

9-26-2014

Great nations can work on mistakes

Kevin Washburn

University of New Mexico - School of Law

Follow this and additional works at: https://digitalrepository.unm.edu/law_facultyscholarship



Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

Kevin Washburn, *Great nations can work on mistakes*, *Albuquerque Journal* (2014).

Available at: https://digitalrepository.unm.edu/law_facultyscholarship/537

This Article is brought to you for free and open access by the UNM School of Law at UNM Digital Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of UNM Digital Repository. For more information, please contact amywinter@unm.edu, lsloane@salud.unm.edu, sarahrk@unm.edu.

<https://www.abqjournal.com/468524/great-nations-can-work-on-mistakes.html>

Great nations can work on mistakes

By Kevin Washburn

Albuquerque Journal
Friday, September 26, 2014

A Supreme Court Justice once wrote, “Great nations, like great men, must keep their word.”

As most Americans realize, Indian treaties represent promises that our country has too often failed to meet.

Today, the United States is announcing another step toward repairing those broken promises. Today, we commemorate with the Navajo Nation a \$554 million settlement of its long-standing breach-of-trust lawsuit against the federal government.

Settling litigation is hardly a bragging opportunity. We should, of course, regret the actions that led to litigation in the first place and that potential liabilities have grown so large over several decades.

But this settlement should be appreciated for being emblematic of a much improved relationship between native governments and the United States. The settlement underscores the importance of the federal trust responsibility owed to Indian tribes, Alaska Natives and the Pueblos.

President Obama has said that when the federal government makes a mistake, the best course is to “own” the mistake and then correct it. In Indian Country, this is a daunting task.

The United States government has more than two centuries of missteps, many of which have festered for at least as long.

The breach-of-trust litigation has placed the United States in a difficult position. The opposing litigants in these cases are the same people for whom the U.S. serves as trustee. Litigation naturally breeds animosity, and it is difficult to serve native people well while simultaneously battling them in court.

Managing the federal tribal relationship is a difficult job under the best of circumstances, but the litigation has sometimes made the work for federal trustees untenable, creating a bunker mentality for these federal officials.

Since Obama took office, the administration has established a new relationship with Indian tribes. This has involved annual meetings for tribal leaders with the White House, new commitments across the federal government to consult with Indian

tribes on matters that affect their interests and the settlement of litigation fairly and expeditiously.

Together with Congress, the president and secretaries of the Interior Sally Jewell and Ken Salazar, working with Solicitor Hilary Tompkins (a New Mexico lawyer) and the Department of Justice, settled the protracted Cobell litigation for \$3.4 billion and several significant water rights cases, including one involving four New Mexico Pueblos, for a total of \$2.6 billion.

Today's settlement agreement with the Navajo Nation is particularly important.

It marks an important milestone in the Obama administration's commitment to honoring the special trust relationship the U.S. owes Native American tribes.

The administration has now settled more than 80 individual cases brought by Indian tribes, including the settlement announced today, for a total of more than \$2 billion. In total, settlements with Indian tribes have exceeded \$8 billion.

Much of the money has reached impoverished tribes, like the Navajo Nation, where many Indian people lack running water or electricity.

To be sure, the federal government continues to defend certain tribal claims in court. And even when it has settled, it has negotiated aggressively and used rigorous methodologies for reliably determining the government's liabilities. Taxpayer money must never be squandered.

Settling the cases has brought some fiscal benefits.

It has eased the burden federal accountants carry by resolving uncertain federal liabilities, sometimes at a discount, and reducing them to present value. And it has saved executive and judicial resources.

Governments act through human beings. That is to say, governments will make mistakes. We must always work to improve.

But the federal government best serves Indian people and tribes – as well as American taxpayers – when we work in good faith to address problems quickly and build relationships of trust with the people we serve. The Navajo Nation settlement does just that.

Copyright © 2017 Albuquerque Journal | Albuquerque, N.M