

**From:** Tapia, Rosalva  
**Location:** DOI – Main Interior Building; Kiowa Room (Basement level in cafeteria area)  
**Importance:** Normal  
**Subject:** Materials for Tomorrow's WHCNA's ECCNR Subgroup In-Person Strategy Planning Meeting  
**Start Date/Time:** 2017-02-28T13:00:00-05:00  
**End Date/Time:** 2017-02-28T16:00:00-05:00  
[Agenda ECCNR In Person Strategic Planning Meeting 2 28 2017.pdf](#)  
[Historical Executive Order 13647.pdf](#)  
[Historical Interagency Tribal Treaty Rights MOU.pdf](#)  
[Historical LEO 1-Pager.pdf](#)  
[Historical NCAI WHCNA NR Convening - TL Briefing Paper - Post Meeting Draft - 05181....pdf](#)  
[Historical Summary ECCNR Past Accomplishments.pdf](#)  
[Historical WHCNA ECCNR Subgroup Paper June 1 2015.pdf](#)  
[Logistical ECCNR Subgroup Lead Contact Information.pdf](#)  
[Planning ECCNR Strategy 2017 01 26 17.pdf](#)

Greetings ECCNR Subgroup Members,

Attached please find the packet for tomorrow's in-person strategy meeting. As noted in the agenda, we will be discussing each agency's programs as they pertain to the subgroup, with the hopes of those programs/projects benefitting from inter-agency collaboration. Please be prepared to share a list/example(s) programs from your agency. As always, please feel free to contact me if you have any questions.

I hope to see you tomorrow. Kindly allow 15 minutes to get through DOI's keen security process.

Best regards,  
Rosalva

**List of Attachments:**

Agenda (ECCNR Strategic Planning Meeting Agenda  
Planning\_ ECCNR Strategy Handout  
Logistical\_ ECCNR Subgroup Lead Contact Information  
The following attachments are background/historical documents

- ☐ Executive Order 13647
- ☐ Interagency Tribal Treaty Rights MOU
- ☐ LEO -1 Pager
- ☐ NCAI WHCNA NR Convening
- ☐ WHCNA ECCNR Subgroup Paper
- ☐ Summary of Subgroup Past Accomplishments

**Event:** WHCNA's ECCNR Subgroup In-Person Convening  
**Date:** Tuesday, February 28, 2017  
**Time:** 1:00 to 4:00 PM

**Location:** DOI – Main Interior Building; Kiowa Room (Basement level in cafeteria area)

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**White House Council on Native American Affairs  
ECCNR Subgroup  
Summary of Past Accomplishments**

**Natural Resources Convening:** In May 2016, the Environment, Climate Change, and Natural Resources Subgroup (Subgroup) and Energy Subgroup, both part of the White House Council on Native American Affairs, supported a convening for tribal leaders and federal agencies. This gave the Subgroup the opportunity to engage directly with tribal leaders regarding the environmental needs of their communities.

**Federal Tribal Climate Change Resource Guide:** An online portal that creates a centralized place for tribal government professionals to locate available resources from the federal government. This guide enables tribal governments to identify resources, tools and expert advice from multiple agencies, responding to the often heard request from tribal governments for the U.S. government to speak to tribal partners with one voice. The guide supports Tribal communities in building knowledge and connections, increasing climate change resilience.

**Interagency MOU on Tribal Treaty Rights:** Subgroup representatives collaborated to create a Memorandum of Understanding (MOU) on interagency coordination and collaboration to advance protection of tribal treaty and similar rights relating to natural resources. This MOU comes in response to numerous requests from tribes to institutionalize the council's commitment to improving how agencies integrate consideration of tribal treaty and similar rights into agency decision making processes. The MOU builds on EPA's recent *Guidance for Discussing Tribal Treaty Rights* and the work that other Subgroup members are doing to address these rights in agency decision making. Eight federal agencies have signed it since its announcement on September 26, 2016.

**Climate Resilience Toolkit Tribal Nations Theme:** In 2015, the Administration expanded the **Climate Resilience Toolkit** (CRT) to include a new "tribal nations" theme, comprised of more than 40 resources—with more to be added in the future—to assist tribal nations in climate change planning, adaptation, and mitigation. Resources include a comprehensive **Tribal Climate Change Adaptation Planning Toolkit**, and a set of guidelines for considering traditional knowledge in climate change initiatives. In July of 2016, the National Oceanic and Atmospheric Administration, in collaboration with the U.S. Global Change Research Program and a number of other agencies, released new capabilities through the Climate Resilience Toolkit; these included county scale climate projections for the continental United States, making climate information more locally relevant.

**Community-Based Data Collection:** In 2015, EPA provided a grant to the Alaska Native Tribal Health Consortium (ANTHC), to support the release of a **Local Environmental Observer (LEO) App**. Expanding on the successful computer based tool, the App allows observers to share photos and text from the field, complete with GPS locations. The LEO Network provides a model for engaging communities and connecting with technical experts and resources to allow communities to monitor, respond to, and adapt to new impacts and health effects. LEO experts apply local and traditional knowledge, western science and modern technology to record and share observations and to raise awareness about the conditions in the circumpolar north. Due to the success of the program, EPA led the expansion of the LEO network to the lower 48 states by supporting Northwest Indian College's LEO HUB, which was launched in fall 2016.

**White House Council on Native American Affairs – Environment and Climate Change Subgroup**  
**Concept Paper**  
*June 1, 2015*

**Introduction**

Tribes have repeatedly asked for the federal government to coordinate and collaborate more effectively. The White House Council on Native American Affairs (WHCNAA), which is comprised of Cabinet members, as well as of the heads of executive departments and agencies, was designed with this request in mind. The Council has the authority to coordinate federal support for tribal governments unlike ever before. While climate change is an issue affecting all communities and cultures, tribes face unique challenges, especially related to their cultural resources and life ways. The Council's Subgroup on Environment and Climate Change seeks to address these challenges from the highest level of the federal government by supporting the needs of tribal communities impacted by climate change, assisting with adaptation projects and mitigation efforts, and communicating information with one voice. The Subgroup's work supports the Administration's overarching goal of strengthening our unique nation-to-nation relationship and supporting tribal sovereignty.

In Spring 2014, the Department of the Interior's Secretary Sally Jewell and the Environmental Protection Agency's Administrator Gina McCarthy created the WHCNAA Subgroup on Environment and Climate Change (Subgroup). The two leaders charged their staffs to develop an inter-agency effort and leverage resources across the federal family that would ultimately benefit tribes across the country. The group quickly expanded to include participation from almost every federal agency, each of which was eager to expand its work in Indian country (see Appendix 2). To demonstrate the Council's commitment and to be responsive to the President's State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience (Task Force), the Subgroup has reviewed their recently-released tribal subset of recommendations and, in response, has aligned its proposal accordingly.

Using this lens, the Subgroup will work within the federal family to implement several projects in 2015 (Appendix I). These projects, which will be rolled out in partnership with federally-recognized tribes, will address areas of need, expand capacities, and result in on-the-ground change that is replicable across Indian country. Throughout the development and implementation of these proposed projects, the Subgroup will engage with tribal leaders in an inclusive and thoughtful manner.

**Key Commitments of the Federal Partners:**

- **Inclusion and Participation:** Federal partners will work with tribal organizations to include tribal concerns in climate conversations at the federal level. This will be accomplished in part by providing tribes with central points of contact, to work with them on all climate change issues happening across the federal family.

- **Long-term planning:** In response to the Task Force request for improved climate change planning, federal partners will provide tribes with access to the resources and strategies they need to integrate climate change planning into existing programs.
- **Education:** Working with tribes, federal partners will build capacity for climate change education, so that this generation and future generations will have the tools, data, and training they need to effectively assess risk and mitigate impacts on the ground.

## **Appendix I: Proposed Projects for Announcement in 2015**

The White House Council on Native American Affairs Climate Change Subgroup is organizing its work both in support of President Obama's Climate Action Plan and in alignment with the Supplemental Recommendations of Tribal Leaders on the Task Force. The Subgroup will also harmonize its efforts with the January 21, 2015 Executive Order on Enhancing Coordination of National Efforts in the Arctic. The following projects and initiatives are being proposed for announcement in June, at which time the Subgroup will directly engage with tribes for feedback and input, with the goal of a November 2015 launch.

The Subgroup selected these projects from a comprehensive catalog of existing or potential federal programs based on the following criteria: feasibility, transferability, and the requirement of interagency collaboration.

### **Inclusion, Participation, and Access**

The **Federal Tribal Climate Change Resource Guide** will be an online portal that creates a centralized place for tribal government professionals to locate available resources from the federal government. This guide will seek to ease some of the administrative burden that tribal governments face in managing grants from multiple agencies, connecting tribes with existing tools that can assist tribal communities in building knowledge and connections, increasing climate change resilience. [DOI AND EPA WITH PARTICIPATING AGENCY DOT]

### **Long-Term Planning**

The **USDA Forest Service Tribal Adaptation Partnership** will leverage Forest Service research and tools, and incorporate traditional and western knowledge in meeting the needs of tribes as they prepare for and adapt to the impacts of climate change, including assistance in carbon capture and prevention of catastrophic releases. [USDA AND PARTICIPATING AGENCIES]

The **Local Environmental Observers (LEO) Network** will be a web-based mapping tool to post observations about climate change impacts that allow communities to connect with technical experts and resources needed for adaptation and provide both real-time assessment and response. Currently, LEO is comprised of local experts who document observations about unusual environmental events in their communities. They apply local and traditional knowledge, western science and modern technology to record and share observations and to raise awareness about the conditions in the circumpolar north. There are LEO participants in Alaska and Canada in over 100 communities. The network also provides a model for connecting communities dealing with similar impacts of climate change. [EPA AND NOAA]

## **Education**

The **Tribal Climate Change App Youth Challenge** will build on the DOI Secretary's Youth Initiatives to seek to explore replication of the National Academy of Engineering's Grand Challenge as a climate adaptation focused on youth science. The Challenge would start a conversation among youth about how technology can be used to respond to the challenges of climate change and resiliency, and help seed the next generation of climate adaptation practitioners:  
[DOE, USDA, SBA, and NOAA]

The **Tribal Nations landing page** on the **Climate Resilience Toolkit** will serve both as a public facing educational tool to highlight tribal sovereignty and resilience partnership opportunities, and a tribal facing tool to direct tribal practitioners to high quality, tribal focused digital tools, resources, information, and communities of practice sites within the participating agency's web offerings. [BIA AND PARTICIPATING AGENCIES- NOAA, EPA and DOE]

## **Appendix II – List of U.S. Government Partners--Subgroup on Environment and Climate Change**

- Advisory Council on Historic Preservation (ACHP)
- Environmental Protection Agency (EPA)
- Federal Communications Commission (FCC)
- Small Business Administration (SBA)
- U.S. Department Agriculture (USDA)
  - U.S. Forest Service (USFS)
- U.S. Department of Commerce
  - National Oceanic and Atmospheric Administration (NOAA)
- U.S. Department of Defense (DOD)
- U.S. Department of Energy (DOE)
- U.S. Department of Health and Human Services
  - Indian Health Service (IHS)
- U.S. Department of Homeland Security (DHS)
  - Federal Emergency Management Agency (FEMA)
  - National Protection and Programs Directorate (NPPD)
  - U.S. Coast Guard
- U.S. Department of Housing and Urban Development (HUD)
- U.S. Department of the Interior (DOI)
  - Bureau of Indian Affairs (BIA)
  - U.S. Fish and Wildlife Service (USFWS)
  - U.S. Geological Survey (USGS)
- U.S. Department of Transportation (DOT)
  - Federal Highway Administration (FHWA)



**White House Council on Native American Affairs  
ECCNR Subgroup**

**Advancing Tribal Climate Resiliency: Proposed 2017 Strategic Planning and Actions**

**Tribal Draft Recommendations:**

Tribes and tribal organizations have provided the federal government with practicable recommendations on how to improve policy to ensure that tribes can adequately prepare and plan for climate resiliency. Recommendations from tribes have been shared in a number of forums that include:

- NCAI Resolutions from [2016](#) and [2015](#)
- NCAI Policy Recommendations from May 2016 to the White House Council on Native American Affairs.
- [Climate Change and Indigenous Peoples: A synthesis of current impacts and experiences, a USDA General Technical Report by Kathryn Norton-Smith et al., October 2016](#)
- [Supplemental Tribal Recommendations of Tribal Leaders on the State, Local and Tribal Leaders Task Force on Climate Preparedness and Resilience](#)

Tribal recommendations include:

- **Foster and develop partnerships:** Establishing mechanisms to foster/develop partnerships including Federal, State, regional and tribal collaboration.
- **Protect food security:** Protect ecosystem health and food security that provide the lifeways and way of life important to tribal communities.
- **Apply traditional knowledge:** Supporting appropriate application of Traditional Knowledge (TK/TEK) in both research and decision-making around tribal climate adaptation and resilience.
- **Consult tribes:** Ensure that tribes are consulted by federal agencies on any climate change decisions that may impact tribes.
- **Support tribal climate adaptation task force:** A government to government forum for ongoing exchange to ensure that advice and engagement with tribes on nationally-developed climate policy occurs. This entity should be established by tribes and tribally authorized organizations; but in part supported and recognized by federal agencies.
- **Coordinate and share information regarding federal programs** available for tribes to plan and implement adaptation and resilience needs.
- **Coordinate and share information regarding federal funds** for tribes to plan and implement adaptation and resilience plans, including development of vulnerability assessments.

- **Evaluate** the effectiveness of current programs providing resources for tribes to plan and implement adaptation and resilience plans.
- **Provide technical support and tools for tribes**, specifically tribal administrators and tribal council members to build leadership and meaningfully engage in federal programs.
- **Share information** with tribes to understand impacts of climate change; undertake vulnerability assessments, resilience and adaptation planning; and engage with on-going efforts (local, regional, and federal).

**Need:**

The White House Council on Native American Affairs (WHCNA) Environment, Climate Change and Natural Resources (ECCNR) subgroup is an important venue for tribes to engage with the federal government about inter-linked climate change and natural resources issues. There is a need to explore opportunities for improving coordination among federal agencies to support tribes to address and plan for climate change. Inter-agency strategic planning is essential at this stage as specific recommendations from tribes and tribal organizations remain unresolved.

**Proposed In-Person Retreat and Potential Outcomes:**

The WHCNA-ECCNR proposes convening staff from key agencies that provide funding, support and technical expertise for tribal nations for long-term climate adaptation and resiliency planning.

- Reflect on progress
- Common federal goals for supporting tribal needs in planning for climate change;
- Resources (programs, funding, etc.) available for supporting tribal tools in planning for climate change and implementing adaptive measures; and
- Identify major gaps and new opportunities.

This convening could form the basis for a formal review of federal programs available to tribes for climate adaptation and resiliency planning and framework and strategy with a plan on how to achieve shared Federal goals and objectives. The DOI Office of Policy Analysis can take the lead in developing these documents in coordination with partner agencies.

As mentioned, this effort would be a project under the WHCNA-ECCNR subgroup lead by DOI-OPA. It would build upon past efforts and feedback from tribal leaders. This effort would also provide an opportunity for strategic development of frameworks that would be valuable for planning long-term climate change programs.

**2017 Working Roadmap and Milestones:****January**

- Subgroup meeting: January 26, 2017 – 2:00 PM (EST)
  - Goals:
    - Discuss and prioritize proposed projects
    - Introduce the subgroup convening and goals
- Events:
  - January 19: NCAI 2017 Presidential Transition Tribal Leaders Meeting, Crystal City
  - January 23-26: ATNI Winter Convention

**February**

- Subgroup meeting: February 22, 2017 – 2:00 PM (EST)
  - Goals:
- Events:
  - February 6-9: Alaska Forum on the Environment
  - February 6-9: USET Sovereignty Protection Fund Impact Week, Crystal City
  - February 13-16: NCAI Executive Council Winter Session, DC

**March**

- Subgroup meeting: March 22, 2017 – 2:00 PM (EST)
- Events:
  - March 8-10: National Environmental Justice Conference & Training, DC

**April**

- Subgroup meeting: April 26, 2017 – 2:00 PM (EST)
- Events:
  - April 13-15: Rising Voices 5, Boulder, CO

**May**

- Subgroup meeting: May 24, 2017 – 2:00 PM (EST)
- Events:
  - WHCNA ECCNR Convening
  - May 9-11: National Adaptation Forum, Minneapolis, MN

**June**

- Subgroup meeting: June 28, 2017 – 2:00 PM (EST)
- Events:
  - June 1-14: NCAI Mid-Year Conference, Connecticut

July

- Subgroup meeting: July 26, 2017 – 2:00 PM (EST)
- Events:

August

- Subgroup meeting: August 23, 2017 – 2:00 PM (EST)
- Events:

September

- Subgroup meeting: September 27, 2017 – 2:00 PM (EST)
- Events:

October

- Subgroup meeting: October 25, 2017 – 2:00 PM (EST)
- Events:

November/December

- Subgroup meeting: November 29, 2017 – 2:00 PM (EST)
- Events:

Appendix A  
WHCNAA ECCNR 2017 Proposed Projects  
**Working Draft**

1. **Climate Change Contact List** - Tribal Climate Resilience Resource Guide was launched in April 2016 by BIA at the direction of the WHCNAA ECCNR subgroup. The guide provides a single access point for tribes and their partners to access federal data and tools to make climate adaptation decisions. The Guide was developed in coordination with NOAA, who led the development and maintenance of the Climate Resilience Toolkit. The Guide also provides specific information (e.g., Tribal Fact Sheets) tailored for each of the 567 federally recognized tribes.
2. **Tribal Water Issues Contact List** - Identify the agency(ies) or federal entity in charge of tribal water issues to create a contact list, which will include, where possible, a point of contact. (BIA/Cross Agency)
3. **Subgroup Quarterly One Pager** – Summarize the goals, aims, and accomplishments from the subgroup on a quarterly basis. This summary will serve to update tribal community working groups and organizations to help enhance communication and streamline the efforts of the tribal communities as well as the federal family. (EPA Lead/Cross Agency)
4. **Enhance GIS Resilience Support Tools**– Develop, promote, and hold training webinars and tools to improve tribal climate adaptation planning, while enhancing the climate-related data, tools, and GIS trainings across the federal government. (BIA Lead / Cross-Agency)
5. **Tribal Climate Resilience Resource Guide Redesign** - DOI is coordinating with federal partners and a tribal advisory team during platform migration to enhance usability, add topical content, and consider issues-based mobile application. (Projected late FY17-  
<http://toolkit.climate.gov/tribal/>)
6. **Expand GIS content** –Develop and link-in climate maps focusing on Climate Data Initiative’s tribal theme integration, which includes tribal and climate static, interactive, and story maps at a regional scale that will be served from a new BIA GIS Web Portal. Additionally, the U.S. Climate Resilience Toolkit will be leveraged to enhance access to built-in climate projection charting and mapping tools, and continue to link in new tool and story content from the Tribal Nations page found at  
<http://toolkit.climate.gov/topics/tribal-nations>.
7. **Tribal Input into Subgroup Goals/Objectives/Work Product** – The Subgroup will consider how tribal input may be incorporated into the Subgroup, including the possibility of ongoing tribal listening sessions. In addition, the Subgroup will create a process to develop a permanent structure for long-term tribal input. (Cross Agency)

8. **National Tribal Liaison Call on Natural Resources** – Previously led by USDA, the National Tribal Liaison Call convened monthly to hear from all the federal agencies' tribal liaisons on relevant matters affecting tribes and their natural resources. An informal inter-agency group, the National Tribal Liaison Call provided an avenue, in a round robin format, for all agencies' tribal liaisons to solicit input and possible solutions from other agencies. The Subgroup is in a prime position to help reignite the National Tribal Liaison Call. (Cross Agency)
9. **Ecosystem Planning Focus** – The Ecosystem Planning Focus is an effort aimed at supporting tribal managers with improved ecosystem visualization tools. This project is aimed at identifying current inter-agency climate science coordination to develop a graphical visualization tool to illustrate climate driven ecosystem shifts and potential resilient strongholds. Such a tool will enable tribal managers to evaluate climate resilience adaptation management needs. This effort requires coordination with federal partners to ensure tribal concerns are built into these tools. (BIA/Cross Agency)

**NATIONAL CONGRESS OF AMERICAN INDIANS**



**TRIBAL LEADER  
NATURAL RESOURCES BRIEFING PAPER  
AND POLICY RECOMMENDATIONS**

**FOR THE**

**NATURAL RESOURCES CONVENING**

**HOSTED BY THE**

***WHITE HOUSE COUNCIL ON NATIVE AMERICAN AFFAIRS  
ENVIRONMENT, CLIMATE CHANGE, & NATURAL RESOURCES SUBGROUP***

**MAY 16, 2016**

## **I. General Points on the White House Counsel on Native American Affairs and Continuing Covenings**

### **A. Enhance Tribal Representation and Participation at White House Council on Native American Affairs**

The creation of the White House Council on Native American Affairs (WHCNA) in 2013 was an important response to a top priority of tribal leaders. The leadership of Department of the Interior Secretary Sally Jewell and high level engagement across the agencies offers the potential to effectively respond to tribal concerns and work energetically to streamline federal programs. However, direct participation tribal leaders participation is essential to the success of the White House Council. The President should call upon tribes through our 12 Bureau of Indian Affairs Regions to nominate one tribal leader to serve as a representative and one tribal leader as an alternate to serve on a Native Nations Council that will work in partnership with the White House Council on Native American Affairs on intergovernmental issues; to educate the public about Indian treaties, agreements, laws, and executive orders, Indian sovereignty, and tribal self government; and to work directly with tribal governments nationwide to be constantly informed of the priorities and needs of Indian Country. The true potential of the Council to build a prosperous future for Indian Country will not be fully realized without a true Nation to Nation dialogue.

Further, the regional meetings at the 2011 White House Tribal Nations Conference and several White House forums since have shown promising trends toward including technical experts and staff to support tribal leaders. However, the White House Tribal Nations Conference itself, and many agency level committees, must provide tribal leaders with support comparable to that offered to senior federal officials. If federal technical experts and support staff participate in the meetings, tribal leaders should have the same option to ensure that the Nation to Nation dialogue is as informed and productive as possible.

While the annual White House Tribal Nations Conference is a helpful “flagship” meeting between tribes and President Obama, true nation to nation engagement must be sustained on an ongoing basis. The White House Council on Native American Affairs holds that promise. Tribal leaders urge Secretary Jewell, and other key leaders of the White House Council, to consider following a model like the White House Rural Council, where regular meetings and events are hosted by the President and Cabinet officials. As with the Rural Council, these meetings should be hosted both at the White House and in conjunction with key Indian Country meetings around the nation. Sustain Engagement with Tribal Nations Throughout the Year.

Finally, White House Conferences and agency advisory councils enhance but cannot supplant consultation. These mechanisms cannot replace specific and meaningful consultation. In general, the meetings do not provide adequate time or sufficient representation to supersede consultation.

### **B. Continual Tribal Leader Engagement through Roundtables on Additional Key Subjects within the Interagency Council’s Jurisdiction to Institutionalize the Process**





## II. Session Break Outs

### A. Water

#### 1. General Points and Background

Water rights were reserved when Indian reservations were established, and these are among the most important rights many tribes have yet to exercise. Although the United States carries the obligation as trustee to protect tribal rights, federal water policy and programs have too often supported non Native communities to the detriment of tribal legal rights. As a result, many tribal communities now suffer from an inadequate, and often compromised, water supply. Many homes on Indian reservations still lack a clean and reliable water supply, and the lack of water and water infrastructure has halted economic development on some reservations and damaged precious cultural and natural resources. Increasing pressure on water supply from climate change, population growth, and economic development will require more tribes to resolve their water rights claims in the near future.

As of 2011, only 75 federally recognized tribes have resolved their water rights claims through litigation or settlement, and only 27 have water settlements approved by Congress. The federal government continues to bypass development of tribal water resources and move slowly on water rights settlements. In 2009, the federal government spent over \$3 billion on water projects in foreign countries, while Indian water rights languish.

#### 2. Identify Responsible Agency for Tribal Water Issues

Water issues in Indian Country span across multiple agencies and jurisdictions making coordinated efforts to protect tribal water rights, water quality, habitats, fish, wildlife, and other natural resources difficult. Many of the agencies have different standards and considerations for water protections and often do not work with each other. The current regulatory scheme makes it hard for tribal voices to be heard. One of the deliverables from the White House Council on Native American Affairs should be to identify or appoint a federal entity to be in charge of tribal water issues allowing tribes, in a non adversary way, to have an entity responsible for ensuring that the trust responsible is upheld for this vital resource.

#### 3. Lift Interior's Moratorium on Approving Tribal Water Codes

Since 1975 the Secretary of the Department of the Interior has upheld a moratorium on the approval of tribal laws that would regulate the use of water on Indian reservations. Tribes that, by their Constitution, require Secretarial approval of major laws and ordinances have not been able to adopt tribal water codes to regulate water use on their lands. Congressional water settlements have typically empowered tribes to adopt water codes. However, until the Secretarial moratorium is lifted, tribes requiring approval of major laws and ordinances will be unable to develop and implement water codes

#### 4. Great Lakes Restoration Initiative

The Great Lakes Restoration Initiative (GLRI) has provided tribes and intertribal agencies with a boost to their capacity to participate in the management of the Great Lakes basin, and is a program that tribes enthusiastically support. That said, changes should be made that allow the GLRI to more directly accomplish the federal government's policy of supporting and enhancing tribal self determination and self governance; in this case, in ways that meet the overall goals of the GLRI to



protect and restore the Great Lakes. Currently, GLRI priorities are determined by the Regional Working Group, made up of representatives from various federal agencies. Therefore, GLRI funding decisions reflect the priorities of these federal agencies and don't necessarily represent the issues that are of the most importance to tribal communities. To ensure that tribes can develop holistic Great Lakes protection and restoration programs that meet the policies and goals of the GLRI Action Plan and the Great Lakes Water Quality Agreement, GLRI funding should be provided to tribes through a separate tribal program. This would allow for greater flexibility to allow tribes to develop the programs that are of the highest priorities to their communities, fulfilling the spirit of self determination, meeting treaty obligations, and carrying out federal trust responsibilities.

#### **5. Supporting Tribal Water Settlement Negotiations and Provide Technical Assistance and Information Sharing to Help Tribes during Water Settlement Negotiations**

This Administration has taken great strides in supporting tribes throughout their water settlement process, but there needs to be an increased focus on provide With the over 27 tribes with Congressionally approved water settlements, there is a lot of information and work already available and tribes must have access to this information. It will expedite the settlement process while decreasing the cost.

#### **6. Interagency Coordination to Protect Tribal Water Quality and Water Projects; Provide Technical Assistance and Resources for Baseline Water Quality Testing**

The Administration should promote safe water quality standards to protect surface and subsurface streams and repositories flowing into tribal lands. As trustee, the federal government should intervene on behalf of tribes when upstream users are polluting or contaminating water resources that tribes use for subsistence, economic development, and cultural practices. Chemical pollutants like cyanide, mercury, pesticides, and others that are affecting tribal water resources must be addressed by the Administration. Further, this Administration must provide tribes with additional technical assistance to ensure water quality standards are being met, particularly when tribes are engaging in developing and implementing their own water quality standards through the Treatment as a State process at the EPA under the new guidelines.

#### **7. Support Water Quality Standards that Protect Tribes and Tribal Lands**

The Administration should promote safe water quality standards to protect surface and subsurface streams and repositories flowing into tribal lands. As trustee, the federal government should intervene on behalf of tribes when upstream users are polluting or contaminating water resources that tribes use for subsistence, economic development, and cultural practices. Chemical pollutants like cyanide, mercury, pesticides, and others that are affecting tribal water resources must be addressed by the Administration.

#### **8. Support Water Availability for Fishery Habitats**

The Administration should support tribal involvement in state water policy development to promote healthy fisheries habitats. In addition to surface water diversions, state groundwater laws are also having a significant effect on stream flows and tribal fisheries. Many state groundwater policies



regarding withdrawals have few ecosystem protections. These water withdrawals are affecting in stream water quality and quantity, which adversely affects fishery habitats.

## 9. Support Water Resources Development and Management on Tribal Lands

The federal government should work with tribes to build tribal technical capacity to develop water resources, water management, and water infrastructure. This could be done by instructing agencies, such as the Bureau of Reclamation, the United States Geological Survey, and the Environmental Protection Agency, to work with tribes on water resources projects on tribal lands.

## 10. Transboundary Waterways

The health of our rivers and streams is paramount, especially for American Indians and Alaska Natives that rely on our traditional and customary ways of life. Since our rivers do not recognize the arbitrary boundaries drawn on maps, many Native communities in Alaska share transboundary waterways which are directly affected by harmful activities taking place in another country, leaving little recourse to address this issue directly with that foreign country. Transboundary waterways pollution can have potentially damaging impacts on water quality, salmon, eulachon (hooligan), wildlife, recreation, livelihood, and customary or traditional lifeways.

While Alaska Native tribes, Canadian First Nations, fishermen, local communities, elected leaders, and conservation groups on both sides of the United States/Canadian border have all raised concerns about the potential harm from the proposed developments to water quality, fish, wildlife and ultimately to the cultural existence, livelihoods, and local economies in the region, it is the responsibility of the United States and Canada to work together on maintaining a healthy ecosystem and clean water for the protection of all of our subsistence resources.

The Boundary Waters Treaty of 1909 established the International Joint Commission to ensure that "waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other." The United States must to uphold its trust responsibility to American Indians and Alaska Natives, consult tribes, and engage the Canadian government, through the International Joint Commission, to promote the health and well being of the transboundary watershed. Our waters, our resources, and our traditional and customary lifeways are at great risk. The time to act is now.

- After consultation with the impacted Native communities, the White House and the Department of State must engage directly with the Canadian government to protect the health and productivity U.S. waterways; and
- Appoint qualified tribal representatives as commissioners on the International Joint Commission (IJC), regional IJC boards, and for individual waterways projects.
- direct participation by tribes in discussions with the Dominion of Canada and provinces
- Authorize and fund a statement of cooperation for a Yakutat Bay to Portland Canal ecosystem agreement to evaluate the environmental status and sources of contamination for the ecosystem;
- Initiate an IJC reference under the Boundary Waters Treaty article IX if Canada does not agree to an ecosystem environmental agreement with the U.S., state of Alaska and other states, and tribes.





## **B. Fish, Marine Mammals, and Wildlife Management**

### **1. Finalize a True Co-Management Agreement**

The hunting and fishing practices of American Indians and Alaska Natives are essential to their social, cultural, spiritual, and economic well being and survival. The current federal and state dual management without specific tribal participation fails to provide a sustainable yield for critical traditional and customary species, resulting in a harmful reduction of hunting and fishing practices. It is important for the Administration to uphold its mandate to provide for meaningful tribal consultation and equal participation by tribes in the co management of traditional and customary resources for the continued well being of their peoples. There are many examples of agreements where federal agencies and tribes have developed agreements to co manage resources, however this practice must be viewed as being the normal rather than the exception. This Administration has the unique opportunity to set a lasting standard for tribal federal co management plans and should act to better protect the resources for generations to come.

### **2. Support Ahtna's Proposal for a Subsistence Wildlife Management Demonstration Project on Federal and Ahtna Lands**

Ahtna's proposal advances President Obama's initiatives to address global warming, tribal food security, the engagement and employment of Ahtna youth consistent with Generation Indigenous, and the empowerment of tribes to develop and implement solutions that best meet their needs. We are thankful to Secretary Jewel and her staff who have expressed interest and support for a demonstration project that meaningfully incorporates Ahtna into wildlife management. We are especially thankful to President Barack Obama for recognizing our Alaska Native Peoples our struggles, challenges, and successes and for the extra effort his staff have put into initiatives that benefit Native peoples. This recognition and interest in Native peoples is unprecedented. We are thankful.

#### **Background**

- The village and regional ANCSA corporations in the Ahtna region retained over 1.7 million acres of land as part of the settlement of the Ahtna's aboriginal land claims. A primary reason for the lands Ahtna selected under ANCSA was their importance as customary and traditional hunting areas.
- Over 600,000 acres of Ahtna's unceded ANCSA settlement lands ended up as in holdings surrounded by the Denali and Wrangell St. Elias National Parks. These National Parks were created or expanded to encompass Ahtna ANCSA lands a decade after Ahtna selected them as part of their aboriginal land claim settlement.
- The foundation for Ahtna's co management proposal, and the Secretary of Interior's authority to implement the co management structure, is Congress' promise at the passage of ANCSA that it "expected both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives." Our Ahtna leaders who are now Elders were present when this promise was made. It was fundamental to the settlement of our aboriginal land claims which opened the way for oil development in Alaska. We believe that Congress' promise created a trust responsibility that establishes a legal and moral duty to the Ahtna.



- It is time for the Secretary to fulfill Congress' promise. The State has failed to provide for Ahtna's right to continue its customary and traditional hunting way of life under its arbitrary and non responsive administrative structure and Alaska's restrictive legal system.
- The federal subsistence management structure also fails to incorporate the Ahtna's traditional knowledge and their customary management practices into its management. Federal agencies cannot understand and implement a management system that is intended to protect Ahtna's customary and traditional hunting and way of life. Only the Ahtna know the relationship between their lands, wildlife resources and way of life, because they live it as they have for countless generations. This fact is the foundation for the policy of self determination.
- Ahtna has been preparing for years to enter into co management. The Ahtna ANCSA regional and village corporations and the eight Ahtna tribes have established the Ahtna Inter Tribal Resource Commission (AITRC). The AITRC has formed a tribal conservation district with a government to government relationship with the Secretary of Agriculture and is successfully engaged in several wildlife and habitat management projects.

**Ahtna's Co-Management Proposal.** Ahtna's proposal for a wildlife demonstration project for the federal and Ahtna lands within Ahtna's traditional territory has four related parts:

1. Ahtna/DOI co management for the federal public lands within Ahtna's traditional hunting territory. Federal lands located within Ahtna's traditional territory include Wild and Scenic Rivers part of the Chugach National Forest, part of the Tetlin National Wildlife Refuge, and parts of the Wrangell St. Elias and Denali National Parks and Preserves.
  - The Secretary, exercising the broad discretion for implementing Title VIII of ANILCA, and to fulfill the trust responsibility, would adopt regulations that provide the AITRC with the primary management role for managing subsistence hunting by Ahtna's rural tribal members on federal lands. A direct relationship for subsistence management would be established between the Secretary and the AITRC rather than continuing to manage Ahtna C&T uses through the federal subsistence board with a majority composed of 5 federal land managers.
  - The Secretary would retain the necessary inherent federal authority to ensure conservation of wildlife populations on federal lands and for providing for subsistence uses of wildlife by other non Ahtna rural residents pursuant to ANILCA.
2. Ahtna ANCSA lands and Native allotments held in trust for Ahtna tribal members would be included in the co management structure. Ahtna lands would not be managed as federal lands subject to the ANILCA subsistence provisions. The Secretary would exercise the trust responsibility to preempt State management on ANCSA lands in order to ensure the opportunity for Native subsistence uses of these Native lands.
  - Through DOI/Ahtna co management of Ahtna lands, the Secretary would retain a role consistent with exercising the trust responsibility and recognizing self determination. DOI's role, and the goal of co management would be to harmonize subsistence management of Ahtna lands and federal lands, and ensure healthy populations of migratory wildlife.
  - The State would be encouraged to join the co management structure to develop a plans for the conservation of wildlife populations that migrate between federal, state and Ahtna land and to develop policies where State, federal and AITRC jurisdiction may overlap.



3. AITRC/DOI would cooperatively develop and implement a comprehensive wildlife management plan for the conservation and sustainable subsistence harvest of wildlife on the public lands and Ahtna lands within Ahtna's traditional territory.
4. AITRC would be provided stable funding for administration and capacity building through (among other funding streams): a 5 year congressional appropriation that is matched by the AITRC; ANILCA section 809 cooperative agreement for projects that support research, monitoring and conservation of wildlife populations and the use of traditional knowledge and C&T management practices; and a commitment by DOI to negotiate an Annual Funding Agreement as authorized by the Tribal Self Governance Act to cooperatively implement the comprehensive wildlife management plan developed by the AITRC and DOI.

### **3. Sturgeon Case and National Park Service Regulations**

In the recent *Sturgeon* case ruling by the U.S. Supreme Court, the state of Alaska can modify federal lands status to put water usage for hovercrafts under its own regulations. This leaves the Alaska Supreme Court decision in *Katie John* very vulnerable regarding public lands management. The National Parks Service needs to promulgate regulations to fix t water management issues for fishing.

### **4. Tribal Subsistence – Protect Traditional and Customary Lifeways**

The term “subsistence,” as it is used today, refers to our traditional and customary ways of life hunting, fishing, and gathering to sustain ourselves in the same ways our ancestors have since time immemorial. Federal laws protecting American Indian and Alaska Native hunting, fishing, and gathering rights apply throughout the United States, but nowhere are they more critical than in Alaska, where hunting, fishing, and gathering remain an economic necessity. Subsistence resources constitute a substantial majority of the nutritional needs of Alaska Native peoples, especially in rural areas where the need for subsistence resources for daily nutritional, spiritual, and cultural sustenance is the greatest. The indigenous peoples of Alaska have a basic human right to their subsistence way of life and to maintain their cultural beliefs and practices and must be full partners in the co management of their subsistence resources.

Indian Country strongly supports the efforts of Alaska Natives to obtain stronger federal protections for Alaska Native subsistence hunting, fishing, and gathering rights. The federal government has a trust responsibility to Alaska Natives to honor the commitment it made to them in the Alaska Native Claims Settlement Act of 1971 (ANCSA) and in Title VIII of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). This commitment is to establish and implement a comprehensive federal program that will protect their way of life. Fulfilling this commitment is central to the survival of this and future generations of Alaska Natives.

- **Convene a High-Level Interagency Meeting with Key White House Officials, Including the Domestic Policy Council and Departments with Jurisdiction over Subsistence Uses.** Subsistence management and the legal rights of Alaska Natives cut across a number of departments within the Administration, including Interior, Agriculture, Justice, and Commerce. If meaningful protections are to be provided for subsistence hunting and fishing in Alaska, there must be an ongoing dialogue between Alaska Native leaders and the agencies with jurisdiction over the various aspects of Alaska Native ways of life. This is a critically important moment in history for Alaska Natives with respect to hunting and fishing, the foundation of a subsistence





way of life, and a mainstay of Native nutrition and economies. Presidential involvement has been a hallmark of all of the major federal laws affecting Alaska, including the Alaska Statehood Act; ANCSA; and ANILCA, including Title VIII of that Act, which was intended to provide protection for subsistence hunting and fishing rights and to fulfill the promises of ANCSA. The same level of White House commitment and involvement is needed today.

- **Take Interim Administrative Measures to Increase Protections for Subsistence.** In addition to convening a high level interagency meeting on subsistence, the President should issue an Executive Order to advise federal agencies and the Federal Subsistence Board that Title VIII of ANILCA is "Indian Legislation," enacted under the plenary authority of Congress over Indian Affairs. The President should also direct the Office of Subsistence Management to implement a subsistence management program in accordance with the Executive Order. Title VIII was enacted to protect the subsistence way of life of rural Alaska residents, including residents of Native villages. In implementing the statute, Congress expressed its long standing concern, and obligation, to protect subsistence uses of Alaska Natives and fulfilling the purposes of ANCSA. Although the statute provides for a "rural" preference, it is important to remember that the subsistence title would never have been added to ANILCA had it not been for the efforts of Alaska Natives.

## 5. Remove the Blood Quantum Requirement under the Fish and Wildlife Service and National Marine Fisheries Service Regulations

The U.S. Fish and Wildlife's (FWS) and National Marine Fisheries Service regulatory definition of Alaska Native as it applies to the Marine Mammal Protection Act and its requirement of "blood quantum" limits access to Alaska Native descendants who do not qualify. This prohibits them from practicing traditional and customary lifeways and keeping their culture alive. Instead, the FWS should follow the definitions in the Marine Mammal Protection Act of 1972, which states:

"an Alaskan Native means a person defined in the Alaska Native Claims Settlement Act (ANCSA) as a citizen of the United States who is of one fourth degree or more Alaska Indian (including Tsimshian Indians enrolled or not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood or combination thereof. The term includes any native, as so defined, either or both of whose adoptive parents are not natives. It also includes in the absence of minimum blood quantum, any citizen of the United States who is regarded as an Alaskan Native by the native village or group, of which he claims to be a member, and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or native group. Any such citizen enrolled by the Secretary of the Interior pursuant to section 5 of ANCSA shall be conclusively presumed to be an Alaska Native for purposes of this part"

This definition allows Alaska Native descendency to be proven by tribal enrollment cards, BIA Blood Quantum Certificates, or other proof of descendency so that all Alaska Native will have the ability to hunt marine mammals.

## 6. Fisheries

Ensure that the traditional food sources found in our fisheries is secured, improved, and that emergency circumstances related to our fisheries is addressed by improved federal attention to the health and well being of these fisheries. More federal support is needed to financially assist tribes



whose actions on the ground are showing marked improvement in local fisheries. Tribes have the answers to fisheries challenges and should be at the forefront of all measures taken to address the health and safety of these fisheries.

Appropriate and significant tribal representation should be maintained on all federal advisory bodies dealing with climate change, and specifically with those bodies focusing on fisheries.

- **Protect Tribal Hatchery Programs: (NOAA/USFWS)** Complete NEPA Reviews and ESA Compliance §4(d) determinations and biological opinions on state and tribal hatchery genetic management plans (HGMPs).

## **7. Wildlife and Habitat Protections**

- **Nationwide Permits: (USACE)** Limit Streamlined Permitting of Habitat Loss through review and response of cumulative effects;
- **Agricultural Easements: (NRCS)** Eliminate barriers for restoration activities;
- **Highest Astronomical Tide: (EPA/USACE)** Increase protection of important shoreline habitat through engagement of jurisdictional authorities; and
- **NRCS Program Riparian Buffer Requirements: (USDA/NRCS)** Require federal funds be utilized consistent with the needs of salmon recovery objectives.

## **8. Magnusson-Stevens Fishery Conservation and Management Act Amendments to Recognize Tribal Fishing Rights**

The Magnuson Stevens Fisheries Conservation Act (MSA) is up for reauthorization and it is time for some much needed changes and amendments. We need the support of the administration to incorporate American Indians and Alaska Natives in the decision making processes, as well as a need for improved practices to protect the health of our fish resources.

Despite being charged with upholding fishing treaty rights of Northwest tribes and the right to fish of Alaska tribes, the management of the North Pacific Fishery Management Council fails to consider the needs of American Indian and Alaska Native people. The structure of the Council prevents tribes from participating as part of the decision making process and engages in a flawed single species based management system which does not consider the food web dynamics, fishing gear impacts, and non target species taken as bycatch which has resulted in the overfishing of one third of the nation's fish stocks.

Without appropriate reform of the MSA, natural fish populations and the Alaska Native inhabitants' well being along with the treaty protected rights of Pacific Northwest Indian nations will continue to be at risk.

Indian Country is requesting that the purpose of the Act be amended to include promotion of Alaska Native subsistence rights and tribal fisheries based on treaty rights, including a mandate to be responsive to the needs of federally recognized tribes, and require that tribes and Native subsistence users be represented on the North Pacific Fishery Management Council. Further, it must utilize ecosystem based management rather than species specific management and additional methods to better protect fish stocks and health. The management council's, as well as all fishery, plans must not only include input from tribes, but must also reflect treaty rights and subsistence rights of American





Indians and Alaska Natives while limiting states' ability to interfere with treaty and subsistence rights. Finally, the MSA must provide resources for mitigation efforts when needed to protect tribal treaty rights including: increased hatchery production, habitat protection and restoration, development of alternative fisheries when primary fisheries have been reduced, and the development of value added programs to increase the value of treaty fisheries.

## **C. Protection of Natural & Cultural Resources**

### **1. Funding for Tribal Projects at the U.S. Geological Survey**

The U.S. Geological Survey (USGS) is responsible for the National Mapping Program of the United States, providing cartographic, geographic, and remotely sensed information in digital, graphic, and image forms which are collected and distributed to support federal, tribal, state, and local governments, private sector organizations, and the general public. The information collected by the USGS is used to support and develop priority natural resource, land management, and climate change issues. Increasingly, the USGS engaging with tribes to develop climate adaptation programs and working to meet tribes' needs for scientific and planning information allowing for the combining this information with traditional ecological knowledges. For other federal agencies to submit a request to USGS to map tribal lands at the request of the tribe for planning purposes, that agency must have money set aside in its budget to do so. The Administration must encourage all agencies that use these services to budget for tribal mapping and the President must include and increase for USGS's tribal budget to handle these requests. As tribes address land and natural resources management, USGS mapping technologies must be made available to tribes.

### **2. National Monument Designation and Approval of Tribal Co-management Agreement for Bears Ears**

The Bears Ears and surrounding land in Southeastern Utah have been a homeland and place of spiritual and cultural significance to tribal people. This living landscape continues to nurture, strengthen, and sustain tribal people, and tribal people remain dependent on these public lands to maintain our traditional livelihoods and cultural practices, such as hunting, gathering, and ceremonial uses. Recognizing the important of this land, tribal leaders from Hopi, Navajo, Ute Mountain Ute, Zuni and Uintah & Ouray Ute formed the Bears Ears Inter Tribal Coalition with the goal of protecting and preserving the homeland area of the Bears Ears region.

Using the power designated under the Antiquities Act of 1909, President Obama should declare a the Bears Ears region a National Monument and allow it to be co managed by the Bears Ears Coalition under its proposed path breaking, comprehensive, and entirely workable regime of true Federal Tribal Collaborative Management.

### **3. Improving Current Federal Management/Co-Management of Sacred Places and Historic Lands**

Indian tribes are specifically committed to the protection, restoration, and enhancement of natural resources for the perpetual cultural, economic, and sovereign benefit of Native people. Tribal governments, tribal consortiums, non profits, and corporations have the knowledge, skills, and abilities to adequately manage their traditional lands, resources, and sacred places as they have served as stewards for thousands of years maintaining healthy and productive ecosystems. The Administration should improve, streamline, and allow of increased tribal co management of lands



and sacred places, recognizing the importance of these lands and places to Native peoples while increasing the protection and access to them for tribal citizens.

#### 4. Cultural Protections of Sacred Places

The protection of Native cultures spans across complex statutory and regulatory aspects of the federal government. Success in navigating these complex structures has resulted in the repatriation of cultural items, guidance regarding tribal member possession of eagle feathers, and increased access to sacred places for religious and spiritual practices. The Administration must continue to prioritize its advocacy and education efforts to protect the religious freedoms of Native peoples while supporting cultural preservation efforts.

- The President should exercise his authority to declare National Monuments under the 1906 Antiquities Act. There are many areas across the country that has cultural, historical, and environmental significance to American Indians and Alaska Natives. However, many of these areas are under threat from natural resource extraction, cultural vandalism, recreational activities, and activities that harm the wildlife and plant habitats important to traditional and cultural practices. The President should work with tribal nations to designate National Monuments to provide additional protections for tribal cultural, historical, and environmentally significant lands.
- Support tribal efforts to repatriate items of cultural patrimony internationally and domestically. The Secretaries of the Department of the Interior, the Department of Justice, the Department of State, and the Attorney General of the United States should consult with tribal nations in addressing issues regarding the theft and illegal sale of tribal cultural patrimony domestically and abroad, and take affirmative actions to prevent such illegal practices.
- Identify existing confidentiality standards and develop actual policies and guidance to address their lack of effectiveness. To protect and ensure the confidentiality of culturally sensitive information, the federal government should develop guidance for staff to protect sacred places without requiring specific information; develop detailed guidance on applicable disclosure laws and exceptions; direct staff to explain such laws prior to collecting information; and develop an overarching policy of a presumption to protect the confidentiality of information.
- Revise Executive Order 13007 “Indian Sacred Sites” to replace the mentions of “Where appropriate,” with language stating “to the maximum extent” in the sentence referring to confidentiality. This was initially recommended by the USDA Office of Tribal Relations and USDA Forest Service Draft Report to the Secretary of Agriculture USDA Policy and Procedures Review and Recommendations: Indian Sacred Sites in 2011.
- Require that all federal staff attend a mandatory training on working effectively with tribal governments, and develop a comprehensive training on sacred places protection with the assistance of Native subject matter experts and extensive Native involvement within the timeline presented in the draft.
- Sustain tribal consultation alongside streamlined energy projects. As the United States continues to focus on job creation and growth through the extraction of natural resources and the production of clean energy, the federal government must maintain consultation with tribes. Additionally, the Administration must continue to adhere to the laws, policies, and regulations already in place. The Administration must stay actively engaged with tribes who may be affected by proposed developments, especially if those areas hold cultural significance. Tribes must be guaranteed a “seat at the table” early and often so they can weigh in on all development proposals which may affect their citizens or their lands. The Administration should look to



amend Executive Order 13604, “Improving Performance of Federal Permitting and Review of Infrastructure Projects” to affirm its commitment to government to government consultation and recognition of tribal sovereignty. Executive Order 13604 expedites energy projects and places tremendous burdens on tribes by precluding government to government consultation, and thereby endangering tribal sacred places, burial grounds, and other cultural rights.

## **5. Protect Tribal Natural Resources in Litigation**

The Administration must participate affirmatively in tribal natural resources litigation by commencing suits to protect tribal rights and resources, joining existing litigation as party to support tribal efforts, or as an amicus party to get more positive precedents in the law.

## **6. Climate Change**

American Indians and Alaska Natives are disproportionately impacted by climate change due to the geographical areas in which they reside and their direct connection to their surrounding environments. Tribes’ cultures, traditions, lifestyles, communities, foods, and economies are all dependent upon many natural resources and they are disappearing faster than they can be restored. Native peoples who rely heavily on the cultural and subsistence practices of their ancestors to survive are particularly impacted. Specifically, the well established plight of those in Alaska Native villages is probably the most profound manifestation of the climate crisis and requires focused, high priority attention from the federal government.

Climate change poses threats not only to the health and food supply of Native peoples, but also to their traditional ways of life. Climate change is reducing the natural ecosystems and biodiversity on which Native peoples have come to rely. The traditional time to gather plants is changing, and the migration patterns of animals are being altered. Wildland fires on Indian lands and federal lands are significantly increasing in size, intensity, and cost. In California and the Southwest, many tribes are experiencing prolonged drought which is having an effect on their water resources and rights while some villages in Alaska that are located near rivers or streams now find the water at their front door.

The increased frequency and intensity of wildfires, higher temperatures, ecosystem changes, ocean acidification, forest loss, and habitat damage intensified by climate change are threatening Native access to traditional foods such as salmon, shellfish, wild and cultivated crops, and marine mammals. These foods have provided sustenance as well as cultural, economic, medicinal, and community health for countless generations.

A significant decrease in water quality and quantity are affecting American Indian and Alaska Native drinking water supplies, food, cultures, ceremonies, and traditional ways of life. Native communities’ vulnerabilities and lack of capacity to adapt to climate change are exacerbated by land use policies, political marginalization, legal issues associated with tribal water rights, and poor socioeconomic conditions.

Declining sea ice in Alaska is causing significant impacts to Native communities, including increasingly risky travel and hunting conditions, damage and/or loss of homes and settlements, food insecurity from changing availability of wild food sources, and socioeconomic and health impacts from loss of cultures, traditional knowledge, and homelands. Alaska Native communities are increasingly exposed to health and livelihood hazards from permafrost thawing and increasing





temperatures, which are causing damage to roads, water supply, sanitation systems, homes, schools, ice cellars, and ice roads threatening traditional lifestyles.

Accelerated sea level rise, erosion, permafrost thaw, and increased intensity of weather events are forcing relocation of entire tribal and indigenous communities in Alaska, Louisiana, the Pacific Islands, and other coastal locations. These relocations and the lack of governance mechanisms or funding to support them are causing loss of community and culture, health impacts, and economic decline, further exacerbating tribal impoverishment.

The United States' responsibility toward tribes goes beyond simply supporting prior agreements, it must allow for full tribal participation, particularly during discussions on addressing and preventing further climate change impacts at the federal level, because tribes are best suited to address the issues facing their communities. Further, Traditional Ecological Knowledge must also be included, as each tribe sees fit, into the framework of developing and implementing adaptation and mitigation plans.

- **Fully and Swiftly Implement the Task Force on Climate Preparedness and Resilience Report Recommendations for Indian Country.** NCAI commends the Administration for establishing a Task Force on Climate Preparedness and Resilience and for appointing two tribal leaders to ensure the inclusion of important issues relating to the impacts climate change is having on tribes. In order to continue the momentum, we believe the Administration must continue the efforts of the Task Force to begin adopting the recommendations that have come from tribes for action on climate change, including:
  - Provide tribes with more access to federal agencies' data and information related to climate change;
  - Remove barriers that prohibit tribal access to federal programs;
  - Increase direct access to federal funding; and
  - Establish a permanent federal government Climate Adaption Task Force.
- **Establish a high level interagency-tribal government task force to examine existing problems and propose solutions to help address climate change.** This group could be a working group of the White House Council on Native American Affairs or could function as a stand alone effort. This task force would: (1) recommend, develop, and implement tribal specific solutions, enabling the agencies to support and foster tribal climate resilient planning and investment; (2) work to ensure that there is meaningful funding and technical support to implement recommendations; and (3) provide oversight/connectivity to the President's Climate Action Plan to ensure that implementation of the Plan is addressing tribal concerns. In order to ensure federal government commitment, the Administration must support the task force in efforts to:
  - Ensure equitable financial resources for tribes to carry out assessments and implementation of preparedness planning;
  - Provide assistance to tribes for climate vulnerability assessments; and
  - Recognize the role and interaction of multiple knowledge systems. Traditional Knowledges can be useful in defining earlier environmental baselines, identifying impacts that require mitigation, providing observational evidence for modeling, and identifying culturally appropriate values for protection from direct impacts of adaptation measures.



- **Maintain current funding for tribal climate adaptation efforts and increase levels to meet demand.** Indian Country applauds the BIA for increasing the budget for tribal climate adaptation efforts to \$9.947 million. Given that tribal natural resource programs have been historically underfunded and no federal programs or funding streams specifically support tribal climate adaptation efforts, this is a welcome and exciting change for tribes. However, this funding must at least remain at the current level and increase to meet the demand for tribes to address, develop, and establish climate change adaptation measures.
- **Strengthen Tribal Sovereignty in the Climate Change Era.** Indian tribes must be partners with full and effective participation in assessing and addressing the problems of climate change at the local, regional, national, and international levels and accorded the status and rights recognized in the UN Declaration on the Rights of Indigenous Peoples and other international standards relevant to Indigenous Peoples.
- **Equal Access for Tribal Governments.** Tribes must have fair and equitable representation on all federal climate committees, working groups, and initiatives in which states, local governments, and other stakeholders are represented. This entails including tribes when during the Coordination of disaster preparedness, response and recovery planning, and implementation with local and regional entities, as well as appropriate funding to address the threats to life and safety with prioritization being provided to communities that have been identified as being in imminent danger.
- **Support Tribes Facing Immediate Threats from Climate Change.** Indigenous Peoples must have direct, open access to funding, capacity building, and other technical assistance, with their free, prior and informed consent, to address the immediate and long term threats from climate change. For example, many Alaska Native communities need protective structures, such as seawalls and evacuation roads, built in their communities to protect against climate change related disasters. Not only should their support provided for by the federal government, Native peoples should have priority for contracting to do this work in close proximity to tribal communities.
- **Ensure Tribal Access to Climate Change Resources.** Tribes must have fair and equitable access to federal climate change programs.
- **Parity in Climate Change Funding.** Tribes must be made eligible for existing and future federal natural resource funding programs for which states are eligible, but from which tribes are currently, or might be, excluded. A fair and equitable set aside of direct monies or allowances must be made available for distribution to tribes through legislation, administrative actions, and existing and future federal natural resource funding programs.
- **Traditional Knowledges and Climate Change.** Indigenous traditional knowledges, with the free, prior, and informed consent of Indigenous Peoples, must be acknowledged, respected, and promoted in federal policies and programs related to climate change.

## 7. Finalize Land into Trust Regulations for Alaska Tribes

In 2014, the Department of the Interior announced an amendment to the trust land acquisition regulations to remove the exclusion for Alaska tribes. With the regulations now final, we request that the Administration implement the new policy and take land into trust in Alaska enabling Alaska tribal governments to protect lands for future generations and improve the exercise of governmental authority for the protection of their citizens.

Two recent blue ribbon panels, the Congressionally created Indian Law and Order Commission and the Secretarial Commission on Indian Trust Administration and Reform, have recommended that



the prohibition on land into trust in Alaska be removed, and land taken into trust for the benefit of Alaska tribes. The Obama Administration has set up an historic opportunity to change policy regarding Alaska Native lands, and this opportunity must be taken, along with tribal lands, into trust.

#### **8. Remove the U.S. Fish and Wildlife Proposal to Add Regional Impacts to the Eagle Act Standard from its Eagle Permits Proposed Rule – 81 Fed. Reg. 27933**

The U.S. Fish and Wildlife Service (FWS) Proposed Rule on Revisions to Regulations for Eagle Incidental Take and Take of Eagle Nests, released on May 6, 2016, the agency proposes modifications permits for incidental take of bald and golden eagles that will protect eagle populations during the course of otherwise lawful human activities.

Under the proposed revisions, only applicants who commit to adaptive management measures to ensure the preservation of eagles will be considered for permits with terms longer than five years, while mandatory adaptive management plans are required by the FWS even before any incidental take, with such plans significantly diminishing the financial value of a project (such as wind turbine idling).

The Eagle Act requires the FWS to determine that any take of eagles it authorizes is “compatible with the preservation of bald eagles or golden eagles,” known as the “preservation standard.” The Service defines the preservation standard to mean “consistent with the goal of maintaining stable or increasing breeding populations.” The Service is proposing to add the clause “and the persistence of local populations, throughout the geographic range of both species” to more clearly define conservation and mitigation efforts at the local scale.

The FWS action would further limit projects by arbitrarily adding to potential impacts their assessment of potential loss of regional eagle breeding pairs due to the probable incidental take of any individual eagle.

#### **Recommendation:**

- The U.S. FWS should not approve the “regional” impact to the “Eagle Act” “preservation standard” as proposed. Doing so would add unquantified and uncontrollable risk to investors in a project with an eagle incidental take permit requirement.

#### **9. Streamline Approval Process for Settlements Subject to the Judgment Fund**

Even after securing a settlement agreement with the federal government, tribes still have many hurdles to clear in order to get them finalized and funded. One of the impediments has been the approval of settlements paid through the Judgment Fund at the Department of Treasury. This process must be streamlined to provide quick payments of final settlements so that tribes can focus on using the funds to address and repair the issues in their community instead of continuing legal battles in court.



## **D. Energy**

### **1. General Talking Points**

Tribal energy resources are vast, largely untapped, and critical to America's efforts to achieve energy security and independence, reduce greenhouse gases, and promote economic development. Energy development is integral to tribal efforts to generate jobs and to improve tribal members' 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. Further, the Department of Energy estimates that tribal resources could provide 32 percent of the wind energy and nearly two times solar energy the United States currently generates per year.

However, developing energy resources on tribal lands, not unlike other trust resources, continues to be a challenge as tribes face barriers to 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 and tribal businesses obtain approval from the Department of the Interior for almost every step of energy development on tribal lands including the approval of business agreements, leases, rights of way, and appraisals continue to delay tribal energy development. Since the last major update to Indian energy policy was over 10 years ago, Congress and the Administration must work with tribes to remove the unnecessary barriers that persist in energy development, bolster tribal self determination, and help create careers and capital in Indian Country.

The Administration must work with tribes and other federal agencies to:

- Support and recognize the right of tribes to own and manage their energy resources both above and below ground;
- Eliminate the application fees for permits to drill on Indian lands;
- Prioritize infrastructure development, such as transmission and electrification investment;
- Consult with tribal governments when developing regulations that may impact tribal energy development;
- Undertake a comprehensive review to streamline approval processes relating to Indian energy development; and
- Affirm and protect exclusive tribal taxing authority over energy development activities on Indian lands.

### **2. Increase tribal energy funding and staffing at the Department of Energy's Office of Indian Energy.**

The Administration must request and advocate for the maximum statutory amount available under the 2005 Energy Policy Act for the DOE Office of Indian Energy and the Indian energy loan guaranty programs. For tribes to fully utilize their tribal energy resources, the Office of Indian Energy needs to be fully staffed and funded.

### **3. Include tribes in clean energy development under Executive Order 13423**

As the largest energy consumer in the U.S. economy, the federal government was directed to lead by example and support clean energy development when President Bush signed Executive Order 13423





on January 24, 2007, enacted into law as part of the 2009 Omnibus Appropriations Act. Agencies must include tribes when working to achieve the goals outlined in Executive Order 13423. Federal agencies should include tribal renewable energy products as part of their annual sustainability plans and identify how they will utilize their authority to prefer tribal energy products to meet those goals. Additionally, the Department of Defense and cooperating agencies should identify plans to engage tribes with potential energy products that meet their procurement goals.

#### **4. Invest in the development of both conventional and renewable energy resources in Indian Country**

In the past few years, there has been notable improvement in federal efforts to develop renewable energy in Indian Country; however much more needs to be accomplished. The Department of Energy's new tribal leader and staff training programs need to be expanded. Additionally, the Department of the Interior's resources should be focused to support tribe's evaluation of, and entrance into Tribal Energy Resource Agreements (aka TERAs), as well as tribal capacity evaluations and related governance needs for TERA programs. DOI should also engage in a parallel effort to support HEARTH Act applications relating to renewable energy projects on tribal lands. DOE Office of Indian Energy's technical assistance for tribes should be continued as well as leveraging competitive technical assistance and financial assistance. Additionally, DOE's authority to provide loan guarantees for tribal energy projects should be effectuated and coordinated by the Office of Indian Energy.

#### **5. Section 17 Corporation Eligibility for Section 1603 Grants on Renewable Energy**

Ensure tribal governments, through Section 17 Corporations or other wholly owned tribal entities, are eligible for Section 1603 grants. These grants are important as they help offset certain renewable energy project production costs. Tribal renewable energy projects have enormous potential and tribal entities should be allowed to participate.

#### **6. Allow for Permitting and Responsible Development of Renewable Energy on Federal Public Lands**

The U.S. Forest Service and the U.S. Department of Energy's National Renewable Energy Laboratory (NREL) established a partnership to conduct an assessment of solar and wind energy resources on National Forest Service lands in the continental United States to identify National Forest and Grassland units which have the highest potential for private sector development of solar and wind energy resources. The top 25 National Forest System Units with areas having the highest potential for Concentrated Solar Photovoltaic, Photovoltaic, and wind energy were assessed and found that: 99 National Forest Units have high potential for power production from one or more of these solar and wind energy sources; and 20 National Forest Units in nine states have high potential for power production from two or more of these solar and wind energy sources.

Further the assessment reported that the National Forest Units held with largest total land area of high potential sites held a maximum development potential totaling 169,536 megawatts (MWs) of solar power, 492,402 MWs photovoltaic power sites held a maximum development potential totaling 492,402 MWs, and 171,947 MWs wind class 4 or more. The current total energy in production on National Forest Units is 0 MWs.





In comparison, the Bureau of Land Management public lands total maximum development potential for solar energy is 2.9M MWs and 206,000 MWs for wind energy. BLM public lands currently produce 12,000 MWs.

With over 60 percent of both Alaska and California categorized as federal public lands, the potential is enormous. The Forest Service and U.S. Fish and Wildlife Service permitting process for renewable energy projects are not financeable and investable.

Public lands and renewable energy development matters to tribes because most tribal lands share boundaries with public lands, and have impacts on public lands due to transmission infrastructure connecting the project to the grid, and, often, the need for a renewable energy project to include both tribal lands and public lands to achieve the scale necessary to make a project financeable and, therefore, feasible.

In order to address this issue, we recommend:

- Revise the U.S. Forest Service energy permitting guidelines to remove requirement for permittee to submit resource data or protect such data from disclosure;
- Revise data collection permits to secure project area for permittees and remove requirement to competitively bid the project permit;
- Remove avian analysis from the screening criteria, leaving such analysis to the Environmental Assessment/Environmental Impact Statement document;
- Add existing visual impacts to the visual impact screening criteria; and
- Add interests of climate change adaptation, greenhouse gas reduction, green economy, and tribal economic interests when a tribe is involved to the screening criteria.
- The U.S. Forest Service should adopt the BLM permit regulations and guidance for renewable energy permits, with the exception of competition for project area.



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## **Local Environmental Observer (LEO) Network Lower 48 Expansion Project**

### **The eyes, ears, and voice of our changing environment: What is LEO?**

LEO is a network of local observers and topic experts who share knowledge about unusual animal, environment, and weather events. Community members can share observations, raise awareness, and find answers about significant environmental events. LEO is a forum where community observers engage with topic experts in many different organizations and become part of a broader observer community. Currently the program operates from Alaska, but is growing across the Arctic region, and soon in the lower 48 states.

### **LEO Expansion into the Lower-48 States**

EPA is in the process of launching a pilot expansion of LEO into the lower 48 states. The pilot launch will establish a network hub via the tribal college and tribal universities, starting in the Northwest. Launching from a tribal college will help the network replicate the model to other tribal colleges and universities throughout the U.S. It will also ensure that the tribally-focused academic institutions will play an integral role in institutionalizing the work of the LEO network.

### **LEO Origins**

Arctic communities were among the first to experience significant impacts from climate change. In 2009, the Alaska Native Tribal Health Consortium (ANTHC) established the Center for Climate and Health to help describe connections between climate change, environmental impacts, and health effects. In 2012, the LEO Network was launched as a tool to help the tribal health system and local observers to share information about climate and other drivers of environmental change.

In 2015, ANTHC and Resource Data Inc. (RDI) developed LEO App to increase access and improve data management and analytical features of the network. In the same year, LEO Network was selected as a model program under the United States Chairmanship of the Arctic Council, to help raise awareness and improve communication about climate change in the circumpolar region. Today LEO Network is continuing to evolve and to build new partnerships with local observers - across the Arctic and around the world.

For more information or to join the LEO next work, please visit: <https://www.leonetwork.org>

**White House Council on Native American Affairs  
Environment, Climate Change, and Natural Resources Subgroup  
In-Person, Inter-Agency Strategic Planning Meeting**

Tuesday, February 28, 2017  
1:00 PM – 4:00 PM (EST)  
Department of the Interior  
1849 C St NW, Kiowa Room

Agenda

- I. Roll Call/Introduction (*25 minutes*    *Rosalva*)
  
- II. Identify common federal goals and objectives for supporting tribal needs in planning for environmental variation (*60 minutes* - *Morgan*)
  - a. Review subgroup goals
  - b. Review subgroup past accomplishments
  - c. Lessons learned

Break (*15 minutes*)

- III. Identify new opportunities where ECCNR Subgroup/inter agency partnerships help address tribal needs (*45 minutes* - *Morgan*)
  - a. Identify subgroup agencies' related programs, leveraging/funding collaboration opportunities.
  - b. Tribal Convening
  
- IV. Prioritize projects to focus subgroup's directions (*20 minutes* - *Morgan*)
  
- V. Wrap up/next steps (*10 minutes*    *Morgan*)

**The White House**  
Office of the Press Secretary  
For Immediate Release

June 26, 2013

# Executive Order -- Establishing the White House Council on Native American Affairs

## EXECUTIVE ORDER

### ESTABLISHING THE WHITE HOUSE COUNCIL ON NATIVE AMERICAN AFFAIRS

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote and sustain prosperous and resilient Native American tribal governments, it is hereby ordered as follows:

Section 1. Policy. The United States recognizes a government to government relationship, as well as a unique legal and political relationship, with federally recognized tribes. This relationship is set forth in the Constitution of the United States, treaties, statutes, Executive Orders, administrative rules and regulations, and judicial decisions. Honoring these relationships and respecting the sovereignty of tribal nations is critical to advancing tribal self determination and prosperity.

As we work together to forge a brighter future for all Americans, we cannot ignore a history of mistreatment and destructive policies that have hurt tribal communities. The United States seeks to continue restoring and healing relations with Native Americans and to strengthen its partnership with tribal governments, for our more recent history demonstrates that tribal self determination the ability of tribal governments to determine how to build and sustain their own communities is necessary for successful and prospering communities. We further recognize that restoring tribal lands through appropriate means helps foster tribal self determination.

This order establishes a national policy to ensure that the Federal Government engages in a true and lasting government to government relationship with federally

recognized tribes in a more coordinated and effective manner, including by better carrying out its trust responsibilities. This policy is established as a means of promoting and sustaining prosperous and resilient tribal communities. Greater engagement and meaningful consultation with tribes is of paramount importance in developing any policies affecting tribal nations.

To honor treaties and recognize tribes' inherent sovereignty and right to self government under U.S. law, it is the policy of the United States to promote the development of prosperous and resilient tribal communities, including by:

- (a) promoting sustainable economic development, particularly energy, transportation, housing, other infrastructure, entrepreneurial, and workforce development to drive future economic growth and security;
- (b) supporting greater access to, and control over, nutrition and healthcare, including special efforts to confront historic health disparities and chronic diseases;
- (c) supporting efforts to improve the effectiveness and efficiency of tribal justice systems and protect tribal communities;
- (d) expanding and improving lifelong educational opportunities for American Indians and Alaska Natives, while respecting demands for greater tribal control over tribal education, consistent with Executive Order 13592 of December 2, 2011 (Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities); and
- (e) protecting tribal lands, environments, and natural resources, and promoting respect for tribal cultures.

Sec. 2. Establishment. There is established the White House Council on Native American Affairs (Council). The Council shall improve coordination of Federal programs and the use of resources available to tribal communities.

Sec. 3. Membership. (a) The Secretary of the Interior shall serve as the Chair of the Council, which shall also include the heads of the following executive departments, agencies, and offices:

- (i) the Department of State;
- (ii) the Department of the Treasury;

- (iii) the Department of Defense;
- (iv) the Department of Justice;
- (v) the Department of Agriculture;
- (vi) the Department of Commerce;
- (vii) the Department of Labor;
- (viii) the Department of Health and Human Services;
- (ix) the Department of Housing and Urban Development;
- (x) the Department of Transportation;
- (xi) the Department of Energy;
- (xii) the Department of Education;
- (xiii) the Department of Veterans Affairs;
- (xiv) the Department of Homeland Security;
- (xv) the Social Security Administration;
- (xvi) the Office of Personnel Management;
- (xvii) the Office of the United States Trade Representative;
- (xviii) the Office of Management and Budget;
- (xix) the Environmental Protection Agency;
- (xx) the Small Business Administration;
- (xxi) the Council of Economic Advisers;
- (xxii) the Office of National Drug Control Policy;
- (xxiii) the Domestic Policy Council;
- (xxiv) the National Economic Council;

- (xxv) the Office of Science and Technology Policy;
- (xxvi) the Council on Environmental Quality;
- (xxvii) the White House Office of Public Engagement and Intergovernmental Affairs;
- (xxviii) the Advisory Council on Historic Preservation;
- (xxix) the Denali Commission;
- (xxx) the White House Office of Cabinet Affairs; and
- (xxxi) such other executive departments, agencies, and offices as the Chair may, from time to time, designate.

- (b) A member of the Council may designate a senior level official, who is a full time officer or employee of the Federal Government, to perform his or her functions.
- (c) The Department of the Interior shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations.
- (d) The Council shall coordinate its policy development through the Domestic Policy Council.
- (e) The Council shall coordinate its outreach to federally recognized tribes through the White House Office of Public Engagement and Intergovernmental Affairs.
- (f) The Council shall meet three times a year, with any additional meetings convened as deemed necessary by the Chair. The Chair may invite other interested agencies and offices to attend meetings as appropriate.

Sec. 4. Mission and Function of the Council. The Council shall work across executive departments, agencies, and offices to coordinate development of policy recommendations to support tribal self governance and improve the quality of life for Native Americans, and shall coordinate the United States Government's engagement with tribal governments and their communities. The Council shall:

- (a) make recommendations to the President, through the Director of the Domestic Policy Council, concerning policy priorities, including improving the effectiveness of Federal investments in Native American communities, where appropriate, to increase



the impact of Federal resources and create greater opportunities to help improve the quality of life for Native Americans;

(b) coordinate, through the Director of the Office of Public Engagement and Intergovernmental Affairs, Federal engagement with tribal governments and Native American stakeholders regarding issues important to Native Americans, including with tribal consortia, small businesses, education and training institutions including tribal colleges and universities, health care providers, trade associations, research and grant institutions, law enforcement, State and local governments, and community and non profit organizations;

(c) coordinate a more effective and efficient process for executive departments, agencies, and offices to honor the United States commitment to tribal consultation as set forth in Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), and my memorandum of November 5, 2009 (Tribal Consultation); and

(d) assist the White House Office of Public Engagement and Intergovernmental Affairs in organizing the White House Tribal Nations Conference each year by bringing together leaders invited from all federally recognized Indian tribes and senior officials from the Federal Government to provide for direct government to government discussion of the Federal Government's Indian country policy priorities.

Sec. 5. General Provisions. (a) The heads of executive departments, agencies, and offices shall assist and provide information to the Council, consistent with applicable law, as may be necessary to carry out the functions of the Council.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) For purposes of this order, "federally recognized tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(e) For purposes of this order, "American Indian and Alaska Native" means a member of an Indian tribe, as membership is defined by the tribe.

(f) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

THE WHITE HOUSE,  
June 26, 2013.

**MEMORANDUM OF UNDERSTANDING  
REGARDING INTERAGENCY COORDINATION AND COLLABORATION  
FOR THE PROTECTION OF TRIBAL TREATY RIGHTS**

**I. Purpose and Principles**

The signatory agencies (Parties) enter into this Memorandum of Understanding (MOU) to affirm our commitment to protect tribal treaty rights and similar tribal rights relating to natural resources through consideration of such rights in agency decision-making processes and enhanced interagency coordination and collaboration.

**II. Background**

From 1778 to 1871, the federal government's relations with American Indian tribes were defined and conducted largely through the treaty-making process. These treaties established unique sets of rights, benefits, and conditions for the treaty-making tribes who agreed to cede millions of acres of their homelands to the United States, in return for recognition of property rights in land and resources and federal protections.

Through treaty-making, Indian tribes granted land and other natural resources to the United States, while retaining all rights not expressly granted. Treaties with Indian tribes cover a wide variety of subjects, including rights reserved by tribes relating to natural resources, such as the right to hunt, fish, and gather both on land ceded, or given up, by tribes, and on land retained by tribes. Although the treaty-making era ended in 1871, federal treaties with tribes ratified by the U.S. Senate remain the law.

Under the U.S. Constitution, treaties are part of the supreme law of the land, with the same legal force and effect as federal statutes. Treaties bind both the federal government and the signing Indian tribe or tribes, and generally constitute recognition of rights to lands and resources, as well as rights to fish, hunt, and gather. As such, the federal government has an obligation to honor and respect tribal rights and resources that are protected by treaties. This means that federal agencies are bound to give effect to treaty language and, accordingly, must ensure that federal agency actions do not conflict with tribal treaty rights. Integrating consideration of tribal treaty rights into agency decision-making processes is also consistent with the federal government's trust responsibility to federally recognized tribes.

After the treaty-making era ended in 1871, agreements between tribes and the federal government were instead generally memorialized through other sources of law, including congressional acts, such as land claims settlement acts, and in some cases through executive orders. The Parties recognize that, like treaties, these other sources of federal law may also

protect reserved tribal rights relating to natural resources. The Parties intend to consider these other natural resources rights as well, as part of the activities listed below.

### **III. Participating Agency Agreement**

The Parties, as members of the White House Council on Native American Affairs, Environmental, Climate Change, and Natural Resources Subgroup, will work together, and consult with federally recognized tribes as appropriate, in developing and implementing the following actions:

1. Continue Parties' current efforts to integrate consideration of tribal treaty rights into their decision-making processes to ensure that agency actions are consistent with such applicable rights;
2. Develop and share tools and resources to identify, understand, and analyze tribal treaty rights that may be affected by agency actions;
3. Consider tribal treaty rights as part of the Parties' respective tribal consultation policies and procedures;
4. Identify and share best practices for considering tribal treaty rights in federal decision-making processes, for example, in determining the potential effect of proposed agency actions on tribal treaty rights, or in analyzing potential environmental impacts of federal actions pursuant to the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.;
5. Establish a working group with members from each of the Parties to enhance interagency collaboration and coordination and address significant issues as they arise. This working group will include a sub-group of agency attorneys to provide legal support to the working group and facilitate interagency coordination on legal issues relating to tribal treaty rights.

### **IV. General Provisions and Limitations**

This MOU is a voluntary agreement that expresses the good-faith intentions of the Parties, is not intended to be legally binding, does not create any contractual or fiscal obligations, and is not enforceable by any party. It does not create any right or benefit, substantive or procedural, enforceable by law or equity, by any party, against the Parties, their officers or employees, or any other person. This MOU does not direct or apply to any person outside of the Parties.

All commitments made by the Parties in this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU, in and of itself, obligates the Parties to expend

appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. Any transaction involving transfers of funds between the Parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

#### **V. Administrative Provisions**

1. This MOU takes effect upon signature of the Parties and shall remain in effect until December 31, 2021. This MOU may be extended or amended upon written request from any Party and the subsequent written concurrence of the others.
2. Any Party can opt out of this MOU by providing a 60-day written notice to the other signatories.
3. Other federal agencies may participate in this MOU at any time while the MOU is in effect. Participation will be evidenced by an agency official signature on the MOU.

#### **VI. Signatures of the Parties of the MOU on Tribal Treaty Rights**

See attachments.