

Federal Indian Policy Trends In The Obama Administration

SELF-GOVERNANCE TRIBAL STRATEGY SESSION – PHOENIX, AZ
November 19, 2008
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INTRODUCTION

My name is Philip Baker-Shenk. I am a partner in the law firm of Holland & Knight. Since 1976, I have been privileged to work on behalf of Indian tribes in Washington D.C.

Over those 32 years, I've become more and more certain that I know fewer and fewer answers. Nevertheless, my job for the next 25 minutes is to give you a political forecast on the federal Indian policy trends that will be shaped by the Obama presidency.

I forecast that President Obama will become, sooner or later, a budget-cutting economic conservative shaped by abysmal economic realities.

For federal Indian policy, this prediction identifies the single biggest threat to federal Indian policy as we know it – a looming, tsunami tidal wave of soaring deficits, swelling national debt and powerful Baby Boomer demands for more and more entitlement spending. All this will force sharp cutbacks in federal funding for Indian programs in the coming years. But more on that later.

First, on a lighter note, I'd like to briefly look at the election results of two weeks ago, President-elect Obama's transition process, the team of advisers he is assembling, and what to expect from Obama's first several months and years as President.

2008 ELECTION TURNOUT

Given the news media coverage of last week's election, most casual observers would think voter turnout was at record levels. It wasn't. The green line on the chart shows where it was through the 2004 election, and that star reflects turnout for 2008 -- it barely exceeded the 2004 election turnout between Bush and Kerry. The fact that national turnout trends are holding fairly steady serves to boost

the impact of higher turnout in Indian Country, like was experienced at the Red Lake Reservation and other places throughout Indian Country earlier this month.

NATIVE AMERICAN INDIAN CANDIDATES

Thanks in part to Native Vote efforts, dozens of Native Americans ran for office in State elections around the country. Dino Rossi, a Tlingit Republican, lost his race for Governor in Washington. A Chickasaw Republican, Tom Cole, won re-election in Oklahoma and remains the only Indian in Congress.

TRANSITION TO PRESIDENT OBAMA ADMINISTRATION

After a campaign ends, the candidate of some becomes the President of all. The winner must decide what he prioritizes and who he pleases first among the millions of people who voted for him. The millions of people who voted for the loser must decide what of the winner's priorities they will support or undermine. Perhaps most importantly, the winner must decide what he's going to do with the problems he was able to duck or ignore during the campaign, the hard problems that defy solutions.

Early this week, President-elect Obama released the list of people he has assembled to advise him on appointments and policy changes at the Department of the Interior.

(run through the names on the list)

NEW SLIDE – TRANSITION

Personnel appointments can make or break an Administration.

Every day you are seeing news on this. There are many familiar faces being named. 31 of the 47 people named as of last weekend to transition or staff posts previously served in the Clinton Administration.

I put the address of our Holland & Knight webpage where you can access a daily memo that carries the latest transition news, rumors, and tips on inauguration tickets and other transition trivia.

Nominations and appointments will preoccupy Washington for the next half year. The latest Plum Book is available on the internet at the address on the screen. It lists all of the thousands of political positions up for appointment. Here are some of the names being discussed for the top positions:

White House (Nicholas Rathod -- Spitzer political affairs; Binney; Allen; Harper, Kendall, Chase, Johnson Pata, Trudell, Zell)
Interior Department (Inslee; Knowles; Richardson; Hayes)
E.P.A. (RFK Jr.)
Health & Human Services (Daschle)
U.S.D.A. (Forest Service) (Vilsak; Peterson)

On appropriations -- the FY 2009 continuing resolution will expire in early March, at FY 2008 funding levels. Plans now appear to involve an omnibus appropriations bill that rolls together 9 bills, including Interior, that will be unveiled and finalized in early January and then be sent to President Obama for signature on the afternoon of January 20th.

While the FY 2010 President's Budget Request is due February 2, 2009, per a 1990 law, the last two incoming Presidents (Clinton and Bush 43) did not submit detailed budget proposals until early April, instead advising Congress of the general contours of their economic and budgetary policies in February. President Bush has indicated he will not submit a budget for FY 2010. Instead, the OMB will prepare a current services baseline from which the incoming Obama Administration will roll out its detailed FY 2010 request in April.

INITIAL NATIONAL PRIORITIES OF THE OBAMA ADMINISTRATION

So what can we expect to be the initial priorities of the Obama Administration?

- ***Economy***
 - Talk of another “economic stimulus” package to be enacted, not this week, but in January and signed into law on the afternoon of January 20th by President Obama.
 - Economic stimulus (up to \$500 billion new money)
 - Tax relief for 95%
 - Extension of unemployment benefits
 - Medicaid relief to state governments

- Infrastructure (quick construction) projects
- Further bail-outs (auto industry/labor union; cities; AIG sale-lease back transit rescue)

OTHER OBAMA PRIORITIES FOR 2009

- Expand health care coverage (CHIP)
- Revamp energy development (alternative energy; restrict fossil)
- Affordable education (rewrite of No Child Left Behind Act)
- Slow climate change (cap & trade)
- Promote labor unions (card check)

INITIAL INDIAN COUNTRY PRIORITIES OF THE OBAMA ADMINISTRATION

- Indian Health Care Improvement Act Reauthorization
- Other Priorities
 - Tribal tax exempt bond authority
 - Tribal Law & Order Act
 - PEPFAR funding (\$2 billion authorized for health, public safety, water settlements)
 - Trust reform and *Cobell* lawsuit settlement
 - Tribal Consultation and Coordination Act
 - Self-governance reform (DoI)
 - Land reacquisition and economic development

NEW SENATORS FROM INDIAN COUNTRY

- ID Jim Risch (R) - succeeds *Larry Craig (R)*
- CO Mark Udall (D) - succeeds *Wayne Allard (R)*
- NE Mike Johanns (R) - succeeds *Chuck Hagel (R)*
- NC Kay Hagan (D) – succeeds *Elizabeth Dole (R)*
- NM Tom Udall (D) – succeeds *Pete Domenici (R)*
- VA Mark Warner (D) – succeeds *John Warner (R)*
- OR Jeff Merkley (D) – succeeds *Gordon Smith (R)*
- AK Mark Begich (D) – succeeds *Ted Stevens (R)*
- Races still uncertain as of November 18th:
 - MN Norm Coleman (R) – recount may take weeks. Coleman leads Franken by 215 votes out of 2.9 million case. Native Vote matters.
 - GA Saxby Chambliss (R) – Dec 2nd runoff election

- If Democrats replace each of these two Republican incumbents, the Democrats will have a filibuster-proof majority in the Senate. Even if they don't reach 60 seats, they and President Obama will be able to pressure a stray Republican or two to defect on any given issue, providing the Senate majority and Executive Branch with rare power to work its will.

SENATE LEADERSHIP

- Floor and Policy Conferences
 - **Harry Reid**, Majority Leader
 - Dick Durbin, Majority Whip
 - **Charles Schumer**, Conference VC (also DSCC?)
 - **Patty Murray**, Conference Secretary
 - **Byron Dorgan**, Policy Cmte Chair
 - Mitch McConnell, Minority Leader
 - **Jon Kyl**, Minority Whip
 - Lamar Alexander, GOP Conference Chair
 - **John Thune**, GOP Conference Vice Chair **John Ensign** (GOP Policy Cmte Chair)
 - NRSC Cornyn chair
- Committees
 - Appropriations
 - **Inouye** (D-HI) & Cochran (R-MS)
 - Indian Affairs
 - **Dorgan** (D-ND) > Johnson (D-SD)? Coburn (R-OK)
 - Commerce
 - Rockefeller (D-WV) or Dorgan (D-ND)?
 - Energy and Natural Resources
 - Bingaman (D-NM) or Dorgan (D-ND)? Murkowski (R-AK)
 - Environment and Public Works
 - Boxer (D-CA) & Inhofe (R-OK)

HOUSE LEADERSHIP

This morning, leadership decisions are being decided by House Democrats and Republicans in their respective caucuses.

- Floor and Policy Conferences
 - Speaker: Nancy Pelosi
 - Majority Leader: Steny Hoyer
 - Majority Whip: James Clyburn
 - DCCC: Chris Van Hollen

- Dem Caucus: Chm John **Larson**, VC Xavier Becerra
- Minority Leader: John Boehner (**Lungren** challenge?)
- Minority Whip: Eric Cantor
- GOP Conference: Chm Mike Pence, VC McMorris-Rodgers
- NRCC: **Tom Cole** challenged by Pete Sessions
- GOP Policy Cmte: Burgess challenging McCotter
- Committees
 - Natural Resources
 - **Rahall** (D-WV) & **Don Young** (R-AK)
 - Commerce
 - Waxman (D-CA)
 - IHCA
 - Native contracting
 - Tobacco

ELEVATING TRIBAL ISSUES IN THE OBAMA ADMINISTRATION - - THE PSYCHOLOGY OF PERSUASION

So how do we raise up Indian issues as a priority for the Obama Administration? Here are some suggestions.

Tribes must master the art of persuasion. We have to make our story compelling to others. We have to convince the Obama Administration that it can further its goals by furthering our goals.

Tribes must romance the next Secretary. We have to get in the Secretary's mind and heart, early and often, and win it over. We need a General Petraeus-style, counter-insurgency, surge-like strategy that gets in close and earns respect by matching the Secretary's goals with ours.

We do best to avoid being bad news. Especially when we're making our first impressions on the Obama Administration. Are Indian Tribes presented as a "problem headache" or will we insist Tribes are an "opportunity" for do-able solutions.

We must tell the good news, in example after example, about how Tribes are expanding employment for members and neighbors, how Tribes are effectively caring for their people, how Tribes are reviving diverse cultures, and folkways, and languages; how Tribes are rebounding from tragedy with a vibrancy that is inspiring.

ELEVATING TRIBAL ISSUES IN THE OBAMA ADMINISTRATION - - THE POWER OF A NARRATIVE

Tribes would do well to refine our narrative, our story-line, and then repeat it over and over again like a good campaign message. Presidential contenders do this to win votes. Tribes must do this to be persuasive. What would be an effective tribal narrative?

1. It must plainly explain tribal sovereignty, perhaps as the right to control what happens with our people, our land, and our guests thereon.

2. It must plainly explain the federal trust responsibility, perhaps as the solemn national duty to honor the letter and spirit of treaties and other agreements made in exchange for peace, land and resources.

3. It must plainly show how Tribes are the most effective entities to deliver vital government services to, and make decisions for, Indians. A Tribe is the best government to deliver services to Indians because it is the one closest to those served. It is the closest culturally, so it understands better than any other entity how best to serve. Because it is the closest geographically, it is the most efficient at serving. And because it is the closest politically to those served, it is more accountable and responsive than any other service provider.

Those are some examples of how we could form a narrative that is persuasive.

ELEVATING TRIBAL ISSUES IN THE OBAMA ADMINISTRATION - - THE PSYCHOLOGY OF CONNECTION

We must connect tribal objectives with national objectives we hold in common with the rest of America:

We share Security interests – we must talk more about the Warrior tradition of many Tribes and the many men and women warriors that Tribes have sent off to defend American freedom.

We share energy independence and sustainability interests - some of the greatest American energy reserves are on Indian lands. What federal and state government obstacles must be removed so Tribes can create a win-win for themselves and America?

Tribes contribute Diversity to America – Tribes bring color, beauty, and a rich variety to the American experience, making history come alive.

We share the goals of efficient expenditures of federal dollars. Tribes benefit from Efficiency – the most effective expenditure of federal tax dollars on services for Indians is done by Tribes for Tribes.

We must show that -- what is good for a Tribal community -- is good for its neighbors. And it's good for America. Jobs in Indian Country produce revenue and taxes that benefit all governments -- tribal, local, state and federal.

ELEVATING TRIBAL ISSUES IN THE OBAMA ADMINISTRATION - - THE POLITICS OF PERSONNEL

Appointments can make or break policy. Cabinet and sub-cabinet nominations can determine a President's success or failure. Think Iraq war Rumsfeld. Think FEMA's heckuva-job-Brownie.

President Obama should be pressured to appoint tribal leaders to federal positions because tribal leaders possess the most knowledge, best experience, proper attitude, and unique aptitude necessary to implement a successful federal Indian policy. Now, more than ever before, Indian people are qualified to fill positions at the highest levels. Why not Cabinet-level positions? For the longest time, non-Indians have been expected to master the Indian aspects of these jobs. Isn't it about time Indians are seen as being able to master the non-Indian aspects of these jobs? But if Tribes don't demand this, who will?

UNPRECEDENTED PRESIDENTIAL POSITIONING

Never before has Indian Country had such attention in the presidential campaigns. Never before have the challenges and opportunities of Native America been so well understood. So why is this not a time to celebrate?

THE ODDS ARE STACKED AGAINST US

The odds are stacked against Indian Country, in my view, because a federal debt tsunami threatens to wipe out Indian funding.

This is the biggest threat to tribal sovereignty I see. Without money, it is very difficult to exercise sovereignty. And, like many other things, if you don't use sovereignty, you lose sovereignty.

The annual 6.5 billion dollars in federal funding for IHS, BIA HUD and DOT Indian programs, are at risk.

Tribes face fierce competitors in the coming battles to protect the tribal slice of a shrinking federal budget pie:

- Financial collapse and pricey bailouts
- National security/wars
- Growth in entitlement spending
- Soaring infrastructure needs
- State/local government demands for financial relief
- Costly interest on a swelling national debt
- Earmark reform curbing "catch-up" projects

All these forces and factors are in direct competition with Tribes for federal funding.

NATIONAL DEBT HAS SOARED TO 10.3 TRILLION DOLLARS

The national debt is at 10.34 trillion dollars. The annual deficit, on both a nominal and percentage-of-GDP basis, is expected to rise sharply in FY 2009, to 1 trillion dollars or more, pumped up by the rescue plan, a recession-induced drop in revenues, and additional economic stimulus spending of up to 500 million dollars.

Deficit spending by the federal government destroys credit markets and hikes interest rates, it cuts consumer spending and business investment, and raises pay-as-you-go pressures that threaten to derail every new Indian funding or tax initiative. Deficit spending hikes the competition faced by Tribes chasing fewer and fewer federal dollars. As a result, I fear that Indian Tribes will find ourselves in the Mother of all battles to preserve federal Indian spending during President Obama's first term in office.

CHART - Social Security, Medicare and Medicaid and interest alone are likely to consume all federal revenues over the next two decades.

As President Obama surveys the coming financial crises, he will have to balance military spending, on wars and national security,

against promises made to veterans and seniors and special interests. So-called entitlement programs like Medicare, Medicaid, and Social Security will consume bigger and bigger slices of tax revenues as America's age wave begins to roll in just beyond the ten-year budget horizon.

Annual deficits and national debt soar if age-related entitlement programs (e.g., Social Security, Medicare) are left on autopilot. All projections by the CBO, GAO, and OMB say this will shatter our economy.

Chart -- Social Security, Medicare, Medicaid, and interest on the national debt will consume all federal revenues at present rates in 20 years. That leaves no money on the table for national security. For roads. For law enforcement. For education. Nothing for Indian programs. And this chart was drawn before last month's the 750 billion dollar bailout and the next 500 billion dollar stimulus package jacked up the amount of interest we will owe on the national debt.

DEFICIT SPENDING – SHORT TERM TACTICS, LONG TERM STRATEGY

- President Obama's likely two year deficit spending plan
 - "We're going to have to spend money now to stimulate the economy.... And the (consensus is) that we shouldn't worry about the deficit next year or even the year after. That (in) the short term, the most important thing is that we avoid a deepening recession." President-elect Obama, November 16, 2008 on CBS "60 Minutes".
- Two-year Tribal Spending Tactics (FY 2009, 2010)
- Long-term Tribal Spending Strategy (FY 2011>)

ELEVATING TRIBAL POLICY – RECAP

How will we survive this era as federal funding is reduced while the needs of Indian Country increase?

I have suggested a strategy that involves persuasion, narrative, connection and personnel efforts that focus on President Obama's priorities for health and trust reform and energy development.

But none of this will be enough to preserve federal Indian funding in the face of the looming national debt tsunami that threatens

to swamp our boat in a couple of years. Preserving federal Indian funding will require a shared unity of purpose between Tribes with enterprise revenues and Tribes who substantially rely on Federal funds for their governmental operations.

Without tribal sovereignty protected by the federal trust responsibility, tribal entities with or without enterprise revenues, will perish. Because without money, it is very hard to exercise tribal sovereignty.

Both groups of Tribes – those with enterprise revenues and those who substantially rely on Federal funds -- share a common identity and a common fate.

If this is true, we may soon see Tribes with enterprise revenues begin to fund a sophisticated, strategic initiative to protect and preserve federal Indian funding for all Tribes.

CONCLUSION – FOR MORE INFORMATION

These are my brief suggestions for how to preserve federal Indian funding in the Obama Administration. My hope is that you will develop these and other ideas into much greater thought and action. Thank you.