

A dog with white and brown patches is standing in a field of tall, dry grass. The background shows a line of trees under a clear sky.

David Wooten
Chief, Fish, Wildlife, and Parks, Central Office,
Bureau of Indian Affairs,

Tribal Trust Training – Short
Course

Bureau of Indian Affairs
1849 C Street, NW
MS 4655, MIB
Washington, DC 202405
(202) 513-0355 phone
(202) 321-8314 cell phone
Email: david.wooten@bia.gov

Consultation and Coordination with Indian Tribal Governments (Executive Order 13175)

- Responsibility to consult and coordinate with tribal governments on regulatory policies that have tribal implications
 - Includes actions we initiate or actions under our purview where we exercise discretionary approval authority

***U.S. Bureau of Indian Affairs Mission:
To enhance the quality of life, to promote economic
opportunity, and to carry out the responsibility to
protect and improve the trust assets of American
Indians, Indian tribes, and Alaska Natives.***



Trust Responsibility to Tribes

- We work under the direction of Congress and we should strive to understand the nature of the Tribal Trust relationship, and the intent of Congress regarding tribes, so as to better harmonize Tribal Trust responsibilities with our regulatory authority.

The Due Process Clause of the Constitution Prohibits Race Discrimination, Why is Congress allowed to Treat Indians and Non-Indians Differently?

- Supreme Court has stated “classifications expressly singling out Indian tribes as subjects of legislation are expressly provided for in the Constitution and supported by the ensuing history of the federal government’s relations with Indians.”
 - Morton v. Mancari (1974) challenged BIA Indian hiring preference based on Due Process Clause – unanimous Supreme Court decision
 - the Constitution gives Congress the power to treat Indians as a separate people – the Preference Act was politically, not racially motivated

Tribal Lands

- Three types of land in U.S.
 - Federal lands – held in trust for public – managed for good of common citizenry; DOD, BLM, FS, FWS, NPS
 - State lands – usually zoned and managed by counties – state, county, city taxes apply; private lands or state/county parks, public use areas
 - Tribal lands – held in trust for use and benefit of federally recognized tribes – no taxes, managed for good of tribe (tribal fee vs/ tribal trust lands)
 - Louisiana Purchase – not a purchase of land – right of discovery....preemption
 - Indian Country

Indian Treaties

- a treaty is a contract between nations
 - U.S. Constitution authorizes the President, with the consent of two-thirds of the Senate, to enter into a treaty on behalf of the United States
 - treaties are the “supreme law of the land” – superior to state constitutions and state laws and are equal in authority to laws passed by Congress
- nearly four hundred treaties were signed between Indian tribes and the United States – most tribes have at least one treaty with the federal government
 - Congress passed a law in 1871 prohibiting any additional treaties with Indian tribes
 - Reservations created via Executive Order are considered equal to those created through execution of a Treaty

Indian Treaties: Reserved Rights Doctrine

- Supreme Court has explained: an Indian treaty is not a grant of rights to Indians, but a grant of rights from them
 - Tribes therefore have many rights, in addition to those listed in treaties
 - Any right that a sovereign nation would normally possess that is not expressly extinguished by a treaty (or by a subsequent federal statute) is generally “reserved” to the tribe

Canons of Treaty Construction

- a treaty creates a trust relationship between the tribe and the United States, a relationship that requires the federal government to enhance, not injure, tribal interests

The Doctrine of Trust Responsibility

- treaties allowed the United States to obtain the land it wanted from the tribes, and in return the United States set aside other reservation lands for those tribes
- treaties guaranteed that the federal government would respect “the sovereignty of the tribes,... would ‘protect’ the tribes,... and would provide food, clothing, and services to the tribes

The Doctrine of Trust Responsibility (continued)

- the Supreme Court has held that treaties of this nature create a special relationship between Indian tribes and the federal government – a unique bond – that obligates the government to keep its end of the bargain, now that the tribes have kept theirs
- “the promises made in exchange for millions of acres of tribal land impose on the federal government “moral obligations of the highest responsibility and trust”
 - This principle - that the government has a duty to keep its word and fulfill its promises - is known as the *doctrine of trust responsibility*

The Doctrine of Trust Responsibility (continued)

- when Congress delegates to federal officials the power to control or manage tribal resources, their actions with respect to those resources must then “be judged by the most exacting fiduciary standards”
- the federal government, as the guardian of tribal resources, must remain loyal to its Indian beneficiaries, using utmost skill both to preserve the property entrusted to its care and make it productive – acts in a fiduciary capacity

Standards to Determine Whether Congress has Abrogated a Treaty

- Supreme Court recognized that Indian treaty rights, although capable of being abrogated by Congress, “are too fundamental to be easily cast aside”
 - thus, a court must not deem a treaty to have been abrogated unless Congress has made its intention to do so “clear and plain” treaty abrogation may not be inferred