

REPAIRING THE TRUMP ADMINISTRATION'S DAMAGE TO U.S. INDIGENOUS COMMUNITIES & CHARTING A BETTER WAY FORWARD



HOUSE COMMITTEE ON NATURAL RESOURCES STAFF REPORT, DECEMBER 17, 2020

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The Democratic majority of the House Committee on Natural Resources presents this report on the health, economic and political status of Indigenous Peoples in the United States after four years of the Trump administration. The report lays out the injustices perpetrated by this administration and suggests a range of options – from legislation to executive action to bureaucratic reorganization – to respond to the legitimate needs of Indigenous communities.

A HISTORY OF RACISM

In the 103rd Congress, Donald J. Trump predicted before the Natural Resources Subcommittee on Native American Affairs¹ that tribes would be likely to see a major rise in organized crime if allowed to expand their economies to include gambling. He claimed that he had a list of criminals likely to take advantage of such a move, but refused to provide the list to the Committee.



Perhaps revealing his underlying motives, he complained at the time, “Only Indians can have gaming. Why can’t you approve it for everybody?” Mr. Trump told Committee members that many Native Americans “don’t look like Indians to me,”² invoking the racist tropes that would come to define his public persona and his presidency.

Mr. Trump’s testimony was not entirely well received by the Committee. During a debate on Mr. Trump’s remarks on tribes, former Committee Chairman George Miller (D-Calif.) said “I have a closed mind against evidence that is not substantiated. I have a closed mind against statements that are made about other people in generality.”



I HAVE A CLOSED MIND AGAINST EVIDENCE THAT IS NOT SUBSTANTIATED. I HAVE A CLOSED MIND AGAINST STATEMENTS THAT ARE MADE ABOUT OTHER PEOPLE IN GENERALITY.

FORMER NATURAL RESOURCES COMMITTEE CHAIRMAN GEORGE MILLER

Normalizing Racial Slurs



In November of 2017, President Trump invited Navajo Code Talkers to the White House to honor them while standing beneath the official portrait of Andrew Jackson, whose infamous legacy includes the forced removal of Native communities along the Trail of Tears. Rather than focusing on the Navajo Code Talkers' heroic efforts, Trump used the event as an opportunity to complain about Sen.

Elizabeth Warren (D-Mass.) and call her “Pocahontas”³ – a step he often took regardless of the tribal affiliation of whoever he was speaking with.

Promoting a Colonial History



PROCLAMATIONS

Proclamation on Columbus Day, 2020

Issued on: October 9, 2020



This year, President Trump marked Columbus Day with a presidential proclamation⁴ embracing an inaccurate version of American history that intentionally dismisses Indigenous Peoples, who have lived on these lands since time immemorial. In this, the president was only following this administration's longstanding tradition of actively erasing Indigenous history. The proclamation went as far as to complain, “Sadly, in recent years, radical activists have sought to undermine Christopher Columbus' legacy. These extremists seek to replace discussion of his vast contributions with talk of failings, his discoveries with atrocities, and his achievements with transgressions.” This country's history does not begin with Christopher Columbus any more than it ends with Donald Trump. Despite the president's efforts, and thanks to generations of work by Indigenous advocates, much of American society is secure, inclusive, diverse and mature enough to appreciate Indigenous narratives as a crucial part of our shared history. The president's proclamation was a typical Trump administration attempt to protect an untenable and already out-of-date version of American history.

THE DESECRATION & DESTRUCTION OF SACRED SITES

Bears Ears National Monument



Before his first year in office had ended, President Trump eliminated federal protections for the vast majority of Bears Ears National Monument in Utah, opening previously conserved federal lands to potential mining and drilling claims.

The land protected by the originally designated Bears Ears National Monument is considered sacred to the Hopi, Pueblo of Zuni, Ute Indian Tribe, Navajo Nation, and Ute Mountain Ute Tribe. The region includes petroglyphs, ancient villages, cultural resources, and traditional landmarks and is widely regarded as a historically important area worthy of federal protection.

In his first year as Chair of the House Committee on Natural Resources, Chair Raúl M. Grijalva (D-Ariz.) held an oversight hearing⁵ on the fate of Bears Ears, inviting tribal leaders to share their concerns about destructive industry encroachment on sacred lands. The Committee recommends that the incoming administration give tribal leaders a seat at the table when considering the future of national monuments that hold cultural significance, especially when they hold such importance for multiple tribes.



Arctic National Wildlife Refuge (ANWR)



In the 115th Congress, Republicans⁶ passed a law – largely built around cutting taxes for high-income Americans – that mandated the establishment of a federal oil and gas leasing program for the coastal plains of Alaska’s Arctic National Wildlife Refuge (ANWR). Industry development in this area threatens the migration patterns of the Porcupine caribou herd and

endangers the “Izhik Gwats’an Gwandaii Goodlit,”⁷ or the sacred place where life begins for the Gwich’in Nation.

In 2019, Chair Grijalva held a Committee hearing entitled “The Need to Protect the Arctic National Wildlife Refuge Coastal Plain,”⁸ and with bipartisan support, House Democrats passed H.R. 1146 – the Arctic Cultural and Coastal Plain Protection Act⁹ – which would repeal the Republican-authored law mandating oil and gas leasing in the Refuge. Due to stonewalling by the current Senate Republican majority, that bill has not yet become law, and the Trump administration is rushing to lease the entire area to oil and gas companies before the incoming Biden administration can impact the outcome.¹⁰ The Committee strongly urges the Biden administration to protect this sacred site.



Chaco Cultural Heritage Area

Just a few months after taking the House majority, Committee Democrats visited New Mexico's Chaco Culture National Historic Park.¹¹ For thousands of years, the Pueblo people have used this area as a vital part of their prayer, and the area is now threatened by fossil fuel development.¹² The Trump administration, however, has shown little interest in the region's cultural importance. More than a year after the Democrats' visit,



during the onset of the COVID-19 pandemic, the Department of the Interior's Bureau of Land Management announced¹³ that despite the extraordinary difficulties faced by tribal members looking to participate in the public comment period on whether to open this sacred site to oil and gas extraction, the agency would not extend the comment period and the process would be closed according to the original timetable regardless of coronavirus impacts in the region. In July of 2019, the Committee¹⁴ passed H.R. 2181 – the Chaco Cultural Heritage Area Protection Act¹⁵ – and the full House approved the measure in October of 2019. As with many other timely and important measures, this bill has sat in the Senate ever since.



Protect Oak Flat



In 2014, House Republicans passed a measure known as the Southeastern Arizona Land Exchange as section 3003 of the fiscal year 2015 National Defense Authorization Act.¹⁶ This exchange authorized the federal transfer of a parcel of public land in Arizona’s Tonto National Forest, known as “Oak Flat Federal Parcel,” to Resolution Copper Mining, LLC, in exchange for land of supposedly (but not actually) equal value. After federal agencies have produced the

required environmental impact statement (EIS), the parcel will be open to mining – regardless of the EIS’ findings. Several regional tribes consider the area sacred land¹⁷ and conduct ceremonies and gather traditional medicines and food in the mine’s likely impact zone. Resolution Copper’s international mining enterprise will permanently destroy the area’s Emory oak groves, sacred springs, and ancestral burial grounds, in direct violation of the now widely accepted global mining processes meant to protect Indigenous Peoples.¹⁸

In March of 2020, the Committee’s Subcommittee for Indigenous Peoples of the United States held a hearing titled “The Irreparable Environmental and Cultural Impacts of the Proposed Resolution Copper Mining Operation.”¹⁹ During the hearing, Naelyn Pike, a youth organizer from the Apache Stronghold, asked Subcommittee members, “How can we practice our ceremonies at Oak Flat when it is destroyed? How will the future apache girls and boys know what it is to be Apache, to know our home when it is gone.”



HOW CAN WE PRACTICE OUR CEREMONIES AT OAK FLAT WHEN IT IS DESTROYED? HOW WILL THE FUTURE APACHE GIRLS AND BOYS KNOW WHAT IT IS TO BE APACHE, TO KNOW OUR HOME WHEN IT IS GONE.

NAELYN PIKE, YOUTH ORGANIZER
FROM THE APACHE STRONGHOLD

The Committee recommends the Biden-Harris administration closely review the final EIS that would allow Resolution Copper Mining, LLC, to mine this sacred site.

Protect The Grand Canyon



In 2010, as Chair of the National Parks, Forests, and Public Lands, Rep. Grijalva held a field hearing in Grand Canyon National Park²⁰ and led efforts to encourage the Obama administration to place a 20-year moratorium on new uranium mining claims on approximately 1 million acres of public lands north and south of the park boundaries. Despite broad opposition from regional

tribal communities, the Trump administration looked for ways to undermine existing protections and incentivize the uranium mining industry in the Grand Canyon region and elsewhere.

Withdrawing the moratorium would jeopardize the Colorado River watershed, which supplies drinking water for 40 million people, and the many sacred sites and ecologically sensitive areas in the region. The health impacts of unsafe uranium mining have already taken a heavy toll on the Navajo Nation – a “generational cycle” that must end. In 2019, Chair Grijalva visited the Navajo Nation to hear directly from former uranium miners and their families.²¹ Following his visit, the House of Representatives passed Chair Grijalva’s Grand Canyon Centennial Protection Act, a bill supported by local tribes that permanently protects the 1 million acres north and south of Grand Canyon National Park from new mineral extraction activities currently covered by the temporary moratorium.²² The Committee recommends the Biden-Harris administration protect the Grand Canyon by preventing further uranium mining extraction and supporting long overdue cleanup efforts.



Building a Racist Border Wall



PROCLAMATIONS

Presidential Proclamation on Declaring a National Emergency Concerning the Southern Border of the United States

— NATIONAL SECURITY & DEFENSE | Issued on: February 15, 2019



As a candidate, President Trump made building a wall along the United States-Mexico border a central promise of his campaign. In the first few months of his presidency, the White House declared a national emergency along the southern border²³ and diverted funds from Pentagon construction projects to rapidly develop a border wall.²⁴ Although a federal judge found this violated federal law,²⁵ the Trump administration moved forward with border wall construction, waiving numerous environmental protection laws²⁶ and inflicting severe damage in Arizona's Organ Pipe Cactus National Monument, which has long been recognized as a United Nations Educational, Scientific and Cultural Organization biosphere reserve.

Based on widespread concerns about the possible extent of this destruction, Chair Grijalva sent a letter²⁷ to Acting Secretary Chad Wolf at the Department of Homeland Security (DHS) urging DHS to conduct meaningful government to government consultation with the Tohono O’odham Nation, given the wall’s proximity to cultural and sacred sites along the border.



In January of 2020, Chair Grijalva visited Organ Pipe at the request of Tohono O’odham Nation Chairman Ned Norris, Jr., where he learned more from Norris and other guides about cultural sites in the path of Trump’s border wall project. Following that visit, the Subcommittee for Indigenous Peoples of

the United States held an oversight hearing²⁸ where Chairman Norris testified²⁹ that the wall was causing irreparable damage to culturally important sites along the border.

The Trump administration bulldozed previously protected land and dynamited a sacred hill that included bone fragments from the remains of Arizona tribal members.³⁰ Although Rep. Kathleen Rice’s (D-N.Y.) Rescinding DHS’ Waiver Authority for Border Wall Act³¹ would repeal DHS’ waiver authority, the bill never became law, leaving Trump to use his full executive powers – and any federal money he could find – to destroy sacred sites along the U.S.-Mexico border, regardless of strong local objections and federal court orders to the contrary.



Allowing the Trophy Hunting of Sacred Animals

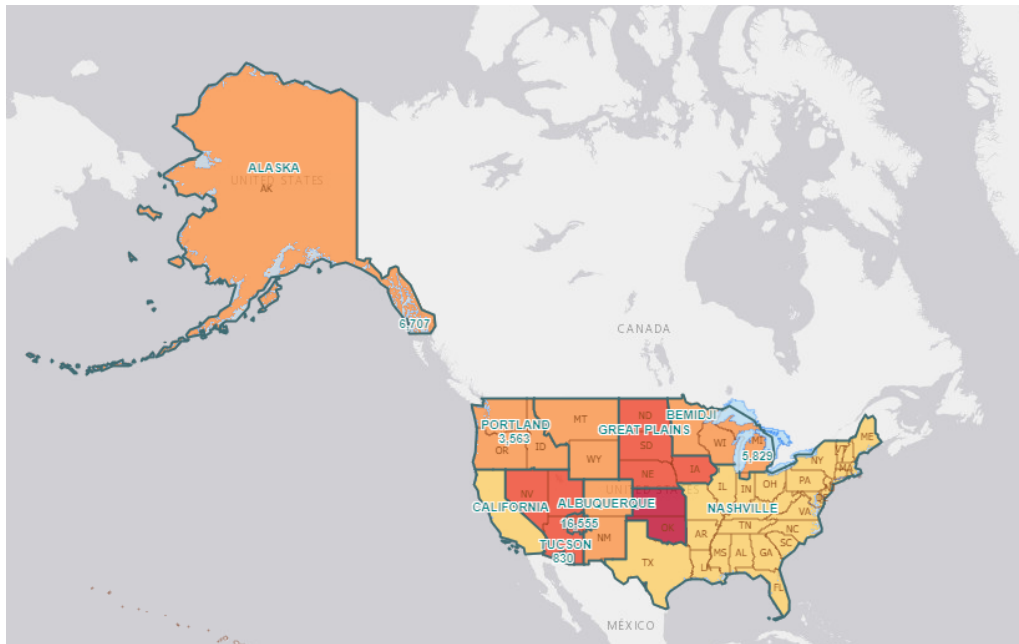


During its first year, the Trump administration delisted the Greater Yellowstone Ecosystem (GYE) grizzly bear population from the endangered species list without input from tribes that have held the animals sacred for many generations.³²

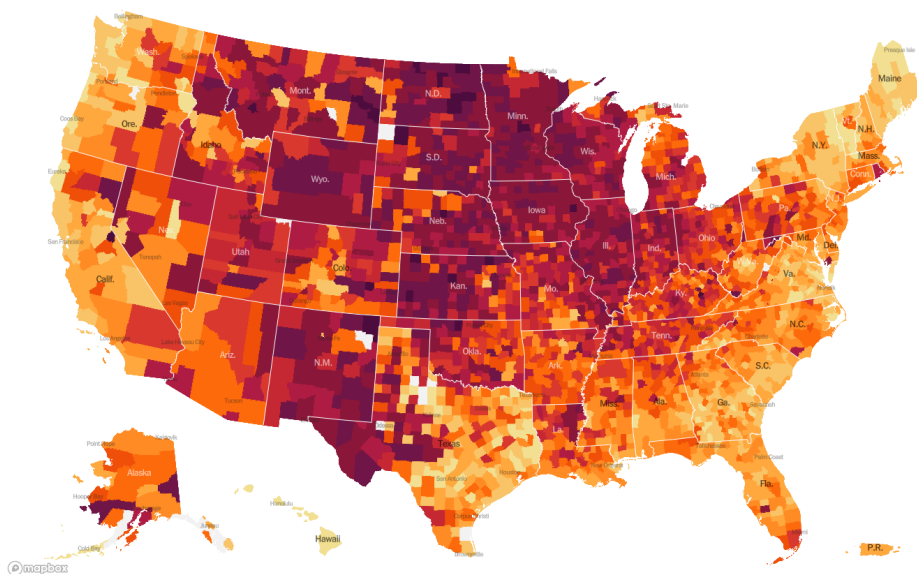
In 2018, a federal judge reversed the decision and found the administration did not sufficiently consider scientific factors in deciding to delist grizzly bears.³³

In June of 2019, Chair Grijalva introduced H.R. 2532 – the Tribal Heritage and Grizzly Bear Protection Act³⁴ – to permanently protect grizzly bears for their ecological and cultural value and to guarantee tribes a role in the conservation and management of the species.

A FAILED RESPONSE TO CORONAVIRUS IN INDIGENOUS COMMUNITIES



The Trump administration has failed to control the ongoing COVID-19 outbreak in Indian Country. A recently released Centers for Disease Control (CDC) report noted that Native Americans are four times more likely to become hospitalized with COVID-19 than their white counterparts.³⁵ The positive cases in Indian Health Service (IHS) areas³⁶ correlate with COVID-19 hot spots³⁷ nationally.



Although the House was not in session, the Committee’s Subcommittee for Indigenous Peoples of the United States held two virtual forums to hear from tribal organizations, urban Indian health organizations and tribal leaders about issues on the ground and how these failures were impacting tribal public health.

**CORONAVIRUS IN INDIAN COUNTRY:
TRIBAL AND URBAN ORGANIZATIONS**



Join the conversation #CoronavirusIndianCountry & Follow @NRDems @RepRaulGrijalva



COVID-19 IN INDIAN COUNTRY



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Erasure of Tribal Voices in Federal Policy

Tribal communities have been historically underrepresented in the U.S. Census,⁴² and the emergence of the COVID-19 pandemic threatened to worsen this problem in 2020. After witnessing the Census Bureau’s (Bureau) halted field operations and foreseeing an undercount, tribal leaders and organizations called on the Trump administration to extend the deadline for collecting Census data. Ignoring these requests, the Trump administration instead cut down the time required for the Bureau to conduct its non-response follow-ups by a full month.⁴³

The administration touted a high non-response follow-up rate as evidence for its success; however, tribal communities fear that this hides a severe undercount in tribal areas, which will impact the allocation of future federal resources.⁴⁴ In August, Chair Grijalva was one of the first members of Congress to call on the Bureau to provide more information to Indian Country on the Census process. The administration failed to respond.

Promoting an Unsafe School Environment for Native Children

When the COVID-19 pandemic broke out across the United States in March, schools across the country began closing to prevent community spread. The Department of the Interior's Bureau of Indian Education (BIE) did not immediately follow suit, instead relying heavily on the decisions of state or tribal governments in different regions. The agency offered no instructions to parents on how to proceed with at-home education⁴⁵ or how to navigate the complications associated with a lack of internet, computer equipment, or student follow-up from some schools – all problems more commonly found at schools in BIE's jurisdiction than in comparable non-BIE schools.

The lack of BIE support for Native students with learning disabilities received widespread condemnation. The Committee held a hearing⁴⁶ two days before BIE schools began the 2020-2021 academic year, which led to the discovery that although BIE placed special-purpose school buses with wi-fi in some strategic locations,⁴⁷ a lack of adequate education for students during the pandemic remained a serious and largely unaddressed problem. Unfortunately, the impacts of these failures may take a generation to fully remedy.

Withholding Federal Funding for COVID-19 Emergency Relief

On March 6, 2020, Congress passed the Coronavirus Preparedness and Response Supplemental Appropriations Act⁴⁸ to provide \$40 million in emergency supplemental funding to tribes and tribal organizations to prevent, prepare for, and respond to the coronavirus. When Congressional staff spoke with federal agencies about the importance of quickly disbursing these funds to tribal governments, the Centers for Disease Control and Prevention (CDC) said it did not have processes in place to get federal funding to tribes,⁴⁹ and many fund transfers were indeed delayed.

On March 27, 2020, Congress passed the Coronavirus Relief and Economic Security (CARES) Act,⁵⁰ which set aside \$8 billion from the Coronavirus Relief Fund (CRF) specifically for tribal governments. The following months saw delays associated with various legal cases,⁵¹ a Trump administration leak of tribal financial data,⁵² and ongoing Department of the Treasury efforts to withhold needed federal funding for tribal governments.

On May 5, 2020 – 37 days after the CARES Act became law – the first disbursement of \$4.8 billion went out to tribal governments based on population information from the Indian Housing Block Grant program. Inconsistent disbursement formulas remain an issue with this fund, which may ultimately be resolved by a Supreme Court ruling.⁵³

The CARES Act also provided \$153.75 million through the Department of Education for BIE programs, including a set-aside for costs associated with shifting schools to remote learning. Fifty-three business days after the CARES Act became law, the Department of Education still had not provided any indication of when the funding would be available to BIE.⁵⁴ It was only on June 15, 2020, 78 days after the CARES Act passed, that the Department of Education transferred the funds to BIE.⁵⁵ Despite Congress explicitly allocating federal funding to tribes through various agencies to combat the COVID-19 pandemic, the Trump administration managed to halt much-needed assistance for Indigenous Peoples, who are among those most at risk from the virus. Federal officials with a thorough working understanding of the federal trust responsibility must be placed in positions of responsibility at every federal agency involved with tribes' pandemic response.

CONCLUSION

The Trump administration did not respect tribal members, tribal lands, sacred sites, or sacred animals. On the Fourth of July this year, the president and his close advisors hosted a fireworks display in the Black Hills of South Dakota, long considered an important tribal area and cultural landscape, despite multiple tribes' requests to hold the event elsewhere.



The administration, often under the cover of the coronavirus pandemic, left tribes out of significant government decisions and public health policy discussions that impacted the health and wellbeing of millions of Native Americans.

The House Committee on Natural Resources is committed to continuing our investigations of the Trump administration's failed record in this area and holding responsible parties accountable. In the 116th Congress, the Committee held 10 oversight hearings and two virtual forums on issues directly affecting Indian Country. The Trump administration refused to allow federal officials to testify before our Committee for any online hearings. The Biden-Harris administration should ensure that all federal agencies, especially the Department of the Interior, will be respectful of Indian Country and work with our Committee to restore the dignity of formal government-to-government relations with the Indigenous Peoples of this country.

ADMINISTRATION RECOMMENDATIONS

To help with the Biden-Harris administration's transition, the Committee respectfully offers the following recommendations.

White House

- **Establish the White House Office of Native American Affairs**
 - The Trump administration narrowed and redefined the concept of tribal sovereignty. Establishing this office and placing associated staff within the White House will assure tribal nations that the Biden-Harris administration has a dedicated team to implement needed reforms and ensure the federal trust responsibility remains a focus across federal agencies.
 - Ideally, the head of this office will participate in cabinet-level meetings as necessary.

- **Establish an Assistant to the President and Executive Director of Native American Affairs position in the White House**
 - The Obama administration had a Senior Policy Advisor for Native American Affairs, a position held by several tribal citizens and led by the White House Council on Native American Affairs.
 - The Biden-Harris administration should establish an Assistant to the President for Native American Affairs to ensure that tribal nations are represented in the executive branch as sovereign entities with the federal government – not merely as one part of a much larger Intergovernmental or Legislative Affairs operation. The executive branch needs this level of engagement to establish trust among tribal leaders.
 - Subordinate positions under this office could include Policy Advisor for Native American Affairs, Strategic Communications for Native American Affairs, Political Advisor for Native American Affairs, Deputy Associate Counsel for Native American Affairs, Native American Liaison for Legislative Affairs, Native American Liaison to Intergovernmental Affairs, Native American Outreach and Public Engagement.

- **Re-establish the Obama Administration's White House Council on Native American Affairs**
 - President Obama's Executive Order 13647 established the White House Council on Native American Affairs, which included heads of multiple executive departments, agencies, and offices. Slight revisions to this order would be ideal, including establishing the Assistant to the President for Native American Affairs as the lead for this initiative, with the Secretary of the Interior serving as a council member rather than the chair.

Department of Interior

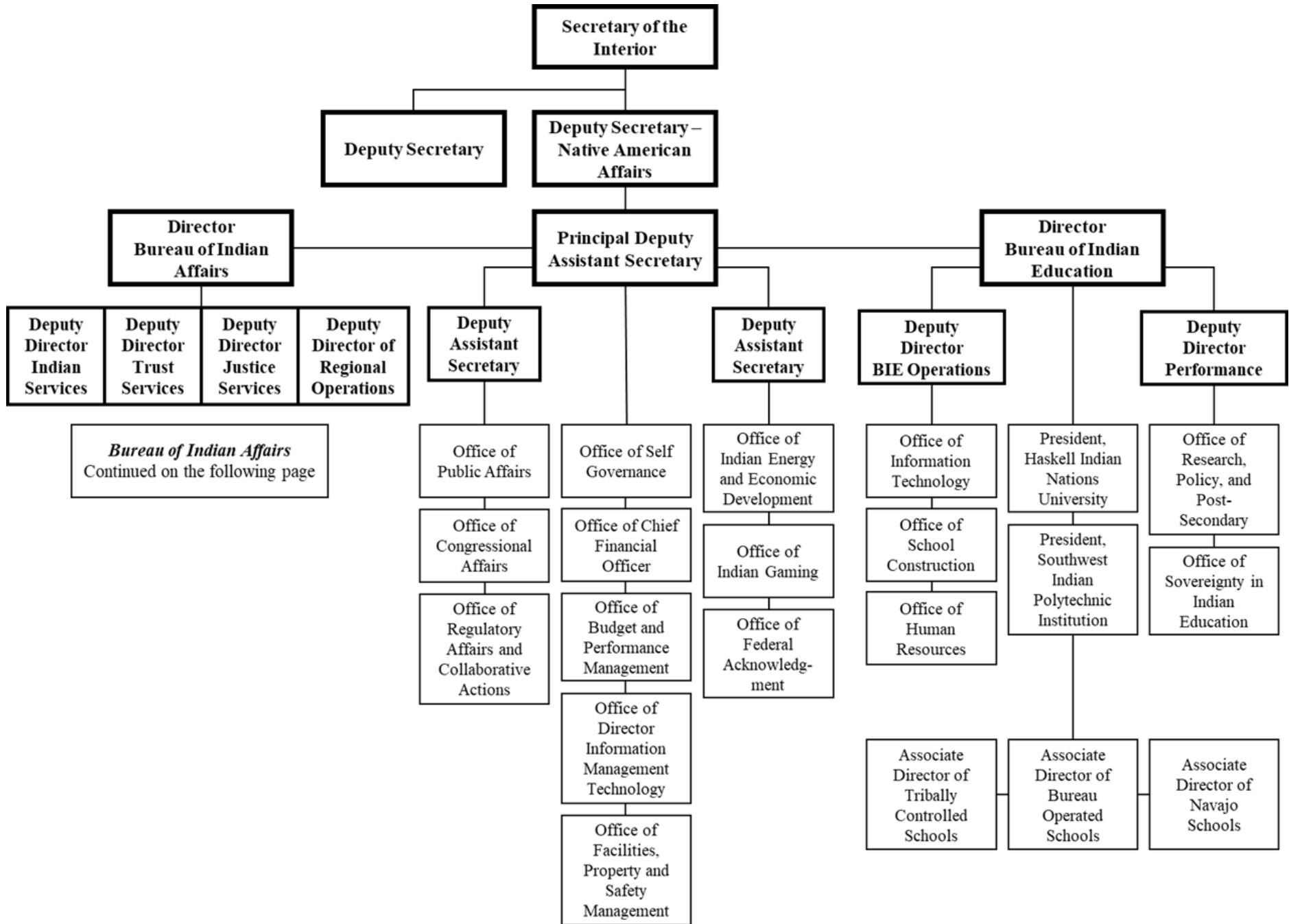
- **Create a Deputy Secretary of Native American Affairs under the Secretary of the Interior**
 - Moving the Assistant Secretary of Indian Affairs (AS-IA) office out of the Assistant Secretary level up to the Deputy Secretary level will elevate Indian Affairs as a priority for the incoming Secretary. This position will allow Indian Affairs to play a central role in developing rules and regulations related to natural resources and tribes.

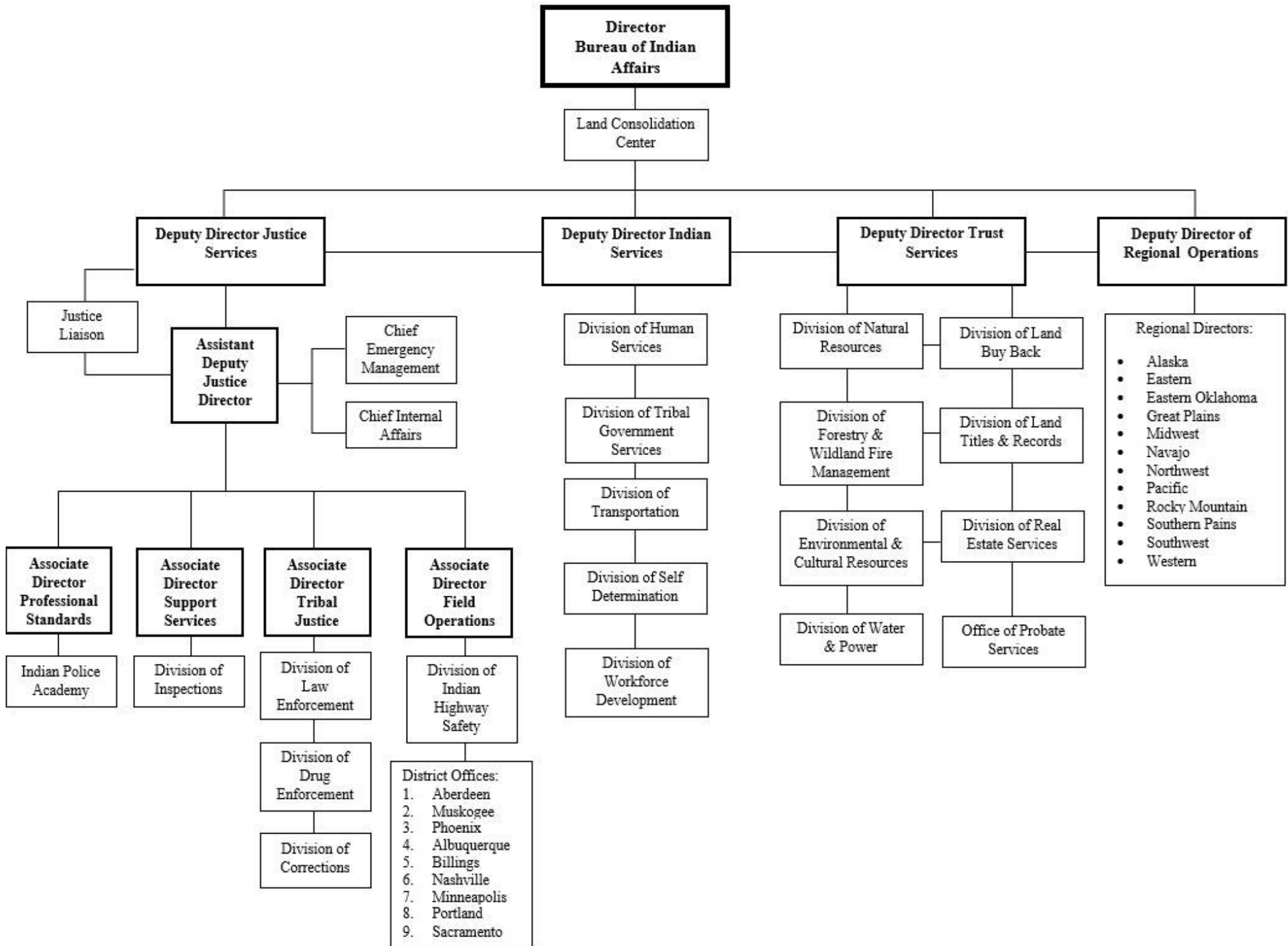
- **Rescind Sec. Bernhardt's Secretary Order 3384 and affirm the Office of Special Trustee as an entity within Indian Affairs**
 - Secretary David Bernhardt created the Bureau of Trust Funds Administration (BTFA) to oversee financial operations for American Indians, with a mandate to report to the Assistant Secretary of Indian Affairs. This arrangement has the potential to allow mismanagement or misuse of trust assets that the Secretary is meant to preserve. This Order was produced without tribal input and has not been fully vetted by tribal nations. Tribal leaders must be included in decisions affecting the trustee responsibility of the federal government.

- **Remove the Executive Director to the White House Council on Native American Affairs from the Department of the Interior and transfer the position back to the executive branch**
 - In July of 2019, the Trump White House accepted Tyler Fish as a detailee from the Department of Interior and gave him the title of Senior Policy Advisor and Tribal Liaison. On April 28, 2020, the White House and Department of the Interior re-established the White House Council on Native American Affairs under President Obama's Executive Order 13647, moving the Council from the executive branch to the Department of the Interior. This move occurred when the COVID-19 pandemic began and left tribal nations without a representative or advocate in the executive branch. There were no tribal representatives or advisors on the White House Coronavirus Taskforce.

- **Restructure the Deputy Secretary of Native American Affairs and subordinate offices under its authority**
 - Add a Deputy Secretary of Native American Affairs to the Department of the Interior's leadership to ensure that Native American tribes are part of natural resource decisions and regulations that matter the most to tribal governments and their leaders. This designation would include the supervision of the Bureau of Indian Affairs and Bureau of Indian Education.

PROPOSED RESTRUCTURING OF DOI FOR DEPUTY SECRETARY OF NATIVE AMERICAN AFFAIRS





FOOTNOTES

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