

Organizing Indian Affairs For The Next 100 Years

By **Larry Roberts** (February 5, 2018, 2:50 PM EST)

U.S. Secretary of the Interior Ryan Zinke welcomed 2018 with a proposal to reorganize the Department of the Interior's regions by watersheds and ecosystems. Reported as his largest priority, Zinke advocates that the 13 reorganized regions, or joint management agencies (JMA), will better manage land and water and will better respond to crisis as a coordinated unit. The secretary has described it as a reorganization plan for the next 100 years (see the Interior Reorganization video) and reportedly "was inspired by the U.S. military's Joint Special Operations Command, in which a mix of uniforms direct blended teams of elite operators. 'That's how we fight wars,' Zinke told the Denali Staff 'Anticipate about 13 of these JMAs in the U.S.'" With 19 western states already voicing concern and requesting consultation (see the Western Governors' Letter), it's clear that tribes need to be at the table with the Interior Department.



Larry Roberts

Currently, the Interior Department's bureau regional offices, including the Bureau of Indian Affairs (BIA), are generally configured to align with state boundaries. See the current BIA regions. The secretary's 13 new regions would be led by a single regional director, with authority over all bureaus within the region, for a term of two years before the leadership position rotates to another bureau in the region. Hypothetically, the U.S. Fish and Wildlife Service could lead the Great Plains Region for two years, followed by two years of the U.S. Bureau of Land Management leading the region, followed by two years of the U.S. Bureau of Reclamation leading the region, followed by two years of the BIA leading the region. This means that tribes could be faced with having to educate a new regional director every two years.

If the current 12 BIA regions are eggs, Zinke's proposal scrambles them. (Only the Alaska Region remains unchanged.) The United South and Eastern Tribes (USET) Tribes, which includes one tribe outside of the current BIA Eastern Region, would see its tribes divided across four regions. For example, tribes surrounded by New York, Michigan, Indiana and parts of Wisconsin would be one region, whereas tribes in Louisiana, and other parts of Wisconsin, Minnesota and Iowa would be in another.

The Midwest Alliance of Sovereign Tribes (MAST), which consists of tribes located within the current BIA Midwest Region, would be divided across three regions. Neighboring tribes in Wisconsin, Minnesota and Iowa would find themselves in different regions. Similarly, neighboring tribes in the current BIA Pacific Region (California) would be cut in half with Northern California tribes being served by the same region as tribes in Oregon and Washington.

Zinke proposes to eliminate entirely both the BIA Navajo Region and the Eastern Oklahoma Region. The Navajo Nation would join a region that stretches from Wyoming to the international boarder in Arizona and would include the western half of New Mexico and parts of Nevada. The Eastern Oklahoma Region would be dissolved and those tribes would be included in a region that includes all of Oklahoma, Eastern New Mexico and Texas.

The changes are perhaps broadest in terms of expanded geography in the BIA Great Plains region. The Great Plains Tribal Chairman's Association (GPTCA) would see the region expand to serve tribes in parts of Montana, Minnesota, Kansas and Wyoming. With the exception of the Blackfeet Nation, tribes within the Rocky Mountain Tribal Leadership Council would find themselves incorporated into this new region. The Affiliated Tribes of Northwest Indians (ATNI) would find a similar scrambling of their member tribes, again dividing tribes in Oregon and Washington into different regions.

Organizing regional leadership by watershed and ecosystem with regional directors that change every two years may have some appeal for agencies such as the Fish and Wildlife Service or Bureau of Reclamation. But on its face it's hard to see how it makes sense for BIA and BIE — the only agencies with a primary mission to deliver services to tribes and Native American people.

Equally concerning is the proposal to rotate regional directors. How will a regional director with a two year term ever possess a meaningful understanding of each tribe in its region, the treaties and the government's actions that led to the present? How will a rotating regional director develop and maintain reliable relationships to effectively work shoulder-to-shoulder with tribes to implement approaches and solutions to current challenges? How does a model that rotates regional leadership every two years foster the depth necessary to best serve tribes?

There is no doubt that regional directors for other agencies are true professionals in their areas of expertise. They're also probably the first to readily acknowledge that they don't have the specialized expertise necessary to lead the multitude of services and programs delivered to Indian Country in a particular region.

Perhaps the secretary recognizes this and will propose a different approach for the Bureau of Indian Affairs. Rather than dividing and separating tribes that have common interests, he could look to how tribes have organized themselves geographically through intertribal organizations and fashion his reorganization to strengthen those relationships. He could streamline the delivery of services under this reorganization by taking a fresh look at "inherent federal functions" to expand the ability of tribes to directly perform more of federal functions if a tribe wants to do so. He could use the reorganization to fortify the actual elevation of Indian affairs within the department that has occurred as a practical matter across administrations.

In the coming months, tribes will need to navigate how to ensure that any reconfiguration best serves Indian Country and that management within the regional framework is structured to hold Interior leadership accountable for implementation of treaty and trust responsibilities. Thus far, there are few concrete details from the Interior Department on the reorganization. There is no information on how the secretary's plan incorporates tribal input received during six listening sessions in 2017. See the BIA Consultations and Listening Sessions [here](#). Those details are anticipated to be released with President Donald Trump's 2019 budget — a budget that hopefully will not continue this administration's previous desire to cut hundreds of millions of dollars from the BIA's budget.

The question remains — will a military-inspired approach advance the nation-to-nation relationship? However the secretary decides to move forward with his greatest priority, tribes need to be at the table. Unlike any other agency within the department, this reorganization of the Bureau of Indian Affairs will impact Native American people, sovereign governments and how the department performs its treaty and trust obligations. Now is the time for tribes to think strategically to maximize their participation in nation-to-nation consultations anticipated for this spring and summer. With tribal consultation being just one of many different levers available, Tribes have an opportunity to ensure that any reorganization designed for the next 100 years best serves the next seven generations of Indian Country.

Larry S. Roberts is a counsel in Kilpatrick Townsend & Stockton LLP's Washington, D.C., office and a member of the firm's Native American affairs practice. Roberts is a citizen of the Oneida Nation of Wisconsin and served as the Acting Assistant Secretary for Indian Affairs under Secretary Jewell in the Obama administration.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.