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**Subject:** NCAI Letter and Memo to Zinke  
**Date:** Friday, March 03, 2017 9:31:48 AM  
**Attachments:** [NCAI Letter to Interior Secretary Zinke.pdf](#)  
[NCAI Memo for Secretary Zinke.pdf](#)

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Jim – Attached is our congratulations letter and a list of some of our recommendations and of course our request to meet with Secretary Zinke. Your assistance in delivering our letter is appreciated. Best always- Jackie

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# NATIONAL CONGRESS OF AMERICAN INDIANS

March 2, 2017

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

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Dear Secretary Zinke:

I am writing on behalf of the National Congress of American Indians, the nation's oldest and largest organization of American Indian and Alaska Native tribal governments, to congratulate you on your nomination by the President and confirmation by the Senate to serve as Secretary of the Interior. In light of the significant role that the Department of Interior plays in the daily lives of Indian people, we would like to meet with you as soon as possible to discuss how we can work together to address challenges and seize the opportunities facing tribal communities.

As you know, the Secretary of Interior is the primary federal official entrusted with protecting tribal sovereignty and treaty rights, and is charged with a broad range of responsibilities to assist Indian Nations on issues ranging from land management to law enforcement to education. Indian issues make up a significant portion of both the work and the budget of the Department. The Secretary of Interior also serves as the Chair of the White House Council on Native American Affairs, a cabinet-level inter-agency council created by Executive Order to improve coordination of Federal programs and the use of resources available to tribal communities. In this capacity you will play a pivotal role in ensuring that federal obligations to Indian tribes are carried out efficiently and effectively across the Executive branch.

We thought we would take just a moment to outline a few of the major issues you will likely face, and have attached a short memorandum. We are eager to meet with you to discuss these and other issues, and hope that a meeting can occur as quickly as possible. Please contact Jacqueline Pata or Netia Agyeman at 202-466-7767 to schedule a meeting. Thank you in advance for your time and consideration.

Very Respectfully,

Brian Cladoosby



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 engage 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 telecommunications 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.