



NATIONAL CONGRESS OF AMERICAN INDIANS

July 21, 2015

The Honorable John Barrasso, *Chairman*
U.S. Senate Committee on Indian Affairs
828 Hart Senate Office Building
Washington, DC 20510

The Honorable John Tester, *Vice-Chairman*
U.S. Senate Committee on Indian Affairs
828 Hart Senate Office Building
Washington, DC 20510

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Tlingit

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
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www.ncai.org

Re: NCAI Support for S. 383 – The Indian Trust Asset Reform Act

Dear Chairman Barrasso and Vice-Chairman Tester:

On behalf of the National Congress of American Indians, I would like to thank the Senate Committee on Indian Affairs for holding an oversight hearing that discussed on S. 383 – The Indian Trust Asset Reform Act. Indian lands and natural resources are a primary source of economic activity for tribal communities, but the antiquated, inefficient federal trust management system is very harmful to many reservation economies. NCAI strongly supports the legislation and urges swift passage.

S. 383 will take an essential step in the effort to modernize the trust management system into a process that recognizes that tribes are in the best position to make decisions for their communities. Through the trust asset demonstration project created in the bill, tribes will have the ability to manage and develop their lands and natural resources without unnecessary federal encumbrances. This provision of the bill also authorizes tribes to engage in surface leasing or forest management activities—mirroring the framework of the highly successful HEARTH Act of 2012, which puts tribes in the position to make decisions about their lands and resources.

Further, S. 383 addresses one of the most significant bottlenecks in the trust system: the Office of the Special Trustee. This office was intended to be an oversight office when it was created by Congress over twenty years ago, but now has taken over management functions and adds another silo of bureaucracy outside the purview of the BIA. The bill requires the Secretary of the Department of the Interior (DOI) to submit a report that will include a transition plan for the Office. Additionally, the Secretary, through tribal consultation, will consolidate the appraisals and valuations processes under a single administrative entity under DOI as well as establish minimum qualifications to prepare appraisals and valuations of Indian trust property.

Thank you for your consideration of this important legislation. We request that the Committee supports and moves this legislation to Senate floor for consideration. If you have any additional questions, please contact NCAI Staff Attorney & Legislative Counsel Colby Duren, cduren@ncai.org or (202) 466-7767.

Sincerely,

Jacqueline Pata
Executive Director



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ANC-14-051

TITLE: Supporting Trust Asset Modernization Legislation

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Tanana Chiefs Conference

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S. Joe Crittenden
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Stephen Smith
Kiowa Tribe of Oklahoma

SOUTHWEST
Manuel Heart
Ute Mountain Ute Tribe

WESTERN
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Reno Sparks Indian Colony

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the United States' fiduciary responsibilities to Indians are founded on the settled law of nations, an inherent presupposition of our constitutional structure, and commitments in treaties and written agreements securing peace in exchange for vast tracts of land; and

WHEREAS, the foregoing historic federal-tribal relations and understandings have benefitted all people of the United States for centuries and established enduring obligations to which the national honor has been committed; and

WHEREAS, the United States has assumed enforceable trust responsibilities over lands and resources held by the United States in trust for Tribal Nations and Tribal citizens even if nothing is said expressly in the governing statutes or regulations, and the most exacting common-law fiduciary standards should govern such federal management of Indian trust assets; and

WHEREAS, the United States' fiduciary responsibilities to Indian tribes include and are not limited by a duty to promote tribal self-determination, and the fact that the United States may simultaneously perform another task for another interest that Congress has obligated it by statute to do does not compromise or limit the United States' enforceable fiduciary obligations to Indians; and

WHEREAS, notwithstanding the established law and policy during the Self-Determination Era, employees of the Executive Branch during this period have repeatedly sought to avoid, limit, and repudiate federal trust duties; and

WHEREAS, the American Indian Trust Funds Reform Act of 1994 temporarily created the Office of the Special Trustee, an agency within the Department of Interior that is wholly separate from the Bureau of Indian Affairs but that, over time, has come to perform certain functions and activities historically performed by the Bureau of Indian Affairs; and

WHEREAS, the creation of a bureaucracy within the Office of the Special Trustee to handle Indian trust assets has resulted in confusion and delays in processing trust transactions, with insufficient oversight by the beneficiary Tribal Nations and Tribal citizens; and

WHEREAS, there is no longer a need or reason to have the Office of the Special Trustee as an agency within the Department of Interior that is separate and distinct from the Bureau of Indian Affairs; and

WHEREAS, while the Office of the Special Trustee has implemented positive reforms in the past 10 years, the position of Special Trustee for American Indians has been vacant for approximately 5 and ½ years; and

WHEREAS, NCAI and many Tribal Nations and citizens have continued to advocate for meaningful administrative and congressional trust reform to help ensure that the Executive Branch fully meets all trust obligations of the United States as trustee to Indians; and

WHEREAS, the U.S. Department of the Interior has established a temporary trust commission to evaluate the Department's management and administration of Indian trust assets, and to make recommendations to improve the federal Indian trust administration system, including regarding termination of the Office of the Special Trustee and whether any legislative or regulatory changes are necessary to permanently implement improvements and to prevent future trust mismanagement; and

WHEREAS, the Commission on Indian Trust Administration and Reform issued a report in December of 2013, setting forth numerous recommendations regarding the administration of Indian trust assets that require further study, review and discussion within Indian Country; and

WHEREAS, there is widespread recognition and agreement among Indian tribes that any proposal to modernize or reform the administration of Indian trust assets should include options and opportunities for Indian tribal governments to make trust management decisions themselves as well as modernization of existing trust laws, regulations, policies and practices that restrict or inhibit tribes from exercising their inherent sovereign authority to engage in sustainable economic development for the benefit of their current members and future generations.

NOW THEREFORE BE IT RESOLVED, that as a primary priority NCAI urges Congress to enact trust reform legislation, either as stand-alone legislation or as part of another legislative vehicle to the extent such vehicle is available and appropriate under the circumstances, that will reaffirm the above foundational history and legal principles, require Executive Branch management of Indian trust assets to meet all federal trust obligations with full accountability to Indian beneficiaries, and require federal officials to honor and uphold the trust responsibilities of the United States to Indian tribes and individual Indian beneficiaries; and

BE IT FURTHER RESOLVED, that NCAI urges Congress to transfer the functions of the Office of the Special Trustee, with supporting appropriated funds, to the Bureau of Indian Affairs (BIA) or local BIA offices as appropriate, under the supervision and authority of a Deputy or Under Secretary for Indian Affairs, who would also oversee other Indian trust functions within the Department of the Interior; and

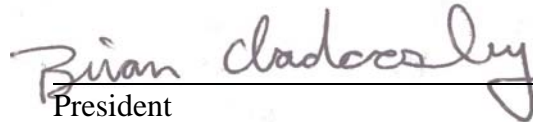
BE IT FURTHER RESOLVED, that NCAI urges Congress to enact a self-determination mechanism to increase tribal control and planning for tribal trust assets and streamline processes to expedite transactions and promote economic development, while maintaining federal trust oversight and responsibilities; and

BE IT FURTHER RESOLVED, that this Resolution supersedes and replaces Resolution SAC-12-023; and

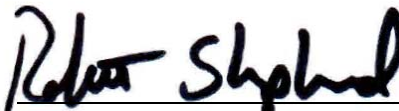
BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2014 Mid-Year Session of the National Congress of American Indians, held at the Dena'ina Civic & Convention Center, June 8-11, 2014 in Anchorage, Alaska, with a quorum present.


President

ATTEST:


Recording Secretary



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #MSP-15-029

TITLE: Reaffirming Support for Congressional Passage and Enactment into Law of the Indian Trust Asset Reform Act

EXECUTIVE COMMITTEE

PRESIDENT
Brian Cladoosby
Swinomish Tribe

FIRST VICE-PRESIDENT
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Len George
Fallon Paiute Shoshone Tribe

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, congressional introduction and enactment of a bill that would establish an Indian trust asset demonstration project and restructure the Office of the Special Trustee, and this draft legislation, the *Indian Trust Asset Reform Act*, was introduced in both the House and the Senate as H.R. 409 and S.165 in the 113th Congress; and

WHEREAS, members of Congress in both parties reintroduced the *Indian Trust Asset Reform Act* in the 114th Congress as H.R. 812 and S.383, and the bill has bipartisan support from members of Congress across the U.S.; and

WHEREAS, on April 14, 2015, the House Subcommittee on Indian, Insular, and Alaska Native Affairs heard testimony on how H.R. 812 would benefit Indian country and promote self-determination, and the bill was well received; and

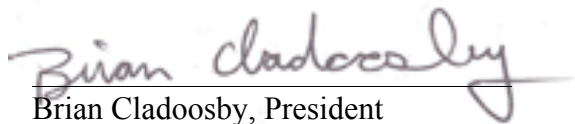
WHEREAS, the NCAI and a number of Indian tribal governments from across Indian country have endorsed the Indian Trust Asset Reform Act.

NOW THEREFORE BE IT RESOLVED, that the NCAI supports congressional passage and enactment into law of H.R. 812/S.383, including changes that are necessary to secure passage in both the House and the Senate that are consistent with the scope and purposes of the bill, is and remains a top trust reform priority; and

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2015 Midyear Session of the National Congress of American Indians, held at the St. Paul River Centre, St. Paul, MN, June 28 to July 1, 2015, with a quorum present.


Brian Cladoosby, President**ATTEST:**
Aaron Payment, Recording Secretary