



NATIONAL CONGRESS OF AMERICAN INDIANS

2013 Mid-Year Conference – June 24-27, 2013

LEGISLATIVE AND REGULATORY UPDATE

Brief Overview

The 113th Congress had a fast start with the passage of key legislation to advance tribal sovereignty and improve the welfare of American Indian and Alaska Native people. In January, Congress passed amendments to the Stafford Act and tribal governments now have the option to seek a federal emergency or major disaster declaration directly from the President of the United States. Then, in an historic vote on February 28th, the House passed the Senate version of the reauthorization of the Violence Against Women Act including the restoration of tribal criminal jurisdiction over all persons who commit acts of domestic violence, dating violence, of violations of protection orders within Indian country.

Going forward in Congress, the top issues are protecting the federal budget for tribal governmental services, tax reform and reinforcing the sovereign tax status of Indian tribes, and protecting and restoring tribal lands by addressing the *Carcieri* decision. Congress will also be taking up work on important national legislation with tribal components. The Farm Bill, Indian Housing, Education, Native languages, Workforce Investment, Magnuson-Stevens Act, and Welfare Reform are all up for reauthorization, and now is the time to make sure tribal priorities are included. NCAI and tribal leaders continue to work with the Administration on several issues, including taxation, land to trust, trust reform, land consolidation, veterans, law enforcement, health care implementation, and economic development.

Recognizing the impact the across-the-board federal budget cuts are having on Indian Country, the **Budget Update** is provided in a separate document. The Legislative Update begins on the next page. Tribal Tax is covered in a special section under “NCAI Initiatives.” Recently introduced bills supporting individual tribes are listed, as well as implementation updates on recently passed laws. All legislative bills and any accompanying reports may be found at <http://thomas.loc.gov>.

It has been an extraordinarily successful start to the 113th Congress, and there are many Members of Congress and the Administration who deserve our sincere thanks. The success comes with broad support from both Republicans and Democrats, emphasizing the importance of bi-partisan engagement. Most importantly, tribal leaders and advocates have worked together cooperatively to educate Congress and the Administration. Let’s keep up the good work together.

General Legislative Updates

CARCIERI "FIX"

In February of 2009, the Supreme Court issued its decision in *Carcieri v. Salazar*, which interpreted Section 19 of the Indian Reorganization Act (IRA). The Court held that the phrase "now under federal jurisdiction" within the definition of "Indian" limits the Secretary of Interior's ability to acquire land in trust to only those Indian tribes who were "under federal jurisdiction" in 1934. Indian tribes throughout the country have strongly disagreed with the opinion as contrary to longstanding interpretation by the Interior Department and because it creates uncertainty and risk of litigation for many tribes. NCAI has been working with a broad coalition of tribal leaders and tribal organizations to support the *Carcieri* "fix" and prevent chaos in a wide range of Indian land determinations. At the end of the 112th Congress another effort was made to bring the legislation to the Senate floor, but it fell short.

This session of Congress, the legislation is pending in the House of Representatives, where there are two different versions. H.R. 279 is sponsored by Representative Tom Cole, and H.R. 666 is sponsored by Representative Ed Markey. H.R. 666 now has 30 co-sponsors including both Republicans and Democrats. No legislation has yet been introduced in the Senate. NCAI encourages all tribes to maintain their strong efforts to gain co-sponsors and to pass land restoration legislation this year.

ELEMENTARY AND SECONDARY EDUCATION ACT (REAUTHORIZATION)

Recently, the U.S. Senate Committee on Health, Education, Labor, and Pensions held a two day mark-up on S. 1094 – Strengthening America's School Act of 2013 – and voted it favorably out of Committee along party lines. The bill incorporates a few Native education policy recommendations put forth by NCAI and other Native organizations; however, it includes neither language that would create more parity between tribes/tribal education agencies and state agencies, nor the access to the student data provision. NCAI is working with Congressional staff members to get additional tribal education priorities included in the bill during the amendment process on the Senate floor.

On the House side, NCAI is working with other Native organizations on amendments and changes to the Republican ESEA reauthorization bill, H.R. 5, the Student Success Act, introduced on June 6th, as well as with the House Democrats on their draft bill. Unfortunately, education is a politically divisive issue, and it could be difficult for both chambers to come to a consensus on final legislation.

TRUST REFORM LEGISLATION

New legislation to improve the trust management system is off to a good start this year with H.R. 409 (Simpson (R-ID)) & S. 165 (Crapo (R-ID)) – the Indian Trust Asset Reform Act. These bills reaffirm the federal government's fiduciary responsibilities to Indians and state that: (1) the most exacting common law fiduciary standards governing private trustees also govern the federal government when it manages Indian Trust Assets, and (2) those standards are not limited to the express terms of statutes and regulations.



The Indian Trust Asset Management Demonstration Project would direct the Secretary to establish an eight-year Indian trust asset management demonstration project that allows Indian tribes to propose, for the Secretary's approval, Indian trust asset management plans. The legislation also authorizes participating Indian tribes that contract or compact trust management functions or activities under the Indian Self-Determination and Education Assistance Act to develop and carry out trust asset management systems, practices, and procedures that differ from the Secretary's.

SELF-GOVERNANCE ACT AMENDMENTS

Last session, Congress considered legislation (H.R. 2444) to make comprehensive amendments to Title IV of the Indian Self-Determination and Education Assistance Act, governing self-governance agreements with the Bureau of Indian Affairs and other bureaus under the Department of the Interior. The purpose of the legislation is to enhance self-governance by, among other things, making the DOI self-governance program consistent with its Indian Health Service counterpart in Title V.

The House Natural Resources Committee held a hearing on H.R. 2444 in September of 2011. The legislation had the full support of the Administration. A few weeks before the end of the last session of Congress, a similar bill was introduced in the Senate. Unfortunately, because of issues regarding compacting for Bureau of Reclamation programs, both bills died at the end of the session.

On May 9, 2013, Senator Cantwell introduced S. 919, a new version of last session's H.R. 2444. Efforts are underway to seek introduction of a similar bill in the House and to pass this legislation this session.

MARKETPLACE FAIRNESS ACT

Congress is again giving serious consideration to legislation implementing the State Streamlined Sales and Use Tax Agreement. The legislation – S. 743, the Marketplace Fairness Act – will permit states to collect sales taxes on remote sales and streamline jurisdictional rules for all sales taxes in participating states. If this bill excluded tribal governments from the stream of revenue collected from remote sales taxes – even when the sales take place on reservation and the tribal government provides the roads, sewers, water, law enforcement and fire protection – it would significantly limit the ability of tribes to generate government revenue to provide services and needs to their citizens.

Fortunately, S. 743 recently passed the Senate and includes tribal governments within the definition of "State." However, the House has yet to act on its version of this bill, H.R. 684. The bill currently sits within the jurisdiction of the House Judiciary Committee because it involves state taxation affecting interstate commerce. It is important to note that Congress's Commerce Clause authority includes commerce "with the Indian tribes," and all tribes are urged to contact their representatives and make clear that any House version of this bill should take the Senate lead by including tribes under the definition of "State."



INDIAN ENERGY SELF-DETERMINATION

In April, Rep. Don Young (R-AK) introduced H.R. 1548, the Native American Energy Act, a bill similar to last year's legislation, with a heavy emphasis on non-renewable sources. At the end of last year the Senate Committee on Indian Affairs unanimously passed Senator Barrasso's Indian energy legislation. A new version for the 113th Congress is said to be forthcoming, which—if passed—would enhance the ability of tribes to control and develop energy resources. Additionally, S. 761, the Energy Savings and Industrial Competitiveness Act, passed in the Senate, and although it includes the NAHASDA definition of Tribes, it does not include tribes in actual funding.

Keystone Pipeline - NCAI continues to voice strong opposition to the Keystone Pipeline to the Administration and Congress, including tribal concerns over environmental impacts to water quality, sacred places, spill prevention control, and lack of consultation with Tribal governments.

Hydraulic Fracturing – The Department of Interior is proposing regulations to regulate hydraulic fracturing on federal public lands and tribal lands. NCAI is pushing for an exception for tribes that would allow them to opt out of federal regulations and use their own regulations so that tribal regulatory authority is maximized and regulatory duplication is avoided.

NCAI is taking the lead in development of an Indian renewable energy bill, with stakeholder/partner meetings to commence after our Mid-Year Conference. NCAI is also advocating for the reauthorization of the Department of Energy's Office of Indian Energy Policy and Programs, which is due to expire in 2016.

CLIMATE CHANGE

American Indian and Alaska Native communities remain vulnerable to climate change through drought, floods and negative impacts to our wildlife and lands. NCAI continues to advocate for legislation that addresses the impacts climate change is having in our communities. NCAI is collaborating with the Assembly of First Nations in Canada on an international climate change effort to identify and seek solutions to already impacted tribal areas of the northeast.

Senator Sanders (I-VT) introduced comprehensive legislation on climate change in the form of two legislative proposals, the Climate Protection Act (S. 332)—on which Senator Boxer (D-CA) has joined as a co-sponsor—and the Sustainability Energy Act (S. 329). Under this legislation, a fee on carbon pollution emissions would fund historic investments in energy efficiency and sustainable energy technologies such as wind, solar, geothermal, and biomass. The proposed legislations would also provide rebates to consumers to offset any efforts by oil, coal, or gas companies to raise prices.

H.R. 70, introduced by Representative Jackson Lee (D-TX), includes a coastal and ocean disaster grant program that would authorize commerce to make grants to coastal states and Indian tribes impacted by coastal or ocean disasters for the purpose of restoring, mitigating, monitoring, or otherwise managing coastal and ocean natural resources impacted by such disasters.

NATIVE AMERICAN PROGRAMS ACT (INCLUDING THE ESTHER MARTINEZ NATIVE AMERICAN LANGUAGE PRESERVATION ACT)

The Native American Programs Act, a law that authorizes the Administration for Native Americans and includes the Esther Martinez Native American Languages Preservation Act, is up for reauthorization. Thus far, Congressman Lujan's (D-NM) bill reauthorizing the Esther Martinez Initiative, H.R. 726, is the only reauthorizing vehicle that has been introduced in this Congress. NCAI and our partners continue to work with Congress to reauthorize both the Esther Martinez Act, as well as the larger Native American Programs Act.

WORKFORCE INVESTMENT ACT (REAUTHORIZATION)

The Workforce Investment Act (WIA) of 1998 includes a Native American Program that supports unemployed, under-employed, and under-skilled American Indians, Alaska Natives, and Native Hawaiians, through a network of 175 grantees. Representative Virginia Foxx (R-NC) introduced the *Supporting Knowledge and Investing in Lifelong Skills (SKILLS) Act*, H.R. 803, which passed the House of Representatives on March 15, 2013. The Act would consolidate 35 programs and create a Workforce Investment Fund to serve as a single source of support for employers, workers, and job seekers. The consolidation would eliminate the Native American Program, but reserve 1% of funding as a tribal set-aside. However, this would eliminate other critical functions established within the Native American Program, such as:

- Language to ensure direct distribution of tribal funds from the Department of Labor
- Consolidation of WIA funds under PL 102-477
- The Native American Employment and Training Council

On the Senate side, Senator Patty Murray (D-WA) and Senator Johnny Isakson (R-GA) are leading bi-partisan WIA efforts and hope to release a bill late June or early July. NCAI is working closely with Congress and other stakeholders to ensure that WIA continues to provide essential opportunities for Native people to develop the skills necessary for job entry, reentry, advancement, and security.

FARM BILL (REAUTHORIZATION)

The U.S. Senate passed its Farm Bill, S. 954 – Agriculture Reform, Food, and Jobs Act of 2013, on June 10, 2013 by a vote of 66-27. The bill includes: a feasibility study for Indian tribes to administer federal food assistance programs; authorization for tribes who administer food distribution programs to use five percent of the program funds for traditional and locally-grown food from Native producers; tribes as eligible entities for conservation programs; and a rural gigabit pilot program. The bill also includes a \$400 million annual cut to the Supplemental Nutrition Assistant Program (SNAP).

The U.S. House Committee on Agriculture has reported its Farm Bill, H.R. 1947, the Federal Agriculture Reform and Risk Management Act of 2013, out of committee. The bill does not include any tribal provisions and cuts SNAP by \$2 billion dollars annually. The House is expected to take its bill to the floor later this summer.

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT

The authorization of the Native American Housing Assistance and Self-Determination Act of 2008 (NAHASDA) is set to expire on September 30, 2013. NAHASDA authorizes and administers Indian housing programs within the U.S. Department of Housing and Urban Development for American Indian and Alaskan Natives to provide safe and decent housing. The 113th Congress is currently drafting and considering a NAHASDA reauthorization.

In April 2013, the Senate Committee on Indian Affairs held an oversight hearing on “Identifying Barriers to Indian Housing Development and Finding Solutions.” The purpose of the oversight hearing was to gather information to assist the Committee on Indian Affairs in drafting the NAHASDA reauthorization, which is expected to be released very soon. The House Committee on Financial Services—the committee with primary jurisdiction—has not scheduled a hearing for the NAHASDA reauthorization, but its counterpart in the House, the House Financial Services Committee, is expected to release a discussion draft of the legislation before the end of June.

During last year’s NCAI Annual Conference, the membership approved resolution # SAC-12-031, to create an “NCAI Task Force on NAHASDA Reauthorization.” Joe Garcia, Head Councilman of Ohkay Owingeh Pueblo and NCAI Southwest Area Vice President and David Sanborn, Executive Director, National American Indian Housing Council co-chair the Task Force and have been working with tribal leaders and tribal housing programs to advocate inclusion of tribal housing policy priorities in the NAHASDA reauthorization.

WELFARE REFORM (REAUTHORIZATION)

The Temporary Assistance for Needy Families (TANF) is a federal block grant program designed to help needy families achieve self-sufficiency. Currently, there are 68 tribal TANF grantees serving nearly 300 American Indian and Alaska Native tribes. TANF was originally scheduled for reauthorization in 2010, but Congress has issued several extensions to maintain current funding levels. Most recently, the Continuing Appropriations Act for fiscal year 2013 extended funding for the block grant program through the end of September 2013.

In partnership with tribal leaders and program representatives, NCAI established a TANF Task Force to develop national tribal priorities for the TANF reauthorization. On June 18, 2013, the House of Representatives Subcommittee on Human Resources of the Committee on Ways and Means held the first of a three-part hearing series to discuss ways to reform the welfare system. NCAI and its TANF Task Force are closely monitoring this issue as we advocate for and advance the national tribal TANF priorities.

MAGNUSON-STEVENS ACT (REAUTHORIZATION)

The Magnuson-Stevens Fishery Conservation and Management Act is the primary statute governing fishing activities in Federal waters and the Act expires at the end of Fiscal Year 2013. The House Committee on Natural Resources held an Oversight Hearing on the reauthorization on March 13, 2013. This hearing was the first in a series that the Committee will hold this summer. While additional hearings have not been finalized, Senator Mark Begich (D-AK) plans to hold a series of roundtables focusing on commercial, sport, and subsistence user/tribal concerns.

ONLINE GAMING

On June 6, 2013, Rep. Peter King (R-NY) introduced H.R. 2282, the Internet Gambling Regulation, Enforcement, and Consumer Protection Act of 2013. The legislation would permit both states and tribes to license internet gaming regulated by the Department of Treasury. The legislation has no co-sponsors and is not viewed as likely to become law. Other bills on the subject may be introduced in this Congress. There has been more activity in the states. The federal government cracked down on online poker in 2011, but the same year, the U.S. Justice Department issued a ruling making online gambling legal so long as it's permitted on the state level. Nevada, New Jersey, and Delaware have legalized some types of online gambling, and legislatures in other states are weighing the issue. NCAI will continue to monitor this issue moving forward.

IMMIGRATION

The bipartisan effort to craft effective and comprehensive immigration reform has resulted in a Senate bill, The Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), that addresses issues which affect all segments of American society, including tribal nations. A few overarching themes directly impact tribal communities, including an effort to secure U.S. international borders, with specific emphasis on securing the southwest border. Under S. 744, \$6.5 billion would be dedicated to southwest border security for the next ten years. Another key element is an employment verification system in which all employers will eventually be required to participate. The new system will be developed by the Department of Homeland Security (DHS). Employers will be able to accept only DHS-approved documentation, such as enhanced driver's licenses or tribal IDs, to verify the work-authorization status of employee applicants. The House of Representatives has also been working to address immigration reform in a number proposed bills. NCAI will continue to work in a bi-partisan manner with members in both chambers of Congress to advocate for tribal inclusion in any comprehensive immigration bill.

GUN VIOLENCE

The recent tragedies in Newton, Connecticut and Aurora, Colorado have prompted legislation on how to reduce gun violence in the United States. Senator Diane Feinstein's "Assault Weapons Ban of 2013"—which would have prohibited the sale, manufacture, transfer, or importation of semiautomatic rifles, handguns, and shotguns that hold more than ten rounds of ammunition—was recently voted down. Also voted down on the Senate floor was the Manchin-Toomey Amendment, which would have required background checks for transfers of firearms at gun shows and over the internet.

Gun legislation may return in the 113th Congress. NCAI will continue to promote amendments to include tribal governments where appropriate. Tribal governments have law enforcement, schools, and mental health services that will likely be affected by any new laws regarding gun control.

TRIBAL SPECIFIC BILLS

The following legislation was introduced before the Executive Council Winter Session and NCAI has been tracking its movement through Congress:

- S. 161 (Tester (D-MT)) – Little Shell Tribe of Chippewa Indians Restoration Act of 2013. **Latest Major Action:** 1/28/2013 Referred to Senate committee. Status: Read twice and referred to the Committee on Indian Affairs.
- S. 27 (Hatch (R-UT)) – Hill Creek Cultural Preservation and Energy Development Act: Authorizes Utah to relinquish for the benefit of the Ute Indian Tribe certain school trust or subsurface mineral lands in exchange for certain federal subsurface mineral lands. **Latest Major Action:** 5/16/2013 Senate committee/subcommittee actions. Status: Committee on Energy and Natural Resources. Ordered to be reported without amendment favorably.
- H.R. 507 (Grijalva (D-AZ)) – Pascua Yaqui Tribe Trust Land Act: A bill to provide for the conveyance of certain land inholdings owned by the United States to the Pascua Yaqui Tribe of Arizona, and for other purposes. **Latest Major Action:** 5/7/2013 Referred to Senate committee. Status: Received in the Senate and Read twice and referred to the Committee on Energy and Natural Resources.
- H.R. 323 (Miller, J (R-FL)) – Muscogee Nation of Florida Federal Recognition Act: To extend Federal recognition to the Muscogee Nation of Florida. **Latest Major Action:** 1/31/2013 Referred to House subcommittee. Status: Referred to the Subcommittee Indian and Alaska Native Affairs.
- H.R. 49 (Young (R-AK)) American Energy Independence and Price Reduction Act: A bill to direct the secretary of the Interior to establish and implement a competitive oil and gas leasing program that will result in an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain of Alaska. **Latest Major Action:** 2/4/2013 Referred to House subcommittee. Status: Referred to the Subcommittee on Energy.
- S. 199 (Begich (D-AK)) – Alaska Adjacent Zone Safe Oil Transport and Revenue Sharing Act: To amend the Outer Continental Shelf Lands Act to require that oil produced from Federal leases in certain Arctic waters be transported by pipeline to onshore facilities and to provide for the sharing of certain outer Continental Shelf revenues from areas in the Alaska Adjacent Zone. **Latest Major Action:** 1/31/2013 Referred to Senate committee. Status: Read twice and referred to the Committee on Energy and Natural Resources.

Implementation Updates

VIOLENCE AGAINST WOMEN ACT 2013: TRIBAL COURTS GAIN JURISDICTION OVER ALL DOMESTIC VIOLENCE OFFENDERS

After a historic vote, President Obama signed the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) into law on March 7. The legislation marks a significant victory for Indian tribes and for the NCAI Task Force on Violence Against Women.

There are three major tribal provisions in Title IX of VAWA 2013. First, the legislation reaffirmed tribal inherent jurisdiction over all domestic and dating violence offenders within Indian country. Tribes must protect due process rights including the right to counsel. Second, the bill clarifies and reasserts tribal jurisdiction to issue protective orders to protect Native women in Indian country. Third, the bill amends the federal assault statute to provide federal prosecutors with additional tools to prosecute VAWA-related crimes that occur on tribal lands.

Attention is now focused on implementation of the new law. The Department of Justice's published its proposed procedures for the VAWA Tribal Pilot Project (<http://federalregister.gov/a/2013-14158>) on June 14, 2013. The DOJ also posted Frequently Asked Questions (<http://www.justice.gov/tribal/docs/wava-tribal-pilot-project-faqs.pdf>), which summarizes the Notice. To participate in the VAWA Tribal Pilot Project, there is a deadline of July 15, 2013, to submit a preliminary expression of interest, although participants may join at a later date.

EMERGENCY RESPONSE – TRIBAL AMENDMENTS TO THE STAFFORD ACT

The Sandy Recovery Improvement Act of 2013 became law on January 29, 2013, and it amended the Stafford Act to allow federally recognized tribal governments to apply directly to the President for a Federal emergency or major disaster declaration and for direct Federal assistance. Tribes also remain eligible to seek assistance through requests made by the states. On March 1st, 2013, the President implemented the new law for the first time, declaring a major disaster for the Eastern Band of Cherokee Indians. The President ordered Federal aid to supplement the Tribe's efforts in the area affected by severe storms, flooding, landslides, and mudslides during the period of January 14-17, 2013.

To implement the amendment, FEMA issued a Federal Register notice on March 8, 2013 soliciting public comments on how it should adapt its existing requirements in order to make them appropriate to tribes. Comments were due April 22, 2013, and NCAI submitted comments. FEMA also announced that it will ease its way into this new relationship with tribes by initiating a pilot program, but it did not set out the scope of the pilot program or indicate how it will choose participating tribes.

HEARTH ACT

The Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act became law on July 31, 2012. The Act authorizes surface leasing of tribal lands without approval from the Secretary of the Interior. Instead, tribal leases can be approved by the tribe under tribal leasing regulations. The new law will enable tribes to move more quickly on leasing and economic

development, while maintaining the Secretary's trust responsibility to oversee trust lands. The BIA has already approved several tribal leasing codes.

Tribal leasing codes under the HEARTH Act must be consistent with the BIA's recently updated leasing regulations, 25 C.F.R. 162. The BIA has also published a National Policy Memorandum containing a list of criteria that should be considered. Key requirements include leasing code development and an environmental review process. The HEARTH Act is essentially an expansion of the Navajo Leasing Act. NCAI conducted a webinar in March that featured an attorney from Navajo Nation who discussed Navajo's leasing-code development and implementation process over the past ten years. A recording of the webinar can be viewed at: <http://www.youtube.com/watch?v=CHI5BHyLrWI&feature=youtu.be>.

HEALTH CARE IMPLEMENTATION

Implementation of the Patient Protection and Affordable Care Act (ACA) and Indian Health Care Improvement Act (IHCA) is pressing forward with the insurance marketplace launch and Medicaid Expansion. Though regulations have slowed, there are still a few pending regulations particular to employers that NCAI is following closely to ensure that tribes understand their responsibilities as employers.

In addition to implementation, NCAI continues its outreach and education work to provide regional training and consumer information for tribal governments and enterprises and Indian-owned small businesses. NCAI, in partnership with the National Indian Health Board, will host a number of regional trainings to help prepare tribal communities for open insurance enrollment, to develop individual consumer information, and to provide specialized cost benefit analysis modules. For more information and future updates about Health Care Implementation, please visit www.tribalhealthcare.org.

NCAI is also working closely with national partners, technical advisors, and Congress to pass a technical fix that streamlines the definition of Indian for purposes of the insurance marketplaces. We recognize this is a critical fix that must happen before October 1, 2013, and are working diligently to find a solution that works for tribes.

KEEPSEAGLE SETTLEMENT

The *Keepseagle* case with the U.S. Department of Agriculture for discrimination in the USDA Farm Loan Program was settled on December 27, 2011 for \$760 million. Payments were made in August and September 2012 to 3,600 claimants with those in Track A receiving \$50,000 and those in Track B receiving \$250,000. The settlement also includes payment of the taxes on settlement proceeds and payment/reduction of outstanding debt.

The Extension Risk Management Education (RME) staff stepped forward to volunteer coordination and execution of a webinar and a series of tax education clinics that took place during the recent tax season for successful Keepseagle claimants. Class counsel and the claims administrator continue to work with claimants and the Internal Revenue Service to conclude any remaining tax issues.

The final action is the disposition of the \$375 million remaining of the original \$760 million settlement after all payments to successful claimants. After consultation with their clients and Native organizations, class counsel has submitted proposals to the U.S. Departments of Agriculture (USDA) and Justice (DOJ) to establish with the \$375 million an independent foundation that would serve Native American farmers and ranchers. Negotiations for this modification of the original settlement with USDA and DOJ are ongoing.

COBELL SETTLEMENT

The *Cobell v. Salazar* case was settled on December 7, 2009. President Obama signed the legislation and approved the settlement on December 8, 2010. The settlement moved forward in November 2012 after all appeals were exhausted, and payments to individual beneficiaries were approved to go forward in December 2012. The settlement was for \$3.4 billion, approximately \$1.5 billion of which was to pay individual Indian trust beneficiaries for past accounting problems and resolve historical asset mismanagement claims. Another \$1.9 billion will be used primarily to buy up interests in trust lands that are owned by many people (“fractionated interests”), called the Land Buy-Back program.

The payment of the \$1.5 billion to individuals is in two stages: the Historic Accounting Class (HAC) and the Trust Administration Class (TAC). Checks for the HAC in the amount of \$1,000 were distributed to individuals across the country that were determined by the Garden City Group (GCG), the Claims Administrator for the Cobell Settlement, to be alive on September 30, 2009, and had an open and active Individual Indian Money (IIM) account during any period between October 25, 1994 and September 30, 2009. As of the end of May 2013, payments have been made to more than 90 percent of those eligible, with 38,000 remaining estate cases and an estimated 50 percent (or 20,000) remaining on the Whereabouts Unknown list. Special efforts are being conducted to continue to settle the estates and locate individuals whose whereabouts are unknown.

Eligibility for the Trust Administration Class has been determined. The deadline for filing a claim for the TAC was March 1, 2013, and determination letters were sent on May 1, 2013 to more than 375,000 individuals. If individuals already received a payment under the Historical Accounting Class they did not need to file again for the TAC. Payments for the TAC, expected this fall, will be a base amount of \$800, with some class members receiving additional depending on account activity.

The federal judge handling the historic Cobell settlement appointed a special master on December 19, 2012 to oversee distribution of the \$1.5 billion to individual Indian trust beneficiaries. Judge Thomas F. Hogan’s order sets forth specific issues to be determined by the Honorable Richard A. Levie (Ret.) as the Special Master. One of Judge Levie’s principal responsibilities will be to resolve disputes over the eligibility for participation by claimants in the Trust Administration Class distributions.

LAND BUY-BACK PROGRAM

The Cobell settlement provides for a \$1.9 billion Trust Land Consolidation Fund and charges the Department of the Interior with the responsibility to expend the Fund within a 10-year period to

acquire fractional interests in trust or restricted fee land that individuals are willing to sell. Those interests will be transferred to the tribal government with jurisdiction over the land. The Land Buy-Back Program has been established by the Department of Interior to implement this aspect of the Settlement. The overall goal of the Land Buy-Back Program is to reduce the number of those fractional interests through voluntary land purchases, which will produce more consolidated tribal trust land bases.

The Department has prepared an Initial Implementation Plan for the Land Buy-Back Program based on preliminary planning and tribal consultation. The Department expects to continually update its plans to reflect tribal feedback, lessons learned, and best practices. Tribal consultation sessions on the Plan and Land Buy-Back Program were held in early 2013 in Minneapolis, Rapid City, and Seattle. Key issues at the consultations included the urgency to get the program started, cooperative agreements with tribal governments for participation in the program, the status of permanent improvements, concerns about the ability to conduct appraisals in a timely way, and land title processing.

TRIBAL LAW & ORDER ACT (TLOA) IMPLEMENTATION

This summer will be the three-year anniversary of enactment of the Tribal Law & Order Act. A few recent implementation activities are highlighted below.

It is very important to note that the TLOA extended sentencing provisions were the precursor to the VAWA jurisdictional expansion over non-Indian domestic violence offenders. A number of tribes have implemented extended sentencing authority, and two tribes (Umatilla and Eastern Band of Cherokee) have already sentenced defendants to federal prison under the Bureau of Prisons pilot project. In the near future, tribal justice systems will likely proceed with extended sentencing and VAWA implementation in tandem. NCAI will be working to help share information among all tribes interested in implementation.

On June 1, 2013, the first assumption of concurrent Federal jurisdiction under TLOA became effective on the 1,300 square mile White Earth Reservation in northern Minnesota. The Department of Justice published its final rule on December 6, 2011, on Assumption of Concurrent Federal Jurisdiction on PL280 Reservations under the TLOA. The rule establishes the procedures for an Indian tribe whose Indian country is subject to State criminal jurisdiction under Public Law 280 (18 U.S.C. 1162(a)) to request that the United States accept concurrent criminal jurisdiction within the tribe's Indian country, and for the Attorney General to decide whether to consent to such a request.

The Department of Justice released a report to Congress entitled *Indian Country Investigations and Prosecutions* which provides a range of enforcement statistics required under the Tribal Law and Order Act of 2010. The report, based on data compiled from the case management system used by U.S. Attorney's Offices (USAO) with Indian Country jurisdiction shows among other things a 54 percent increase in Indian Country criminal prosecutions since Fiscal Year 2009. The entire report is located at www.justice.gov/tribal/tloa-report-cy-2011-2012.pdf.

For more information and updates about TLOA implementation, we urge you to sign up for our listserv on the Tribal Law & Order Resource Center website at <http://www.ncai.org/tloa>. This website, created as part of the Tribal-State Collaboration and Justice Capacity Building Project, is an interactive website, the aim of which is to disseminate information about tribal justice, track implementation of TLOA, post upcoming events, and create a network of key criminal justice stakeholders.

NCAI Initiatives

THE 2014 WORLD CONFERENCE ON INDIGENOUS PEOPLES

NCAI's international work of late has focused on providing technical assistance and education for tribal leadership interested in engaging in international indigenous discussions within the United Nations. This work has been guided by the upcoming World Conference on Indigenous Peoples, a high-level plenary meeting scheduled to occur in 2014, where members of the UN will meet and discuss outcome recommendations on how to implement the UN Declaration on the Rights of Indigenous Peoples.

In late May, NCAI, with the support of more than 70 Indian tribes, as well as a broad representation of indigenous organizations, submitted a joint statement to the Permanent Forum on Indigenous Issues recommending three items:

- 1) that a new monitoring body be incorporated within the UN to help guide implementation of the Declaration by members states of the UN;
- 2) that the UN take action to address the issue of violence against Indigenous women, including convening a high-level conference to discuss this matter, ensuring any monitoring mechanism of the Declaration pay particular attention to Article 22, and to appoint a Special Rapporteur with a specific focus on violence against Indigenous women and children; and
- 3) that action be taken to given constitutional and customary governments of Indigenous Peoples a dignified, permanent status within the UN which acknowledges their sovereign rights as self-governing nations.

TRIBAL WATER RIGHTS WORKGROUP

NCAI maintains a close working relationship with an ad hoc Indian water rights settlement group, which is made up of individuals representing the Native American Rights Fund, the Western Governors Association, and the Western States Water Council. Shortly after the 113th Session of Congress convened, NCAI joined this group for meetings on Capitol Hill to discuss the need for the federal government to ensure funding is available for Indian tribes to quantify their water rights through the Congressional settlement process.

Even during the current budget climate, it is important for tribes to tell Congress that the right to water is a fundamental need for Indian tribes, and that as first stewards of this land, tribal rights to water relate back to—at a minimum—the establishment of the reservation, often superseding the water rights of neighboring non-Indian communities.. This makes the settlement process even



more crucial because water rights left unsettled lead to uncertainty for all, and often costly and time-consuming litigation.

Also, NCAI continues to reach out and work with technical experts and tribal water resource managers and policy advocates to help engage its members in discussions on best practices for developing tribal water codes. In doing so, we have hosted several webinars and outreach meetings on the importance of quantifying water and the importance of developing sound water management tools within the regulatory jurisdiction of the Indian tribe.

TRUST REFORM

The Secretary of Interior has established a Trust Reform Commission chaired by President Fawn Sharp of the Quinault Nation and including Chairman Tex Hall of the Mandan, Arikara & Hidatsa Nation. The Commission is working to improve the trust system for the future. NCAI has engaged the Commission on this issue and is promoting seven areas of reform.

- 1) Reintegrating the BIA Office of Special Trustee functions under the high level guidance of a Deputy Secretary for Indian Affairs, who would also oversee trust functions in other divisions of Interior such as BLM.
- 2) Creating a separate oversight/audit function.
- 3) Focusing resources at the reservation level on support of tribal resource management.
- 4) Creating a self-determination mechanism to increase tribal control over tribal lands and funds, while maintaining federal trust oversight.
- 5) Including a tribal planning process within the self-determination mechanism, which would benefit self-governance and direct service tribes, as well as economic development in Indian country.
- 6) Streamlining processes and regulations to expedite transactions—particularly appraisals and title, two significant bottlenecks in the trust process.
- 7) Addressing fractionation of individual Indian land title, not only through the Buy-Back program, but also through a targeted estate planning program.

TAX INITIATIVE

NCAI's tribal tax policy strives for national partnerships and broad engagement with tribal leaders and tax policy experts. In doing so, NCAI has reached out at national meetings, through its broadcast system, and through hosting a series of extensive webinars on key tax issues affecting Indian tribes, to develop strong tribal tax priorities that reflect the diverse needs of tribes.

More recently, NCAI has worked in collaboration with intertribal organizations, which include the Affiliated Tribes of Northwest Indians, the California Association of Tribal Governments, the Midwest Alliance of Sovereign Tribes, the United South and Eastern Tribes, the United Indian Nations of Oklahoma, Texas, and Kansas, as well as the Native American Finance Officers Association, to develop joint comments to the IRS and Treasury to address the tax implications of tribal government programs. Also, NCAI is currently in the midst of gathering key legislative tax priorities to present to Congress on behalf of Indian tribes. Our current tax priorities focus on achieving government fairness in tribal tax law, and findings incentives to create businesses and jobs on the reservation. We encourage all tribes to participate in these discussions, and we look



forward to continuing our work advocating for stronger tribal nations' regulatory tax authority and tax status.

TELECOMMUNICATIONS

NCAI filed comments and reply comments with Native Public Media (NPM) in response to a Federal Communications Commission (FCC) Public Notice for comments on the Tribal Mobility Fund Phase 1 Auction scheduled for October 24, 2013. The Tribal Mobility Fund (TMF) auction will disburse \$50 million in direct support to carriers that commit to serving tribal lands. Communications carriers receiving TMF funds will be required to provide 3G mobile voice and broadband services on unserved tribal lands.

NCAI and NPM raised the following issues regarding the structure of the TMF:

- **Lack of Tribal Nation Access to Spectrum:** Many non-tribal communications carriers hold spectrum licenses over tribal lands.
- **Issues with Tribal Nations' Access to Capital:** FCC has put forth a proposal to require TMF bidders to provide an irrevocable letter of credit. NCAI and NPM noted that the proposal fails to recognize tribal lands are usually the principle assets of tribal nations and, because these lands are held in trust by the federal government, they cannot be pledged as collateral. The joint comments recommended the FCC waive the letter of credit requirement for tribally-owned or controlled entities.
- **Issues with Quality of Service:** The comments recommended that the FCC adopt performance standards to require bidders receiving TMF funds to repay TMF funds if they fail to deliver 3G or better services. This recommendation was made with the understanding that non-tribal communications providers that have received funds to build out onto tribal lands have historically failed to do so at appropriate service levels.
- **Issues with Perceived Lack of Tribal Engagement Before Auction 902 Commences:** One of the TMF proposals required a winning bidder to notify relevant tribal governments in a service area within five days after being identified as a winning bidder. NCAI and NPM stated the proposed notification was too late in the process and instead recommended that—as part of the application to bid for TMF funds—applicants should have to certify they have applied for registration to conduct business on the tribal lands they intend to serve.

For a complete copy of the NCAI/NPM comments, contact NCAI Legislative Associate Brian Howard at bhoward@ncai.org.

If you have questions regarding this update, please contact NCAI Legal Staff: General Counsel John Dossett, jdossett@ncai.org; or Staff Attorneys Derrick Beetso, dbeesto@ncai.org, and Natasha Anderson, nanderson@ncai.org.



