



# NATIONAL CONGRESS OF AMERICAN INDIANS

December 21, 2018

David Bernhardt,  
Deputy Secretary,  
Department of the Interior,  
1849 C Street, NW  
Washington, D.C. 20240

Dear Deputy Secretary Bernhardt—

On behalf of the National Congress of American Indians (NCAI), I write to request a meeting in the near future to discuss the direction the Department of the Interior (DOI) is moving with respect to Indian Affairs. The recent departure of DOI Secretary Ryan Zinke presents a new opportunity for Indian Country to discuss its priorities under your leadership.

Tribes have been displeased with certain policies and priorities under Secretary Zinke and are hopeful you will assist in changing course in several key areas. First, tribes have overwhelmingly opposed DOI's recent efforts involving tribal lands. As you know, the Indian Reorganization Act (IRA) was passed in the early part of the 20th century to provide tribes an opportunity to better self-govern. The recent efforts to self-entertain changes to the fee-to-trust regulatory framework, with respect to off-reservation acquisitions and also with respect to land in Alaska, are troubling and should cease immediately. This would include reinstating the Alaska lands M-Opinion. Further, DOI's recent reversal of its decision involving the traditional homelands of the Mashpee Wampanoag Tribe should also be re-examined in a manner consistent with past DOI reviews under the existing *Carcieri* M-Opinion (See [NCAI Resolution DEN-18-055](#)).

DOI's reorganization efforts are also strongly opposed by tribes. This effort, if put in place, would isolate the Bureau of Indian Affairs (BIA) from other DOI agencies in a manner that weakens current programs and services provided to tribes by non-Indian Affairs agencies within DOI, and would also weaken the decision making authority of BIA Regional Directors (BIA RD) since the proposed Interior Regional Directors (IRD) would report directly to the Secretary's Office. For this reason, Indian Country has consistently urged DOI to establish the position of Under Secretary for Indian Affairs within the Secretary's Office. This position is critical to ensuring tribal priorities are appropriately elevated and considered on par with other agencies' decisions.

Important to note, DOI policy makers have consulted on and consistently reassured tribes that the BIA would remain unaffected by DOI reorganization. However DOI has not consulted with tribes regarding its overwhelming internal restructuring of BIA. Within the past 2 years, much change has occurred within BIA – none of which was consulted on with tribes. A third of those reassigned in the now highly publicized “Thursday Night Massacre” were Native employees. Affected personnel included the then-Director of the BIA and the then-Acting Special Trustee for American Indians,

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## NCAI HEADQUARTERS

1516 P Street, N.W.  
Washington, DC 20005  
202.466.7767  
202.466.7797 fax  
[www.ncai.org](http://www.ncai.org)

both of whom held critical roles in carrying out DOI's trust responsibility to Indian tribes. As a result of this action, and other subsequent actions, a number of the twelve BIA Regions functioned without a permanent BIA RD for much of this time.

The BIA RD of the Navajo Region was reassigned to Washington, D.C., without any notice given to or consultation with the Navajo Nation itself. This reassignment was strongly opposed by the Nation, which had developed a strong working relationship with its former BIA RD. Further, BIA typically selects BIA RDs in consultation with tribes because that role within DOI requires trust, extensive knowledge of tribal statutory and treaty rights, historical circumstances, tribal customs and government structures, self-governance and self-determination contracts processes, and the federal trust responsibility. This did not occur in that instance.

Also of great concern is the fact that personnel from almost the entire Central Office of the Office of Justice Services were transferred to Albuquerque, NM – again without any consultation with or notice to affected tribes, despite the key function and role that the Office plays in administering tribal funds and programs for law enforcement, courts, and detention facilities. More recently, tribes are hearing the Office of Trust Services is following suit. This constant shifting around of personnel within the BIA has resulted in resignations, early retirements, requests for agency transfers, and the replacement in some instances of highly qualified and effective federal servants with new, inexperienced, and less effective leadership. This must stop and DOI must engage with tribes and determine whether immediate steps need to be taken to protect tribal interests within DOI, including the reversal of some of these agency actions. Policy makers at DOI are temporary, but decisions like these have long lasting effects on generations of tribal peoples – tribal governments must be consulted on these actions.

NCAI and its partners would like to meet with you to discuss these issues and others, and to further urge DOI to adhere to its trust responsibilities to tribes when considering policies affecting their interests (*See* DOI Departmental Manual at 512 DM 5). Please let us know if you have time after the New Year holiday to discuss. Thanks for your time and hope you have a great holiday season.

Sincerely,

A handwritten signature in black ink that reads "Jefferson Keel". The signature is written in a cursive, flowing style.

Jefferson Keel  
NCAI President