



NATIONAL CONGRESS OF AMERICAN INDIANS

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**INDIAN NATIONS AND  
THE 2008 PRESIDENTIAL TRANSITION**

*DRAFT  
OCTOBER 17, 2008*

For discussion in NCAI breakout sessions and committee meetings.  
Please provide comments to any member of the NCAI Staff  
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## INDIAN NATIONS AND THE 2008 PRESIDENTIAL TRANSITION

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*OCTOBER 17, 2008*

**INDIAN NATIONS ARE SOVEREIGN GOVERNMENTS**, recognized under treaties and the U.S. Constitution. Yet tribal government issues have suffered from inattention during the transition and early years of many prior Administrations. If appointments and major policy decisions are delayed for extended periods, the long term issues in Indian country are left unaddressed and handed on to the next Administration. Any significant reform efforts must be planned during the transition and start at the beginning of an Administration if they are to succeed.

### *The Transition Team and Initial Appointment Process*

Participation in Transition Team -- The Transition Team should identify highly knowledgeable tribal leaders and individuals from outside of the federal government, and inside of the federal agencies, to serve on the transition team and provide expertise and assistance on matters related to Indian Affairs.

White House Advisor on Indian Nations – Every major Indian issue will require policy coordination across Congress and the federal agencies. The next Administration should create a high level position within the White House, and this position must be accompanied by adequate staffing and support.

Secretary of Interior – The Secretary of Interior is the primary federal official entrusted with protecting tribal sovereignty, treaty rights, and a broad range of responsibilities to assist Indian Nations. Our primary objective is a Secretary of Interior who is knowledgeable and supportive of Indian Nations. It is high time that a Native leader is appointed Secretary of Interior.

Create OMB Assistant Director for Native American Programs – Administration budgets for Indian programs are organized where they are subservient to natural resources budgets. Indian communities are not a natural resource! We strongly urge a reorganization of OMB to appropriately prioritize the budget for Indian programs.

Assistant Secretary for Indian Affairs – This position bears the full weight of the responsibilities for Indian Affairs, and trust reform, land management and law enforcement will be key priorities.. This leader must be a strong and charismatic Native leader who has the full confidence of the Administration and a team of talented and energetic support.

Department of Justice – The Department of Justice has ignored its responsibilities for prosecuting crimes committed on Indian reservations, while violent crime, sexual assaults and drug trafficking have reached epidemic proportions on some reservations. Strong leadership and coordination must be brought to the Department and the U.S. Attorneys to ensure that the federal government fulfills its crime fighting responsibilities to Indian communities.

Federal Judicial Appointments – Indian Nations have grown increasingly concerned as the Supreme Court and the federal judiciary has become hostile to tribal sovereignty and the trust responsibility.

Sharp battles over judicial appointments have led to the appointment of more and more ideologues, and fewer judges with pragmatic views. We strongly urge the appointment of Native American judges, and more judges who are knowledgeable and supportive of the fundamental principles of federal Indian law.

White House Office of Personnel – We strongly urge the placement of a knowledgeable Indian person in the White House Office of Personnel to coordinate appointments where qualified Indian leadership is necessary, and in the hundreds of positions where knowledge of and relationships with tribal governments will serve the Administration well.

### ***Identifying Indian Country's Priorities***

Although there are many issues that deserve attention during the next Administration, there are a few key issues where a transformation is needed in the way the federal government interacts with Indian Nations. These priorities should provide direction in appointments and initial focus for the first few months of a new Administration. These issues include:

1) Trust Reform and Tribal Natural Resources Management – For the last decade trust accounting litigation and trust reform have dominated the resources and energy of the Department of Interior. There is broad agreement that a fair settlement is necessary and that fundamental reforms are needed to improve the Department's management of Indian natural resources and trust accounts, to empower tribal governments in natural resources management, to address fractionation, and to streamline the bureaucracy that stifles economic development in Indian country. Leadership is needed to bring these issues to closure.

2) Tribal Sovereignty, Treaty Rights and Consultation – The rights of Indian Nations are recognized in the Constitution, treaties, federal laws and numerous Supreme Court decisions, yet too many federal agencies are unaware of their responsibilities toward tribes. Tribal governments have jurisdiction over land the size of seven states, yet are not included in important intergovernmental matters that affect the entire nation. Strong leadership is needed at the White House to ensure that Indian Nations are consulted on the broad range of issues that affect tribes, that consultation results in meaningful policies that respect tribal sovereignty.

3) Funding of Tribal Government Services – Under the federal policy of Tribal Self-Determination, Indian Nations have taken on an increasing role in providing the basic services on reservations such as education, health care, law enforcement and transportation. White House and OMB budgets and policies must ensure stable sources of funding for tribal governments so that tribal citizens receive equitable services in the same manner that is found in other jurisdictions throughout the United States. Adequate funding for programs that foster self-determination is paramount.

4) Law Enforcement – Rising crime rates and scarce law enforcement resources have grown into a crisis on many Indian reservations. Jurisdictional fragmentation, lack of funding, failures of coordination and an anemic federal response have all contributed to the problem. The Department of Justice and Department of Interior need new leadership that will seriously address the federal government's role in Indian country, and new resources must be focused to reduce crime on Indian reservations, particularly to address the increasing problems with drug trafficking, domestic violence and sexual assault.

5) Taxation – As tribes have increased their economic development efforts, they have increasingly developed issues at the Department of Treasury and the Internal Revenue Service. On a range of issues from tax exempt bonds, to pension plans, to benefits provided to tribal members, the Department has

failed to provide policy guidance while the IRS Audit Division has dramatically expanded review and enforcement in ways that are unfair and detrimental to Indian tribes. The Treasury Department needs leadership that will work with tribes and develop equitable policies. In addition, the new Administration should take a fresh look at the problem of dual taxation on retail sales on reservations, as tribes look for non-federal revenue streams to improve the inadequate services on reservations.

***Anticipating National Policy Initiatives***

In addition to identifying Indian Country's key priorities, Indian tribes must be considered and included in those issues that will be keystone policy initiatives for the new Administration. This will allow Indian Country to proactively work to ensure that tribal concerns are incorporated from the outset.

Economic Stimulus - The current downturn in the U.S. economy will be a top priority of the incoming Administration. Indian tribal communities should be included in any economic stimulus efforts.

Health Care -- The nation is engaged in a large-scale debate on how to reform the health care system in America. Much of the debate has centered on proposals to ensure universal health care for all Americans. The Federal Government has a unique responsibility to provide health care to Indian people. If the new Administration and Congress moves forward with health care reform, tribes should be an integral component in any of the proposals to reform health care.

Climate Change and Energy - Climate change is having the most profound impacts on native communities, such as tribes located in regions in Alaska and the arid West that are already affected by rising temperatures and increased drought. Tribal communities also live closer to the land, and are more dependent on subsistence hunting and fishing and other natural resources affected by climate change. Tribes are also uniquely positioned to contribute to sustainable energy technologies, and should be prominently included in any national climate change strategy.

Education and Job Training – Education policy will be a key question for the next Administration. However, the federal government has direct responsibility for only two education systems – military and Indian school systems. Indian education and job training should become a model for preparing our children and our workers to compete in the global economy while also respecting the values of local communities.

***Transition Policy Papers on Major Issues*** -- Detailed policy guidance on key issues should be prepared during the Transition to enable the incoming Administration to move forward with proactive policies that will benefit Indian Country. In consultation with tribal leaders, guidance should be prepared on the following topics, among others:

Law Enforcement	Education
Trust Reform and Trust Settlement	Homeland Security and Emergency Response
Sovereignty and Government to	Energy
Government Consultation	Climate Change
Land into Trust	Sacred sites and Cultural resources
Budget and Funding	Gaming
Taxation	Agriculture
Economic Development	Transportation
Health Care	Water rights

# **RECOMMENDATIONS FOR NATIVE POLITICAL APPOINTMENTS IN THE NEXT ADMINISTRATION**

Prepared by  
National Congress of American Indians  
October 17, 2008

## **Introduction**

The National Congress of American Indians (NCAI) is the oldest and largest advocacy organization for American Indian and Alaska Native Tribes. NCAI has 250 member Tribes from throughout the United States. With the election of the next President, the presidential transition will be underway. Decisions on personnel matters are among the most important decisions which will be made in the next Administration. The appointment of qualified Native Americans to positions of importance and interest to American Indian and Alaska Native Tribes recognizes and facilitates the government-to-government relationship between tribal governments and the United States, honors the United States trust responsibility to provide for the well-being of Native people, and invokes consultation between the federal government and NCAI as the representative of Tribes.

Key political appointments in the next President's Administration which significantly affect Tribes and Native individuals are listed below. NCAI recommends that the next President appoint qualified Native individuals to these positions. From this list of Native political appointments, NCAI identifies its highest priorities and recommends immediate appointment or appointment within 30 days of qualified Native individuals to these positions as follows:

## **Immediate Appointments**

- White House Senior Advisor to the President for American Indian and Alaska Native Tribes. This position answers directly to the Chief of Staff and is the principal advisor to the President on all matters related to American Indian and Alaska Native Tribes and Native individuals. It serves as the primary contact and interface with tribal governments and Native individuals and coordinates policy across Congress and the federal departments and agencies. It requires adequate staffing and administrative support.
- Associate Director, White House Office of Presidential Personnel. This position is responsible for the appointment of highly qualified Native individuals to positions throughout the Administration as well as other general appointments in various departments and agencies.

## **Appointments Within 30 Days**

- Associate Director for Native Programs, Office of Management and Budget (OMB). In the past, Administration budgets for Native programs have been organized as subordinate to natural resources budgets. NCAI strongly urges a reorganization of OMB to appropriately prioritize the budget for Native programs. This position is responsible for this reorganization and ensures that OMB budgets and policies provide stable sources of funding for tribal governments so that tribal citizens receive equitable services in the same manner that is found in other jurisdictions throughout the United States. Adequate funding for programs that foster self-determination is paramount.
- Assistant Secretary for Indian Affairs. This position bears the full weight of the responsibility for Indian affairs and key priorities are trust reform, land management, and

law enforcement. NCAI recommends the appointment of a strong Native leader who has the full confidence of the Administration and has the support of a talented and energetic team.

- Deputy Assistant Attorney General for Indian Country Crime. The Department of Justice has ignored its responsibilities for prosecuting crimes committed on Indian reservations while violent crime, sexual assaults, and drug trafficking have reached epidemic proportions on some reservations. This position provides strong leadership and coordination to the Department and the U.S. Attorneys to ensure that the federal government fulfills its crime-fighting responsibilities to Indian communities. Senator Byron Dorgan introduced S. 3320, Tribal Law and Order Act of 2008, in the U.S. Senate which provides that the Attorney General shall appoint a Deputy Assistant Attorney General for Indian Country Crime. NCAI supports the enactment of S. 3320, or its successor, into law. In any event, NCAI recommends that the Attorney General work with the White House to appoint this position as a political appointment.

NCAI recommends immediate consultation with presidential transition representatives regarding the appointment of the Secretary of the Interior who has a significant impact on Tribes and Native individuals as follows:

### **Immediate Consultation**

- Secretary of the Interior. The Secretary of the Interior is the primary federal official entrusted with protecting tribal sovereignty, treaty rights, and a broad range of responsibilities to assist Tribes. NCAI's primary objective is the appointment of a Secretary of the Interior who is knowledgeable and supportive of Tribes and is not solely focused on federal lands management.

NCAI recommends that the next President appoint qualified Native Americans to the following positions:

### **Executive Office of the President**

In addition to the highest priority positions in the Executive Office of the President identified above (White House Senior Advisor to the President for American Indian and Alaska Native Tribes, Associate Director in the White House Office of Presidential Personnel, Associate Director for Native Programs, OMB), a key position is:

- Associate Director, White House Domestic Policy Council. This position assists in developing the President's policy initiatives including Native issues.

### **Departments**

#### **Department of Agriculture**

- Director of Native American Programs. The Director of Native American Programs is presently located in the Office of External and Intergovernmental Affairs and is USDA's primary contact with tribal governments and their members. In order to more effectively implement the government-to-government relationship, NCAI recommends the relocation of this position to the Immediate Office of the Secretary or redefinition as a Deputy Assistant Secretary for Tribal Affairs in the Office of Congressional Relations. This position requires adequate staffing and administrative support.

- Farm Service Agency (FSA) State Directors. Consider Native candidates for FSA State Directors especially in states with significant Native populations.
- Rural Development (RD) State Directors. Consider Native candidates for RD State Directors especially in states with significant Native populations.
- Senior Advisor to the Under Secretary of Rural Development for Tribal Affairs. Since the mission of USDA Rural Development is to increase economic opportunity and improve the quality of life for all rural Americans and 36% of Native Americans live in rural areas and have the highest poverty rate of any racial grouping, this position assists the implementation of RD's mission in relation to Tribes and Native individuals.

#### Department of Commerce

- Director of Native American Business Development. During the Bush Administration, this position was a temporary expert appointment. According to 25 U.S.C. 44, which establishes this position, the Secretary of Commerce appoints the Director of Native American Business Development. NCAI recommends that the Secretary of Commerce work with the White House to establish this position as a permanent political appointment. This position is presently located in the Minority Business Development Agency. In order to implement the government-to-government relationship, NCAI recommends the relocation of this position to the Office of the Secretary. This position requires adequate staffing and administrative support.

#### Department of Defense

- Senior Advisor to the Secretary for Tribal Affairs. During the Bush Administration, a temporary Senior Tribal Liaison position was located in the Office of the Deputy Under Secretary of Defense (Installations and Environment) at the Department of Defense. In order to recognize the government-to-government relationship and to honor the federal trust responsibility to Native people, NCAI recommends that the Department of Defense and the White House work together to redefine and relocate the Senior Tribal Liaison position to Senior Advisor to the Secretary for Tribal Affairs in the Immediate Office of the Secretary as a permanent political appointment.

#### Department of Education

- Assistant Deputy Secretary and Director, Office of Indian Education. The Bush Administration demoted this position to Director, Office of Indian Education in the Office of Elementary and Secondary Education. Native Americans have consistently lower educational attainment rates for high school diploma (71%) and college degrees (11.5%), compared to the national average for high school (80%) and college (24%) attainment. Access to high-quality, culturally-appropriate education is critical for Native children to have a future and pursue opportunities. Given the continued need for the improvement of the education of Native people, NCAI recommends the reinstatement of this position to Assistant Deputy Secretary and Director, Office of Indian Education.
- Director, White House Initiative on Tribal Colleges and Universities.
- Special Assistant, Tribal Colleges and Universities.

#### Department of Energy

- Deputy Assistant Secretary for Intergovernmental and Tribal Affairs.

#### Department of Health and Human Services

- Commissioner, Administrator for Native Americans.
- Director, Indian Health Service (IHS).
- Deputy Director, Indian Health Policy, IHS.
- Deputy Director for Management Operations, IHS.
- Director, Office of Urban Indian Health Programs, IHS.
- Director, Office of Finance and Accounting, IHS.
- Director, Office of Information Technology, IHS.
- Director, Office of Management Services, IHS.
- Director, Office of Resource Access and Partnerships, IHS.

#### Department of Homeland Security

- Senior Advisor to the Secretary for Tribal Affairs. The Department of Homeland Security partners with state, local, and tribal authorities to prevent terrorists and terrorist weapons from entering the United States. Twenty-four Tribes govern lands that are either adjacent to borders or directly accessible by boat from the border. These tribal lands cover over 260 miles of the U.S. borders with Mexico and Canada. In order to work with Tribes on a government-to-government basis and to protect the United States, NCAI recommends the appointment of a Senior Advisor to the Secretary for Tribal Affairs in the Office of the Secretary, which is a new position.

#### Department of Housing and Urban Development

- Deputy Assistant Secretary for Native American Programs.

#### Department of the Interior

- Counselor to the Secretary. The Secretary of the Interior is the primary federal official entrusted with protecting tribal sovereignty, treaty rights, and a broad range of responsibilities to assist Tribes. This position provides expert counsel on the government-to-government relationship between tribal governments and the United States.
- Special Trustee for American Indians.
- Chairman, National Indian Gaming Commission.
- Solicitor. Consider Native candidates for this position.
- Associate Solicitor, Indian Affairs.

#### Department of Justice

- Director, Office of Tribal Justice. The Office of Tribal Justice is presently semi-permanent and is composed of career detailees from the Department of Justice. Senator Byron Dorgan introduced S. 3320, Tribal Law and Order Act of 2008, which provides that the Attorney General shall establish the Office of Tribal Justice as a permanent division of the Department. NCAI supports the enactment of S. 3320, or its successor,

into law. In any event, NCAI recommends that the Attorney General work with the White House to ensure that the Office of Tribal Justice is a permanent division of the Department.

- U.S. Attorneys. Consider Native applicants especially in states which have Indian Country jurisdictions.
- United States Marshals. Consider Native applicants especially in states which have Indian Country jurisdictions.

#### Department of Labor

- Senior Advisor to the Secretary for Tribal Affairs. According to Census 2000, unemployment among Native Americans in 2000 was 12.3%, more than twice the national average of 5.7%, and had the highest poverty rate of any racial grouping. In order to recognize the government-to-government relationship and facilitate the federal trust responsibility to Tribes, NCAI recommends the appointment of a Senior Advisor to the Secretary on Tribal Affairs in the Office of the Secretary, which is a new position.

#### Department of State

- Senior Advisor to the Secretary for Tribal Affairs. In order to implement the government-to-government relationship, NCAI recommends the appointment of a Senior Advisor to the Secretary for Tribal Affairs in the Office of the Secretary, which is a new position to ensure that tribal governments are appropriately included and informed about developments in international relations.

#### Department of Transportation

- Senior Advisor to the Secretary for Tribal Affairs. In order to recognize the government-to-government relationship and implement the federal trust responsibility to Tribes and individual Native people, NCAI recommends the appointment of a Senior Advisor to the Secretary for Tribal Affairs in the Immediate Office of the Secretary, which is a new position.

#### Department of the Treasury

- Senior Advisor to the Secretary for Tribal Affairs. In order to assist Tribes access capital and promote tribal economic development on a government-to-government basis, NCAI recommends the appointment of a Senior Advisor to the Secretary on Tribal Affairs in the Office of the Secretary, which is a new position.

#### Department of Veterans Affairs

- Senior Advisor to the Secretary for Tribal Affairs. Native Americans have served with distinction in United States military actions for more than 200 years. Historically, Native Americans have the highest record of service per capita when compared to other ethnic groups. According to Census 2000, over 220,000 Native American veterans self-identified in a single race category as American Indian or Alaska Native. Native American veterans report four times the unmet health care needs of other veterans. In order to recognize the government-to-government relationship and facilitate the federal trust responsibility to Tribes and individual Native people, NCAI recommends the appointment of a Senior Advisor to the Secretary for Tribal Affairs in the Immediate Office of the Secretary, which is a new position.

- Director, Center for Minority Veterans. Consider Native candidates for this position.

### **Independent Agencies and Governmental Corporations**

#### Advisory Council on Historic Preservation

- Member of Indian Tribe or Native Hawaiian Organization.

#### Commission on Civil Rights

- Commissioner.
- Special Assistant to the Commissioner.

#### Environmental Protection Agency

- Director, American Indian Environmental Office. Although this position is presently a career position, it was a political appointment in the Clinton Administration. Climate change has disproportionate adverse effects on tribal communities. For example, the Alaska Native village of Kivalina faces imminent destruction from global warming due to the melting of sea ice and urgently requires relocation. In order to closely reflect the policies of the Administration on the environment, NCAI recommends the conversion of this position to a political appointment when the position becomes vacant.

#### Farm Credit Administration

- Member, Farm Credit Administration Board. Since agriculture is the second biggest employer in Indian Country and the backbone of the economy of about 230 Tribes, NCAI recommends the consideration of Native candidates for the Farm Credit Administration Board.

#### Federal Energy Regulatory Commission (FERC)

- Member, FERC. In order to work with Tribes on a government-to-government basis and address the effects of proposed FERC projects on Tribes, NCAI recommends the consideration of Native candidates for Commissioner.

#### Presidio Trust

- Member, Board of Directors. Given the history of the Presidio which includes a long era directing operations to control and protect Native Americans, consider the appointment of Native Americans to the Board of Directors.

#### Small Business Administration

- Assistant Administrator, Office of Native American Affairs.
- Regional Administrator. Consider Native candidates for Regional Administrators.

### **Advisory Councils and Boards**

- Institute of American Indian and Alaska Native Culture and Arts Development Board of Trustees. The President appoints 13 voting members by and with the advice and consent of the Senate who are Native people who are widely recognized in the field of Native art and culture and represent diverse political views and fields of expertise.
- National Advisory Council on Indian Education. The Council consists of 15 American Indians and Alaska Natives who advise the Secretary of Education regarding the funding and administration of programs which benefit Native children or adults.

- Community Development Advisory Board. The President appoints nine private citizens including an individual who has personal experience and specialized expertise in the unique lending and community development issues which confront Indian tribes on Indian reservations.

### **Federal Judicial Appointments**

American Indian and Alaska Native Tribes have grown increasingly concerned as the Supreme Court and the federal judiciary have become increasingly hostile to tribal sovereignty and the trust responsibility. Sharp battles over judicial appointments have led to the appointment of more ideologues and fewer judges with pragmatic real world experience. NCAI strongly urges the appointment of Native judges and more judges who are knowledgeable and supportive of the fundamental principles of federal Indian law.

### **General Appointments**

NCAI recommends the consideration of Native candidates for general appointments throughout the Administration which NCAI has not specifically identified in these recommendations. Examples of general positions are Agency Directors, General Counsels, Counselors, Special Assistants, Communication Directors, Intergovernmental and Congressional Relations Directors, and Ambassadors.

July 3, 2008

**Re: Presidential Transition Planning and Political Appointments**

Dear Tribal Leaders and All Friends of Indian Country:

As we approach another Presidential election, NCAI is developing a strategy for the 2009 Presidential Transition. As a nonpartisan organization, NCAI is preparing for either a Democratic or Republican Administration. We need your assistance.

In the past, tribal issues have suffered from inattention during the early years of prior Administrations. Without clear goals and planning for Indian affairs, appointments and policy decisions are delayed, new appointees lack expertise in the issues that they will be required to manage, and the long term issues in Indian country are left unaddressed. Any significant reform efforts must start at the beginning of an Administration if they are to have a chance of success. To prepare for the 2009 transition NCAI is developing a comprehensive Indian Country Transition Plan, and we want to coordinate with all tribes and tribal organizations. Our initial memo is available here (insert link). We need to start now to be ready in November.

Decisions on personnel matters are among the most important decisions made in the next Administration. The appointment of Native individuals in positions of importance and interest to Tribes recognizes the government-to-government relationship and facilitates the United States' trust responsibility to Tribes and individual Native people. As the national constituency group of tribal governments, NCAI is positioned to consult and work with the next President's transition representatives to ensure that Native people participate in the next Administration as political appointees. In addition, we want to ensure that all important political appointees are knowledgeable and supportive of tribal governments.

NCAI intends to make a concerted effort to influence the next Administration's political appointment process on behalf of Tribes. NCAI has developed a strategy to accomplish this goal as follows:

- Identify tribal policy priorities to set criteria for the experience needed by appointees.
- Identify Indian-specific and general positions of significance to Tribes in all federal departments and agencies.
- Compile résumés of accomplished Native professionals who are interested in seeking political appointments in the next Administration. Provide résumés to the next President's transition representatives and the White House Office of Presidential Personnel.
- Meet with transition representatives upon the election of the next President.
- Work with transition officials to appoint Native individuals to key positions in the White House and the federal departments and agencies, and to influence other major appointments of interest to tribes.

The White House Office of Presidential Personnel and the federal departments and agencies work in coordination to search for and select applicants for political appointments. As a result, this is a highly competitive, demanding, but measured process. The White House makes the final decisions regarding political appointments. Our experience indicates that the currency in the White House Office of Presidential Personnel is résumés of qualified individuals. Opportunities to recommend Native applicants increase with the number of outstanding resumes on hand in the White House.

I would appreciate your assistance in our efforts to collect resumes of qualified Native professionals from your Tribe who are highly motivated to apply for political appointments in the next Administration. Please have interested applicants provide the following information to NCAI:

- 1) Send a recent resume preferably by e-mail to Tanya Davis, [tdavis@ncai.org](mailto:tdavis@ncai.org), or, if necessary by fax to 202-466-7767 or by mail to 1301 Connecticut Ave, NW, Washington DC 20036. The resume should include the applicant's name, address, telephone number(s), and e-mail address.
- 2) Send an e-mail or a cover letter which accompanies the applicant's resume in which the applicant: a) Indicates whether he/she will most likely vote for John McCain or Barack Obama; b) identifies areas of interest in the next Administration such as Agriculture, Arts, Defense, Economic Development, Education, Environment, Finance, Health, Homeland Security, Housing, International, Justice, Labor, Trade, Transportation, the White House, etc.; c) indicates previous positions in other Administrations, if any; d) indicates experience, if any, in the campaign of John McCain or Barack Obama; and e) provides tribal affiliation.

Applicants' resumes and associated information provided to NCAI will remain confidential.

After the next President is elected, NCAI will transmit the compilation of resumes of Native applicants who supported the President-elect to transition representatives as appropriate. At this point in the process, applicants will only hear from White House or Administration representatives, not from NCAI. Given the competitive and complex nature of the Presidential personnel process, NCAI cannot predict whether the next Administration will contact any particular applicant. NCAI will be only one avenue, and interested applicants should seek every opportunity to develop their own contacts with the next Administration.

If you have any questions about this process, please contact me or Virginia Davis at 202-466-7767. Thank you for your assistance regarding NCAI's 2009 Presidential Transition efforts.

Sincerely,

Jacqueline Johnson  
Executive Director

## **TRIBAL SOVEREIGNTY, SELF-DETERMINATION AND GOVERNMENT TO GOVERNMENT CONSULTATION**

### **PRESIDENTIAL TRANSITION 2008**

The rights of Indian Nations are recognized in the United States Constitution, treaties, federal laws and numerous Supreme Court opinions. Throughout American history Indian Nations have been recognized as sovereigns that pre-existed the United States and have maintained their rights to govern their own people and their own lands.

That unique consideration creates the need for government to government consultation between the United States and Indian Nations. Executive Order 13175 directs each agency to have an “accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” However, too many federal agencies fail to fulfill this important responsibility, to the detriment of federal and tribal interests and the welfare of all Americans.

Tribal governments have jurisdiction over a land mass equal to seven states. Yet, Indian Nations are not included in important intergovernmental matters that affect the entire nation. For decades agencies have developed and implemented a range of policies and processes for consultation, but still take important actions without consultation, and fail to take action on critical issues even after a great deal of consultation.

What is needed is not new policy, but instead a change of minds and attitudes. It is time that federal officials stop thinking of the “Indian problem” and starts to include Indian Nations as part of the solution in the federal system of governance.

We would urge the next Administration to quickly issue an Executive Memorandum to the heads of executive departments and agencies that underscores the recognition of tribal sovereignty and the need for meaningful consultation. But this must be only a first step.

In particular, Indian Nations should be engaged on the broader issues that affect all governments -- energy, climate change, law enforcement, economic development, environmental protection, transportation and infrastructure development – to name just a few. Tribal governments have a great deal to offer in these and many other areas, and should be included in policymaking at the same levels as states.

On tribal-specific issues, such as trust reform or the functions of the Bureau of Indian Affairs, the federal government has a trust responsibility to Indian tribes, to make decisions that are for the benefit of the tribes. The federal government must assume that Tribal Nations themselves are the best judge of their own interests. A new commitment to Tribal Self-Determination will mean increased support for tribal initiatives and the removal of legal and bureaucratic barriers.

## **Meaningful Consultation with Tribal Nations**

Consultation under existing federal policies has fallen short of what a true government-to-government relationship requires. As a result, simply ratcheting up consultation requirements in written policies is unlikely to make a difference without an increased commitment on the part of the Administration to conduct meaningful consultation and the creation of a mechanism for tribes to hold the federal government accountable when it fails to adequately consult with Tribal Nations. Efforts to reform federal consultation policies and practice should: (1) set minimum standards for the consultation process; (2) build and reinforce the political commitment to government-to-government consultation; and (3) create accountability mechanisms that empower tribes to be true partners in federal policy-making.

A key challenge for both tribal leaders and for the next Administration is how we can make consultation more effective and efficient, and integrate it as an ordinary part of the intergovernmental policy discussions, so that it cannot be evaded and is built in throughout federal decision-making.

## **Executive Branch Recognition of Sovereignty**

In the new Administration, Tribal Nations need to have a direct relationship with the executive branch. Strong leadership is needed at the White House to ensure that Indian Nations are consulted on the board range of issues that affect tribes, that consultation results in meaningful policies that respect tribal sovereignty and core concerns. Finally, strong leadership is needed at the White House to ensure that the time and energy of the tribes and federal agencies is used effectively. Every major Indian issue will require policy coordination across Congress and the federal agencies. The next Administration should create a high level position within the White House, and this position must be accompanied by adequate staffing and support.

Ideally, a White House position for Indian Country would serve as a coordinator of federal agencies compliance with the highest fiduciary standards and respectful of the national policy of Indian self-determination and self-governance. In addition, the position could serve as an ombudsman of sorts where Tribal Nations can seek assistance in overall relations with the executive agencies. There are some federal agencies that truly recognize their responsibilities to Tribal Nations, but there are others that do not even consider the impact of agency actions in Indian Country. For situations such as that, a White House position would be extraordinarily helpful for both Tribal Nations and the federal government.

The White House position must have authority to effect change and ensure that the federal agencies are responsive to the needs of Indian Country. The position would be strongest if it were structured within the Intergovernmental Affairs Office and have participation in the Domestic Policy Counsel Office. This position will be most effective with some recognized authority in the policy process within the Office of Management and Budget.

# **FIXING THE TRUST SYSTEM: INDIAN LANDS AND NATURAL RESOURCES**

## **Presidential Transition 2008**

### **BACKGROUND**

There are nearly 60 million acres of Indian land – an area the size of Nebraska – and the land and natural resources are fundamental to the tribal cultures and economies. Indian land is held in trust or restricted status by the federal government to protect it from alienation and trespass and to protect tribal autonomy. Indian land is also a primary source of economic activity for Indian communities. But the federal trust system for Indian land is severely troubled and needs reforms.

The federal government controls management and leasing of Indian trust lands and is responsible for tens of billions of dollars in revenues from oil, gas, timber, minerals, agriculture and other resources. The “*Cobell*” litigation concerns royalties due to individual Indian people and there is similar litigation on behalf of tribal lands. There is wide agreement that the federal government did not properly account for trust funds. The National Congress of American Indians is encouraging a settlement of the litigation, and reforms to the trust system so that the problems of the past will not reoccur.

### ***It is time for a fair settlement of trust accounting and mismanagement claims.***

No one will ever know exactly how much is owed, but in 2006 the Senate Committee on Indian Affairs determined – based on the evidence – that \$8 billion is a fair settlement for the Indian claims in *Cobell*. This reflects an approximate 5% error rate – a very low error rate given the documented scope of mismanagement. A recent decision in federal district court estimated accounting errors at \$455 million, but excluded consideration of interest and uncollected payments. An equitable settlement will take these factors into account. A settlement is simply returning money that is owed to Indian account holders.

### ***Continued litigation will be extremely expensive and unlikely to lead to compensation in the lifetime of most account holders.***

The Department of Interior is under court order to complete an enormous historical accounting for Indian trust funds that will take at least a decade to complete and will cost billions. This “accounting” is unlikely to satisfy anyone, as the Department does not have the records to compare accounts receivable with receipts and disbursements. No one wants to spend billions on a historical accounting when that money could be put to better use benefiting Indian people and reservation land management.

### ***Continued litigation is undermining the tribal-federal relationship and the mission of the Department of Interior.***

It is unconscionable that Indian tribes are being forced to pay for the mismanagement of Indian funds, but at this time tribes are losing approximately \$100 million annually out of Indian programs to pay for the accounting -- and none of this money is paying for the land management services that reservations need. In addition, an embattled mindset has developed at Interior that hinders dialogue with the tribes, impedes economic development and distracts enormously from their efforts in other areas like law enforcement and education.

***The trust system should be reformed for the future.***

In addition to developing a fair settlement proposal, the new Administration should consult with tribes, work with Congress, and move forward on trust reform measures. Fixing the trust system will make the federal government a partner in tribal economic development, rather than a bureaucracy that stands in its way. We need to increase the efficiency of trust administration, improve returns on trust resources, and redirect trust administration from risk management to increased support for tribal development initiatives.

***REFORMS***

***Indian Trust Asset Management Demonstration Project***

Create a demonstration project where an Indian tribe can develop its own system and plan to take over resource management on the reservation. The plan would identify the trust assets, establish objectives and priorities, and allocate the available funding. Contracting and compacting tribes may establish their own management systems consistent with federal laws. Provide for comprehensive land use planning and a trust asset management agreement authorizing the tribe to lease land without the approval of the Secretary.

***Fractional Interest Purchase and Consolidation Program***

Fractionation of land ownership is one of the root causes of trust mismanagement. Amend the Indian Land Consolidation Act to streamline land acquisition procedures and create incentives for voluntary sales of fractionated interests by allowing the Secretary to offer more than fair market value. Fully fund the Indian Land Consolidation Program, and work directly with the tribal governments on the reservations where the fractionation exists. The Inter Tribal Monitoring Association is working with tribes to develop proposals to attack fractionation.

***Restructuring Bureau of Indian Affairs and Office of Special Trustee***

Create a single line of authority for all functions that are now split between the BIA and the Special Trustee, and an Under Secretary of Indian Affairs to have the responsibility to supervise any activities related to Indian affairs that are carried out by the Bureau of Reclamation, the Bureau of Land Management, and the Minerals Management Service. Transfer the functions of the Special Trustee to the Under Secretary.

***Audit of Trust Funds***

Provide for the Inspector General of the Department of Interior to hire an independent auditor to conduct an audit of the Secretary's financial statements and report on the Secretary's internal controls. The Comptroller General would conduct a review of the audit.

***Regulations, Policies and Systems***

The Interior Department is struggling to update many old regulations and systems that date back as far as the 1930's. The Department has begun these efforts, but much more work is needed. The key will be to ensure that tribal governments are deeply involved in development so that the new systems and regulations meet tribal needs both now and in the future. There needs to be greater flexibility to encourage tribal self-management and to account for the very different resources on different reservations.

## Law Enforcement and Criminal Justice

Unlike in other communities within the United States, the federal government has assumed responsibility for much of the day-to-day law enforcement services on Indian reservations.<sup>1</sup> Under the Major Crimes Act and other federal laws, Indian communities are dependent on the federal government for investigation and prosecution of many crimes committed on Indian reservations. The Department of Justice and Department of Interior share responsibility for law enforcement in tribal communities. In addition, the Department of Health and Human Services through SAMHSA and the IHS, provide much needed treatment, rehabilitation, prevention, and early intervention programs. Growing reservation crime rates indicate that this arrangement is failing to keep Indian people safe.

A host of Congressional hearings, government reports, and media investigations have documented that there is a public safety crisis in American Indian and Alaska Native tribal communities across the nation. American Indians experience per capita rates of violence that are much higher than those of the general population. Domestic violence and drug-related crimes are particularly prevalent.

For too long Indian Country law enforcement has been grossly underfunded at all levels of police, investigation, prosecution, courts, detention and rehabilitation. An initiative to increase funding during the Clinton Administration was short-lived,<sup>2</sup> and funding cuts during the Bush Administration demonstrate that public safety in Indian Country simply was not a priority. Most reservation communities have 2-3 officers charged with patrolling an area the size of Delaware.<sup>3</sup> U.S. Attorneys decline to prosecute more than two-thirds of cases originating in Indian Country, a rate far higher than the average.<sup>4</sup> And, tribal detention facilities are notoriously unsafe and unsecure.<sup>5</sup>

In order to bring justice and safety to Native communities, it is imperative that the next Administration make public safety a priority. To that end, NCAI recommends the following:

### Department of Justice – First 100 Days

1. Establish an Office of Indian Country Crime in the Criminal Division.
2. Give the Office of Tribal Justice direct reporting authority to the Attorney General so that it can play a meaningful role in guiding policy development across the agency.
3. Instruct U.S. Attorneys with Indian Country jurisdictions that prosecutions of Indian Country crime are a priority.

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<sup>1</sup> Major Crimes Act, Indian Civil Rights Act, *Oliphant v. Suquamish*

<sup>2</sup> “Report of the Executive Committee for Indian Country Law Enforcement Improvements,” Final Report to the Attorney General and Secretary of the Interior, October 1997.

<sup>3</sup> U.S. Dept. of Interior, Bureau of Indian Affairs, Office of Law Enforcement Services, “Gap Analysis,” April 18, 2006.

<sup>4</sup> Michael Riley, *Lawless Lands*, DENVER POST (Nov. 11-14, 2007).

<sup>5</sup> Office of Inspector General, Department of Interior, “Neither Safe Nor Secure: An Assessment of Indian Detention Facilities,” September 2004, available at [www.doi.gov/upload/IndianCountryDetentionFinal%20Report.pdf](http://www.doi.gov/upload/IndianCountryDetentionFinal%20Report.pdf).

4. Give the Chair of the Native American Issues Subcommittee a permanent seat on the Attorney General's Advisory Committee of United States Attorneys.
5. Increase the number of FBI agents assigned to Indian Country.
6. Support swift passage of the Indian Country Law and Order Bill.
7. Establish a standing Indian Country Advisory Committee composed of tribal leaders from across the country who can advise the Department and the Attorney General on the full range of issues impacting tribal governments and Native people.

#### **Department of Interior – First 100 Days**

1. Request and advocate for adequate funding for law enforcement, tribal courts, and detention facilities.
2. Modify BIA law enforcement training policies to provide maximum flexibility for law enforcement and detention officer training.

## DEPARTMENT OF HOMELAND SECURITY & TRIBAL GOVERNMENTS

### 2008 PRESIDENTIAL TRANSITION

#### **BACKGROUND**

As independent sovereign governments, Tribes have the same responsibilities for the public safety and security of their community as state or local governments. Nearly forty Tribes are located on or near the U.S. international borders with Mexico and Canada. Hundreds of other Tribal governments are the only major governmental presence in rural and isolated locations, serving as the first and often only responders for their Native and non-native communities. Tribal governments have broad emergency and first responder responsibilities, as well as extensive border responsibilities with immigration and smuggling implications, all integral aspects of homeland security, and the Department of Homeland Security has not addressed these responsibilities and obligations effectively.

***Tribes are First Responders.*** In many Tribal jurisdictions Tribal emergency responders are the only emergency response entity for both the Tribal and non-tribal community, this includes firefighters, law enforcement, and medical emergency response. Many Tribes have built significant emergency management infrastructure with highly trained personnel, and actually contract to support their non-Native surrounding communities. A number of Tribes have their own departments of Homeland Security or Emergency Response. In addition to preparing for basic first responder duties, Tribes also prepare their communities for incidents such as pandemic outbreaks.

***Tribes Protect Extensive Critical Infrastructure.*** There is significant vital infrastructure located on and near Tribal lands including national communications network systems, highway and rail lines, dams, power transmission stations and relays, oil and natural gas pipelines, dams, military defense facilities and operations. The Fort Berthold Indian Reservation has several Minuteman missile launch facilities located within its exterior borders as a strategic element of the homeland security system. The Grand Coulee Dam is the largest electric power producing facility in the United States and is situated within the Colville Indian Reservation. The Mdewakanton Dakota at the Prairie Island Indian Community is bordered by a nuclear power reactor. Reservations in Oklahoma hosts a number of critical oil pipelines.

***Tribes Protect The Border from Drug & Immigration Smuggling.*** Approximately 40 Tribes are on or near U.S. international borders; many are in very remote areas of the border. For the past decade, the U.S. federal border enforcement strategy has resulted in funneling illegal immigration and drug smuggling into more remote areas. Unfortunately those “remote” areas are often Indian reservations. The substantial increase in the flow of people and drugs, and the subsequent increase in crime and property damage, has been very difficult for Tribal law enforcement and Tribal communities to address with already limited resources. There has also been an irreversible destruction of cultural and religious sites, and adverse environmental impacts to tribal lands.

## NEEDED REFORMS

***Increase Consultation and Coordination with Tribal Governments.*** The DHS is one of the only federal agencies not in compliance with Executive Order 13175 which requires each agency to have a formal consultation policy in place. There is no permanent Tribal liaison in Intergovernmental office, resulting in inconsistent decisions among the various DHS arms with regard to Tribes. There are dozens of provisions in the various DHS authorizations that mistakenly categorize Tribes as “local governments” and therefore set the wrong legal framework for the federal-Tribal relationship for which DHS has responsibility.

***Directly Empower Tribal First Responders.*** Largely because of the erroneous categorization of Tribal governments as “local” governments in DHS’s authorizations, DHS has set up an inappropriate infrastructure whereby tribes are deemed subsets of state governments for most purposes. Not only is this erroneous, it is ineffective. DHS has essentially delegated homeland security oversight to state governments that have little incentive and no legal responsibility to ensure the security of tribal communities. Tribes do not want to be a gaping hole in the nation’s homeland security infrastructure.

Currently Tribes must apply for nearly all DHS grants and programs through state governments. This is unacceptable. Tribal governments should be able to apply directly to and deal directly with DHS. Some of these changes are legislative, but many of them are administrative. DHS has misinterpreted the one grant tribes have been successful at ensuring direct access, the SHSGP. The statute requires that a “at least” (or a minimum) of 0.1% be made available for tribes. DHS, however, has been implementing this as a ceiling, with a maximum of 0.1% made available

In addition to the difficulties in accessing funds directly, tribes have been struggling with direct authorities as well. Specifically, tribes need the ability to directly seek Presidential disaster declaration. Currently tribes are forced to go first to the state governor. Not only do tribes and states have a historically acrimonious relationship, states have a disincentive to submit a request for aid for which they do not have responsibility. Disasters occurring on tribal lands, in most instances, that are catastrophic to tribal communities will not meet the damage threshold of a state formula that is set by FEMA. Also in situations where a county consists of tribal and non-tribal lands, if only the tribal lands are impacted by a disaster, the county will not necessarily seek a declaration from the governor due to administrative and matching cost requirements. More often than not, tribes are left stranded with no FEMA assistance for major natural disasters.

***Create Uniformity in DHS’s Acceptance of Tribal Governmental Identification.*** Largely because of the lack of an institutionalized DHS Tribal liaison, there is no consistent agency-wide recognition of. TSA accepts tribal IDs for domestic air travel as long as they have a photo (but they have not yet put this into regulations). The Western Hemisphere Travel Initiative (WHTI) accepts tribal IDs for international land border crossing purposes, as long as they have met certain security requirements. But the REAL ID regulation team did not coordinate with the other teams and inadvertently left tribal ID cards off the list of ID for obtaining a state drivers license. So DHS’s inconsistent rules have the perverse effect of allowing Tribal members to fly domestically and travel internationally (by land) with their tribal ID, but may not use tribal ID to acquire a state driver’s license. This oversight can be fixed administratively.

## TAXATION IN INDIAN COUNTRY

As tribes have increased their economic development efforts, they have increasingly developed issues with dual taxation and with the Department of the Treasury and the Internal Revenue Service. On a range of issues from tax exempt bonds, to pension plans, to benefits provided to tribal members, the Bush Administration failed to provide policy guidance and allowed the IRS Audit Division to dramatically expand review and enforcement in ways that are unfair and detrimental to Indian tribes. A new Administration has an important opportunity to clarify the tax treatment of Indian tribal governments in several contexts and to develop new sources of tax revenue that will provide funding for tribal services and infrastructure.

### PROBLEM OF DUAL TAXATION IN INDIAN COUNTRY

The Supreme Court's rulings on state taxation of sales between Indian sellers and non-Indian buyers are complex and the source of many misunderstandings. The Supreme Court has held that state governments can collect excise taxes on sales of imported products that occur on tribal lands to non-tribal members, *so long as the tax does not fall directly on the tribal government or a tribal member or does not burden revenues derived from value generated on the reservation by activities in which Indians have a significant interest*. At the same time, tribal governments retain their right to tax all sales within the reservation, whether to members or non-members.<sup>6</sup> There is frequent litigation between tribes and states over the fairness and interpretation of these common law rules, which have remained static while tax systems have changed dramatically.

The Supreme Court rulings result in the inequity of dual taxation where the collection of a state tax effectively prevents the tribal government from implementing its own tax, because the double taxation would drive business away from the reservation. On most reservations tribal members must go off reservation to purchase goods and services. The state gets all of those taxes, and it is estimated that as much as 80% of tribal members' incomes are spent off-reservation. When a non-Indian comes on reservation, the state gets that tax as well. Tribal governments are left with few viable options for raising tax revenue.

Just like state governments, tribal governments provide a broad range of services and must develop a source of tax revenue if they are to move away from dependence on inadequate federal funding. There must be consideration given at the Executive level about addressing the problem of dual taxation in Indian Country. There are models at the state level that should be considered for a national policy. For example, the State of Nevada by statute does not collect a state tax if the tribe taxes at the same or higher level.<sup>7</sup> This is the primary source of revenue for many Nevada tribes. This model is being replicated in other states. A solution like this provides tribal governments with a critical source of tax revenue, does away with the problem of dual taxation and supports tribal infrastructure development and tribal programs.

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<sup>6</sup> See *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation*, 425 U.S. 463 (1976); *Washington v. Confederated Tribes of Colville Reservation*, 447 U.S. 134 (1980).

<sup>7</sup> Nevada Revised Statute 370.0751.

As with state governments, dual taxation on internet sales is also increasingly a problem for tribal governments. The Administration should strongly support the tribal provisions in S. 34, the Sales Tax Fairness and Simplification Act.

### **Disparate Treatment Concerning Tax Exempt Bonds**

Current IRS interpretation of the Internal Revenue Code unfairly limits tribal government access to tax exempt bond financing in a way that hurt tribes ability to build infrastructure and create jobs. The IRS audit division has adopted a strict interpretation of an “essential government function” test without any written guidance that has destroyed the market for tribal tax exempt bonds. As a result, tribes are barred from issuing bonds for projects that are identical to state and local governments development projects.

The Administration could readily improve the economic development conditions in Indian country by adopting an interpretation of the “essential government function” “to include any function which is performed by a State or local government with general taxing powers.”<sup>8</sup>

### **Impermissible Treatment by the IRS of Indian Tribal Benefit Programs**

During the Bush Administration, the IRS has initiated 139 audits that focus specifically on the use of tribal net gaming revenues to provide benefits to tribal members such as health care. In a letter to the Senate Finance Committee, the IRS has identified such tribal benefit programs as “problematic tax avoidance schemes.”

Under the Indian Gaming Regulatory Act, (IGRA), gaming proceeds may be used for several authorized purposes, including the funding of tribal government operations, the general welfare of the tribe, and per capita payments to tribal members.<sup>9</sup> Per capita payments are subject to federal income tax. Indian tribal governments have a long history of sponsoring general welfare programs, such as housing assistance, food cards or banks, educational assistance, health coverage and death benefit programs. These programs were introduced to address the harsh conditions resulting from decades of poverty and as general welfare programs similar should not be subject to federal tax.

The IRS is now characterizing tribal benefit programs as tax-avoidance or tax-deferral schemes. The programs that the IRS is targeting include housing programs, disaster relief, educational programs, water & sewer, and tribal health care reimbursement programs.

The IRS has stated two reasons for justification in evaluating the tax consequence of a program payment as: (1) whether the payment is specifically excluded under a particular provision of the Internal Revenue Code, and (2) whether the payment qualifies for exclusion under the General Welfare Doctrine of federal tax law. The IGRA reference to the use of profits for “general welfare of the tribe its members” has been deemed by the IRS as inconsistent with the General Welfare Doctrine. The IRS has made administrative decisions that state tribes need

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<sup>8</sup> The 110<sup>th</sup> Congress saw legislation which sought to apply a legislative fix, The Tax Exempt Bond Parity Act, S. 1850 and H.R. 3164.

<sup>9</sup> 25 U.S.C. § 2710(b)(2)(B).

documentation as proof that the program benefits are intended to be a general welfare program under the General Welfare Doctrine.

This interpretation by the IRS is especially problematic when applied to tribal health plans. The Internal Revenue Code excludes employer provided medical benefits from the gross income of employees. The IRS has determined this does not extend to medical benefits provided by an Indian tribe to its members. The IRS has determined that tribal health program payments are excluded from taxation only if they meet the requirements of the General Welfare Doctrine or are otherwise excludable. The IRS cited that tribes are “ahead of the rest of the world,” with regards to governmental provided medical coverage.<sup>10</sup> Indian tribal governments have historically been involved in the provision of medical services, mostly because the federal government has largely failed to meet its federal trust responsibility in that arena. There are seven or eight tribes that are currently facing an audit under this interpretation of the tribal health plans.

The Administration ought to support tribal benefit programs as a sign of tribal self-determination. Penalizing tribal governments for providing services to tribal members does not support the policy of self-determination. The Administration should use its discretion to reach a conclusion that the general welfare provisions of the IGRA are mutually exclusive with the General Welfare Doctrine of federal tax policy and allow tribal governments to use gaming profits to provide benefits programs without onerous tax consequences.

### **Indian Tribal Governments Office at the IRS**

The IRS includes the Indian Tribal Government Office but this office is advisory and lacks authority over policy and enforcement. In large measure, tribes have been left without policy guidance on tax matters while facing an increasingly active audit division that is specifically targeting tribal governments. Staffing and organizational considerations must be developed within the IRS to ensure that policy and interpretation issues are addressed outside of the enforcement context, and to ensure knowledge of federal Indian policy provisions and the government-to-government relationship.

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<sup>10</sup> Statement of Kenneth Voght, senior Manager in IRS’s Office of Indian Tribal Governments at the 2008 Annual Conference of the Native American Finance Officers Association, Chicago, IL, September, 2008.

## **PROTECTING SACRED PLACES 2008 Presidential Transition**

As the oldest and largest national organization of American Indian and Alaska Native tribal governments, NCAI is deeply concerned with the respectful treatment and the protection of Native American sacred landscapes. Historically subjected to the devastating systemic destruction of our religious practices and places, we continue to suffer the heartbreaking loss and destruction of our precious few remaining sacred places.

The American Indian Religious Freedom Act (AIRFA) was enacted into law 30 years ago, in 1978, and states that "it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."

However, 20 years ago, in 1988, the Supreme Court ruled that neither AIRFA nor the U.S. Constitution provides a cause of action for Native Americans to defend their sacred places in court. The high court also stated that Congress would need to enact a statute for that purpose. Congress has acted, but in two recent decisions, courts have ruled that the Religious Freedom Restoration Act does not protect Native American religious interests at the San Francisco Peaks or Snoqualmie Falls. Other legal instruments -- such as AIRFA, the Executive Order on Sacred Sites (EO 13007), the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA) -- often are ineffectively implemented and provide limited legal redress to aggrieved traditional religious practitioners and tribes.

Year after year, sacred landscapes that are integral to the exercise of Indian religions are being destroyed and are under threat by development, pollution, recreation, vandalism and other public and private actions. There is no comprehensive, effective policy to preserve and protect sacred places. Protecting sacred places is necessary for the survival of traditional religions, cultures and lifeways and our identity and status as sovereign nations. Here are action steps that are needed at this time to protect Native American sacred places:

- **Enact a statutory right of action for tribes to defend sacred places**

Today, there is no federal statute for the express purpose of protecting Native American sacred places. Congress should enact a right of action for tribes to defend sacred places. Unless tribes can sustain lawsuits, they will not have a seat at federal negotiation tables and agencies and developers will continue to disregard existing consultation requirements. Meaningful consultation and respectful negotiations can obviate the need for litigation.

- **Update Executive Order 13007 and all consultative instruments**

Executive Order 13007 needs to be updated to assure that Native nations have sufficient, ongoing and meaningful opportunities to consult and participate in federal planning and decision-making processes that may affect Native American sacred landscapes and site-specific ceremonies. A future Executive Order needs to include a specific right of action for legal protection of Native American sacred places. In addition to assuring adequate nation-to-nation

dealings with tribes regarding sacred places, all tribal consultative instruments need to be updated and strengthened.

- **Strengthen the Native American Graves Protection and Repatriation Act**

The Native American Graves Protection and Repatriation Act (NAGPRA) needs to be strengthened in several ways. First, NAGPRA's definition of "Native American" needs to be technically clarified and returned to its original intent by adding the following italicized words to the existing definition: "Native American" means of, or relating to, a tribe, people, or culture that is *or was* indigenous to *any geographic area that is now located within the boundaries of the United States*. Second, NAGPRA needs increased penalties for violations of burials and burial grounds, human remains and cultural items. Third, NAGPRA needs to be specifically strengthened with tools for improved law enforcement and prosecutions.

- **Appoint Native people to federal land-managing decision-making entities**

Many of the federal land-managing agencies' decisions affect sacred landscapes, tribal ceremonies and the cultural well being of Native people, but Native people do not sit on the key federal land-management committees, boards and panels which make those decisions. Tribal members need to be appointed to those bodies that make and drive policies and decisions in the federal land-managing agencies, especially those that may affect sacred places and site-specific ceremonies.

- **Use and strengthen existing administrative policies and regulations**

Many federal agencies have not made use of existing administrative policies and regulations to protect sacred landscapes or to accommodate the ceremonial use of sacred places by tribes, moieties and traditional practitioners. Any policies and regulations that are deemed inadequate for these purposes need to be strengthened, in full consultation with tribes, religious leaders and traditional practitioners. Federal land managers need to provide the means for scientific and cultural experts, as well as other assistance to tribes in the consultative process.

- **Establish discrete processes for easements for taking sacred places into trust**

Obtaining access to sacred places located on private lands can prove to be difficult. Federal officials, in consultation with tribal officials, need to develop incentives for private owners to enter into easements for Native access to sacred places and to provide assistance to tribes in obtaining such easements. There also needs to be a discrete and efficient federal process for taking sacred places into trust for tribes.

The NCAI tribal leadership has adopted resolutions which support the action steps above, including Resolution BIS-02-043, *Sacred Lands*, at the Mid-Year Conference, June 2002 in Bismarck, ND, in support of legislation that furthers the protection of sacred lands and sacred places; and Resolution SD-02-027, *Essential Elements of Public Policy to Protect Native Sacred Places*, at the Annual Convention in November 2002 in San Diego, CA.

## **For Transition Team – Indian Energy in the Next Administration**

The White House and Federal Agencies must consult fully with the Nation's energy resource Indian tribes on energy production on tribal lands, conservation and energy use in Indian communities, climate change, and energy efficiency.

Along with the NCAI, the primary entity to ensure such consultation will be the Council of Energy Resource Tribes (CERT) based in Denver, Colorado. CERT is launching a multi-pronged effort to insure input from Indian tribes into a coherent and forward-looking Indian energy policy that will mesh with, and complement, the national energy policy developed in the coming years. The goal is to maximize tribal perspective and tribal input.

The new Administration should encourage tribal ownership and development of tribal resources in order to maximize returns to tribal economies. The tribal energy resource agreement (TERA) process is underway at the Department of the Interior and should be fully supported. Indian lands have about 20-30 percent of the on-shore oil and gas resources in the United States. If the new Administration wants to increase domestic production to achieve a modicum of energy independence, it must factor in the development of these resources on Indian lands. There are significant impediments to production that must be resolved, including tax policies and lack of physical infrastructure.

The Administration should explore with tribal governments the vast potential renewable resources on Indian lands that have the potential bring significant economic benefits to tribal communities through increased revenues and creation of jobs. Energy efficiency and conservation policies, particularly in federal-funded facilities and homes on Indian lands, need immediate attention.

When changes to the IRC are considered, new energy tax policies must consider impacts on energy projects on tribal lands.

The Administration must ensure the Indian tribes may participate in any carbon regime that is put in place and that tribal energy development is not hobbled by new standards that may be overbroad with respect to Indian lands.

Much of the nation's developable uranium ore deposits in the United States are on Indian lands. Uranium-rich tribes are not per se opposed to nuclear projects but need full guarantees by the United States of mining safety and freedom from contamination. The Administration also needs to assist in addressing significant, unresolved legacy issues on Indian lands from earlier uranium mining activities.

Indian lands are often traversed by major energy transportation routes in the West and host major transmission and pipeline infrastructure. Tribes need to fully participate in the development and management of future transmissions lines and electricity grids that cross tribal lands.

## NCAI Policy Statement on Climate Change For the 2008 Presidential Administration

### INTRODUCTION

The Intergovernmental Panel on Climate Change (IPCC) finds that “Indigenous peoples of North America and those who are socially and economically disadvantaged are disproportionately vulnerable to climate change.”<sup>11</sup> Among the most climate-sensitive North American communities are those of indigenous populations (sic) dependent on one or a few natural resources. Many reservation economies and budgets of indigenous governments depend heavily on agriculture, forest products and tourism.<sup>12</sup> The IPCC also finds that “the most vulnerable industries, settlements and societies are generally those in coastal and river flood plains, those whose economies are closely linked with climate-sensitive resources, and those in areas prone to extreme weather events . . . .”<sup>13</sup> Nearly all tribes fit into one of those categories, and nearly all Alaska Native Communities fit into all three.

The Alaska Native Villages of Newtok, Kivalina and Shishmaref must be relocated imminently because of rapidly eroding shorelines, with 181 other villages facing the same threat in coming years. Tribes in the continental United States heavily dependent on natural resources for cultural and economic vitality, are witnessing the disappearance of those resources. EPA predicts that the next 40 to 80 years will witness upwards of a 50% loss of salmon and trout habitat across the U.S, species that an overwhelming number of tribes rely upon for survival.<sup>14</sup> Tribes in Great Plains must travel longer distances to find native plants, such as chokecherry and wild turnip that they utilize for subsistence and medicinal purposes.<sup>15</sup> Tribal economies, cultures, lifeways, knowledge, and identity<sup>16</sup>, are directly threatened.

At the same time, many Native communities are proactively addressing climate change, demonstrating great resilience and providing unique knowledge and practices to and beyond tribal communities. A handful of tribal governments are developing adaptation plans, calculating their carbon footprints, collaborating with states, local governments, undertaking renewable energy projects, building green communities, and participating in carbon markets. Tribal

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**11** Intergovernmental Panel on Climate Change, Working Group II Report, *Impacts, Adaptation and Vulnerability*, Ch. 14, p. 639 (Fourth Assessment Report, 2007).

<sup>12</sup> *Id.*, Ch. 14, p. 625.

<sup>13</sup> *Id.*, Summary for Policymakers, p. 12.

<sup>14</sup> Steve Torbit, National Wildlife Federation, “Impacts of Climate Change on Tribal Resources,” at [www.tribalclimate.org/GreatLakes](http://www.tribalclimate.org/GreatLakes), (accessed Oct. 8, 2008).

<sup>15</sup> Garrit Voggeser, National Wildlife Federation, *Limiting the Impacts of Energy Development on Cultural and Environmental Resources*, at [www.tribalclimate.org/NewMexico.html](http://www.tribalclimate.org/NewMexico.html) (accessed Oct. 8, 2008).

<sup>16</sup> While there is no official definition of “indigenous,” the United Nations has developed an understanding of the term based on the characteristics which include a strong link to territories and surrounding natural resources, and a resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities United Nations Permanent Forum on Indigenous Peoples, Fact Sheet, *Who are Indigenous Peoples?* [http://www.wipce2008.com/enews/pdf/wipce\\_fact\\_sheet\\_21-10-07.pdf](http://www.wipce2008.com/enews/pdf/wipce_fact_sheet_21-10-07.pdf) (2008) (accessed Oct. 8, 2008). Thus, significant degradation of indigenous natural resources and environments threatens the distinctive character of indigenous peoples.

peoples are sharing their traditional knowledge with other tribal peoples, providing invaluable insights to scientific efforts to understand climate change, and reviving ancestral practices that are time-tested, climate resilient, therefore inherently effective adaptation and mitigation techniques. However, significant resources are needed to propel the momentum.

In this context, the tribal effort to address climate change in partnership with the federal government has three aspects: 1) adaptation to climate change, 2) mitigation of climate change, and 3) preservation of tribal lifeways. Interwoven across these aspects are three themes: 1) tribal participation in and consultation on the development of federal climate change policies and programs, 2) protection of tribal sovereignty and rights, and 3) establishment of climate change regimes within which tribes are provided opportunities that are equal to states, remove barriers to tribal access, and/or address unique tribal needs. The Tribes look forward to the full and active partnership with the federal government as sovereign partners in meaningful federal climate change actions, including significant reductions in the nation's greenhouse gas (GHG) emissions, the establishment of a national cap and trade system for carbon emissions, incentives for renewable energy and green jobs, and resources towards adaptation efforts.

## THE REQUEST

### General Principles

**Government to Government Partnership and Consultation.** Tribal governments must be provided formal participatory roles in the various federally-led task forces that will develop and implement agendas, strategies, policies, and programs on climate change, including development of a national adaptation and mitigation strategies.

**Protection of Tribal Rights.** Tribal rights, such as rights to water, hunting, fishing and gathering that are embodied in treaties, executive orders and other legal instruments, must be advanced and protected as climate change impacts water, land use, and natural resources.

**Equity in Federal Programmatic Support.** Federal climate change programs that can help tribes address climate change must be enhanced, amended or created, so that tribes are provided opportunities that are least equal to those provided to states and others, tribal barriers to access are removed, ensure that support that is commensurate with the severity of impact, and/or address unique tribal needs. This includes existing federal programs that will be impacted by climate change, such as for tribal infrastructure and natural resource management, and new programs to help tribes develop climate change adaptation plans, participate in the carbon market and renewable energy.

### Adaptation

**Sovereignty.** Tribes must *participate as sovereigns* in the climate change research undertaken various organizations such as the US Climate Change Science Program, US Climate Change

Technology Program, and Intergovernmental Panel on Climate Change, and relevant Science and Technical Advisory Boards.

**Planning.** Tribes must be included as active participants, and be consulted upon federal efforts to develop a *National Adaptation Strategy*, as well as subsequent federal action plans developed on regional, media, and other levels. Tribes should be provided direct financing and technical assistance to develop adaptation plans for their peoples, lands, and natural resources, calculate carbon footprints, and participate in collaborative planning efforts.

**Implementation.** The federal government should create a *National Adaptation Fund* to reduce vulnerabilities across the nation related to climate change and its impacts. Specific set asides should be provided for tribal governments across all applicable areas, that are similar in scope to those received by state governments, and/or are commensurate with the severity of climate change impacts. The federal government should ensure the *safe relocation of residents of Alaska Native Villages* with the prior and informed consent of the residents. Adequate funding must be ensured, and barriers to funding which are GAO identified, removed.

*Existing federal programs that will now account for climate change impacts*, for which tribes have or should have access, must be improved in various and innovative ways, with the goal of creating climate resilient, sustainable, and economically vibrant tribal communities. Most tribal governments have buildings, infrastructure, and government services that are already underfunded and undercapitalized.<sup>17</sup> Climate change strategies can provide innovative opportunities in these programs. For example, the construction of housing on tribal lands can be coupled with green building standards and materials, energy efficiency appliances, and small scale renewable energy sources.

NCAI has identified various federal agencies and programs of relevance, but for the time being mention the following some areas for consideration: safe drinking water and improved sanitation; water storage and conservation; land use and natural resources; insurance; disaster preparedness and response; public health action plans; air quality, water quality and disease surveillance; standards and planning for housing, roads, rail and other infrastructure; energy transmission and distribution infrastructure; energy efficiency; and agricultural practices. Improvements include the provision of equitable funding to tribes, funding commensurate with impacts, removal of tribal barriers to access, increases in funding and technical assistance to address the added component of climate change, and meaningful tribal participation and consultation in the development and implementation of new standards and programs.

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<sup>17</sup> For example, the National American Indian Housing Council reports that an estimated 200,000 housing units are needed immediately in Indian country. Using Census and GAO statistics, NAIHC reports that in tribal areas, 14.7% of homes are overcrowded, compared to 5.7% of homes of the general U.S. population; and 16.9% lack of telephone service, compared to 2.4%; 11% lack kitchen facilities compared to 1%. <http://www.naihc.net/news/index.asp?bid=6316> (accessed Oct. 8, 2008). The Indian Health Service finds that in 2006, 13.3% of tribal homes lack access to safe drinking water and wastewater infrastructure, compared to 0.6% of the general U.S. population. The Sanitation Facilities Construction Program of the Indian Health Service, U.S. Public Health Service, Department of Health and Human Services, *Public Law 86-121 Annual Report for 2006*, p. 26 (2007).

## Mitigation

The federal government should develop a **National Cap and Trade program** for greenhouse gas emissions, which results: in the implementation of a large-source, economy-wide cap-and-trade program for greenhouse gases that will *reduce greenhouse gas (GHG) emissions* by 60% to 80% by the year 2050; *create a mandatory GHG reporting system* as a basis for an economy-wide emissions trading program; *technical assistance and funding* to tribes to develop emission inventories that would enable them to effectively participate in GHG reporting systems and trading systems; *allocation of tribal set-aside of emission allowances* which would be auction and deposited into a “Tribal Climate Change Assistance Fund,” and a uniform system for tracking renewable energy credits and carbon offsets.

The federal government should provide tribes equal access to **economic opportunities in low-carbon, renewable and efficient energy practices and technologies** such as solar, wind, biomass, and carbon capture and storage, including but not limited to: technical assistance and funding to enable tribes to explore and implement economic opportunities within these technologies, including funding for *feasibility studies and demonstration projects*; tribal participation in *carbon offset programs* for agricultural, forestry, landfill methane, improved waste and wastewater management, and other offset projects; *removal of barriers* to tribal opportunities to undertake and own renewable energy projects on tribal lands that exist because of the application of the production tax credit and accelerated depreciation; and support for upgraded and *expanded electricity grids* to reach tribal energy projects and communities. Federal funding and technical assistance should be provided to enable tribes and their members to: calculate and reduce their *GHG footprints*; improve the *energy efficiency provisions of tribal buildings codes*; promote tribal understanding of the breadth of climate change issues, and what can be done through *outreach and education* programs.

## Tribal Lifeways

The federal government should work with tribes to protect and preserve tribal lifeways, in two ways 1) by ensuring that *research programs account for the value that traditional knowledge* can bring to scientific research and adaptation and mitigation efforts, and 2) by *establishing a federal-tribal task force and funding an implementation program* that addresses climate change impacts on tribal cultures and lifeways, including but not limited to: research on the social, cultural and economic costs of climate change upon tribal communities and the benefits traditional practices have in social stability, adaptation and mitigation efforts; and support for natural resource management programs that protect indigenous ecological systems, subsistence plants and animals; inter-tribal sharing and application of traditional knowledge and culture; and implementation by tribal peoples, of demonstrably effective tribal practices that will benefit of tribes and others, in climate change adaptation and mitigation efforts.

## **Indian Water Rights Policy Statement for the 2008 Presidential Administration**

Water rights are possibly the most important right many Indian tribes have yet to exercise. When reservations were established, water rights ("Winters Rights") were also reserved by the tribes and by the federal government. These water rights were intended to ensure tribes would have a sufficient supply of water to meet the agricultural, domestic, industrial, and municipal water needs of the reservations. The United States carries the legal obligation as trustee to protect these tribal rights. Ironically, despite this legal obligation, the United States government developed water policy and related infrastructure benefiting non-Indian communities without consideration of tribal interests. As a result, many tribal communities now suffer from inadequate, often compromised, water supplies. Degraded water supplies hamper reservation economic and community development, and prohibit effective fire protection. Furthermore, water resources and aquatic ecosystems crucial to tribal communities for cultural survival are often impaired by over-appropriation by non-Indian interests.

Indian tribes have sought to assert their water rights through litigation and, more recently, negotiated settlements to reverse these trends. Each method is extremely costly and lengthy, which further limits the ability of tribes to secure and utilize their water rights. The critical importance of asserting and developing Indian water rights will grow as the threats posed from climate change and population growth continue to escalate.

The benefits from tribal water rights settlements extend beyond reservation boundaries. Settlements are created in conjunction with the interests of the affected parties, including non-tribal users. Indian water settlements have been key catalysts for regional water infrastructure development, and have far reaching mutual benefits with non-tribal users. Wildlife and ecosystem conservation, too, are being considered and negotiated. An increasingly crucial priority in tribal water rights settlement negotiations has been the inclusion of in-stream flows to protect aquatic species and wetlands, both which carry cultural significance for many tribes.

However, the consistent, overarching obstacle tribes face when exercising water rights is a lack of serious and sustained fiduciary commitment from the United States. A permanent funding mechanism for Indian water rights settlements is an absolute necessity to enable the federal government to permanently resolve this issue.

There are a number of important steps the Administration and Congress could do to facilitate the development of tribal water rights:

- **Prioritize Reclamation Fund monies to fund Indian water rights settlements-**
  - The Reclamation Fund is an appropriate primary funding mechanism for Indian water rights settlements in the west. Created in 1902 to finance agricultural water projects and infrastructure to build up the 17 western states, the Reclamation Fund is ideally positioned to fund Indian water rights settlements that comply with Reclamation Act requirements. The Reclamation Fund acquires money

through repayments on the sale, lease or rental of public lands, and revenues from mineral leases and timber sales. These payments have been increasing in recent years largely to increasing prices of oil and gas, and the available balance has as well. The Reclamation Fund should be Congress' primary funding source for Indian water rights settlements. There is currently legislation pending in Congress to create an Indian water settlement fund from the Reclamation Fund; this approach should be embraced by the next Administration and in the new Congress.

- **Support tribal preparation, litigation, negotiation and settlement of water rights claims**
  - The Bureau of Indian Affairs (BIA) regional offices distribute vital funding to tribes to conduct essential technical studies to enable them to participate fully and effectively in the litigation and negotiation processes. Over the past decade these resources have been badly cut, to the point tribes are seriously crippled in these efforts. Additional financial and human resources are necessary to assist tribes in developing and pursuing Indian water rights claims. Currently 19 tribes are engaged in settlement discussions and nine more have requested monies for such purposes. The demand for funding and staffing is going to increase as water concerns continue to rise, and the BIA must be adequately equipped with staff and program monies to distribute to tribes for the preparation and subsequent negotiation of water rights claims.
  
- **Support the Department of Interior's Indian Water Rights Office-**
  - The DOI Indian Water Rights Office has been an important partner for Indian tribes when working on their settlements, providing meaningful input and resources. The Indian Water Rights Office should be permanently placed in the Department of Interior's structure, and effectively staffed, and funded to assist current and future water rights claims by the dozens of Indian tribes waiting to protect one of their most precious assets -- water.

The settlement of tribal water and land claims is one of the most important aspects of the United States' trust obligations to Indian tribes. As the next Administration begins to address current issues across Indian Country, water rights settlements must be a top priority as water issues loom over tribal and non-tribal communities alike. Water rights settlements create an opportunity for partnerships between water users that solve local problems with local knowledge while promoting tribal sovereignty. The United States needs to look at ways to improve the settlement process to create opportunities for Indian tribes and to uphold their trust responsibility. Significant obstacles exist across tribal communities, but access to a clean reliable water supply should not be one of them.

## **Indian Transportation Policy Statement for the 2008 Presidential Transition**

Indian Reservation Roads (IRR) comprise over 104,000 miles of public roads with multiple owners, including the Bureau of Indian Affairs, Indian tribes, states and counties. IRR are the most underdeveloped road network in the nation<sup>18</sup>—yet it is the primary transportation system for all residents of and visitors to American Indian and Alaska Native communities. Over 66 percent of the system is unimproved earth and gravel. Approximately 24 percent of IRR bridges are classified as deficient. These conditions make it very difficult for residents of tribal communities to travel to hospitals, stores, schools, and employment centers.<sup>19</sup>

As far back as 2003, the BIA formally acknowledged in a report that at least \$120 million per year was needed to maintain BIA-owned roads and bridges to an adequate standard.<sup>20</sup> This same BIA Report concluded that \$50 million per year was needed for bridge rehabilitation and replacement. These costs have risen sharply in the past five years due to high construction cost inflation, but the Interior Department has requested only \$25 to \$26 million annually in Department of Interior appropriations for the BIA Road Maintenance Program, and proposes to cut the funding to \$13 Million in FY 2009.

Funding for the Indian Reservation Roads (IRR) Program and other Tribal transportation programs is authorized every five to six years through federal highway reauthorization legislation. These highway reauthorization laws operate on a five to six year funding cycle and authorize the appropriation of hundreds of billions of dollars in transportation funding for State, Federal and Tribal transportation and transit programs from the Highway Trust Fund. Unfortunately, the Highway Trust Fund is now badly underfunded because current Federal gas tax receipts are insufficient to pay for the SAFETEA-LU-authorized transportation funding increases. The White House and other transportation analysts estimate that the Highway Account of the Highway Trust Fund will suffer a \$4.3 billion shortfall in the FY 2009 funds needed to pay for all federal highway programs at the level promised in SAFETEA-LU. The Highway Trust Fund shortfall is projected to get worse as gas prices increase and drivers continue to switch to more fuel efficient vehicles.

Without an immediate and substantial increase in Highway Trust Fund revenues, the American Road & Transportation Builders Association (ARTBA) estimates that the Federal transportation investment could be cut by 40% percent in FY 2009 alone. If left uncorrected, this will mean a disastrous cut in Tribal transportation funding as well. The National Surface Transportation Policy and Revenue Commission, which was created by SAFETEA-LU, as well as other transportation organizations such as ARTBA, have put forward a number of proposals to address the Nation's long-term infrastructure funding needs, including raising the gas tax, assessing user taxes based on vehicle miles traveled, increased use of toll roads, and encouraging the

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<sup>18</sup> Bureau of Indian Affairs, Transportation Serving Native American Lands: TEA-21 Reauthorization Resource Paper (2003).

<sup>19</sup> Statement of John Baxtor, Administrator of Federal Lands, FHWA, U.S. DOT, *Hearing on Transportation issues in Indian Country Before Senate Comm. on Indian Affairs*, 110<sup>th</sup> Cong. 1 (2007).

<sup>20</sup> See TEA-21 Reauthorization Resource Paper, BIA (May 2003), p. 32.

construction of roads by public-private partnerships. But these proposed solutions will not be enough to improve the conditions in Indian country.

Transportation infrastructure is vital to tribal economies, education systems, health care and social service programs. Tribal communities are threatened by unsafe and often inaccessible roads, bridges and ferries. Indian tribes suffer injury and death by driving and walking along reservation roadways at rates far above the national average. Data shows 5,962 fatal motor vehicle crashes were reported on Indian reservation roads between 1975 and 2002 with 7,093 lives lost. The trend is on the increase, up nearly 25% to over 284 lives lost per year in the last five years of study. While the number of fatal crashes in the nation during the study period declined 2.2 percent, the number of fatal motor vehicle crashes per year on Indian reservations increased 52.5 percent. American Indians also have the highest rates of pedestrian injury and death per capita of any racial or ethnic group in the United States. These statistics are shocking and cry out for major changes in Federal transportation safety programs serving Indian country. In 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, was enacted into law. SAFETEA-LU provided several significant Tribally-beneficial provisions, and the funding allocated to the Indian Reservation Roads (IRR) Program increased from \$275 million for Fiscal Year 2004 to \$450 million for Fiscal Year 2009. SAFETEA-LU will expire on September 30, 2009.

#### **Administration and Congress - Next Steps:**

- Increase Funding for the Indian Reservation Roads (IRR) Program: IRR system has a construction need of nearly \$40 billion. Although these roads represent 9.18% of the combined total of Federal-Aid Highways and federally-owned roads, the IRR Program receives only 1.4% of funds authorized to be appropriated under section 101(a) of Title I of SAFETEA-LU;
- Establish a Tribal Liaison within the Office of the Secretary of U.S. Department of Transportation;
- Treat Indian tribal governments equitably and give them the same authority as state and local governments to raise revenue to fund the costs associated with building and maintaining transportation infrastructure;
- Create a new Tribal Traffic Safety Program within the FHWA-Federal Lands Highways office (FLH) and within the National Highway Traffic Safety Administration (NHTSA), each funded at \$50 million annually to dramatically reduce the incidence of death and injury on America's Indian reservation roads;
- Address the backlog of BIA Indian Reservation Roads and Bridge Maintenance:
  - Encourage Tribal Leaders, Interior Department and Office of Management and Budget (OMB) officials to support an annual budget request to Congress of at least \$150 million for the BIA Road Maintenance Program;
  - If this Interior Department funding level is not reached prior to the reauthorization of SAFETEA-LU, request that Congress authorize an additional \$100 million

annual for the IRR Program to augment the shortfalls in the BIA Road Maintenance Program.

- Authorize the Secretary of Transportation to enter into funding agreements under the ISDEAA for all Federal transportation programs serving Tribal program beneficiaries;
- Increase the number of Department of Transportation programs which Tribes may participate in as direct funding recipients from the Federal government rather than as sub-recipients through the States;
- Authorize the Secretary of Transportation to award State-administered transportation programs funds (such as Federal-Aid project funds) directly to Tribes through ISDEAA contracts and compacts;
- Increase funding to the Tribal Technical Assistance Programs (TTAPs) to; \$2.5 million annually and fully fund each TTAP Center at 100% federal share. Create additional TTAPs for each BIA region and require the Department of Transportation, FHWA Office of Professional and Corporate Development to consult with Tribal transportation officials with respect to the selection of TTAP award recipients;
- Authorize The Department of the Interior to include provisions in IRR Program Self-Determination Contracts and Self-Governance Compacts that facilitate Tribal governments' use of Debt Financing Instruments;
- Amend the IRR Bridge Program to authorize the use of funds for the construction of new bridges and other similar structures;
- Require the BIA to update and computerize right-of-way documentation for IRR Program routes and support Tribal corridor management practices; and
- Clarify that State Departments of Transportation may recognize and abide by Tribal Employment Rights Ordinances on Federal-Aid projects located on or near Indian reservations and Tribal lands.

# **HOUSING PROGRAMS FOR AMERICA'S NATIVE PEOPLE**

## **Presidential Transition 2008**

The bulk of Federal housing programs for American Indians, Alaska Natives, and Native Hawaiians ("Native Americans") are administered by the U.S. Department of Housing and Urban Development (HUD). Within HUD, the Secretary, operating through the Office of Native American Programs (ONAP), carries out the United States' special trust responsibility to Indian tribes and Indian people by improving their housing conditions and socio-economic status.

While there have been improvements, Indian housing is still far more substandard than for the rest of the country. An estimated 200,000 housing units are needed immediately in Indian Country and approximately 90,000 Native families are homeless or under-housed. Overcrowding on tribal lands is almost 15 percent, and 11 percent of Indian homes lack complete plumbing and kitchen facilities.

The *Native American Housing Assistance and Self-Determination Act* is the main source of authority under which the United States provides housing and housing-related programs for Native Americans. Enacted in 1996, NAHASDA combined scattered Federal public housing programs into a consolidated block grant to better serve Native American communities. NAHASDA established the Indian Housing Block Grant (IHBG) to provide direct Federal assistance to Indian tribes to carry out affordable housing activities. NAHASDA was also meant to enable greater tribal participation in regulations through the negotiated rule-making process and to spur housing development by leveraging IHBG funds in combination with private sources of capital.

## **RECOMMENDATIONS FOR PRESIDENTIAL TRANSITION TEAM**

Following the November 5, 2008, election, the President-elect should convene a team from experienced Indian housing and community development practitioners. The team will work with senior advisors and designated transition team members from the President-elect's staff to identify the critical housing and community development issues throughout the Federal government as they relate to Native American housing and community development.

### **➤ Issues Requiring Attention by the President-Elect**

There is a wide array of issues --- some related to funding, others related to the operation and management of Federal housing and development programs --- that justify the focused attention of the President-elect and his team of advisors.

These include but are not limited to the following:

- Restoring the focus of Federal housing and housing-related programs and services to one respecting the hallmark of Indian Self-Determination;

- Ensuring meaningful consultation with tribal governments and housing authorities in advance of the development of relevant regulations and policies;
- Restoring to the Federal agencies an appropriate role in terms of oversight and monitoring of tribal housing programs and services;
- Re-instituting a vigorous negotiated rulemaking procedure with tribal governments and housing authorities so that the impacts and consequences of proposed Federal actions can be fully debated and agreed to prior to implementation;
- Improving housing development and leveraging capacity within Indian Housing Authorities (IHAs) as distinguished from simply improving housing management skills according to federal guidelines
- Increasing Federal funding levels for Native American housing with a particular emphasis on achieving parity with jurisdictions of comparable size;
- Assisting Indian tribes in the construction and maintenance of physical infrastructure including methods of financing similar to those available to state and local governments;
- Ameliorating high energy and other costs of construction due in large part to isolated locations;
- Improving eGrant submission issues, particularly at the U.S. Department of Housing and Urban Development, as the current system negatively impacts tribal communities;
- Collaborate with tribal governments and housing authorities to initiate and develop comprehensive and effective risk management and other self-insurance programs and services related to Native American housing and related assets and property;
- Ensure a Native presence at White House and Cabinet level positions, e.g., Assistant Secretary for Indian Housing and Community Development, U.S. Department of Housing and Urban Development

The team should be conducting a series of strategy sessions leading up to and before the election and developing recommendations and strategies to ensure that agency-level representatives will be working with the President-elect's transition team that will be placed in Federal agencies by noon, January 20, 2009.

➤ Team Participants

Representatives from the following organizations should meet with the President-elect and his team of advisors to identify and present strategies to address the most pressing issues related to housing and community development in Native American communities.

- Elected tribal officials;

- The National American Indian Housing Council (NAIHC) Board of Directors and designated staff;
- Representatives of Native housing from Alaska, Oklahoma and Hawaii;
- NAIHC Regional Housing Association representatives from the each of 9 regions;
- AMERIND Risk Management Board representatives and designated staff;
- Office of Hawaiian Affairs representative(s); and
- Department of Hawaiian Home Lands representative(s).

➤ Federal Agency Engagement

At a minimum, the following Federal agencies should be included in the focus of the transition team's work.

- U.S. Department of Housing and Urban Development (Public and Indian Housing, Office of Native American Programs);
- U.S. Department of Health and Human Services (Indian Health Service (IHS) and Administration for Native Americans (ANA));
- U.S. Department of Agriculture (Housing and Community Facilities Programs);
- U.S. Department of the Interior (Bureau of Indian Affairs Housing Improvement Program; and
- U.S. Department of Veterans Affairs (VA Direct Home Loans for Native American Veterans Living on Trust Lands).

End/

## INDIAN HEALTH POLICY STATEMENT -- PRESIDENTIAL TRANSITION 2008

The Federal government provides health care to American Indians and Alaska Natives based on its trust responsibility found in the U.S. Constitution and affirmed by treaties, federal court decisions, and federal law. Today, health care is provided to 1.9 million to American Indians and Alaska Natives primarily residing on or near Indian reservations located in 35 states. Despite the Federal government's trust responsibility, Indian people suffer disproportionately higher health disparities and mortality rates compared to the general population.

American Indian and Alaska Natives have the highest cancer mortality rates<sup>21</sup> – due to late detection and lack of diagnostic and treatment options. Our infant mortality rate is 150% greater than that of Caucasian infants<sup>22</sup>. We are 2.6 times more likely to be diagnosed with diabetes<sup>23</sup> and 7.7 times more likely to die from alcoholism. The suicide rate for Natives is 2 1/2 times higher than the national average, and the #2 cause of death for Indian youth.<sup>24</sup>

In FY 2008, the Indian Health Service (IHS) received \$3.3 billion through the Department of Interior, Environment, and Related Agencies Appropriations Act. IHS appropriations provide approximately 40% of level of need funding. The Indian health programs must supplement funding through third party resources: Medicare, Medicaid, SCHIP, private and tribal health insurance, and the Department of Defense and Veterans' Affairs.

While the health services delivered to American Indians and Alaska Natives has improved over time, the current service level is not adequately addressing the chronic need in the American Indian and Alaska Native population. To begin addressing the gaping disparities in health care of our Nation's first citizens, NCAI recommends the following:

1. The President should urge the rapid passage of the Indian Health Care Improvement Act Reauthorization as a top priority.
2. The President should elevate the Director of the Indian Health Service to an Assistant Secretary of Indian Health within the Department of Health and Human Services in order to more effectively and efficiently carry out the United States' responsibility to provide health care to American Indian and Alaska Natives.
3. The President should submit a budget to Congress that requests full funding reflecting 100% of the needs to support the Indian health care delivery system.
4. The President must ensure that any health care reform advanced by the President and his Administration must include the Indian health delivery system.

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<sup>21</sup> Trends in Indian Health 2000-2001. Indian Health Service.

[http://www.ihs.gov/NonMedicalPrograms/IHS\\_Stats/index.cfm?module=hqPub&option=t00](http://www.ihs.gov/NonMedicalPrograms/IHS_Stats/index.cfm?module=hqPub&option=t00).

<sup>22</sup> National Vital Statistics Reports, U.S. States Life Tables, 2003.

[http://www.cdc.gov/nchs/data/nvsr/nvsr54/nvsr54\\_14.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr54/nvsr54_14.pdf).

<sup>23</sup> National Center for Health Statistics, Health, United States, 2007, With Chartbook on Trends in the Health of Americans.

<sup>24</sup> Trends in Indian Health 2000-2001.

## INDIAN EDUCATION POLICY STATEMENT -- PRESIDENTIAL TRANSITION 2008

American Indian and Alaska Native students are being left behind. The 2007 National Indian Education Study<sup>25</sup> indicated that in reading and math, American Indian and Alaska Native students scored significantly lower than their peers in both fourth and eighth grades. In fact, Native students were the only students to show no significant progress in either subject since 2005. Our students also face some of the highest dropout rates in the country<sup>26</sup>. These trends need to be reversed.

Recent studies have shown that students are more likely to thrive in environments that support their cultural identities<sup>27</sup>. This can be accomplished by Tribes and tribal education departments having a greater role in administering the education of their children. In turn, these children will be better prepared to become active, engaged tribal citizens.

In order to ensure that Native students meet the same challenging academic standards as the majority population, it is imperative that the next Administration make education a priority. To that end, NCAI recommends the following:

1. Accomplish the intent of the charter of the Office of Indian Education in the Department of Education by re-establishing the Director to Assistant Secretary and elevating the office out of the Office of Elementary and Secondary Education to be a stand alone.
2. Establishment of an Indian Education Budget Task Force that would consist of representatives of the Department of Education and Department of the Interior as well as tribal experts.
3. Issue an Executive Order on Indian Education that promotes the use of Native language instruction and culture based education in public and federally funded schools.
4. Call for a Whitehouse conference on Native youth issues and support a Native Children's Agenda – elevating the current status and situation facing Native youth to a national priority.
5. Actively utilize the National Advisory Council on Indian Education (NACIE) to promote policies on Indian Education within the Department of Education.
6. Reauthorize the No Child Left Behind Act and reaffirm the original intent of the Title VII program by providing provisions for meaningful tribal involvement in setting education

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<sup>25</sup> Moran, R., Rampey, B.D., Dion, G., Donahue, P. (2008). *National Indian Education Study 2007 Part I: Performance of American Indian and Alaska Native Students at Grades 4 and 8 on NAEP 2007 Reading and Mathematics Assessments* (NCES 2008-457). National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education, Washington, D.C.

<sup>26</sup> Laird, J., DeBell, M., and Chapman, C. (2006). *Dropout Rates in the United States: 2004* ([NCES 2007-024](#)). National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC.

<sup>27</sup> Clarke, "American Indian and Alaska Native Students."

priorities for Indian students and the inclusion of Native language and cultural instruction.

7. Advocate for appropriations for Tribal Education Departments.
8. Request and advocate for adequate funding for Bureau of Indian Affairs school construction, maintenance, and transportation.
9. Authorize Tribes to be Eligible Grantees for Title VIII Impact Aid Grants and disallow the equalization of Impact Aid funding, utilized by states like Alaska and New Mexico that allows for Impact Aid funding to be considered a local revenue source and deducted from state aid.
10. Support the ongoing work of the White House Initiative on Tribal Colleges and Universities.

## **List of National Indian Organizations**

### **American Indian College Fund**

Tel: 303-426-8900

Website: [www.collegefund.org](http://www.collegefund.org)

### **Council of Energy Resource Tribes**

Tel: 303-282-7576

Website: [www.certreearth.com](http://www.certreearth.com)

### **First Nations Development Institute**

Tel: 540-371-5615

Website: [www.firstnations.org](http://www.firstnations.org)

### **Indian Land Tenure Foundation**

Tel: 651-766-8999

Website: [www.indianlandtenure.org](http://www.indianlandtenure.org)

### **Institute for Indian Estate Planning and Probate**

Tel: 206-398-4284

Website: [www.indianwills.org](http://www.indianwills.org)

### **Intertribal Agriculture Council**

Tel: 406-259-3525

Website: [www.i-a-c-online.com](http://www.i-a-c-online.com)

### **Intertribal Tax Alliance**

Tel: 918-287-5392

Website: [www.indiantax.org](http://www.indiantax.org)

### **Intertribal Timber Council**

Tel: 503-282-4296

Website: [www.itcnet.org](http://www.itcnet.org)

### **Intertribal Transportation Association**

Tel: 406-353-8469

Website: <http://www.ewu.edu/x25312.xml>

### **Intertribal Trust Fund Monitoring Association**

Tel: 505-247-1447

Website: [www.itmatrustfunds.org](http://www.itmatrustfunds.org)

**National American Indian Court Judges Association**

Tel: 605-342-4804

Website: [www.naicja.org](http://www.naicja.org)

**National American Indian Housing Council**

Tel: 202-789-1754

Website: [www.naihc.net](http://www.naihc.net)

**National Center for American Indian Enterprise Development**

Tel: 480-545-1298

Website: [www.ncaied.org](http://www.ncaied.org)

**National Congress of American Indians**

Tel: 202-466-7767

Website: [www.ncai.org](http://www.ncai.org)

**National Council of Urban Indian Health**

Tel: 202-544-0344

Website: [www.ncuih.org](http://www.ncuih.org)

**National Indian Business Association**

Tel: 202-233-3766

Website: [www.nibanetwork.org](http://www.nibanetwork.org)

**National Indian Child Welfare Association**

Tel: 503-222-4044

Website: [www.nicwa.org](http://www.nicwa.org)

**National Indian Council on Aging**

Tel: 505-292-2001

Website: [www.nicoa.org](http://www.nicoa.org)

**National Indian Education Association**

Tel: 202-544-7290

Website: [www.niea.org](http://www.niea.org)

**National Indian Gaming Association**

Tel: 202-547-7711

Website: [www.niga.org](http://www.niga.org)

**National Indian Health Board**

Tel: 202-742-4262

Website: [www.nihb.org](http://www.nihb.org)

**National Indian Justice Center**

Tel: 707-579-5507

Website: [www.nijc.indian.com](http://www.nijc.indian.com)

**National Native American Law Enforcement Association**

Tel: 800-948-3863

Website: [www.nnalea.org](http://www.nnalea.org)

**National Tribal Environmental Council**

Tel: 505-242-2175

Website: [www.ntec.org](http://www.ntec.org)

**National Tribal Justice Resource Center**

Tel: 303-245-0786

Website: [www.tribalresourcecenter.org](http://www.tribalresourcecenter.org)

**Native American Finance Officers Association**

Tel: 602-532-6295

Website: [www.nafoa.org](http://www.nafoa.org)

**Native American Rights Fund**

Tel: 303-447-8760

Website: [www.narf.org](http://www.narf.org)

## **2008 Presidential Candidate Policies/ Party Platform Summary Comparison on Issues Specific to Indian Country**

### McCain/Palin Policies – GOP Platform

Senator John McCain points to his record and his position as the former chairman of the Senate Committee on Indian Affairs to assert his role as an advocate for tribes. McCain's Native American Policy statement references the work he has done as a Senator to promote tribal self governance, law enforcement, health care, trust reform, tribal economic development, housing, education, and his support for American Indian veterans. McCain's examples include his sponsorship of the Tribal Self-Governance Act of 1994, his work on legislation addressing methamphetamines in Indian Country, sponsorship of the Indian Child Protection and Family Violence Prevention Act, the Reservation Employment Tax Credit, the Accelerated Depreciation Allowance for reservation businesses, and his work to support the reauthorization of Indian Health Care. Additionally, McCain was involved passage of the American Indian Trust Management and Reform Act of 1994 and helped the Code Talkers to gain the recognition they deserve.

The GOP's platform focuses on tribal economic self-sufficiency and federal-state-tribal partnerships as primary mechanisms of addressing challenges in Indian Country. The GOP rejects the one size fits all approach to these partnerships and favors expansion of local autonomy.

### Obama/Biden Policies

Senator Barack Obama's campaign is based on the tribal consultation process. His goal is to actively engage tribal leaders in the policy making process. Obama addresses his principles for stronger tribal communities by describing his policies for tribal consultation, inclusion, tribal-federal relations, honoring the trust responsibility, self determination, tribal empowerment through funding police programs, cultural rights and sacred places protection, fostering preservation of Indian languages, tribal economic development, poverty and the minimum wage, Indian gaming, tribes as sources of alternative energy, housing, Indian health care, address health disparities by funding the Indian Health Service, women's reproductive health, violence against women, law enforcement in Indian Country, detention centers, methamphetamines in Indian Country, hunting and fishing rights, veteran affairs, education, no child left behind-Title VII, early child education, Indian school construction, and funding for tribal colleges.

The Democratic platform calls for a White House advisor on Indian affairs, promotion of tribal participation in the Small Business Administration's programs, and makes the elimination of health care disparities a priority. The Democratic Party seeks to increase funding and resources to honor treaty and trust obligations to tribes.