

Breach-of-Trust Claims

15 **§ 10. Suits by Indian Tribes Against the United States Under the Tucker Act**

16 **Indian tribes may bring suit against the United States for claims arising under the**
17 **Constitution, laws, or treaties of the United States, or Executive orders of the President, or**
18 **for claims that “otherwise would be cognizable in the Court of Federal Claims if the claimant**
19 **were not an Indian tribe, band, or group.”**

20 **Source Note: 28 U.S.C. § 1505; 28 U.S.C. § 1491.**

21 **Comment:**

22 *a. History and statutory background.* Before 1946, Indians and Indian tribes could not
23 pursue claims for damages against the United States unless Congress enacted a special
24 jurisdictional act to waive the sovereign immunity of the United States and permit such claims to
25 be brought. Although the United States had, with enactment of the Tucker Act of February 24,
26 1855, ch. 122, 10 Stat. 612, created the Court of Claims and waived its sovereign immunity to
27 permit suits for damages against the United States, amendments in 1863 excluded from the Court’s
28 jurisdiction any claim “growing out of or dependent on any treaty stipulation entered into with
29 foreign nations or with the Indian tribes.” Act of March 3, 1863, ch. 92, § 9, 12 Stat. 765-767.

30 Both the Tucker Act, 28 U.S.C. § 1491, and the Indian Tucker Act, 28 U.S.C. § 1505,
31 constitute a waiver of federal sovereign immunity from suits brought by Indians and Indian tribes
32 against the United States in federal claims court. Section 1491(a)(1) provides in relevant part:

1 The United States Court of Federal Claims shall have jurisdiction to render
2 judgment upon any claim against the United States founded either upon the
3 Constitution, or any Act of Congress or any regulation of an executive department,
4 or upon any express or implied contract with the United States, or for liquidated or
5 unliquidated damages in cases not sounding in tort.

6 Section 1505 provides:

7 The United States Court of Federal Claims shall have jurisdiction of any
8 claim against the United States accruing after August 13, 1946, in favor of any tribe,
9 band, or other identifiable group of American Indians residing within the territorial
10 limits of the United States or Alaska whenever such claim is one arising under the
11 Constitution, laws or treaties of the United States, or Executive orders of the
12 President, or is one which otherwise would be cognizable in the Court of Federal
13 Claims if the claimant were not an Indian tribe, band or group.

14 The last clause in § 1505 refers to § 1491(a)(1).

15 *b. Two-part threshold determination.* The Supreme Court has held that neither statute alone
16 confers a substantive right against the United States to recover money damages. The Tucker Acts
17 create jurisdiction only. The plaintiff must identify a specific right- or duty-creating statute, and
18 allege a breach by the government of that statute. When a tribal or individual plaintiff brings suit
19 for money damages, the court must then inquire whether the source of substantive law can fairly
20 be interpreted as mandating compensation by the federal government for the damages sustained.
21 The two-part threshold determination derives from Supreme Court decisions such as *United States*
22 *v. Navajo Nation*, 556 U.S. 287 (2009) (*Navajo II*); *United States v. Navajo Nation*, 537 U.S. 488
23 (2003) (*Navajo I*); and *United States v. White Mountain Apache Tribe*, 537 U.S. 465 (2003).

24 In *Navajo II*, the Supreme Court articulated the analysis as follows:

25 As we explained in *Navajo I*, there are thus two hurdles that must be cleared
26 before a tribe can invoke jurisdiction under the Indian Tucker Act. First, the tribe
27 “must identify a substantive source of law that establishes specific fiduciary or
28 other duties, and allege that the Government has failed faithfully to perform those
29 duties.” . . . “If that threshold is passed, the court must then determine whether the
30 relevant source of substantive law ‘can fairly be interpreted as mandating
31 compensation for damages sustained as a result of a breach of the duties [the

1 governing law] impose[s].” . . . At the second stage, principles of trust law might
2 be relevant “in drawing the inference that Congress intended damages to remedy a
3 breach.”

4 *Navajo II*, 556 U.S. at 290 (citing and quoting *Navajo I*, 537 U.S. at 506, and *White Mountain*
5 *Apache Tribe*, 537 U.S. at 477).

6 **Illustrations:**

7 1. Individual Indians allege that the Secretary of the Interior mismanaged timber
8 resources on lands held in trust by the Secretary for the benefit of the Indians. Claimants
9 allege that the Indian Tucker Act, along with the General Allotment Act, establishes a
10 substantive right to recover money damages. Claimants are incorrect. The General
11 Allotment Act merely allows the federal government to hold title to the lands and does not
12 create an enforceable fiduciary duty to manage timber resources. The suit is dismissed for
13 failure to state a claim.

14 2. Same facts as Illustration 1, but claimants allege that the Secretary’s pervasive
15 role and specific duties in the sales of timber under federal statutes and regulations give
16 rise to a substantive right to recover money damages. In particular, Congress mandated that
17 the Secretary take into account the present and future needs of the trust beneficiary and his
18 or her heirs. Congress required that the Secretary handle trust assets and pay appropriate
19 compensation to the beneficiaries. The plaintiffs have stated a claim for breach of the
20 statutory duties for which they are entitled to money damages.

21 3. Indian tribe sues the United States for breach of fiduciary duties to manage land
22 and buildings at the former Fort Apache Military Reservation held in trust by the Secretary
23 of the Interior for the benefit of the tribe, but the Act that established the trust provided that
24 the government could use the property for school or administrative purposes. These
25 features of the statute give rise to a fiduciary duty on the part of the government while it is
26 using the property to preserve and maintain it.

27 *c. Remedies.* Once it is established that federal law imposes enforceable obligations, courts
28 initially look to federal statutes to define the appropriate remedies for breach of any duty. Because
29 there is a general trust relationship between Indian tribes and the federal government, once a tribe
30 demonstrates the existence of a fiduciary right or duty that has been breached, “it naturally follows
31 that the Government should be liable in damages for the breach of its fiduciary duties.” United

1 States v. Mitchell, 463 U.S. 206, 226 (1983). The Supreme Court has looked to common-law trust
2 principles to determine the scope of liability when the statute or regulation is not dispositive on
3 the scope of remedies. Lower courts have looked to federal statutes to determine the scope and
4 nature of duties owed to the tribe.

5 *d. Other tort and contract claims against the United States.* In addition to the Tucker Act
6 and Indian Tucker Act, other statutes that waive the United States’ sovereign immunity and
7 provide jurisdiction for the courts to adjudicate damages claims against the United States allow
8 claims by Indians and Indian tribes on the same basis as other plaintiffs. For example, Indians and
9 Indian tribes can recover damages from the United States arising from torts committed by federal
10 employees under the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2671-2680. Likewise, under the
11 Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5301 et seq. (formerly
12 § 450a et seq.), Indian tribes regularly enter into contracts with the United States under which
13 tribes administer federal programs and provide services for their members and others within Indian
14 country. If the federal government is in breach of such contracts, Indian tribes can recover damages
15 on the same basis as other contractors with the United States under the Contract Disputes Act, 41
16 U.S.C. §§ 7101-7109, in either the federal claims court or the federal district courts. Indian tribes
17 also may bring suit against the United States under the Administrative Procedures Act, 5 U.S.C.
18 §§ 701-706, to set aside agency decisions that are arbitrary, capricious, or otherwise contrary to
19 law.

REPORTERS’ NOTES

20 *Comment a. History and statutory background.* Indian tribes and individual Indians
21 collectively retain property interests in millions of acres of land throughout the United States,
22 mostly in the western part of the nation. The United States holds much of this property in trust for
23 the benefit of the tribes and Indians, with the Secretary charged with serving as the trustee. See
24 § 3, Comment *f*, on trust land and § 4, Comment *c*, on safeguarding Indian and tribal property.

25 Prior to the enactment of the Indian Claims Commission Act of 1946 and the Indian Tucker
26 Act in 1949, Indians and tribes were forced to seek special jurisdictional statutes from Congress
27 authorizing suit against the government for money damages, usually arising from claims for breach
28 of treaty rights. See Samuel J. Flickinger, *The American Indian*, 20 Fed. Bar J. 212, 214 (1960).
29 The tribes rarely benefited from these special jurisdictional statutes due to the difficulty in bringing
30 the claims. See *id.* at 214-215 (“[Special jurisdictional acts] authorize[d] the particular tribe or
31 band of Indians to go into the Court of Claims to have determined whether or not the handling of
32 their affairs by the Federal Government had been in accordance with the requirements of the treaty

1 or Acts of Congress. This was a tedious procedure, often requiring much time by the attorneys
2 employed by the Indians and involving long delays before the desired legislation was enacted. The
3 jurisdictional act thus obtained did not always permit the presentation of all the claims the Indians
4 believed they were entitled to have judicially determined.”).

5 The leading case during this early period is *Seminole Nation v. United States*, 316 U.S.
6 286 (1942). There, the tribe sued the United States under a Congressional statute authorizing the
7 suit over the failure of the government to pay trust assets to individual tribal members on a per
8 capita basis. An 1856 treaty provided that the government was to make the per capita payments,
9 but instead the government paid the annuity to the Seminole tribal council. In describing the
10 contours of the federal government’s obligation, the Court asserted that the court must judge the
11 government in accordance with “the most exacting fiduciary standards”:

12 [T]his Court has recognized the distinctive obligation of trust incumbent upon the
13 Government in its dealings with these dependent and sometimes exploited people.
14 . . . In carrying out its treaty obligations with the Indian tribes the Government is
15 something more than a mere contracting party. Under a humane and self imposed
16 policy which has found expression in many acts of Congress and numerous
17 decisions of this Court, it has charged itself with moral obligations of the highest
18 responsibility and trust. Its conduct, as disclosed in the acts of those who represent
19 it in dealings with the Indians, should therefore be judged by the most exacting
20 fiduciary standards.

21 *Seminole Nation*, 316 U.S. at 296-297 (citations omitted).

22 Other cases arising from jurisdictional statutes include *United States v. Shoshone Tribe of*
23 *Indians of the Wind River Rsrv. in Wyo.*, 304 U.S. 111, 118 (1938) (holding that the compensable
24 treaty right included timber and minerals within the reservation). See also *Confederated Bands of*
25 *Ute Indians v. United States*, 330 U.S. 169, 177 (1947) (rejecting claim brought under
26 jurisdictional statute for an accounting of the value of an Executive order reservation); *Nw. Bands*
27 *of Shoshone Indians v. United States*, 324 U.S. 335, 338-339 (1945) (rejecting claim brought under
28 jurisdictional statute for aboriginal title); *Chippewa Indians v. United States*, 307 U.S. 1, 4 (1939)
29 (rejecting claim brought under special jurisdictional statute to recover trust funds expended by the
30 federal government).

31 In 1946, Congress enacted the Indian Claims Commission Act (ICCA), Pub. L. No. 79-
32 726, ch. 959, Act of August 13, 1946, 60 Stat. 1049. The Supreme Court noted that “[t]he ‘chief
33 purpose of the [ICCA was] to dispose of the Indian claims problem with finality.’” *United States*
34 *v. Dann*, 470 U.S. 39, 45 (1985). See also Robert W. Barker, *The Indian Claims Commission –*
35 *The Conscience of the Nation in Its Dealings with the Original American*, 20 Fed. Bar J. 240, 241-
36 242 (1960) (quoting President Truman, White House News Release No. 319, August 13, 1946: “It
37 would be a miracle if in the course of the dealings—the largest real estate transaction in history—
38 we had not made some mistakes and occasionally failed to live up to the precise terms of our
39 treaties and agreements with some 200 tribes. But we stand ready to submit all such controversies

1 to the judgment of impartial tribunals. We stand ready to correct any mistakes we have made.”).
2 Further, Congress intended the ICCA to be remedial as to historic Indian claims:

3 The Indian Claims Commission Act is both remedial legislation and special
4 legislation. It broadens the Government’s consent to suit and as such is in
5 derogation of its sovereignty. It confers special privileges upon the Indian claimants
6 apart from the rest of the community, and to some extent is in derogation of the
7 common law. This was, we think, because of the peculiar nature of the dealings
8 between the Government and Indians from very early times. On the other hand, it
9 remedies defects in the common law and in pre-existing statutory law as those laws
10 affected Indians, and it was designed to correct certain evils of long standing and
11 well known to Congress. Fortunately, under these circumstances, rules of
12 interpretation and construction are subordinate to the principle that the object of all
13 construction and interpretation is the just and reasonable operation of the particular
14 statute, and accordingly it should be possible to construe the statute liberally to
15 affect its remedial purpose and intent, and strictly to limit undue abrogation of
16 fundamental rights or to prevent undue extension of extraordinary remedies.

17 *Otoe and Missouri Tribe of Indians v. United States*, 131 Ct. Cl. 593, 602, 131 F. Supp. 265, 271
18 (1955). The Act authorized and instructed the Indian Claims Commission to consider Indian claims
19 in a new light (for the time), allowing the Commission to reform the treaty terms to conform to
20 Indian understandings of the meaning of treaty provisions, similar to how courts utilize the canons
21 of construing Indian treaties in the modern era. See § 6. One critic of the Act noted that the
22 Commission was authorized to consider:

23 “claims based on fair and honorable dealings not recognized by any existing rule
24 of law or equity.” . . . In a lecture delivered on March 12, 1958, on Advanced Legal
25 Education, Judge Madden of the Court of Claims said of this provision: “It makes
26 one feel the power and the moral responsibility of the earliest chancellors, not
27 restricted by law or by terms of contracts.”

28 Ralph A. Barney, *Some Legal Problems under the Indian Claims Commission Act*, 20 Fed. Bar J.
29 235, 238 (1960).

30 The Act prohibited claims demanding the return of Indian lands, and valued Indian land
31 sales from the fair market value of the land at the time of the transaction. From the point of view
32 of many (but certainly not all) Indian and tribal claimants, those restrictions rendered the ICCA
33 process a nullity. Even for successful Indian and tribal claimants, the judgment funds were
34 insufficient to allow the claimants to restore their historic land bases:

35 One of the most troublesome features is that damages are confined to the market
36 value of land at the time of the taking, usually almost one hundred years ago,
37 without regard to the fact that the Indians could not replace that land from the

1 proceeds of the judgment at current market prices, even if desirable land were
2 available.

3 Robert W. Barker, *The Indian Claims Commission – The Conscience of the Nation in Its Dealings*
4 *with the Original American*, 20 Fed. Bar J. 240, 243 (1960). The Indian Claims Commission
5 process often was deeply unsatisfying to the Indian claimants. David E. Wilkins, *A History of*
6 *Indigenous Claims in the United States* 124-125 (2013). See also Barker, *supra*, at 241 (“Deep
7 resentment and irritation was experienced by the Indians as a result of limited access to Courts for
8 their legitimate grievances.”).

9 The leading case arising out of the Indian Claims Commission is *United States v. Sioux*
10 *Nation of Indians*, 448 U.S. 371 (1980). The case arose out of the United States’ forced breakup
11 of the Great Sioux Reservation, established by treaty in 1868 and covering the Dakotas and parts
12 of several other states, through a series of post-treaty “agreements.” The collected Sioux nations,
13 which included the Lakota, the Dakota, and Nakota nations, sought compensation for the
14 government’s taking of the Black Hills in the latter part of the 19th century. The 1868 Treaty of
15 Fort Laramie had established the Great Sioux Reservation, which included the Black Hills in what
16 is now western South Dakota, setting aside the lands “for the absolute and undisturbed use and
17 occupation of the Indians. . . .” *Sioux Nation*, 448 U.S. at 374 (quoting Fort Laramie Treaty of
18 April 29, 1868, art. II, 15 Stat. 635). Moreover, Article XII of the treaty made it virtually
19 impossible to amend the treaty (at least on paper), providing that:

20 No treaty for the cession of any portion or part of the reservation herein
21 described which may be held in common shall be of any validity or force as against
22 the said Indians, unless executed and signed by at least three fourths of all the adult
23 male Indians, occupying or interested in the same.

24 *Id.* at 376 (quoting Fort Laramie Treaty of April 29, 1868, art. XII, 15 Stat. 635). An important
25 feature of the treaty was that the United States promised to provide the Indians with subsistence
26 rations and materials necessary “to assist the Sioux in becoming civilized farmers. . . .” *Id.* at 375.

27 The Supreme Court in *Sioux Nation* largely adopted the legal standard from the Court of
28 Claims in *Three Affiliated Tribes of the Fort Berthold Rsrv. v. United States*, 390 F.2d 686 (Ct.
29 Cl. 1968). There, the court distinguished between disputes that arose when the federal government
30 acted as a trustee to Indian or tribal property interests, and when the government acted as a
31 sovereign in the exercise of eminent domain powers:

32 It is obvious that Congress cannot simultaneously (1) act as trustee for the
33 benefit of the Indians, exercising its plenary powers over the Indians and their
34 property, as it thinks is in their best interests, and (2) exercise its sovereign power
35 of eminent domain, taking the Indians’ property within the meaning of the Fifth
36 Amendment to the Constitution. In any given situation in which Congress has acted
37 with regard to Indian people, it must have acted either in one capacity or the other.
38 Congress can own two hats, but it cannot wear them both at the same time.

1 Some guideline must be established so that a court can identify in which
2 capacity Congress is acting. The following guideline would best give recognition
3 to the basic distinction between the two types of congressional action: Where
4 Congress makes a good faith effort to give the Indians the full value of the land and
5 thus merely transmutes the property from land to money, there is no taking. This is
6 a mere substitution of assets or change of form and is a traditional function of a
7 trustee.

8 *Fort Berthold*, 390 F.2d at 691 (quoted in *Sioux Nation*, 448 U.S. at 408-409). The Court rejected
9 the government’s claims that its taking of the Black Hills was not subject to the *Fort Berthold* test,
10 holding, “But the court must also be cognizant that ‘this power to control and manage [is] not
11 absolute. While extending to all appropriate measures for protecting and advancing the tribe, it [is]
12 subject to limitations inhering in . . . a guardianship and to pertinent constitutional restrictions.’”
13 *Sioux Nation*, 448 U.S. at 415 (quoting *United States v. Creek Nation*, 295 U.S. 103, 109-111
14 (1935)). See also § 7 for more details on the constitutional limitations on Congress’s statutory
15 power.

16 *Comment b. Two-part threshold determination.* The leading scholarly commentary on suits
17 for breach of trust for money damages includes Gregory C. Sisk, *Litigation with the Federal*
18 *Government* § 4.07, at 279-297 (4th ed. 2006); Gregory C. Sisk, *Yesterday and Today: Of Indians,*
19 *Breach of Trust, Money, and Sovereign Immunity*, 39 *Tulsa L. Rev.* 313 (2003); Nell Jessup
20 Newton, *Indian Claims in the Courts of the Conqueror*, 41 *Am. U. L. Rev.* 753 (1992); and Nell
21 Jessup Newton, *Enforcing the Federal-Indian Trust Relationship After Mitchell*, 31 *Cath. U. L.*
22 *Rev.* 635 (1982).

23 Illustrations 1 and 2 are based on *United States v. Mitchell*, 445 U.S. 535 (1980) (*Mitchell*
24 *I*), and *United States v. Mitchell*, 463 U.S. 206 (1983) (*Mitchell II*). For more discussion on the
25 *Mitchell* cases, see William H. Rodgers, Jr., *Environmental Law in Indian Country* § 1:9, at 230-
26 237 (2005).

27 Illustration 3 is based on *United States v. White Mountain Apache Tribe*, 537 U.S. 465
28 (2003). There, the Court held the government liable for failure to “maintain, protect, repair and
29 preserve” the property at the Fort Apache Military Reservation. See *id.* at 469, 471. A 1960 Act of
30 Congress placed the fort and its environs in trust for the benefit of the White Mountain Apache
31 Tribe:

32 [A]ll right, title, and interest of the United States in and to the lands, together with
33 the improvements thereon, included in the former Fort Apache Military
34 Reservation, created by Executive order of February 1, 1877, and subsequently set
35 aside by the Act of January 24, 1923 (42 Stat. 1187), as a site for the Theodore
36 Roosevelt School, located within the boundaries of the Fort Apache Indian
37 Reservation, Arizona, are hereby declared to be held by the United States in trust
38 for the White Mountain Apache Tribe, subject to the right of the Secretary of the

1 Interior to use any part of the land and improvements for administrative or school
2 purposes for as long as they are needed for that purpose.

3 Pub. L. No. 86-392, 74 Stat. 8 (1960). The Court found that, while the 1960 statute did not
4 expressly note the government’s obligation to manage and conserve the trust corpus, the
5 government did occupy the entire facility and therefore held even more control over the asset than
6 it did in *Mitchell II*:

7 The trust property is “subject to the right of the Secretary of the Interior to use any
8 part of the land and improvements for administrative or school purposes for as long
9 as they are needed for the purpose,” . . . and it is undisputed that the Government
10 has to this day availed itself of its option. As to the property subject to the
11 Government’s actual use, then, the United States has not merely exercised daily
12 supervision but has enjoyed daily occupation, and so has obtained control at least
13 as plenary as its authority over the timber in *Mitchell II*. While it is true that the
14 1960 Act does not, like the statutes cited in that case, expressly subject the
15 Government to duties of management and conservation, the fact that the property
16 occupied by the United States is expressly subject to a trust supports a fair inference
17 that an obligation to preserve the property improvements was incumbent on the
18 United States as trustee. This is so because elementary trust law, after all, confirms
19 the commonsense assumption that a fiduciary actually administering trust property
20 may not allow it to fall into ruin on his watch. “One of the fundamental common-
21 law duties of a trustee is to preserve and maintain trust assets[.]” . . . Given this duty
22 on the part of the trustee to preserve corpus, “it naturally follows that the
23 Government should be liable in damages for the breach of its fiduciary duties.”

24 *White Mountain Apache Tribe*, 537 U.S. at 475-476 (citations omitted).

25 Other courts applying the *Mitchell I* and *II* framework have concluded that relevant statutes
26 and regulations create a compensable fiduciary duty. E.g., *Jicarilla Apache Nation v. United States*,
27 100 Fed. Cl. 726, 731-732 (2011) (“These statutory ‘prescription[s] . . . bear[] the hallmarks of a
28 “conventional fiduciary relationship.” *Navajo II* [. . . .] They vest the United States with
29 management control over the trust funds, discretion with respect to their investment, and detailed
30 responsibilities to account to the tribal beneficiaries. . . . As stated somewhat differently by the
31 Supreme Court in *Mitchell II*, these statutes give the Secretary of Interior ‘authority to invest tribal
32 . . . funds held in trust in banks, bonds, notes or other public debt obligations of the United States
33 if deemed advisable and for the best interest of the Indians.’”) (citations omitted); *Rosebud Sioux
34 Tribe v. United States*, 75 Fed. Cl. 15, 28 (2007) (finding possible compensable duty where “the
35 government controls the leasing of tribal lands. The Secretary of Interior must approve
36 leases. . . . Commercial leases may not exceed twenty-five years, and before approval, the
37 Secretary has to consider any impact on neighboring lands, the safety of the structures to be built
38 on the leased land and the effect on the environment.”) (citations omitted); *Osage Tribe of Indians
39 of Okla. v. United States*, 68 Fed. Cl. 322, 330 (2005) (“The court agrees with plaintiff that the

1 trust relationship created by the Act of 1906 is not a ‘bare’ or ‘limited’ trust as found to exist in
 2 *Mitchell I*. The plain language of the Act of 1906 establishes a specific duty to hold in trust all
 3 moneys due, now and in the future, to the Osage Tribe.”); *Lummi Tribe of Lummi Rsrv. v. United*
 4 *States*, 99 Fed. Cl. 584, 593 n.8 (2011) (“Whether or not the Court’s language in *White Mountain*
 5 in some way modifies the traditional rule, however, we do not read that decision as changing the
 6 fundamental premise that a statute is money mandating where it creates an unqualified entitlement
 7 to payment. Where such an entitlement exists, a remedy is necessarily available in this court.”);
 8 *Shoshone Indian Tribe of the Wind River Rsrv., Wyo. v. United States*, 58 Fed. Cl. 77, 82 (2003)
 9 (“[T]here is an obligation imposed by law on defendant to ensure the prompt and proper collection
 10 and disbursement of royalties. That obligation is found in the Federal Oil and Gas Royalty
 11 Management Act (FOGRMA), 30 U.S.C. §§ 1701-1757 (2000). . . . While these statutes do not
 12 mandate that the government audit every transaction that comes before it, they do establish clear
 13 duties with respect to the collection of royalties, as required by *Navajo Nation*. . . . These statutes
 14 can also be inferred to be money mandating because they are ‘duty-imposing,’ . . . in that they
 15 impose an obligation on defendant to collect moneys on behalf of Indian tribes. Therefore, the
 16 court finds that plaintiffs have established that defendant had a duty beyond the general fiduciary
 17 duty owed to Indian tribes by the government and that plaintiffs may recover money damages for
 18 any breach.”) (citations omitted).

19 *Comment c. Remedies*. Once it is established that federal law imposes enforceable fiduciary
 20 obligations, courts look “to common-law principles to inform . . . [their] interpretation of statutes
 21 and to determine the scope of liability that Congress has imposed.” *United States v. Jicarilla*
 22 *Apache Nation*, 564 U.S. 162, 177 (2011). The “construction of statutes and regulations is
 23 reinforced by the undisputed existence of a general trust relationship between the United States
 24 and the Indian people” and “[g]iven the existence of a trust relationship, it naturally follows that
 25 the Government should be liable in damages for the breach of its fiduciary duties” established by
 26 statutes and regulations. *United States v. Mitchell*, 463 U.S. 206, 225-226 (1983).

27 Thus, the scope of enforceable fiduciary duties is not limited to the express terms of
 28 governing statutes and regulations. *United States v. White Mountain Apache Tribe*, 537 U.S. 465,
 29 475 (2003) (applying fiduciary duties even though “the 1960 Act does not . . . expressly subject
 30 the Government to duties of management and conservation.”); *id.* at 477 (“general trust law [i]s
 31 considered in drawing the inference that Congress intended damages to remedy a breach of
 32 obligation”); *Cobell v. Norton*, 392 F.3d 461, 472 (D.C. Cir. 2004) (“once a statutory obligation
 33 is identified, the court may look to common law trust principles to particularize that obligation”);
 34 *Cobell v. Norton*, 240 F.3d 1081, 1100-1101 (D.C. Cir. 2001) (“[t]he general ‘contours’ of the
 35 government’s obligations may be defined by statute, but the interstices must be filled in through
 36 reference to general trust law”); *Duncan v. United States*, 667 F.2d 36, 42-43 (Ct. Cl. 1981)
 37 (rejecting that “a federal trust must spell out specifically all the trust duties of the Government”);
 38 *Navajo Tribe v. United States*, 624 F.2d 981, 988 (Ct. Cl. 1980) (“Nor is the court required to find
 39 all the fiduciary obligations it may enforce within the express terms of an authorizing

1 statute”); *Jicarilla Apache Nation v. United States*, 112 Fed. Cl. 274, 287 (2013) (same);
2 *Jicarilla Apache Nation v. United States*, 100 Fed. Cl. 726, 737-738 (2011) (same).

3 *Comment d. Other tort and contract claims against the United States.* As a result of other
4 acts of Congress that vest the courts with jurisdiction and waive the federal government’s
5 sovereign immunity for damages claims, Indians and tribes have, in appropriate circumstances,
6 pursued damages claims against the United States as provided by those statutes. For example, in
7 *Hatahley v. United States*, 351 U.S. 173 (1956), Navajo Indians brought claims under the Federal
8 Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 et seq., and recovered damages for the loss of
9 horses and burros that were wrongfully and unlawfully seized and destroyed by agents of the
10 United States Bureau of Land Management. Other tribes have relied on the Federal Tort Claims
11 Act to pursue damages claims against the United States for trespass on land held in trust for tribes’
12 benefit, *Salt River Pima–Maricopa Indian Cmty. v. United States*, 266 F.R.D. 375 (D. Ariz. 2010),
13 including trespass that resulted in damages to cultural resources, *Quechan Indian Tribe v. United*
14 *States*, 535 F. Supp. 2d 1072, 1108-1110 (S.D. Cal. 2008).

15 Tribes that have entered into contracts with agencies of the United States also have a right
16 to bring suit against the United States for damages when the federal government breached those
17 contracts, and damages have been awarded to tribes in such cases. In *Cherokee Nation v. Leavitt*,
18 543 U.S. 631 (2005), the tribes recovered damages from the United States when the federal Indian
19 Health Service failed to pay certain administrative costs, known as “contract support costs” under
20 contracts with the tribes made pursuant to the Indian Self-Determination Act. In *Salazar v. Ramah*
21 *Navajo Chapter*, 567 U.S. 182 (2012), and *Arctic Slope Native Ass’n v. Sebelius*, 567 U.S. 930
22 (2012), on remand, *Arctic Slope Native Ass’n v. Sebelius*, 501 F. App’x 957 (Fed. Cir. 2012), the
23 courts held the United States liable in money damages for breach of contract with tribes when the
24 federal agencies failed to pay full contract support costs notwithstanding language in the
25 appropriations act which provided that “not to exceed [a particular amount] shall be available for
26 payments to tribes and tribal organizations for contract support costs.”