



COALITION OF LARGE TRIBES

Blackfeet Nation • Cheyenne River Sioux Tribe • Crow Nation • Eastern Shoshone Tribe
Fort Belknap Indian Community • Mandan, Hidatsa & Arikara Nation • Navajo Nation • Northern Arapaho Tribe
Oglala Sioux Tribe • Rosebud Sioux Tribe • Sisseton Wahpeton Sioux Tribe
Shoshone Bannock Tribes • Spokane Tribe • Ute Indian Tribe • Walker River Paiute Tribe

August 25, 2023

White House Council on Native
American Affairs
Attn. Mr. A. Morgan Rodman
Executive Director

Hon. Bryan Newland
Assistant Secretary, Indian Affairs
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

VIA EMAIL

**Re: Summary of Coalition of Large Tribes' Feedback
on August 24, 2023 Tribal Consultation on the
Protection of Tribal Treaty Rights**

Dear Sirs:

COLT thanks you for your leadership today in convening 17 different federal agencies for the consultation on the protection of tribal Treaty rights. The commitment of the federal family to doing better is most welcome. This letter summarizes the feedback provided by COLT today through our designated representative, Mr. OJ Semans, COLT's Executive Director and a citizen of the Rosebud Sioux Tribe, a COLT member Tribe. As you know, COLT is a Section 17 intertribal corporation that advocates for the interests of the more than 50 tribes with reservations of 100,000 acres or more, representing more than 95% of Indian Country in the U.S. and approximately one million Native Americans. Treaties are at the heart of COLT member tribes' relationships with the United States. Yesterday's consultation topic could not be more important to us.

COLT echoes the statement of COLT member tribe, the Navajo Nation.

1. The number one problem from our member tribes' perspectives is that DOJ is undoing the work of the Biden-Harris Administration on Treaty rights. They are taking outrageous positions, such as their opposition to Navajo water rights at the Supreme Court, their denial of healthcare and law enforcement as Treaty obligations. In *Rosebud Sioux Tribe v. United States*, the Department of Justice argued that health service provided to Native Americans is "gratuitous," and not part of the Trust requirement relating back to the Treaties. In *Oglala Sioux Tribe v. United States*, DOJ argued that federal officials cannot be forced to send the Tribe more money to combat a purported "public safety crisis" on the Pine Ridge Reservation despite the specific law enforcement obligations in the Treaties.



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This shows DOJ's continued efforts to deny the Treaties & Tribal Sovereignty through the federal courts.

COLT calls on the Administration to adopt an Executive Order directing the Attorney General to honor Treaties, and directing the establishment of an Office of Treaty Rights Enforcement that is ethically walled off from "other federal considerations" and serves to protect tribal Treaty interests exclusively, with a sole duty of loyalty to tribal interests irrespective of other perceived federal interests. The EO should also establish an Assistant Attorney General for Tribal Relations to centralize responsibility, report directly to the Attorney General, express a priority for tribes, and hire tribal people to staff it. This office should also have budgeting authority to make sure U.S. Attorneys' Offices with a high volume of Indian Country cases actually have funding to match their obligations.

It is outrageous that there is not and has never been a Native American in the Solicitor General's office and there is no Native political appointee at DOJ. It shows. DOJ undercuts all the other good work of the Administration, such as continually arguing that the United States bears no responsibility for the rape of a Northern Cheyenne woman in her home on the Northern Cheyenne Reservation by an on-duty BIA law enforcement officer.

We have sought to engage DOJ on these issues, and those efforts have been unsuccessful. **Quite simply, DOJ is an embarrassment to the Administration's good work, commitment, and policy support for tribal-federal Treaties and the federal government's overall trust responsibility to tribal nations.** Their performance is routinely characterized by their inappropriate focus on evading the monetary liabilities of the United States when they should be focused on assisting the entire federal family with honoring their Treaty responsibilities.

COLT has repeatedly called attention to how bad DOJ is. [See Opinion: DOJ Spouts Outdated Colonialist Arguments in Face of Treaty Obligations \(Media Share\) | Coalition of Large Tribes](#); ['Callous disrespect for tribal treaty rights': Tribes blast government attorney for U.S. Supreme Court argument \(Media Share\) | Coalition of Large Tribes](#); [COLT Calls for Action After U.S. Department of Justice Argues to U.S. Supreme Court That the Navajo Nation's Treaty Reserved Water Rights Are Basically Meaningless | Coalition of Large Tribes](#); [Speaking at the United Nations, Chairman Weatherwax Calls on the U.S. to respect Indigenous Peoples' Human Rights on Reservations | Coalition of Large Tribes](#). But to date, the Biden-Harris Administration continues to let DOJ frolic with anti-Indian positions that are totally inconsistent with the good work the rest of the Administration is doing in Indian Country. COLT calls on President Biden to make immediate significant changes at the Department of Justice to right DOJ's constant parade of wrongs to Indian Country.



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DOJ needs to counsel its federal agency clients to protect Treaty and trust rights, not resist them. DOJ needs to adopt an expansive view of tribal sovereignty and abandon the restrictive view that persists at the highest levels of the agency.

2. Protect Preference for Tribal Entities and Tribal Citizens. DOJ’s one recent bright spot came from the Office of Civil Rights, which correctly recognized that tribal citizenship remains a proper consideration in higher education admissions (despite the US Supreme Court’s recent affirmative action rulings) because of the government-to-government relationship between tribes and the United States. *See* [SFFA Resource FAQ DOJ Seal ED Seal \(justice.gov\)](#). COLT applauds OCR’s analysis.

The Administration needs to reinforce that guidance throughout federal agencies, including especially the Small Business Administration which has temporarily suspended 8(a) applications based on that ruling and a related Tennessee federal court ruling. [8\(a\) Business Development program | U.S. Small Business Administration \(sba.gov\)](#). Congress created the Tribal 8(a) Program for the enterprises owned by tribes, Alaska Native Corporations and Native Hawaiian Organizations, which are the community-based organizations required to provide social, economic, and cultural benefits to their Native owners in perpetuity. Through this, the tribal governments are able to provide benefits to their communities because of their relationships with the United States and because of Treaty obligations, not because of race or ethnicity. Thus, the Program is grounded in the government-to-government relationships between tribes and the United States and should not be subject to any changes. In any event, **SBA needs to consult with tribes about their temporary suspension of applications and any changes to their 8(a) application right away.**

3. Maps. It would be helpful if the Administration made maps of Treaty lands available. Federal agencies are routinely confused about this. These maps should show the reservations in Oklahoma that are thriving under *McGirt*. Most maps still don’t show the reservations in Oklahoma. This is wrong. Reservations of 100,000 acres or more exist in Oklahoma. The federal government’s maps should catch up to the U.S. Supreme Court’s 2020 ruling.

4. Adequate Funding. Under our Constitution, “all Treaties made” are “the supreme Law of the Land.” Art. VI, cl. 2. Congress can pass laws to implement those treaties, *see, e.g., Bond v. United States*, 572 U. S. 844, 851, 855 (2014), and the Executive Branch must act in accordance with them, *see, e.g., Fok Yung Yo v. United States*, 185 U. S. 296, 303 (1902). A treaty is “essentially a contract between two sovereign nations.” *Washington v. Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U. S.



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658, 675 (1979). COLT Tribes' Treaties with the United States contain numerous obligations for the United States to provide healthcare, law enforcement, welfare, language revitalization, economic development and other supports that manifest in modern form the Federal Budget. The United States must honor its Treaty obligations and emphasize them in the Budget process.¹

COLT will file robust written comments by September 21. But for now, we ask the 17 consulting federal agencies to focus on what the Biden-Harris Campaign pledged:

Joe Biden understands that tribal sovereignty and self-governance, as well as honoring the federal trust responsibility to Tribal Nations, should be the cornerstones of federal Indian policy. As

¹ In the Budget context, the Biden-Harris Campaign pledged to:

Ensure fulfillment of federal trust and treaty obligations including by working to address chronic underfunding of unmet federal obligations to Indian Country. Biden will launch a budget task force under the White House Council on Native American Affairs and Office of Management and Budget (OMB), in consultation with tribes, that seeks to understand chronic funding shortfalls and **deliver recommendations to fully fund the federal government's trust and treaty obligations.** This work will include reviewing the ability to make Indian Country funding advanced or mandatory, instead of discretionary to provide tribes with the certainty and predictability they need.

Increase and ensure stable funding for the Indian Health Service. The Indian Health Service (IHS) has been underfunded for decades. And, as the only major federally funded health care provider that does not receive advance appropriations or significant mandatory funding, the IHS consistently faces the uncertainty of the federal budget process. **Biden has called for dramatically increasing funding for IHS and making that funding mandatory.**

[Biden-Harris Plan for Tribal Nations | Joe Biden for President: Official Campaign Website \(gitpa.org\)](https://www.gitpa.org).

COLT calls on the Biden-Harris Administration to honor their promises and the contractual obligations the United States made in Treaties with tribes, including with dramatic funding increases and mandatory funding in the federal Budget process for the Bureau of Indian Affairs. Our Treaties require nothing less.



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President, Biden will build on the efforts of the Obama-Biden Administration, which were instrumental in rebuilding trust, good faith, and respect for the tribal-federal relationship.

[Biden-Harris Plan for Tribal Nations | Joe Biden for President: Official Campaign Website \(gitpa.org\)](#) (emphasis supplied).

President Biden echoed this commitment in his very first days in office:

American Indian and Alaska Native Tribal Nations are sovereign governments recognized under the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. **It is a priority of my Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal Indian policy.** The United States has made solemn promises to Tribal Nations for more than two centuries. Honoring those commitments is particularly vital now, as our Nation faces crises related to health, the economy, racial justice, and climate change — all of which disproportionately harm Native Americans.

January 26, 2021 [Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships | The White House](#) (emphasis again supplied).

Embracing and honoring Treaty obligations should be the North Star for your work in the remainder of this term, as the Campaign promised tribes.

Respectfully,

Hon. Marvin Weatherwax, COLT Chairman
Councilman, Blackfeet Nation Tribal Business Council