

**Origins and Development of the Trust Responsibility:
Paternalism or Protection?**

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It's a real honor for me to be here today, and a great privilege to follow in the path that Professor Williams has forged. I would like to approach the trust responsibility from an entirely different angle, and it's my hope that our two approaches will converge for you in framing the trust responsibility.

Much of my work on the trust responsibility has grown out of my study of treaty rights across the Pacific Northwest, and so I'd like to share that context with you as a starting point. The Pacific Northwest is a region defined in large part by its signature species, the anadromous salmon. Historically, salmon were abundant throughout the area that is now Washington, Idaho, Oregon, Northern California, and part of Montana. About 10-15 million salmon returned annually to the Columbia River alone. The tribes across this huge region are culturally strong, all sharing a history marked by dependence upon salmon, extending back 10,000 years. The salmon remain vital to the tribes for commercial, subsistence and cultural purposes.

In 1855, the federal government negotiated nine treaties with tribes across the Pacific Northwest. In every treaty, the tribes were asked to cede the majority of their lands in exchange for living on smaller, protected reservations. And the treaty records show clearly that tribal leaders refused to give up their lands unless they had assurances that their fishing off the reservations, in the ceded lands, would be protected. The government promised in the treaties that tribes would have continued access to their traditional fishing grounds. And on this promise,

the tribes of the Pacific Northwest ceded about 64 million acres of land to the federal government. As I will point out in a few minutes, the trust responsibility frames these early promises.

Well, after those treaties were signed guaranteeing fishing rights, there began an unprecedented human assault throughout the basin on the natural resources that supported life. Non-Indians commercially over-fished the species. Industry came and, with federal approval and subsidies, ravaged the region -- building dams, destroying wetlands, polluting waters, clearcutting forests, building cities, constructing nuclear and defense facilities, and killing entire stretches of river through mining waste. By 1995 the National Marine Fisheries Service concluded that "few examples of naturally functioning aquatic systems now remain in the Pacific Northwest." In a short century and a half, 107 stocks of salmon became extinct, and several others now hover on the brink of extinction.

This has had a devastating impact on the tribes of the region. In the Columbia River alone, the tribal fishing is about 1% of what it was historically. Traditional lifeways that reach back literally ten thousand years are themselves poised on the brink of extinction along with the salmon. In 1995, the Umatilla Tribe appealed to President Clinton to declare a State of Emergency in the Columbia River Basin, stating in a letter, "If more salmon go extinct, our very culture, religion and way of life will also be destroyed." Chairman Antone Mintorn gave this testimony before Congress: "Our economic base has been devastated and my people are suffering. The rivers in the Western United States, and the life that depends on them, are in a crisis state. It is almost impossible to describe in words the pain and suffering this has caused my people. We have been fishermen for thousands of years. It is our life, not just our economy."

This reality -- the reality of tribes being at the brink of losing their fish and wildlife resources forever, or having their land and water supply contaminated forever, or having their sacred sites destroyed forever -- is a pattern that is playing out across all of Indian Country, and it is this reality that frames what I think is the most important dimension of the trust responsibility. The Worldwatch Institute has found that 317 reservations in the United States are threatened by

environmental hazards. If you look across Indian Country, you see the Colville Tribe of Washington, the Chippewas of Wisconsin, the Gros Ventre and Assiniboine Tribes of Montana, and several others, fighting cyanide heap leach mining just off reservation boundaries; the Northern Cheyennes dealing with impacts from five huge coal strip mines, a 2,000 megawatt power plant, and potentially 16,000 new coal methane wells off their reservation; the Pyramid Lake Band of Paiutes, the Klamaths, the Umatillas, the Yakamas trying to reclaim from the Bureau of Reclamation enough water in the rivers to sustain their fisheries; the Western Shoshones in Nevada dealing with the proposed nuclear waste dump at Yucca Mountain, as well as the existing fallout from nuclear waste testing -- amounting to 700 atomic explosions over the past 45 years on their aboriginal lands; the Hopis, Navajos, Lakota Sioux, Pueblo tribes, Wintu, Zuni, and so many dozens of other tribes trying to protect their sacred sites from desecration. These threats to Indian Country are pervasive, and the damage is permanent.

In the treaty era the government promised homelands that could sustain tribal lifeways, governments, and economies; Charles Wilkinson refers to these as "islands of Indianness," but in ecological terms, they are not islands at all. Much of the natural web that sustains tribal life and culture occurs beyond the boundaries of Indian Country. By this I am talking about the species that tribes hunt and fish for, the roots and berries that they gather, the headwaters and tributaries that flow into their reservation streams, the sacred sites -- these are being destroyed at an unprecedented pace. And the pressure from Industrial America is both unyielding and unbounded. It comes from corporations that are driven by profit goals and feed on growth. While environmental disease will sooner or later affect everyone in the United States, the impacts on Indian Country are magnified, because the land base is the linchpin for tribal survival.

My focus on the trust responsibility has been in the context of these threats to the tribal land base and tribal resources. Jerry Meninick, a member of the Yakama Nation, said in testimony before Congress: "My ancestor who signed the treaty accepted the word of the United States that this treaty would protect not only the Indian way of life for those then living, but also

for all generations yet unborn." His words capture a fundamental premise, the duty of protection, that forms the background of every relinquishment of native property, whether accomplished by treaty, statute, or executive order. In exchange for giving up lands, tribes would be protected on their retained lands, their reservations. Tribal reliance on this promise gave rise to a sovereign trust. And so we ask ourselves today, is there anything in this essential promise, this trust, that endures as a legal principle, that forms the seed of a new construct of federal-tribal relations, that is respectful of the sovereignty of tribes and imposes effective restraints on the majority society? In 1992 the Director of the Columbia River Inter-Tribal Fish Commission explained the trust responsibility to Congress in these simple terms:

The United States' trust responsibility toward American Indians is the unique legal and moral duty of the United States to assist Indians in the protection of their property and rights. Too often, the federal government has construed protection to mean control. In the spirit of the law, we seek federal assistance to defend against injury to our trust resources.

Is this trust paternalistic? Is it an outgrowth of a guardian-ward relationship? Is it a manifestation of plenary power? I think we have to isolate the promise and duty of protection that these tribal leaders speak of. Certainly any trust responsibility is part of the picture of conquest -- everything about Indian law is -- but is there a seed of trust that serves as a limit to conquest rather than a tool of conquest? The treaties too are part of the history of conquest. Treaty promises were coerced and often gained fraudulently, but is there nonetheless a central, fundamental core of those promises that strikes at the sense of justice in us all? Professor Williams has written in his excellent forthcoming book that "Indians uniformly regard these treaties as solemn pledges, in the nature of a sacred trust." The trust responsibility I am trying to highlight for you *is* that sacred trust. It is the principled doctrine that the promises of protection ought to be enforced, still today, regardless of whether the tribe had a treaty with the federal

government or not. It's a principle that arises from the native relinquishment of land in reliance on federal assurances that retained lands and resources would be protected for future generations.

This core part of the trust responsibility, then, is really a property law concept. You could think of it as a very rough analogy to nuisance and trespass law. If you, as an individual, have an acre of land and a deed that says you own that acre, that's not all you have in terms of property rights. You also have the right to go to court to get the government to prevent your neighbor from harming your land through his actions on his property. You have the right to call upon the government for protection of your private property. The Indian trust responsibility is protection for property guaranteed on the sovereign level, from the federal government to tribes.

Now there's a problem with how this trust has been expressed in the past. In cases and in law review articles, the trust duty of protection is often linked to the guardian-ward analogy made by Justice Marshall in Cherokee Nation. I would suggest that the trust duty of protection and the guardian-ward relationship are two entirely different concepts, and one does not depend at all on the other. The guardian-ward relationship, in my view, is the doctrine that the Kagama Court used to support plenary power. The trust responsibility, the sacred trust so to speak, arose as a promise in the land cessions. This promise stands on its own, without any guardian-ward relationship. Justice Marshall recognized this when he analyzed the Treaty of Holston in Worchester v. Georgia. He said there, "The relation between the Cherokee Nation and the United States was that of a nation claiming and receiving the *protection* of one more powerful; *not* that of individuals abandoning their national character, and submitting, as subjects, to the laws of a master." In searching for the well-spring of the common law trust duty, I would cite that language in Worchester rather than Cherokee Nation's guardian-ward language.

Doctrinally, the guardian-ward relationship provides no necessary legal basis for the trust responsibility. Generally speaking, you do *not* need a guardian-ward relationship in order to establish trust duties. Now certainly, all guardian-ward relationships do have trust responsibilities inherent in them, but the reverse is not true. There are many examples of trust relationships that

have *no* guardian-ward aspects to them. In the private realm, I could set up a trust and appoint a trustee and beneficiaries without any guardian-ward element in the picture. The public trust doctrine in environmental law involves a sovereign trust model, but with no guardian-ward aspect. So in my view, you can isolate the trust responsibility to a duty of protection arising as a corollary to the massive land cessions, not as a duty arising from a guardian-ward relationship.

Now we certainly can't ignore the fact that many courts today still mention the guardian-ward relationship as the source of federal Indian trust responsibility. But may I suggest that the courts are automatically parroting language from earlier opinions. This rhetoric is likely to continue as long as keep citing to the guardian-ward relationship, which they often do. Those who believe that the trust doctrine can be useful today in protecting tribal rights could begin cleansing the trust responsibility of any guardian-ward language. In my work I have offered another term, the sovereign trusteeship, to describe the trust protection owed to tribes on a sovereign level. I think that if every tribal lawyer from here on simply refused to link the trust responsibility with the guardian-ward relationship in their briefs, they could still assert the trust duty in clear and forceful terms and we'd see mention of the guardian-ward relationship diminishing in the court opinions over time.

There's another dimension of the trust responsibility that is profoundly complex, and that is the ownership of Indian resources. And I want to say a few words about this, but then put it aside because it deserves much more time than what I have left. Let me frame this part of the trust responsibility with some background. Going back to the beginning of federal-Indian policy there were Nonintercourse Acts which prohibited states, counties, and private parties from purchasing Indian lands without federal approval. This was a restraint upon the majority society. The idea was to remove Indian lands from the pressures of capitalism and from the sights of hungry land speculators. As we know from the Supreme Court's landmark Oneida decision in 1985, some tribes did sell off their lands in the late 1700s and would have lost this land permanently had it not been for the restriction in the Nonintercourse Acts. Over time, the federal

approval requirement transformed into a classic trust model of ownership. As the Supreme Court described two years ago in Klamath Water Users, "The fiduciary relationship . . . has been compared to one existing under a common law trust, with the United States as trustee, the Indian tribes or individuals as beneficiaries, and the property and natural resources managed by the United States as the trust corpus."

This trust ownership protects tribes from state taxes and also from sale of their lands. But it also gives the federal government two distinct roles with respect to tribal lands. One stems from the Nonintercourse Act restriction: statutes require federal approval for any lease of tribal land. The other is a management role. When you focus on this ownership aspect of the trust responsibility, all sorts of dilemmas arise. This is particularly so when the federal government is asked to approve a proposed use of land that would permanently destroy part of the tribal land base; these proposals often ignite strong dissension within the tribal membership. In some cases the proposed use is really extreme. The Skull Valley Band of Goshutes in Utah have signed a contract with a private nuclear consortium to store 40,000 tons of highly radioactive nuclear waste from the nation's power plants on 100 acres below the tribal village, and there's tremendous dissension over this within the tribe. This is something of a replay of the Mescalero situation from just a few years ago. Whether it's nuclear waste disposal, hazardous waste disposal, mining, or polluting industries, the federal government's trust obligation in approving uses on the reservation is a deeply complex one. It deserves a real look, because there may be irreparable consequences from the government's decision. But I want to set that aside today because my focus in coming here is to highlight that core duty of protecting Indian lands from outside threats - that sacred trust that Indian leaders today feel and try to invoke in the protection of their lands and resources.

II.

So let me turn to the real question of how lawyers take this essential promise -- this trust - and translate it into actual protection for tribal property. When we think about this sovereign

trust duty of protection, we have to first recognize that its role today is within a much different context than 150 years ago. In the early periods, federal protection was needed to secure reservation lands against the intrusions of white settlers; today, federal protection is needed to shield Indian Country from environmental threats coming primarily from corporate industry. This modern context is vastly different from the historic one, because there is now a very complex statutory framework and an Executive Branch allowing these destructive corporate actions. A multitude of federal agencies manage the public lands surrounding reservations, manage water projects, and exercise regulatory authority under environmental laws. Collectively, these agencies are taking actions that jeopardize the ecological health of native lands and resources. But it's a great legal challenge to fit the core trust duty of protection into the dense statutory and administrative framework.

At this point you might ask, why doesn't environmental law protect Indian Country? We are certainly not lacking environmental laws. There's the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, the Endangered Species Act, the National Environmental Policy Act, and at least a dozen more. But there are two problems. First, these statutes are designed to *permit* natural destruction. Aside from wilderness designations, most environmental laws are permitting schemes. And most federal agencies find it difficult to deny permits. The second problem is that agencies promulgate regulations to meet the interests of the majority, not tribes. The Clean Water Act, for example, allows discharges of pollutants that may be acceptable to the majority population, but not acceptable for water quality that supports tribal drinking water, fishing, or cultural use. The land management statutes governing Forest Service and Bureau of Land Management activities routinely allow destruction of federal land where sacred sites are located. Uniquely tribal resources are generally not protected by environmental statutes.

So how do you bring the Indian trust duty of protection into the missions of agencies acting under statutory law? Court decisions make it clear that every federal agency, not just BIA, must fulfill the trust responsibility in implementing statutes. The whole federal government is

blanketed by this trust responsibility. Now the first thing agency officials will point out is that they have no authority to deviate from explicit statutory mandates. But all environmental statutes give broad discretion to the agencies. Most agencies could establish higher levels of protection but choose not to because the interests of the majority society don't demand it. So the challenge for tribal lawyers is to analyze these statutes, find the pockets of discretion that they contain, and define the duty of protection that is required to safeguard tribal property interests.

A wonderful example of this is found in Professor Catherine O'Neill's work. She published a very thorough article in which she analyzed how the standards set by the Environmental Protection Agency under the Clean Water Act for discharges of dioxin and other pollutants failed to protect tribal interests, because the standards still allowed for considerable bioaccumulation of toxins in fish tissue. She pointed out that the impact on tribes was significant, because the tribal consumption of fish was so high -- 150 grams a day as compared to the national average of 6.5 grams. She showed that standards that might be protective of the majority's interests were not protective of Indian interests, and she very precisely identified the discretion the agency had to change its standard. She then argued that the trust responsibility required EPA to change its standard. This work has been instrumental and serves as a great example of giving the trust responsibility effect within statutory law. And indeed, many agencies have begun to define their trust obligation within the context of the ir governing statutes. A good example of this is the Joint Secretarial Order issued by the Departments of Commerce and Interior on implementing the ESA to fulfill trust responsibilities. Many tribes nationwide were involved in seeking that order. Professor Charles Wilkinson has memorialized the entire process leading up to that effort in a law review article published in University of Washington Law Review.

III.

But what if an agency persists in allowing or taking action that threatens tribal property? Let me now turn to enforcing the trust responsibility in the courts. When the trust responsibility finds life in the courts, we call it the trust doctrine. It takes the form of a common law duty to

protect tribal property and resources. I think we should pause to emphasize this common law origin, because there is a strength in that form of law, as compared to statutory law. Judges make common law, Congress makes statutes. As one court in Oregon put it long ago:

The very essence of the common law is flexibility and adaptability. It does not consist of fixed rules, but is the best product of human reason applied to the premises of the ordinary and extraordinary conditions of life.

The common law trust doctrine is a powerful and unique tool in the protection of Indian property because it allows judges to formulate legal principles to carry out the intent of the treaties, or other agreements. It was under this authority of common law that Judge Boldt upheld a 50% share of harvestable fish for the treaty tribes in Washington. It was under this authority of common law that the Supreme Court in Winters found an implied water right associated with reservation lands. When tribal attorneys seek to protect Indian resources by bringing *statutory* claims, they put the court into an entirely different position. In that situation, the court is not creating common law, but, rather, is interpreting the will of Congress, and as I said before, that will is most often geared to majority interests.

Now let's move to the mechanics of the trust doctrine. When the trust doctrine is used to *protect* Indian property from federal agency action, it is nearly always cast as a claim under the Administrative Procedure Act (APA). The APA allows anyone to sue an agency for action that is arbitrary, capricious, or otherwise not in accordance with law, including the common law. So the trust doctrine is enforceable through the APA, and when tribes bring those claims, they are seeking injunctive relief in federal district court. And typically, as I mentioned before, the agency is carrying out some statute in a way that harms the tribe. So the tribal lawyer has to argue that the agency must use its discretion to protect the tribal interests unless doing so conflicts with the actual statutory language. The successful cases are those in which the judge clearly sees the discretion in the statute, sees the Indian interest, and sees that the Indian interest demands protection greater than that normally provided by the agency.

So, for example, in a 1996 case, the Klamath Tribes were successful in halting timber sales planned by the U.S. Forest Service under the Salvage Rider on forest lands that supported their treaty deer herds. The district court of Oregon ruled that the government had a "substantive duty to protect 'to the fullest extent possible' the tribes' treaty rights, and the resources on which those rights depend." In Pyramid Lake Paiute Tribe v. Morton, the court held that the Secretary of Interior had to send all the water not obligated by contract or decree to Pyramid Lake to support the tribal fishery. In Northern Cheyenne Tribe v. Hodel, a 1985 case, the district court rejected the Bureau of Land Management's proposal to lease federal lands for coal development just outside the Northern Cheyenne reservation, because coal mining would have adverse environmental, social and economic effects on the tribe. And that court held firm despite the federal government's contention that the national interest in developing coal overshadowed the trust duty towards the tribe. The court there stated:

The Secretary's conflicting responsibilities do not relieve him of his trust obligations. To the contrary, identifying and fulfilling the trust responsibility is even more important in situations such as the present case where an agency's conflicting goals and responsibilities combined with political pressure asserted by non-Indians can lead federal agencies to compromise or ignore Indian rights.

In two more recent cases the agencies themselves have set a greater standard to protect Indian interests in fulfillment of their trust responsibility. And when this higher standard has been challenged by the industrial interests, or non-Indian interests, the courts have upheld the standard under authority of the trust doctrine. In Sea Farms v. U.S. Army Corps of Engineers, a 1996 case, the federal district court for the western district of Washington upheld the Corps' refusal of a permit for a fish farm because it could interfere with the treaty fisheries of the Lummi Nation and Nooksack Tribes. The Corps of Engineers found its pocket of discretion in section 10 of the Rivers and Harbors Act; it could deny a permit that conflicted with the public interest, and the Corps there defined public interest to include the protection of treaty rights. The district court

solidly supported this interpretation, holding that the fiduciary trust duty formed a legal mandate within the statute. And in Parravano v. Babbitt, a case decided in 1995, the Ninth Circuit upheld an emergency regulation issued by the Department of Commerce to curtail non-Indian fishing under the Magnuson Act in order to protect the runs for the Hoopa and Yurok Tribes. There was no treaty right securing the tribal fishing in this case, and the court rested its decision in part on the trust doctrine.

But along with these winning cases for tribes, there are several others that equate tribal interests with statutory standards. These opinions basically say that if the agency abides by the statute, it is protecting the Indian interest as well. The courts in these cases are essentially collapsing trust standards into statutory standards. And this is a dangerous trend. When judges start equating trust standards with statutory standards, they eliminate the role of the trust responsibility in protecting uniquely tribal interests, and Indian law itself moves towards assimilation because the one potentially powerful tool for protecting unique native interests gets interpreted as just a majority standard. And in an even broader sense, when courts start defining common law duties according to statutory standards, the courts diminish their own role in protecting native rights, and the balance of power shifts more towards Congress. I think it's vitally important to keep the common law alive as a reservoir of native rights and not let it be entirely squeezed out by statutory law.

Well, having noted the importance of the trust doctrine in the courts, I have to say that the doctrine is hanging on the edge of a cliff, and it will take some strong, concerted lawyering to keep it from disappearing altogether as a source of legal protection for tribes seeking injunctive relief. A very unfortunate confusion has made its way into the courts, and unless it's cleared up soon, this confusion will extinguish any effective use of the doctrine in stopping agencies from harming tribal property interests. And because I stand here in front the very attorneys who can rescue the doctrine, I'm going to do something I never do before large audiences, which is to delve into the nuts and bolts of the law.

The confusion has come from the two contexts in which the trust responsibility is enforced against agencies. One context is the one I've been talking about -- tribes seeking injunctive relief under the APA in federal district court. This is a very important context because injunctive relief seeks to stop damage before it happens. The APA clearly allows common law claims that have no statutory basis.

The second context is the one that has attracted far more attention, and it will likely be the focus of most of the commentators today. It's the context of tribes seeking monetary damages against the BIA for mismanaging their lands. Those suits are brought in the Court of Federal Claims under the Tucker Act (or the Indian Tucker Act) which specifically states that any claim for damages against the United States must be founded upon express law found in the Constitution, statutes, regulations, executive orders, or treaties *28 U.S.C. § 1491(a)(1); 28 U.S.C. § 1505*. And the Supreme Court has said on numerous occasions that the express source of law supporting a Tucker Act claim must be one that "can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained." Note that trust enforcement under the Tucker Act is much more narrow than under the APA, because you have to find a statute or some other source of express law supporting your Tucker Act claim. A general common law trust obligation doesn't get you anywhere in the Tucker Act. The major Supreme Court cases dealing with the federal trust obligation have been ones seeking damages under the Tucker Act. Mitchell I, Mitchell II, White Mountain Apache, and Navajo Nation.

Unfortunately, attorneys and judges have confused these two realms, have confused the Tucker Act and the APA, so that they are now applying Tucker Act restrictions to the claims brought under the APA. In other words, they are taking the Tucker Act mandate that you find a statute to support your trust claim, and applying it to the context of the APA. This is totally erroneous. The APA does not have the restrictive language found in the Tucker Act. The Tucker Act cases should have no application to the APA context. The APA allows trust claims for injunctive relief based on common law without any statutory basis.

But some courts now require tribes to find a statute supporting their trust claim, even when they bring actions for injunctive relief under the APA. You can trace this judicial error through the caselaw. One of the first courts to make it was the D.C. Circuit in *North Slope Borough v. Andrus* back in 1980. In that case the Inupiat people of Alaska sued the Secretary of Interior, arguing that massive federal oil leasing in the Beaufert Sea would threaten the bowhead whales that they hunted, and therefore would violate the Secretary's trust responsibility towards them. This was a suit seeking injunctive relief under the APA. But the court applied Mitchell I and held, "A trust responsibility can only arise from a statute, treaty, or executive order; [the] United States bore no fiduciary responsibility to Native Americans under a statute which contained no specific provision in the terms of the statute." So the D.C. Circuit applied the Mitchell restriction, a restriction that clearly emanates from the precise language of the Tucker Act, to a case arising under an entirely different statute, the APA, which has no such restrictive language in it.

Well, this mistake has now been picked up as precedent and has made its way into Ninth Circuit law. In a 1998 case, the Morongo Band of Mission Indians brought a claim under the APA against the Federal Aviation Administration for putting a flight path into LA airport right over canyons on the reservation where tribal members conducted traditional ceremonies. The court applied Mitchell II and said, "[U]nless there is a specific duty that has been placed on the government with respect to Indians, [the trust] responsibility is discharged by the agency's compliance with general regulations and statutes not specifically aimed at protecting tribes." Well, if this mistake endures, we can all bury hopes of the trust doctrine protecting Indian lands and resources, because you won't find any environmental or natural resources statute out there that imposes a specific duty towards tribes (except some historic preservation laws). And now the Department of Justice is perpetuating this fundamental mistake in its briefs defending the government in APA suits. As we all know, once a mistake makes it into a court decision, the

mistake becomes law by stare decisis. And once it becomes law, agencies will ignore their trust obligation to tribes.

So the door is just about to close on any general trust responsibility in preventing federal action that is harmful to tribal property interests. However, I think there is one wedge holding the door open, and it comes from the very recent Navajo and White Mountain Apache cases. If you read those opinions carefully, the Court in both cases takes great pains to say that the requirement of finding a statutory basis for trust claims comes directly from the language of the Tucker Act. Tribal lawyers in trust cases now pending before federal district courts should take this opportunity to use the language in Navajo and White Mountain Apache to distinguish Tucker Act claims for damages from APA claims for injunctive relief, and to clarify that claims brought under the APA may be based on the common law trust duty without any supporting statutory language.

I'd like to conclude by saying that it has been a real privilege to address members of the bar that can actually develop the Indian trust doctrine as a source of Indian rights. This doctrine is perhaps the only source of law that can protect the natural landscapes, animals, and waters that sustain tribalism. This is a pivotal point in the history of many tribes -- a time that will determine whether ancient lifeways associated with natural resources will survive into the future. As tribal lawyers carrying the message of sovereign trust to agency officials, judges, and the public, let your compass be the purest moral foundation of the trust: that sacred promise, made to induce massive land cessions, that the retained homelands would be protected to support tribal lifeways and generations into the future. This fundamental promise *should* restrain the majority society and its industry from bringing to ruin those natural systems sustaining Native America.

THANK YOU.