

**TESTIMONY OF DONALD “DEL” LAVERDURE,
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON
THE UNITED NATIONS DECLARATION
ON THE RIGHTS OF INDIGENOUS PEOPLES**

JUNE 9, 2011

Good afternoon, Mr. Chairman and members of the committee. My name is Del Laverdure and I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior. I am pleased to be here today to discuss the United States’ support for the United Nations Declaration on the Rights of Indigenous Peoples (Declaration).

I. Introduction.

On September 13, 2007, the United Nations General Assembly adopted the Declaration by a vote of 143 in favor, 11 abstentions, 34 not participating, and 4 opposed. The United States was one of the four nations that voted against adoption of the Declaration at that time. Less than 10 months after President Obama was sworn into office, the President held the first White House Tribal Nations Conference, on November 5, 2009.¹ President Obama, joined by Members of Congress, several cabinet secretaries and other senior administration officials from the Departments of State, Justice, Commerce, Education, Energy, Agriculture, Labor, Health and Human Services, Housing and Urban Development, and the Interior, and the Environmental Protection Agency, met with leaders invited from all of the then 564 federally recognized tribes to forge a stronger relationship with tribal governments. During the conference, tribal leaders recommended to President Obama that he reexamine the United States’ position on the Declaration.

Six months later, on April 20, 2010, at the United Nation’s Permanent Forum on Indigenous Issues, Ambassador Susan Rice, the Permanent Representative of the United States to the United Nations, announced that the United States would undertake a formal review of its position on the Declaration, in consultation with Indian tribes and with the input of interested nongovernmental organizations. Ambassador Rice stated that the United States recognized that “for many around the world, this Declaration provides a framework for addressing indigenous issues.” During the review, the Administration held multiple consultation sessions with tribal leaders and other meetings with interested groups and individuals. The Administration received over 3,000 written submissions. An interagency team reviewed and considered all of the comments received and carefully considered the 46 articles contained in the Declaration.

On December 16, 2010, at the second White House Tribal Nations Conference, President Obama announced the United States’ support for the Declaration. The President stated that “[t]he aspirations [the Declaration] affirms -- including the respect for the institutions and rich cultures

¹ See <http://www.whitehouse.gov/photos-and-video/video/president-obama-opens-tribal-nations-conference>.

of Native peoples -- are one[s] we must always seek to fulfill.” The Administration also released a document to accompany President Obama’s announcement that provides a more detailed statement about United States’ support for the Declaration and our ongoing work in Indian Country.²

II. The United Nations Declaration on the Rights of Indigenous Peoples.

The Declaration is a not legally binding, aspirational international instrument that includes a broad range of provisions regarding the relationship between nations, organizations and indigenous peoples and individuals. While not legally binding, the Declaration has both moral and political force.³

The Declaration is an important instrument, in part, because of the breadth of its provisions on issues of concern to indigenous peoples, including:

- Consultation and cooperation before adopting measures that may affect indigenous peoples;
- Maintaining, protecting, and accessing in private indigenous religious and cultural sites;
- Protecting indigenous lands, territories, and natural resources;
- Improvement of the economic and social conditions of indigenous peoples; and
- Living in freedom, peace, and security as distinct peoples.

The United States’ support for the Declaration is a milestone in the international community’s efforts to identify and address the needs of indigenous peoples around the world. By supporting the Declaration, the United States joined more than 140 countries in support of it, including the three other countries that voted against adoption of the Declaration in 2007: Australia, Canada and New Zealand.

The Administration, however, does not see support for the Declaration as an end in itself, because – again quoting President Obama – “[w]hat matters far more than words -- what matters far more than any resolution or declaration -- are actions to match those words.” The President set a standard of action to which he expects his Administration to be held, and we are already being challenged to meet that standard. We view this challenge as a good thing. The Obama Administration is committed to working with tribal leaders to address the many challenges facing their communities. Toward this end, the Administration is looking to the principles embodied in the Declaration to meaningfully address the challenges that Indian communities face and to improve the lives of Native Americans. We are doing this in a number of ways.

² See Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples -- Initiatives to Promote the Government-to-Government Relationship & Improve the Lives of Indigenous Peoples at <http://www.state.gov/documents/organization/153223.pdf>.

³ For further explanation of these issues, see <http://www.state.gov/documents/organization/153223.pdf>.

III. Actions of the United States that Complement the Principles Embodied in the Declaration.

A. Consultation and cooperation before adopting measures that may affect indigenous peoples; and maintaining, protecting and accessing in private indigenous religious and cultural sites

We are working with tribal leaders to identify the matters that they believe are priorities for Federal government action and to formulate appropriate responses. Indeed, President Obama himself reached out to tribal leaders and invited them to Washington, D.C. to meet with him and many of his Cabinet officials at the two White House Tribal Nations Conferences that I mentioned briefly earlier in my testimony. Those sessions gave tribal leaders unique opportunities to discuss their priorities with the President and his most senior officials.⁴ Many of the priorities identified by tribal leaders at both White House Tribal Nations Conferences are very closely related to the principles outlined in the Declaration.

The first White House Tribal Nations Conference was organized, in part, in response to tribal leaders' emphasis on the importance of government-to-government consultation with tribes before actions are taken that directly affect them. In response, the United States has been working to reinvigorate implementation of Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments." The Executive Order requires federal agencies to consult with tribal officials on "policies that have tribal implications," a term that is broadly defined in the order. To improve the implementation of the order, President Obama, at the first White House Tribal Nations Conference with tribal leaders, in November 2009, signed a Presidential Memorandum directing all U.S. Government agencies to develop detailed plans to fully implement the Executive Order. I understand that the federal agencies completed their detailed action plans. For example, the Department of the Interior submitted its plan of action on February 3, 2010, and its proposed consultation policy was published in the Federal Register on May 17, 2011. 76 Fed. Reg. 28446 (May 17, 2011). The Department is seeking comment from the public before making publishing a final consultation policy.

President Obama's directive has had its intended effect. Tribal consultations are at an unprecedented level throughout the U.S. government. Indeed, some tribal leaders will tell you that the effect has been too many requests for consultations. The Administration is therefore exploring ways of coordinating agency requests for consultation and of using technology to smooth the consultation process.

One example of a significant ongoing process of consultation with tribal leaders is the effort by the U.S. Forest Service (Forest Service) in U.S. Department of Agriculture (USDA) regarding sacred sites. Because the agency heard from many tribal governments that improvements were needed, the Forest Service now engaged in a year-long series of tribal consultations to identify better processes that can be put in place to protect sacred sites.⁵ This effort also complements

⁴ To access the report summarizing the main comments and recommendations made by tribal leaders at the December 2010 White House Tribal Nations Conference; see http://www.whitehouse.gov/sites/default/files/Tribal_Nations_Conference_Final_0.pdf.

⁵ See <http://www.fs.fed.us/spf/tribalrelations/sacredsites.shtml>.

the principle in the Declaration regarding maintaining, protecting, and accessing in private indigenous religious and cultural sites.

Tribal consultations are not only taking place, they are also having an effect. For example, in response to concerns expressed by tribal leaders, the USDA opened eligibility to the Renewable Energy for America Program to tribal business entities, thus improving their access to renewable energy program funding.

B. Protecting indigenous lands, territories, and natural resources.

The Administration understands that tribal homelands are essential to the health, safety, and welfare of Native Americans. Thus, the Department of the Interior has made the restoration of tribal homelands a priority by improving the process by which it acquires land in trust on behalf of tribes and individual Indians. In addition, President Obama, Secretary Ken Salazar, Assistant Secretary – Indian Affairs Larry Echo Hawk, and I have all expressed our support for legislation that would address the harmful effects of the 2009 U.S. Supreme Court decision in *Carcieri v. Salazar*, which held that under the Indian Reorganization Act of 1934 the Federal Government cannot take land into trust for Indian Tribes not under Federal jurisdiction in 1934.

The Department also recognizes that Indian tribes must be able to determine how their homelands will be used. That's why we are revising our regulations governing leasing on Indian lands. Once completed, we believe this effort will mark the most significant reform to Indian land leasing in 50 years. The Department's revisions will streamline the process by which leases of Indian lands are approved, thereby promoting homeownership, economic development, and renewable energy development on tribal lands. We conducted three tribal consultation sessions on this initiative in April, and are now reviewing and considering all tribal comments on the draft leasing regulations. Once that is completed, the Department will proceed to a formal Notice of Proposed Rulemaking. We intend to conduct further consultation at that time, in addition to receiving public comments on the proposed regulations. As it stands, our plan is to complete the rulemaking for these regulations in early 2012.

I also recently testified before this Committee in strong support of S. 703, the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2011, which would restore tribal authority to govern leasing on tribal lands, for those tribes that wish to exercise that authority. Under this legislation, tribes would submit their own leasing regulations to the Secretary for approval, and then process leases under tribal law without prior express approval from the Secretary of the Interior.⁶ This bill has the potential to significantly reduce the time it takes to approve leases for homes, small businesses, and renewable energy.

C. Improvement of the economic and social conditions of indigenous peoples.

As we all know, the global economic downturn has affected communities all across the country. But Native Americans have been hit particularly hard. The Administration has responded by

⁶ See <http://indian.senate.gov/hearings/upload/Donald-Laverdure-testimony-S-636-S-703.pdf>.

taking many steps to promote economic and social development in Native American communities in both the short and the long terms.

Through the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, the Administration provided an infusion of more than \$3 billion into Indian Country to improve infrastructure and provide jobs.⁷ More than \$22 million of this money was provided through the Department of the Interior's program to improve housing in tribal communities.

Perhaps the most important long-term investment for any country, people, or individual is in education. Tribal leaders have stressed, in particular, the importance of greater tribal control over the education of Native American students. The Administration has proposed changes to enhance the role of tribes in the education of their youth and to give them greater flexibility in the use of federal funds to meet the unique needs of Native American students. We have also accelerated the rebuilding of schools on tribal lands and are working to improve the programs available at tribal colleges.

A critical part of promoting the economic and social development of Indian, Alaska Native, and Native Hawaiian communities is to prepare workers from these communities for good jobs in the knowledge-based global economy. Grants under section 166 of the Department of Labor's Workforce Investment Act (WIA) support comprehensive employment and training services and targeted assistance designed to help indigenous Americans, including those with multiple barriers to employment, obtain the education, work experience, and skills needed to secure good jobs, especially in high-growth industries.

Another crucial component of economic and social development is the health of our people. Yet health care is often insufficient in indigenous communities.

President Obama took a major step towards addressing health-care gaps (for both indigenous and non-indigenous communities) by signing into law last year the Affordable Care Act, Pub. L. No. 111-148. Significantly, the Act provides permanent authorization for the Indian Health Care Improvement Act, which modernizes and updates the Indian Health Service, which provides health services for approximately 1.9 million American Indians and Alaska Natives in 35 states. The Administration expects this law to improve the lives and health of Native Americans.

First Lady Michelle Obama has also made a particular effort to involve Native American youth in her "Let's Move!" initiative to address childhood obesity. On May 25, 2011, the First Lady launched *Let's Move! in Indian Country* (LMIC) at the Menominee Nation in Keshena, Wisconsin.⁸ In addition, the First Lady and American Indian youth planted native seeds of corn, beans and squash in the White House Kitchen garden last Friday. LMIC brings together federal agencies, communities, nonprofits, corporate partners, and tribes to end the epidemic of childhood obesity in Indian Country within a generation. To further the efforts of LMIC, the First Lady recruited Native American athletes, like football stars Sam Bradford, a member of the Cherokee Nation, and Levi Horn, a member of the Northern Cheyenne Tribe, to encourage Indian kids to adopt healthy lifestyles.

⁷ See <http://www.bia.gov/idc/groups/public/documents/text/idc010971.pdf>.

⁸ See <http://www.letsmove.gov/indiancountry>.

One public-health challenge on which we are focusing particularly intensely is the unacceptably high rate of suicide by Native American youth. From November of 2010 through February of 2011, the Administration held listening sessions with tribal leaders from across the country on suicide prevention. These listening sessions sought input from tribal leaders on how the Bureau of Indian Affairs, the Indian Health Service, and the Substance Abuse and Mental Health Services Administration can effectively work with Indian tribes to prevent suicide. These listening sessions will culminate in two national conferences on this topic. The first conference will be in Scottsdale, Arizona, in August, and the second conference will be later this year in Alaska.

Tribal leaders who have met with President Obama have stressed to him the importance of investment in infrastructure. President Obama agrees and we have supported many economic development initiatives that are focused on the needs of Native Americans. One exciting initiative was the announcement in December by Energy Secretary Chu of the establishment in the Department of Energy of an Office of Indian Energy Policy and Programs, led by a member of the Cheyenne River Sioux Tribe. The office is charged with directing and implementing energy planning and programs that assist tribes with energy development and electrification of Indian lands and homes. It has done extensive outreach to Indian tribes regarding energy issues on tribal lands and last month held a Department of Energy Tribal Summit that brought together over 350 participants, including tribal leaders and high-ranking cabinet officials, to interact directly on energy development and related issues.⁹

The Administration is also working with tribal leaders to bring their communities into the 21st Century by equipping them with high-speed access to the Internet. Both the USDA and the U.S. Department of Commerce (Commerce) have programs to do so. USDA awarded loans and grants worth over \$133 million to expand broadband access in tribal communities in the continental United States and an additional \$122 million to provide high-speed internet infrastructure across many Native Villages in Alaska. Similarly, Commerce awarded approximately \$1.4 billion for broadband projects to benefit tribal areas.

These infrastructure investments go hand in hand with a wide range of projects to create jobs in Indian communities and prepare Native Americans to fill them.

D. Living in freedom, peace, and security as distinct peoples.

As we have been told repeatedly by tribal leaders, no community can prosper, economically or socially, unless its basic needs for public safety are met. For this reason, this Administration has taken a number of steps to strengthen tribal police and judicial systems. More flexible funding has been key. But perhaps more fundamental was the July 2010 signing by President Obama of the Tribal Law and Order Act (TLOA), Pub. L. No. 111-211. As you know, this comprehensive statute is aimed at improving public safety on tribal lands, including unacceptably high rates of violence against women. TLOA gives tribes greater authority to prosecute crimes and increases federal accountability for public safety in tribal communities. Moreover, in anticipation of the reauthorization of the Violence Against Women Act, this month, the Department of Justice will

⁹ See <http://www.energy.gov/indianenergy/tribalsummit.htm>.

hold tribal consultation sessions to solicit recommendations from tribal leaders on whether additional Federal statutory authorities could enhance the safety of Native American women.¹⁰

In a related initiative, the Bureau of Indian Affairs launched an intense community-policing pilot program on four reservations with high crime rates. *Operation Alliance* provided 560 uniformed officers from four Interior bureaus and the USDA Forest Service who performed 10,000 officer days of police service to tribal communities. The officers far exceeded traditional law enforcement duties by also performing social and community service projects to build positive relationships and partnerships with the communities. The Department is already seeing promising results in decreased crime rates and the Bureau hopes to expand the program in the near future.

IV. Conclusion.

There are over 20 Federal departments and agencies that provide a full range of programs to Native Americans. I have given you a few examples today to help demonstrate the extent of our Administration wide initiatives to address the needs of Native American governments and communities across our country in ways that complement the United States' support for the Declaration. However, we recognize that a lot more needs to be done and we look forward to working with Congress, tribal leaders, other indigenous peoples and representatives from other indigenous organizations and communities to ensure that Native Americans, like all Americans, have the opportunities they deserve.

Thank you for the invitation to present testimony on the United States' support for the Declaration. I will be happy to answer any questions you may have.

¹⁰ See <http://www.tribaljusticeandsafety.gov/inv-ltr-framing-paper.pdf>.