



Department of Justice

STATEMENT FOR THE RECORD OF

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ENVIRONMENT AND NATURAL RESOURCES DIVISION**

BEFORE THE

**SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES**

ENTITLED

**“PER CAPITA ACT AND FEDERAL TREATMENT OF TRUST
PER CAPITA DISTRIBUTIONS”**

HELD

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**Statement for the Record of
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**Subcommittee on Indian and Alaska Native Affairs
Committee on Natural Resources
U.S. House of Representatives**

Thank you for the opportunity to submit this written testimony as part of the Subcommittee on Indian and Alaska Native Affairs hearing on the “*Per Capita Act and Federal Treatment of Trust Per Capita Distributions.*” This testimony provides an overview of the process that resulted in the settlement of many of the “Tribal Trust” lawsuits brought against the United States without the need for continued protracted and costly litigation.

Overview and Origin of the Process for the Settlement Proposal to the Obama Administration (SPOA)

Since 2002, numerous federally recognized tribes and certain Indian groups have brought suit against the United States alleging that the United States – in particular, the Departments of the Interior and of the Treasury – violated the Federal government’s trust duties and responsibilities to the tribes by failing to provide “full and complete” historical trust accountings and failing to manage the tribes’ trust funds and non-monetary trust assets or resources in an adequate manner. The tribes requested declaratory and injunctive relief and compensatory damages. By 2009, the United States was defending approximately 97 breach of trust lawsuits brought by 114 Indian tribes in federal district courts in the District of Columbia and Oklahoma and in the Court of Federal Claims.

In September 2009, counsel for 96 of the litigating tribes sent a letter to President Obama

asking the administration to engage in expedited settlement discussions with their clients. The Native American Rights Fund, which represents numerous other litigating tribes, sent a similar letter to the President in December 2009. Seventy-six tribes ultimately elected to participate in the settlement process that came to be known as the “SPOA process,” which stands for “Settlement Proposal to the Obama Administration.” The first meeting between representatives of these tribes and officials from the Departments of Justice, the Interior, and the Treasury occurred on April 21, 2010.

Thereafter, Federal government representatives undertook a two-year process of negotiating with tribal representatives and consultants. As part of this process, the Federal government produced relevant information about certain tribal trust fund accounts and transactions to tribal representatives. The Federal government also carefully developed certain trust data-driven methodologies for evaluating reasonable potential settlement values of the tribes’ trust accounting and trust mismanagement claims, which enabled the Federal government to make fair and reasonable settlement offers to each tribe. In addition to the SPOA process, the Departments of Justice, the Interior, and the Treasury have been engaging in similar settlement processes involving other litigating tribes.

As a result of the SPOA process negotiations, on April 11, 2012, the United States announced that it had executed individual settlement agreements with 41 tribes. Since that time, the government has executed settlement agreements with 15 other tribes. Through these processes, the United States has reached settlements with 56 tribes, 45 of which were involved in the SPOA process. The Federal government is continuing its efforts to resolve the trust accounting and trust management claims of the remaining tribes in a manner that is fair and reasonable to both the tribes and the United States.

Under the settlement agreements, litigation brought by the settling tribes regarding the Department of the Interior's accounting and management of the tribes' trust accounts, trust lands, and other natural resources has ended. With monies from the Judgment Fund, which is used to pay settlements or final judgments against the Federal government, the United States is compensating the tribes for their "breach of trust" claims, and the tribes have agreed to waive, release, and dismiss their claims with prejudice. Also, the tribes and the Department of the Interior have agreed to ongoing information-sharing procedures that will lead to strengthened management of the tribes' trust funds and non-monetary assets, through improved communications between tribes and the Department of the Interior. Further, the settlement agreements contained certain dispute resolution provisions to reduce the likelihood of future litigation.

The SPOA process serves as a sound model for resolving pending or future Tribal Trust cases in a fair, reasonable, and expedited manner. This process also protects the public purse by avoiding protracted and costly litigation. In addition to the SPOA process, the United States has used several different alternative dispute resolution (ADR) processes to achieve settlements of tribal trust accounting and trust mismanagement claims since the filing of the first Tribal Trust cases in 2002. Between 2002 and the present day, the government has resolved the claims of 64 tribes, using various different ADR methods.