

SUSTAINABLE DEVELOPMENT AND
SUSTAINABLE ENERGY
SUTTON SYMPOSIUM,
STURM COLLEGE OF LAW

“SUSTAINABLE ENERGY FOR ALL”

October 10, 2015

Carla F. Fredericks



COLORADO LAW

Tribal Natural Resource Development

- ▣ The path from IMLA to FPIC
- ▣ IMLA
- ▣ IMDA
- ▣ TERA
- ▣ UNDRIP/FPIC



The Trust Responsibility?

Trust

Sovereignty



Irreconcilable Tensions

- ▣ Conflicts of interest
- ▣ No remedies
- ▣ Lack of tribal buy-in to model
- ▣ Trust and sovereignty are inversely proportional under law



Fiduciary Government?

"the federal government has failed time and again to discharge its fiduciary duties," resulting in a serious injustice that has persisted for over a century and that cries out for redress. *Cobell VI*, 240 F.3d at 1086

- ▣ “It is well established that the directors owe their fiduciary obligations to the corporation and its shareholders.”

North American Catholic Educational Programming Foundation, Inc. v. Gheewalla, 930 A.2d 92, 99 (Del. 2007)



Operations and Corporations

- ▣ Passive landlord issues



Tribe as Operator/Owner/Shareholder

- ▣ Opportunity for FPIC to be realized with legal consent
- ▣ No “gray areas”
- ▣ Codification of FPIC
- ▣ Liability protection for tribe
- ▣ Can tribes have it both ways?
- ▣ FPIC obligations as vacillating and continuous



Tribal equity in operations

- ▣ From a “ward/trust” model to a fiduciary model
- ▣ Conflicts of interest to best interest



Risk and Operations

- ▣ Risk to shareholders
- ▣ How to leverage without ownership
- ▣ Role of tribes as investors for indigenous peoples worldwide



Thank you

▣ Questions

