

To: Begay, Amanda[amanda.begay@bia.gov]
From: Appel, Elizabeth
Sent: 2017-07-20T15:11:54-04:00
Importance: Normal
Subject: Re: Reorganization Comments
Received: 2017-07-20T15:12:07-04:00
[16 - Northern Cheyenne Tribe.pdf](#)
[17 - Port Gamble S'Klallam.pdf](#)
[18 - Grand Ronde Community of Oregon.pdf](#)
[19 - NCAI.pdf](#)
[20 - Pueblo of Laguna.pdf](#)
[21 - Oglala Sioux Tribe.pdf](#)
[22 - NIEA.pdf](#)
[23 - Navajo Nation.pdf](#)
[24 - GPTCA.pdf](#)
[25 - USET.pdf](#)
[26 - Anonymous.pdf](#)

Sure! They're actually 10 more (or 11, I can't do math)... 16 through 26. They're attached.
Thank you!

On Thu, Jul 20, 2017 at 1:09 PM, Begay, Amanda <amanda.begay@bia.gov> wrote:

Hi Liz -

Can send comments 16-21? I should be able start reviewing them today and tomorrow!

Thanks!
Amanda

On Tue, Jul 18, 2017 at 5:29 PM, Appel, Elizabeth <elizabeth.appel@bia.gov> wrote:

Awesome - thank you! I have comments 16-21 whenever you're ready. The comment period has passed, so that should be it.

On Mon, Jul 17, 2017 at 5:55 PM, Begay, Amanda <amanda.begay@bia.gov> wrote:

Hi Liz -

Sure! I should have some time this week to go through some of these comments! Let me know if you get more!

Thanks!
Amanda

On Mon, Jul 17, 2017 at 4:56 PM, Appel, Elizabeth <elizabeth.appel@bia.gov> wrote:

Hi Amanda-

If you have time free this week, could you help input comments on the Reorganization EO?

Thomasine has the comment summary, putting it directly into a Word document rather than using an Excel sheet. She's working on comments from the transcripts, and has already put in the first couple of written comments. So we now have written comments number 7-21 that haven't been summarized yet.

Just in case you do have time... I'm attaching the Word document, but since Thomasine is working on it too, either delete the comments listed there (so I don't end up putting them in twice when I combine), or add your comments in a different color. I'm also attaching comments 7-15.

Thanks!
Liz

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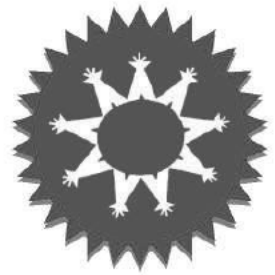
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Oglala Sioux Tribe

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President Troy "Scott" Weston

July 15, 2017

Secretary Ryan Zinke
Assistant Secretary- Indian Affairs Michael Black
Bureau of Indian Affairs
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

via email: consultation@bia.gov

Dear Secretary Zinke and Assistant Secretary Black:

**Re: Comments from the Oglala Sioux Tribe on Executive Order 13871 –
Reorganization of the Executive Branch**

The Oglala Sioux Tribe submits these comments in response to the Department's solicitation for input on President Trump's Executive Order 13871 to reorganize the Executive Branch of the U.S. Government issued on May 16, 2017. We appreciate the opportunity to submit these comments prior to implementation of the Executive Order. True government-to-government consultation, however, is needed before the Department takes any action that will affect our Tribe, our members and our rights.

Reorganization can be healthy if it empowers Tribes for self-determination

The current structures of the Department of the Interior (the "Department") and the Bureau of Indian Affairs ("BIA") were formed over one hundred years ago. These structures were put into place during a different time – a time when there were very different issues confronting Indian Country. Thus, a review of these structures to ensure the Department and the BIA are addressing issues facing Indian Country today can be a worthy endeavor. However, reorganization can be healthy only if it is done right and if it empowers tribes for self-determination and improves the United States' provision of services to tribes and Indian people. Our concern is that reorganization is just another name for downsizing and reducing the BIA – cutting a budget that is already grossly underfunded and reducing services that play such an essential role in our community. From 2001 forward, the BIA and Indian tribes have already had our budgets cut too much.

To build trust and to produce the results intended, the process needs to be transparent, and must involve government-to-government consultation not only at the beginning of the process but also throughout the reorganization. We appreciate that the BIA has come to us to obtain our views before you have crafted a policy, as oftentimes tribes are put in the position of commenting on an already-drafted policy after the decisions are made. As we have seen, such a process is counterproductive, since we then have to work to ensure that needed changes are

included in these policies after the fact. It is more prudent for tribes to be at the forefront of any reorganization of the BIA and not at the end.

To date, one of the only plans we have heard is Secretary Zinke's desire to move BIA resources to field offices and reduce the size of BIA's DC and Denver offices. While we support making decisions at more local levels and giving tribes greater control over decisions, we also feel that the BIA needs to ensure that local offices are given the authority to make decisions. If final decision-making authority still resides in an inadequately-staffed central office, the result will be bottlenecks and delays, the exact opposite of the Administration's intent in reorganizing. The tribes and the Department should work together to identify the types of decision-making authority that should be delegated to the local offices. This kind of collaborative, government-to-government approach can help to ensure that any reorganization is truly beneficial to all parties involved, especially to tribes and their members who the BIA serves.

No Diminishment of Treaty Rights

Under the United States Constitution, treaties—including Indian treaties—are the “supreme law of the land.” U.S. Const., art. VI, cl. 2; *Worcester v. Georgia*, 31 U.S. 515, 531 (1832). The United States, including all of its subdivisions and agencies, is bound to uphold Indian treaties. Federal agencies are required to consider the impacts to our treaties when reorganizing and must ensure that such reorganization does not negatively impact our treaty rights. Failure to consider and protect treaty rights is a violation of federal law and an affront to tribal sovereignty.

The Oglala Sioux Tribe is a sovereign Indian Nation and part of the Oceti Sakowin (Seven Council Fires or Great Sioux Nation). The seven divisions of the Oceti Sakowin, and bands within these seven divisions, signed many treaties with the United States. In 1851, the United States signed the Treaty of Fort Laramie with the Teton and Yankton divisions of the Oceti Sakowin. *See* Treaty of Fort Laramie, 11 Stat. 749 (Sept. 17, 1851). However, the United States did not abide by the terms of the treaty. Continued westward expansion resulted in the Powder River War of 1866-1868. The war ended not in victory for either side, but in a negotiated settlement, and the signing of the Sioux Treaty of 1868, 15 Stat. 635 (April 29, 1868). The Sioux Treaty established a 26 million acre reservation for the “absolute and undisturbed use and occupation” of the Sioux Indian, as a permanent homeland. By the terms of the Sioux Treaty of 1868, the United States promised to provide certain benefits and annuities to the Sioux bands each year.

For the Oglala Sioux Tribe and Great Sioux Nation, the ultimate authorities requiring consultation and acquiescence for reorganization of the BIA and Department are the Fort Laramie Treaties of 1851 and 1868. These treaty obligations remain in effect today. As explained by the Chief Justice John Marshall:

The Indian nations had always been considered as distinct, independent communities, retaining their original natural rights, as the undisputed possessors of the soil from time immemorial.... The very term “nation,” so generally applied to them, means “a people distinct from all others.” The Constitution, by declaring treaties already made, as well as those to be made, the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and

consequently admits their rank among those powers who are capable of making treaties. The words “treaty” and “nation” are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians as we have applied them to other nations of the earth. They are all applied in the same sense.

Worcester v. Georgia, 31 U.S. 515, 559–60 (1832). Furthermore, the United States discontinued negotiating treaties with tribes in 1871 by statute, yet that statute provides that “no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871 shall be hereby invalidated or impaired.” Our treaties are still in full force and effect.

Thus, the obligations of the United States to the Great Sioux Nation under the 1851 and 1868 Fort Laramie Treaties remain in effect today. This includes the obligation to consult with the Tribe on federal undertakings.

Federal agencies are not permitted to unilaterally abrogate our treaty rights. Rather, federal agencies have the legal responsibility to consult with us regarding actions that could impact our treaty rights, and no action that negatively affects our treaty rights should be approved without our express and informed consent.

No Diminishment of Trust Responsibility

The federal government has a trust responsibility to the Oglala Sioux Tribe and all other Indian Nations, which originates from the treaties, the U.S. Constitution, and the unique government-to-government relationship between tribes and the United States. This responsibility runs across all agencies, and agencies need to coordinate with each other to fulfill this responsibility. Our position is that fulfilling the trust responsibility requires obtaining our express and informed consent any time the federal government is undertaking a project that impacts our Tribe and our rights.

Federal departments and agencies under the Executive Branch play an essential role in fulfilling the federal government’s trust responsibility to Indian tribes by ensuring that American Indians have access to critical programs and services based on their political status as members of sovereign tribal nations involved in a government-to-government relationship with the United States. While programs serving Indian Country exist across the federal government, the Department of the Interior is perhaps most closely associated with the federal trust responsibility because of its close historical and contemporary ties to tribal nations and an abundance of programs serving tribes and Indian people.

Of particular concern regarding the federal government’s trust responsibility is the responsibility of the Department and the BIA to take land into trust for Indian tribes. The land-into-trust responsibility originates from one of the more egregious policy failures in our Nation’s history: the failed attempt to assimilate Native people by seizing collectively held tribal land and allotting such lands to individuals. While Congress soon realized the failure of what is now known as the “Allotment Era” and ended it with the Indian Reorganization Act (“IRA”), massive damage had already been done. Tribal governments lost meaningful management of large

portions of their homelands. It was to remedy this harm that Congress empowered the Department to help rebuild tribal homelands by taking land into trust through the IRA.

This responsibility is of great importance to us because the diminished land base has created major challenges for the Oglala Sioux Tribe, and this impacts our sovereignty and self-determination. The checker-boarding and fractionated interest problems on our Reservation make it very difficult for us to use our land within our boundaries, making it difficult to pursue economic development and complete much needed infrastructure projects. We strongly urge that any reorganization plan recognize the great importance of taking land into trust and incorporate a process that improves and streamlines the process, including quicker action from the BIA on land-into-trust applications. Resources and authority should be targeted to the local level for this task.

Consultation

The listening sessions and written comments that you are taking into consideration before drafting a policy are appreciated, but not sufficient. Longstanding policy and Executive Orders across several Administrations underscore the government's commitment to true government-to-government consultation with tribes. Any proposed reorganization must involve the same kind of consultation.

We support the adoption of measures that will streamline Interior processes and enable the Department to better fulfill its treaty and trust responsibilities. However, the intent and effect of streamlining must be improved processes for better provision of services by the Department, not a decrease in staff or resources in already underfunded and understaffed programs. The Department through the BIA should convene a Tribal Reorganization Workgroup as soon as possible to review agency programs serving Native populations. The Workgroup could then work jointly with BIA officials to identify programs that are not reaching their full potential and propose informed solutions for moving forward. Such an approach would be respectful of our tribal sovereignty. It would also further the federal government's duty to consult with tribal nations on federal policies or actions that may impact their communities and rights. The result of the Workgroup's cooperative efforts would be a more cohesive, detailed set of recommendations for Department leadership to consider during the reorganization process.

We recommend the creation of a Tribal Reorganization Workgroup to analyze and present an informed set of recommendations on ways to improve the effectiveness and accountability of Interior programs serving our Tribe and Indian Country. The Workgroup must, of course, include Tribal Leaders.

Indian Trust Asset Reform Act

A good place to begin looking at for a potential reorganization of the BIA is the Indian Trust Asset Reform Act, Pub. L. 114-178. This act was passed in 2016 and was an attempt to allow tribes to move to a system focused on tribal self-determination and economic opportunities. The Act would allow tribes to have greater control and decision making. Unfortunately, many provisions of the Act have yet to be implemented. The Act nonetheless

leaves a good roadmap of potential changes that can be made with reorganization. One of the greatest priorities for a reorganization can be found in the Act's establishment of an Under Secretary for Indian Affairs who would report directly to the Secretary. The Under Secretary would supervise and coordinate activities and policies of the BIA with activities and policies of non-BIA agencies and bureaus within the Department of Interior. It would also elevate Indian Affairs issues within the Department.

The Under Secretary was intended to ensure that other parts of the Department cannot implement policies that negatively affect tribes and beneficiaries without Indian Affairs knowing about it as early as possible. Any reorganization of the Department needs to confront the fact that Indian Affairs is an essential component of the Department. In one hundred years much has happened (it was not long ago that Indian Affairs was transferred from the War Department, for example) and reorganization needs to recognize and integrate Indian Affairs within the workings of the whole Department. The Oglala Sioux Tribe recommends the establishment of an Under Secretary for Indian Affairs.

BIA might not be broken—it just needs to be funded

While BIA is often made the scapegoat of problems facing Indian Country—and some of it may be well-deserved—we must also look at the resources it has to work with. Any plans for reorganization should recognize the fact that the BIA may not be broken but rather is just chronically underfunded. The BIA has an enormous responsibility to meet the needs of 567 Indian Nations, and there is strong consensus that Congress has not allocated enough resources to meet these needs. This situation creates a constant struggle pitting tribes against each other fighting for shrinking federal dollars.

Instead of spending extensive resources moving around BIA staff and responsibilities, it would be wise for the BIA to focus on examining its various funding allocations based on tribes' needs and why those needs exist. Further, the Secretary and the Administration should reject cuts for the BIA, especially in the Great Plains Region. Oglala Lakota County, within our Pine Ridge Indian Reservation, is one of the three poorest counties in the entire nation. We have an enormous need for infrastructure funding—for roads, schools, courts, law enforcement, healthcare facilities, water systems, youth and elder care centers—which, if obtained, would be put to immediate use for community development which, in turn, would facilitate the economic development we so greatly need on our Reservation. We need more resources, not less!

Disproportionate Impact of Reorganization on Indian Tribes

Because of the unique status of tribal nations within our federalist system, we rely on the federal government for support through direct government-to-government funding, services, agency programs, and cooperative partnership opportunities. We are concerned that Executive Order 13781 could be used to cut or diminish essential government services under the guise of reorganization. The comprehensive restructuring of executive federal agencies—such as Interior, HHS, and HUD, among others—without specific consideration or carve-outs for Indian programs will necessarily and disproportionately affect the health, safety, and welfare of our people, lands, and natural resources.

We are also alarmed by recent reports that Secretary Zinke is considering eliminating 4,000 positions from the Department of Interior. Assuming that the alleged cuts would be evenly distributed across the Department, the BIA—which employs approximately 8,000 personnel—would suffer the loss of 462 positions, which translates into a 5.8% reduction in its overall workforce. Such a loss would drastically impair its ability to fulfill its mission to “enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes, and Alaska Natives.” Further reductions in BIA resources when it has already been chronically underfunded for decades is simply unacceptable.

We urge the Department to exempt the BIA from any proposed reductions in the Interior workforce. We also strongly recommend that any programs housed in executive federal agencies serving the complex needs of Indian Country be appropriately protected during the restructuring process to ensure that the federal government continues to fulfill its treaty and trust obligations to tribal nations.

Tribes have been providing the BIA with specific ideas to streamline and improve. The BIA needs to focus in on one area at a time and then work with Tribal Leaders on targeted outcomes rather than just implementing across-the-board reductions in staff and services.

Conclusion

Time and again, tribes have either been altogether excluded from decision-making that has a direct impact on us and our rights, or we have participated only to have our concerns noted and dismissed. This failure to meaningfully consult with tribes has resulted in major threats to our culture, lands, and way of life. It is from this history that much of the concern and apprehension has come from with the recent discussions regarding reorganization.

The Oglala Sioux Tribe appreciates the early consultation that you have engaged in on reorganization thus far. However, as you move forward with your consideration to reorganize the Department or the BIA, you must provide tribes with details of any plans and continue to consult with us and Indian Country throughout your process. It is only through meaningful consultation and buy-in of Indian Country that a reorganization of the Department and the BIA can succeed. We also underscore that the Department and the BIA must adhere to the strict and high standards of the federal trust responsibility and the United States’ treaty obligations in any and all decisions and action steps that will affect us.

Sincerely,



Troy “Scott” Weston
President, Oglala Sioux



NATIONAL CONGRESS OF AMERICAN INDIANS

July 14, 2017

The Honorable Ryan Zinke, Secretary
Department of the Interior
1849 C Street NW
Washington, DC 20240

EXECUTIVE COMMITTEE

PRESIDENT

Brian Cladoosby
Swinomish Tribe

FIRST VICE-PRESIDENT

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Aaron Payment
Sault Ste. Marie Tribe of Chippewa
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TREASURER

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Jerry Isaac
Native Village of Tanacross

EASTERN OKLAHOMA

Joe Byrd
Cherokee Nation

GREAT PLAINS

Larry Wright, Jr.
Ponca Tribe of Nebraska

MIDWEST

Roger Rader
Pokagon Band of Potawatomi

NORTHEAST

Lance Gumbs
Shinnecock Indian Nation

NORTHWEST

Mei Sheldon, Jr.
Tulalip Tribes

PACIFIC

Jack Potter, Jr.
Redding Rancheria

ROCKY MOUNTAIN

Darrin Old Coyote
Crow Nation

SOUTHEAST

Larry Townsend
Lumbee Tribe

SOUTHERN PLAINS

Liana Onnen
Prairie Band of Potawatomi Nation

SOUTHWEST

Joe Garcia
Ohkay Owingeh Pueblo

WESTERN

Bruce Ignacio
Ute Indian Tribe

EXECUTIVE DIRECTOR

Jacqueline Pata
Tlingit

NCAI HEADQUARTERS

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Sent via email to: consultation@bia.gov

Re: Comments on the Department of the Interior's Implementation of Executive Order 13871

Dear Secretary Zinke:

The National Congress of American Indians, the largest and oldest organization representing American Indian and Alaska Native tribal governments, offers these comments in response to Executive Order (EO) 13781, "Presidential Executive Order on Comprehensive Plan for Reorganizing the Executive Branch," issued by President Trump on March 13, 2017. The stated purpose of the Executive Order (EO) is to improve the efficiency, effectiveness, and accountability of the federal government. In addition to the comments below, NCAI also supports the comments made by the Self-Governance Advisory Committee.

Indian Nations are sovereign governments recognized under treaties and the U.S. Constitution. The federal trust responsibility to Indian tribes, which is recognized by treaties, statutes, EOs, and judicial opinions, is rooted in the land cessions that formed the United States. The trust responsibility is one of the most fundamental aspects of the federal government's relationship to Indian tribes and all federal departments and agencies play a vital role in upholding the federal trust responsibility. EO 13781 contemplates reorganizing governmental functions that are integral to the federal obligation to protect tribal self-determination, lands, resources, and treaty rights.

After the EO was released in March, NCAI sent a letter to the White House and DOI requesting government to government consultation. Any reorganization of the Executive Branch should be undertaken in full compliance with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Although listening sessions may be a helpful way to begin the conversation, they do not take the place of formal government-to-government consultation on specific proposals or ideas. We continue to expect that formal consultation will take place before DOI moves forward with any proposals for reorganizing or reforming any of the federal programs and offices that provide essential governmental assistance to tribal governments in accordance with the federal trust responsibility.

As DOI heard at the June 12th Listening Session held in conjunction with NCAI's Mid-Year meeting, this is not the first time that reorganization of DOI has been discussed. Several tribal leaders commented that this is a perennial conversation and encouraged DOI to revisit recommendations that have been made in the past, including the 1999 National Academy of Public Administration report on BIA

Management and Administration requested by the Assistant Secretary for Indian Affairs and the 2012 “Bronner Report,” which analyzed the effectiveness of the 2004 reorganization effort.

The EO specifically asks for input on “whether some or all of the functions of an agency, a component, or a program are appropriate for the Federal Government or would be better left to State or local governments or to the private sector through free enterprise.” In response to this question, we reiterate that the programs within the various agencies that provide essential governmental assistance to tribal governments are rooted in the treaties that were made with tribal nations in exchange for land cessions. **The trust relationship with tribes is a federal responsibility that cannot be delegated to State or local governments.**

Trust Resources Management

NCAI urges DOI to move forward with implementation of the Indian Trust Asset Reform Act (ITARA), which was enacted last year, and includes a number of provisions that will improve the efficiency and effectiveness of the Department of Interior once they are implemented. In particular, we urge the Administration to identify a single entity to have responsibility for the administration of appraisals and to appoint an Under Secretary for Indian Affairs. Once established, the Under Secretary will report directly to the Secretary and serve as a cross-agency advocate for Indian country to ensure that all agencies and bureaus within the Department implement policies that consider their trust obligations to Indian tribes. The position will address a major issue that has been raised in every significant study of trust management at Interior: the lack of clear lines of authority and responsibility to ensure accountability for trust reform efforts by the various divisions of the Department of Interior. More specific recommendations about ITARA implementation are included in the joint comments from NCAI and ATNI that were submitted to DOI last October (attached).

Indian Education

Similarly, there has been considerable discussion over the past several years about the need for reform at the Bureau of Indian Education (BIE). Consistent with Resolution # SD15-073, NCAI continues to support reform efforts at the DOI and BIE that improve student achievement and respect tribal sovereignty. More specific recommendations about BIE reform are included in the joint comments from NCAI and the National Indian Education Association that were submitted to DOI in 2014 (attached).

Tribal Government Self-Determination

Self-determination and self-governance have been two of the most successful policies for promoting tribal self-determination and improving the delivery of services to tribal communities. They are also policies that are consistent with the Administration’s goal of reducing the federal government’s footprint and reestablishing local control in appropriate areas. We hope the Administration will view an expansion of these policies, where desired by tribal governments, as one way to achieve their goal of increasing the efficiency and effectiveness of the federal government. The Indian Self-Determination Act Amendments of 1994 permit Indian tribes to contract or compact to operate programs in other parts of Interior, outside of the BIA. We recommend that DOI consult with Indian tribes about the possibility of expanding 638 contracting to other DOI entities, such as the National Park Service.

The EO also asks “whether certain administrative capabilities necessary for operating an agency, a component, or a program are redundant with those of another agency, component, or program.” Indian programs are housed across the executive branch. While there may be programs that appear

to fund related activities, each of these programs plays a unique role and contributes to the federal government's fulfillment of its trust obligations. These programs are not redundant.

There is, however, a need to ensure that tribal programs are coordinated across the executive branch. To this end, NCAI has recommended that the President establish by EO in the Office of Management and Budget (OMB) the Office on Indian Trust Responsibility (OITR). The OITR would review federal agency draft and proposed final regulatory actions that may potentially affect the federal Indian trust responsibility to American Indian and Alaska Native tribal governments. The objectives of the EO would be to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of the federal Indian trust responsibility for agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; to make the process more accessible and transparent to tribal governments; and further improve rulemaking and regulatory review to support tribal governments interests and self-determination.

The President should also establish by EO a Council on Indian Trust Responsibility (CITR) that would coordinate federal Indian policy efforts and work closely with agencies and other White House offices in the development of American Indian and Alaska Native policies and initiatives. CITR would be established within the Executive Office of the President as part of the Council on Native American Affairs. The CITR would assist and advise the President in developing policies and initiatives. This would help ensure that Indian Country programs and initiatives are coordinated across agencies.

In addition to these efforts to ensure that tribal programs and initiatives are coordinated across agencies, NCAI believes that reforms could be undertaken that would streamline some of these programs and increase administrative efficiency, particularly with regard to tribal public safety programs.

Public Safety

Federal funding for law enforcement, public safety, substance abuse, and mental health programs in Indian Country is administered by several different federal agencies. The largest amounts of public safety funding originate from: (1) the BIA, (2) DOJ, and (3) HHS. There are several notable differences between how tribes are required to apply for, receive, and report their use of funding from these agencies. Many tribes must hire grant writers for DOJ's competitive grant system, pay employees for extensive record keeping systems, and comply with differing reporting structures for similar programs that originate in differing agencies. The differences in processes and requirements cause many tribes to lose substantial amounts of money and time to administrative costs. Tribes have countless stories of successful programs disappearing at the end of a two- or three-year grant cycle. Under this ad hoc system, tribal law enforcement may receive vehicles, but no maintenance. They get funding for construction of a new detention facility, but no staff. The system does not make sense.

NCAI has been discussing a proposal, modeled after Public Law 102-477, which established what is commonly known as the "477 Program" and authorizes tribal governments to consolidate up to thirteen different programs from DOI, Department of Labor, Department of Education, and HHS into a single plan, approved by the Secretary of the Interior, to foster employment and economic development in Indian Country. Similar authority for tribal public safety funding would give tribes the flexibility to integrate public safety funding into a single, coordinated, comprehensive program

that reduces administrative costs by consolidating administrative functions. This model would streamline reporting into a simpler single-compliance model that would be monitored and executed by the “lead agency.” Consolidation by tribal governments has the potential to eliminate duplicate reporting and unnecessary grant management expenses. The model NCAI has been discussing would be flexible enough to ensure consistent funding for long-term programs while maintaining competitive grant programs in certain project-specific areas. NCAI recommends that DOI and DOJ initiate consultation with Indian tribes about the options for tribal consolidation of public safety programs.

Programs Must Be Adequately Funded

Finally, as many leaders stressed at the June 12th Listening Session, BIA and DOI have made significant advancements in recent years in their administration of tribal programs. The fundamental problem at DOI is insufficient resources to meet federal obligations to Indian tribes. No amount of restructuring or increased efficiency will be able to close the gap between the unmet obligation and the available funding. Recognizing this, DOI must continue to advocate strongly for the resources needed. DOI should also pursue reforms that will allow tribal governments to build their economic and tax base. NCAI outlined a number of priorities in this area in a March 2, 2017 memo to Secretary Zinke (attached), including eliminating dual taxation of business activity on tribal lands through new regulations under the Indian Trader Statutes.

We look forward to future discussions on any proposed reorganization of DOI and thank you for the opportunity to provide these comments.

Sincerely,



Brian Cladoosby, President

Attachments:

- NCAI/ATNI comments on ITARA Implementation
- NCAI/NIEA comments on BIE Reform
- NCAI Memo to Secretary Zinke

VIA EMAIL

October 7, 2016

Ms. Elizabeth Appel
Office of the Assistant Secretary - Indian Affairs
MS-3642-MIB
1849 C Street, N.W.
Washington, D.C. 20240
Email: OST ITARA@ost.doi.gov

RE: Joint Comments of the Affiliated Tribes of Northwest Indians and the National Congress of American Indians on the Implementation of the Indian Trust Asset Reform Act

Dear Ms. Appel:

The Affiliated Tribes of Northwest Indians (“ATNI”) and the National Congress of American Indians (“NCAI”) respectfully submit these comments on the Secretary of the Interior’s (“Secretary’s”) implementation of the Indian Trust Asset Reform Act, Pub. L. 114-178 (the “ITARA”). We intend this document to provide input not only on the provisions of the ITARA for which the Secretary has solicited comment, but also to provide a roadmap for improving delivery of trust services in the next Administration.

Founded in 1953, ATNI represents 57 tribal governments from Oregon, Idaho, Washington, southeast Alaska, northern California, and Montana. The ITARA originated from, and was drafted by, ATNI’s Trust Reform Committee. Founded in 1944, NCAI is the oldest, largest, and most representative American Indian and Alaska Native organization serving the broad interests of tribal governments and communities. Both ATNI and NCAI advocated for the ITARA’s passage.

Most of the text of the ITARA had its origins in the Indian Trust Reform Act of 2005 (hereinafter “S. 1439”), which was introduced by then-Senate Committee on Indian Affairs Chairman John McCain and Vice Chairman Byron Dorgan in the 109th Congress. Following the introduction of S. 1439, the Committee staff travelled across the United States to consult with Indian tribes on the legislation. The Committee then generated a revised version of S. 1439 to reflect tribal input. Using the Committee’s revised draft of S. 1439 as a template, beginning in 2011, ATNI focused on updating the two titles of that bill that remained relevant in light of the *Cobell* settlement and that had universal tribal support. One of those titles related to the Office of the Special Trustee for American Indians (“OST”) and became Title III of the ITARA, which is the subject of this consultation.¹

At the outset, we want to focus on the positive vision that tribal leaders have long put forward for a trust system that places resources at the local tribal level and promotes tribal

¹ The legislative history of H.R. 812, its Senate companion bill S. 383, and the prior versions introduced in the 113th Congress (H.R. 409 and S. 165) are incorporated into these comments by reference.

decision-making on development and conservation of tribal land. The purpose of the Under Secretary of Indian Affairs authorized by Section 303 of the ITARA (“Under Secretary”) is to integrate high-level decision making on policy and avoid a “stove piped” organization of the Bureau of Indian Affairs (“BIA”) and OST that sharply separates the ability to make *policy* decisions. We support, however, keeping the core trust accounting functions separate and accountable. Under a tribally proposed structure, these fiduciary accounting and investment functions should remain intact but report to the Under Secretary to ensure coordination. The Buy Back Program would continue to function independently and would also report to the Under Secretary. Should the transition plan required by Section 304 be implemented, a new office of Trust Accountability could report to the Under Secretary to provide internal control and quality assurance. Within the BIA, a trust services section could provide support for field operations. If implemented in the next Administration, this structure would create a single line of authority for delivering trust programs and services to tribal communities.

I. CONCERNS ABOUT THE ITARA CONSULTATION PROCESS

Prior to discussing substantive recommendations for the ITARA implementation, we feel compelled to identify some concerns and observations about how the Department conducted the consultations. Materials that were presented and disseminated at the consultations and on OST’s ITARA website appear to be intended to influence the substance of the consultations. For example, OST has made available a document titled “OST Accomplishments”², a less-than-subtle attempt to advocate for the continuing existence of OST. Similarly, a flow chart of OST functions identifies several activities under the column “Management, Collection, and Investment of Indian Trust Funds,” some of which have only tangential relation to those activities.³

Section 304 of the ITARA requires the Secretary to submit a transition plan to Congress that provides for the termination of OST within two years. It would appear to be a conflict of interest for OST personnel to be involved in the consultations, the preparation of consultation materials, or the preparation of the report required by Section 304 in any capacity. At least one top level OST official personally lobbied against H.R. 812 when it was pending in the U.S. Senate and subsequently attended listening and consultation sessions. From an outside perspective, OST would appear to have a motivation to emphasize information in furtherance of its own self-preservation and to suppress information that does not comport with that view. For example, at the Seattle consultation, one prominent, nationally known tribal leader stated that none of the PowerPoint presentations mentioned that Section 304 of the ITARA requires the Secretary to submit to Congress a transition plan for OST to terminate within two years—undoubtedly a key piece of information for the attendees of the consultation.

We request that the Department of the Interior (“Department”) have a neutral third party examine these issues thoroughly before any drafts of the report are developed to ensure that the consultations were conducted in a manner free of conflicts of interests and undue influence. To

² DOI, *OST Accomplishments*, https://www.doi.gov/sites/doi.gov/files/uploads/ost_accomplishments_08_16_2016_final.pdf (last visited Oct. 5, 2016).

³ DOI, *OST Trust Functions* (July 25, 2016), https://www.doi.gov/sites/doi.gov/files/uploads/ost_trust_functions_diagram_07252016_v1.4_final.pdf.

the extent that the Department agrees that the consultations were or may have been conducted improperly, additional consultations should be scheduled and organized by an entity other than OST. No Section 304 report should be drafted, approved, or submitted to Congress until the Department examines these issues.

We strongly urge the Department to allow the next Administration to prepare and submit the report required by Section 304 of the ITARA. The ITARA consultations were truncated into a period of less than four weeks in August and September. These issues are far too important to rush such a report out the door before the end of calendar year 2016.

II. UNDER SECRETARY FOR INDIAN AFFAIRS

Section 303 of the ITARA authorizes the Secretary to establish an Under Secretary within the Department. If established, the Under Secretary would report directly to the Secretary. It would be a higher level position than the Assistant Secretary—Indian Affairs (“AS-IA”) and the heads of other non-Indian land management agencies, such as the Bureau of Reclamation, the Bureau of Land Management, and the National Park Service.

At this time, there is no single executive within the Secretary’s office that is focused on Indian affairs and that possesses authority over the non-Indian agencies and bureaus in the Department. The Under Secretary is intended to fill this void. Among other duties, the Under Secretary would “to the maximum extent practicable, *supervise and coordinate* activities and policies” of the Bureau of Indian Affairs (“BIA”) with activities and policies of non-BIA agencies and bureaus within the Department.⁴ The Under Secretary is intended to serve as a cross-agency advocate for Indian country within the Department and ensure that non-Indian agencies and bureaus within the Department do not implement policies that negatively affect tribes and beneficiaries. In addition to the duties enumerated in Section 303(c), that subsection also authorizes the Secretary to direct the Under Secretary to perform other duties.

The creation of this position would address a major issue that has been raised in every significant study of trust management at the Department: the lack of clear lines of authority and responsibility within the Department to ensure accountability by the non-Indian agencies within the Department. At the August 29, 2016 consultation in Seattle, one tribal leader explained the need for an Under Secretary by describing how National Park Service officials fail to recognize treaty rights and instead claim that adhering to the trust responsibility is the BIA’s job. Similar examples abound throughout Indian country.

The Under Secretary provision was included in S. 1439 and had previously been recommended by a Tribal Leader’s Trust Reform Task Force from 2002 to 2003. In response to a question at the Seattle consultation as to why the Department had advocated *against* the Under Secretary provision when H.R. 812 was pending in the U.S. Senate, Deputy Secretary Mike Connor clarified that once the Department realized the updates had been made to the legislation, it no longer had concerns with the Under Secretary provision or the legislation. We appreciate

⁴ 25 U.S.C. § 5633(c)(2) (emphasis added).

this clarification, considering that even the George W. Bush Administration supported the establishment of an Under Secretary.⁵

Recommendations for the Under Secretary

We recommend that the Secretary immediately establish the Under Secretary position to set the stage for the next Administration to consider potential nominees for the position. We also recommend that the Secretary designate an Acting Under Secretary to assist with the transition to the next Administration and to oversee any OST functions that might be transferred by next Administration or by Congress.

In establishing the position, the Secretary should include additional duties for the Under Secretary and memorialize all of the Under Secretary's duties in the appropriate sections of the Department of the Interior's Departmental Manual ("Departmental Manual"). Because of the importance of this position to Indian country and federal Indian policy, we strongly believe that the Department should consult with Indian tribes and Indian organizations prior to the Departmental Manual sections becoming final. We recommend that the following additional duties be included in the draft Departmental Manual sections:

- The Under Secretary will be one of the Department's representatives to the White House Council on Native American Affairs;
- For issues relating to (a) Indian trust property, including natural resources and fish and wildlife, (b) Indian rights reserved by treaty, executive order, or other federal law; (c) protection of environmental resources, sacred sites, or culturally significant places, or (d) any Departmental funding relating to or affecting (a), (b), or (c); the Under Secretary may exercise Secretarial direction and supervision over the following Departmental officials, including the deputy assistant secretaries, directors, commissioners, or other top officials of the subordinate bureaus and offices, as the case may be, that report to each: (1) Assistant Secretary—Policy Management and Budget and Chief Financial Officer (CFO); (2) Assistant Secretary—Water and Science; (3) Assistant Secretary for Fish and Wildlife and Parks; (4) Assistant Secretary—Land and Minerals Management; (5) the Special Trustee for American Indians; and (6) the Assistant Secretary—Insular Affairs.
- The Under Secretary may consult with the AS-IA on any issue in carrying out any of the Under Secretary's duties, but the AS-IA would retain whatever line authority he/she currently possesses.

⁵ In testimony before the Senate Committee on Indian Affairs in 2005 on S.1439, Associate Deputy Secretary James Cason stated that "Interior is receptive to the concepts of establishing an Under Secretary position and merging Indian programs under new leadership." *Statement of James Cason Associate Deputy Secretary and Ross Swimmer Special Trustee for American Indians Department of the Interior Before the Senate Committee on Indian Affairs on S. 1439, The Indian Trust Reform Act of 2005, Titles II VI*, at 5 (Mar. 28, 2006), <http://www.bia.gov/cs/groups/xocl/documents/text/idc008288.pdf>.

Finally, we recommend the Secretary request funds in the FY 2018 budget request for the Under Secretary and for appropriate staff and administrative support for that position. These funds should not come from budgets of the AS-IA, the BIA, or other Indian affairs programs or line items within the Department. Rather, these funds should be included and requested in the budget of the Office of the Secretary, which funds the Secretary's and Deputy Secretary's offices. Within the Office of the Secretary, the "Departmental Operations" account would likely be the most appropriate place for this funding.

III. ADMINISTRATION OF APPRAISALS

Section 305(a) of the ITARA requires that "not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with Indian tribes and tribal organizations, shall ensure that appraisals and valuations of Indian trust property are administered by a single bureau, agency, or other administrative entity within the Department."⁶

As has been explained several times to Department officials at two consultations (Seattle and the teleconference consultation) and tribal organizational meetings, this provision is intended to simply ensure that one entity receives an appraisal request and is responsible for ensuring its completion. The April 10, 2015 ATNI testimony before the Subcommittee on Indian, Insular, and Alaska Native Affairs makes this intent clear:

In the report accompanying the FY 2010 Interior, Environment and Related Agencies spending bill, the House Appropriations Committee said the following about OST's involvement in the appraisal process:

"Indian Tribes routinely experience lengthy delays in obtaining appraisals from the Department for transactions involving the conveyance of Indian trust lands. The Bureau of Indian Affairs is responsible for requesting appraisals and the Office of the Special Trustee is responsible for procuring the appraisals. Appraisals are required for Indian Tribes and individual Indians to sell, acquire or exchange interests in trust land. Delays in obtaining appraisals also delay these transactions, which negatively impacts Tribal economies." ...

... As mentioned above, both the BIA and OST have a role in the appraisal process and neither have authority over the other. As a result, the bureaucracy of having two separate entities involved in accomplishing a single task often leads to lengthy delays. Section 305(a) requires the Secretary, within 18 months of enactment and in consultation with Indian tribes, to ensure that appraisals and valuations of Indian trust property are administered by a single bureau, agency or other administrative entity within the Department. ...

It is easy to see how involving two competing bureaucracies with no authority over each other and little coordination leads to delays in effectuating routine transactions like appraisals. As this Subcommittee knows from its focus on tribal energy development, delays in securing federal approvals and permits and—in

⁶ Codified at 25 U.S.C. § 5635(a).

this case—appraisals, often result in lost economic opportunities for Indian tribes and their members.⁷

Section 305(a) simply requires that a single entity “administer” appraisals of Indian trust property. It does not require specialty components of appraisals that are situated and funded in other agencies of the Department to be relocated. When drafting Section 305(a), ATNI was well aware that BIA Forestry personnel are responsible for valuing timber and a separate entity, the Division of Minerals Evaluation, is responsible for appraising minerals. These specialty functions can remain in place provided that a single entity receives the initial appraisal request and is responsible for delivering the completed appraisal.

Recommendation for the Administration of Appraisals and Valuations

The Office of Appraisal Service (“OAS”) should be the single entity that administers appraisals of Indian trust property. The processes that OAS has established and the appraisers it has on staff and available for contacting make it an obvious choice. Although we believe, as discussed in Part IV below, that OAS should be transferred to the AS-IA in the transition plan and report to Congress, we do not believe that OAS itself should be dismantled.

OAS can satisfy Section 305(a) and receive appraisal requests by simply directing that someone at OAS or within OST be the point of contact for appraisal requests for Indian tribes and Indian beneficiaries. OAS can similarly enter into memoranda of understanding with BIA Forestry and the DME to obtain forestry and subsurface valuations as necessary.

IV. REPORT TO CONGRESS AND TRANSITION PLAN

Section 304 of the ITARA requires the Secretary to consult with Indian country and submit a report to Congress that (a) describes OST’s non-trust funds-related activities; (b) provides a description of any OST functions that will be transitioned to other agencies or bureaus within the Department; and (c) includes a transition plan for OST to terminate within two years of submission, or an alternative date if an orderly transition cannot be done within two years.

Section 304(c) states that nothing in the report causes OST to terminate or affects application of the existing provisions in the American Indian Trust Fund Management Reform Act of 1994 (“1994 Act”), which created OST. It will be up to a future Administration or Congress to decide whether the transition plan is actually implemented.

⁷ Prepared Statement of the Honorable Ernest L. Stensgar, Vice Chairman, Coeur d’Alene Tribe Chair, Trust Reform Committee, Affiliated Tribes of Northwest Indians Legislative Hearing on H.R. 812, the Indian Trust Asset Reform Act Subcommittee on Indian, Insular, and Alaska Native Affairs at 35 (April 14, 2015), <http://naturalresources.house.gov/uploadedfiles/stensgartestimony.pdf>.

When Congress created OST in the 1994 Act, it intended that office to be a temporary entity that would sunset after the major fiduciary accounting reforms were implemented. As noted by the Senate Committee on Indian Affairs in its report accompanying S. 383:

The major reforms that the OST was tasked with were completed years ago. The Government Accountability Office (GAO) stated that the “OST estimates that almost all key reforms needed to develop an integrated trust management system and to provide improved trust services will be completed by November 2007.”⁸

Despite the findings in the GAO report, neither OST nor the Department initiated any dialogue on the future of OST. The report required by Section 304 was intended to, for the first time, direct the Secretary to provide Congress with a written transition plan detailing what a transition of OST would look like.

General Recommendations for the Report

The Secretary’s report to Congress should emphasize that, by default, all functions of OST are contractible and compactable under the Indian Self-Determination and Education Assistance Act of 1975 (“ISDEAA”). History has shown that Indian tribes do best when they are in control of their own destinies. Nothing exemplifies this more than the success tribes have achieved under the ISDEAA. The Secretary should strongly affirm in the report that the Department fully intends to contract and compact any OST functions that tribes are willing to assume.

Specific Recommendations for the Section 304 Report and the Transition Plan

We believe that the core OST fiduciary accounting and investment functions should remain largely intact to provide continuity for Indian tribes and Indian beneficiaries. Other OST line items and FTEs, however, should be transferred to other entities within the Department, such as the BIA or the Under Secretary.

For purposes of the transition plan, we recommend the following for the various programs within OST, which correspond to the program headings used in OST’s FY 2017 detailed budget justifications:

Executive Direction (\$2,044,000/ 6 Full-Time Equivalents (FTE))

The Executive Direction line item and accompanying FTEs should be moved to the Under Secretary. These top level executive expenditures would not be needed in any transition of OST.

⁸ S. Rep. No. 114 207, at 3 (2016) (internal citations omitted).

Program Operations

Office of Field Operations (\$26,569,000 /220 FTE): With the exception of the Office of Trust Fund Investments and the Trust Beneficiary Call Center (which should be transferred to the Under Secretary), the remainder of the Office of Field Operations funding and FTEs should be transferred to the BIA's Office of Trust Services. This would include the Regional Trust Administrators and Fiduciary Trust Officers. Most of these personnel are already physically situated in BIA regional and agency offices. For this reason, the BIA would be particularly suited to utilize these personnel for its Trust Services programs, most of which have been underfunded and understaffed for decades.

For example, the three Indian Forest Management Assessment Team ("IFMAT") assessments that have been published by the Intertribal Timber Council provide detailed data on the steady decline of BIA and tribal forestry staff, which are funded through the BIA's Office of Trust Services. In the IFMAT III report, data illustrates that from 2001-2011, BIA and tribal forestry programs lost 21 percent of staffing levels. BIA range and agricultural staff are nearly nonexistent at BIA agencies and funding for cadastral surveys and other BIA realty functions declined precipitously during those years. In contrast, OST's budget swelled during that same timeframe. In FY 2006, OST's budget was \$222.7 million—more than double what it had been four years earlier.

The woeful lack of staffing in BIA forestry in particular has had severe implications on the federal budget and taxpayers. In the past few years alone, the federal government settled tribal mismanagement settlements collectively totaling nearly \$600 million with the three largest timber tribes. Much of this liability arose from lack of staff to complete management duties required under the National Indian Forest Resources Management Act and related authorities. This potential liability is ongoing because the lack of staff continues, even after these settlements. Failure to address these issues has started the clock running anew for additional federal liability in coming decades. For these reasons, the BIA's Office of Trust Services is the most logical place to transfer OST funds and FTEs as part of any transition.

Office of Appraisal Services (\$10,811/84 FTE): The OAS should remain intact and be transferred to the AS-IA. Transferring OAS to the Department's Office of Valuation Services will, in our view, result in competition for resources between appraisals sought by the larger non-Indian land management agencies and bureaus within the Department.

Office of Trust Services (\$29,347,000/124 FTE): This program provides the core of OST's trust fund fiduciary activities. This funding and associated FTEs should be moved to the Under Secretary.

Office of Historical Trust Accounting (\$19,632,000/20 FTE): With the continued resolution of the various Indian trust mismanagement settlements, the Office of Historical Trust Accounting will be winding down in the coming years and largely be a litigation support entity. For this reason, it should be moved to the Office of the Solicitor.

Program Support

Business Management (\$1,810,000/15 FTE): This line item funds “strategic planning, workforce planning, training design and coordination for staff development, and the execution of special projects as directed by Executive Management” of OST.⁹ These functions will no longer be necessary in any transition of OST. This funding and associated FTEs should be transferred to the BIA’s Office of Trust Services.

Office of Budget, Finance and Administration (\$24,201,000/26 FTE): According to the FY 2017 budget justifications, this program funds personnel, Equal Employment Opportunity, space management, telephone services, Government Purchase Card, travel, vehicle management, transportation, management, facilities, and working capital fund activities. These “overhead” types of functions are duplicative of other personnel in the Department and would not be needed following a transition and wind down of OST. The \$8,516,000 in pass-through funding from this line item for the Office of Hearings and Appeals (“OHA”) should continue to go to OHA. The remaining \$15,685,000 from this line item should be transferred to the BIA’s Office of Trust Services.

Office of Information Resources (\$7,011,000/38 FTE): Half of this funding and accompanying FTEs should be transferred to the Under Secretary to support the core fiduciary accounting and investment functions that would also be transferred to the Under Secretary. The remaining \$3,505,500 should be transferred to the BIA’s Office of Trust Services.

Office of External Affairs (\$1,568,000/8 FTE): The Office of External Affairs budget and FTEs should be transferred to the Under Secretary.

Program Management (\$15,827,000/114 FTE)

Office of Trust Records (\$10,148,000/81 FTE): The Office of Trust Records, which includes the facility in Lenexa, Kansas, should remain intact and be transferred to the Under Secretary.

Office of Trust Review and Audit (\$5,025,000/28 FTE): This line item and associated FTEs should be transferred to the Under Secretary.

Office of Risk Management (\$654,000/5 FTE): The Office of Risk Management should be transferred to the Under Secretary.

⁹ DOI, *Budget Justifications and Performance Information Fiscal Year 2017: Office of the Special Trustee for American Indians*, at OST 46, https://www.doi.gov/sites/doi.gov/files/uploads/FY2017_OST_Budget_Justification.pdf (last visited Oct. 5, 2016).

V. IMPROVING TRUST SERVICES IN THE NEXT ADMINISTRATION

Looking ahead to the next Administration, we believe the ITARA and the report required by Section 304 can provide the starting point for improved delivery of trust services to both tribal governments and Indian beneficiaries.


The principal goal of improving delivery of trust services should be to have the resources and decision making at the local level, coupled with an internal oversight mechanism. Tribes have always had concerns with the “stove piped” organization of the BIA and OST that sharply separates the ability to make decisions on trust resource management and trust services at the local level. For example, the division between the roles of the BIA and OST in the appraisal process and the delays it has caused is why Section 305(a) was ultimately included in the ITARA.

- As previously explained, OST’s core fiduciary accounting and investment functions should remain intact but have those functions report to the Under Secretary to ensure coordination with resource management.
- The Buy Back Program should continue to function independently and would also continue to report to the Secretary or to the Under Secretary.
- Utilizing funding from transferred OST line items and working in conjunction with OST’s Offices of Trust Records, Trust Review and Audit, and Risk Management (all three of which would transfer to the Under Secretary under the recommendations in Part IV, above), a new office of Trust Accountability should be established and report to the Under Secretary to provide internal control and quality assurance in trust administration throughout the Department as well as ensuring timely resolution of problems.
- Participation in Trust Asset Management Activities by Indian Tribes. All tribes around the Nation, both direct service and self-governance, are increasing their capacity to manage their own lands. Tribes are very interested in increasing their ability to make decisions about how the reservation lands will be used for the long term benefit of their people. The trust asset management planning option in title II of the ITARA will provide all tribes with the ability to establish management objectives for Indian trust assets, define critical values of the Indian tribe, and provide identified management objectives. The Under Secretary and the BIA should make implementing title II of the ITARA a priority.
- The BIA’s Office of Trust Services should provide technical support for field operations, train services for BIA and tribal staff, and controls to ensure that programs are administered in accordance with defined standards for trust administration, and help avoid problems before they reach serious proportions.
- Substantial changes to operations would be sought in adequate staffing, training and funding levels, technical assistance would need to be readily available, and performance

standards reflecting modern practices of trust administration would be established and enforced.

We are very enthusiastic about exploring these concepts in the next Administration and look forward to continuing to vigorously monitor the Department's implementation of the ITARA.

Sincerely,



Fawn Sharp
President, ATNI



Brian Cladoosby
President, NCAI



Ernest Stensgar
Vice Chairman, Coeur d'Alene Tribe
Co-Chair, ATNI Trust Reform Committee

cc: House Committee on Natural Resources
Senate Committee on Indian Affairs
House and Senate Committees on Appropriations



NATIONAL INDIAN EDUCATION ASSOCIATION

NATIONAL CONGRESS OF AMERICAN INDIANS

**Joint Organizational Comments on the
Indian Education Study Group
Strategic Plan for Reform**

**United States Department of the Interior
Bureau of Indian Education**

June 2, 2014

The National Indian Education Association (NIEA) was privileged to testify last year before the House of Representatives' Appropriations Subcommittee on Interior, Environment, and Related Agencies regarding the disparate state of Native education within the Department of the Interior (DOI). NIEA testified last month before the Senate Committee on Indian Affairs regarding measures needed to improve the ability of the Bureau of Indian Education (BIE) to serve Indian students. We are enthusiastic, but appropriately cautious, about the renewed focus and efforts of the Administration to reform the failing school system. The following comments and recommendations are reflective of that restraint and should be taken into account as DOI initiates reform. The National Congress of American Indians (NCAI) is also happy to join NIEA's comments and recommendations as a proud partner working to ensure Indian Country's children are afforded a quality educational experience that will shape the future leaders of Indian Country.

NIEA, founded in 1969, is the most inclusive Native organization in the country—representing Native students, educators, families, communities, and tribes. NIEA's mission is to advance comprehensive educational opportunities for all American Indians, Alaska Natives, and Native Hawaiians throughout the United States. From communities in Hawaii, to tribal reservations across the continental U.S., to villages in Alaska and urban communities in major cities, NIEA has the most reach of any Native education organization in the country.

The National Congress of American Indians (NCAI), founded in 1944, is the oldest, largest, and most representative American Indian and Alaska Native organization serving the broad interests of tribal governments and communities. NCAI is a consensus-driven organization that advocates for a bright future for generations to come by taking the lead to gain consensus on a constructive and promising vision for Indian Country. NCAI is committed to ensuring that American Indian and Alaska Native students have the best educational opportunities possible, including access to a quality education system that respects and addresses their unique cultural and linguistic needs. For nearly seven decades since its founding, NCAI has remained true to the original purpose of the organization: to be the unified voice of tribal nations.

Native Education Crisis Due to Federal Mismanagement

Native education is in a state of emergency partly due to the inability of the federal government to uphold its trust responsibility. As Interior Secretary Sally Jewell has stated, "Indian education is an embarrassment to you and to us. It is not for the lack of desire. This [the BIE] is the one part of the Department of the Interior that deals directly with services to children. We know that

self-determination and self-governance is going to play an important role in bringing the kind of academically rigorous and culturally appropriate education that children need...”¹ Unfortunately, the BIE has been consistently unable to educate Indian children and support tribal self-determination. As a result, Native students lag behind their peers on every educational indicator, from academic achievement to high school and college graduation rates. Just over 50% of Native students are graduating high school, compared to nearly 80% for the majority population. For students attending BIE schools, rates are even lower. According to the latest results from the National Assessment of Educational Progress (NAEP), BIE schools are among the worst performing in the nation. The federal government’s continued inadequacy in directly educating our students hinders our children from developing a strong education foundation that prepares them for future success.

Native Student Demographics Snapshot²

- 378,000, or 93% of Native students, attend U.S. public schools, with the remainder attending federally-funded BIE schools, tribally-operated schools, and charter schools.
- As of the 2011-2012 school year, there are 183 Bureau-funded elementary and secondary schools, located in 23 states, serving approximately 41,051 Indian students.
- Of all Native students, 33% live in poverty, compared to 12% of Whites (2011-2012 school year).
- 29% of these students attend high-poverty city public schools, compared to 6% of Whites (2009-10 school year).
- Only 52% of Native students live in two-parent households, compared to 75% of Whites (2011).
- After the most recent census, only 65,356 Natives ages 25 years and older had a graduate or professional degree.

The Trust Responsibility to Native Education

Our organizations’ work for decades has centered on reversing these negative trends. We are making sure our communities have the future leaders needed to help tribes thrive as well as preserve and strengthen local cultural and linguistic traditions. This begins by providing our future generations’ equal educational opportunities that prepare them for academic success no matter where they attend school – BIE, tribal grant and contract, charter, or public. As tribes work to increase their footprint in education, there must be support for that increased participation. The federal government must uphold its trust responsibility. Established through treaties, federal law, and U.S. Supreme Court decisions, this responsibility includes a fiduciary obligation to provide parity in access and equal resources to all American Indian and Alaska Native students.

Bureau of Indian Education Reform through Tribal Consultation

For too many years, DOI has made other programs under its purview priorities while Native education programs and the BIE were considered afterthoughts. In addition to the 2012 Bronner Report and Government Accountability Office (GAO) Reports on the BIE, statistics continue to highlight the inability of the BIE to successfully educate Native students. To address the BIE, Secretaries Sally Jewell and Arne Duncan in the Departments of the Interior and Education (ED)

¹ Hearing Before the Committee on Indian Affairs United States Senate. May 15, 2013. “Receiving the Views and Priorities of Interior Secretary Sally Jewell with Regard to Matters of Indian Affairs.” U.S. Government Printing Office. Washington. 2013. (9).

² National Center for Education Statistics, Institute of Education Sciences, United States Department of Education. National Indian Education Study. 2011. (NCES 2012 466). <http://nces.ed.gov/nationsreportcard/nies/>
NIEA NCAI Joint BIE Strategic Plan Comments

created the American Indian Education Study Group (Study Group) to analyze persisting issues and develop solutions. As educational achievement gaps widen for Native students, it has never been more important to fix the broken system.

NIEA and NCAI are enthusiastic about the Study Group's work and support the principals outlined in the strategic plan. It has numerous good ideas and is a result of hard work and a long overdue focus on the BIE from Congress and the Administration. However, much work lies ahead. Through our discussions with tribes and tribally-controlled school administrators and educators, it is clear that there is unhappiness, skepticism, and confusion regarding the Study Group's strategic plan. Tribes are already disappointed in the Study Group's inability to provide appropriate time for consultations, which is necessary to ensure meaningful dialogue in the development of the reform measure. Tribes have repeatedly expressed concern that this measure could create increased bureaucracy in Washington. While it focuses on creating local, tribal capacity to deliver education services, the report appears to be the result of a top-down approach with little regard for tribal input. Such perceptions must be addressed to ensure successful reform.

Reform is unattainable unless the Study Group works with and adequately incorporates the views and local needs of tribes. As the Study Group continues its work, NIEA and NCAI respectfully request another round of tribal consultation sessions after it has incorporated the prerogatives outlined during this open comment period. Transparency and active collaboration is crucial for garnering tribal support and providing a means for tribal participation. While we recognize that time is of the essence as this Administration comes to the end of its second term, tribes have seen top-level BIE reform efforts fail in the past. To succeed, this plan must address the needs of tribes and take concrete steps to implement the proposed changes provided from tribes and tribally-run schools in order to support their education systems, while also decreasing bureaucracy and inefficiency.

Tribes and their representatives must have the ability to meaningfully consult on an updated report that takes into account their recommendations. They should also have the opportunity to analyze any proposals set on altering appropriation levels, legislation, or regulation. Goals and outcomes are necessary, but tribes and Native education stakeholders must have the means to review draft language or specific policy and budget recommendations to ensure compliance with tribal self-determination and the Tribally Controlled Schools Act.

Recommendations to Improve the Bureau of Indian Education

The BIE's mission, as stated in Title 25 CFR Part 32.3, is to provide quality education opportunities from early childhood through life in accordance with a tribe's needs for cultural and economic well-being, in keeping with the wide diversity of Indian tribes and Alaska Native villages as distinct cultural and governmental entities. The BIE is to manifest consideration of the whole person by taking into account the spiritual, mental, physical, and cultural aspects of the individual within his or her family and tribal or village context.

Unfortunately, the BIE is failing its mission by inadequately educating our children. Reform, without abrogating the federal trust responsibility and treaty obligations, is needed within DOI. Agency reform should begin locally in BIE schools and at the discretion of tribal leaders and Native education stakeholders. To ensure the support of our communities, the federal

government must work with tribal leaders and their experts in order to ensure systemic change addresses the concerns and prerogatives tribes have called for over the last several decades.

Tribally controlled contract and grant schools are the future of Indian education and as such, those institutions of self-determination must be supported based on local needs, not at the direction of the Department or the Administration. The following recommendations and suggestions are based on resolutions passed by our membership as well as through local work with tribal leaders, educators and administrators of tribally-run schools, and tribal communities.

I. Strengthen Tribal Self-Determination

The federal government implemented assimilation and termination policies in the 19th and 20th Centuries by breaking down traditional family patterns in tribal communities and forbidding the use of cultural traditions. Education systems, such as boarding schools, supported these efforts and restricted traditional family structures. The United States then separated Native children from their parents and tribal families in order to destroy cultural kinship. Through these systems, the U.S. robbed tribes of their ability to educate their children.

As tribes fought and achieved the ability to once again exercise their inherent rights as sovereign governments in the latter 20th Century, tribes began contracting with the Bureau of Indian Affairs (BIA) to administer education functions under the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638). However, as a result of history and legal statutes, the federal government had positioned itself as the direct education provider for many tribal communities. Through this context, the federal government created the inability of BIE reform to succeed internally because the system functioned and continues to operate under a model rooted in outdated practices that often run counter to tribal self-determination.

Precedence of Self-Determination

Even as tribes reasserted their ability to perform some education functions under federal statute, such as the Tribally Controlled Schools Act of 1988, other legal barriers such as those under Public Law 107-110, the Elementary and Secondary Education Act (ESEA), continue to drive the Bureau's means for working with tribes, families, and students. As a result, BIE schools working with local communities have developed an internal bureaucratic mentality that tribes often work to support local Bureau schools rather than BIE schools serving tribes.

NIEA and NCAI are glad to see that the BIE strategic plan looks to increase collaboration with and support of tribes in their efforts to increase self-determination in education, rather than dictating local educational policy on tribal communities. To facilitate the critical reform that is needed, DOI and the BIE within it, must use actions, not words, by providing the tools and resources necessary for supporting tribes as they administer education functions.

The report says the BIE will transition from running schools to serving tribes. However, the BIE must ensure it has the ability to continue serving tribes who decide their trust principles would be violated if the agency forces a tribe to assume operational responsibility of a former BIE school. The Interior Department has a poor record of support for tribal assumption of BIE schools and must assist tribes as they work to build capacity or provide the necessary services to tribes who wish to be served by other means. Congressional and internal support from DOI must equate to increased budgetary requests for BIE and tribes for administering educational services. More detail in the report is necessary for providing such support, such as utilizing an "integrated

management system,” as the report currently gives little information for how the BIE will use such tools to successfully meet the needs of all tribes.

II. Support and Strengthen Native Language and Culture

Common Core State Standards

Native language revitalization and preservation is a critical priority to tribes and Native communities because language preservation goes to the heart of Native identity. In many ways, language is culture. Learning and understanding traditional languages helps Native students thrive and is a critical piece to ensuring the BIE is serving our communities effectively. As a means to support local language and cultural immersion, the BIE should explain in further detail how it would support culturally-relevant Common Core State Standards (CCSS) implementation efforts.

BIE schools often operate in a vacuum apart from other local schools serving a tribe. Since Native students travel between the public, BIE, charter, and tribal contracted or grant schools in their communities, the BIE should work with local non-BIE school systems, tribes, and their education agencies to ensure school calendars, professional development, and CCSS curriculum implementation support one another and provide consistency for Native students.

Teacher Recruitment and Retention

The high rate of teacher turnover in Native-serving schools continues to negatively impact student learning. Local teachers must understand the culture and language of their students in order to adequately address student needs. The BIE should help tribes and tribally-run schools administer immersion programs and ensure stability among the teacher workforce. The report should provide a detailed analysis and proposed recommendations for addressing such things as the education, experience, retention and turnover rates, as well as effectiveness of tribal-serving teachers.

The report should also make note of any differences between teachers in BIE-operated schools and tribally-operated schools as well as describe teacher compensation at BIE-operated and tribally-run schools and the availability of decent housing for school employees from outside the local Indian community. The Study Group should also provide concrete steps, such as offering premium pay and housing, or preparing local tribal citizens to teach, in order to assist schools having trouble recruiting and retaining experienced teachers and administrators.

Expansion of Language Immersion and Congressional Intent

Immersion programs not only increase academic achievement, but also guarantee that a student’s language will be carried forward for generations. Our communities’ unique cultural and linguistic traditions are crucial for the success of our students and are critical cornerstones for providing relevant and high quality instruction as part of an education that ensures Native students attain the same level of academic achievement as the majority of students. NIEA and NCAI request the BIE ensure that reform strengthens the ability of the federal government to support tribes in the delivery of culturally-relevant curricula.

NIEA and NCAI support expanding immersion opportunities in BIE supported schools. P.L. 100-297, Tribally Controlled Grant Schools Act, and P.L. 93-638, Indian Self Determination and Education Assistance Act, as well as P.L. 109-394, Esther Martinez Native American Languages Preservation Act of 2006, promote a policy of both self-determination and investment in Native

languages—specifically language immersion schools. Further, the White House Initiative on American Indian and Alaska Native Education promises to support expanding opportunities and improving outcomes for Native students by promoting education in Native languages and histories.

NIEA and NCAI acknowledge that exemplary immersion models, such as those at Niigaane Ojibwemovin Immersion Program and School serving the Leech Lake Band of Ojibwe and Rough Rock Community School serving the Navajo Nation, have won the prestigious NIEA cultural freedom award for their efforts in full-day language immersion. However, federal agency interpretation and administrative procedures often restrict tribes from running schools, such as Niigaane and Rough Rock, by creating barriers to tribal self-determination. To begin addressing this issue, NIEA and NCAI request that congressional intent of legal statutes, rather than agency interpretation, be utilized so that tribes can deliver effective education programs.

III. BIE Internal Reform

BIE as a Technical Service Provider

As the Administration progresses its reform agenda with the BIE strategic plan, it should work with tribes and Congress to ensure the BIE has the necessary support to become a technical assistance provider as outlined in the report. If the BIE is to become an entity that assists tribes who wish to participate in the delivery of their children's education, then support is needed in Washington, D.C and locally. Since the late 20th Century, Congress and presidential administrations have worked to strengthen tribal capacity to directly serve their citizens in other services. In this spirit, tribes should have the same ability as state and local education agencies to administer education.

NIEA and NCAI are happy to see that the plan calls for the BIE to end its era of failed education delivery. Becoming an entity similar to a Regional Educational Laboratory (REL) would, rather than providing direct education to Native students, strengthen the ability of the BIE to work in partnership with tribes, tribal colleges and universities, school districts, and state departments of education. However, as the BIE shifts its focus, it must consult with tribes to become a technical and best practices provider that collects and utilizes data and research focused on addressing local issues and tribal needs for improving the academic outcomes of Native students.

BIE Capacity Transition

In order to successfully reform the BIE into a technical provider and capacity builder, DOI and the BIE staff need a fundamental shift in thinking. Some staff at the BIE have served their communities for decades, which builds experience and expertise. However, that expertise is based on a flawed and outdated model that has yet to decrease the achievement gap among our students and the majority population. NIEA and NCAI suggest that DOI work with tribes to develop models for ensuring educators and administrators understand the needs of their local Native communities and that educators are prepared to accordingly engage and work with tribes and their education agencies.

BIE reform should not be an internal, Bureau-wide capacity building effort set on hiring an influx of new thought leaders in Washington. Rather, we need a change in capacity and a restructuring that supports community collaborators who will sit with a principal chief in Oklahoma or a pueblo governor in New Mexico to find solutions to local problems. Simply, we need the right people in the right positions supporting tribal capacity to administer education

services. Tribal leaders understand their children best and tribal communities can better address a child's unique educational and cultural needs. Rather than directly educating Native students, the BIE should be situated to provide support services to tribal leaders and education agencies, similar to the Indian Health Service's (IHS) relationship with tribes as they administer health services.

IV. BIE Funding

As tribes work with Congress and the Administration to reform education institutions and increase tribal responsibility in administering education, federal leaders should also increase treaty-based appropriation levels and requests for tribal governments and Native education institutions. Historical funding trends illustrate that the federal government is abandoning its trust responsibility by decreasing federal funds to Native-serving programs by more than half in the last 30 years. These shortfalls persistently affect the ability of the BIE to provide transportation services, construct new buildings, and effectively educate Native students. These issues would be unacceptable in any other school system and must be addressed now if we are to systemically improve the BIE's ability to serve our communities and strengthen self-determination.

BIE Budget Authority

For too long, budgetary fragmentation and bureaucratic issues between the BIA and the BIE have decreased the ability of the BIE to meet the educational needs of our youth. Congress and federal agencies should fund Native education programs that strengthen tribal self-determination and tribal education agencies to ensure adequate resources are appropriated to the BIE in order to address tribal concerns and needed systemic changes.

As a result of BIA authority over the BIE budget, the BIE is often low in priority when compared to other programs. Recently, internal BIA FY 2014 Operating Plan reallocations reduced BIE Johnson O'Malley Assistance Grants by \$170,000 as well as cut BIE higher education scholarships. While the reduced lines were under tribal priority allocations, such reductions were not authorized by tribal leaders but were a result of internal redistributions in the agency. Although the reductions are small as compared to the overall increase in the BIA budgets after Congress postponed sequestration, rescissions without appropriate consultation are unacceptable.

NIEA and NCAI are open to discussing the idea of transferring budget authority from the BIA to the BIE if it increases efficiency and effectiveness by decreasing the bureaucracy inhibiting funds from positively impacting Native students and tribal self-determination. This does not mean duplicating budget management, but providing the BIE the necessary means to administer funds to areas of need. However, the BIE must work in concert with tribal leaders and fund programs based on tribal priorities and funding formulas in order to ensure equity among schools.

The report should provide an historical and present funding analysis for the BIE, focusing on budget proposals originating within the BIE, budget challenges within the Administration's internal budget formulation process, and illustrations for how budget proposals fared in Congress. Providing examples should explain continuing need to develop internal budget authority apart from the BIA. If the BIE is determined to be in need of autonomy from the BIA, we reiterate that tribes must have appropriate and formal avenues to provide their budget priorities to the BIE, DOI, and the White House Office of Management and Budget (OMB). The

Administration should not shift critical formula funds or budget priorities that provide equity among BIE schools unless such budget alterations are supported by tribes.

BIE Grant Pilot

As the BIE works to support tribes and their education agencies, BIE reform could be strengthened by providing funds for a competitive grant pilot that incentivizes capacity building in tribally-controlled grant and contract schools. This grant program could be modeled on best practices from existing competitive grants in use within the Department of Education. For \$3 million, the BIE could administer a pilot to spur urgent and abrupt systemic reform that would substantially improve student success, close achievement gaps, improve high school graduation rates, and prepare students for success in college and careers.

The three-year competitive incentive-based grant, similar to existing Race to the Top initiatives for which BIE continues to be excluded, could provide much-needed resources to tribes for accelerating local reforms and aligning education services to tribal education priorities that include language and culture. Further, performance metrics for the grant could include student attendance rates, graduation rates, college enrollment rates, and measures on educator accountability. In order to catalyze reform efforts and create a set of high-performing, tribally-controlled grant schools, the BIE could also provide on-going technical assistance to build the capacity of those schools that applied for, but did not receive, a grant.

It is important to note that a competitive grant idea has garnered some opposition in remarks from tribes. To address this, such a competition should not replace existing funds from other much-needed programs. A competition should be a means for providing equity for the BIE with other high-need school systems currently eligible for initiatives, such as Race to the Top. Such a pilot would provide examples for best practices to other BIE and tribally-operated schools. While NIEA and NCAI support equity for the BIE in federal funding initiatives, this is an idea that should be discussed further to provide additional details to tribal leaders and their technical experts and only pursued at the expression of general tribal support.

Tribal Grant Support Costs

This year, Congress and the Administration fully funded IHS and BIA contract support costs under self-determination and self-governance contracts and compacts. However, Public Law 100-297 grant or Public Law 93-638 self-determination contracted BIE schools were exempt from full funding, which will result in budget shortfalls. Full funding for Tribal Grant Support Costs in FY 2015 and subsequent years is just as important as full funding for Contract Support Costs as these dollars help tribes expand self-determination and tribal authority over education programs by providing funds for administrative costs, such as accounting, payroll, and other legal requirements.

The BIA currently funds only 65 percent of support costs in the 126 tribally managed schools and residential facilities under the BIE purview. This forces the schools to divert critical classroom education funding in order to cover unpaid operational costs, which make it unrealistic to improve educational outcomes and bridge the achievement gap among Native and non-Native students. To support Tribal Grant Support Costs, the report should account for the current situation and include consideration of the input provided by tribal and school representatives on the impact of Tribal Grant Support Costs funded at levels far below the formula mandated in the law.

The report should also propose ideas to address continuing need for transportation appropriations and construction funding. While the report addresses the need to maintain a safe learning environment for students, it does not include school replacement construction in that section. Providing Native students a structurally-sound facility is the first step to providing a safe learning environment and the report should provide recommendations for addressing such concerns. The BIE and the Department of Defense Education Agency (DoDEA) run a similar number of schools (183 for BIE, as compared to 190 at DoDEA). However, the DoDEA was appropriated \$3.7 billion for school replacement, which it completed in a nine-year plan. The BIE cites a \$1.3 billion figure in the report that is based on an outdated school replacement list. There must be adequate internal review of school construction need and appropriate support from the Administration for addressing replacement construction.

Connect BIE Schools to Educate

The President's goal in the ConnectED Initiative is to connect 99 percent of America's students to the Internet through high-speed broadband by 2018. Unfortunately, tribal areas are already far behind their counterparts due to geographical isolation, ineligibility, and inadequate capacity to apply for funds. The Federal Communications Commission (FCC) is one of the primary entities leading the implementation of the President's ConnectED initiative. As a regulatory entity, the FCC develops rules to manage the Universal Service Fund (USF), which provides subsidies for various telecommunications services. One program component of the USF is the E-rate Program, which provides funding for the deployment of telecommunications services to the nation's schools and libraries.

Since last year, the FCC has been developing proposals and receiving recommendations on modernization of the E-rate program in order to support broadband speed capacities and technologies. However, the BIE recently reported 130 to 140 BIE schools applied for and received E-rate funds over the last nine years—out of a total 183 BIE entities. Out of the E-rate funds committed for these BIE schools over the past nine years, only 60 percent was actually spent. Furthermore, many eligible BIE schools did not apply because they did not meet the 80% threshold to receive a discount.

These statistics illustrate persistent gaps in E-rate adoption among BIE schools that are similarly prevalent in other Native-serving institutions due to their geographical isolation and inability to meet Universal Service Administrative Company (USAC) guidelines. If BIE schools are, on average, spending just 60 percent of E-rate awarded funds then there should be further collaboration among Congress, the FCC, and BIE to ascertain these reasons and work to ensure BIE schools are receiving critical E-rate funds to connect next generation technologies and broadband speeds.

We must work together to make sure tribes and Native-serving schools benefit under this initiative. Limited data already suggests overall connectivity funding for schools and libraries on tribal lands is disproportionately low and inadequate for connectivity. To prevent tribal nations and their citizens from becoming the one percent that remains disconnected, BIE reform must include coordination efforts with the FCC and tribes to decrease barriers that hinder tribal and BIE participation in the E-rate program and 21st Century education.

V. Elevate Native Education

Deputy Assistant Secretary of Indian Education

Tribes have spoken loudly that Indian education belongs within the Department of the Interior in order to ensure the federal trust responsibility is upheld. Unfortunately, DOI continues to fail at including education experts and educators in key policy and budget decisions. As we work to find ways to increase the effectiveness of the BIE and improve the state of Native education, we must have people leading in Washington who understand the needs of our students and have the authority to drive successful reform.

Tribes and our students require a federal leader who has the ability to address colleagues and the President on the federal government's trust responsibility to Native education. We request the Administration support the creation of a Deputy Assistant Secretary of Indian Education in order to elevate the needs of our students. While the report mentions the need to formulate an office focused on strengthening self-determination, NIEA and NCAI do not support a large increase in bureaucracy that hinders local efficiency. However, there should be an advocate in DOI that works with tribes at an elevated level to ensure our children become the highest-achieving students in the country and that the BIE is supporting tribes who are operating state of the art schools.

DOI Tribal Education Budget Council

To support BIE budget autonomy and tribal negotiations, we also request that BIE reform include the creation of a Tribal Education Budget Council that functions similar to the Tribal Interior Budget Council and is presided by tribal leaders and the newly created Deputy Assistant Secretary of Indian Education position. This would help guarantee that education issues do not fall in priority. Tribal leaders are often forced to choose between issues and focus on providing for present-day emergency measures, such as fire prevention resources or critical medical funds, as compared to long-term preventative solutions in education. Providing equity to education and a venue to address our students' needs is crucial to elevating Native education and ensuring that persistent issues are addressed.

Conclusion

NIEA and NCAI share your commitment to tribal education and we look forward to working closely with the Administration and the Study Group as this reform proposal moves forward. Strengthening our partnership will ensure all tribal-serving schools are as effective as possible and that tribes have more access to administer education services. We must make sure BIE has the tools necessary to improve and assist tribes in providing services to tribal citizens, but only if that is supported by the local community. This effort cannot be a top-down approach, but a measure created through grassroots support at the tribal level, which requires additional consultations and outreach. Tribes have expressed that this current proposal for BIE reform, while well intentioned, was not a direct result of meaningful consultation.

We appreciate the efforts and ideas within the BIE strategic plan, but without tribal support and local collaboration, we cannot expect BIE reform to succeed. Only by working with all stakeholders in all education systems will we increase the ability of the BIE to work with tribes and expand our students' preparedness for success. Once again, thank you for this opportunity and if you have any questions regarding these comments on BIE reform, please contact Ahniwake Rose, NIEA Executive Director, at arose@niea.org, or Jacqueline Johnson Pata, NCAI Executive Director, at jpata@ncai.org.



To: Ryan Zinke, Secretary of Interior
Fr: Brian Cladoosby, NCAI President
Re: Key Issues in Indian Affairs
Dt: March 2, 2017

1) TRIBAL SOVEREIGNTY AND THE FEDERAL TRUST RESPONSIBILITY

Although we know you are familiar with these principles, it is sometimes helpful to repeat the fundamentals as you undertake a significant new responsibility for the United States.

Indian Nations are sovereign governments recognized under treaties and the U.S. Constitution. The federal trust responsibility to Indian tribes is rooted in the land cessions that formed the United States. In 1787, the Founders pledged in the Northwest Ordinance, "The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent...but laws founded in justice and humanity, shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them."

Indian Nations govern an area the size of Idaho, 57 million acres. This is the same size as Rhode Island, Delaware, New Jersey, Massachusetts, New Hampshire, Vermont, Maryland, West Virginia, Connecticut, and half of South Carolina. The Secretary of Interior is charged with protecting tribal lands, providing services, and promoting tribal self government.

In 1970 President Nixon delivered a Special Address to Congress articulating a tribal vision for self determination. Since then, the federal government has been guided by a commitment to empowering tribal communities to make decisions for themselves. Under the policy of tribal self determination, tribal governments provide public safety, detention, court systems, emergency response, education, workforce development, health care, social services, and land management. Tribes also build and maintain a variety of infrastructure, including roads, bridges, and public buildings.

Self determination is essential if tribal communities are to continue to build economic opportunities for their people and their regions in rural America. We urge a focus on reforming outmoded bureaucratic processes to unleash the economic engine of Indian Country, along with strong working relationships with the tribal governments to determine new and innovative paths for development.

2) ECONOMIC DEVELOPMENT, JOBS, AND INFRASTRUCTURE

Indian Nations are economic drivers in many rural regions of America. Your Administration has an opportunity to show a new path to growth through tax parity, tribal engagement in planning, respect for tribal lands, waters, and treaty rights, and empowering tribes on infrastructure development.

Recommendations:

A. Eliminate Dual Taxation of Business Activity through New Regulations under the Indian Trader Statutes. 25 U.S.C. 262 states that "Any person desiring to trade with the Indians on any Indian reservation shall . . . be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians." However, the regulations date to 1957 and consist of little more than an outdated federal licensing process. For decades tribes have asked for a fresh look at the problem of dual taxation, as tribes hope to invest in roads, housing, telecommunications and other infrastructure. The imposition of state tax in Indian country on commercial sales, personal

property, and natural resources extraction is a consequence of judicial interference with Congressional regulation of tribal commerce. It causes great harm because it prevents tribal governments from implementing their own tax policies and raising revenue for the programs and services that are so greatly needed on reservations. Dual taxation is one of the mostly fundamental problems in Indian country, as highlighted by NCAI Resolution SD 15 045, and the Administration has the opportunity to address it without the need for any additional action from Congress.

- B. Invest in and Support Tribal Land Use Planning/Strategic Development.** Tribal planning processes tend to silo into grant driven plans for housing, transportation, water, power, and sewage. Tribes need resources to integrate planning for economic development and jobs, education, agriculture and natural resources, climate change adaption and mitigation, and the development of healthy communities. There is a growing emphasis on planning for rural development. Tribal industries tend to cluster in certain areas, and the Administration should initiate support and technical assist in developing land use/strategic development plans to fit needs of their particular community. The BIA last supported comprehensive planning in the 1980's but those planning efforts must be updated for a new era.
- C. Invest in and Remove Obstacles to Infrastructure Development/Rehabilitation in Indian Country:** The national systemic problem of physical infrastructure development and neglect is nowhere more severe than in Indian Country. Not only does the federal government need to invest in Indian Country infrastructure development, it also needs to remove the unnecessary obstacles standing in the way of tribal efforts to do so. This will provide tribal nations a firm foundation upon which to undertake economic development, as well as expand the number of direct jobs available in tribal communities and training opportunities for tribal members to secure those jobs.
- D. Support Efforts to Expand Financial Education Programs in Native Communities:** Resources to support the building of financial capability in Native communities are key to long term development. Government programs across agencies should support efforts to provide Native people in unbanked or under banked communities an opportunity to build their financial skills, which would work to reduce one of the barriers to business development.

3) TRUST REFORM, ENERGY AND LAND RESTORATION

For the last two decades trust accounting litigation and trust reform have dominated the resources and energy of the Department. However, many settlements have been reached and Congress passed important reforms last year. There is an opportunity to bring closure to the trust settlements, empower tribal governments in natural resources management, and streamline the bureaucracy that frequently stifles economic development in Indian country. Tribes are uniquely positioned to contribute to sustainable energy technologies, as well as traditional energy resources. We also urge a continued focus on restoring tribal lands.

Recommendations:

- A. Implement the Indian Trust Asset Management Reform Act –** Last year Congress passed an important new law authorizing the Secretary of the Interior to establish an Under Secretary for Indian Affairs. When established, the Under Secretary will report directly to the Secretary and serve as a cross agency advocate for Indian country to ensure that all agencies and bureaus within the Department implement policies that consider their trust obligations to Indian tribes. The position will address a major issue that has been raised in every significant study of trust management at Interior: the lack of clear lines of authority and responsibility to ensure accountability for trust reform efforts by the various divisions of the Department of Interior.

- B. Continue to Place Land Into Trust.** The vast majority of trust land acquisitions take place within reservation boundaries, in rural areas, and are non controversial. These acquisitions are necessary to consolidate allotted lands, most often for grazing, forestry, or agricultural purposes. Other typical acquisitions include land for Indian housing, health clinics, and land for Indian schools. Despite the high priority of restoring tribal lands, there are many acquisitions that have been pending for years or even decades. While trust land applications tend to stall on land title or environmental review, most often it's simply a lack of staffing. We strongly encourage the Department of the Interior to set goals for land recovery to ensure tribal governments have the land resources necessary to provide for the infrastructure and other needs of tribal citizens.
- C. Continue to Take Land to Trust in Alaska.** Last year, the Department of the Interior announced an amendment to the trust land acquisition regulations to remove the exclusion for Alaska tribes. With the regulations final, implementation of the new policy is in effect to allow lands to be placed in trust for Alaska Tribes. The first acquisition was recently announced to take land into trust for the Craig Tribe. We support continued acquisitions in Alaska to allow Alaska tribal governments to protect lands for future generations and improve the exercise of governmental authority for the protection of their citizens.
- D. Support Energy Legislation.** Tribal energy resources are vast, largely untapped, and critical to America's efforts to achieve energy security and independence. Energy development is integral to tribal efforts to generate jobs and to improve tribal citizens' standard of living. The Department of the Interior estimates that undeveloped traditional energy reserves on Indian lands could generate up to \$1 trillion for tribes and surrounding communities. The Department of Energy estimates that tribal wind resources could provide 32 percent of the total U.S. electricity demand, and tribal solar resources could generate twice the total amount of energy needed to power the country.

However, the current federal trust resource management system places barriers to tribal energy development which do not exist elsewhere. Cumbersome bureaucratic processes, disincentives for tribal financing, Applications for Permit to Drill fees, inequitable exclusion from federal programs, and the requirement that tribes obtain approval for almost every step of energy development on tribal lands continue to delay energy development in Indian Country.

Recently, Chairman Hoeven of the Senate Committee on Indian Affairs introduced and passed through committee S. 245, a bill to amend the Indian Tribal Energy Development and Self Determination Act of 2005. This legislation will take great strides towards supporting tribal energy development by allowing tribes to make their own decisions regarding energy production and further increasing tribal control and flexibility over their own energy resources.

4) PUBLIC SAFETY

In recent years, the Administration, Congress, and tribal governments have together taken historic steps to begin to address the issues created by years of neglect and an unworkable system. The Tribal Law and Order Act in 2010, the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), and most recently the Tribal Access Program (TAP) and Purpose Code X Program, which are aimed at improving tribal access to federal criminal information databases, begin to address some of the structural barriers to public safety in tribal communities. For the promise of these laws and programs to be fully realized, however, they must be fully implemented, which requires sufficient resources for tribal justice systems and ongoing coordination and consultation between various federal agencies and tribal governments.

Recommendations:

A. Streamline Public Safety Funding Mechanisms. Currently, base funding for tribal courts, law enforcement, and detention is provided through the BIA and is entirely inadequate. Oftentimes, tribes in PL 280 jurisdictions are completely shut out of this funding. Additional funding is provided through the Departments of Justice and Health and Human Services under a series of grant programs that have the typical problems of competitive grant programs. Moreover funding for prevention, rehabilitation, and treatment programs, which are key components of any community's approach to reducing crime, are located at IHS, SAMHSA, and elsewhere within the DHHS. In order to obtain this funding, tribes often must compete against each other under the priorities and guidelines set by the administering agency. In the end, too often the tribes that have the financial and human resources to employ experienced grant writers end up receiving funding, while the under resourced tribes may be left without. Those tribes that do receive funding cannot count on funding continuing beyond the current grant period, and Indian Country has countless stories of successful programs disappearing at the end of a two or three year grant cycle.

Under this ad hoc system, tribal law enforcement will receive vehicles, but no maintenance. They will get a detention facility, but no staff. They will receive radios, but no central dispatch. The system doesn't make sense. The Administration should consult with tribes to develop a proposal what would streamline tribal public safety funding into a single funding vehicle that would be negotiated on an annual basis and made more flexible to meet local needs.

B. Criminal Trespass - Tribes issue protection and exclusion orders to ensure the public safety of their members. These have included exclusion orders for individuals who have committed crimes related to drugs, tenants who overstay agricultural and residential leases, or sportsman hunting or fishing without a license. Additionally, tribes issue protection orders against non natives for stalking and sexual assault offenses. However, tribes have a limited ability to enforce these orders in most cases. The Administration should initiate consultation with tribal governments about options to increase federal penalties and deterrence for Native and non Natives who violate tribal exclusion orders and protection orders, those who cause serious threats to persons and damage to property in Indian country, and repeat offenders of Indian country hunting, fishing and trespass laws.

C. Prioritize taking land into trust in Alaska. Please excuse the repetition, but the importance of this issue crosses categories. Because of the legal status of the land in most Alaska Native villages, tribal governments in Alaska generally have very limited authority to protect their communities. The Department of Interior has recently issued regulations to allow land to be taken in to trust in Alaska, which has the potential to transform the tools available to Alaskan tribes for ensuring public safety in their communities. The Administration should work swiftly to take land into trust in Alaska.

D. Address funding disparities for tribes in PL 280 jurisdictions. Indian nations in Public Law 280 jurisdictions have been provided substantially lower amounts of support from the Bureau of Indian Affairs for tribal law enforcement and tribal courts than Indian nations not subject to Public Law 280. Consequently the tribes in Public Law 280 jurisdictions have had far less opportunity to develop their own police departments and court systems. Beginning in the 1990s, the United States Department of Justice has been supplying financial support and technical assistance to Indian nations for development and enhancement of their police departments and court systems. The Bureau of Indian Affairs should request appropriate additional federal funding to end this disparity in funding between tribes depending on their PL 280 status.

5) **EDUCATION**

There are approximately 620,000, or 93 percent, of Native students are currently enrolled in public schools both in urban and rural, while 45,000, or seven percent, attend schools within the Bureau of Indian Education (BIE) system. There are 184 BIE funded schools (including 14 peripheral dormitories) located on 63 reservations in 23 states. Effectively reaching all Native students will require a concentrated effort from multiple partners: tribes, the federal government, and State Education Agencies and Local Education Agencies. Tribes, Native parents and families, and communities are best suited to influence these critical factors for academic success.

The Every Student Succeeds Act (ESSA) reauthorized in 2015 included several tribal provisions: providing BIE greater autonomy over their schools by providing more flexibility for Secretary of Interior to determine standards, assessments, and accountability; BIE schools can waive requirements under Title I Part A, it is determine to be non applicable for the students attending that school; and BIE is eligible to receive discretionary funding that had only been eligible for states.

Recommendations:

- A. **Bureau of Indian Education Reform.** The education of our children is the most important resource for the future of Indian Country. The lagging academic performance of the BIE schools is a multi faceted problem, however there is an agreement at the federal, tribal, and school level that reform is needed and necessary. Any improvements to BIE will rely on the federal trust responsibility as the foundation. When tribal capacity is supported, our tribal nations are able to assume greater control of education systems. This begins with rebuilding these systems from a foundation of our own tribal identity, culture, and spirituality as place based people. This is evident from the Navajo Nation implementation of the “Diné School Accountability Plan,” enabling a curriculum that incorporates the Diné language, history and culture into the school system. This is plan will help the Navajo Nation incorporate family and community connections to the education system, and help ensure the survival of the culture and language of the Navajo Nation.
- B. **Executive Memorandum on hiring freeze for federal civilian employment should exempt BIE.** Recently, President Trump issued an executive order for a hiring freeze on Federal employees, any existing employment vacancy will not be fulfilled nor will new positions be created. This Federal employment hiring freeze has impacted the Bureau of Indian Education and its hiring of teachers and other positions within the 184 BIE schools in Indian Country. The recruitment of qualified teachers has been challenging for BIE schools with the hiring freeze it has become more difficult for BIE schools to fulfilled positions.
- C. **Support the implementation of tribal provisions within ESSA.** To support the implementations of ESSA for BIE schools, such as BIE has to enter into a negotiated rulemaking to amend the current accountability system; and to continue the development of State Plans for BIE schools.
- D. **The Department of Education and the Bureau of Indian Education must jointly develop a Native curriculum to share with states, tribal leaders, and local education agencies across the country.** Indian Education for All from Montana and Since Time Immemorial from the State of Washington are good models. The curriculum will serve as a resource for states, tribal education departments, and school districts as they integrate Native history and culture and rigorous standards based curriculum. It will also serve as technical assistance and capacity building that the Department of Education and the Bureau of Indian Education will provide to make sure Native students receive the culturally based instruction necessary to succeed.

6) TRANSPORTATION

Surface transportation in Indian Country involves thousands of miles of roads, bridges, and highways. According to the latest National Tribal Transportation Facility Inventory (NTTFI), there are approximately 160,000 miles of roads and trails in Indian Country owned and maintained by tribes, the Bureau of Indian Affairs (BIA), states and counties. Of those, Indian tribes own and maintain 13,650 miles of roads and trails, of which only 1,000 (or 7.3 percent) are paved, with another 12,650 miles consisting of gravel, earth, or primitive materials. Of the 29,400 miles owned and maintained by the Bureau of Indian Affairs, 75 percent of them are graveled, earth, or primitive. When combined, the roads owned and maintained by Indian tribes and the BIA are among the most underdeveloped and unsafe road networks in the nation, even though they are the primary means of access to American Indian and Alaska Native communities by Native and non Native residents and visitors alike.

Although the majority of tribal transportation programs are authorized and funded through the Department of Transportation, the Bureau of Indian Affairs (BIA) Road Maintenance program within the Department of Interior is critical to BIA owned roads and facilities. The BIA is responsible for maintaining approximately 29,400 miles of roads in Indian Country including 900 bridges. However funding for the BIA Road Maintenance has remained stagnant at approximately \$24 million for several appropriations cycles, while deferred maintenance has risen to over \$289 million for FY 2015. The condition of these roads is increasingly concerning for tribal members and members of surrounding communities. The lack of sufficient infrastructure also hampers economic development opportunities for tribes.

Recommendations:

A. Support for the BIA Road Maintenance Program. The BIA has maintenance responsibility for approximately 29,000 miles of roads and 900+ bridges. The road mileage consists of 7,150 miles of paved, 4,720 miles of gravel, and 17,130 miles of unimproved and earth surface roads. The total public road network serving Indian Country is 140,000+ miles according to the National Tribal Transportation Facility Inventory. The Office of Indian Services Division of Transportation in Washington, DC provides oversight and distribution for the annual maintenance program. The amount received in the TPA portion of the budget has been approximately \$24,000,000 per year, which is less than 9% of the deferred maintenance of \$289,000,000 for FY 2015.

B. Support the Tribal Interior Budget Council BIA Road Maintenance Subcommittee. To assist in address this deferred maintenance of BIA Road Maintenance issue the Tribal Interior Budget Council (TBIC) has formed a BIA Road Maintenance Subcommittee, the Subcommittee and have held two meetings during the TBIC meetings to discuss road maintenance.

7) DEVELOPMENT, CULTURAL RESOURCES AND SACRED LANDS

Although Indian tribes are strongly supportive of economic development, there are also some places that must be protected for cultural and environmental reasons. The Department of Interior has an extremely important role to play in protecting tribal lands as well as cultural resources found on public lands. For the last 25 years or more the Department has been a leader in this area. The Departmental Manual at 512 DM 2 is a blueprint for successful consultation with tribal leaders to both advance development projects and protect important assets. However, some federal agencies have been struggling to work successfully with tribes, often in a hit or miss fashion. We encourage you to enage with other agencies and exercise leadership on the government to government relationship. Indian tribes bring a lot of resources to the table in traditional knowledge, in scientific capacity, and in collaborative development planning, and should be included as partners.

Recommendations:

- A. **Protection of Tribal Sacred Places Through Presidential Declarations as National Monuments.** The 1906 Antiquities Act allows the President to act in the national interest to designate National Monuments to protect areas that have cultural, historical, and environmental significance. Tribes have sought designations of certain areas, including sacred places, as National Monuments to provide such areas protections from development. There are currently a number of areas that hold tribal cultural significance. For instance, NCAI last year worked with the Bears Ears Inter Tribal Coalition to request it be proclaimed as a National Monument. Bears Ears area holds great cultural and religious significance to the Hopi, Navajo, Ute Mountain Ute, Zuni, and Uintah and Ouray Ute Tribes of the southwest. NCAI urges that you meet directly with the Inter Tribal Coalition to discuss any questions or issues about this designation, and continue to work on behalf of tribes to request Presidential proclamations to increase federal protections for areas holding cultural and religious importance.
- B. **Consultation and Consent in Early Planning and Coordination.** Meaningful consultation requires that Tribes be included in setting infrastructure development priorities; that Tribes be consulted from the very earliest stages of projects; that consultation be undertaken with the goal of reaching consensus; and that Tribal consent be obtained when projects are likely to significantly impact Tribal resources. Engaging in meaningful, early Tribal consultation facilitates project development by avoiding late and costly Tribal objections that can lead to administrative appeal, litigation, or public protest.
- C. **Regional Mapping and Tribal Impact Evaluation.** Federal agencies shall work together to do appropriate mapping of Tribal lands, both historic and current, in the area of infrastructure development based on self identification by Tribes, to facilitate early and effective communication between Federal agencies, Tribes and other interested parties, as appropriate. The Federal Communication Commission has developed such a confidential system on a nation wide basis to facilitate communications between the FCC, Tribes and tele communications companies, in order to expedite infrastructure development while protecting areas of traditional and cultural significance to Tribes. The Geological Service should be considered to serve a larger role in mapping for all federal agencies.
- D. **Funding for Tribal Participation in Process.** Tribes must have access to funding to participate in permitting processes, including funding for Tribal Historic Preservation Offices and for Tribal environmental review. Funding is necessary for Tribes to educate themselves about their rights under various statutes and to analyze and respond to the many notices they receive regarding federal infrastructure projects. Ensuring that Tribal consultation occurs and Tribal rights are respected is a federal responsibility, and the federal government should provide funding for Tribal participation in that process.
- E. **Training for Agencies to Improve Understanding of Tribal Stakeholders.** Agency staff require training to increase familiarity with Tribal lands, rights, and concerns, and the Department plays an important role in training across federal agencies. Trainings should be held regularly in addition to occurring whenever there are leadership changes. Trainings should include an understanding of Tribal cultures, Tribal trust and treaty rights, and relevant consultation obligations. Tribes should be included in the development of training materials.



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

Submitted via email to consultation@bia.gov

Ryan Zinke, Secretary
United States Department of the Interior
1848 C Street NW
Washington, DC 20240

July 15, 2017

Dear Secretary Zinke,

This letter provides written comments to the Department of Interior (DOI) in response to President Trump's Executive Order (EO) 13781 on a *Comprehensive Plan for Reorganizing the Executive Branch*. I presented an initial overview of my comments at the May 17, 2017 listening session held in Phoenix, AZ at the Phoenix Convention Center. The Navajo Nation (Nation) welcomes the opportunity to present ideas for reorganization, streamlining, and reducing waste in the Bureau of Indian Affairs (BIA).

1. Tribal Consultation Timeline

Reorganization of the BIA could be a tremendous opportunity to improve the lives of Native American people throughout the country, if it is undertaken after full and thorough investigation of tribal input. I am concerned that the ambitious timeline for tribal consultation in EO 13781 will result in inadequate input from tribal communities. There must be more than 120 days for tribal nations to review and respond to any BIA reorganization proposal. Much of Indian Country cannot readily access or comment on electronic proposals. Nearly 40% of the Navajo people lack access to broadband and do not have the ability to comment via a link in a press release issued through electronic mail or through the Federal Register. Therefore, the Nation and other tribes rely on traditional timelines for review in order to thoroughly disseminate and gather input from tribal communities.

2. Tribal Government Status

We do not support sweeping federal action to convert tribal governments into corporations or otherwise broadly alter the nature of tribal governments. Any changes to the Navajo government structure must come from within the Navajo government. I do, however, support more autonomy for tribal governments.

3. Land Status

The Navajo Nation cannot approve mineral leases or easements, also known as rights-of-way, on land held in trust without Secretarial approval. Broadly speaking, I support full tribal control over leasing on the Nation's lands. In addition, I believe there is an opportunity to review how land is managed and an

opportunity to explore an option to convert land to restricted fee-like status. Additionally, any transfer of federal regulatory authority should be accompanied by a corresponding transfer of the relevant federal funding to cover the increased tribal functions.

4. BIA as a Liaison for Tribes

Fundamentally, the BIA needs to more effectively act as liaison between tribes and other federal agencies outside of the Department of Interior. There are projects that may require review by or coordination with several agencies and BIA needs to provide better coordination with these agencies. Also, the process of review by multiple agencies needs to be streamlined, and BIA should lead this effort with tribal input. Additionally, regional BIA offices should universally have personnel who are intimately familiar with the cultures and needs of regional tribes.

5. Public Safety

There is a backlog in annual audit reporting by the BIA Office of Justice Services. I request that the backlog be reduced by streamlining the process or through increased funding and personnel.

6. NEPA

I support limited waivers of the time-consuming National Environmental Protection Act process on tribal land, if such waiver is at the election of individual tribal governments. As noted earlier, any transfer of federal regulatory authority should be accompanied by a corresponding transfer of the relevant federal funding to cover the increased tribal functions. I believe this process improvement can be accomplished on a cost-neutral basis.

7. Tribal Interior Budget Council (TIBC) Reform

The current Interior budget process does not provide efficient delivery of needed services, and there are numerous unfunded mandates that impact Navajo service efforts. Currently, the BIA regions vote on funding and create a national priority list. Because the Navajo Nation is its own region, the Navajo Nation prefers that funding allocation be based on regional priority rather than a national priority. This will provide a more efficient allocation of resources to those areas that are higher in priority for the Nation. In addition, we should have more flexibility on these allocations as needs change during the year, especially in response to emergencies. Approximately a third of all tribal land is held in trust for the Navajo Nation, nearly half of the Bureau of Indian Education population are Navajo tribal members, and the Nation has the largest contracted law enforcement agency. To best represent our constituency, the Nation should have a proportional influence on Interior policy and funding allocations.

8. BIA Organizational Structure

In order to improve BIA's organizational effectiveness, I request that:

- a) The Assistant Secretary of Indian Affairs be elevated to Undersecretary of the DOI as required by Public Law 114-178, the *Indian Trust Asset Reform Act*. Tribal nations should have the opportunity to provide formal input on the selection of the Undersecretary;
- b) BIA regional offices maintain authority over land acquisitions and other administrative support to tribes (as opposed to Washington, D.C. offices thousands of miles away); and
- c) The DOI provide the Office of Navajo and Hopi Indian Relocation (ONHIR) with sufficient oversight, funding, and support to fulfill the remainder of its obligations to affected Navajo and Hopi families if and when ONHIR functions are transferred to the BIA.

9. Federal Lease Approval Authority

While the Navajo Nation has authority to execute its business site lease (leases) under the Navajo Business Leasing Regulations of 2005, there are still leases that are governed by 25 U.S.C. § 415 (a) (federal leases). Any leasing transactions (i.e. lease modifications, assignment, etc.) of federal lease still requires execution by the Bureau of Indian Affairs (BIA). Generally, BIA does not timely execute the respective leasing transactions. For purposes of reorganization, it is important that BIA's duty of executing leasing transactions is improved considering that the current process is not efficient.

10. Agency Name and Brand.

The BIA name and brand are in sore need of an update. The name should better represent the modern relationship between tribes and the federal government. I suggest that the DOI propose several alternative names for consideration by tribal nations in the next steps of this review process.

The Navajo Nation asks that the DOI share the draft Agency Reform Plan and consult with the Navajo Nation and other Indian tribes prior to submission to President Donald Trump and the Office of Management and Budget. If we work together, I believe we can improve BIA operations, efficiency, and effectiveness and make great strides toward a more productive and meaningful government-to-government relationship.

Sincerely,



President Russell Begaye



July 12, 2017

Secretary Ryan Zinke
 Assistant Secretary- Indian Affairs Michael Black
 Bureau of Indian Affairs
 U.S. Department of the Interior
 1849 C Street, NW
 via email: consultation@bia.gov

Dear Secretary Zinke and Assistant Secretary Black:

**Re: Comments from the Port Gamble S'Klallam Tribe on Executive Order 13871
 – Reorganization of the Executive Branch**

The Port Gamble S'Klallam Tribe submits these comments in response to the Department's solicitation for input on President Trump's Executive Order 13871 to reorganize the Executive Branch of the U.S. Government issued on May 16, 2017. We appreciate the opportunity to submit these comments prior to implementation of the Executive Order, and we look forward to additional dialogue and opportunity for input on this project through government-to-government consultation.

Reorganization can be healthy if it is done right

As noted during the discussion regarding restructuring the Department of the Interior (the "Department") and the Bureau of Indian Affairs ("BIA"), the current structures were formed over one hundred years ago. These structures were put into place during a different time – a time when there were very different issues confronting Indian Country. It is true that reorganization and review is needed to address the issues facing Indian Country today. Reorganization can be healthy and a good thing if it is done right. But our concern is that reorganization is just another name for downsizing and reducing the BIA – cutting a budget that is already grossly underfunded and reducing services that play such an essential role to our community.

To build trust and to produce the results intended, the process needs to be transparent, and must involve government-to-government consultation not only at the beginning of the process but also throughout the reorganization. We appreciate that the BIA has come to us to get our views before you have crafted a policy, as oftentimes tribes are put in the position of commenting on already-drafted policy after the decisions are made. As we have seen, such a process is counterproductive, since we then have to work to ensure that needed changes are

included in these policies after the fact. It is more prudent for tribes to be at the forefront of any reorganization of the BIA and not at the end.

To date, one of the only plans we have heard is Secretary Zinke's desire to move BIA resources to field offices and reduce the size of BIA's DC and Denver offices. While we support making decisions at closer levels and giving tribes greater control over decisions, we also feel that the BIA needs to ensure that local offices are given the authority to make decisions. If final decision-making authority still resides in an inadequately-staffed central office, the result will be bottlenecks and delays, the exact opposite of the Administration's intent in reorganizing. The tribes and the Department should work together to identify the types of decision-making authority that should be delegated to the local offices. This kind of collaborative, government-to-government approach can help to ensure any reorganization is truly beneficial to all parties involved.

No Diminishment of Trust Responsibility

The federal government has a trust responsibility to the Port Gamble S'Klallam Tribe and all other Indian Nations, which originates from the treaties, the U.S. Constitution, and the unique government-to-government relationship between tribes and the United States. This responsibility runs across all agencies, and agencies need to coordinate with each other to fulfill this responsibility. Our position is that fulfilling the trust responsibility requires obtaining our express and informed consent any time the federal government is undertaking a project that impacts our communities.

Federal departments and agencies under the Executive Branch play an essential role in fulfilling the federal government's trust responsibility to Indian tribes, pueblos, and communities by ensuring that American Indian and Native Alaskans have access to critical programs and services based on their political status as members of sovereign tribal nations involved in a government-to-government relationship with the United States. While programs serving Indian Country exist across the federal government, the Department of the Interior is perhaps most closely associated with the federal trust responsibility because of its close historical and contemporary ties to tribal nations.

Of particular concern regarding the federal government's trust responsibility is the responsibility of the Department and the BIA to take land into trust for Indian tribes. The land-into-trust responsibility originates from one of the more egregious policy failures in our Nation's history: the failed attempt to assimilate Native people by seizing collectively held tribal land and allotting such lands to individuals. While Congress soon realized the failure of what is now known as the "Allotment Era" and ended it with the Indian Reorganization Act ("IRA"), massive damage had already been done. Tribal governments lost meaningful management of large portions of their aboriginal homelands. It was to remedy this harm that Congress empowered the Department to help rebuild tribal homelands by taking land into trust through the IRA.

This responsibility is of great importance to us because the diminished land base has created major challenges for the Port Gamble S'Klallam Tribe, and this impacts our sovereignty and self-determination. The lack of a cohesive land base makes it difficult to protect and access

sacred and cultural sites and creates jurisdictional challenges that ties up land within our boundaries, making it difficult to pursue economic development and complete much needed infrastructure projects. We strongly urge that any reorganization plan recognize the great importance of taking land into trust and incorporate a process that improves and streamlines the process, including quicker action from the BIA on land-into-trust applications. Resources and authority should be targeted to the local level for this task. Further, local offices—with boots on the ground—should have decision-making authority to take land into trust.

Consultation

The listening sessions and written comments that you are taking into consideration before drafting a policy are appreciated, but not sufficient. Longstanding policy and Executive Orders across several Administrations (Republican and Democrat alike) underscore the government's commitment to true government-to-government consultation with tribes. Any proposed reorganization must involve the same kind of consultation.

We support the adoption of measures that will streamline Interior services and enable the Department to better fulfill its treaty and trust responsibilities. However, increased efficiency should not come at the price of lost programs or the further marginalization of smaller tribal nations. To ensure that these interests are protected, the Department through the BIA should convene a Tribal Reorganization Workgroup as soon as possible to review agency programs serving Native populations. The Workgroup could then work jointly with BIA officials to identify programs that are not reaching their full potential and propose informed solutions for moving forward. Such an approach would be respectful of our tribal sovereignty. It would also further the federal government's duty to consult with tribal nations on federal policies or actions that may impact their communities. The result of the Workgroup's cooperative efforts would be a more cohesive, detailed set of recommendations for Department leadership to consider during the reorganization process.

We recommend the creation of a Tribal Reorganization Workgroup to analyze and present an informed set of recommendations on ways to improve the effectiveness and accountability of Interior programs serving our communities. The Workgroup should include Tribal Leaders that represent each geographic region of the United States, as well as small and larger tribes and direct service and self-governance tribes.

Indian Trust Asset Reform Act

A good place to begin looking at for a potential reorganization of the BIA is the Indian Trust Asset Reform Act, Pub. L. 114-178. This act was passed in 2016 and was an attempt to allow tribes to move to a system focused on tribal self-determination and economic opportunities. The Act would allow tribes to have greater control and decision making and furthers tribal self-governance. The passage of the Act was a true milestone for Indian Country and started the process towards modernizing the trust relationship between the federal government and tribes.

Unfortunately, many provisions of the Act have yet to be implemented. The Act nonetheless leaves a good roadmap of potential changes that can be made with reorganization. One of the greatest priorities for a reorganization can be found in the Act's establishment of an Under Secretary for Indian Affairs who would report directly to the Secretary. The Under Secretary would supervise and coordinate activities and policies of the BIA with activities and policies of non-BIA agencies and bureaus within the Department of Interior.

The Under Secretary was intended to ensure that other parts of the Department cannot implement policies that negatively affect tribes and beneficiaries without Indian Affairs knowing about it early as possible. Any reorganization of the Department needs to confront the fact that Indian Affairs is an essential component of the Department. In one hundred years much has happened (it was not long ago that Indian Affairs was transferred from the War Department, for example) and reorganization needs to recognize and integrate Indian Affairs within the workings of the whole Department. The Port Gamble S'Klallam Tribe strongly recommends the establishment of an Under Secretary for Indian Affairs.

BIA might not be broken—it just needs to be funded

While BIA is often made the scapegoat of problems facing Indian Country—and some of it may be true—we must also look at the resources it has to work with. Any plans for reorganization should recognize the fact that the BIA may not be broken but rather is just chronically underfunded. The BIA has an enormous responsibility to meet the needs of 567 Indian Nations, and there is strong consensus that Congress has not allocated enough resources to meet these needs. This situation creates a constant struggle pitting tribes against each other fighting for shrinking federal dollars.

Instead of spending extensive resources moving around BIA staff and responsibilities, it may be wise for the BIA to focus on examining its various funding allocations based on tribes' needs and why those needs exist. A good place to begin would be to review NCAI's consensus-based tribal priorities over the past four presidential administrations and consider the proposed policy and legal priorities that have not yet been implemented.

Disproportionate Impact of Reorganization on Indian Tribes

Because of the unique status of tribal nations within our federalist system, we rely on the federal government for support through direct government-to-government funding, services, agency programs, and cooperative partnership opportunities. We are concerned that Executive Order 13781 could be used to cut or diminish essential government services under the guise of reorganization. The comprehensive restructuring of executive federal agencies—such as Interior, HHS, and HUD, among others—without specific consideration or carve-outs for Indian programs will necessarily and disproportionately affect the health, safety, and welfare of our people, lands, and natural resources.

We are also alarmed by recent reports that Secretary Zinke is considering eliminating 4,000 positions from the Department of Interior. Assuming that the alleged cuts would be evenly distributed across the Department, the BIA—which employs approximately 8,000 personnel—

would suffer the loss of 462 positions, which translates into a 5.8% reduction in its overall workforce. Such a loss would drastically impair its ability to fulfill its mission to “enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes, and Alaska Natives.” Further reductions in BIA resources when it has already been chronically underfunded for decades is simply unacceptable.

We urge the Department to exempt the BIA from any proposed reductions in the Interior workforce. We also strongly recommend that any programs housed in executive federal agencies serving the complex needs of Indian Country be appropriately protected during the restructuring process to ensure that the federal government continues to fulfill its treaty and trust obligations to tribal nations.

Tribes have been providing the BIA with specific ideas to streamline and improve. The BIA needs to focus in on one area at a time and then work with Tribal Leaders on targeted outcomes rather than just implementing across-the-board reductions in staff and services.

Expansion of Self-Governance within the Interior

Reorganization could provide a meaningful opportunity to expand tribal self-governance within the Department of the Interior. Public Law 93-638 compacting and contracting enables tribal nations to assume responsibility for the administration of certain federal functions within their communities. This transfer of authority generally reduces agency inefficiencies and maximizes the use of resources at the local level. As Tribal Leaders, we have a deep understanding of our peoples’ pressing needs, as well as their immense potential to succeed if given the appropriate level of resources and support. Self-governance provides us with the flexibility to meet these unique needs while advancing our self-determination.

We, therefore, urge the Department to consider expanding the list of Interior programs that are eligible for self-governance compacting and contracting. Authorizing such an expansion would not impose additional financial or personnel requirements on the Department. Instead, it would strengthen the ability of Tribal Nations to meet their communities’ needs through a streamlined and accountable approach.

It is critical to note that the expansion of tribal self-governance should not translate into reduced programming for direct services tribes. Nor should it result in the reduction of services provided through the Office of Self-Governance (OSG), which operates under the Office of the Assistant Secretary – Indian Affairs. Support for tribal self-determination necessarily correlates with support for OSG as it advocates for and implements tribal self-governance statutes and policies across the federal government.

Conclusion

Time and again, tribes have either been altogether excluded from decision-making that has a direct impact on our communities, or we have participated only to have our concerns noted and dismissed. This failure to meaningfully consult with tribes has resulted in major threats to our culture, lands, and way of life. It is from this history that much of the concern and

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July 12, 2017

apprehension has come from with the recent discussions regarding reorganization. The Port Gamble S'Klallam Tribe appreciates the early consultation that you have engaged in on reorganization thus far. However, as you move forward with your consideration to reorganize the BIA, you must provide tribes with details of any plans and continue to consult with us and Indian Country throughout your process. It is only through meaningful consultation and buy-in of Indian Country that a reorganization of the Department and the BIA can succeed. We also underscore that the Department and the BIA must adhere to the strict and high standards of the federal trust responsibility in any and all decisions and action steps that will affect us.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeromy Sullivan", followed by a period.

Jeromy Sullivan
Chairman



Consultation, IA <consultation@bia.gov>

Comments

1 message

Tribal Leader <tribalchairperson@gmail.com>
To: Consultation@bia.gov

Sun, Jul 16, 2017 at 10:19 AM

I am offering these comments about the Bureau of Indian Affairs. The reason for this is because I live within the exterior boundaries of land owned by my Tribe and that federal agency's actions have a direct affect on me and my family. The mission of the Bureau of Indian Affairs is to enhance the quality of life, to promote economic opportunity and to carry out the responsibility to protect and improve the trust assets of Indians. Many of us have worked or have family who work for the BIA in the midwest. As I travel to other states over the summer pow-wow season, many of us talk about the shake up happening at the BIA. We compare notes and talk about what we would do to downsize the BIA. Many talk that we don't need to be "oversighted" any longer but I can't agree. We need the Indian affairs programs but when their budget shrinks, and their staff shrinks, ours do too. Someone in Oklahoma said that the BIA doesn't do anything for us reservation Indians but I think she let her anger speak for her. She doesn't speak for all of us in Indian country. My travels bring me to the Rapid City area, Billings, Oklahoma all over Minnesota, Wisconsin and Michigan. The talk around Indian country is that you can see what BIA offices truly care about providing good service to their tribes. My advice is to compare the size of the regional offices, and ask where they can trim the fat. Do all the BIA regional offices really need two deputies maybe the big offices do. That will save \$100,000 at each small or medium size regional office. What about all the BIA cars and trucks those BIA people drive. I see them parked at the walmart parking lot and in diners and at some homes. Can't they share cars that would save money. They have the same people doing the same things at all the regions. Can't they share budget and admin people. I hear that the fish and wildlife office takes care of all the contracts for the Minneapolis office cant they do it for all the BIA around the them. What ever happened to Indian preference when you start bending the rules you soon find yourself breaking the law. I hear that regions pay another federal agency to do Human Resources work? Is it okay to mis manage resources that could be used for tribes? Figure heads serving as management could best serve our communities if they were eliminated and more expertise mobilized to the tribal communities would help us better. It's hard to understand the rationality of having so many leaders and less front line workers. This needs to change. Quit wasting federal monies to pad the pockets of high paid figure heads.



July 14, 2017

Secretary Ryan Zinke, Department of the Interior
Michael S. Black, Acting Assistant Secretary – Indian Affairs
consultation@bia.gov

RE: Reorganization of Dept. of the Interior pursuant to E.O. 13871

Honorable Secretary Zinke:

On behalf of the Pueblo of Laguna, New Mexico, kindly accept our comments related to reorganization of the Department of the Interior (DOI) as requested the “Dear Tribal Leader Letter” sent by Michael Black on May 16, 2017.

Generally, no one at the Pueblo can recall any prior reorganization effort for the Bureau of Indian Affairs (BIA) ever resulting in significant positive results for Indian Programs. Rather, we can only recall the opposite result – diminished budgets and adverse impact on tribes by reducing financial assistance or services. Hence, although admittedly there is a fair amount of redundancy throughout the federal government, we doubt that this current effort will yield noticeable improvements that benefit our Pueblo or Indian Country. Nevertheless, we ask you to keep in mind that the effort should, at least, do no harm.

We recognize, for example, that it could initially look logical to move the functions of the Bureau of Indian Education to the Department of Education, or BIA forestry to Department of Agriculture, or BIA transportation to Department of Transportation. However, before serious consideration to any of these ideas there must be an appreciation for the reason that an education, forestry, or transportation function currently exists within the DOI and BIA.

These and many other similar functions exist within the BIA primarily because of the trust responsibility of the United States due to Indians and the historical lack of such functions being adequately addressed by the “logical” department in the first place. For the most part, the various federal departments exist to serve the states. And, for the large part of United States history, the states have regarded the tribes within their respective borders to either be, at worst, a threat, or, at a minimum, an irrelevant constituency. Given these circumstances, there has been for the most part a lack of interest by the “logical” department to devote comparable resources to address Indian Country needs. BIA has needed to advocate for tribes and take care of issues not otherwise addressed.

Another “logical” consolidation is to transfer any BIA housing function to the Department of Housing and Urban Development (HUD). However, HUD is but one example of the previously-noted continuing neglect of Indian Country issues by the “logical” federal agency.

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HUD has not in the previous ten years (and probably longer) sought Indian Housing Block Grant (IHBG) program funding in parity with general public housing funding. On a per household basis, HUD seeks IHBG funding that is only 45% of public housing funding. For example, the \$598 million allocated under the proposed FY 2018 federal budget for the IHBG program will provide assistance to approximately 317,000 low-income Indian families – or only \$1,886 per household. On the other hand, the same budget provides \$4.528 billion for public housing programs to assist 1.1 million public housing units or families – or a more robust \$4,116 per household. It is this regular funding disparity that provides impetus for the DOI and BIA to seek separate housing funds from Congress for Indian-specific programs within the BIA.

All of the current programs within the BIA exist primarily because the “logical” federal agency could not or would not address the Indian Country issue. Hence, absent BIA taking on functions that logically could be, but were not being, delivered to Indian Country by other federal agencies, those issues would continually be neglected. BIA has been the primary advocate for addressing Indian Country needs and issues for several decades. Neither DOI nor Pueblo of Laguna can point to sufficient improvements in any other federal agency’s services to our people to justify any diminishment in BIA resources or functions. That is why we urge caution in considering reorganization to achieve efficiency. Kindly remember the necessity of having apparently duplicative services delivered by the BIA to Indian Country, and do no harm.

Respectfully,

PUEBLO OF LAGUNA

A handwritten signature in black ink, reading "Virgil Siow". The signature is written in a cursive, flowing style.

Virgil A. Siow, Governor



GREAT PLAINS TRIBAL CHAIRMEN'S ASSOCIATION, INC.

Mailing Address: US Post Office Box 988, Rapid City, SD 57701

Physical Address: 628 ½ 6th Street #210, Rapid City, SD 57701

July 15, 2017

Hon. Ryan Zinke, Secretary
U.S. Department of the Interior
Attn: Acting Assistant Secretary for Indian Affairs
Mike Black
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Via email: consultation@bia.gov

Re: BIA Reorganization

Dear Secretary Zinke:

The Great Plains Tribal Chairmen's Association (GPTCA) is composed of the sixteen (16) sovereign Indian nations and tribes located in the BIA Great Plains Region. We are treaty tribes. The United States has pledged peace, friendship and protection through treaty. The United States pledged to assist us with agriculture, economic development, education, health care, housing, law enforcement and the administration of justice, roads, water and sanitation systems, among other things. We stand on our treaties, and call upon the United States to honor our treaties.

I write to express the concerns of the Great Plains Tribal Chairmen's Association (GPTCA) as to the proposed BIA Reorganization. From 2001 forward, the BIA and Indian tribes have already had our budgets cut too much. In 2011, we were subject to sequester. We have a large backlog on infrastructure funding, such as schools, hospitals, health clinics, police departments, courts, detention facilities, roads, water systems, and community, youth activity and elder care centers. We have a large backlog on personnel funding, so we need more funding, not less.

The mission of the Bureau of Indian Affairs is to: "enhance the quality of life, promote economic opportunity and carry out the responsibility to protect and improve the trust assets of Indians, Indian tribes, and Alaska Natives." The BIA is the oldest Agency of the Department of the Interior, which was first established as an Agency of the War Department in 1824 and

transferred to the Interior in 1847. The BIA is essential to carry out the United States' treaty obligation and trust responsibility to Indian nations and tribes.

Executive Order 13781, Comprehensive Plan for Reorganizing the Executive Branch provides: Within 180 days of March 16, 2017, "the head of each agency shall submit to the Director a proposed plan to reorganize the agency, if appropriate, in order to improve the efficiency, effectiveness, and accountability of that agency." Some press commentators suggest that Executive Order 13781 is a cover for dismantling the Executive Branch. We trust that the Secretary of the Interior is opposed to any such dismantling of the BIA.

The BIA has been underfunded for many, many years. The Secretary of the Interior and the Administration should reject cuts for the BIA, especially in the Great Plains Region. In South Dakota, the 3 poorest counties in the Nation are located on the Sioux Reservations, and 7 of the poorest 50 counties in America are located on the Sioux Reservations in North and South Dakota. We need more resources, not less!

The U.N Declaration on the Rights of Indigenous Peoples, the Indian Reorganization Act, the Indian Self-Determination, and Executive Order 13175 require prior informed consultation on matters that impact Indian nations and tribes, including impacts on treaty rights, the trust responsibility, self-government and self-determination.

The BIA Reorganization, proposed by the Secretary and the Department of the Interior, was completely lacking in framework, outline or details and formed an insufficient basis for consultation with Indian nations and tribes. Nevertheless, prior to the end of the public comment period, the Acting Assistant Secretary for Indian Affairs, BIA Director, and other senior officials were reassigned, with authority over Indian Affairs and the BIA apparently arrogated to the Associate Deputy Secretary of the Interior. This approach to "consultation" violates U.S. law and policy, violates the United States treaty obligations and trust responsibility.

Real consultation on any proposed BIA Reorganization should be conducted with Indian nations and tribes before any regulatory, budgetary or statutory proposals are finalized or presented to Congress.

Here is an outline of what the United States should do to reorganize the BIA and Indian Affairs:

The Declaration of Independence declares "All Men [and Women] are Created Equal ... endowed by the Creator with unalienable rights ... to Life, Liberty and the Pursuit of Happiness." Our Indian nations and Native peoples were vested with these inherent natural Human rights, as the Founding Fathers recognized. The Continental Congress set forth the First Federal Indian Policy through the treaties and the Northwest Ordinance of 1787, which pledges:

The utmost good faith shall always be observed towards the Indians, and in their liberty and property they shall never be invaded, except in just wars authorized by Congress....

By treaty and statute, a Federal treaty and trust responsibility was thereby established.

The Constitution of the United States acknowledges the status of Indian nations as prior sovereigns in the Treaty and Supremacy Clauses, where the early Indian treaties were affirmed as “treaties made” and new treaties with Indian nations were authorized. The Commerce Clause empowers Congress to regulate “Commerce with ... the Indian Tribes.” “Indians not taxed” were excluded from taxation and apportionment in Congress because our Native peoples were citizens of our prior Native Sovereign Nations. In the same year that our 1868 Sioux Nation Treaty was entered into, the American People ratified the 14th Amendment to the Constitution affirming tribal government jurisdiction over tribal citizens, and repeating the recognition of “Indians not taxed.”

Background: Treaty Obligations and Federal Trust Responsibilities:

Indian Peoples are Equal to All other Peoples, the Creator vested us with Natural Rights to Life, Liberty and the Pursuit of Happiness. Indian Nations were sovereign, independent self-governing nations prior to the formation of the United States and we have never ceded our original, inherent sovereign authority.

In accordance with its Constitution, treaties, and statutes, the United States should defer to Indian nations and tribes on internal self-governance, self-determination, and territorial management, and resolve issues of mutual concern based upon mutual consent. The United States undertook the Federal Trust Responsibility to protect Indian tribes through treaties. Accordingly, the United States promise to protect our “permanent” home is a promise to assist us to make our Indian lands livable homes. Through treaties, the United States undertook to assist Indian tribes with education, health care, law enforcement and administration of justice, agriculture, roads and economic development.

The Secretary of the Interior should establish a new Office of the Treaty Commissioner to ensure compliance with Indian treaties, agreements and Executive Orders establishing Indian Reservations.

Better Decision-Making:

The Assistant Secretary for Indian Affairs should be elevated to the Under Secretary for Indian Affairs equal to the Deputy Secretary. By increasing the authority of the Assistant Secretary to serve as an Under Secretary, better and more efficient decisions will be made.

The Office of Special Trustee and the Bureau of Indian Education should be re-consolidated as Divisions of the Bureau of Indian Affairs subject to the overall direction of the Under Secretary for Indian Affairs. Some of the high level positions in these agencies can be moved back to the field to provide direct services to Indian tribes.

Improved Services:

In North and South Dakota and Nebraska, we have 7 of the poorest 50 counties in America on our Indian Reservations. We have suffered from budget cuts over the past several years with a decline in actual services.

Our Indian nations and tribes have very basic needs that are not being met through the Federal Government's Budgets:

- Indian Education Funding Must Increase: Our Schools Are Old And Falling Down. We need new school construction.
- We Need More Indian Health Care Funding: Indian Health Care per patient spending is only \$3,000 compared to \$12,000 for Medicare, \$7,000 for Veterans, and \$5,500 for Medicaid.
- Indian housing has been inadequate and we have 2 or 3 families per house. Sometimes 28 people live in a house that is intended for 4 or 5 people.
- Law Enforcement Funding is Inadequate we have only 1/3 as many police officers as we did in the past yet American Indians suffer some of the highest violent crime rates in the country.
-

We need improvement in our government services. We need resources for direct services. We need more Doctors for Health Care, more Teachers for Education, more Police Officers. The Administration and Congress need to provide a better budget and streamlined government in our government-to-government relations between the United States and our Indian nations and tribes.

We request a meeting between the Secretary of the Interior and the Great Plains Tribal Chairmen to discuss the BIA Reorganization, Treaty Obligations and the Federal Trust Responsibility. Our Executive Director will be in touch with your office to schedule the meeting. Contact information for A. Gay Kingman is Cell: 605-484-3036 and Email is kingmanwapato@rushmore.com.

Thank you for your thoughtful consideration. We look forward to your inclusion of our message in your BIA Reorganization Plan.

Sincerely,



**Chairman Harold Frazier, Cheyenne River Sioux Tribe, Chairman,
Great Plains Tribal Chairmen's Association, Inc.**



USET

SOVEREIGNTY PROTECTION FUND

July 15, 2017

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Submitted via: consultation@bia.gov

The Honorable Michael S. Black
Acting Assistant Secretary—Indian Affairs
Bureau of Indian Affairs
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Re: Dear Tribal Leader Letter on Implementation of Executive Order 13871

Dear Acting Assistant Secretary Black,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we are pleased to submit the following comments in response to your May 16, 2017 “Dear Tribal Leader” letter requesting comments on the implementation of Executive Order (EO) 13871, *Comprehensive Plan for Reorganizing the Executive Branch*. USET SPF member Tribal Nations acknowledge that there may be unnecessary levels of bureaucracy and redundancies at the Department of the Interior (DOI) and this belief is consistent with our organizational effort to modernize the trust relationship. However, any eliminations or changes must be accomplished with the intent to (1) achieve more timely and seamless execution of federal trust obligations, and (2) promote greater Tribal Nation self-determination.

USET SPF is an intertribal organization comprised of twenty-six federally recognized Tribal Nations, ranging from Maine to Florida to Texas.¹ USET SPF is dedicated to enhancing the development of Tribal Nations, to improving the capabilities of Tribal governments, and assisting member Tribal governments in dealing effectively with public policy issues and in serving the broad needs of Indian people.

Execution of Trust Obligations and Inherent Federal Functions Must be Protected

USET SPF recognizes that a major priority of President Trump is a full reorganization and reduction in the workforce of the executive branch. However, we also note that executive orders and memoranda issued do not, with very limited exceptions, exempt positions and agencies charged with delivering on the trust responsibility. As DOI and the whole federal government moves forward with its reorganization, the execution of the federal government’s trust responsibility and obligations must be paramount. Positions and agencies charged with execution of this obligation, and all inherent federal functions must be preserved. This includes ensuring agencies, departments, and divisions are adequately staffed and resourced to carry out these functions. It is never acceptable or appropriate for any of the federal trust obligation to be executed by state or private entities.

¹USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

BIA Eastern Region Office Must Be Preserved

Historically, as part of past reorganization/restructuring efforts, USET SPF member Tribal Nations have consistently had to fight to protect the Bureau of Indian Affairs (BIA) Eastern Region Office. We are adamantly opposed to any effort to eliminate or consolidate this office. Previous efforts to fulfill Eastern Region trust obligations through other BIA regional offices have failed and proven that ERO Tribal Nation interests are secondary to the interests of the Tribal Nations within those regions tasked with providing contracted services.

In addition, the Eastern Region has recently undergone a change in leadership and corresponding reorganization. Our member Tribal Nations view this change as positive and productive. The new leadership has spent the last several years cultivating a trustworthy and reliable working relationship with the Tribal Nations it serves. We urge you to allow this progress to proceed by maintaining the current leadership of the Eastern Region Office.

- **Other Regional Offices and Staff**

We note that our region is also served by a number of satellite offices. USET SPF stands with each of our member Tribal Nations receiving this direct outreach and asserts that no changes to these relationships shall be made without their consent. We remind the DOI of its commitment to ensuring that Tribal Nations are provided advance notice and opportunity for consultation when the agency is considering action with Tribal impact.

Need for Extensive Tribal Consultation

As the full reorganization proceeds, greater coordination and clarity is needed from agencies across the federal government to ensure that the trust responsibilities and obligations of the federal government are not intentionally or inadvertently diminished. Any federal action impacting Tribal Nations must be consulted upon in advance. This Administration has already provided verbal indication of its intent to keep a structure in place similar to the White House Council on Native American Affairs. Regardless of the form or name that it takes in this Administration, this would be an appropriate task for this entity to take on.

Indian Country also needs to be better informed in order to respond to requests for consultation. Federal agencies must present any proposed changes to Indian Country in a clear and transparent manner, describing specific proposed actions with Tribal implications, in order to facilitate meaningful guidance from Indian Country.

Conclusion

Recognizing that no formal Tribal consultation has taken place, we expect that this will be the first of many opportunities to provide input as the Trump Administration implements EO 13871. USET SPF welcomes the opportunity to modernize the federal government and execution of the federal trust responsibility in a way that upholds the obligations of our sacred government-to-government relationship and promotes the full exercise of Tribal sovereignty. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 202-624-3550.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director



NATIONAL INDIAN EDUCATION
Advancing Excellence for All Native Students

July 15, 2017

The Honorable Ryan Zinke
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

***Re: Secretary's Interest in the National Indian Education Association's (NIEA's) Thoughts
about Reorganization of the Department of Interior***

Dear Secretary Zinke,

Thank you for the opportunity to provide feedback on the Department of the Interior's (the Department's) reorganization. The National Indian Education Association (NIEA) advocates for improved educational opportunities to enable Native students to thrive in the classroom and beyond. Part of our work is providing the Department feedback on how it serves Native students, so we appreciate your request and take it as an important aspect of our mission.

The Federal Trust Relationship

Since our creation in 1969, NIEA's work has centered on reversing negative trends within Native education, an objective that is possible only if the federal government upholds its trust responsibility to tribes. Established through treaties, federal law, and U.S. Supreme Court decisions, this relationship includes a fiduciary obligation to provide parity in access and equal resources to all American Indian and Alaska Native students, regardless of where they attend school. So, as we look at reorganization of the Department, it is important to state that under the federal government's trust corpus in the field of Indian education, the obligation is shared between the Administration and Congress for federally-recognized Indian tribes.

Streamline Operations at the Bureau of Indian Education to Best Serve Native Students

NIEA has always argued for a responsive Department of Interior and Bureau of Indian Education (BIE), attuned to the needs of Native students. Toward that goal, consistent with the General Accounting Office's 2017 High Risk Report, we believe that consolidating the human resources, financial oversight, construction contracting, and inspection functions at BIE—moving these functions from the Bureau of Indian Affairs (BIA) to the BIE—is a critical step in reform.¹ Currently the BIA has joint or oversight authority over many of these functions, leading to disjointed authority and inefficient management. Examples of the problems inherent in leaving human resources, for example, as a BIA function, are numerous. BIE will know best how to hire

¹ To see the High Risk Report, go to <http://www.gao.gov/assets/690/682765.pdf> accessed July 14, 2017

educators to teach students, and will best be able to hold inspectors of school facilities accountable. BIE also knows the urgency and unique challenges involved in hiring teachers in rural communities. As far as fiscal management, different fiscal years for the BIA and the BIE have led to lags in school construction while students suffer in substandard schools. Director Dearman and his team have identified these challenges and NIEA agrees with him as well his predecessors that BIE should consolidate authority in order to be accountable. It is long past time for BIE to have the direct authority for the basic operations functions, so that BIE can actually fulfill the critical operational functions that have a significant impact on Native students at BIE schools.

Promote Accountability at the BIE: Work with NIEA and Tribal Leaders

NIEA has worked with Senator John Barrasso (R-WY) on legislation he introduced last Congress to better hold BIE accountable for improving Native education and we support accountability in this reorganization effort. Senator Barrasso's legislation, Senate Bill 2580, consolidates many of the functions that we recommend fall in BIE under school "Assistant Directors": human resources, communications, acquisitions and grants, budget and finance, educational technology, and school facilities. NIEA agrees that these functions should be consolidated at BIE. The legislation also requires a report to Congress on the progress being made on Indian education, which we agree is a helpful step for accountability. NIEA has concerns, however, about some the detail regarding salaries that Senator Barrasso suggested and we also would want to be sure that reforms to BIE are done *with* tribal leaders and NIEA. The history of reforms done without partnering with Indian Country shows that true partnership with tribal leaders and Native education advocates is essential. We look forward to working with the Department, BIA, and BIE on the proposal that Senator Barrasso has suggested.

Clarify Operations at the BIE through an Assistant Secretary of Indian Education

NIEA believes that the Federal Trust relationship makes an Assistant Secretary of Indian Education the best way to ensure that Native students are being served in BIE Schools. We have long believed that an Assistant Secretary who would report directly to the Secretary would provide the accountability and attention needed to provide Native students in BIE schools with the education they deserve. This reorganization is the time to seize the moment and appoint an Assistant Secretary of Indian Education at the Department.

The reasons for an Assistant Secretary are solid. No other group of students has explicitly been promised educational services by the Federal government throughout the Federal government's history. The remainder of the Department is focused on functions far different from education, such as land management. The Department has not succeeded to this point using the current system and accountability is critical for the BIE. Each supports an Assistant Secretary of Indian Education whose job would be to manage the career appointed BIE Director as well as the BIE as a whole, with consistent, direct responsibility for bringing BIE to the standards that have been long-promised on behalf of Native students.

Keep the Bureau of Indian Education at the Department of the Interior

NIEA stands with tribal leaders across the Country in support of keeping the Bureau of Indian Education at the Department of the Interior. Native communities face unique challenges and have sovereignty as tribal nations that require consultation. The Department is best equipped to

work with tribes to improve Native education. The Department of Education, by contrast, does not have significant experience working with tribes, and, therefore, is not as experienced working with Native communities on educating Native students. Native education is often in rural communities where the Department of Interior has experience and the Department of Education has very little. Native nations do not need another change in bureaucracy, which would delay consolidation of services, result in a protracted political fight, and distract attention from the critical human resources, construction, and financial management priorities that we identified above. Please do not go down what we see as a path of division and distraction, which runs counter to tribal sovereignty and your experience in Montana. Please keep the BIE at the Department of Interior.

Conclusion

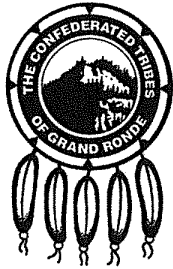
Through the recommendations on the Department's organizational structure that impact Native education, NIEA looks forward to working alongside the Department to drive federal resources to the only students that the federal government has a direct responsibility to educate – Native students. If you have any questions, please contact Ahniwake Rose, NIEA Executive Director, at arose@niea.org.

Sincerely,



Yatibaey Evans
President

CC: Michael S. Black, Acting Assistant Secretary—Indian Affairs
Tony Dearman, Director, Bureau of Indian Education



The Confederated Tribes of the Grand Ronde Community of Oregon

Executive Office
Phone 503-879-1451
Fax 503-879-2117
1-800-422-0232

9615 Grand Ronde Rd
Grand Ronde, OR 97347

July 14, 2017

U.S. Department of the Interior
Bureau of Indian Affairs
ATTN: Michael S. Black, Acting Assistant Secretary
Washington, DC 20240

*Submitted via email
to consultation@bia.gov*

RE: Tribal comments on Department and Bureau implementation of Executive Order 13781: Reorganization of the Executive Branch

Assistant Secretary Black:

On behalf of the Confederated Tribes of the Grand Ronde Community of Oregon ("Grand Ronde" or "Tribe"), thank you for the opportunity to comment on Executive Order (EO) 13781: Reorganization of the Executive Branch. Grand Ronde is made up of over 27 antecedent tribes and bands from western Oregon, southwest Washington, and northern California. The Grand Ronde Indian Reservation is located in northwest Oregon. The Tribe and its members rely on services from the Department of the Interior (DOI) and its agencies including the Bureau of Indian Affairs (BIA) for their well-being and the well-being of the lands, natural resources and cultural resources on the Reservation and ancestral homelands of the Tribe.

The Tribe strongly encourages the DOI and BIA to remember their federal trust responsibilities to Grand Ronde and its people and to consider the effects of reorganizing and/or "downsizing" the agencies. The National Congress of American Indians (NCAI) has expressed concern regarding FY18 federal budget cuts that would affect services to the nation's federally-recognized tribes, and has formally requested ongoing government-to-government consultation on any proposed cuts to funding that would affect American Indians and Alaska Natives. Please see NCAI Resolution MOH-17-051.

In a similar spirit, Grand Ronde expresses concern regarding any agency reorganization that would potentially affect the well-being of the Tribe, its members, or its lands and resources both on- and off-Reservation. The Tribe defines consultation as an equal dialogue between sovereign nations or their agencies at the highest levels of decision-making. Consultation is an ongoing and meaningful dialogue; this means that consultation takes place until project completion, not just until the comment window is over. Therefore, the Tribe requests ongoing government-to-government consultation on any and all DOI and BIA plans and proposals regarding agency reorganization, as well as their implementation.

Please contact Michael Karnosh, Ceded Lands Program Manager, at (503) 879-2383 or Michael.Karnosh@grandronde.org if there are any questions on these comments. Once again, thank you for this opportunity to comment.

hayu-masi (Many thanks),

A handwritten signature in black ink, appearing to read "David Fullerton". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David Fullerton
General Manager

Cc: Tribal Council



-WOHEHIV-
The Morning Star

**NORTHERN CHEYENNE TRIBE
ADMINISTRATION**

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LAME DEER, MONTANA 59043
(406) 477-6284
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-WOHEHIV-
The Morning Star

July 14, 2017

The Honorable Ryan Zinke
Secretary of the Interior
1849 C Street N.W.
Washington, D.C. 20220

**Re: Written Comments on Federal Government Re-organization at the
Department of Indian Interior-Indian Affairs.**

Dear Secretary Zinke:

On behalf of the Northern Cheyenne Tribe (Tribe) this office is formally providing written comments in response to the Department of the Interior's (DOI) May 16, 2017 notice for Tribal leaders to submit comments to DOI concerning the reorganization of *Indian Affairs* under this Department's jurisdiction. A representative from my office attended one (1) of six (6) listening sessions held on June 8, 2017 in Rapid City, SD in which the lead DOI representative posed the important overall question of whether or not the current Bureau of Indian Affairs (BIA) and Bureau of Indian Education (BIE) structures were meeting the needs of Tribes. The listening sessions were DOI's response to the March 13, 2017 Executive Order No. 13871 (*Comprehensive Plan for Reorganizing the Executive Branch*) issued by President Donald Trump requesting all Federal agencies to initiate a process to seek public and Tribal comments and suggestions (input) regarding improvements to the organization and functioning of the Executive Branch.

LITTLE WOLF AND MORNING STAR – Out of defeat and exile they led us back to Montana and won our Cheyenne homeland that we will keep forever.

It envisioned that submitted Public and Tribal leader input (Indian Affairs) would be helpful in the development of a proposed a *Government-wide Reform Plan* that would improve the efficiency, effectiveness, and accountability of Federal Agencies , including, as appropriate, to eliminate or reorganize unnecessary or redundant Federal agencies. The Director of the Office of Management and Budget (OMB) in the E.O. 13871 is tasked with proposing a plan to reorganize governmental functions and eliminate unnecessary agencies, components of agencies and agency programs. The heads of each Federal agency are required to submit to the OMB Director a proposed plan to reorganize their respective agency. The following commentary from this office is in response to the request from DOI on reorganization of the BIA and BIE.

-Page 2: Tribal Comments-

In viewing the proposed change initiative being required by the President of the United States it is important for Tribal leaders and other stakeholders to recognize is that change from what we have known to be government-to-government relations-through a period of transition-and to arrive at a desired new way of implementing government-to-government relations is a process. The BIA and BIE under the auspices of the DOI can be characterized as bureaucratic behemoths with the smaller BIE subject to an estimated thirteen (13) Federal laws and with the BIA under an estimated 150+ specific authorizing pieces of legislation passed by the United States Congress (information from DOI website). General authorizations include the Snyder Act of 1921, the Indian Reorganization Act of 1934, the Indian Self-Determination Act and the Johnson-O'Malley Act. Much of the governing legislation and implementing Federal regulations may be outdated and in dire need of updating to address the ever changing dynamics infused into the current Federal system of service delivery. The BIA and BIE systems are influenced by diverse technological, political, legal and administrative issues that are diverse in nature due in part to the sixteen (16) major administrative areas, with multiple subsidiary branches, requiring active ministerial functions. For Tribal leaders, embedded in the Federal statutes and implementing regulations are the principles of *trust responsibility, fiduciary responsibility and Tribal sovereignty* that have been consistently challenged in their interpretation through administrative rulings and in the American Judicial system.

In the listening session held in Rapid City multiple participating Tribal leaders repeated the need for the United States government to uphold Trust Responsibility, Fiduciary Responsibility and Tribal Sovereignty in the process of meaningful Tribal

consultation associated with the ongoing process of reorganization of BIA and BIE. The facilitator for the listening session indicated that the Federal government had not issued a draft reorganization plan and that the session was the beginning of the process to develop a reorganization plan for the DOI which will be submitted by the Secretary's office to the OMB by September 9, 2017. Organizational charts for the BIA and BIE were distributed by the Federal representative and no other information was distributed to Tribal leaders for review, analysis and commentary by the July 15, 2017 deadline to submit comments on the rapidly approaching deadline for the Secretary to submit proposed changes to the BIA and BIE to the Director of OMB.

In this contemporary era of Tribal government operations it is vital for Tribal leaders to have access to information directly related to the core issues identified by the leaders in the DOI that are stimulating the aggressive executive initiative to revamp BIA and BIE operations. Our basic approach in understanding the change process is a framework that includes the current state, the transition state and the future state of the BIA and BIE. The current state includes the processes, behaviors, tools, technologies, organizational structures and job roles that constitute how work is done. Longitudinal studies, by the General Accounting Office (GAO) or other Federal oversight

-Page 3: Tribal Comments-

agencies that assess both quantitative and qualitative performance of the BIA and BIE have not been provided for analysis by Tribal leaders (e.g. information on government websites). In addition, customer surveys, employee satisfaction surveys or attainment of organization goals (with congressional appropriations) as a result of a BIA and BIE strategic planning has not been provided to assess effectiveness, efficiency and accountability. Due to the short timeframe and lack of performance based information required to submit substantive evidence based comments to improve the efficiency, effectiveness of BIA and BIE our Tribe's is not appropriately afforded adequate time to submit comments based on hard data. Tribes are aware that the President's administration and U.S. Congress are keenly attuned to the allocation of the American taxpayer dollar and appear to be focusing on waste, fraud and duplication of services in all areas of the executive branch of operations.

During the transition state of 180 days prior to submittal of a proposed reorganization plan by heads of Federal agencies to the Director of OMB there appears to be a "messy" disorganized and unpredictable state of affairs within the DOI and other

Federal agencies. Emotionally charged comments ranging from despair, anxiety to fear are raging through Tribal leadership and their communities due to the uncertainty associated with the reorganization of BIA and BIE. Tribal leaders do not want to compromise the documented progress achieved under the previous administration, however, some Tribal leaders are inclined, in the transition state, to accept new perspectives and learn new ways of implementing government-to-government relations, under a yet to be determined, restructured BIA and BIE without diluting the principles of trust, fiduciary responsibility and Tribal sovereignty. The executive direction provided by President Trump is a powerful administrative instrument, implemented by high level DOI leaders designed to change the course of Federal governmental operations. The transition period is very challenging and when the senior career leaders in Indian Affairs were summarily transferred/reassigned prior to input by Tribal leaders the distrust level escalated amongst Tribal leaders across the country.

The future state of BIA and BIE has not been fully defined and may actually shift during the transition state and what remains to be seen is whether the future BIA and BIE will be better than the current BIA and BIE in terms of performance. The future state of the BIA and BIE may not match the personal and professional goals of the Tribal leaders of the 567 Federally Recognized Tribes whose local issues, concerns and priorities are as diverse as the economies, cultures, languages, geographies, and political, legal and administrative experiences with the BIA and BIE. In this current reorganization process there has been very poor communications with Indian tribes based on no summary or detailed explanation by the DOI leadership on why the current BIA and BIE is not working and must be changed. It is certain that any change in the BIA and BIE structures delivering services to Tribes will impact each respective Tribe in different ways.

-Page 4-

The across the board reorganization of Federal agencies appears to have the characteristics of unplanned change and responsiveness to unplanned change requires tremendous flexibility and adaptability on the part of the organizations (BIA and BIE). Fundamental changes to these organization's career senior executives (for example) and changes to the organization's processes, systems, structures, strategies and core values will depend upon the BIA and BIE resources and capabilities. The new leaders in the DOI have an executive mandate to reorganize BIA and BIE and the leaders are certainly intelligent high- achievers with a track record of good decisions, however, it takes time and analysis to define the problem, to fully understand the root

cause, and evaluate the trade-offs between potential solutions. The changes in the line of authority in the organizational chart are for the most part are about power and reporting lines and do not address the problems and between the boxes and lines. It is probably the space between the boxes and lines where the solutions lie. It is the executives and senior leaders who will bring about the future state of the BIA and BIE and it is the project team tasked with investigating alternatives who will ultimately decide on a path to reorganization and will develop a solution to change these organizations.

Employees, managers, and supervisors will continue with the current state of the BIA and BIE simply because these organizations they are responsible for must keep their respective organizations functioning, in accordance with applicable law and regulations, while reorganization is being implemented. It is more difficult to define substantive involvement by Tribal leaders in the reorganization of the BIA and BIE, however over the past decades there has been consistent commentary by Tribal leaders that Congressional appropriations do not reach the local Tribal communities where direct services are delivered. In short, Tribal leaders in various government-to-government forums have asserted that the BIA Regional and local agencies receive a larger share of the DOI appropriations with the local Indian communities receiving a low percentage of the Federal dollars appropriated by the United States Congress. At present Tribal leaders have not been afforded data or summaries of data depicting the patterns of success or attainment of strategic goals. Tribal leaders in the budget current BIA/DOI budget formulation provide limited budget priority information (e.g. top five (5) budget priorities by the twelve (12) BIA regional offices) which skews the actual funding needs of participating Tribes.

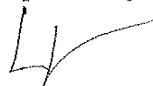
Reorganization initiatives involving the BIA with the BIE appear occur in cycles with the last major study of the Indian Affairs by Senate Select Committee in the late 1980s. This review and reorganization effort by an appointed Committee provided multiple recommendations for improving the efficiency, effectiveness and accountability of the BIA including, at the time, BIA schools. Some of the recommendations made by the team were included in restructuring of the BIA. The current Trump Administration reorganization is focusing on reducing funding for major programs and eliminating some small and independent Federal agencies. The programs under the BIA and BIE are subject to reduction or elimination depending on the budget decisions by the U.S. Congress. Indian Tribes are currently asserting their interests with appropriate

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Congressional representatives urging preservation of BIA and BIE programs that sustain Tribal communities and are inextricably linked to trust responsibility, fiduciary responsibility and Tribal sovereignty. The Congressional appropriations decisions in Fiscal Year 2018 will directly impact the restructuring of BIA and BIE and at this stage of the Trump administration's reorganization of the Executive Branch the administration's high level leaders appear to be intent on *removing obstacles* to reorganization including the leaders in the BIA and DOI who may have been identified as barriers to reorganization. The Trump administration has not permanently filled the top leadership position in many Federal agencies including the DOI, BIA and BIE which may be an indication of a continuing search for leaders whose main roles are to deliver the change or reorganization.

In closing, the Department of the Interior has not provided a formal planned change intervention strategy in the current effort-based on meaningful government-to-government consultation with Indian Tribes-that seeks to improve the organization effectiveness of the Bureau Indian Affairs and Bureau of Indian Education organizations which deliver essential services to Indian communities. More importantly, Tribal leaders have been requested to provide input without adequate information to make substantive recommendations to reorganize the BIA and BIE. Tribal leaders throughout Indian Country are not adverse to reorganization or positive change if the plan for reorganization is strategically planned with the inclusion of information indicative of the performance of programs under the authority of DOI. Following the submission of a DOI reorganization plan to the Director of the OMB, this office recommends a meeting with Tribal leaders to review and appropriately make revisions to the reorganization plans for the BIA and BIE. We respect the intent to improve BIA and BIE, however, we are of the opinion that this reorganization must include the trust and support of Tribal leaders across Indian country.

Respectfully Submitted,



L. Jace Killsback, President
Northern Cheyenne Tribe

cc: file