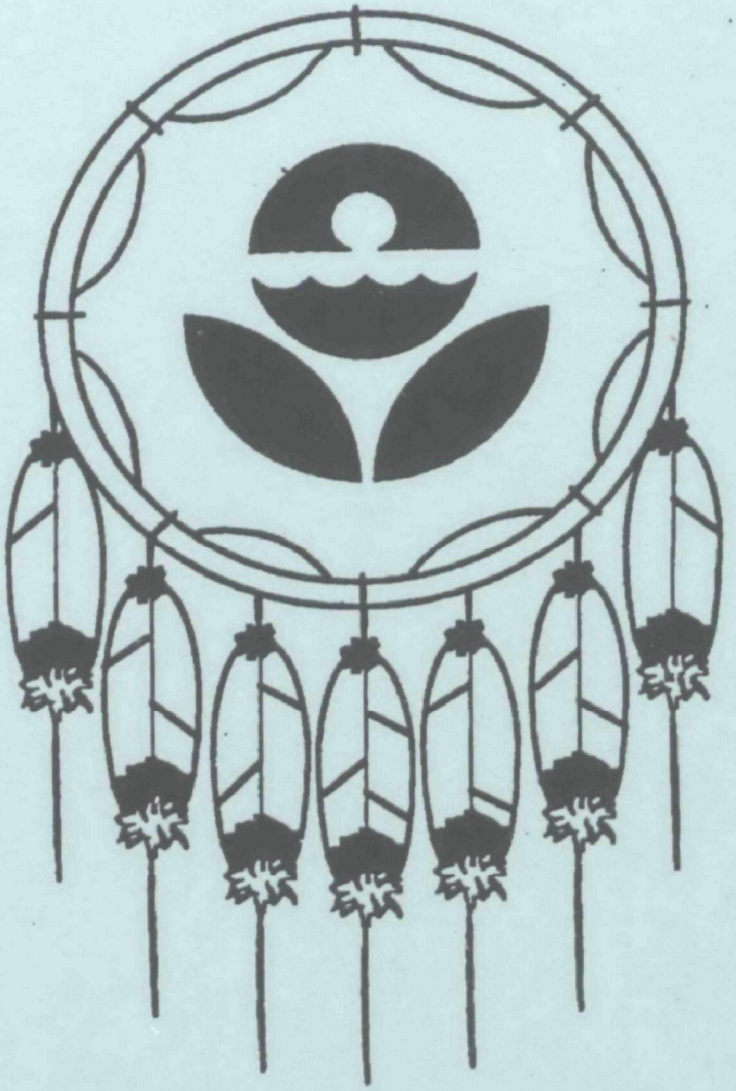
U.S. Environmental Protection Agency
Region 9

November 1995



EPA Region 9 Employees' Indian Program Resource Manual

EPA Region 9 Employee's Indian Program Resource Manual

Preface

This Manual provides a reference of EPA documents and other useful materials that is designed to help EPA Region 9 managers and staff work more effectively with Tribal governments. A compilation of materials is presented that follows the growth of EPA's relationship with Tribal entities, with some basic legal and cultural background. The Manual is organized into six sections that highlight key developments in the national and regional Indian Programs, and contains selected legal history and cultural readings from literature collected by the Region 9 Indian Program Team.

The first section, ***National Policy***, begins with the 1994 "Government to Government Relations with Native American Tribal Governments" memorandum from President Clinton followed by the original 1984 Indian Policy. Key EPA supporting policy documents and the list of Federally Recognized Tribes are included. This section also contains the "Draft Policy Guidance on EPA Civil and Administrative Enforcement Against American Indian Tribes." Although the Guidance does not represent official agency policy, it captures the intent of EPA's enforcement approach on tribal lands to assist Tribes in meeting compliance with environmental requirements. Ongoing review and discussions may lead to a final policy in the near future.

The second section, ***Tribal Eligibility and Funding***, contains an overview of funding availability and Federal Register announcements granting EPA authority to provide financial assistance to tribes.

The third section, ***Region 9***, provides Regional Indian Program developments including the Draft Regional Strategy for Environmental Protection on Indian Lands, the Regional Indian Program Committee and Regional Tribal Operations Committee charters, information on Tribal EPA agreements, and other Region specific information.

The fourth section, ***Legal History***, contains a brief overview of Indian legal history, readings on Indian sovereignty, jurisdiction, Public Law 280, and important definitions.

The fifth section, ***Cultural/General***, contains information to promote cross-cultural understanding. It is important to note that the reading, "Preparing Presentations for an American Indian Audience", includes some stereotypical information which the reader may wish to analyze for group discussion or personal reflection.

The final section contains a list of frequently used phone numbers.

Acknowledgements

"Indian Law and Policy" and "Preparing Presentations for an American Indian Audience" are excerpts from *Working Effectively With Indian Tribes* and are reprinted with the permission of Native American Technologies, Inc. The Institute for the Development of Indian Law gave permission to include the following sections: "What is Sovereignty" taken from *Indian Sovereignty;* "An Overview of Indian Jurisdiction" and "Public Law 280" taken from *Indian Jurisdiction.* "Indian Values, Attitudes, and Behaviors, Together with Educational Considerations" is an excerpt from *The American Indian: Yesterday, Today, and Tomorrow* and is reprinted with the permission of California Department of Education.

Table of Contents

Section I: *National Policy*

1) MEMORANDUM: Government-to-Government Relations with Native American Tribal Governments from President Clinton, April 29, 1994.....I-1

*2) EPA Policy for the Administration of Environmental Programs on Indian Reservations from Administrator William D. Ruckelshaus, November 8, 1984 ..... I-3

3) MEMORANDUM: Indian Policy Implementation Guidance from Deputy Administrator Alvin L. Alm, November 8, 1984.....I-7

4) MEMORANDUM: EPA Indian Policy from Administrator Carol Browner, March 14, 1994.....I-15

5) MEMORANDUM: Announcement of Actions for Strengthening EPA's Tribal Operations from Administrator Carol Browner, July 14, 1994..... I-17

6) MEMORANDUM: EPA/State/Tribal Relations from Administrator William K. Reilly, July 10, 1991..... I-23

7) Draft: Policy Guidance on EPA Civil and Administrative Enforcement Against American Indian Tribes, March 8, 1994..... I-31

8) MEMORANDUM: EPA Statutes Regarding the Role of Indian Tribes in Managing Reservation Environments from David Coursen, Oct 25, 1991..... I-47

9) Federal Register, List of Recognized Tribes, February 16, 1995..... I-59

Section II: *Tribal Eligibility and Funding*

1) Overview: Categorical (Program) and Project Financial Assistance from EPA, July, 1995 ..... II-1

2) MEMORANDUM: Publication of Regulation Simplifying EPA's Process for Qualifying Indian Tribes for Program Approval from Richard E. Sanderson, December 16, 1994 ..... II-9

4) Federal Register; EPA 40 CFR Parts 123, 124, 131, 142, 144, 145, 233, and 501; Indian Tribes: Eligibility for Program Authorization; Final Rule, December 14, 1994.....II-15

5) Federal Register; EPA 40 CFR Parts 35 and 130; Indian Tribes: Eligibility of Indian Tribes for Financial Assistance; Final Rule, March 23, 1994..... II-23

6) Federal Register; EPA 40 CFR Part 35; Indian Tribes: General Assistance Grants for Environmental Protection Programs; Interim Final Rule, December 2, 1993..... II-29

Section III: *Region 9*

1) MEMORANDUM: A Reminder: Assuring Compliance with EPA's Indian Policy from Deanna Wieman, Director, Office of External Affairs, May 23, 1994..... III-1

2) Regional Order 1000.2: Regional Indian Programs Steering Committee, Felicia Marcus, Regional Administrator, August 10, 1995..... III-3

3) Draft Regional Strategy for Environmental Protection on Region 9 Indian Lands, November 1995. ..... III-5

4) EPA Region 9 Indian Program Steering Committee Charter, May, 1995..... .....III-11

5) Regional Tribal Operations Committee Charter, July 27, 1995.....III-13

6) Tribal EPA Agreements (TEA's).....III-17

7) Draft: Sample Language for a TEA.....III-19

8) Overview: Region 9 Indian Program.....III-25

9) Federally Recognized Tribal Entities: Nevada, Arizona, and California.....III-29

Section IV: *Legal History*

1) Overview of Indian Law Issues.....IV-1

2) Land Term Definitions, Bureau of Indian Affairs Navajo Area Office, November 1, 1984.....IV-3

3) Indian Law and Policy--an Historical Overview from Colonial Times Forward.....IV-5

4) What is Sovereignty?.....IV-21

5) An Overview of Indian Jurisdiction.....IV-35

6) Public Law 280.....IV-49

Section V: *Cultural/General*

1) Preparing Presentations for an American Indian Audience, Erasing Stereotypes, and a Comparison of Lifestyles.....V-1

2) Indian Values, Attitudes, and Behaviors, Together with Educational Considerations.....V-5

3) American Indians Today: Answers to Your Questions.....V-17

Section VI: ***Phone Numbers and Address Lists***

1) Regional EPA Contacts VI-1

2) American Indian Environmental Office VI-6

3) Bureau of Indian Affairs Area and Field Offices VI-7

4) National Indian Organizations VI-9

5) Regional Indian Organizations VI-10

I

National Policy

THE WHITE HOUSE

WASHINGTON

April 29, 1994

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Government-to-Government Relations with Native American Tribal Governments

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

William J. Clinton

EPA POLICY FOR THE ADMINISTRATION OF ENVIRONMENTAL PROGRAMS ON INDIAN RESERVATIONS

INTRODUCTION

The President published a Federal Indian Policy on January 24, 1983, supporting the primary role of Tribal Governments in matters affecting American Indian reservations. That policy stressed two related themes: (1) that the Federal Government will pursue the principle of Indian "self-government" and (2) that it will work directly with Tribal Governments on a "government-to-government" basis.

The Environmental Protection Agency (EPA) has previously issued general statements of policy which recognize the importance of Tribal Governments in regulatory activities that impact reservation environments. It is the purpose of this statement to consolidate and expand on existing EPA Indian Policy statements in a manner consistent with the overall Federal position in support of Tribal "self-government" and "government-to-government" relations between Federal and Tribal Governments. This statement sets forth the principles that will guide the Agency in dealing with Tribal Governments and in responding to the problems of environmental management on American Indian reservations in order to protect human health and the environment. The Policy is intended to provide guidance for EPA program managers in the conduct of the Agency's congressionally mandated responsibilities. As such, it applies to EPA only and does not articulate policy for other Agencies in the conduct of their respective responsibilities.

It is important to emphasize that the implementation of regulatory programs which will realize these principles on Indian Reservations cannot be accomplished immediately. Effective implementation will take careful and conscientious work by EPA, the Tribes and many others. In many cases, it will require changes in applicable statutory authorities and regulations. It will be necessary to proceed in a carefully phased way, to learn from successes and failures, and to gain experience. Nonetheless, by beginning work on the priority problems that exist now and continuing in the direction established under these principles, over time we can significantly enhance environmental quality on reservation lands.

POLICY

In carrying out our responsibilities on Indian reservations, the fundamental objective of the Environmental Protection Agency is to protect human health and the environment. The keynote of this effort will be to give special consideration to Tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands. To meet this objective, the Agency will pursue the following principles:

1. THE AGENCY STANDS READY TO WORK DIRECTLY WITH INDIAN TRIBAL GOVERNMENTS ON A ONE-TO-ONE BASIS (THE "GOVERNMENT-TO-GOVERNMENT" RELATIONSHIP), RATHER THAN AS SUBDIVISIONS OF OTHER GOVERNMENTS.

EPA recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with Tribal Governments as the independent authority for reservation affairs, and not as political subdivisions of States or other governmental units.

2. THE AGENCY WILL RECOGNIZE TRIBAL GOVERNMENTS AS THE PRIMARY PARTIES FOR SETTING STANDARDS, MAKING ENVIRONMENTAL POLICY DECISIONS AND MANAGING PROGRAMS FOR RESERVATIONS, CONSISTENT WITH AGENCY STANDARDS AND REGULATIONS.

In keeping with the principle of Indian self-government, the Agency will view Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved the interests and/or participation of State Governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments.

3. THE AGENCY WILL TAKE AFFIRMATIVE STEPS TO ENCOURAGE AND ASSIST TRIBES IN ASSUMING REGULATORY AND PROGRAM MANAGEMENT RESPONSIBILITIES FOR RESERVATION LANDS.

The Agency will assist interested Tribal Governments in developing programs and in preparing to assume regulatory and program management responsibilities for reservation lands. Within the constraints of EPA's authority and resources, this aid will include providing grants and other assistance to Tribes similar to that we provide State Governments. The Agency will encourage Tribes to assume delegable responsibilities, (i.e. responsibilities which the Agency has traditionally delegated to State Governments for non-reservation lands) under terms similar to those governing delegations to States.

Until Tribal Governments are willing and able to assume full responsibility for delegable programs, the Agency will retain responsibility for managing programs for reservations (unless the State has an express grant of jurisdiction from Congress sufficient to support delegation to the State Government). Where EPA retains such responsibility, the Agency will encourage the Tribe to participate in policy-making and to assume appropriate lesser or partial roles in the management of reservation programs.

4. THE AGENCY WILL TAKE APPROPRIATE STEPS TO REMOVE EXISTING LEGAL AND PROCEDURAL IMPEDIMENTS TO WORKING DIRECTLY AND EFFECTIVELY WITH TRIBAL GOVERNMENTS ON RESERVATION PROGRAMS.

A number of serious constraints and uncertainties in the language of our statutes and regulations have limited our ability to work directly and effectively with Tribal Governments on reservation problems. As impediments in our procedures, regulations or statutes are identified which limit our ability to work effectively with Tribes consistent with this Policy, we will seek to remove those impediments.

5. THE AGENCY, IN KEEPING WITH THE FEDERAL TRUST RESPONSIBILITY, WILL ASSURE THAT TRIBAL CONCERNS AND INTERESTS ARE CONSIDERED WHENEVER EPA'S ACTIONS AND/OR DECISIONS MAY AFFECT RESERVATION ENVIRONMENTS.

EPA recognizes that a trust responsibility derives from the historical relationship between the Federal Government and Indian Tribes as expressed in certain treaties and Federal Indian Law. In keeping with that trust responsibility, the Agency will endeavor to protect the environmental interests of Indian Tribes when carrying out its responsibilities that may affect the reservations.

6. THE AGENCY WILL ENCOURAGE COOPERATION BETWEEN TRIBAL, STATE AND LOCAL GOVERNMENTS TO RESOLVE ENVIRONMENTAL PROBLEMS OF MUTUAL CONCERN.

Sound environmental planning and management require the cooperation and mutual consideration of neighboring governments, whether those governments be neighboring States, Tribes, or local units of government. Accordingly, EPA will encourage early communication and cooperation among Tribes, States and local governments. This is not intended to lend Federal support to any one party to the jeopardy of the interests of the other. Rather, it recognizes that in the field of environmental regulation, problems are often shared and the principle of comity between equals and neighbors often serves the best interests of both.

7. THE AGENCY WILL WORK WITH OTHER FEDERAL AGENCIES WHICH HAVE RELATED RESPONSIBILITIES ON INDIAN RESERVATIONS TO ENLIST THEIR INTEREST AND SUPPORT IN COOPERATIVE EFFORTS TO HELP TRIBES ASSUME ENVIRONMENTAL PROGRAM RESPONSIBILITIES FOR RESERVATIONS.

EPA will seek and promote cooperation between Federal agencies to protect human health and the environment on reservations. We will work with other agencies to clearly identify and delineate the roles, responsibilities and relationships of our respective organizations and to assist Tribes in developing and managing environmental programs for reservation lands.

8. THE AGENCY WILL STRIVE TO ASSURE COMPLIANCE WITH ENVIRONMENTAL STATUTES AND REGULATIONS ON INDIAN RESERVATIONS.

In those cases where facilities owned or managed by Tribal Governments are not in compliance with Federal environmental statutes, EPA will work cooperatively with Tribal leadership to develop means to achieve compliance, providing technical support and consultation as necessary to enable Tribal facilities to comply. Because of the distinct status of Indian Tribes and the complex legal issues involved, direct EPA action through the judicial or administrative process will be considered where the Agency determines, in its judgment, that: (1) a significant threat to human health or the environment exists, (2) such action would reasonably be expected to achieve effective results in a timely manner, and (3) the Federal Government cannot utilize other alternatives to correct the problem in a timely fashion.

In those cases where reservation facilities are clearly owned or managed by private parties and there is no substantial Tribal interest or control involved, the Agency will endeavor to act in cooperation with the affected Tribal Government, but will otherwise respond to noncompliance by private parties on Indian reservations as the Agency would to noncompliance by the private sector elsewhere in the country. Where the Tribe has a substantial proprietary interest in, or control over, the privately owned or managed facility, EPA will respond as described in the first paragraph above.

9. THE AGENCY WILL INCORPORATE THESE INDIAN POLICY GOALS INTO ITS PLANNING AND MANAGEMENT ACTIVITIES, INCLUDING ITS BUDGET, OPERATING GUIDANCE, LEGISLATIVE INITIATIVES, MANAGEMENT ACCOUNTABILITY SYSTEM AND ONGOING POLICY AND REGULATION DEVELOPMENT PROCESSES.

It is a central purpose of this effort to ensure that the principles of this Policy are effectively institutionalized by incorporating them into the Agency's ongoing and long-term planning and management processes. Agency managers will include specific programmatic actions designed to resolve problems on Indian reservations in the Agency's existing fiscal year and long-term planning and management processes.

William D. Ruckelshaus

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 8 1984

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Indian Policy Implementation Guidance

FROM: Alvin L. Alm
Deputy Administrator

TO: Assistant Administrators
Regional Administrators
General Counsel

INTRODUCTION

The Administrator has signed the attached EPA Indian Policy. This document sets forth the broad principles that will guide the Agency in its relations with American Indian Tribal Governments and in the administration of EPA programs on Indian reservation lands.

This Policy concerns more than one hundred federally-recognized Tribal Governments and the environment of a geographical area that is larger than the combined area of the States of Maryland, New Jersey, Connecticut, Massachusetts, Vermont, New Hampshire and Maine. It is an important sector of the country, and constitutes the remaining lands of America's first stewards of the environment, the American Indian Tribes.

The Policy places a strong emphasis on incorporating Tribal Governments into the operation and management of EPA's delegable programs. This concept is based on the President's Federal Indian Policy published on January 24, 1983 and the analysis, recommendations and Agency input to the EPA Indian Work Group's Discussion Paper, Administration of Environmental Programs on American Indian Reservations (July 1983).

TIMING AND SCOPE

Because of the importance of the reservation environments, we must begin immediately to incorporate the principles of EPA's Indian Policy into the conduct of our everyday business. Our established operating procedures (including long-range budgetary and operational planning activities) have not consistently focused on the proper role of Tribal Governments or the special legal and political problems of program management on Indian lands. As a result, it will require a phased and sustained effort over time to fully implement the principles of the Policy and to take the steps outlined in this Guidance.

Some Regions and Program Offices have already made individual starts along the lines of the Policy and Guidance. I believe that a clear Agency-wide policy will enable all programs to build on these efforts so that, within the limits of our legal and budgetary constraints, the Agency as a whole can make respectable progress in the next year.

As we begin the first year of operations under the Indian Policy, we cannot expect to solve all of the problems we will face in administering programs under the unique legal and political circumstances presented by Indian reservations. We can, however, concentrate on specific priority problems and issues and proceed to address these systematically and carefully in the first year. With this general emphasis, I believe that we can make respectable progress and establish good precedents for working effectively with Tribes. By working within a manageable scope and pace, we can develop a coordinated base which can be expanded, and, as appropriate, accelerated in the second and third years of operations under the Policy.

In addition to routine application of the Policy and this Guidance in the conduct of our everyday business, the first year's implementation effort will emphasize concentrated work on a discrete number of representative problems through cooperative programs or pilot projects. In the Regions, this effort should include the identification and initiation of work on priority Tribal projects. At Headquarters, it should involve the resolution of the legal, policy and procedural problems which hamper our ability to implement the kinds of projects identified by the Regions.

The Indian Work Group (IWG), which is chaired by the Director of the Office of Federal Activities and composed of representatives of key regional and headquarters offices, will facilitate and coordinate these efforts. The IWG will begin immediately to help identify the specific projects which may be ripe for implementation and the problems needing resolution in the first year.

Because we are starting in "mid-stream," the implementation effort will necessarily require some contribution of personnel time and funds. While no one program will be affected in a major fashion, almost all Agency programs are affected to some degree. I do not expect the investment in projects on Indian Lands to cause any serious restriction in the States' funding support or in their ability to function effectively. To preserve the flexibility of each Region and each program, we have not set a target for allocation of FY 85 funds. I am confident, however, that Regions and program offices can, through readjustment of existing resources, demonstrate significant and credible progress in the implementation of EPA's Policy in the next year.

ACTION

Subject to these constraints, Regions and program managers should now initiate actions to implement the principles of the Indian Policy. The eight categories set forth below will direct our initial implementation activities. Further guidance will be provided by the Assistant Administrator for External Affairs as experience indicates a need for such guidance.

1. THE ASSISTANT ADMINISTRATOR FOR EXTERNAL AFFAIRS WILL SERVE AS LEAD AGENCY CLEARINGHOUSE AND COORDINATOR FOR INDIAN POLICY MATTERS.

This responsibility will include coordinating the development of appropriate Agency guidelines pertaining to Indian issues, the implementation of the Indian Policy and this Guidance. In this effort the Assistant Administrator for External Affairs will rely upon the assistance and support of the EPA Indian Work Group.

2. THE INDIAN WORK GROUP (IWG) WILL ASSIST AND SUPPORT THE ASSISTANT ADMINISTRATOR FOR EXTERNAL AFFAIRS IN DEVELOPING AND RECOMMENDING DETAILED GUIDANCE AS NEEDED ON INDIAN POLICY AND IMPLEMENTATION MATTERS. ASSISTANT ADMINISTRATORS, REGIONAL ADMINISTRATORS AND THE GENERAL COUNSEL SHOULD DESIGNATE APPROPRIATE REPRESENTATIVES TO THE INDIAN WORK GROUP AND PROVIDE THEM WITH ADEQUATE TIME AND RESOURCES NEEDED TO CARRY OUT THE IWG'S RESPONSIBILITIES UNDER THE DIRECTION OF THE ASSISTANT ADMINISTRATOR FOR EXTERNAL AFFAIRS.

The Indian Work Group, (IWG) chaired by the Director of the Office of Federal Activities, will be an important entity for consolidating the experience and advice of the key Assistant and Regional Administrators on Indian Policy matters. It will perform the following functions: identify specific legal, policy, and procedural impediments to working directly with Tribes on reservation problems; help develop appropriate guidance for overcoming such impediments; recommend opportunities for implementation of appropriate programs or pilot projects; and perform other services in support of Agency managers in implementing the Indian Policy.

The initial task of the IWG will be to develop recommendations and suggest priorities for specific opportunities for program implementation in the first year of operations under the Indian Policy and this Guidance.

To accomplish this, the General Counsel and each Regional and Assistant Administrator must be actively represented on the IWG by a staff member authorized to speak for his or her office. Further, the designated representative(s) should be afforded the time and resources, including travel, needed to provide significant staff support to the work of the IWG.

3. ASSISTANT AND REGIONAL ADMINISTRATORS SHOULD UNDERTAKE ACTIVE OUTREACH AND LIAISON WITH TRIBES, PROVIDING ADEQUATE INFORMATION TO ALLOW THEM TO WORK WITH US IN AN INFORMED WAY.

In the first thirteen years of the Agency's existence, we have worked hard to establish working relationships with State Governments, providing background information and sufficient interpretation and explanations to enable them to work effectively with us in the development of cooperative State programs under our various statutes. In a similar manner, EPA managers should try to establish direct, face-to-face contact (preferably on the reservation) with Tribal Government officials. This liaison is essential to understanding Tribal needs, perspectives and priorities. It will also foster Tribal understanding of EPA's programs and procedures needed to deal effectively with us.

4. ASSISTANT AND REGIONAL ADMINISTRATORS SHOULD ALLOCATE RESOURCES TO MEET TRIBAL NEEDS, WITHIN THE CONSTRAINTS IMPOSED BY COMPETING PRIORITIES AND BY OUR LEGAL AUTHORITY.

As Tribes move to assume responsibilities similar to those borne by EPA or State Governments, an appropriate block of funds must be set aside to support reservation abatement, control and compliance activities.

Because we want to begin to implement the Indian Policy now, we cannot wait until FY 87 to formally budget for programs on Indian lands. Accordingly, for many programs, funds for initial Indian projects in FY 85 and FY 86 will need to come from resources currently planned for support to EPA-and State-managed programs meeting similar objectives. As I stated earlier, we do not expect to resolve all problems and address all environmental needs on reservations immediately. However, we can make a significant beginning without unduly restricting our ability to fund ongoing programs.

I am asking each Assistant Administrator and Regional Administrator to take measures within his or her discretion and authority to provide sufficient staff time and grant funds to allow the Agency to initiate projects on Indian lands in FY 85 and FY 86 that will constitute a respectable step towards implementation of the Indian Policy.

5. ASSISTANT AND REGIONAL ADMINISTRATORS, WITH LEGAL SUPPORT PROVIDED BY THE GENERAL COUNSEL, SHOULD ASSIST TRIBAL GOVERNMENTS IN PROGRAM DEVELOPMENT AS THEY HAVE DONE FOR THE STATES.

The Agency has provided extensive staff work and assistance to State Governments over the years in the development of environmental programs and program management capabilities. This assistance has become a routine aspect of Federal/State relations, enabling and expediting the States' assumption of delegable programs under the various EPA statutes. This "front end" investment has promoted cooperation and increased State involvement in the regulatory process.

As the Agency begins to deal with Tribal Governments as partners in reservation environmental programming, we will find a similar need for EPA assistance. Many Regional and program personnel have extensive experience in working with States on program design and development; their expertise should be used to assist Tribal Governments where needed.

6. ASSISTANT ADMINISTRATORS, REGIONAL ADMINISTRATORS AND THE GENERAL COUNSEL SHOULD TAKE ACTIVE STEPS TO ALLOW TRIBES TO PROVIDE INFORMED INPUT INTO EPA'S DECISION-MAKING AND PROGRAM MANAGEMENT ACTIVITIES WHICH AFFECT RESERVATION ENVIRONMENTS.

Where EPA manages Federal programs and/or makes decisions relating directly or indirectly to reservation environments, full consideration and weight should be given to the public policies, priorities and concerns of the affected Indian Tribes as expressed through their Tribal Governments. Agency managers should make a special effort to inform Tribes of EPA decisions and activities which can affect their reservations and solicit their input as we have done with State Governments. Where necessary, this should include providing the necessary information, explanation and/or briefings needed to foster the informed participation of Tribal Governments in the Agency's standard-setting and policy-making activities.

7. ASSISTANT AND REGIONAL ADMINISTRATORS SHOULD, TO THE MAXIMUM FEASIBLE EXTENT, INCORPORATE TRIBAL CONCERNS, NEEDS AND PREFERENCES INTO EPA'S POLICY DECISIONS AND PROGRAM MANAGEMENT ACTIVITIES AFFECTING RESERVATIONS.

It has been EPA's practice to seek out and accord special consideration to local interests and concerns, within the limits allowed by our statutory mandate and nationally established criteria and standards. Consistent with the Federal and Agency policy to recognize Tribal Governments as the primary voice for expressing public policy on reservations, EPA managers should, within the limits of their flexibility, seek and utilize Tribal input and preferences in those situations where we have traditionally utilized State or local input.

We recognize that conflicts in policy, priority or preference may arise between States and Tribes as it does between neighboring States. As in the case of conflicts between neighboring States, EPA will encourage early communication and cooperation between Tribal and State Governments to avoid and resolve such issues. This is not intended to lend Federal support to any one party in its dealings with the other. Rather, it recognizes that in the field of environmental regulation, problems are often shared and the principle of comity between equals often serves the interests of both.

Several of the environmental statutes include a conflict resolution mechanism which enables EPA to use its good offices to balance and resolve the conflict. These procedures can be applied to conflicts between Tribal and State Governments that cannot otherwise be resolved. EPA can play a moderating role by following the conflict resolution principles set by the statute, the Federal trust responsibility and the EPA Indian Policy.

8. ASSISTANT ADMINISTRATORS, REGIONAL ADMINISTRATORS AND THE GENERAL COUNSEL SHOULD WORK COOPERATIVELY WITH TRIBAL GOVERNMENTS TO ACHIEVE COMPLIANCE WITH ENVIRONMENTAL STATUTES AND REGULATIONS ON INDIAN RESERVATIONS, CONSISTENT WITH THE PRINCIPLE OF INDIAN SELF-GOVERNMENT.

The EPA Indian Policy recognizes Tribal Governments as the key governments having responsibility for matters affecting the health and welfare of the Tribe. Accordingly, where tribally owned or managed facilities do not meet Federally established standards, the Agency will endeavor to work with the Tribal leadership to enable the Tribe to achieve compliance. Where reservation facilities are clearly owned or managed by private parties and there is no substantial Tribal interest or control involved, the Agency will endeavor to act in cooperation with the affected Tribal Government, but will otherwise respond to noncompliance by private parties on Indian reservations as we do to noncompliance by the private sector off-reservation.

Actions to enable and ensure compliance by Tribal facilities with Federal statutes and regulations include providing consultation and technical support to Tribal leaders and managers concerning the impacts of noncompliance on Tribal health and the reservation environment and steps needed to achieve such compliance. As appropriate, EPA may also develop compliance agreements with Tribal Governments and work cooperatively with other Federal agencies to assist Tribes in meeting Federal standards.

Because of the unique legal and political status of Indian Tribes in the Federal System, direct EPA actions against Tribal facilities through the judicial or administrative process will be considered where the Agency determines, in its judgment, that: (1) a significant threat to human health or the environment exists, (2) such action would reasonably be expected to achieve effective results in a timely manner, and (3) the Federal Government cannot utilize other alternatives to correct the problem in a timely fashion. Regional Administrators proposing to initiate such action should first obtain concurrence from the Assistant Administrator for Enforcement and Compliance Monitoring, who will act in consultation with the Assistant Administrator for External Affairs and the General Counsel. In emergency situations, the Regional Administrator may issue emergency Temporary Restraining Orders, provided that the appropriate procedures set forth in Agency delegations for such actions are followed.

9. ASSISTANT ADMINISTRATORS, REGIONAL ADMINISTRATORS AND THE GENERAL COUNSEL SHOULD BEGIN TO FACTOR INDIAN POLICY GOALS INTO THEIR LONG-RANGE PLANNING AND PROGRAM MANAGEMENT ACTIVITIES, INCLUDING BUDGET, OPERATING GUIDANCE, MANAGEMENT ACCOUNTABILITY SYSTEMS AND PERFORMANCE STANDARDS.

In order to carry out the principles of the EPA Indian Policy and work effectively with Tribal Governments on a long-range basis, it will be necessary to institutionalize the Agency's policy goals in the management systems that regulate Agency behavior. Where we have systematically incorporated State needs, concerns and cooperative roles into our budget, Operating Guidance, management accountability systems and performance standards, we must now begin to factor the Agency's Indian Policy goals into these same procedures and activities.

Agency managers should begin to consider Indian reservations and Tribes when conducting routine planning and management activities or carrying out special policy analysis activities. In addition, the IWG, operating under the direction of the Assistant Administrator for External Affairs and with assistance from the Assistant Administrator for Policy, Planning and Evaluation, will identify and recommend specific steps to be taken to ensure that Indian Policy goals are effectively incorporated and institutionalized in the Agency's procedures and operations.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 1 4 1994

MEMORANDUM

SUBJECT: EPA Indian Policy

THE ADMINISTRATOR

TO: All Employees

In 1984, EPA became the first Federal agency to adopt a formal Indian Policy (copy attached). EPA is proud of that Policy, which has provided the framework for our developing partnership with Tribes. Since 1984 Agency programs have changed and several of our statutes have been amended to address Tribal needs. Nevertheless, the core principle of the Policy, a commitment to working with Federally recognized tribes on a government-to-government basis to enhance environmental protection, has been reaffirmed by President Clinton and remains the cornerstone of EPA's Indian program. Accordingly, therefore, I formally reaffirm the EPA Indian Policy.

The challenge for EPA today is to implement its Policy effectively. Previous administrations have addressed implementation, both in a 1984 Policy Implementation Guidance and a 1991 Concept Paper. We must now update and strengthen these documents and our implementation programs to reflect the goals and values of our long-term vision and strategic agenda. A key element for successfully implementing the Indian Policy must be a commitment to fully institutionalize the Policy into the Agency's planning and management activities.

On March 7, Martha Prothro, formerly Deputy Assistant Administrator for Water, joined my staff to assist in developing our Tribal Programs. I have asked Martha and Bill Yellowtail, Regional Administrator, EPA Region VIII, to form a team of Agency leaders to make recommendations on EPA/Tribal relations and the implementation of the Policy. The work of this group should help the Agency develop the best structure and adopt the best strategies for implementing the goals of the Policy. The team will work with Tribal representatives, including the Tribal Operations Committee and others, in drafting new implementation guidance. This guidance will provide a blueprint for transforming the Policy's vision into a reality for federally recognized Indian Tribes, including Alaskan Tribes.

This is an exciting opportunity for us to develop a stronger partnership with Tribal governments in protecting the environment. I ask all of you to help make this effort a great success.

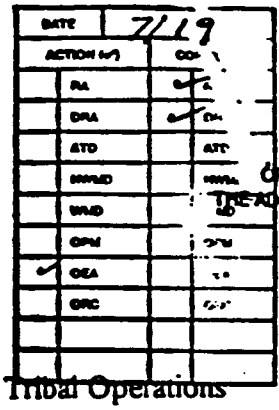
Carol M. Browner

Attachment

RA FOR REGION 9

UNITED STATES ENVIRON
WASHINGTON, D.C. 20460

JUL 14 1994



MEMORANDUM

SUBJECT: Announcement of Actions for Strengthening EPA's Tribal Operations

TO: Assistant Administrators
General Counsel
Inspector General
Associate Administrators
Regional Administrators
Staff Office Directors

Over the last five months a team of Senior EPA managers and a workgroup of EPA staff have been working to identify ways to strengthen Tribal operations throughout the Agency. I would like to thank those who worked on the team for your time and valuable contributions. Thanks also to all of you for your support for improving EPA's Indian program and increasing the Agency's ability to assist Tribes in the development and implementation of their environmental protection programs.

Attached is a document outlining steps we should implement promptly throughout the Agency. Although many of you are already working to improve specific areas of Tribal operations, additional steps are needed to address critical gaps in Tribal environmental protection and to improve our government-to-government partnership with Tribes. We can make significant progress within the next year, while continuing to search for additional opportunities to strengthen EPA's Indian program. When our new Office of Indian Affairs begins operation this fall, it will assist in carrying out this action agenda, as well as. developing, coordinating and promoting broad, longer-term activities for Tribal environmental protection.

I ask each of you to continue to make this effort a high priority.

Carol M. Browner

Attachments

TRIBAL OPERATIONS ACTION MEMORANDUM
July 12, 1994

To help improve communications and understanding between EPA and Tribes, Administrator Browner has established a new EPA/Tribal Operations Committee (TOC), which includes 18 Tribal representatives. At the Committee's first meeting, on February 17, 1994, the Administrator, in order to respond to Tribal recommendations, authorized a group of senior managers from EPA Headquarters and Regions to develop recommendations, in consultation with the Tribal members of the TOC, on ways to strengthen EPA's Tribal environmental programs and daily operations, pursuant to the implementation of the 1984 Indian Policy. This team of EPA managers has worked on a variety of issues over the last five months.

On May 26, 1994, at the Second National Tribal Conference on Environmental Management in Cherokee, North Carolina, Administrator Browner announced her intent to create a new Office of Indian Affairs and set October 1994, as the target date for it to begin operations. Although this Office will have the lead for coordinating certain activities, most of the responsibility for developing and implementing Tribal environmental protection programs will remain with the Regions and Headquarters Program Offices. Therefore, we need not wait until the establishment of the Office to promptly begin the implementation of the following actions.

The following action items are intended to strengthen EPA's Indian program by supplementing current activities. Although a Federal Register notice will invite public review and comment on the functions of the new Office of Indian Affairs (some of which are similar to the actions described below), EPA need not delay its efforts to strengthen Tribal operations. The public may have additional ideas about actions we should take and there may be refinements in our thinking. However, consultation with the Tribal Operations Committee members and responses received to a mailing to Tribal Leaders in June suggest we are generally on the right track.

Recognizing that many of these actions are new or were not previously identified as priorities, each Assistant and Regional Administrator will need to make some difficult resource allocation decisions to provide the necessary people and resources to begin to meet the challenge of strengthening EPA's Tribal operations. Each Assistant and Regional Administrator, in proceeding in the implementation of the following actions, would benefit greatly from the experience and working knowledge of the Headquarters Program and Regional Indian Coordinators (the National Indian Work Group) and from consultation with the Tribal representatives to the Tribal Operations Committee. These individuals have a great deal of information on Tribal needs and priorities.

In order to document and measure the Agency's progress and successes on strengthening the implementation of Tribal environmental protection and to facilitate early feedback on that progress, each Assistant and Regional Administrator will be asked to report, within 6 months from the issuance of this memorandum, to the Administrator on the status of his/her implementation efforts.

1) **Tribal Environmental Workplans:** In order for EPA and Tribes to plan for and respond effectively to Tribal environmental problems, the Agency and Tribes need to establish a base description of the types of environmental problems and priorities Tribes face and then formulate specific workplans for responding to the problems. To facilitate and support such a cooperative EPA/Tribal effort, each Regional Administrator should promptly begin to work with Tribes to develop environmental workplans, to include the Tribes' plans to manage authorized environmental programs and/or their need for federal technical assistance, education and implementation and management of environmental protection. Each Regional Administrator has the flexibility to determine, in consultation with Tribes, the most appropriate way to develop these workplans.

2) **EPA Regional and Program Indian Workplans:** To focus and facilitate Program and Regional efforts for effective Tribal environmental protection, each Assistant and Regional Administrator should begin to establish strategies for achieving the goals outlined in the Tribal environmental workplans. These Workplans should include the specific program implementation and management activities, technical assistance and education that will be undertaken by each Region and National Program Office. While these plans should address the problems identified in the Tribal workplans, they may be developed at the same time, in close consultation with the Tribal plans, so as to ensure the completion of Regional and National Program plans prior to the FY 1997 budget development process. The plans may be flexible and allow for future revisions as more is learned about the Tribes' environmental problems and priorities.

3) **EPA Implementation, Management and Compliance Activities:** In response to concerns that numerous gaps may exist in Tribal environmental protection, each Assistant and Regional Administrator, in close consultation with Tribes, should take immediate steps to increase implementation and management of and ensure compliance with environmental programs. Although the Agency should encourage Tribal implementation and management, where such Tribal environmental programs do not exist, the Agency, in carrying out its statutory and trust responsibilities, must work, in partnership with Tribes, on a government to government basis, to ensure the protection of Tribal human health, tural resources and environments. Although EPA retains final authority over and responsibility for its actions, the EPA Indian Policy recognizes Tribal governments as the most appropriate authority for managing Tribal environments and the Agency should accord great deference to Tribal priorities and environmental goals when carrying out these activities.

4) **Program and Regional Organization:** To strengthen the Indian program within the Regions and Headquarters Program Offices and to ensure greater consistency in the work performed by those offices, each Assistant and Regional Administrator should begin to review and, where necessary, modify the organization and/or management of the Indian program within his/her office. Each Region and Program Office has different responsibilities and/or workloads for Tribal operations and, therefore, some may require more resources than others. However, at a minimum, each Assistant and Regional

Administrator with responsibilities for Tribal activities should consider assigning a professional, full-time, to serve as Indian Coordinator, and report back to the new Office on status of this position. The Indian Coordinators must have the necessary procedures and support to assure full and effective communication with program staff throughout the organization. In addition, each Assistant and Regional Administrator should begin to address any need for additional staff to carry out critical activities related to the Agency's Indian program.

5) **Field Assistance for Tribes:** In order to supply the necessary assistance to Tribes for program development, authorization, operation and/or management, and to work with the Tribes to determine EPA implementation and management responsibilities, each Regional Administrator should ensure that there is an effective EPA/Tribal liaison capacity (ie. Indian Environmental Liaisons or other appropriate EPA field presence), to provide direct field assistance to the Tribes. As much as possible, this capacity should be carried out by staff from Indian Country and who have experience in the environmental field working with Tribal governments, communities, organizations and/or environmental staff.

6) **Training of EPA Staff:** It is important that EPA employees have the necessary sensitivity, knowledge and understanding of Indian affairs to facilitate communication between EPA and Tribal representatives. The Office of Indian Affairs, once established, will promote and coordinate training on Indian issues for Agency managers and staff. In the interim, Assistant and Regional Administrators are encouraged to provide training that moves the Agency in the direction of better understanding of Indian issues. This training could cover the EPA Indian Policy, EPA's Indian program activities, Tribal sovereignty and jurisdiction, Tribal environmental needs and activities, the role of Tribal individuals and organizations and cultural differences that may affect EPA's working relationship with Tribes.

7) **Communication with Tribes:** To promote and facilitate communication between EPA and Tribal governments, pursuant to the 1984 Indian Policy and Executive Order 12875, and between EPA and Tribal members and/or organizations, in keeping with the spirit of Environmental Justice, Assistant and Regional Administrators should include Tribes in decision-making and program management activities that affect them. Communication and requests for Tribal input should occur early in any Agency process that may affect Tribes and full consideration should be given to the policies, priorities and concerns of the affected Tribe(s) and/or, where appropriate, affected Tribal members.

8) **Grant Flexibility and Streamlining:** Given that most Tribes have a small environmental staff (if any) to manage various program-specific grants, in order to increase the efficient use of limited resources, each Assistant and Regional Administrator should, to the extent

allowed by law, use available discretion to consolidate issuance and administration of grants to Tribes and allow for both program operation and program development.[1]

9) **Resource Investment in Tribal Operations:** Some encouraging first steps have already been taken to increase resources for Tribal operations in the FY 1996 budget. High priority was established for increasing support for Tribal operations at the Annual Planning meeting in April. However, to begin immediately strengthening the Indian program and to implement the new activities outlined in this memorandum, resources must be invested in FY 1994 and FY 1995 for: 1) staff assistance in the development of Tribal environmental workplans (FTE and travel); 2) Tribal capacity building, environmental program development, authorization and management (primarily grant funding); 3) EPA implementation and management activities (FTE, travel and AC&C support); and 4) technical assistance and related support, as needed by the Tribes (FTE, travel and AC&C support). These additional investments, will require a shift in Headquarters Program and Regional priorities to place greater emphasis on Tribal operations. Recognizing that we cannot immediately resolve all problems or address all Tribal environmental needs, each Assistant and Regional Administrator should allocate resources within their discretion and authority to constitute a significant commitment to strengthening Tribal environmental protection.

---

[1] While recognizing that the primary objective of the General Assistance Program (GAP) is to develop Tribal environmental capacity, the new Office of Indian Affairs will be asked to consider using, to the extent allowed by law, any flexibility in the current GAP for program implementation, where funding such implementation would be impractical on a program by program basis. In consultation with Assistant and Regional Administrators, the Office will consider whether EPA should support statutory changes in granting authorities to create more opportunities for Tribal block grants and to explicitly allow for the use of GAP, where practical, for program implementation. However, even if the use of GAP is expanded, program-specific funding and responsibility for technical assistance, implementation, management or other related activities would still need to continue and also expand.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 10 1991

MEMORANDUM

THE ADMINISTRATOR

SUBJECT: EPA/State/Tribal Relations

TO: Assistant Administrators
General Counsel
Inspector General
Regional Administrators
Associate Administrators
Staff Office Directors

Earlier this year I shared with you my views concerning EPA's Indian Policy, its implementation and its future direction. I would now like to further emphasize my commitment to the Policy by endorsing the attached paper that was coordinated by Region VIII on EPA/State/Tribal Relations.

This paper was prepared to formalize the Agency's role in strengthening tribal governments' management of environmental programs on reservations. The paper notes that the differences between the interests of tribal and state governments can be very sensitive and sometimes extend well beyond the specific issues of environmental protection. It reaffirms the general approach of the Agency's Indian Policy and recommends the strengthening of tribal capacity for environmental management. I believe the Agency should continue its present policy, making every effort to support cooperation and coordination between tribal and state governments, while maintaining our commitment to environmental quality.

I encourage you to promote tribal management of environmental programs and work toward that goal.

Please distribute this document to states and tribes in your region.

William K. Reilly

Attachment

cc. Headquarters Program Office Directors
Regional Office Directors

FEDERAL, TRIBAL AND STATE ROLES IN THE PROTECTION AND REGULATION OF RESERVATION ENVIRONMENTS

A Concept Paper

I. BACKGROUND

William Reilly, in his first year as EPA Administrator, reaffirmed the 1984 EPA Indian Policy and its implicit promise to protect the environment of Indian reservations as effectively as the Agency protects the environment of the rest of the country. The EPA Indian Policy is premised on tribal self-determination, the principle that has been set forth as federal policy by Presidents Nixon, Reagan, and Bush. Self-determination is the principle recognizing the primary role of tribal governments in determining the future course of reservation affairs. Applied to the environmental arena in the EPA Indian Policy, this principle looks to tribal governments to manage programs to protect human health and the environment on Indian reservations.

II. TRIBAL, STATE AND FEDERAL EXPECTATIONS

The Agency is sensitive to the fact that tribal and state governments have serious and legitimate interests in the effective control and regulation of pollution sources on Indian reservations. EPA shares these concerns and, moreover, has a responsibility to Congress under the environmental statutes to assure that effective and enforceable environmental programs are developed to protect human health and the environment throughout the nation, including Indian reservations.

Indian tribes, for whom human welfare is tied closely to the land, see protection of the reservation environment as essential to preservation of the reservations themselves. Environmental degradation is viewed as a form of further destruction of the remaining reservation land base, and pollution prevention is viewed as an act of tribal self-preservation that cannot be entrusted to others. For these reasons, Indian tribes have insisted that tribal governments be recognized as the proper governmental entities to determine the future quality of reservation environments.

State governments, in turn, recognize that the environmental integrity of entire ecosystems cannot be regulated in isolation. Pollution in the air and water, even the transportation of hazardous materials in everyday commerce, is not restricted to political boundaries. Accordingly, state governments claim a vital interest in assuring that reservation pollution sources are effectively regulated and, in many cases, express an interest in managing reservation environmental programs themselves, at least for non-Indian sources located on the reservations. In addition, some state officials have voiced the concerns of various non-Indians who live or conduct business within reservation boundaries, many of whom believe that their environmental or business interests would be better represented by state government than by the tribal government.

Although the Agency hears these particular concerns expressed most often through tribal and state representatives, respectively, the Agency is aware that most of these concerns are shared by both tribes and states. For example, tribal governments are not alone in holding the view that future generations depend on today's leaders to manage the environment wisely. Many state officials argue the same point with the same level of conviction as tribal leaders. Conversely, tribal governments share with states the awareness that individual components of whole ecosystems cannot be regulated without regard to management of the other parts. Tribal governments have also shown themselves to share the states' sensitivity to the concerns and interests of the entire reservation populace, whether those interests are the interests of Indians or non-Indians. In the Agency's view, tribes and states do not differ on the importance of these goals. Where they differ at all, they differ on the means to achieve them.

EPA fully shares with tribes and states their concerns for preservation of the reservation as a healthy and viable environment, for rational and coordinated management of entire ecosystems, and, thirdly, for environmental management based on adequate input both from regulated businesses and from the populace whose health the system is designed to protect. Moreover, the Agency believes that all of these interests and goals can be accommodated within the framework of federal Indian policy goals and federal Indian law.

III. EPA POLICY

The EPA Indian Policy addresses the subject of state and tribal roles within reservation boundaries as follows:

1) First, consistent with the President's policy, the Agency supports the principle of Indian self-government:

"In keeping with the principle of Indian self-government, the Agency will view Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved the interests and/or participation of State Governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments."

2) Second, the Agency encourages cooperation between state, tribal and local governments to resolve environmental issues of mutual concern:

"Sound environmental planning and management require the cooperation and mutual consideration of neighboring governments, whether those governments be neighboring States, Tribes or local units of government. Accordingly, EPA will encourage early communication and cooperation among Tribes, States and local governments. This is not intended to lend Federal support to any one party to the jeopardy of the interests of the other. Rather, it recognizes that in the field of environmental regulation, problems are often shared and the principle of comity between equals often serves the best interests of both."

IV. PRINCIPLES AND PROCEDURES FOR EPA ACTION

EPA program managers will be guided by the following principles and procedures regarding tribal and state roles in the management of programs to protect reservation environments.

1. The Agency will follow the principles and procedures set forth in the EPA Policy for the Administration of Environmental Programs on Indian Reservations and the accompanying Implementation Guidance, both signed on November 8, 1984.

2. The Agency will, in making decisions on program authorization and other matters where jurisdiction over reservation pollution sources is critical, apply federal law as found in the U.S. Constitution, applicable treaties, statutes and federal Indian law. Consistent with the EPA Indian Policy and the interests of administrative clarity, the Agency will view Indian reservations as single administrative units for regulatory purposes. Hence, as a general rule, the Agency will authorize a tribal or state government to manage reservation programs only where that government can demonstrate adequate jurisdiction over pollution sources throughout the reservation. Where, however, a tribe cannot demonstrate jurisdiction over one or more

reservation sources, the Agency will retain enforcement primacy for those sources. Until EPA formally authorizes a state or tribal program, the Agency retains full responsibility for program management. Where EPA retains such responsibility, it will carry out its duties in accordance with the principles set forth in the EPA Indian Policy.

3. Under both authorized and EPA-administered programs for reservations, the Agency encourages cooperation between tribes and states, acting in the spirit of neighbors with a mutual self-interest in protecting the environmental and the health and welfare of the reservation populace. Such cooperation can take many forms, including notification, consultation, sharing of technical information, expertise and personnel, and joint tribal/state programming. While EPA will in all cases be guided by federal Indian law, EPA Indian Policy and its broad responsibility to assure effective protection of human health and the environment, the Agency believes that this framework allows flexibility for a wide variety of cooperative agreements and activities, provided that such arrangements are freely negotiated and mutually agreeable to both tribe and state. The Agency will not act in such a manner as to force such agreements.

4. The Agency urges states to assist tribes in developing environmental expertise and program capability. The Agency has assisted in funding state environmental programs for two decades, with the result that, today, state governments have a very capable and sophisticated institutional infrastructure to set and enforce environmental standards consistent with local state needs and policies. As the country now moves to develop an infrastructure of tribal institutions to achieve the same goals, state governments can play a helpful and constructive role in helping to develop and support strong and effective tribal institutions. The State of Wisconsin has worked with the Menominee Tribe to develop a joint tribal/state RCRA program that can serve as a model of mutually beneficial cooperation for other states and tribes.

5. The Agency urges tribes to develop an Administrative Procedures Act (APA) or other means for public notice and comment in the tribal rule-making process. Many tribes now working with EPA to develop environmental standards and regulatory programs have already taken the initiative in establishing such techniques for obtaining community input into tribal decision-making. Such tribes have enacted APAs and held public meetings to gather input from both Indian and non-Indian residents of the reservation prior to setting tribal environmental standards for their reservations. The Agency generally requires states and tribes to provide for adequate public participation as a prerequisite for approval of state or tribal environmental programs. The Agency believes that public input into major regulatory decisions is an important part of modern regulatory governance that contributes

significantly to public acceptance and therefore the effectiveness of regulatory programs. The Agency encourages all tribes to follow the example of those tribes that have already enacted an APA.

6. Where tribal and State governments, managing regulatory programs for reservation and state areas, respectively, may encounter transboundary problems arising from inconsistent standards, policies, or enforcement activities, EPA encourages the tribal and state governments to resolve their differences through negotiation at the local level. EPA, in such cases, is prepared to act as a moderator for such discussions, if requested. Where a statute such as the Clean Water Act designates a conflict-resolution role for EPA in helping to resolve tribal/state differences, EPA will act in accordance with the statute. Otherwise, EPA will respond generally to such differences in the same manner that EPA responds to differences between states.

V. CONCLUSION

The Agency believes that where an ecosystem crosses political boundaries, effective regulation calls for coordination and cooperation among all governments having a regulatory role impacting the ecosystem. Many differences among tribes and states, like differences among states, are a natural outgrowth of decentralized regulatory programs; these differences are best resolved locally by tribes and states acting out of mutual concern for the environment and the health of the affected populace. EPA actions and decisions made in carrying out its role and responsibilities will be consistent with federal law and the EPA Indian Policy. Within this framework, the Agency is convinced that the environmental quality of reservation lands can be protected and enhanced to the benefit of all.

NOTE: This is a draft policy and does not represent official agency policy. Ongoing review and discussions may lead to a final policy in the near future. Please, do not cite as agency policy.

DRAFT COPY AS OF 03/08/94

POLICY GUIDANCE ON EPA CIVIL AND ADMINISTRATIVE ENFORCEMENT AGAINST AMERICAN INDIAN TRIBES

The following is the Office of Enforcement's (OE) guidance on civil and administrative enforcement actions taken by or on behalf of the Environmental Protection Agency (EPA) against American Indian tribal governments and facilities. This guidance clarifies and expands upon the procedures outlined in the November 8, 1984 "EPA Policy for the Administration of Environmental Programs on Indian Reservations" (Indian Policy) and its accompanying Implementation Guidance.

I. Conditions Necessary for Enforcement Action

The Indian Policy limits the instances when the Agency will take enforcement action against a tribe, providing:

> In those cases where facilities owned or managed by Tribal Governments are not in compliance with Federal environmental statutes[1], EPA will work cooperatively with Tribal leadership to develop means to achieve compliance, providing technical support and consultation as necessary to enable Tribal facilities to comply. Because of the distinct status of Indian Tribes and the complex legal issues involved, direct EPA action through the judicial or administrative process will be considered where the Agency determines, in its judgment, that: (1) a significant threat to human health or the environment exists, (2) such action would reasonably be expected to achieve effective results in a timely manner, and (3) the Federal Government cannot utilize other alternatives to correct the problem in a timely fashion.

A. " ... owned or managed by Tribal Governments ... "

As set forth above, the Indian Policy requires EPA to ensure that certain conditions have been met before taking enforcement action against facilities owned or managed by "Tribal Governments." Such facilities include those that are wholly owned or directly managed by a tribal government whether or not the facilities are

---

[1] This guidance deals solely with violations of EPA's civil regulatory programs. It does not apply to criminal conduct, criminal investigations or enforcement under criminal provisions of laws or regulations which protect lives, health or environment and are enforced by this Agency.

located in Indian country[2]. In cases of facilities that are wholly owned and directly managed by parties other than a tribal government (including individual members of the tribe) and located in Indian country, EPA will respond to noncompliance in the same way that it does to noncompliance at facilities located outside Indian country but will coordinate with the tribal government in the same way that it otherwise would with the affected state government.

In determining whether a facility partially owned by a tribal government should be treated as if wholly owned by a tribal government, EPA will consider the extent of the tribal government's ownership of the facility. Generally, a facility in which a tribal government has a controlling ownership interest will be treated as if owned by that government, whereas a facility with only minor tribal ownership will not. Similarly, EPA will examine the degree of a tribe's involvement in the daily operations of a facility in determining whether the facility is managed by the tribal government. When there is no substantial tribal ownership interest in or management of a facility located in Indian country, the Agency shall respond to noncompliance at the facility in the manner described above for facilities wholly owned and managed by parties other than a tribal government.

B. " ... EPA will work cooperatively with Tribal leadership to develop means to achieve compliance, providing technical support and consultation as necessary ... "

EPA will contact the tribal leadership and the manager of a noncompliant facility and attempt to cooperatively develop a means to achieve compliance before taking any enforcement action. This condition applies to the issuance of notices of violation, administrative and judicial complaints, proposed and final orders and all other documents that implicate injunctive relief or the assessment of penalties. It does not apply to the issuance of information requests. The initial contact with the tribe should

---

[2] This guidance incorporates the definition of "Indian country" found at 18 U.S.C. § 1151: a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

include an offer by EPA to provide consultation and technical support appropriate under the circumstances and consistent with the availability of resources. This support could include training of tribal personnel, visits by EPA personnel to the facility or other measures. For the sake of preserving an adequate record, such communication should be by certified letter or, when oral, memorialized in writing. At times it will be more effective for EPA to deal primarily with the manager of the facility. In this circumstance, the tribal leadership should still be informed of the alleged violation by EPA in writing, even if only by copy of correspondence with the facility manager.

If this initial contact does not result in timely compliance, EPA should consider further cooperative means of assisting the facility to resolve the violations. Such efforts could include follow-up letters, direct correspondence with the tribal leadership, grants assistance or an informal compliance agreement that does not provide for penalties nor constitute a consent order.

If EPA determines that cooperative means are not likely to achieve timely compliance, or if such means have been unsuccessful, the Agency should proceed with whatever enforcement action it would take at a non-tribal facility under similar circumstances, such as the issuance of a notice of violation followed, if necessary, by a proposed order or administrative complaint. Factors to consider in making this determination include the potential for harm to human health, the environment or the regulatory program, any relevant history of noncompliance with EPA programs, and the degree of willfulness pertaining to the violation.

C. " ... a significant threat to human health or the environment exists ... "

EPA should take enforcement action against a tribal government only if it determines that a significant threat to human health or the environment exists because of the noncompliance. The existence of such a threat should be referred to in the appropriate enforcement documents. Threats to human health and the environment include not only such direct threats as a release of contaminants into the environment and exposure of humans to pollutants but also indirect threats such as failure to operate with a permit, failure to monitor and failure to maintain proper operational records. The "significant threat" standard is not intended to, and should not, result in a lesser degree of environmental protection in Indian country. It is a means of confirming EPA's government-to-government relationship with

tribes by assuring that minor or solely punitive actions will be avoided whenever possible.

D. " ... such action would reasonably be expected to achieve effective results in a timely manner ... "

As a general matter, enforcement proceedings seeking injunctive relief are reasonably expected to achieve effective results in a timely manner when the relief requested is specific and appropriate to the violations and includes a time frame for attaining compliance. EPA should seek penalties from a tribal government or include stipulated penalties in consent orders and decrees only when they are necessary to secure effective, timely results. The Agency should generally avoid actions which seek penalties without injunctive relief.

E. " ... the Federal government cannot utilize other alternatives to correct the problem in a timely fashion ... "

EPA should consider all reasonable ways to assist a tribal facility to come into compliance before considering enforcement action. The extent to which EPA should include other federal agencies in its efforts to cooperatively resolve violations with a tribal government will vary from case to case. EPA should involve federal agencies generally charged with American Indian affairs (e.g., the Bureau of Indian Affairs or the Indian Health Service) or other federal agencies with an interest in the particular matter (e.g., the Army Corps of Engineers regarding dredge and fill permits) whenever such involvement is reasonably expected to facilitate tribal compliance in an acceptable time frame. EPA should also consider utilizing non-federal agencies or private entities as appropriate to the circumstances; for example, a state agency or private company with an interest in the tribal facility may be able to provide technical assistance or other resources to the tribe. To maximize the effectiveness of involving other agencies and entities, EPA should generally involve them in compliance efforts as early as is reasonable under the circumstances. EPA should provide the Bureau of Indian Affairs with copies of notices of violation and other enforcement documents unless this practice would impede the particular enforcement action.

II. Coordination within the Agency

The Indian Policy Implementation Guidance provides that

> Regional Administrators proposing to initiate such (enforcement) action should first obtain concurrence from the Assistant Administrator for Enforcement and Compliance Monitoring, who will act in consultation with the Assistant Administrator for External Affairs and the General Counsel.

In light of the reorganization of EPA Headquarters offices since the issuance of the Implementation Guidance, the Acting Deputy Assistant Administrator for Federal Facilities Enforcement by memorandum of October 21, 1992 directed all EPA enforcement actions against tribal facilities, except in emergency situations, to be submitted to the Assistant Administrator for Enforcement, who will act in consultation with the Office of Federal Activities, including its Senior Legal Advisor, and the General Counsel.

Provided that the conditions necessary for enforcement action described above have been met, a Region need not obtain concurrence from the Assistant Administrator for Enforcement for the issuance of a notice of violation or a consent order to a tribal facility, unless the case otherwise involves issues of national significance. Issues of national significance include actions which could be construed as setting precedent for other Regions or the Agency as a whole, first-impression interpretations of laws, and actions which are inconsistent with the practice of other Regions or national policy. In the event of uncertainty regarding the national significance of issues presented by the case, the Region should consult with the Office of Enforcement. To ensure that those conditions have been met and that no issue of national significance is implicated, the Regional program office must obtain the concurrence of the Regional Indian Program Coordinator and the Office of Regional Counsel before issuing a notice of violation, consent order or any other document that implicates injunctive relief or the assessment of penalties. The Region must obtain the concurrence of the Assistant Administrator for Enforcement before taking any enforcement action of greater magnitude than a notice of violation, such as issuing an administrative complaint or proposed order, against a tribal facility. Informal consultation with the Office of Federal Activities' Senior Legal Advisor by the Offices of Regional Counsel and the National Indian Program Coordinator is encouraged for all enforcement matters related to American Indian tribes.

Whenever the concurrence of the Assistant Administrator for Enforcement is necessary for an enforcement action against a tribal facility, the Office of Regional Counsel should submit to the Assistant Administrator the following information: 1) identification of the facility, person or other entity against whom the action is proposed; 2) the nature of the alleged

violation (i.e., statutory/regulatory requirement violated; place, time and date of violation; names of actors; action giving rise to violation); 3) the type of action proposed (e.g., compliance order, criminal prosecution); 4) a description of how the case meets the conditions necessary for enforcement action set forth above, including a description of all relevant communications with tribe; and 5) copies of the proposed enforcement document and relevant supporting documents. The Region should allow two weeks for review by the Office of Enforcement, unless an expedited review is requested and granted.

In emergency situations, the Regional Administrators may issue emergency temporary restraining orders against a tribal government without obtaining the advance concurrence of the Assistant Administrator for Enforcement, provided that the appropriate procedures set forth in Agency delegations for such action are followed.

RESPONSE TO COMMENTS RECEIVED TO 8/25/93 DRAFT OF POLICY GUIDANCE ON EPA ENFORCEMENT ON AMERICAN INDIAN LANDS

Comments were received from: Regions 4, 6, 8, 9 and 10; the National Indian Program Coordinator; the Office of Water; the Organizational Management and Integrity Staff, Office of Solid Waste and Emergency Response; and the Criminal Enforcement Counsel Division.

Note: Many comments were similar; your comment may have been consolidated into someone else's.

Comment #1: Document should use "Indian country" instead of "American Indian lands." A new term would be confusing and without the benefit of precedent. "Indian country" emphasizes the land's connection with Federal jurisdiction and administration, which is usually the basis for tribal jurisdiction.

Response: Agreed. The subcommittee originally decided against using "Indian country," as that term is, on its face, broader than terms used in some of our statutes.

Comment #2: Change "verbal" to "oral" on p. 2.

Response: Agreed.

Comment #3: Guidance should extend (as it currently does) beyond Indian country to activities of a tribal government that may not be on Indian lands.

Response: Agreed. This recognizes the sovereignty of tribes and EPA's commitment to dealing with them on a government-to-government basis. In most cases, tribal facilities outside Indian country will be under state jurisdiction and actions against such facilities will be taken by a state. This policy guidance does not affect the assertion or validity of state jurisdiction over such facilities or imply U.S. EPA enforcement primacy over states for such facilities. Extending this guidance to facilities outside Indian country means only that when and if U.S. EPA takes an enforcement action against such a facility, the Agency will comply with this policy guidance. The guidance provides sufficient flexibility regarding facilities partially owned by non-tribal entities to allow EPA to follow normal enforcement procedures in actions against companies that are

trying to shield themselves from enforcement by becoming business partners with tribes.

Comment #4: Regions should not need OE concurrence on enforcement actions greater than an NOV.

Response: Given the political sensitivity of such an action and the existence of some sort of EPA trust responsibility toward tribes, any actual enforcement action is by nature a matter of national significance. Since actual enforcement actions will be rare and OE has committed to review enforcement requests in a timely manner, obtaining concurrence of OE should not be burdensome on the Regions.

Comment #5: The terms "in a timely manner" and "timely compliance" are vague.

Response: The timeliness of an action will depend upon the individual regulatory program, type of action, etc. Rather than expound an exhaustive and potentially exclusive-through-incompleteness list of time frames, we allow the Region to determine on a case-by-case when an action is timely. Use of these terms is common in other EPA guidance.

Comment #6: You should insert an example of EPA utilizing non-federal agencies or private entities to facilitate tribal compliance on p. 4.

Response: Agreed.

Comment #7: Would Regions have to copy BIA on simple notices, which do not refer to possible enforcement actions or assessment of penalties?

Response: The guidance does not require copies of non-enforcement notices to be sent to BIA.

Comment #8: Item 4 of the information necessary to send to OE to obtain concurrence on an enforcement action (p. 5) should appear earlier in the guidance document.

Response: We believe that all 5 items of information necessary to forward to OE should be kept together and that they best appear in their current location.

Comment #9: The guidance seems to imply that EPA will not take enforcement action against non-Indian facilities in Indian country.

Response: Page 2 of the guidance provides "When there is no substantial tribal interest in or management of a facility located in Indian country, the Agency shall respond to noncompliance at the facility in the manner described above for facilities wholly owned and managed by parties other than a tribal government."

Comment #10: We should provide enforcement training to tribal governments and the reservation population.

Response: Providing training to tribes is outside the purview of this task force. Such a request should be directed to the Regional or national program offices.

Comment #11: The statement on p. 5 that Regions must obtain OE concurrence "before taking any enforcement action of greater magnitude than a notice of violation" appears to conflict with the statement on p. 4 that Regions do not need OE concurrence for "issuance of a notice of violation or consent order."

Response: Neither statement requires OE approval for issuance of an NOV. The work group does not believe that consent orders, which resolve noncompliance cooperatively, are enforcemnt actions of greater magnitude than an NOV. Please note that an administrative complaint does need OE concurrence and that in some programs administrative complaints must be filed before or along with consent orders.

Comment #12: Regional program offices should not have to obtain the concurrence of the Regional Indian Program Coordinators or Regional Counsels before issuing NOVs.

Response: Due to the extreme political sensitivity of taking enforcement actions against tribes and the existence of an EPA trust responsibility to tribes, even NOVs warrant concurrence by the RIPCs and RCs. Some Regions have developed procedures whereby a program office may issue a generic, RC/RIPC-approved "pre-NOV" notice of potential noncompliance to a tribe without advance concurrence, provided that the RIPC and RC are sent copies of the notice. If the pre-NOV does not result in compliance, RC/RIPC concurrence is sought before issuing an actual NOV. Such procedures are acceptable under the new guidance.

Comment #13: Allowing an extended period of time to assist a non-compliant tribal facility in returning to compliance may mean that Indians do not receive the same degree of public health protection as non-Indians. OE will have to revise its Timely and Appropriate guidance to accommodate this new principle.

Response: The guidance allows enough flexibility to assure that neither the public health nor the environment is jeopardized by efforts to assist a tribal facility in coming into compliance. The guidance provides that cooperative approcahs to achieving compliance must correct compliance problems in a timely fashion and that, in emergency situations, Regional Administrators may issue temporary restraining orders against tribal governments without advance concurrence by OE. Thus, this guidance does not generally contradict the principle of timely and appropriate enforcement found in other Agency guidance. Specific contradictions between this and other guidance will be resolved as they arise.

Comment #14: Allowing EPA to take enforcement action against a tribe only when a significant threat to human health or the environment exists is too restrictive.

Response: As explained in the guidance, the significant threat standard is a means of confirming EPA's government-to-government relationship with tribes by assuring that minor or solely punitive actions will be avoided whenever possible. It is not intended to, and should not, result in a lesser degree of environmental protection in Indian country. As a general matter, EPA seldom takes enforcement action against any entity unless a significant threat to human health or the environment exists.

Comment #15: How will tribal corporations formed under Section 17 of the Indian Reorganization Act (25 U.S.C. § 477) be dealt with?

Response: Section 17 of the Indian Reorganization Act allows the Secretary of the Interior to approve the incorporation of certain tribes. For the most part, these corporations are tribal governmental entities and will be dealt with as any other tribal governmental agency. That is, it is the extent of the tribal government's involvement at a facility which determines the applicability of the guidance; such involvement may be manifest by a tribal council, corporation, agency or other entity.

Comment #16: EPA should not provide the Bureau of Indian Affairs with copies of notices of violation or other enforcement documents, as EPA could not assure their confidentiality.

Response: Enforcement documents such as NOVs, administrative complaints and orders are public information. Also, since the Department of Interior holds most tribal lands in trust, it is an interested party in any enforcement proceeding. Providing BIA with copies of these documents will in no way jeopardize any civil enforcement action. This guidance does not apply to criminal actions.

Comment #17: The guidance requires the Regional program offices to obtain the concurrence of the Regional Indian Program Coordinator and the Office of Regional Counsel before issuing a notice of violation, consent order or any other document that implicates injunctive relief or the assessment of penalties. Must the program offices also obtain RIPC/ORC concurrence taking any enforcement action of greater magnitude than a notice of violation?

Response: Yes. enforcement actions of greater magnitude than NOVs are "other documents that implicate injunctive relief or the assessment of penalties."

Comment #18: Would Underground Storage Tank Program field citations be eligible to be used at a tribally owned facility?

Response: No. These citations are essentially administrative complaints and require OE concurrence. Regional UST programs may want to develop a generic field "notice of potential non-compliance" approved by ORC and the Regional Indian Program Coordinator for tribal facilities.

Comment #19: This policy is in direct disagreement with President Clinton's directive to reduce by 50% the number of internal regulations under which we operate.

Response: At this time, most Agencies construe President Clinton's directive to apply only to operational and administrative regulations. Should it be made clear that program and enforcement guidance must also be cut, we shall consider not finalizing this guidance.

Comment #20: Each of the Regions should be trusted to take the enforcement actions as appropriate on a case-by-case basis.

Response: The guidance attempts to maintain a proper balance between Headquarters and Regional involvement. The guidance provides greater autonomy to the Regions than is the current practice, yet reserves to Headquarters concurrence on issues of national importance.

Comment #21: Section I., line 11: "judicial or administrative process" should be changed to "administrative or judicial process."

Response: The cited text is a direct (and accurate) quote from the EPA policy, as indicated by its indentation. As such, it cannot be changed.

Comment #22: There should be an exemption for working cooperatively with a tribe for significant non-compliers, falsification of data and imminent and substantial endangerment.

Response: Page three of the policy guidance provides conditions when the Agency need not attempt to work cooperatively with a tribe before taking enforcement action. These conditions would accommodate your concerns and include: failure of such an effort to achieve timely compliance (imminent and substantial endangerment); history of non-compliance (SNCs); and degree of willfulness (falsification of data).

Comment #23: The issuance of certified letters for every written communication is extremely burdensome.

Response: The policy guidance requires only the initial contact with a tribe regarding a violation and offer to work cooperatively to be sent by certified mail. This is necessary to preserve an adequate record of the basis for enforcement action.

Comment #24: Seeking penalties against a tribe only when necessary to secure effective, timely results is too strict. It should not be more profitable to violate environmental laws than to comply with them or to operate in non-compliance on a reservation than off. EPA could recognize the limited financial resources of tribes by providing that penalties will be sought only when a tribe has the ability to pay. Seeking penalties should be allowed whenever tribes have abused the Federal Government's trust relationship to the detriment of the environment.

Response: The "effective results" standard would allow the Agency to seek penalties to off-set profits gained through non-compliance when appropriate. Don't forget that the policy guidance applies to tribal governments, not to private enterprises operating on reservations. The presumption against seeking penalties from tribes is not related to their financial conditions, which vary widely, but to their status as sovereigns and as beneficiaries of the Federal Government's trust relationship with them. A tribe's ability to pay should be assessed in calculating penalties through the same procedures that any other alleged violator's ability to pay is. Tribes have not been found by the courts or Congress to have any responsibility to the Federal Government as a result of the trust relationship. Until such a responsibility is expressly found to exist and EPA is authorized to regulate it, the Agency should not penalize tribes for abusing it.

Comment #25: Providing copies of NOVs and other enforcement documents to the Bureau of Indian Affairs makes no sense at the local level.

Response: As the agency with primary responsibility for American Indian affairs and potential owner/lessor of the land involved, the BIA has a strong interest in enforcement proceedings against tribes. Since EPA and tribes will often look to the BIA for the resources to correct violations, it is in EPA's interest to keep the BIA informed of enforcement proceedings. This contact is most effective at the Regional level and should not be burdensome.

Comment #26: "the Regional Administrator may issue emergency temporary restraining orders" should be changed to "the Regional Administrator may use applicable emergency enforcement authorities" because only a judge can issue a TRO.

Response: Some statutes which EPA administers allow the Administrator (and, by delegation, the Regional Administrators) to issue administrative orders to stop situations which present an immediate danger to the environment. It is to these orders that the policy guidance language (a direct quote from the 1984 implementation guidance) refers. The policy guidance does not authorize the Regional Administrators to seek judicial temporary restraining orders through the Department of Justice without the concurrence of the Office of Enforcement.

Comment #27: The term "substantial tribal interest" on page 2 is unclear. It could refer to ownership interest or another type of interest, such as major employment of Indian workers.

Response: We have changed the language to read "ownership interest," as that is the only type on interest intended to be considered.

Comment #28: In order to achieve compliance, EPA may need to provide funds, such as LUST funds, for clean-up in the event that an enforcement action or an agreement does not result in clean-up.

Response: Agreed. The policy guidance encourages such funding in Section I. B.

Comment #29: There will be many violations which never get addressed by the Agency, as a tribe may not be able to afford to come into compliance and, accordingly, an enforcement action would not achieve timely results.

Response: Enforcement actions are not the primary way in which the Agency should respond to non-compliance at tribal facilities. The policy guidance encourages EPA to consider other alternatives, such as seeking other sources of funding, before taking enforcement action against tribes. A tribe's inability to afford to come into compliance is all the more reason that EPA should help it look for alternative sources of funding and not take an enforcement action.

Comment #30: EPA should not commit to provide technical support and consultation as necessary to enable tribal facilities to comply.

Response: The language referred to is quoted directly from the EPA Indian Policy. The policy guidance clarifies in Section I. B. that this support must be "appropriate under the circumstances and consistent with the availability of resources."

Comment #31: The indented paragraph on page 1 should be rewritten to clarify that enforcement action will be considered only under certain circumstances.

Response: The indented paragraph is a direct quotation of the existing Indian policy and cannot be modified by this guidance.

This guidance interprets and clarifies that language in a manner which, we hope, addresses your concern.

Comment #32: Does the policy guidance require EPA to cooperatively develop a means to achieve compliance before issuing an information request? It shouldn't. This should be explicitly stated in the guidance.

Response: The guidance is not intended to require such efforts before the issuance of an information request. We have added language to make this clear.

Comment #33: EPA should involve other agencies and organizations immediately upon the discovery of the violation, whether such involvement would facilitate compliance or not as such involvement would not only facilitate compliance [sic] but could have a significant impact on the resources EPA would need to commit.

Response: We have added language to Section I. E. to encourage early involvement of other agencies and organizations.

Comment #34: The guidance requires the concurrence of the Office of Enforcement for issues of national significance. It should define or give examples of such issues.

Response. We have added some examples in Section II to address your concern.

Comment #35: The guidance should explicitly state that it does not apply to criminal conduct, criminal investigations or enforcement under criminal provisions of laws or regulations which protect lives, health or environment and are enforced by this Agency.

Response: We have amended what is now footnote 1 to address this concern.

Comment #36: The guidance ought to be retitled to reflect that it deals more with civil/administrative enforcement against tribal governmental entities than with all enforcement within Indian country.

Response: Agreed. We have changed the title and introductory paragraph to incorporate this idea.

Comment #37: The guidance should specify at what level contact between EPA and tribal leadership should occur. Contact with tribal councils or chairpersons means that Headquarters should represent EPA. The guidance seems to contradict itself by requiring EPA to contact tribal leadership about possible violations then later saying that it's enough to copy the leadership on correspondence with the facility's manager.

Response: EPA Regional offices routinely correspond with tribal councils and chairpersons, just as they do with governors and the heads of state agencies. There is no reason to alter this practice for the type of correspondence provided for in the guidance. Similarly, it is the Region that should determine on a case-by-case basis exactly what level of leadership within EPA and the tribe need be involved. Some tribes have established environmental agencies, whereas others have only a part-time employee assigned to environmental matters. In the former case, correspondence with the director of the tribal agency may be appropriate; the latter may require contact with the tribal chairperson or council. We assume that the Regional program offices will work closely with the Regional Indian Coordinators to determine how the contact should be made. Work group members believe that in cases when more effective results can be obtained by dealing directly with the manager of the facility, sending a copy of the correspondence to tribal leadership will be sufficient contact with the tribe. We have clarified the relevant language somewhat.

Comment #38: If EPA bases this guidance on its government-to-government relationship with tribes, EPA should treat tribes the same as other governments. Since this guidance treats tribes differently than state/municipal/local governments, it should state the reason for doing so (presumably the trust relationship.)

Response: This guidance interprets the EPA Indian policy's enforcement provisions. It is not intended to modify the basis for those provisions.

Comment #39: The last paragraph should delineate which delegations are referred to and where they can be found.

Response: EPA delegations are too numerous to cite in the guidance. EPA legal offices will be able to determine which delegations are relevant and where they can be found. (Most EPA libraries have copies of the EPA delegations manuals.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 25 1991

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: EPA Statutes Regarding the Role of Indian Tribes in Managing Reservation Environments

FROM: David Coursen
Attorney-Advisor

TO: Howard Corcoran
Acting Deputy Associate General Counsel

Environmental regulation is a complex process in which EPA often shares responsibilities with state or tribal governments; further, it involves activities that can have serious impacts on human health. Consequently, a clear understanding of EPA's statutory authorities regarding environmental management on Indian reservations, as well as a general understanding of federal Indian law, is essential to the rational administration of environmental programs on and affecting Indians and their lands.

I. Specific Statutes

The Agency's principal focus is the management, on reservations and elsewhere, of the environmental programs for which the Agency bears statutory responsibility. Generally, the environmental statutes under which the Agency operates define a federal, or a joint state and federal role (often with the state having a lead role) in environmental management.

The environmental statutes are not all equally clear in defining the environmental role of Indian tribes on reservations. Several of the environmental statutes are completely or partially silent concerning the role of tribes in the management of reservation environments. Four statutes explicitly authorize the Agency to treat Indian tribes in a manner similar to that in which it treats states: the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), and the Clean Air Act (CAA); Agency regulations define how tribes are treated as states under the Water Acts and CERCLA, and the Agency is currently developing CAA regulations. (The Agency is also developing regulations defining a tribal role under various provisions of RCRA).

A. The Water Acts

Under the SDWA, the Agency may treat Indian Tribes as states and develop regulations specifying those provisions for which a tribe may be given such treatment. 42 U.S.C. § 300j-11(b)(1). A tribe treated as a state may apply for delegation of primary enforcement responsibility for public water systems (PWS) and for underground injection control (UIC), and for grant and contract assistance. 42 U.S.C. § 300j-11 (a). Where it is not appropriate to treat tribes identically to states, Agency regulations may provide alternative means for achieving the purposes of such treatment. 42 U.S.C. § 300j-11(b)(2). A tribe need not have criminal enforcement jurisdiction to obtain treatment as a state. Id.

The CWA authorizes EPA to treat tribes as states and to develop regulations that specify how tribes will receive such treatment. 33 U.S.C. § 1377(e). The Agency's regulations should "provide a mechanism for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Indian tribes located on common bodies of water." Id.

Tribes may be treated as states "to the degree necessary to carry out the purposes" of the Act. Id. The Act expressly authorizes such treatment for purposes of Title II of the Act (grants for waste management treatment works), and for Sections 1254 (research and training program), 1256 (program of grants for pollution control) 1313, 1315, 1318, and 1319 (relating, respectively, to the establishment and operation of a state Water Quality Standards Program, and to reporting, record-keeping and inspection, and enforcement under such a program); 1324 (Clean Lakes program); 1329 (Nonpoint Source Management), 1341 (Permits),1342 (National Pollutant Discharge Elimination System (NPDES)), and 1344 (Permits for dredged or fill material). The Agency has not treated the Act's list as exhaustive.[1]

In addition, under both Acts there are grant programs for which tribal groups not treated as states appear to be eligible. See e.g. 42 U.S.C. § 300j-1 (b)(3) (SDWA provision authorizing grants to "any organization."); 33 U.S.C. §§ 1254, 1377 (c) (CWA provisions authorizing, respectively, grants to wide range of entities, including "institutions, organizations, and individuals," and grants for waste management treatment works to serve certain Indian areas under Title II). Tribes can assume a

---

[1] For example, the Agency treats tribes as states for purposes of administering sewage sludge management programs under Section 1355, which is not explicitly mentioned in Section 1377(e). See 54 Fed. Reg. 18782.

role under, or benefit from, those provisions without receiving treatment as a state.[2]

1. The Requirements for Treatment as a State

To qualify for treatment as a state under either Act, a tribe must demonstrate that it is federally recognized, possesses "a governing body carrying out substantial duties and powers," 33 U.S.C. § 1377(e)(1); 42 U.S.C. § 300j-11(b)(1)(A), and is capable of carrying out the functions it proposes to exercise. 33 U.S.C. § 1377(e)(3); 42 U.S.C. § 300j-11(b)(1)(C). Under the SDWA, a tribe must also show that "the functions to be exercised are within the area of the Tribal Government's jurisdiction." 42 U.S.C. § 300j-11(b)(1)(B). Under the CWA, a tribe must show that the functions "pertain to the management and protection of water resources ... within the borders of an Indian reservation." 33 U.S.C. § 1377(e)(3).

The treatment as a state approval processes under the Water Act regulations promulgated to date are relatively formal and virtually identical. 40 CFR Parts 35, 124, 141, 142, 143, 144, 145, and 146, 53 Fed. Reg. 37396-414 (September 26, 1988)(SDWA PWS and UIC regulations); 40 CFR Parts 35 and 150, 54 Fed. Reg. 14354-60 (April 11, 1989)(CWA grant regulations). A tribe seeking treatment as a state must submit an application which EPA reviews to ensure that the tribe meets the applicable requirements. 40 CFR §§ 130.15, 142.76, 145.56.

a) Recognition

SDWA regulations require submission of a "statement that the tribe is recognized by the Secretary of the Interior." 40 C.F.R. §§ 142.76 (a) (PWS), 145.56 (a) (UIC). The CWA regulation requires "documentation that [the Tribe] is recognized by the Secretary of the Interior." 54 Fed. Reg. at 14355, which can ordinarily be met by showing the applicant's inclusion on a list of federally recognized Tribes published by the Secretary of the Interior. Id.

b) Functioning Government

Under SDWA, the tribe must submit "[a] descriptive statement demonstrating that the tribal governing body is currently carrying out substantial governmental duties and powers over a defined area." 40 C.F.R. § 142.76 (b)(PWS); § 145.56 (b) (UIC). This statement must describe the form of the tribal government and the types of governmental functions it performs and identify

---

[2] A comprehensive list of grant programs for which tribes may be eligible, developed in conjunction with guidance on multi-media grants, is attached as Appendix A.

the sources of the authorities to perform those functions. Id.

The CWA regulations do not prescribe the submission of specific materials, but a tribal submission must include "a narrative statement (1) Describing the form of Tribal government; (2) describing the types of essential governmental functions currently performed; and (3) identifying the sources of authorities to perform those functions (e.g. Tribal constitutions, codes, etc.)." 54 Fed. Reg. at 14355.

In all its regulations, the Agency has expressed the view that tribes should generally be able to meet this requirement "with relative ease [without much difficulty]" 53 Fed. Reg. at 37399 (SDWA); [54 Fed. Reg. at 14355 (CWA)]. This requirement is intended to "minimize the burdens to a Tribe in demonstrating that it is carrying out substantial governmental duties and powers." 54 Fed. Reg. at 14355.

c) Authority

Under the SDWA, a tribe must submit various documents to support its jurisdictional assertion, including: a map or legal description of the area over which the tribe has authority; a statement by a tribal legal official describing the basis, nature, and subject matter of the tribe's jurisdictional authority; a copy of all documents supporting the jurisdictional assertions (e.g. tribal constitutions, codes, by-laws, charters, etc.); and a description of the locations of the systems or sources the tribe proposes to regulate. 40 C.F.R. §§ 142.76 (c) (PWS); 145.56 (c) (UIC).

Although the CWA regulations do not list any specific requirements, the preamble to the regulation directs submission of "a statement signed by the Tribal Attorney General or an equivalent official explaining the legal basis for the Tribe's regulatory authority over its water resources." 54 Fed. Reg. at 14355.

Before approving an application for treatment as a state, EPA notifies "appropriate governmental entities" such as states, other tribes, and federal land management agencies, as to the substance of the tribe's jurisdictional assertions and invites them to comment on those assertions, but not on any other aspect of the application. 53 Fed. Reg. at 37400; 54 Fed. Reg. at 14355. Where another government raises a competing or conflicting jurisdictional claim, the Agency, after consulting with the Department of the Interior, will make a final decision on the tribe's jurisdiction for the particular function in question. Id. This is not a determination of the tribe's general regulatory authority. Id.

d) Capability

The SDWA regulations require that a tribe submit a narrative statement describing tribal capability to administer an effective program. 40 C.F.R. § 142.76(d), 145.56(d). Although the regulations provide an expansive and detailed list of materials the tribe must provide in support of this statement, capability is primarily a technical rather than a legal question.

Neither the CWA regulation nor the preamble identifies any specific showings a Tribe must make in order to meet the capability requirement. See 54 Fed. Reg. 14356. However, the requirement of section 106 of the Act that the Tribe have injunctive relief-type authority comparable to that in section 504 of the Act is relevant to the capability requirement for treatment as a State, although it is identified as a grant limitation in both the regulation and the preamble. See 40 C.F.R. § 35.260, 54 Fed. Reg. at 14357.

The Water Act regulations require a separate treatment as a state application for each program for which the tribe seeks such treatment; however, after an initial approval, the regulations require a tribe to submit only that additional information unique to the additional program. 40 CFR §§142.76 (f), 145.56 (f). 54 Fed. Reg. 14356.

2. The Effects of Treatment as a State

The Agency has clearly stated in the preamble to its SDWA regulation that it "fully intends that once Tribes ... meet the regulatory requirements for 'treatment as a State' that they will be treated in the same manner as States except where noted in this rule (i.e. grant match requirements, developmental grant time frames, primary enforcement responsibility requirements, etc.)." 53 Fed. Reg. at 37403. Thus a tribal application for primary enforcement responsibility will be subject to the same requirements as a state application. See 40 C.F.R. §§ 142.10-11 (PWS); 145.21-25, 145.31. (UIC). Similarly, under the existing Clean Water Act regulations, tribes approved for TAS are treated in the same manner as states to the extent practical.

B. CERCLA

CERCLA authorizes the Agency to afford "[t]he governing body of [a federally recognized] Indian tribe ... substantially the same treatment as a State" with respect to various provisions of the Act, including 42 U.S.C. §§ 9603 (a) (regarding notification of releases), 9604(c)(2) (regarding consultation on remedial actions), 9604(e) (regarding access to information), 9604(i) (regarding health authorities) and 9605 ("regarding roles and responsibilities under the national contingency plan [(NCP), the regulation that implements CERCLA] and submittal of priorities for remedial action"). However, tribes, unlike states, are not

assured of the inclusion of at least one site on the National Priorities List of sites for remedial action. 42 U.S.C. §§ 9601 (36), 9626. Section 9604(c)(3) also treats tribes differently than states by waiving, for responses on tribal lands, requirements CERCLA imposes on states for cost share, assurance of future maintenance of response actions, and assurance of availability of a suitable disposal site.

Other provisions of CERCLA that are not referenced in § 9626 also provide roles for tribes that are equivalent to those available for states. See e.g. § 9604(d) (authorizing cooperative agreements with tribes); § 9607(f)(1)(authorizing tribes to seek recovery for damages to tribal natural resources). The Agency has not yet formally decided whether the list of purposes in § 126 and the express references to tribes elsewhere in CERCLA limit the Agency's ability to treat tribes as states in any other context.

The NCP defines the term "state" to include Indian tribes "except where specifically noted" to the contrary. 40 CFR § 300.5. To qualify for treatment similar to that afforded a state under CERCLA § 104, which defines Superfund cleanup ("response") roles and authorities, a tribe must be recognized, have a governing body carrying out substantial duties and powers, and have jurisdiction over a Superfund site. 40 CFR § 300.515(b)[3]. The tribe need not undergo any formal process to qualify for "treatment as a state."

If a tribe is treated as a state, EPA will act to ensure meaningful tribal involvement in the response process, whether the cleanup is conducted by a governmental entity or the person responsible for the site. 40 CFR § 300.500(a). A tribe will be given the opportunity to review site documents, consult with EPA at least annually, concur in various decisions relating to the response process, and be formally involved in the selection of the cleanup. §§ 300.515 (c), (d),(e) (h); 300.525. CERCLA response actions must attain (or waive) legally applicable, or relevant and appropriate requirements (ARARs) of tribal law that are promulgated, more stringent than federal requirements, and identified in a timely manner. See 42 U.S.C. § 9621(d). A key element in the EPA-tribal partnership will be the communication of potential ARARs and other pertinent advisories, criteria, or guidance to be considered in selection of the remedy (TBCs). § 300.515(d), 300.525. Tribes have the opportunity to comment on ARAR waivers. §§ 300.515 (e), 300.525.

Tribes are also treated as states for purposes of the § 9604(j)(2) property acquisition assurance. Thus before EPA

---

[3] The definition of "tribe" in CERCLA does not refer to jurisdiction. § 9601 (36).

acquires an interest in real property on a reservation as part of a remedial action, the tribe must assure, to the extent of its authority, that it will accept transfer of the property interest on or before completion of the remedial action. 40 CFR §§ 300.510(f); 300.6110(b)(2). However, the Agency has not yet "address[ed] whether tribes are states for purposes" of providing the CERCLA § 104(c)(9) assurance regarding capacity to process hazardous waste expected to be generated in the next twenty years. § 300.510(e)(2).

The Superfund Administrative Regulation, 40 CFR Part 35, Subpart O, describes the administrative roles which states, tribes, and local governments play under Superfund. To assume such a role, a tribe must meet the requirements established in the NCP. 40 CFR § 35.6010. Under Subpart O, tribes are eligible to enter a wide range of agreements with EPA regarding participation in various types of response activities, as the lead or support agency. §§ 35.6050-.6205; 35.6240-6250. They are also eligible for core program cooperative agreements to support their general ability to participate in the response program. §§ 35.6240-.6255.

C. The Clean Air Act

The recently-amended Clean Air Act (CAA) contain new provisions authorizing EPA "to treat Indian tribes as States" for those purposes that EPA, through rule-making, determines appropriate, and to provide grant and contract assistance "to such tribes." 42 U.S.C. § 7601 (d)(1). Although a tribal role under the Act must generally await the development of implementing regulations, EPA is expressly authorized to continue making grants to tribes in the absence of such regulations. 42 U.S.C. § 7601(d)(5).

"Indian tribe" is defined as any Federally recognized "tribe, band, nation, or other organized group or community." 42 U.S.C. § 7602 (r). The statutory criteria for treatment as a state are similar to those set forth in the CWA. 42 U.S.C. §§ 7601(d)(2) (recognition, a government, and authority). EPA may determine that treatment as a state is inappropriate or administratively infeasible for certain provisions, and directly administer those provisions, providing the means for such direct administration through regulation. 42 U.S.C. § 7601(d)(4).

The Act specifies that "[i]f an Indian tribe submits an implementation plan" to EPA, pursuant to regulations to be developed by EPA, for attainment and maintenance of the national ambient air quality standards (NAAQS), such a plan will be reviewed by EPA under the provisions governing review of State Implementation Plans (SIPs), unless EPA promulgates regulations establishing different requirements and review procedures for

TIPs. 42 U.S.C. §§ 7410(o) and 7601(d)(3). When EPA approves a TIP, under regulations to be developed, and it becomes effective it "shall become applicable to all areas located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent." 42 U.S.C. § 7410(o).

The Act expressly provides for a tribal role in prevention of significant deterioration (PSD) of air quality on reservations: "Lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only by the appropriate Indian governing body." 42 U.S.C. § 7474(c). The Agency is charged with resolving disputes between tribes and states arising from redesignations or permits. 42 U.S.C. § 7474(e).

D. Acts not Expressly Authorizing Treatment of Tribes as States

1. RCRA

The Resource Conservation and Recovery Act, (RCRA), 42 U.S.C. §§ 6901 to 6991i currently refers to Indian tribes only once, when it defines "municipality" to include Indian tribal governments. 42 U.S.C. § 6903(13). There is no explicit provision authorizing EPA to treat tribes as states. Nonetheless, the Agency has recently decided to issue rules that permit eligible Indian Tribes to administer the Subtitle C and D hazardous and solid waste programs under, respectively, 42 U.S.C. §§ 6926 and 6947, in the same manner as States. Cf. Nance v. EPA, 645 F.2d 701 (9th Cir. 1981), (upholding treatment of Tribes in same manner as States under the Clean Air Act absent specific statutory authorization). The Agency is also considering the status of tribes as states in other contexts under RCRA on a case-by-case basis.

2. FIFRA

The Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA), 7 U.S.C. §§ 136 to 136y, refers to Indian tribes only in § 136u. That provision authorizes EPA to enter cooperative agreements with Indian tribes delegating to them authority to cooperate in enforcement actions as well as to develop and administer applicator training and certification programs.

EPA regulations under FIFRA authorize tribes to certify applicators on reservation lands. 40 C.F.R. § 171.10. The regulations categorize reservations as either subject or not subject to state jurisdiction. Id. If a reservation is subject to state jurisdiction "under other federal laws," pesticide users or supervisors must be certified under the appropriate State certification plan. 40 C.F.R. § 171.10(b). If a reservation is not subject to state jurisdiction, the tribe has the option of

adopting either a tribal certification plan or using one previously adopted by the state. 40 C.F.R. § 171.10(a). The regulations recognize that some tribes will neither develop tribal certification plans nor use existing state plans. 40 C.F.R. § 171.11. In this instance, EPA will implement a plan for federal certification of applicators or restricted use pesticides. Id. The regulations describe the types of persons subject to the rules; applicable standards; record-keeping requirements; recognition of other certificates; procedures for denial, suspension, modification, or revocation of certificates; and pesticide dealer requirements.

This is the sole reference to tribes in FIFRA, and the statute's definition of state does not include Indian tribes. Further, Indian tribes have not been carrying out those activities which FIFRA authorizes states to do, such as issuing special local need registrations.

3. TSCA

The Toxic Substances Control Act, (TSCA), 15 U.S.C. §§ 2601 to 2654, allows tribes to assume a local regulatory role. Under Title II, tribes that run their own schools are treated as Local Education Authorities and assume responsibility to inspect their schools for asbestos and to develop plans for managing asbestos problems.

4. Title III

The Emergency Planning and Community Right to Know Act (EPCRA or Title III), 42 U.S.C. §§ 11001 to 11050 does not mention Indian tribes. Nevertheless, the Agency concluded that the purposes of Title III were best served by a tribal role, comparable to the role a state assumes in planning and information-gathering. EPA utilized its authority to fill statutory gaps to define this role. Moreover, the Agency further found that tribes should assume this role on a reservation-wide basis. In announcing its decision, the Agency used the following reasoning:

> The requirements of an effective Title III program indicate that Congress intended that only one governing authority implement the program within a given area. Implementation of Title III by more than one governing authority would be unwieldy and contrary to the dictates of local emergency response planning. ... In summary, because Congress envisioned effective and comprehensive emergency response planning under Title III it is reasonable to interpret the statute ... as contemplating only one governing authority implementing the Act within a single geographic area.

54 Fed. Reg. 12992, 13001 (March 29, 1989).

II. The Indian Policy

EPA's implementation of its various statutory authorities on Indian Land is governed by the Agency's 1984 Indian Policy. Based on President Reagan's 1983 Indian Policy (twice reaffirmed by President Bush, most recently on June 14, 1991) the thrust of the EPA Policy is to encourage tribal self-determination. The Policy states that the Agency will "work directly with Indian Tribal Governments on a one-to-one basis (the 'Government-to-Government' relationship)." It also "recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace." It commits the Agency to "encourage and assist tribes in assuming regulatory and program management responsibilities for reservation lands."

The Policy has most recently been reaffirmed by the Administrator's July 10, 1991 endorsement of "Federal, Tribal and State Roles in the Protection and Regulation of Reservation Environments: A Concept Paper." The Paper also reiterates that on a reservation, "[u]ntil EPA formally authorizes a state or tribal program, the Agency retains full responsibility for program management. Where EPA retains such responsibility, it will carry out its duties in accordance with the principles set forth in the EPA Indian Policy."

ATTACHMENT 1

MULTI-MEDIA ASSISTANCE AGREEMENTS FOR INDIAN TRIBES

SUMMARY OF EPA GRANT PROGRAMS

MEDIA PROGRAM OFFICE	GRANT
Office of Air and Radiation	§105, Clean Air Act
Office of Air and Radiation	§306, Indoor Radon Abatement Act
Office of Water	§106, Clean Water Act, Surface Water Grant Program
Office of Water	§140(b)(3), Clean Water Act, Wetlands Grant Program
	§104(b)(3), Clean Water Act, Water Quality Management
Office of Water	§205(m), Clean Water Act, State Revolving Loan Program
Office of Water	§320(g) and §205(1), Clean Water Act, National Estuary Program
Office of Water	§§319(h), 205(j)(5), and 201(g)(1)(b), Clean Water Act, Non-point Source Grant Program
Office of Water	§314, Clean Water Act, Clean Lakes Program
Office of Water	§1443(b) Safe Drinking Water Act, UIC Grant Program
Office of Water	§1428(a),(b) Safe Drinking Water Act, Public Water Systems Supervision (PWSS) Grant Program

7/3/95 ... CALIFORNIA-102 REG-9

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From The United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the current list of tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792).

FOR FURTHER INFORMATION CONTACT: Patricia Simmons, Bureau of Indian Affairs, Division of Tribal Government Services, 1849 C Street N. W., Washington, DC 20240. Telephone number: (202) 208–7445.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below are lists of federally acknowledged tribes in the contiguous 48 states and in Alaska. The list is updated from the last such list published October 21, 1993 (58 FR 54364) to include tribes acknowledged through the Federal acknowledgment process and legislation. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of unusual and complex Native names.

In October 1993, the Department published its most recent list in an effort to bring the list up to date as required by 25 CFR Part 83 and in an effort to clarify the legal status of Alaska Native villages. As described in the preamble to the October 1993 list, the first list of acknowledged tribes was published in 1979. 44 FR 7235 (Feb. 6, 1979). The list used the term "entities" in the preamble and elsewhere to refer to and include all the various anthropological organizations, such as bands, pueblos and villages, acknowledged by the Federal Government to constitute tribes with a government-to-government relationship with the United States. A footnote defined "entities" to include "Indian tribes, bands, villages, groups and pueblos as well as Eskimos and Aleuts." 44 FR 7235 n.1. The 1979 list did not, however, contain the names of any Alaska Native entities. The preamble stated that: "[t]he list of eligible Alaskan entities will be published at a later date." 44 FR 7235.

Under the Department's acknowledgement regulations, publication of the list serves at least two functions. First, it gives notice as to which entities the Department of the Interior deals with as "Indian tribes" pursuant to Congress's general delegation of authority to the Secretary of the Interior to manage all public business relating to Indians under 43 U.S.C. 1457. Second, it identifies those entities which are considered "Indian tribes" as a matter of law by virtue of past practices and which, therefore, need not petition the Secretary for a determination that they now exist as Indian tribes. See 25 CFR 83.3 (a), (b) and 83.6(a) (1993 ed.); 25 CFR 83.3(a), (b) (1994 ed.). Because the Department did not include any Alaska entities in its initial publication and characterized its publication in 1982 of the Alaska entities as a "preliminary list" (47 FR 53133), the intended functions of the publication of the list were not fully implemented for Alaska until October 1993.

The entities listed on the 1982 "preliminary list" parallel the kinds of entities included on the list for the contiguous 48 states. The regional, village and urban corporations organized under state law in accordance with the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 et seq.) were not listed although they had been designated as "tribes" for the purposes of some Federal laws, primarily the Indian Self-Determination and Education Assistance Act (ISDA), 25 U.S.C. 450b(b). In addition, between 1982 and 1986, a number of Alaska Native entities complained that they had been wrongly omitted from the lists that were published in those years. Some groups in the contiguous 48 states have also complained that they had been wrongly left-off the lists and should not have to go through the burdensome process of petitioning. While the Department had conceded that its 1982 list for Alaska was "preliminary," it had made no such concession with regard to groups in the contiguous 48 states. Therefore, the Department required all groups from the contiguous 48 states to petition in order to be placed on the list.

In 1988, in an effort to resolve all pending questions as to the Native entities to be listed and the eligibility of entities described as "tribes" by Congress in post-ANCSA legislation but not otherwise thought of as "Indian tribes," i.e., the state-chartered ANCSA Native corporations, the Department published a new list of Alaska entities. The preamble to the list stated that the revised list responded to a "demand by the Bureau and other Federal agencies * * * for a list of organizations which are eligible for their funding and services based on their inclusion in categories frequently mentioned in statutes concerning Federal programs for Indians." 53 FR 52832.

Unfortunately, the 1988 revisions of the Alaska Native entities list appeared to create more questions than it resolved. The omission from the 1988 preamble of all references acknowledging the tribal status of the listed villages, and the inclusion of ANCSA corporations (which are formally state-chartered corporations rather than tribes in the conventional legal or political sense) generated questions as to the status of all the listed entities. Numerous Native villages, regional tribes and other Native organizations objected to the 1988 list on the grounds that it failed to distinguish between Native corporations and Native tribes and failed to unequivocally recognize the tribal status of the listed villages and regional tribes. That the Department had considered Alaska Native villages to possess tribal status is evident from the Solicitor's 1993 historical review of this matter.

In January 1993 the Solicitor of the Department of the Interior issued a comprehensive opinion analyzing the status of Alaska Native villages as "Indian tribes," as that term is commonly used to refer to Indian entities in the contiguous 48 states. After a lengthy historical review and legal analysis, the Solicitor concluded that:

> For the last half century, Congress and the Department have dealt with Alaska Natives as though there were tribes in Alaska. The fact that the Congress and the Department may not have dealt with all Alaska Natives as tribes at all times prior to the 1930's did not preclude it from dealing with them as tribes subsequently.
>
> Sol. Op. M–36975, at 46, 47–48 (Jan. 11, 1993).

Although the Solicitor found it unnecessary for the purposes of his opinion to identify specifically which villages were tribes, he observed that Congress' listing of specific villages in ANCSA and the repeated inclusion of such villages within the definition of "tribes" in post-ANCSA legislation arguably constituted a congressional determination that the villages found eligible for benefits under ANCSA, referred to as the "modified ANCSA list," were Indian tribes for purposes of Federal law. M–36975 at 58–59

In response to the guidance in the Solicitor's Opinion, the Bureau of Indian Affairs reviewed the "modified ANCSA list" of villages and the list of those villages and regional tribes previously listed or dealt with by the Federal Government as governments. The result of that review was the list of tribal entities published on October 21, 1993. The October 1993 list represents a list only of those villages and regional tribes which the Department believes to have functioned as political entities, exercising governmental authority. The listed entities are, therefore, acknowledged to have "the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes." 25 CFR 83.2 (1994 ed.).

Inclusion on the list does not resolve the scope of powers of any particular tribe over land or non-members. It only establishes that the listed tribes have the same privileges, immunities, responsibilities and obligations as other Indian tribes under the same or similar circumstances including the right, subject to general principles of Federal Indian law, to exercise the same inherent and delegated authorities available to other tribes.[1]

Subsequent to the publication of the October 1993 list, Congress enacted two significant pieces of legislation. First, in the Act of May 31, 1994 (P.L. 103-263; 108 Stat. 707), Congress confirmed that the Secretary can make no distinctions among tribes as a general matter of Federal law. Second, in the Act of November 2, 1994 (P.L. 103-454; 108 Stat. 4791), Congress confirmed the Secretary's authority and responsibility to establish a list of Indian tribes and mandated that he publish such a list annually. The following list is published in response to that mandate.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible to Receive Services From the Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of Papago Indians of the Maricopa, Ak Chin Reservation, Arizona
Alabama and Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town of the Creek Nation of Oklahoma
Alturas Indian Rancheria of Pit River Indians of California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mill Reservation, Michigan
Bear River Band of the Rohnerville Rancheria of California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria of Smith River Indians of California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Rancheria of Pomo & Pit River Indians of California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria of California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Indian Tribe of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Catawba Tribe of South Carolina
Cayuga Nation of New York
Cedarville Rancheria of Northern Paiute Indians of California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation of Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Band Potawatomi Indian Tribe of Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Coast Indian Community of Yurok Indians of the Resighini Rancheria, California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Indian Tribe of Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation Washington
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Indians of Oregon
Coyote Valley Band of Pomo Indians of California
Crow Tribe of Montana

[1] Sol. Op. M-36975 concluded, construing general principles of Federal Indian law and ANCSA, that "notwithstanding the potential that Indian country still exists in Alaska in certain limited cases, Congress has left little or no room for tribes in Alaska to exercise governmental authority over land or nonmembers." M-36975 at 108. That portion of the opinion is subject to review, but has not been withdrawn or modified.

Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
34 Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California
35 Death Valley Timbi-Sha Shoshone Band of California
Delaware Tribe of Western Oklahoma
Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota
36 Dry Creek Rancheria of Pomo Indians of California
37 Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
38 Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
39 Elk Valley Rancheria of California
40 Ely Shoshone Tribe of Nevada
41 Enterprise Rancheria of Maidu Indians of California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community of Wisconsin Potawatomie Indians, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
42 Fort Bidwell Indian Community of Paiute Indians of the Fort Bidwell Reservation, California
43 Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
44 Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada
45 Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, Arizona
46 Fort Mojave Indian Tribe of Arizona
Fort Sill Apache Tribe of Oklahoma
47 Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation of Arizona
Grand Traverse Band of Ottawa & Chippewa Indians of Michigan
48 Greenville Rancheria of Maidu Indians of California
49 Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
50 Guidiville Rancheria of California
Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin (formerly known as the Wisconsin Winnebago Tribe)
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe of the Hoopa Valley Reservation, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Reservation, California
Houlton Band of Maliseet Indians of Maine
55 Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
56 Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
57 Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
58 Jackson Rancheria of Me-Wuk Indians of California
Jamestown Klallam Tribe of Washington
59 Jamul Indian Village of California
Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico
60 Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
61 Karuk Tribe of California
62 Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Indian Tribe of Oklahoma
Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan
Kialegee Tribal Town of the Creek Indian Nation of Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Indian Tribe of Oregon
Kootenai Tribe of Idaho
63 La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation California
64 La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan
65 Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians of Michigan
Little Traverse Bay Bands of Odawa Indians of Michigan
66 Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California
67 Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota
Lummi Tribe of the Lummi Reservation, Washington
68 Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
69 Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
70 Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
71 Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
72 Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
73 Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations:
Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lac Band; White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
74 Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
75 Mooretown Rancheria of Maidu Indians of California
76 Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Muskogee (Creek) Nation of Oklahoma
Narragansett Indian Tribe of Rhode Island
77 Navajo Tribe of Arizona, New Mexico & Utah
Nez Perce Tribe of Idaho
Nisqually Indian Tribe of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
78 Northfork Rancheria of Mono Indians of California
Northwestern Band of the Shoshoni Nation of Utah (Washakie)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Omaha Tribe of Nebraska

Oneida Nation of New York
Oneida Tribe of Wisconsin
Onondaga Nation of New York
Osage Nation of Oklahoma
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Oklahoma
Paiute Indian Tribe of Utah
19 Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
20 Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
21 Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
22 Pala Band of Luiseno Mission Indians o. the Pala Reservation, California
23 Pascua Yaqui Tribe of Arizona
24 Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe of Maine
25 Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Indian Tribe of Oklahoma
26 Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Oklahoma
27 Picayune Rancheria of Chukchansi Indians of California
28 Pinoleville Rancheria of Pomo Indians of California
29 Pit River Tribe of California (includes Big Bend, Lookout, Montgomery Creek & Roaring Creek Rancherias & XL Ranch)
Poarch Band of Creek Indians of Alabama
Pokagon Band of Potawatomi Indians of Michigan
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the Port Gamble Reservation, Washington
30 Potter Valley Rancheria of Pomo Indians of California
Prairie Band of Potawatomi Indians of Kansas
Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Juan, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
91 Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Washington
Quapaw Tribe of Oklahoma
92 Quartz Valley Indian Community of the Quartz Valley Reservation of California
93 Quechan Tribe of the Fort Yuma Indian Reservation, California
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
94 Ramona Band or Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota
95 Redding Rancheria of California
96 Redwood Valley Rancheria of Pomo Indians of California
97 Reno-Sparks Indian Colony, Nevada
98 Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
99 Robinson Rancheria of Pomo Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
100 Round Valley Indian Tribes of the Round Valley Reservation, California (formerly known as the Covelo Indian Community)
101 Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation of Oklahoma
Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation
102 Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
103 San Carlos Apache Tribe of the San Carlos Reservation, Arizona
104 San Juan Southern Paiute Tribe of Arizona
105 San Manuel Band of Serrano Mission Indians of the San Manual Reservation, California
106 San Pasqual Band of Diegueno Mission Indians of California
107 Santa Rosa Indian Community of the Santa Rosa Rancheria, California
108 Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
109 Santa Ynez Band of Chumash Mission Indians of the Santa Ysabel Reservation, California
110 Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
Santee Sioux Tribe of the Santee Reservation of Nebraska
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
111 Scotts Valley Band of Pomo Indians of California
Seminole Nation of Oklahoma
Seminole Tribe of Florida, Dania, Big Cypress & Brighton Reservations
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake)
112 Sheep Ranch Rancheria of Me-Wuk Indians of California
113 Sherwood Valley Rancheria of Pomo Indians of California
114 Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
115 Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe of the Skokomish Reservation, Washington
Skull Valley Band of Goshute Indians of Utah
116 Smith River Rancheria of California
117 Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California
Sokoagon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation
St. Regis Band of Mohawk Indians of New York
Standing Rock Sioux Tribe of North & South Dakota
Stockbridge-Munsee Community of Mohican Indians of Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
118 Susanville Indian Rancheria of Paiute, Maidu, Pit River & Washoe Indians of California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of Diegueno Mission Indians of California
119

120 Table Bluff Rancheria of Wiyot Indians of California
121 Table Mountain Rancheria of California
122 Te-Moak Tribes of Western Shoshone Indians of Nevada
Thlopthlocco Tribal Town of the Creek Nation of Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
123 Tohono O'odham Nation of Arizona (formerly known as the Papago Tribe of the Sells, Gila Bend & San Xavier Reservation, Arizona)
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
124 Tonto Apache Tribe of Arizona
125 Torres-Martinez Band of Cahuilla Mission Indians of California
126 Tule River Indian Tribe of the Tule River Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
127 Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
128 Twenty-Nine Palms Band of Luiseno Mission Indians of California
129 United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians of Oklahoma
130 Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California
Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
131 Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
132 Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
133 Washoe Tribe of Nevada & California (Carson Colony, Dresslerville & Washoe Ranches)
134 White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie) of Oklahoma
Winnebago Tribe of Nebraska
135 Winnemucca Indian Colony of Nevada
Wyandotte Tribe of Oklahoma
Yankton Sioux Tribe of South Dakota
136 Yavapai Apache Nation of the Camp Verde Reservation, Arizona
137 Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
138 Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
139 Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
140 Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs

Village of Afognak
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Native Village of Atka
Atqasuk Village (Atkasook)
Village of Atmautluak
Native Village of Barrow
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Village
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chanega (aka Chenega)
Chalkyitsik Village
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Native Village of Chignik
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chistochina
Native Village of Chitina
Native Village of Chuathaluk (Russian Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clarks's Point
Native Village of Council
Craig Community Association
Village of Crooked Creek
Native Village of Deering
Native Village of Dillingham
Native Village of Diomede (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Evansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Louden Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna
Inupiat Community of the Arctic Slope
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Native Village of Kasigluk
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
Agdaagux Tribe of King Cove
King Island Native Community
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper Center)
Knik Tribe
Native Village of Kobuk
Kokhanok Village
Koliganek Village
Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lesnoi Village (aka Woody Island)
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village

Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Lake Village
Metlakatla Indian Community, Annette Island Reserve
Native Village of Minto
Native Village of Mountain Village
Naknek Native Village
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute
Nikolai Village
Native Village of Nikolski
Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Toyagungin Tribe of Sand Point Village
Rampart Village
Village of Red Devil
Native Village of Ruby
Native Village of Russion Mission (Yukon)
Village of Salamatoff
Organized Village of Saxman
Native Village of Savoonga
Saint George (*See* Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Saint Michael
Saint Paul (*See* Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Native Village
Native Village of Shaktoolik
Native Village of Sheldon's Point
Native Village of Shishmaref
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village
Stebbins Community Association
Native Village of Stevens
Village of Stony River
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Central Council of the Tlingit & Haida Indian Tribes
Traditional Village of Togiak
Native Village of Toksook Bay
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiute Native Village
Native Village of Unalakleet
Qawalingin Tribe of Unalaska
Native Village of Unga
Village of Venetie (See Native Village of Venetie Tribal Government)
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–3839 Filed 2–15–95; 8:45 am]
BILLING CODE 4310–02–P

II

Tribal Elgibility and Funding

OVERVIEW

CATEGORICAL (PROGRAM) and PROJECT

FINANCIAL

ASSISTANCE FROM

EPA

July 1995

CLEAN AIR ACT

(CAA)

Major Objective: To Protect public health and welfare from harmful effects of air pollution.

Grants:

* Section 105 Air Quality Program Development and Implementation

  Section 103 R & D, Pilot Projects and Special Studies

* Requires EPA approval of Tribal eligibility application for financial assistance

---

CLEAN WATER ACT
(CWA)

Major Objective: To restore and maintain the "chemical, physical and biological integrity of the nation's waters", primarily through eliminating or controlling the discharge of pollutants into water systems (oceans, rivers, streams, lakes, estuaries, aquifers, wetlands).

GRANTS:

* Section 106 Water Quality Assessment and Planning
* Section 314 Clean Lakes
* Section 319(h) Non-Point Source Program
* Section 205 State Revolving Loan Program/Construction Wastewater Facilities

  Section 104(b)(3) R & D, Pilot Projects & Special Studies
  - Wetlands
  - Non-Point Source
  - Water Quality Management (Sludge & Wastewater Discharge Management)

*Requires EPA approval of Tribal eligibility application for financial assistance

SAFE DRINKING WATER ACT
(SDWA)

Major Objective: To assure that the Nation's drinking water supply is safe for human consumption by regulating both public water supply systems and ground water supplies.

Grants:

* Section 1443(a)	Drinking Water Programs - Public Water Supply Supervision (PWSS) Program Development and Implementation
* Section 1443(b)	Underground Injection Control Program Development and Implementation
Section 1442(b)(3)	R & D, Pilot Projects & Special Studies PWSS Wellhead Protection

*Requires EPA approval of Tribal eligibility application for financial assistance

---

TOXIC SUBSTANCE CONTROL ACT
(TSCA)

Major Objective: To identify and control reasonable risks posed by commercial chemicals that are not regulated as drugs, food additives, cosmetics or pesticides to control chemicals whose presence can cause severe health and environmental damage.

Grants:

* Section 28	Toxic Substance Enforcement Program
Section 10	R & D, Pilot Projects & Special Studies Indian Radon Program Development SARA Title III Innovative Technical Assistance for Chemical Emergency Planning
Section 404(g)	Lead (Pb) Model State Program Development

* Pertains only to states (does not inc

INDOOR RADON ABATEMENT ACT (IRRA): (An Amendment to TSCA)

Major Objective: To render the air within buildings in the U.S. as free of radon as the ambient air outside of buildings.

Grants:

* Section 306	State Radon Program Development and Implementation
TSCA Section 10	R & D, Pilot Projects & Special Studies Indian Radon Programs

*Pertains only to states.

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)

Major Objective: To regulate the sale and use of pesticides to ensure the least risk possible to human health and the environment from pesticides.

Grants:

Section 23(a)(1)	Pesticide Enforcement Program Development and Implementation including: Endangered Species Pesticides in Groundwater Worker Protection & Safety
Section 20	R & D, Pilot Projects & Special Studies

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

Major Objective: To protect human health and the environment from pollution resulting from the disposal of solid and hazardous waste and the leaking of underground storage tanks.
Grants:

* Section 3011	Hazardous Waste Management Program Development and Implementation
* Section 9004	Underground Storage Tank Program Development and Implementation
Section 8001	R & D, Pilot Projects & Special Studies Solid Waste Hazardous Waste Underground Storage Tanks

* Not currently available to Tribes.

COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT (CERCLA - SUPERFUND)

Major Objective: To create a tax on the chemical and petroleum industries to support a trust fund to clean up abandoned or uncontrolled hazardous waste sites.

Grants:

* Section 104(d)	Core Superfund Program and Response Activity
Section 311	R & D, Pilot Projects & Special Studies

*Requires EPA approval of Tribal eligibility application for financial assistance

SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT (SARA)

TITLE III: EMERGENCY PLANNING AND THE COMMUNITY RIGHT-TO-KNOW ACT

Major Objectives: To prepare local communities for emergencies arising from spills and releases of hazardous materials.

Grants:

Section 305(a) Training Grants for Chemical Emergency Planning & Response

TSCA Section 10 SARA Tile III Innovative Technical Assistance Grants for Chemical Emergency Planning

Funding available on a limited basis through Federal Emergency Management Agency (FEMA)

INDIAN ENVIRONMENTAL GENERAL ASSISTANCE ACT

Major Objective: To provide funding for tribes to build tribal capacity to plan, develop and establish environmental protection programs.

. GRANTS AWARDED UNDER THIS ACT WILL BE SIMILAR TO THE MULTI-MEDIA ASSISTANCE WHICH EPA AWARDED IN FY91-93.

. REGULATIONS FOR IMPLEMENTING THIS ACT WERE PUBLISHED IN DECEMBER 1993.

THIS ACT ALLOWS FOR:

- Congress can appropriate up to $15M per year.
- No assistance granted shall be for less than $75,000.
- Eligible recipients are Federally recognized tribes or consortia of two or more eligible tribes.

POLLUTION PREVENTION ACT

Major Objective: To prevent or reduce pollution at the source whenever possible (i.e. source reduction, recycling, treatment to minimize human and environmental exposure).

Grants:

Section 6005	Pollution Prevention Incentives for States (PPIS) (includes state universities and all federally recognized Indian Tribes)

Also CWA-Section 104(b)(3); SDWA-Section 1442(b)(3); RCRA-Section 8001; CAA-Section 103(b)(3); TSCA-Section 10(a); FIFRA-Section 20(a); CERCLA-Section 111(c)(10)

NATIONAL ENVIRONMENTAL EDUCATION ACT

Major Objective: To support the design and implementation of environmental education programs that enhance critical thinking and problem solving skills to ensure informed responsible decisions are made to protect the environment.

Grants:

Section 6	Environmental Education Grant Program

ENVIRONMENTAL JUSTICE THROUGH POLLUTION PREVENTION (EJP2)

Major Objective: To provide financial assistance to community groups and tribal governments for projects that address environmental justice and use pollution prevention activities as the proposed solution.

Grants:

Multi statutes can fund these efforts [i.e. CWA-Section 104(b)(3); SDWA- Section 1442(b)(3); RCRA-Section 8001(a); CAA-Section 103(b)(3); TSCA-Section 10(a); FIFRA-Section 20(a); CERCLA-Section 111(c)(10)]

ENVIRONMENTAL JUSTICE SMALL GRANTS PROGRAM

Major Objective: To provide financial assistance to small community groups and tribal governments to support projects to design, demonstrate and disseminate practices, methods or techniques related to environmental justice.

Grants:

Multi statutes can fund these efforts [i.e. CWA-Section 104(b)(3); SDWA-Section 1442(b)(3); RCRA-Section 8001(a); CAA-Section 103(b)(3); TSCA-Section 10(a); FIFRA-Section 20(a); CERCLA-Section 111(c)(10)]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 16 1994

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Publication of Regulation Simplifying EPA's Process for Qualifying Indian Tribes for Program Approval

FROM: Richard E. Sanderson
Director
Office of Federal Activities

TO: Addressees

The regulation designed to simplify EPA's process for qualifying Indian tribes for program approval (the so-called "treatment-as-a-state" or TAS regulation) was published in the Federal Register on December 14, 1994. Copies of the regulation and a summary thereof are attached. We request that the Regional Indian Program Coordinators transmit copies to the tribes in their regions.

A companion regulation simplifying the process for Indian tribes to qualify for financial assistance was published in the Federal Register on March 23, 1994.

This is the culmination of an effort which began in 1992 when an intra-agency workgroup determined that the process for qualifying Indian tribes for financial assistance and program authorization was burdensome and unnecessarily complex. This new process should make it easier for tribes to obtain EPA approval to assume the role Congress envisioned for them under the environmental statutes.

This action completes all activities in the Office of Federal Activities relating to the Indian program which has now been transferred to the American Indian Environmental Office within the Office of Water. It also fulfills our commitment to Bob Perciasepe, the Assistant Administrator for Water, to complete this project and we are complying with the request of Terry Williams, the new Director of the American Indian Environmental Office, to transmit the regulation.

My sincere appreciation to Marshall Cain, who led the effort, and to all of you who worked so diligently on these regulations over an extended period of time.

Addressees:

Workgroup Representatives
Agency Steering Committee Representatives
Regional Indian Program Coordinators
Regional Indian Law Attorneys Workgroup
Headquarters Indian Program Coordinators
Federal Inter-Agency Indian Discussion Group
American Indian Environmental Office
Tribal Operations Committee
Office of Congressional and Legislative Affairs (Martha Wofford)

Attachments

SUMMARY
"Treatment-as-a-State" Regulation
U.S. Environmental Protection Agency

The Final Rule under the Clean Water and Safe Drinking Water Acts is designed to simplify EPA's process for qualifying Indian tribes for program approval. It was developed because the Agency process for approving Indian tribes for "Treatment as a State" (TAS) under various programs has proven to be burdensome and offensive to tribes.

Background

The Clean Water, Safe Drinking Water, and Clean Air Acts authorize EPA to treat Indian tribes as states for purposes of certain types of grant awards and program authorization. The only statutory requirements are that a tribe be federally recognized, have a governing body carrying out substantial duties and powers, and have adequate jurisdiction and capability to carry out the proposed activities. The Agency has promulgated regulations for implementing this authority under the Water Acts and has proposed regulations under the Air Acts.

Changes to Existing Process

A. Elimination of separate "TAS" approval

None of the statutes compel the use of a formal TAS or other prequalification process separate from approval of the request for a grant or program approval. However, the Agency initially chose to implement provisions of the Clean Water and Safe Drinking Water Acts by establishing a formal prequalification process under which tribes can seek eligibility under these statutes. Under the regulation, current regulations would be amended to eliminate TAS review as a separate step in the processing of a tribal application for program approval. Under the new, simplified process, the Agency will ensure compliance with statutory requirements as an integral part of the process of reviewing program approval applications.

B. Minimize use of the term "treatment-as-a-state"

The term "treatment-as-a-state" is somewhat misleading and may be offensive to tribes. To the extent possible, the rule amends existing regulations so as to discontinue use of the term "treatment as a state;" however, since this phrase is included in several statutes, its continued use is sometimes necessary.

C. Establish uniform requirements for "recognition" and "governmental" requirements under each statute

As a general rule, the "recognition" and "governmental" requirements are essentially the same under the Clean Water, Safe Drinking Water, and Clean Air Acts. The new process will reflect this by establishing identical requirements for making this showing under each statute. Moreover, the fact that a tribe has met the "recognition" or "governmental functions" requirements under the Clean Air Act or either of the Water Acts will establish that it meets those requirements under all three statutes.

D. Eliminate unnecessary and/or duplicative requirements and expedite the process regarding the establishment of tribal jurisdiction

Because a tribe may have jurisdiction over, and capability to carry out, certain activities (e.g., protection of the quality of a particular lake for the Clean Lakes program under the Clean Water Act), but not others (e.g., waste management on a portion of the reservation far removed from any lakes), the new process does not foreclose the Agency from making a specific determination that a tribe has adequate jurisdictional authority and administrative and programmatic capability before it approves each tribal program.

The portion of existing regulations on jurisdictional determination under which governments comment on tribal jurisdiction will be altered under the regulation:

(1) for approvals of all Drinking Water regulatory programs and most Clean Water programs under existing regulations, EPA will not authorize a state to operate a program without determining that the state has adequate authority to carry out those actions required to run the program. This applies also to a tribe seeking approval, and ensures that a close analysis of the legal basis of a tribe's jurisdiction will occur before program authorization. Accordingly, a separate TAS jurisdictional review is not needed to verify that a tribe meets the statutory requirement, and is therefore eliminated for all programs under the Safe Drinking Water Act, and for the Clean Water Act's 404 and NPDES programs. This change will have the effect only of eliminating duplicative requirements;

(2) for the Water Quality Standards program, there is no review of tribal authority as part of the program approval process. Accordingly, for that program, a comment process will be retained. However, the Agency emphasizes that comments must be offered in a timely manner and specifies that where no timely comments are offered, the Agency will conclude that there is no objection to the tribal applicant's jurisdictional assertion.

EPA will no longer be required, by regulation, to consult with the Department of the Interior although it may, in its discretion, seek additional information from the tribe or the commenting party, and may consult as it sees fit with other federal agencies prior to making a decision as to tribal jurisdictional authority.

To encourage the expeditious resolution of tribal jurisdictional matters, the rule notes that once the Agency makes a jurisdictional determination in response to a tribal application regarding any EPA program, it will ordinarily make the same determination for other programs unless a subsequent application raises different legal issues. By contrast, however, a determination that a tribe has inherent jurisdiction to regulate activities in one medium might not conclusively establish its jurisdiction over activities in another medium.

Under the new approval process, as under the old, the Agency will continue to retain authority to limit its approval of a tribal application to those land areas where the tribe has demonstrated jurisdiction. This would allow EPA to approve the portion of a tribal application covering certain areas, while withholding approval of the portion of the application addressing those land areas where tribal authority has not been satisfactorily established.

E. Establish consistency among programs and flexibility in requirements for establishing tribal capability

EPA will continue to make a separate determination of tribal capability for each program for which it approves a tribe. However, the Safe Drinking Water Act and Clean Water Act regulations will be amended to conform to the CWA grant regulations, which do not specifically prescribe the material a tribe must submit to establish capability. Ordinarily, the inquiry EPA will make into the capability of any applicant, tribal or state for a grant or program approval, would be sufficient to enable the Agency to determine whether a tribe meets the statutory capability requirement.

Intergovernmental relations, Nitrogen Dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds. Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 28, 1994.

John Wise,

Acting Regional Administrator

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (186)(i)(D)(2) and (194)(i)(A)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(186) * * *

(i) * * *

(D) * * *

(2) Rule 103, adopted on June 4, 1991.

* * * * *

(194) * * *

(i) * * *

(A) * * *

(2) Rule 59, adopted on September 15, 1992.

* * * * *

[FR Doc. 94–30742 Filed 12–13–94; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Parts 123, 124, 131, 142, 144, 145, 233, and 501

[FRL–5119–9]

RIN 2020–AA20

Indian Tribes; Eligibility for Program Authorization

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends regulations addressing the role of Indian tribes so as to make it easier for tribes to obtain EPA approval to assume the role Congress envisioned for them under certain environmental statutes. Three EPA regulatory statutes address the tribal role specifically by authorizing EPA to treat tribes in a manner similar to that in which it treats states: The Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), and the Clean Air Act (CAA). All three statutes specify that, in order to receive such treatment, a tribe must be federally recognized and possess a governing body carrying out substantial duties and powers. In addition, each requires that a tribe possess civil regulatory jurisdiction to carry out the functions it seeks to exercise. Finally, all three require that a tribe be reasonably expected to be capable of carrying out those functions.

The Agency initially chose to implement provisions of the Clean Water and Safe Drinking Water Acts regarding Indian tribes by establishing a formal prequalification process under which tribes can seek eligibility under these statutes. This prequalification process has in the past been referred to as approval for "treatment as a state" ("TAS"). Tribes that obtain such approval then become eligible to apply for certain grants and program approvals available to states.

The Agency's "TAS" prequalification process has proven to be burdensome, time-consuming and offensive to tribes. Accordingly, EPA has adopted a new policy to improve and simplify the process and this regulation implements the new policy. To the extent possible, the Agency plans to use the same process in future regulations regarding determinations of tribal eligibility.

As of the effective date of this regulation, it is the intent of EPA to follow the new process in making determinations on tribal eligibility for program authorization. With respect to pending "TAS" applications for program authorization, the Agency will utilize the information contained in such applications to determine tribes' eligibility and tribes will be requested to supplement such applications only to the extent necessary to determine program eligibility

EFFECTIVE DATE: December 14, 1994.

FOR FURTHER INFORMATION CONTACT: C. Marshall Cain, Office of Federal Activities (2251), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–8792.

SUPPLEMENTARY INFORMATION:

Background

In order to simplify and streamline the process of assessing tribal eligibility for program authorization while still ensuring full compliance with all applicable statutes, on March 23, 1994, EPA published in the Federal Register (59 FR 13819) a notice of proposed rulemaking to amend regulations governing the process whereby Indian tribes become eligible to assume a role in implementing the environmental statutes on tribal land comparable to the role states play on state land.

EPA recognizes that tribes are sovereign nations with a unique legal status and a relationship to the federal government that is significantly different than that of states. EPA believes that Congress did not intend to alter this when it authorized treatment of tribes "as States;" rather, the purpose was to reflect an intent that, insofar as possible, tribes should assume a role in implementing the environmental statutes on tribal land comparable to the role states play on state land.

The proposals set forth in the proposed rule involved the following:

1. Elimination of "TAS" review as a separate step in the process. No statute compels the use of a formal "TAS" or other prequalification process separate from approval of the underlying request for program approval. The only requirements imposed by statute are that, to be eligible for program authorization, a tribe must be federally recognized, have a governing body carrying out substantial duties and powers, and have adequate jurisdiction and capability to carry out the proposed activities. Thus, EPA may authorize a tribal program without formally designating the tribe as "eligible for TAS," so long as the Agency establishes that the tribe meets the applicable statutory requirements. In other words, the Agency can ensure compliance with statutory mandates without requiring tribes to undergo a discrete, formal process of seeking "TAS" approval.

Accordingly, EPA is amending its regulations to eliminate "TAS" review as a separate step in the processing of a tribal application for program approval. Under the new, simplified process, the Agency will ensure compliance with statutory requirements as an integral part of the process of reviewing program approval applications. To the extent that this rule or preamble conflicts with the language of previous rules and preambles, the language herein shall be controlling.

2. Discontinuance of use of the term "treatment as a state." To the extent possible, the rule amends existing regulations so as to discontinue use of the term "treatment as a state"; however, since the phrase is included in several statutes, its continued use may sometimes be necessary.

3. Simplified determination as to "recognition" and "government." A tribe typically establishes recognition by showing its inclusion on the list of federally recognized Tribes published by the Secretary of the Interior in the Federal Register. A tribe establis-

it meets the governmental duties and powers requirement with a narrative statement describing the form of the tribal government and the types of functions it performs, and identifying the sources of the tribe's governmental authority.

As a general rule, the "recognition" and "governmental" requirements are essentially the same under the Clean Water, Safe Drinking Water and Clean Air Acts. The new process will reflect this by establishing identical requirements for making this showing under each statute. Moreover, the fact that a tribe has met the recognition or governmental functions requirement under either of the Water Acts or the Clean Air Act will establish that it meets those requirements under both statutes. To facilitate review of tribal applications, EPA will request that tribal applications inform EPA whether a tribe has been approved for "TAS" (under the old process) or deemed eligible to receive authorization (under the revised process) for any other program.

A tribe that has not done so may establish that it has been federally recognized by simply stating in its program authorization application that it appears on the list of federally recognized tribes that the Secretary of the Interior publishes periodically in the Federal Register. If the tribe notifies EPA that it has been recognized but does not appear on this list because the list has not been updated, EPA will seek to verify the fact of recognition with the Department of the Interior.

A tribe that has not yet made its initial "governmental" showing can do so by certifying that it has a government carrying out substantial functions. A tribe will be able to make the required certification if it is currently performing governmental functions to promote the public health, safety, and welfare of its population. Examples of such functions include, but are not limited to, levying taxes, acquiring land by exercise of the power of eminent domain, and exercising police power. Such examples should be included in a narrative statement supporting the certification, (1) describing the form of tribal government and the types of essential governmental functions currently performed, and (2) identifying the legal authorities for performing those functions (*e.g.*, tribal constitutions or codes). It should be relatively easy for tribes to meet this requirement without submitting copies of specific documents unless requested to do so by the Agency.

4. Simplified jurisdictional analysis. A tribe may have jurisdiction over, and capability to carry out, certain activities (*e.g.*, protection of the quality of a particular lake for the Clean Lakes program under the Clean Water Act), but not others (*e.g.*, waste management on a portion of the reservation far removed from any lakes). For this reason, EPA believes that the Agency must make a specific determination that a tribe has adequate jurisdictional authority and administrative and programmatic capability before it approves each tribal program. This will ensure that tribes meet the statutory requirements Congress has established as prerequisites to tribal eligibility for each particular program.

The portion of the jurisdictional determination under which governments comment on tribal jurisdiction will be substantially altered under this Rule. These changes are outlined below.

For approvals of all Drinking Water regulatory programs and most Clean Water programs under existing regulations, EPA will not authorize a state to operate a program without determining that the state has adequate authority to carry out those actions required to run the program. *See e.g.* 40 CFR 142.10 (PWS), 145.24 (UIC). This applies also to a tribe seeking program approval, and ensures that a close analysis of the legal basis of a tribe's jurisdiction will occur before program authorization.

Accordingly, a separate "TAS" jurisdictional review is not needed to verify that a tribe meets the statutory jurisdictional requirement and, therefore, will be eliminated for all programs under the Safe Drinking Water Act, and for the Clean Water Act's 404 and NPDES programs. This change will have the effect only of eliminating duplicative requirements. In no case can a tribe receive program approval until the Agency has received full and adequate input concerning the scope and extent of the tribe's jurisdiction. Moreover, EPA will expect each tribe seeking program approval to provide a precise description of the physical extent and boundaries of the area for which it seeks regulatory authority. This description should ordinarily include a map and should identify the sources or systems to be regulated by the tribe.

However, for the Water Quality Standards program, there is no review of tribal civil regulatory authority as part of the standards approval process under section 303(c) of the Clean Water Act. Accordingly, for that program, a comment process will be retained. However, the Agency wishes to clarify the operation of that process by reiterating that comments must be offered in a timely manner, and, further, by specifying that where no timely comments are offered, the Agency will conclude that there is no objection to the tribal applicant's jurisdictional assertion. Moreover, to raise a competing or conflicting claim a comment must clearly explain the substance, basis, and extent of its objections. Finally, when questions are raised concerning a tribe's jurisdiction, EPA may, in its discretion, seek additional information from the tribe or the commenting party, and may consult as it sees fit with other federal agencies prior to making a determination as to tribal jurisdictional authority, but is not required to do so. Henceforth, EPA will no longer be required, by regulation, to consult with the Department of the Interior.

Finally, the Agency notes that certain disputes concerning tribal jurisdiction may be relevant to a tribe's authority to conduct activities and obtain program approval under several environmental statutes. For example, if a tribe and a state or another tribe disagree as to the boundary of a particular tribe's reservation, each time the tribe seeks to assert authority over the disputed area, the dispute will recur. The Agency recognizes that its determinations regarding tribal jurisdiction apply only to activities within the scope of EPA programs. However, it also believes that once it makes a jurisdictional determination in response to a tribal application regarding any EPA program, it will ordinarily make the same determination for other programs unless a subsequent application raises different legal issues. Thus, for example, once the Agency has arrived at a position concerning a boundary dispute, it will not alter that position in the absence of significant new factual or legal information. By contrast, however, a determination that a tribe has inherent jurisdiction to regulate activities in one medium might not conclusively establish its jurisdiction over activities in another medium. See generally Discussion of inherent tribal authority in Water Quality Standards Regulation, 56 FR 64877–64879.

Under the new approval process, as under the old, the Agency will continue to retain authority to limit its approval of a tribal application to those land areas where the tribe has demonstrated jurisdiction. This would allow EPA to approve the portion of a tribal application covering certain areas, while withholding approval of the portion of an application addressing those land areas where tribal authority has not been satisfactorily established. See, *e.g.* 53 FR 37395, 37402 (September 26, 1988) (SDWA); 54 FR 14353, 14355

(April 11, 1989) (Clean Water Act Grants); 54 FR 39097, 39102 (September 12, 1989) (Clean Water Act Water Quality Standards); 58 FR 8171, 8176 (February 11, 1993) (Clean Water Act section 404); 58 FR 67966, 67972 (Clean Water Act NPDES) (December 22, 1993).

5. More flexible requirements to establish capability. EPA must continue to make a separate determination of tribal capability for each program for which it approves a tribe. However, the Safe Drinking Water Act, Water Quality Standards, Section 404, and NPDES regulations will be amended to conform to the CWA grant regulations, which do not specifically prescribe the material a tribe must submit to establish capability. Ordinarily, the inquiry EPA will make into the capability of any applicant, tribal or state, for a grant or program approval will be sufficient to enable the Agency to determine whether a tribe meets the statutory capability requirement. See, *e.g.*, 40 CFR part 31 (grant regulations applicable to states and tribes); 40 CFR 142.3 (Public Water System primary enforcement responsibility requirements at parts 141, 142 apply to tribes); § 145.1(h) (Underground Injection Control requirements of parts 124, 144, 145, and 146 that apply to states generally apply to tribes).

Nevertheless, EPA may request that the tribe provide a narrative statement or other documents showing that the tribe is capable of administering the program for which it is seeking approval. In evaluating tribal capability, EPA will consider:

(1) The tribe's previous management experience;

(2) Existing environmental or public health programs administered by the tribe;

(3) The mechanisms in place for carrying out the executive, legislative and judicial functions of the tribal government;

(4) The relationship between regulated entities and the administrative agency of the tribal government which will be the regulator; and

(5) The technical and administrative capabilities of the staff to administer and manage the program.

EPA recognizes that certain tribes may not have substantial experience administering environmental programs; a lack of such experience will not preclude a tribe from demonstrating capability, so long as it shows that it has the necessary management and technical and related skills or submits a plan describing how it will acquire those skills.

The notice of proposed rulemaking invited public comments on the proposed amendments, which would be considered before adoption of a final rule. The public comment period closed on May 23, 1994.

Analysis of Comments

A total of seven commenters responded to the solicitation of comments during the public comment period. Of these, four expressed support for the proposed changes in varying degrees, one of whom expressed strong support and others supported the changes generally but disagreed with certain aspects or had specific recommendations for other changes. One commenter did not express support or opposition but urged EPA to continue to stress that tribes should enact water quality programs similar to current state water quality programs. Another commenter, while not explicitly supporting the proposed amendments, urged that they be extended to include two other programs under the Safe Drinking Water Act. A final commenter opposed one aspect of the simplification process as it related to state review of tribal applications. These comments, suggested changes, and the EPA responses thereto, are set forth below.

Comment: Consistent with the EPA Indian Policy and sound administrative practice, EPA should recognize tribal authority over all environmental matters within reservation boundaries, without requiring tribes to demonstrate their inherent authority.

Response: EPA recognizes the importance of comprehensive management of reservation environments. However, EPA does not have the legal authority to expand the scope of tribal jurisdiction. Consequently, EPA must continue to analyze each tribal claim of jurisdiction in light of appropriate statutory and common law principles to ensure that the tribe in fact has adequate authority to carry out the functions it proposes to undertake.

Comment: EPA is to be commended for eliminating the state opportunity to comment on tribal jurisdictional assertions for all SDWA programs and for the Clean Water Act Section 404 and NPDES programs. However, since tribes cannot comment on state jurisdictional assertions in any programs, in fairness EPA should also eliminate state opportunity to comment on tribal jurisdictional assertions regarding Water Quality Standards.

Response: EPA continues to believe that it has the legal authority to approve a tribal Water Quality Standards program only upon a determination that the tribe has adequate authority to operate that program, and that state comments may be useful to the Agency in making that determination.

Comment: EPA could further simplify the TAS process by providing that, when EPA reviews a new TAS application for a tribe that has already obtained TAS approval for one program, EPA will rely on the jurisdictional assertions in the prior approval to establish jurisdiction for a subsequent program. Where the earlier jurisdictional assertions do not establish jurisdiction adequately for the subsequent application, EPA would notify the tribe of any deficiencies and the tribe could then supplement or amend the original jurisdictional statement.

Response: EPA agrees with the commenter that this would simplify the process. However, EPA believes that it should look in the first instance to each tribal applicant's views as to its own jurisdiction. Thus a tribe that believes it is appropriate to provide more information regarding jurisdiction on a subsequent application than if provided on a previous one should be able to do so directly, without waiting for EPA to determine, after it begins processing an application, that more information is needed. EPA believes that under the current proposal, a tribe that wishes to use the process described by the commenter could do so by expressly incorporating the earlier jurisdictional assertion into a subsequent application.

In addition, the jurisdictional approach the Agency has determined the Clean Air Act allows it to follow differs substantially from the approach it follows under the Water Acts. For this reason, EPA does not believe it would be appropriate to establish a process under which a tribe would assume that, unless advised to the contrary, a jurisdictional assertion that was adequate under the Clean Air Act would also be adequate under one of the Water Acts.

Comment: States should be able to comment on the jurisdictional assertions contained in tribal grant applications. Also, states should not be totally bypassed in decisions to approve tribal regulatory programs.

Response: As stated in the Federal Register notice amending the EPA financial assistance regulations for tribes, EPA has extensive experience awarding grants to tribes, and has concluded that it is fully capable of evaluating grant applications to ensure adequate tribal jurisdiction without seeking comments from states. EPA agrees that it should obtain information from states concerning tribal applications for program a

the proposed regulatory changes would ensure that this occurs.

Comment: One commenter, while supporting the intent of the proposed revisions, urged that (1) EPA regulations relating to Section 401 Certification (40 CFR part 121) be amended to expressly include Indian tribes so as to facilitate tribal involvement in the section 401 process, to resolve disagreements between tribes and states and to resolve disputes between tribes as well; (2) an apparent inconsistency in the definition of "State" in § 122.2 (which references Indian tribes that have obtained approval of their NPDES program but not their WQS program) be changed so that water quality standards set by approved tribes will be protected in NPDES permits under §§ 122.44, 124.53 and similar provisions; and (3) the regulations for the dispute resolution mechanism, 40 CFR 131.7, be revised to expressly authorize the use of this process for resolving disputes between two or more tribes that have differing standards for common bodies of water.

Response: (1) EPA believes it is unnecessary to amend the 401 regulations in Part 121 through the present TAS revisions rule in order to clarify that tribes have the authority to provide 401 certifications once they have approved water quality standards (WQS). It is EPA's position that tribes clearly have 401 authority once they receive approval of their WQS as specified in 40 CFR 131.4(c).

(2) EPA also does not believe that changes are necessary to the definition of "State" in § 122.2. The intent of EPA's regulations was to require the permitting authority (whether EPA or an authorized NPDES State) to issue permits which comply with all applicable water quality standards (including WQS approved by EPA for an Indian tribe). EPA interprets its regulations to require that all NPDES permits comply with applicable and EPA approved tribal WQS regardless of whether the tribe has been authorized as a permitting authority for the NPDES program. EPA's new regulatory provision in 40 CFR 124.51(c) supports the tribes' 401 certification authority and reads as follows: "As stated in 40 CFR 131.4, an Indian Tribe that is qualified for Treatment as a State for purposes of the WQS program is likewise qualified for treatment as a State for purposes of State certification of WQS pursuant to section 401(a)(1) of the Act [Clean Water Act] and Subpart D of this part." The preamble of the final NPDES rule at 58 FR 67967 (December 10, 1993) discusses this new [illegible] in more depth.

In addition, the recent EPA guidance concerning EPA's implementation of the NPDES and sludge management programs with respect to Federal Indian Reservations (FIRs) specifies that "In situations where a State is the upstream NPDES permitting authority and downstream FIR Tribal WQS have been approved by EPA, the State will provide notice of the preparation of a draft permit to the affected Tribe pursuant to CWA sections 401 and 402. Under CWA sections 402(b)(3) and 40 CFR 124.12(a), the upstream NPDES state must provide an opportunity for public hearing on the issuance of the draft permit where there is significant public interest in so doing. Under CWA section 402(b)(5), the affected Tribe may submit written recommendations to the permitting State and EPA, and the failure to accept the recommendations and the reasons for doing so. EPA can object to the upstream State permit where EPA believes that the reasons for rejecting the recommendations are inadequate." Therefore, this guidance reflects EPA's general view that applicable tribal WQS are to be reflected in all water quality-based NPDES permit limits. When the Part 122–124 regulations refer to WQS of a "State," this also refers to Indian tribes with EPA approved WQS.

(3) EPA previously responded to comments regarding the scope of the dispute resolution mechanism on the rule allowing tribes to establish WQS (56 FR 64876, December 12, 1991). At that time, OW commented that the rule was written in this manner because Section 518 of the Clean Water Act specified that a dispute resolution mechanism be developed to resolve disputes arising between a tribe and a state. OW further commented that EPA believes the requirements that the State standards provide for protection of downstream standards in § 131.10(b) of the WQS Regulation, supported by a 25 year history of informal negotiation of issues between states, provides sufficient basis for resolving disputes between two states or two tribes. 56 FR 64888–64889. Further comments on this issue are beyond the scope of this rule and, therefore, EPA declines to revisit it at this time.

Comment: Although the proposed regulation would simplify the TAS process for a number of programs, it would not apply expressly to wellhead protection programs or sole source aquifer demonstration programs under the Safe Drinking Water Act. The Agency should consider seriously the inclusion of these important programs under the new regulation as well.

Response: EPA does not believe that it would be appropriate to expand the scope of the regulation at this stage of its development. However, as pointed out previously in the Summary of this regulation, to the extent possible, the Agency plans to use the new process in future regulations regarding determinations of tribal eligibility.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, EPA believes that the proposed regulatory amendments as published in the Federal Register on March 23, 1994 (59 FR 13819) should be adopted as a final rule as discussed above and set forth below.

Executive Order 12866

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities because it merely revises existing procedural requirements for Indian tribes by making them simpler and less burdensome; Indian tribes are not considered small entities under this rulemaking for RFA purposes.

Paperwork Reduction Act

The proposed regulations contain no new or additional information collection activities and, therefore, no information collection request will be submitted to the Office of Management and Budget for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects

40 CFR Part 123

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous substances, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Environmental protection, Hazardous substances, Indian lands, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control, Water supply

40 CFR Part 131

Environmental protection, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians—lands, Radiation protection, Reporting and recordkeeping requirements, Water supply

40 CFR Part 144

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Indians—lands, Reporting and recordkeeping requirements, Surety bonds, Water supply.

40 CFR Part 145

Environmental protection, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 233

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Sewage disposal.

Dated: November 18, 1994.

Fred Hansen,

Acting Administrator

For the reasons set forth in the preamble, 40 CFR parts 123, 124, 131, 142, 144, 145, 233, and 501 are amended as follows:

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

§ 123.1 [Amended]

2. Section 123.1(h) is amended by removing the phrase "treated as a State."

§ 123.21 [Amended]

3. In § 123.21 paragraph (a)(1) is amended by revising the phrase "eligible for treatment as a state in accordance with § 123.33(e)" to read "in accordance with § 123.33(b)".

4. In § 123.21 paragraph (b)(2) is amended by removing the phrase "for treatment as a State" both times they appear and by revising the text "§ 123.33(e)" to read "§ 123.33(b)"

§ 123.22 [Amended]

5. In § 123.22 paragraph (g) is amended by removing the phrase "for treatment as a State" and by revising the text "§ 123.33(e)" to read "§ 123.33(b)".

§ 123.31 [Amended]

6. The heading of § 123.31 is amended by revising the phrase "for treatment of Indian Tribes as States" to read "for eligibility of Indian Tribes."

7. In § 123.31 paragraph (a) is amended by removing the phrase "a State for purposes of making the Tribe."

8. In § 123.31 paragraph (a)(4) is amended by removing all language following "in a manner consistent with the terms and purposes of the Act and applicable regulations, of an effective NPDES permit program."

§ 123.32 [Amended]

9. The heading of § 123.32 is amended by removing "for treatment as a State."

10. In § 123.32 the introductory text is amended by removing the phrase "for treatment as a State."

11. In § 123.32 paragraph (b) introductory text is amended by revising the words "This statement shall" to read "This statement should."

12. In § 123.32 paragraph (c) is amended by revising the phrase "a copy of all documents" to read "copies of those documents" and by revising the phrase "support the Tribe's assertion" to read "the Tribe believes are relevant to its assertion."

13. In § 123.32 paragraph (d) introductory text is amended by revising the phrase "The statement shall include" to read "The statement should include."

14. In § 123.32 paragraph (d)(1) is amended by revising the words "including, but not limited to," to read "which may include."

15. In § 123.32 paragraph (e) is amended by revising the phrase "a Tribal request for treatment as a State" to read "a Tribe's eligibility."

16. In § 123.32 paragraph (f) is revised to read as follows:

§ 123.32 Request by an Indian Tribe for a determination of eligibility.

* * * * *

(f) If the Administrator or his or her delegatee has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a state as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the NPDES program which is requested by the Regional Administrator.

§ 123.33 [Amended]

17. The heading of § 123.33 is amended by removing the phrase "for treatment as a State."

18. In § 123.33 paragraph (a) is amended by removing the phrase "for treatment as a State."

19. In § 123.33 paragraphs (b),(c), (d), and (e) are removed and paragraph (f) is redesignated as paragraph (b).

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*, Clean Water Act, 33 U.S.C. 1251 *et seq.*, Clean Air Act, 42 U.S.C. 7401 *et seq.*

§ 124.2 [Amended]

2. In § 124.2 the definition of "State" is amended by revising the phrase "an Indian Tribe treated as a State" to read "an Indian Tribe that meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State"

§ 124.51 [Amended]

3. In § 124.51 paragraph (c) is amended by revising the phrase "is qualified for treatment as a State" to

read "meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State" and by revising the phrase "likewise qualified for treatment as a State" to read "likewise qualified for such treatment."

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.3 [Amended]

2. In § 131.3 paragraph (j) is amended by revising the phrase "qualify for treatment as States for purposes of water quality standards" to read "to be eligible for purposes of a water quality standards program".

§ 131.4 [Amended]

3. In § 131.4 paragraph (c) is amended by revising the phrase "qualifies for treatment as a State" in both places that it appears to read "is eligible to the same extent as a State"

§ 131.7 [Amended]

4. In § 131.7 paragraph (b)(2) is amended by revising the phrase "qualifies to be treated as a State" to read "is eligible to the same extent as a State".

§ 131.8 [Amended]

5. The heading of § 131.8 is amended by revising the phrase "to be treated as States for purposes of water quality standards" to read "to administer a water quality standards program".

6. In § 131.8 paragraph (a) introductory text is amended by revising the phrase "treat an Indian Tribe as a State for purposes of the water quality standards program" to read "accept and approve a tribal application for purposes of administering a water quality standards program".

7. In § 131.8 paragraph (b) introductory text is amended by revising the phrase "for treatment as states for purposes of water quality standards" to read "for administration of a water quality standards program".

8. In § 131.8 paragraph (b)(2) introductory text is amended by revising the word "shall" to read "should".

9. In § 131.8 paragraph (b)(3) introductory text is amended by revising the word "shall" to read "should".

10. In § 131.8 paragraph (b)(3)(ii) is amended by removing the semi-colon and adding to the end of the paragraph the phrase "and which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of authority; and".

11. Section 131.8(b)(3)(iii) is removed.

12. In § 131.8 paragraph (b)(3)(iv) is redesignated as (b)(3)(iii).

13. In § 131.8 paragraph (b)(4) introductory text is amended by revising the word "shall" to read "should".

14. In § 131.8 paragraph (b)(4)(i) is amended by revising the phrase "including, but not limited to" to read "which may include".

15. In § 131.8 paragraph (b)(5) is amended by revising the phrase "request for treatment as a State," to read "application".

16. In § 131.8 paragraph (b)(6) is amended by revising the phrase "qualified for treatment as a State" to read "qualified for eligibility or 'treatment as a state'" and by removing the second occurrence of the phrase "treatment as a State".

17. In § 131.8 paragraphs (c) introductory text, (c)(1) and (c)(2) introductory text are amended by removing the words "for treatment as a State".

18. In § 131.8 paragraph (c)(4) is amended by revising the phrase "after consultation with the Secretary of the Interior, or his designee" to read "after due consideration".

19. In § 131.8 paragraph (c)(5) is amended by revising the words "has qualified to be treated as a State for purposes of water quality standards and that the Tribe may initiate the formulation and adoption of water quality standards approvable under this part" to read "is authorized to administer the Water Quality Standards program".

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, and 300j-9.

§ 142.2 [Amended]

2. In § 142.2 the definition of "State" is amended by revising the phrase "or an Indian Tribe treated as a State," to read "or an eligible Indian tribe"

§ 142.3 [Amended]

3. In § 142.3 paragraph (c) is amended by revising the phrase "be designated by the Administrator for treatment as a State" to read "meet the statutory criteria at 42 U.S.C. 300j-11(b)(1)"

Subpart H—Indian Tribes

4. The heading for subpart H of part 142 is revised to read as set forth above.

§ 142.72 Requirements for Tribal eligibility.

5. The heading of § 142.72 is revised to read as set forth above.

6–7. Section 142.72 is amended by revising the introductory text and paragraph (d) to read as follows.

§ 142.72 Requirements for Tribal eligibility

The Administrator is authorized to treat an Indian Tribe as eligible to apply for primary enforcement responsibility for the Public Water System Program if it meets the following criteria:

* * * * *

(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of administering (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Public Water System program

* * * * *

§ 142.76 [Amended]

8. The heading of § 142.76 is amended by revising the phrase "of treatment as a State" to read "of eligibility"

9. Section 142.76 is amended by revising in the introductory text the phrase "qualifies for treatment as a State pursuant to" to read "meets the criteria of."

10. In § 142.76 paragraph (b) introductory text is amended by revising the word "shall" to read "should"

11. In § 142.76 paragraph (c) is amended by revising the word "all" to read "those" and by revising the phrase "support the Tribe's asserted jurisdiction" to read "the Tribe believes are relevant to its assertions regarding jurisdiction"

12. In § 142.76 paragraph (d) introductory text is amended by revising the word "shall" to read "should"

13. In § 142.76 paragraph (d)(1) is amended by revising the words "including, but not limited to" to read "which may include"

14. In § 142.76 paragraph (e) is amended by revising the phrase "a Tribal request for treatment as a State to read "a Tribe's eligibility"

15. In § 142.76 paragraph (f) is revised to read as follows:

§ 142.76 Request by an Indian tribe for a determination of eligibility.

* * * * *

(f) If the Administrator has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a state as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the Public Water System program (paragraph (c), (d)(5) and (6) of this section).

§ 142.78 [Amended]

16. The heading of § 142.78 is amended by removing the phrase "for treatment as a State".

17. In § 142.78 paragraph (a) is amended by removing the words "for treatment as a State submitted pursuant to § 142.76".

18. In § 142.78 paragraphs (b), (c) and (d) are removed and paragraph (e) is redesignated as (b) and amended by revising the language "If the Administrator determines that a Tribe meets the requirements of § 142.72, the Indian Tribe is then eligible to apply for" to read "A tribe that meets the requirements of § 142.72 is eligible to apply for"

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for part 144 continues to read as follows:

Authority: *Safe Drinking Water Act*, 42 U.S.C. 300f *et seq*; *Resource Conservation and Recovery Act*, 42 U.S.C. 6902 *et seq*.

2. Section 144.3 is amended by adding the definition of "eligible Indian tribe" in alphabetical order to read as follows:

§ 144.3 Definitions.

* * * * *

Eligible Indian Tribe is a Tribe that meets the statutory requirements established at 42 U.S.C. 300j-11(b)(1).

* * * * *

PART 145—STATE UIC PROGRAM REQUIREMENTS

1 The authority citation for part 145 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq*.

§ 145.1 [Amended]

2. In § 145.1 paragraph (h) is amended by adding the word "eligible" between "to" and "Indian Tribes" in the first sentence; and by removing the second sentence.

Subpart E—Indian Tribes

3. The heading of subpart E of part 145 is revised to read as set forth above.

§ 145.52 Requirements for Tribal eligibility.

4. The heading of § 145.52 is revised to read as set forth above.

5-6. Section 145.52 is amended by revising the introductory text and paragraph (d) to read as follows:

§ 145.52 Requirements for Tribal eligibility.

The Administrator is authorized to treat an Indian Tribe as eligible to apply for primary enforcement responsibility for the Underground Injection Control Program if it meets the following criteria:

* * * * *

(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of administering (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Underground Injection Control Program.

* * * * *

§ 145.56 [Amended]

7. The heading of § 145.56 is amended by revising the phrase "of treatment as a State" to read "of eligibility"

8. In § 145.56 the introductory text is amended by revising the phrase "qualifies for treatment as a State pursuant to" to read "meets the criteria of."

9. In § 145.56 paragraph (b) introductory text is amended by revising the word "shall" to read "should"

10. In § 145.56 paragraph (c) is amended by revising the word "all" to read "those," and by revising the phrase "support the Tribe's asserted jurisdiction" to read "the Tribe believes are relevant to its assertions regarding jurisdiction"

11. In § 145.56 paragraph (d) introductory text is amended by revising the word "shall" to read "should"

12. In § 145.56 paragraph (d)(1) is amended by revising the words "including, but not limited to" to read "which may include."

13. In § 145.56 paragraph (e) is amended by revising the phrase "a Tribal request for treatment as a State" to read "a Tribe's eligibility".

14. In § 145.56 paragraph (f) is revised to read as follows:

§ 145.56. Request by an Indian Tribe for a determination of eligibility.

* * * * *

(f) If the Administrator has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a State as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the Underground Injection Control program (§ 145.76(c) and (d)(6)).

§ 145.58 [Amended]

15. The heading of § 145.58 is amended by removing the phrase "for treatment as a State".

16. In § 145.58 paragraph (a) is amended by removing the phrase "for treatment as a State submitted pursuant to § 146.56".

17. In § 145.58 paragraphs (b), (c), and (d) are removed and paragraph (e) is redesignated as paragraph (b) and amended by revising the language "If the Administrator determines that a Tribe meets the requirements of § 145.52, the Indian Tribe is then eligible to apply for" to read "A tribe that meets the requirements of § 145.52 is eligible to apply for"

PART 233—404 STATE PROGRAM REGULATIONS

1. The authority citation for part 233 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq*.

Subpart G—Eligible Indian Tribes

2. The heading of subpart G of part 233 is revised to read as set forth above.

§ 233.60 Requirements for eligibility.

3. The heading of § 233.60 is revised to read as set forth above.

4. Section 233.60 introductory text is amended by removing the words "a State for purposes of making the Tribe"

§ 233.61 Determination of Tribal eligibility.

5. The heading of § 233.61 is revised to read as set forth above.

6. In § 233.61 the introductory text is amended by revising the phrase "that it qualifies for treatment as a State pursuant to Section 518 of the Act" to read "that it meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State"; by revising the word "shall" in the last sentence to read "should."

7. In § 233.61 paragraph (b) introductory text is amended by revising the word "shall" to read "should".

8. In § 233.61 paragraph (c)(2) is amended by adding at the end of the paragraph before the semicolon "which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of authority".

9. Section 233.61 (c)(3) is removed.

10. In § 233.61 paragraph (d) introductory text is amended by revising the word "shall" to read "may".

11. In § 233.61 paragraph (d)(1) is amended by revising the words "including, but not limited to" to read "which may include".

12. In § 233.61 paragraph (e) is amended by revising the words "request for treatment as a State" to read "application".

13. In § 233.61 paragraph (f) is amended by adding the words "for eligibility or" between "has met the

requirements" and "for treatment as a State.'"

§ 233.62 [Amended]

14. The heading of § 233.62 is amended by removing the phrase "for treatment as a State".

15. In § 233.62 paragraph (a) is amended by removing the phrase "for treatment as a State".

16. In § 233.62 paragraphs (b), (c), (d), and (e) are removed.

17. In § 233.62 paragraph (f) is redesignated as paragraph (b).

PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

1. The authority citation for part 501 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 501.11 [Amended]

2. In § 501.11 (a)(1) remove the phrase "eligible for treatment as a state" and revise the text "§ 501.24(e)" to read "§ 501.24(b)".

3. In § 501.11(b)(2) remove the phrase "for treatment as a State" both times it appears and revise the text "§ 501.24(e)" to read "§ 501.24(b)".

§ 501.12 [Amended]

4. In § 501.12(g) remove the phrase "for treatment as a State" and revise the text "§ 501.24(e)" to read "§ 501.24(b)".

§ 501.22 [Amended]

5. The heading of § 501.22 is amended by revising the phrase "for treatment of Indian Tribes as States" to read "for eligibility of Indian Tribes."

6. In § 501.22 paragraph (a) introductory text is amended by removing the phrase "a State for purposes of making the Tribe."

7. In § 501.22 paragraph (a)(4) is amended by removing the last two sentences.

§ 501.23 [Amended]

8. The heading of § 501.23 is amended by removing the phrase "for treatment as a State".

9. In § 501.23 the introductory text is amended by removing the phrase "for treatment as a State."

10. In § 501.23 paragraph (b) introductory text is amended by revising the word "shall" to read "should."

11. In § 501.23 paragraph (c) is amended by revising the phrase "a copy of all documents" to read "copies of those documents" and by revising the phrase "support the Tribe's assertion" to read "the Tribe believes are relevant to its assertion."

12. In § 501.23 paragraph (d) introductory text is amended by revising the word "shall" to read "should."

13. In § 501.23 paragraph (d)(1) is amended by revising the words "including, but not limited to" to read "which may include."

14. In § 501.23 paragraph (e) is amended by revising the phrase "a Tribal request for treatment as a State" to read "a Tribe's eligibility."

15. In § 501.23 paragraph (f) is revised to read as follows:

§ 501.23 Request by an Indian Tribe for a determination of eligibility.

* * * * *

(f) If the Administrator or her delegatee has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a state as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the sludge management program which is requested by the Regional Administrator.

§ 501.24 [Amended]

16. The heading of § 501.24 is amended by removing the phrase "for treatment as a State."

17. In § 501.24 paragraph (a) is amended by removing the words "for treatment as a State."

18. In § 501.24 paragraphs (b), (c), (d), and (e) are removed and paragraph (f) is redesignated as paragraph (b).

[FR Doc. 94-30401 Filed 12-13-94; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 675, and 676

[Docket No. 941241-4341; I.D. 112894B]

Foreign Fishing; Groundfish Fishery of the Bering Sea and Aleutian Islands; Limited Access Management of Federal Fisheries in and Off of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim 1995 specifications of groundfish, associated management measures, and closures.

SUMMARY: NMFS issues interim 1995 initial total allowable catches (ITACs) for each category of groundfish and specifications for prohibited species bycatch allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is also closing specified fisheries consistent with the interim 1995 groundfish specifications. The intended effect is to conserve and manage the groundfish resources in the BSAI.

EFFECTIVE DATE: January 1, 1995, until the effective date of the final 1995 initial specifications.

ADDRESSES: The preliminary 1995 Stock Assessment and Fishery Evaluation (SAFE) Report may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907-271-2809

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, NMFS, 907-586-7228

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the BSAI are governed by Federal regulations (50 CFR 611.93 and parts 675 and 676) that implement the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the Magnuson Fishery Conservation and Management Act.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify for each calendar year the total allowable catch (TAC) for each target species and the "other species" category (§ 675.20(a)(2)). Regulations under § 675.20(a)(7)(i) further require NMFS to publish and solicit public comment on amounts of proposed annual TACs and ITACs for each target species, apportionments of each TAC, prohibited species catch (PSC) allowances under § 675.21(b), and seasonal allowances of pollock TAC. The Council, at its September 1994 meeting, based on the recommendations of its Scientific and Statistical Committee (SSC) and other information, approved preliminary initial specifications for 1995, as detailed below. NMFS is publishing these specifications in today's proposed rule section of the Federal Register.

Preliminary TAC Specifications

The Council developed its TAC recommendations (Table 1) based on the preliminary acceptable biological catches (ABCs) as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC in the required optimum yield range of 1.4–2.0 million metric tons (mt). Each of the Council's recommended TACs for 1995 is equal to or less than the final 1995 ABC for each species category. Therefore, NMFS finds that the recommended TACs are consistent with the biological condition of groundfish stocks. The preliminary

13813

Federal Register

Wednesday
March 23, 1994

Part III

Environmental Protection Agency

40 CFR Parts 35 and 130
Indian Tribes: Eligibility of Indian Tribes for Financial Assistance; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 35 and 130

[FRL-4728-6]

Indian Tribes: Eligibility of Indian Tribes for Financial Assistance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendments to interim final rule.

SUMMARY: The Clean Water Act contains provisions which authorize EPA to treat Indian tribes in substantially the same manner in which it treats states for purposes of various types of financial assistance. This action contains amendments to the interim final regulations implementing that authority for financial assistance programs. The purpose of these regulatory amendments is to make it easier for tribes to obtain EPA approval to assume the role Congress envisioned for them under this statute.

EFFECTIVE DATES: The amendments to the interim final rule are effective March 23, 1994. EPA will accept comments on these amendments until May 23, 1994.

ADDRESSES: Comments must be mailed (in duplicate, if possible) to C. Marshall Cain, Office of Federal Activities (A-104), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The docket for this rule and copies of the public documents submitted will be available for public inspection and copying at a reasonable fee at EPA Headquarters Library, Public Information Reference Unit, room 2904, 401 M Street, telephone (202) 260-5926.

FOR FURTHER INFORMATION CONTACT: C. Marshall Cain, Office of Federal Activities, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460, telephone (202) 260-8792.

SUPPLEMENTARY INFORMATION: This preamble is organized according to the following outline:

I. Introduction
II. Regulations Governing Eligibility of Indian Tribes
A. The Existing Process
1. Recognition and a Government
2. Jurisdiction and Capability
3. Comment Process
4. Subsequent Tribal Applications
B. Workgroup Examination of Process
III. Revisions to the Process in Light of Statutory Requirements
A. Simplified Determination as To Recognition and Government
B. Case by Case Review of Jurisdiction and Capability
1. Simplified Jurisdictional Analysis
2. Capability
IV. Summary of Revised Process
V. Executive Order 12866
VI. Regulatory Flexibility Act
VII. Paperwork Reduction Act

I. Introduction: Statutory and Regulatory Background

Under its American Indian Policy, EPA works directly with tribal governments as "sovereign entities with primary authority and responsibility for the reservation populace." At the time the Policy was adopted in 1984, the environmental statutes which EPA administers generally did not explicitly address the role of tribes in environmental management, but provided for a joint state and federal role in environmental management. Subsequently, three EPA regulatory statutes have been amended to address the tribal role specifically by authorizing EPA to treat tribes in a manner similar to that in which it treats states: the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), and the Clean Air Act (CAA).[1]

EPA recognizes that tribes are sovereign nations with a unique legal status and a relationship to the federal government that is significantly different than that of states. EPA believes that Congress did not intend to alter this when it authorized treatment of tribes "as States;" rather, the purpose of the statutory amendments was to reflect an intent that, insofar as possible, tribes should assume a role in implementing the environmental statutes on tribal land comparable to the role states play on state land.

All three regulatory statutes specify that, in order to receive such treatment, a tribe must be federally recognized and possess a governing body carrying out substantial duties and powers. 33 U.S.C. 1377 (e), (h) (CWA); 42 U.S.C. 300j-11 (SDWA); 42 U.S.C. 7601(d) (CAA). In addition, although there are some variations in language among the three statutes, each requires that a tribe possess civil regulatory jurisdiction to carry out the functions it seeks to exercise.[2] Finally, all three require that a tribe be reasonably expected to be capable of carrying out those functions.

The Agency initially chose to implement provisions of the Clean Water and Safe Drinking Water Acts regarding Indian tribes by establishing a formal prequalification process under which tribes can seek eligibility under these statutes. This prequalification process has in the past been referred to as approval for "treatment as a state" ("TAS"). Tribes that obtain such approval then become eligible to apply for certain grants and program approvals available to states.[3]

II. Regulations Governing Eligibility of Indian Tribes

A. The Existing Process

The Agency has promulgated five regulations that utilize the "TAS" process to date: (1) Safe Drinking Water Act National Drinking Water Regulations and Underground Injection Control Regulations for Indian Lands, 53 FR 37395 (September 26, 1988), codified at 40 CFR parts 35, 124, 141, 142, 143, 144, 145, and 146; (2) Indian Tribes: Water Quality Planning and Management, 54 FR 14353 (April 11, 1989), Comprehensive Construction Grant Regulation Revision, 55 FR 27092 (June 29, 1990) (governing grant programs under the CWA), codified at 40 CFR parts 35 and 130; (3) Amendments to the Water Quality Standards Regulation that Pertain to Standards on Indian Reservations, 56 FR 64876 (December 12, 1991), codified at 40 CFR part 131; (4) Clean Water Act, section 404 Tribal Regulations, 58 FR 8171 (February 11, 1993), codified at 40 CFR parts 232 and 233; and (5) Treatment of Indian Tribes as States for Purposes of sections 308, 309, 401, 402, and 405 of the Clean Water Act ("NPDES") Rule, 58 FR 67966 (December 22, 1993), codified at 40 CFR parts 122, 123, 124 and 501.

[1] In addition, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"), which is primarily a response, rather than a regulatory statute, has also been amended to authorize EPA to treat tribal governments in substantially the same way it treats states with respect to selected provisions of the statute.

[2] Under the Clean Water Act, the tribe must propose to carry out functions that "pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation." 33 U.S.C. 1377(e)(2). Under the Clean Air Act, "the functions to be exercised by the Indian tribe [must] pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction." 42 U.S.C. 7601(d)(2)(B). Under the SDWA, the tribe must propose to exercise functions "within the area of the Tribal Government's jurisdiction." 42 U.S.C. 300j-11 (b)(1)(B).

[3] By contrast, the provision of CERCLA authorizing EPA to afford a tribal government "substantially the same treatment as a State" does not establish any specific criteria a tribe must meet to qualify for such treatment. 42 U.S.C. 9626. EPA has established, by regulation, the criteria of recognition, a government, and jurisdiction, but has not adopted a formal prequalification process under CERCLA. See 40 CFR 300.515(b). The Agency is developing regulations pertaining to the treatment of American Indian tribes under the Clean Air Act.

Under all of these regulations, before a tribe can obtain financial assistance available to states or obtain approval to operate a program which states are authorized to operate on state lands, the tribe must first formally qualify for "treatment as a state." To qualify, a tribe must submit an application establishing that it is federally recognized, has a governing body carrying out substantial duties and powers, and has adequate jurisdiction and capability to carry out the proposed activities. Once a tribe obtains "TAS" approval, it is eligible to apply for financial assistance and program approval.

1. Recognition and Government

A tribe typically establishes recognition by showing its inclusion on the list of federally recognized Tribes published by the Secretary of the Interior in the Federal Register. A tribe establishes that it meets the governmental duties and powers requirement with a narrative statement describing the form of the tribal government and the types of functions it performs, and identifying the sources of the tribe's governmental authority.

2. Jurisdiction and Capability

To establish jurisdiction under the CWA grant regulations, a tribe must submit a statement signed by a tribal legal official explaining the legal basis for the Tribe's regulatory authority over its water resources. The CWA grant regulations do not require that a tribe submit any specific materials to establish capability.

The other regulations specify that a tribe must submit various specific documents to establish jurisdiction, including: a map or legal description of the area over which the tribe claims jurisdiction; a statement by a tribal legal official describing the basis, nature, and subject matter of the tribe's jurisdiction; copies of all documents supporting the jurisdictional assertions; and a description of the locations of the systems or sources the tribe proposes to regulate. Similarly, to establish capability a tribe must submit a narrative statement describing tribal capability to administer an effective program, and certain specific, listed materials in support of that statement.

3. Comment Process

Upon receiving a "TAS" application under these regulations, EPA notifies all "appropriate governmental entities,"[4] as to the substance of and basis for the jurisdictional assertions in the application, and invites comment on those assertions. Where comments raise a competing or conflicting jurisdictional claim, the Agency must consult with the Department of the Interior before making a final decision on the tribe's application.

In practice, this comment process has sometimes led to delays in the processing and approval of tribal applications. Indeed, it has proven to be the single portion of "TAS" review most responsible for delays. The comment process also has created a perception that states have an oversight role in EPA's treatment of Indian tribes, which some tribes find objectionable, particularly since tribes have typically not been asked to offer their views on the scope and extent of state jurisdiction.

4. Subsequent Tribal Applications

The regulations require a separate "treatment as a state" application for each program for which the tribe seeks such treatment. However, after an initial approval, applications for each additional program need provide only that additional information unique to the additional program.

B. Workgroup Examination of Process

The Agency's "TAS" prequalification process has proven to be burdensome, time-consuming and offensive to tribes. Accordingly, in 1992 EPA established a working group to focus on ways of improving and simplifying that process. The Agency formally adopted the Workgroup's recommendations as Agency policy by Memorandum dated November 10, 1992. That Memorandum explicitly recognized that the policies it adopted would require amendments to existing regulations. The purpose of this regulation is to amend existing financial assistance regulations under the Clean Water Act in order to implement the new policy. To the extent possible, the Agency plans to use the same process in future regulations regarding determinations of tribal eligibility.

III. Revisions to the Process in Light of Statutory Requirements

No statute compels the use of a formal "TAS" or other prequalification process separate from approval of the underlying request for a grant or program approval. The only requirements imposed by statute are that, to be eligible for financial assistance and/or program authorization, a tribe must be federally recognized, have a governing body carrying out substantial duties and powers, and have adequate jurisdiction and capability to carry out the proposed activities. Thus, EPA may authorize a tribal program or grant without formally designating the tribe as "eligible for TAS," so long as the Agency establishes that the tribe meets applicable statutory requirements. In other words, the Agency can ensure compliance with statutory mandates without requiring tribes to undergo a discrete, formal process of seeking "TAS" approval.

Accordingly, EPA is amending its regulations to eliminate "TAS" review as a separate step in the processing of a tribal application for a grant. Under the new, simplified process, the Agency will ensure compliance with statutory requirements as an integral part of the process of reviewing grant applications. To the extent that this rule or preamble conflicts with the language of previous rules and preambles, the language herein shall be controlling. EPA will also, as far as possible, discontinue use of the term "treatment as a state;" however, since this phrase is included in several statutes, its continued use may sometimes be necessary.

A. Simplified Determination as to Recognition and Government

As a general rule, the recognition and governmental requirements are essentially the same under the Clean Water and Safe Drinking Water Acts. The new process will reflect this by establishing identical requirements for making this showing under each statute. Moreover, the fact that a tribe has met the recognition or governmental functions requirement under either of the Water Acts will establish that it meets those requirements under both statutes. To facilitate review of tribal applications, EPA therefore requests that tribal applications inform EPA whether a tribe has been approved for "TAS" (under the old process) or deemed eligible to receive funding or authorization (under the revised process) for any other program.

A tribe that has not done so may establish that it has been federally recognized by simply stating in its grant or program authorization application that it appears on the list of federally recognized tribes that the Secretary of the Interior publishes periodically in the Federal Register. If the tribe notifies EPA that it has been recognized but does not appear on this list because the

[4] The Agency defines this to include contiguous states, other tribes, and federal land agencies responsible for management of lands contiguous to the reservation. (Amendments to the Water Quality Standards Regulation that Pertain to Standards on Indian Reservations; Final Rule. 56 FR 64875, 64884 (December 12, 1991)). In response to public comments, EPA has considered, but decided against, providing interested political subdivisions of states, including local governments and water districts, the opportunity to comment on tribal jurisdictional assertions. *Id.*

list has not been updated, EPA will seek to verify the fact of recognition with the Department of the Interior.

A tribe that has not yet made its initial governmental showing can do so by certifying that it has a government carrying out substantial governmental functions. A tribe will be able to make the required certification if it is currently performing governmental functions to promote the public health, safety, and welfare of its population. Examples of such functions include, but are not limited to, levying taxes, acquiring land by exercise of the power of eminent domain, and exercising police power. Such examples should be included in a narrative statement supporting the certification. (1) Describing the form of tribal government and the types of essential governmental functions currently performed, and (2) identifying the legal authorities for performing those functions (e.g., tribal constitutions or codes). It should be relatively easy for tribes to meet this requirement without submitting copies of specific documents unless requested to do so by the Agency.

B. Case by Case Review of Jurisdiction and Capability

A tribe may have jurisdiction over, and capability to carry out, certain activities (e.g., protection of the quality of a particular lake for the Clean Lakes program under the Clean Water Act), but not others (e.g., waste management on a portion of the reservation far removed from any lakes). For this reason, EPA believes that the Agency must make a specific determination that a tribe has adequate jurisdictional authority and administrative and programmatic capability before it approves each tribal program. This will ensure that tribes meet the statutory requirements Congress has established as prerequisites to tribal eligibility for each particular program.

1. Simplified Jurisdictional Analysis

The portion of the jurisdictional determination under which governments comment on tribal jurisdiction will be substantially altered under this Rule. These changes are outlined below.

Comments will no longer be sought from "appropriate governmental entities" with regard to tribal grant applications. The Agency now has extensive experience awarding grants to tribes and is capable of evaluating tribal grant applications to ensure that a tribe has adequate jurisdiction to receive grants.

A separate "TAS" jurisdictional review is not needed to verify that a tribe meets the statutory jurisdictional requirement. This change will have the effect only of eliminating duplicative requirements.

Finally, the Agency notes that certain issues concerning tribal jurisdiction may be relevant to a tribe's authority to conduct activities. For example, if a tribe and a state or another tribe disagree as to the boundary of a particular tribe's reservation, each time the tribe seeks to assert authority over the disputed area, the dispute will recur. The Agency recognizes that its determinations regarding tribal jurisdiction apply only to activities to be carried out within the scope of the grant. However, it also believes that, once it makes a jurisdictional determination in response to a tribal application regarding any EPA program, it will ordinarily make the same determination for other programs unless a subsequent application raises different legal issues. Thus, for example, once the Agency has arrived at a position concerning a boundary dispute, it will not alter that position in the absence of significant new factual or legal information.

Under the new approval process, as under the old, the Agency will continue to retain authority to limit its approval of a tribal application to those land areas where the tribe has demonstrated jurisdiction. This would allow EPA to approve the portion of a tribal application covering certain areas, while withholding approval of the portion of an application addressing those land areas where tribal authority has not been satisfactorily established. See, e.g., 53 FR 37395, 37402 (September 26, 1988) (SDWA); 54 FR 14353, 14355 (April 11, 1989) (Clean Water Act Grants); 54 FR 39097, 39102 (September 12, 1989) (Clean Water Act Water Quality Standards); 58 FR 8171, 8176 (February 11, 1993) (Clean Water Act section 404); 58 FR 67966, 67972 (Clean Water Act NPDES) (December 22, 1993).

2. Capability

EPA must continue to make a separate determination of tribal capability for each program for which it approves a tribe. However, the Safe Drinking Water Act, Water Quality Standards, and section 404 regulations would be amended to conform to the CWA grant regulations, which do not specifically prescribe the material a tribe must submit to establish capability. Ordinarily, the inquiry EPA will make into the capability of any applicant, tribal or state, for a grant or program approval would be sufficient to enable the Agency to determine whether a tribe meets the statutory capability requirement. See, e.g., 40 CFR part 31 (grant regulations applicable to states and tribes); 40 CFR 142.3 (Public Water System primary enforcement responsibility requirements at parts 141, 142 apply to tribes); 145.1(h) (Underground Injection Control requirements of parts 124, 144, 145, and 146 that apply to states generally apply to tribes).

Nevertheless, EPA may request that the tribe provide a narrative statement or other documents showing that the tribe is capable of administering the program for which it is seeking approval. In evaluating tribal capability, EPA will consider: (1) The tribe's previous management experience; (2) existing environmental or public health programs administered by the tribe; (3) the mechanisms in place for carrying out the executive, legislative and judicial functions of the tribal government; (4) the relationship between regulated entities and the administrative agency of the tribal government which will be the regulator; and (5) the technical and administrative capabilities of the staff to administer and manage the program.

EPA recognizes that certain tribes may not have substantial experience administering environmental programs; a lack of such experience will not preclude a tribe from demonstrating capability, so long as it shows that it has the necessary management and technical and related skills or submits a plan describing how it will acquire those skills.

IV. Summary of Revised Process

Under the new process, tribes will continue to seek grants under the authority of statutes authorizing EPA to treat eligible tribes in a manner similar to that in which it treats states. For instance, tribes seeking approval of an NPDES or Wetlands permits program will comply with the applicable provisions of 40 CFR parts 123 or 233. However, tribes will now generally be required to submit only a single application to demonstrate eligibility for the grant, without the need for a separate application for "TAS." EPA will verify that the tribe meets all statutory prerequisites for eligibility in the process of reviewing the single tribal application.

EPA believes that the changes outlined in this notice will simplify and streamline the process of assessing tribal eligibility while still ensuring full compliance with all applicable statutes. The Agency expects that the new process will reduce the burdens and barriers to tribes of participating in environmental management.

V. Executive Order 12866

OMB has reviewed this action under the terms of Executive Order 12866.

VI. Regulatory Flexibility Act

EPA did not develop a Regulatory Flexibility Analysis for the amendments in this rule. This is because they are exempt from notice and comment rulemaking under section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 553(a)(2)) and therefore are not subject to the analytical requirements of sections 603 and 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603 and 604).

VII. Paperwork Reduction Act

The proposed regulations contain no new or additional information collection activities and, therefore, no information collection request will be submitted to the Office of Management and Budget for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 35

Environmental protection, Air pollution control, Coastal zone, Grant programs-environmental protection, Grant programs-Indians, Hazardous waste, Indians, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 130

Environmental protection, Grant programs-environmental protection, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 10, 1994.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 35—STATE AND LOCAL ASSISTANCE

Subpart A—Financial Assistance for Continuing Environmental Programs

1. The authority citation for subpart A of part 35 continues to read as follows:

Authority: Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a); Secs. 106, 205(g), 205(j), 208, 319, 501(a), and 518 of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1361(a) and 1377); secs. 1443, 1450, and 1451 of the Safe Drinking Water Act (42 U.S.C. 300j-2, 300j-9 and 300j-11); secs. 2002(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation, and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, and 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136(b), 136(u) and 136w(a).

2. Section 35.105 is amended by adding a definition of *Eligible Indian Tribe* in alphabetical order and by revising the definition of "State" to read as follows:

§ 35.105 Definitions.

* * * *

Eligible Indian Tribe means for purposes of the Clean Water Act, any federally recognized Indian Tribe that meets the requirements set forth at 40 CFR 130.6(d).

* * * * *

State means within the context of Public Water Systems Supervision and Underground Water Source Protection grants or of financial assistance programs under the Clean Water Act, one of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territories of the Pacific Islands or an eligible Indian Tribe.

* * * * *

§ 35.115 [Amended]

3. Section 35.115 is amended by revising the phrase "Indian Tribes treated as States" in paragraphs (b), (d), and (f) to read "eligible Indian Tribes" and paragraph (g) is amended by revising the phrase "Indian Tribe treated as a State" to read "eligible Indian Tribe".

§ 35.155 [Amended]

4. In § 35.155 paragraph (c) is amended by revising the phrase "Indian Tribes treated as States" to read "eligible Indian Tribes".

§ 35.250 [Amended]

5. Section 35.250 is amended by revising the phrase "Indian Tribes treated as States" to read "eligible Indian Tribes."

§ 35.255 [Amended]

6. Section 35.255(b) is amended by revising the phrase "Indian Tribes treated as States" to read "eligible Indian Tribes".

§ 35.260 [Amended]

7. In § 35.260 paragraph (a) is amended by revising the phrase "Indian Tribes treated as States" to read "eligible Indian Tribes" and paragraph (b) is amended by revising the phrase "Indian Tribe treated as a State" to read "eligible Indian Tribe".

§§ 35.265, 35.365 and 35.755 [Amended]

8. Sections 35.265(a), 35.365(a)(1), 35.755(a), and 35.755(b)(1) are amended by revising the phrase "requirements for treatment as a State in accordance with 40 CFR 130.6(d) and 130.15" to read "requirements set forth at 40 CFR 130.6(d)".

§§ 35.350 and 35.750 [Amended]

9. Sections 35.350 introductory text and 35.750 are amended by revising the phrase "Indian Tribes treated as States" to read "eligible Indian Tribes".

§ 35.400 [Amended]

10. Section 35.400 is amended by revising the phrase "Indian Tribes treated as States for" to read "eligible Indian Tribes under".

§ 35.1605–9 [Amended]

11. Section 35.1605–9 is amended by revising the phrase "treated as a State" in the heading to read "set forth at 40 CFR 130.6(d)" and by revising the phrase "set forth for treatment as a State in accordance with 40 CFR 130.6(d) and 130.15" to read "set forth at 40 CFR 130.6(d)".

§ 35.1620–1 [Amended]

12. Section 35.1620–1 (c) is amended by revising the phrase "treated as States" in the paragraph heading to read "eligible Indian Tribe" and by revising the phrase "Indian tribe treated as a State" to read "eligible Indian Tribe".

§ 35.415 [Amended]

13. Section 35.415(a)(1) is amended by removing the words "—Treatment of Indian Tribes as States".

§ 35.450 [Amended]

14. Section 35.450 is amended by revising the phrase "Indian Tribes treated as States for" to read "eligible Indian Tribes under".

§ 35.465 [Amended]

15. Section 35.465(a)(1) is amended by removing the words "—Treatment of Indian Tribes as States".

PART 130—WATER QUALITY PLANNING AND MANAGEMENT

1. The authority citation for part 130 continues to read as follows:

Authority: 33 U.S.C. 1251 et. seq.

§ 130.1 [Amended]

1. Section 130.1(a) is amended by revising the phrase "Indian Tribe

treated as a State" to read "eligible Indian Tribe".

§ 130.6 [Amended]

2. Section 130.6(d) introductory text is amended by revising the phrase "may be treated as a State" to read "is eligible".

§ 130.15 [Amended]

3. Section 130.15 is amended by revising the phrase "for treatment as a State" in the heading to read "for Indian tribes"; by removing the phrase "for treatment as a State" from paragraph (a); by removing paragraphs (b), (c), and (d); and by removing the paragraph designation "(a)" from the remaining text.

[FR Doc. 94-6382 Filed 3-22-94; 8:45 am]
BILLING CODE 6560-60-P

federal register

Thursday
December 2, 1993

Part V

Environmental Protection Agency

40 CFR Part 35
Indian Tribes: General Assistance Grants for Environmental Protection Programs; Interim Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[FRL-4670-7]

Indian Tribes: General Assistance Grants for Environmental Protection Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule with request for comments.

SUMMARY: Under the Indian Environmental General Assistance Program Act of 1992 EPA must promulgate regulations that govern the award of general assistance grants to Indian tribal governments to build capacity to administer environmental protection programs on Indian lands. This interim final rule establishes the rules and procedures EPA will follow in awarding those grants.

DATE: *Effective Date:* EPA is publishing this rule as an interim final rule which is effective December 2, 1993.

Comment Date: EPA solicits comments on this interim rule until January 31, 1994.

ADDRESSES: Comments must be mailed (in duplicate, if possible) to B. Katherine Biggs, Office of Federal Activities (A-104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The docket for this rule and copies of the public documents submitted will be available for public inspection and copying at a reasonable fee at EPA Headquarters Library, Public Information Reference Unit, room 2904, 401 M Street SW., Washington, DC 20460, telephone (202) 260-5926.

FOR FURTHER INFORMATION CONTACT: B. Katherine Biggs, Office of Federal Activities (A-104), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, at (202) 260-5078.

SUPPLEMENTARY INFORMATION: This preamble is organized according to the following outline:

I. Introduction
  A. Statutory Background
  B. Background of the Rulemaking
II. Description of Program and Regulation
  A. Purpose of General Assistance Grants
  B. Relationship to Other Grant Programs
  1. Grants Under Statutes Authorizing EPA to Treat Tribes in the Same Manner as It Treats States
  2. Grants for Regulation of Hazardous and Solid Waste
III. Eligibility
IV. Grant Limitations
  A. Terms and Awards
  B. Tribal Share
V. Grant Procedures
  A. Grant Application and Management
  B. Procurement Requirements
VI. Executive Order Clearances
VII. Regulatory Flexibility Act
VIII. Paperwork Reduction Act

I. Introduction

A. Statutory Background

On October 24, 1992, the President signed into law the Indian Environmental General Assistance Program Act of 1992 (Act). The purposes of the Act are to:

(1) Provide general assistance grants to Indian tribal governments and intertribal consortia to build capacity to administer environmental regulatory programs that may be delegated by the [EPA] on Indian lands; and (2) provide technical assistance from the [EPA] to Indian tribal governments and intertribal consortia in the development of multimedia programs to address environmental issues on Indian lands.

Consistent with these purposes, the Act authorizes the Environmental Protection Agency (EPA) to provide general assistance grants to tribal governments and intertribal consortia for planning, developing, and establishing the capability to implement environmental protection programs administered by EPA on Indian lands.

The Act requires EPA to promulgate regulations establishing procedures governing such grants. Since FY 91, EPA has had authority to provide financial assistance to tribes for the development of the capacity to implement multimedia environmental programs. EPA has relied to the extent appropriate on its experience from administering these programs in developing this regulation.

B. Background of the Rulemaking

This interim final rule is consistent with federal policy regarding Indian tribes, including the EPA Indian Policy Statement and Implementation Guidance issued in November of 1984. It is promulgated as interim final, rather than as a proposed rule, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(a), which exempts grants rules from the notice-and-comment requirements for rulemaking. Nevertheless, EPA solicits public comment on this interim final rule which takes effect today for prompt implementation of this new authority for awarding grants to Indian tribes.

II. Description of Program and Regulation

A. Purpose of General Assistance Grants

EPA's goal is to assist in the development of tribal environmental programs which are tailored to individual tribal needs. General assistance agreements are intended to assist Indian tribes in developing the capacity to manage their own environmental programs. General assistance agreements offer the opportunity for a tribe to develop an integrated environmental program, develop the capability to manage specific programs that can be delegated by EPA, and, as appropriate, plan and establish a core program for environmental protection. These assistance agreements provide the opportunity for the tribes to define and develop administrative and legal infrastructures, and to conduct assessments, monitoring, planning and other actions, and to undertake additional activities to develop environmental programs within a simplified administrative framework.

The primary purpose of these assistance agreements is to support the development of elements of a core environmental protection program, such as:

- Providing for tribal capacity-building to assure an environmental presence for identifying programs and projects, including developing proposals for environmental program grants and managing environmental work;
- Fostering compliance with federal environmental statutes by developing appropriate tribal environmental programs, ordinances and services; and
- Establishing a communications capability to work with federal, state, local and other tribal environmental officials.

The intent of the general assistance grant program is to provide maximum flexibility for the Agency to work with tribes to plan, develop, and establish the capability to implement effective environmental programs for Indian lands.

B. Relationship to Other Grant Programs

1. Grants Under Statutes Authorizing EPA To Treat Tribes in the Same Manner as It Treats States

EPA has a variety of authorities regarding protection of the environment on reservations. Several of the Agency's statutes authorize the provision of funds to tribes for specific media program activities. Receipt of general assistance under this program will not preclude a tribe from also receiving program or project-specific grants. Tribes remain eligible for categorical program, project-specific, and other EPA grants. Thus the Act is explicit in its requirement that the award of general assistance under

this authority shall not result in a reduction of EPA grants for environmental protection to the recipient. Conversely, general assistance agreements under the Act are not prerequisites to program-specific grants under other EPA authorities.

General assistance agreements must support the objectives of EPA's statutory and regulatory programs. Since the principal focus of this program is on the development of general tribal environmental capability, assistance will not be provided under this program for construction of specific facilities or for site-specific actions unless the Agency determines it is necessary to do so to carry out the purposes of the Act. Such determination shall include approval of EPA's National Program Manager for the General Assistance Program.

2. Grants for Regulation of Hazardous and Solid Waste

The Act expressly authorizes the use of general assistance funds for "planning, developing, and establishing the capability to implement programs administered by the Environmental Protection Agency * * * [including] the development and implementation of solid and hazardous waste programs for Indian lands."

A stated purpose of the Act is to build tribal capacity "to administer environmental regulatory programs that may be delegated by the Environmental Protection Agency on Indian lands." Several statutes expressly authorize EPA to approve tribal programs on Indian lands, by providing that EPA may treat tribes in the same manner in which it treats states. By contrast, the Resource Conservation and Recovery Act, which regulates hazardous and solid waste management, contains no express language authorizing program approvals on tribal lands, and EPA has not to date issued regulations authorizing approval of tribal programs (although such regulations are under development). The Agency believes that the Act's express reference to waste programs is intended to clarify that general assistance funds may be used to build capacity to administer environmental regulatory programs for waste, as well as water, air, and other media activities integral to planning, developing, and establishing environmental protection programs on Indian lands.

III. Eligibility

Federally recognized Indian tribes are eligible to receive general assistance agreements. The Bureau of Indian Affairs (BIA) periodically publishes a list of federally recognized tribal entities. See, e.g., 53 FR 52829–52832 (December 29, 1988). Any tribe that has gained recognition since the publication of that list and thus does not appear on it because the list has not been updated by BIA will need to notify EPA of this fact so EPA can verify this with BIA.

The Act defines "Indian tribal government" broadly to include tribal entities appearing on that list, including Alaska Native villages and regional or village corporations. However, Alaska Native village corporations and regional corporations are not deemed to be governmental bodies, and therefore, they are not eligible to receive general assistance for capacity-building to develop regulatory programs. They may, however, assist Alaska Native villages with funds provided to the villages, and in certain circumstances, village corporations and regional corporations may be eligible for direct funding for non-regulatory capacity-building activities, such as training or needs assessment.

Tribal consortia formed by two or more eligible tribes for the purpose of receiving general assistance agreements are eligible for general assistance agreements.

IV. Grant Limitations

A. Terms and Awards

The Act authorizes the establishment of a general assistance program for grants to Indian tribes. Section 11(d)(2) of the Act further provides that a grant awarded "under this subsection for a fiscal year shall be no less than $75,000." The Agency believes this means that each new grant awarded under this authority in a fiscal year must be for a minimum of $75,000. However, amendments under this authority to either new grants or grants originally awarded under the Multi-Media Assistance Program, may be made in such amounts as are appropriate in light of the nature and scope of the original project.

The Act further provides that the term of an award may exceed one year, with funds remaining available until expended. The Agency interprets this to mean that, while no new grant may be for an amount of less than $75,000, a grant of that amount may be for a period exceeding one fiscal year.

Finally, Section 11(d)(3) of the Act provides that a recipient "may receive a general assistance grant for a period of up to four years in each specific media area." EPA does not believe that this precludes more than one award for work in a particular area. However, the Agency has determined that, under this regulation, the term of an award made under the Act may not exceed four years. Grantees may reapply at the end of the grant period.

B. Tribal Share

Neither the statute nor this regulation requires that a tribe provide any share of project costs. However, in the absence of specific statutory authority, funds provided under this program may not be used as a cost share for any other federal program (see 40 CFR 31.24(b)(1)).

V. Grant Procedures

A. Grant Application and Management

The Act authorizes EPA, through this regulation, to establish procedures for this program. The Agency concludes that general assistance agreements should be governed by the requirements of 40 CFR part 31. These are standard EPA grant regulations that apply to financial assistance to state and local governments and Indian tribes. The Agency believes it is appropriate to apply these requirements in this program for two principal reasons. First, the requirements, which are not overly burdensome, are based on a common government-wide rule for administering federal grants. Second, these requirements generally govern all other EPA assistance to tribes; if tribes are to develop viable environmental programs, they must have or develop the ability to comply with these requirements.

Applicants must use the "Application for Federal Assistance: State and Local Non-Construction Programs" (Standard Form 424). Tribes receiving federal funds must comply with OMB Circular A–128 which implements the Single Audit Act of 1984. Circular A–128 assigns audit responsibilities based on the amount of federal funding. General Assistance agreements awarded under the authority of 42 U.S.C. 4368b are not subject to intergovernmental review.

B. Procurement Requirements

As noted above, general assistance agreements are subject to the EPA grant regulations applicable to state and local governments and tribes at 40 CFR part 31. In addition, ordinarily all procurements under federal financial assistance are subject to standard procurement requirements. However, the Agency believes that these requirements could prove to be burdensome to some tribes, particularly those who are just beginning to develop capacity. Although uniformity in administration of federal financial assistance programs is important, the Agency believes that Congress intended that this program be shaped flexibly to meet the needs of tribes developing

environmental management programs, and to encourage and facilitate tribal participation in this program. For this reason, for procurements of less than $50,000, grant recipients under this program will be provided with specific, but limited and controlled, variation from the standard federal procurement requirements at 40 CFR part 31. In summary:

- For procurements of $1000 or less, the recipient need only determine that the costs are reasonable. This procedure is consistent with the requirements for direct federal procurement.
- For purchases over $1000 and less than $25,000, the small purchase procedures in 40 CFR 31.36(d)(1) apply.
- For procurements of $25,000 and over but less than $50,000, the recipient must: (1) Solicit written bids/proposals from two or more sources; (2) provide a complete descripuon of what the bid/proposal must cover; (3) provide criteria for evaluation of bids/proposals; (4) evaluate all bids/proposals objectively; and (5) notify all unsuccessful bidders/proposers. There is no requirement to formally announce the request for bids/proposals, and there is no formal panel for evaluation of the bids/proposals for procurements of $25,000 and over but less than $50,000.
- For procurements of $50,000 or over, the recipient must follow the procurement requirements in 40 CFR 31.36.

These procurement requirements are similar to the procurement requirements approved for use by recipients of Superfund Technical Assistance Grants. These procedures are simpler and easier than the standard requirements, but are generally consistent with the common rule and allow for adequate control, including audits, over procurements under these grants.

VI. Executive Order Clearance

Under Executuve Order E.O. 12291, EPA must judge whether a new regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation does not sausfy any of the criteria the Executive Order specifies for a major rulemaking and therefore is not subject to a Regulatory Impact Analysis.

This Regulation was submitted to OMB for review as required by E.O. 12291 and cleared under E.O. 12866.

VII. Regulatory Flexibility Act

EPA did not develop a Regulatory Flexibility Analysis for this grant regulation because it is exempt from notice and comment rulemaking under section 553(a)(2) of the APA (5 U.S.C. 553(a)(2)), and therefore is not subject to the analytical requirements of sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604).

VIII. Paperwork Reduction Act

The proposed regulation contains no new or additional information collection activities and, therefore, no information collection request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*.

The information collection activities associated with the administrative requirements of assistance programs have already been approved under the provisions of the Paperwork Reduction Act at 44 U.S.C. 3501 *et seq* and have been assigned OMB control number 2030-0020.

The collection of information associated with the administrative requirements of assistance programs is estimated to have a public reporting burden averaging 29 hours per response and to require 3 hours per recordkeeper annually. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (PM-223Y); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 35

Environmental protection, Grant programs-environmental protection, Grant programs-Indians, Indians, Reporting and recordkeeping requirements.

Dated: November 19, 1993.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 35 as set forth below:

PART 35—STATE AND LOCAL ASSISTANCE

1. The authority citation for part 35 is revised to read as follows:

Authority: 42 U.S.C. 4368b.

2. Part 35 is amended by adding subpart Q consisting of §§ 35.10000 through 35.10035 to read as follows:

Subpart Q—General Assistance Grants to Indian Tribes

Sec.

35.10000 Authority
35.10005 Purpose and scope.
35.10010 Definitions.
35.10015 Eligible recipients.
35.10020 Eligible activities.
35.10025 Limitations.
35.10030 Grant management.
35.10035 Procurement under general assistance agreements.

Subpart Q—General Assistance Grants to Indian Tribes

§35.10000 Authority.

This subpart is issued under the Indian Environmental General Assistance Program Act of 1992 ("the Act"), 42 U.S.C. 4368b.

§35.10005 Purpose and scope.

(a) This subpart codifies requirements for administering general assistance grants to Indian tribal governments and intertribal consortia to build capacity to administer environmental regulatory programs on Indian lands.

(b) 40 CFR part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," establishes consistency and uniformity among Federal agencies in the administration of grants and cooperative agreements to State, local, and Indian Tribal governments. This subpart supplements the requirements contained in 40 CFR part 31, including its provisions for accounting, auditing, evaluating, and reviewing any programs or activities funded in whole or in part by an EPA grant.

§35.10010 Definitions.

(a) *Indian tribal government.* Any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*)), which is recognized by the United States Department of the Interior as eligible for the special services provided by the United States to Indians because of their status as Indians.

(b) *Intertribal Consortia or Intertribal Consortium.* A partnership between two or more Indian tribal governments authorized by the governing bodies of those tribes to apply for and receive assistance under this program.

(c) *General assistance.* Financial assistance provided under this program

to Indian tribal governments or to an intertribal consortia or consortium to cover the costs of planning, developing, and establishing the capability to implement environmental protection programs on Indian lands. General assistance may be provided through either a grant or a cooperative agreement in accordance with the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.*

§35.10015 Eligible recipients.

The following entities are eligible to receive financial assistance under this program:

(a) An Indian tribal government.

(b) An intertribal consortium or consortia.

§35.10020 Eligible activities.

(a) Activities eligible for funding under this program are those for planning, developing, and establishing capability to implement environmental protection programs, including solid and hazardous waste programs.

(b) Alaska Native village corporations and regional corporations are not eligible to receive general assistance for capacity-building to develop regulatory programs.

§35.10025 Limitations.

Financial assistance provided under this program is subject to the following terms and limitations:

(a) No initial grant provided under this program for a fiscal year shall be for an amount less than $75,000. A grant amendment may be for an amount less than $75,000.

(b) No single grant awarded under this program may be for an amount exceeding ten percent of total annual funds appropriated under section 11(h) of the Act.

(c) Awards made pursuant to this section shall remain available until expended within the term of the award. The term of an award may exceed one year, but may not exceed four years.

(d) No award under this program shall result in reduction of total EPA grants for environmental programs to the recipient. Receipt of funds under this program shall not preclude an eligible Indian tribal government or intertribal consortium from receiving individual program or project-specific grants or cooperative agreements. Funds provided under this program may be used to supplement other funds provided by EPA through individual program or project-specific grants or cooperative agreements.

§35.10030 Grant management.

Procedures for accounting, auditing, evaluating, and reviewing any programs or activities funded in whole or in part for a general assistance grant under this program shall be governed by regulations at 40 CFR part 31.

§35.10035 Procurement under general assistance agreements.

Procurement of goods or services by recipients funded under this program shall be governed by the following requirements:

(a) *Competition.* To the extent permitted by 25 U.S.C. 450e(b).

(1) The recipient must provide maximum open and free competition.

(2) Recipients must not unduly restrict or eliminate competition.

(b) *Documentation.* Recipients must document all procurement activities with written records that furnish reasons for decisions.

(c) *Cost.*

(1) The recipient must determine that all costs are reasonable.

(2) The recipient must comply with the cost and price analysis requirements in 40 CFR 31.36(f).

(d) *Debarment.* Recipients and contractors must not make any contract at any time to anyone who is on the "List of Parties Excluded from Federal Procurement or Nonprocurement Programs."

(e) *Recipient Responsibility.*

(1) The recipient is responsible for the settlement and satisfactory completion of all contractual and administrative issues arising out of contracts entered into under a grant.

(2) The recipient must ensure that all contractors perform in accordance with the terms and conditions of the contract.

(f) *Responsible contractors.* The recipient shall award contracts only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed contract.

(g) *Disadvantaged business enterprises.* The recipient shall comply with the "Small, Minority, Women's and Labor Surplus Area Business" requirements in 40 CFR 31.36(e).

(h) *Illegal contracts.* Recipients may not award cost-plus-percentage-of-cost or percentage-of-construction-cost contracts.

(i) *Contract provisions.* The recipient must include the following provisions in each contract:

(1) Statement of work,

(2) Schedule for performance;

(3) Due dates for deliverables;

(4) Total cost of the contract;

(5) Payment provisions; and

(6) The following clauses from 40 CFR 33.1030, "Model contract clauses":

(i) Supersession;

(ii) Privity of Contract;

(iii) Termination;

(iv) Remedies;

(v) Audit, Access to Records,

(vi) Covenant Against Contingent Fees;

(vii) Gratuities;

(viii) Responsibility of the Contractor; and

(ix) Final Payment.

(j) *Subcontracting.* A contractor must comply with the following provisions in its award of subcontracts (these requirements do not apply to subcontractors for the supply of materials to produce equipment, materials, and subcontracts for catalog, off-the-shelf, or manufactured items):

(1) Section 35.10035(b) Documentation;

(2) Section 35.10035(c) Cost;

(3) Section 35.10035(d) Debarment;

(4) Section 35.10035(f) Responsible contractor;

(5) Section 35.10035(g) Disadvantaged business enterprises;

(6) Section 35.10035(h) Illegal contracts; and

(7) Section 35.10035(i) Contract provisions.

(k) *Bid protests.* The recipient must establish a procedure for resolving protests which complies with the provisions of 40 CFR 31.36(b)(12).

(l) *Procurement.* Recipients shall not divide any procurements into smaller parts to get under any dollar limit.

(1) If the aggregate amount of the purchase is $1000 or less, the recipient may make the purchase as long as the recipient demonstrates that the price is reasonable.

(2) If the aggregate amount of the proposed contract is over $1000 but less than $25,000, the recipient must obtain and document oral or written price quotations from two or more qualified sources.

(3) If the aggregate amount of the proposed contract is $25,000 and over but less than $50,000, the recipient must:

(i) Solicit written bids/proposals from two or more sources who are willing and able to do the work;

(ii) Provide to potential sources a clear and accurate description of the work to be performed;

(iii) Provide the criteria the recipient will use to evaluate bids/proposals;

(iv) Objectively evaluate all bids/proposals submitted; and

(v) Notify all unsuccessful bidders/proposers.

(4) If the aggregate amount of the proposed contract is $50,000 or over, the recipient must follow the procurement rules in 40 CFR 31.36.

(m) *Non-competitive procurements.* The recipient shall comply with the non-competitive procurement requirements in 40 CFR 31.36(d)(4).

[FR Doc. 93-29506 Filed 12-1-93; 8:45 am]

BILLING CODE 4550-60-P

Region 9

III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

May 23, 1994

MEMORANDUM

SUBJECT: A Reminder: Assuring Compliance with EPA's Indian Policy

FROM: Deanna Wieman, Director
Office of External Affairs (E-4)

TO: Division Directors and Deputies
Branch and Section Chiefs

Several recent environmental situations on Indian Reservations in Region 9 have lead to questions regarding EPA's relationships with tribal goverments and State or local off-reservation agencies to resolve problems on-reservation lands. In that regard, I would like to refer you to the EPA Policy for the Administration of Environmental Programs on Indian Reservations (see Attachment I).

Principle number #1 of the Policy states: **"The Agency will recognize tribal governments as the primary parties for setting standards, making environmental policy decisions and managing programs for reservations, consistent with agency standards and regulations."** In light of this principle our role should be to look to and assist the Tribe to regulate activities on their lands and not to encourage a State or local agency (i.e. a Regional Water Quality Control Board, Air Pollution Control Districts, etc.) to determine what standards should be applied to an on-reservation facility. In this regard, EPA should always contact appropriate tribal officials when EPA is taking action (i.e. inspection, training, enforcement, etc.) on a reservation.

If a tribe has not demonstrated or does not demonstrate an interest in regulating activities on their lands, EPA is the agency responsible for assuring environmental compliance with the Federal statutes and regulations per Policy principle #8.

The agency recognizes that pollution does not recognize and contain itself within specified political boundaries, and therefore, strongly encourages **"cooperation between Tribal, State and local governments to resolve environmental problems of mutual concern"**, principle #6. Also this point is further discussed in the Agency's Concept Paper entitled, Federal, Tribal and State Roles in the Protection and Regulation of Reservation Environments. (See Attachment II.) While both this document and principle #6

stress that EPA will encourage tribal/state cooperation, they further state that **we will not support any one party to the jeopardy of the interest of the other.**

In conclusion, when dealing with environmental problems on Tribal lands within Region 9, our primary responsibilities are to:

1. Work with Tribal governments on a government-to-government basis. This includes, among other things, informing appropriate tribal officials when EPA is taking action on a reservation;

2. Assure compliance with Federal environmental laws and regulations on reservations where no approved tribal program exists;

3. Work with the Tribal governments interested in developing regulatory programs to regulate activities within their jurisdictional areas by building tribal capacity; and

4. Encourage Tribes, States and local governments to work together to resolve their differences and work together, as neighbors, on areas of mutual concern without choosing one position over another.

If we are to resolve environmental issues on tribal lands we **must** involve the tribal government in the solution. We cannot adequately or appropriately solve these problems merely working with the regulated entity and/or a governmental body (state/local) that has no jurisdiction on Tribal lands.

Any questions regarding the information within this memorandum or the attachments should be referred to Roccena Lawatch at 4-1602 or Greg Lind at 4-1320.

Attachments - 2

cc: Indian Workgroup Members

ENVIRONMENTAL PROTECTION AGENCY

ORDER

1000.2

AUG 10 1995

Regional Indian Programs Steering Committee

REGIONAL INDIAN PROGRAMS STEERING COMMITTEE

1. PURPOSE.

To establish a Regional Indian Programs Steering Committee. The Steering Committee will provide the direction and support for the Indian program in the Region. It will promote overall policies to ensure the Region's Tribal environmental programs and operations are strong, responsive to Tribal needs, and meet the principles of the EPA Indian Policy.

2. SCOPE.

The Steering Committee will provide strategic direction for Regional Indian policy. It will set Regional policies and priorities, identify potential issues, make decisions, and coordinate Indian program activities to increase effectiveness of Regional Indian programs. It will serve as a communication forum for the Tribal activities in the Region. The Committee will ensure that Tribal issues are elevated and Regional staff are educated about Tribes and the Indian Program.

Members will serve as the lead for Indian issues in their Division/Office, and will be responsible for ensuring that the Division/Office implements the Committee's decisions. Members will be the focal point for communication between the Division/Office and the Committee. They will be responsible for disseminating relevant information within their respective Division/Office, and bringing emerging issues to the Committee's attention.

3. OPERATION.

A. Structure and Membership

The Committee will consist of two representatives from each Division/Office, one representing staff and one representing management (Branch chief or above). Larger Divisions/Offices (HWMD, WMD, OPM) may appoint an additional representative. Each Division/Office will select an alternate to attend if members from a Division/Office cannot attend. The Senior Staff Lead for the Indian Program, along with the Senior Indian Program Officer and the Indian Coordinator, will represent the Indian Program Team. The Committee will be chaired by the Deputy Regional Administrator or the Senior Staff Lead.

Dist:

RC1, A-1, H-1, W-1, P-2, P-1, RA

Initiated by:

OEA

The Steering Committee, together with Tribal representatives from each state, make up the Regional Tribal Operations Committee.

Committee members will serve a renewable, two-year term. If members are unable to actively participate during their term, they will be asked to resign. New members will be chosen for their interest, experience with Tribal programs, and ability to represent their respective Division/Office.

As a working committee, the Steering Committee may appoint subcommittees as needed, to develop issues or accomplish specific tasks.

B. Meetings

Initially, the Committee will meet at least once a month, on the first Thursday of each month. Additional meetings will be scheduled as appropriate, and the Committee may change the frequency of the meetings as needed. In addition, Steering Committee members are expected to participate in the meetings of the Regional Tribal Operations Committee, which will be set by the full RTOC (both Tribal and EPA representatives).

Members should make every effort to attend meetings. If they are absent, they will abide by the decisions made in their absence. If they cannot attend, members have the responsibility of presenting their opinions through their alternates. Decisions will be reached by group consensus.

Steering Committee meetings will be open to all interested EPA staff. Visitors, however, will not be included in decisions requiring Committee consensus.

C. Administration

In general, the Indian Programs Team will staff the Committee, schedule and arrange Committee meetings, and distribute information, agenda and minutes to Committee members. Committee members and program staff will provide support for particular projects or tasks.

Each Division will establish an Indian Work Group or some other structure to facilitate information exchange and monitor implementation of Division Tribal programs. The Divisions/Offices will provide the Steering Committee and the Indian Programs Team with the list of those staff within the Division/Office responsible for Tribal activities, and will update those lists as necessary.

4. AMENDMENT AND REVIEW.

As the Committee's role and responsibilities evolve, it may change this document as necessary. This Order should be reviewed annually to ensure that it accurately reflects the purpose and procedures of the Committee.

Felicia Marcus
Regional Administrator

DRAFT

REGIONAL STRATEGY

for

ENVIRONMENTAL PROTECTION ON REGION 9 INDIAN LANDS

November 1995

OUTLINE

I. STRATEGIC DIRECTION

II. THEMES

III. ROLES AND RESPONSIBILITIES

IV. ACTION PLANS

a) Division Operating Plans
b) Committee Workplan

THE STRATEGIC DIRECTION

for

ENVIRONMENTAL PROTECTION ON REGION 9 INDIAN LANDS

The EPA Indian Policy commits the Region to work directly with our 140 Federally recognized tribes on a government-to-government basis to protect human health and the environment. Last year, the Administrator reaffirmed the Policy and mandated Regional actions to strengthen EPA's Tribal operations. To successfully implement the Indian Policy, there must be a strong, Region-wide commitment to fully incorporate the goals of the Policy into the ongoing planning and management of the Region. A Regional strategy is necessary to ensure the goals of the Policy are achieved, EPA programs are responsive to Tribal needs and the high priority expectations as directed by the Administrator and the Regional Administrator are reached. Three overall themes form the strategic direction.

First, the Region will increase coordinated grant and technical assistance and outreach to Tribes to support stronger environmental and human health programs on reservations, treating Tribes as unique customers and full partners. Region 9 will focus outreach and assist Tribes in planning and building environmental protection programs. The Region will communicate and collaborate with Tribes more regularly and more frequently to better respond to their needs. In addition, where Tribes require assistance to protect and regulate Tribe-specific environments, the Region will continue direct implementation and field assistance.

Second, the Region will place a new emphasis on education and training for EPA employees to increase the EPA awareness of the diversity and uniqueness of Indian cultures, society and governments. EPA will utilize American Indians to assist us in the education and training efforts.

Third, the Region will coordinate and work more cooperatively with other federal, state and local agencies to protect reservation environments and to help Tribes contend with local issues.

The Regional Indian Programs Committee has the responsibility to plan and monitor this strategy. Each Division, the Regional management and the Indian Programs Team have separate but integrated roles and responsibilities to ensure Tribal operations remain a high priority, visibility is increased and communication throughout the Region is effective for the benefit of all Tribes.

STRATEGIC THEMES

Comprehensive and well coordinated Region-wide action on each theme is essential to meet the challenge to strengthen Tribal environmental protection programs in the future. Each operating function in the Region that works directly or in a support role with Tribes, should consider and incorporate as appropriate each strategic theme into the planning and implemention of Regional Tribal programs.

THEME No.1: PROVIDE COORDINATED SUPPORT AND OUTREACH TO TRIBES

Grant support: focus and coordinate assistance using the multi-media approach commensurate with specific Tribal needs; if determined to be advantageous for an individual Tribe, use performance partnership grants; strive to reduce the funding disparity between states and tribes.

Direct implementation: increase dedicated resources.

Field assistance: increase travel budgets for more on-site presence; coordinate timing and purpose of trips in Indian Country, using trip reports and the Tribal Travel Tracking System; leverage IHS and circuit riders.

Tribal/EPA Agreements: use TEA's as a planning tool to define resources to meet Tribal needs and to clarify our relationship with specfic Tribes; continue and expand TEA development with interested Tribes.

Outreach: target efforts to communicate information to Tribes about EPA program authorities and jurisdiction; improve and expand outreach materials; coordinate outreach efforts with all travel to reservations.

Regional Tribal Operations Committee: adhere to the mission and goals of the charter, looking for new opportunities for Tribal representatives to help EPA coordinate and outreach more effectively and efficiently; give RTOC participation a high priority; improve communication within the Region.

Annual Tribal meetings: support and participate to facilitate information exchange with our Tribes and to become better aware on Tribal issues.

THEME No.2: INCREASE EPA AWARENESS OF INDIAN CULTURE, ISSUES, NEEDS

Training and education: organize and expand training opportunities for all EPA employees; support and encourage attendance at training classes; increase support for the American Indian library.

Tribal Information System: support and maintain the data system; complete and update data input to data base; use Tribal profiles; increase Regional coordination and communication of Tribe specific issues.

Recruitment: target American Indians into the workforce; detail a Tribal representative to the senior leadership team.

Division work groups: support Indian work groups in all Divisions to facilitate information exchange.

THEME No.3: COORDINATE WITH OTHER AGENCIES IN INDIAN COUNTRY

Federal agencies: work to improve and expand relationships, especially with BIA.

Other agencies: coordinate and cooperate with state and local agencies dealing with Tribes to protect reservation environments; educate agencies on EPA Indian Policy.

EPA Headquarters and Regions: influence and support Agency policy with EPA Regions and Headquarters; actively participate on the National TOC; actively participate on the National Indian Work Group and other media work groups affecting Indian policies; fulfill Lead Region responsibility.

ROLES AND RESPONSIBILITIES

REGIONAL ADMINISTRATOR & SENIOR LEADERSHIP TEAM

- o Define and communicate Regional Strategic Direction
- o Affirm and assure implementation of Regional Strategic Plan
- o Allocate priority resources to Indian Programs
- o Participate on Regional Tribal Operations Committee (RTOC)

REGIONAL INDIAN PROGRAMS COMMITTEE

- o Carry out mission of the Charter
- o Develop and recommend Regional Strategic Plan and Theme Workplans
  - Theme No.1: Support and outreach to Tribes
  - Theme No.2: EPA awareness of Indian culture, issues & needs
  - Theme No.3: Interagency coordination

INDIAN PROGRAMS TEAM

- o Manage Indian General Assistance Program grants
- o Coordinate Tribal issues, needs & Tribal/EPA Agreements
- o Support RTOC and RIPC
- o Liaison with Regions, AIEO, other agencies and organizations
- o Ensures cross-media integration of Tribal operations
- o Manage Tribal Information System

DIVISIONS AND INDIAN WORK GROUPS

- o Plan and implement Division Operating Plans
- o Carry out direct implementation regulatory responsibilities
  (permits, inspections, enforcement, technical assistance)
- o Build Tribal environmental program capacity
  (program grants, technical & compliance assistance, outreach)
- o Support program authorization
- o Maintain program specific data in Tribal Information System

EPA Region 9
Indian Programs Steering Committee

CHARTER

Mission

The Steering Committee will provide the direction and support for the Indian program in the Region. It will promote overall policies to ensure the Region's Tribal environmental programs and operations are strong, responsive to Tribal needs, and meet the principles of the EPA Indian Policy.

Scope

The Steering Committee will provide strategic direction for Regional Indian policy. It will set Regional policies and priorities, identify potential issues, make decisions, and coordinate Indian program activities to increase effectiveness of Regional Indian programs. It will serve as a communication forum for the Tribal activities in the Region. The Committee will ensure that that Tribal issues are elevated and Regional staff are educated about Tribes and the Indian Program.

Members will serve as the lead for Indian issues in their Division/Office, and will be responsible for ensuring that the Division/Office implements the Committee's decisions. They will be the focal point for communication between the Division/Office and the Committee. They will be responsible for disseminating relevant information within their respective Division/Office, and bringing emerging issues to the Committee's attention.

Structure and Membership

The Committee will consist of two representatives from each Division/Office, one representing staff and one representing management (Branch chief or above). Larger Divisions/Offices (HWMD, WMD, OPM) may appoint an additional representative. Each Division/Office will select an alternate to attend if members from a Division/Office cannot attend. The Senior Staff Lead for the Indian Program, along with the Senior Indian Program Officer and the Indian Coordinator, will represent the Indian Program Team. The Committee will be chaired by the Deputy Regional Administrator or the Senior Staff Lead.

The Steering Committee, together with Tribal representatives from each state, make up the Regional Tribal Standing Committee.

Committee members will serve a renewable, two-year term. If members are unable to actively participate during their term, they will be asked to resign. New members will be chosen for their interest, experience with Tribal programs, and ability to represent their respective Division/Office.

As a working committee, the Steering Committee may appoint subcommittees as needed, to develop issues or accomplish specific tasks.

Meetings

Initially, the Committee will meet at least once a month, on the first Thursday of each month. Additional meetings will be scheduled as appropriate, and the Committee may change the frequency of the meetings as needed. In addition, Steering Committee members are expected to participate in the Standing Committee meetings, which will be set by the full Regional Tribal Standing Committee.

Members should make every effort to attend meetings. If they are absent, they will abide by the decisions made in their absence. If they cannot attend, members have the responsibility of presenting their opinions through their alternates. Decisions will be reached by group consensus.

Steering Committee meetings will be open to all interested EPA staff. Visitors, however, will not be included in decisions requiring Committee consensus.

Administration

In general, the Indian Programs Team will staff the Committee, schedule and arrange Committee meetings, and distribute information, agenda and minutes to Committee members. Committee members and program staff will provide support for particular projects or tasks.

Each Division will establish an Indian Work Group or some other structure to facilitate information exchange and monitor implementation of Division Tribal programs. The Divisions/Offices will provide the Steering Committee and the Indian Programs Team with the list of those staff within the Division/Office responsible for Tribal activities, and will update those lists as necessary.

Charter Amendment and Review

As the Committee's role and responsibilities evolve, it may change this document as necessary. This Charter should be reviewed annually to ensure that it accurately reflects the purpose and procedures of the Committee.

May, 1995

REGION 9
REGIONAL TRIBAL OPERATIONS COMMITTEE
CHARTER
July 28, 1995

The Regional Tribal Operations Committee (RTOC) is the Regional counterpart to the National Tribal Operations Committee (NTOC). The RTOC does not replace direct Tribal to EPA relationships. The RTOC recognizes and respects the existing Tribal jurisdiction, cultural, political and social continuity of Tribes.

MISSION

The RTOC's mission is to:

- Assist EPA in meeting its trust responsibility to Tribes;
- Provide support for the Indian program in the Region;
- Strengthen Tribal environmental and public health programs;
- Enhance responsiveness to Tribal needs;
- Assist with the communication and information exchange between Tribes, the NTOC and EPA.

GOALS

The RTOC's goals are to:

Enhance government-to-government relationships between EPA and all Tribes.

Promote and strengthen the inherent ability and continuing efforts of Tribes to manage programs to provide environmental and public health protection.

Assist EPA in meeting the principles of the EPA Indian Policy of 1984.[1]

Foster and encourage a partnership between EPA and Tribal governments, and build relationships to improve environmental and public health protection on Indian lands. It will demonstrate leadership in federal agency and Tribal government relations. It will provide a forum to:

- develop strategies and recommendations for Regional resources and operating policies, based on Tribal and EPA experiences
- foster better understanding and bridge gaps between EPA and Tribal government cultures.

[1] EPA Indian Policy of 1984, as reaffirmed by EPA Administrator Browner in 1994.

SCOPE

The RTOC will help further the development of government-to-government relationships between EPA and all Tribes in the Region. Within that scope, the RTOC will have a role in three key areas:

Policy and Management of EPA Indian Programs

The RTOC will review and make recommendations on the development of Regional strategies for all Indian program activities. It will advise Regional policies and priorities and make recommendations on the deployment of Regional resources for Indian program activities.[2] It also will provide input on how national budget and resources should be allocated.

The RTOC will review and make recommendations on Regional program activities that impact the environment of Indian lands, including Agency initiatives that may impact Region 9 Indian program operations.

The RTOC will review and make recommendations on the development, modification and implementation of Agency policies.

The RTOC will help identify processes for assessing the environmental problems and needs of Tribes, and filling information gaps.[3]

The RTOC will identify and promote opportunities for the training, education, recruitment, and hiring of American Indians and Alaskan natives in careers of environmental and public health protection.[4]

Coordination/Communication between Tribes, EPA, and other Agencies

The RTOC will serve as a communication forum for Tribal activities. It will work to ensure effective, two-way communication between EPA and the Tribes in the Region, and facilitate and coordinate communication with other federal agencies. It will establish a communication network among Tribes to disseminate information and ideas and solicit feedback. It also will advise Tribes how to contact EPA directly, and work to ensure that there is an environmental presence in each Tribe.

As a coordinating body, the RTOC will provide a mechanism to identify issues, elevate them to the appropriate level, and coordinate program activities to increase effectiveness. The RTOC will provide a direct linkage to the NTOC, in order to facilitate effective communication between the Tribes, Region 9, the NTOC, and the American Indian Environmental Office.

The RTOC will represent the Region in the NTOC selection process with the American Indian Environmental Office (AIEO). RTOC Tribal representatives shall be given preference to serve as alternates to the NTOC meetings.

---

[2] The RTOC as a body will not participate in individual application review and awards of EPA grants or contracts.

[3] The RTOC also supports increasing the number of EPA trips to Tribal lands to identify Tribal needs.

[4] [illegible] isses opportunities in Tribal and federal agencies.

SCOPE - continued

Education

The RTOC will work to ensure that Regional staff are educated about Tribes and the Indian Programs. It will help raise awareness of the diversity among Tribes and promote a better understanding of jurisdiction and sovereignty. It also will work to ensure that Tribes are informed about EPA activities and available resources.

STRUCTURE AND MEMBERSHIP

EPA representatives to the RTOC are identified by the EPA Indian Programs Steering Committee. Tribal representatives will be determined by government-to-government communication with all Tribes in the Region. Tribal representation would be selected by geographic area, as recommended by the RTOC and agreed to by the Tribal governments. The NTOC representatives from Region 9 will also be members of the RTOC. The actual number of Tribal and EPA representatives will be a joint decision by the RTOC. The RTOC is co-chaired by a Tribal representative and an EPA representative.

If a RTOC member cannot attend a meeting, they will send an alternate. Alternates are to be selected by the RTOC member, within their respective tribal or agency protocols.

RTOC members serve a renewable two-year term. This process will be revisited, if necessary, to assure adequate continuity of membership. If RTOC members are unable to actively participate during their term, they will be asked to reassess their ability to be active members. The RTOC will notify all parties involved of changes in membership.

As a working committee, the RTOC may appoint subcommittees as needed, to develop issues or accomplish specific tasks.

MEETINGS

At a minimum, the RTOC will meet four times a year. Additional meetings will be scheduled if necessary, contingent upon available funds. Meetings will be conducted by the co-chairs, including facilitation and management of the agenda.

RTOC members should make every effort to attend meetings. If they are absent, they will abide by the decisions made in their absence. If they cannot attend, members have the responsibility of presenting their opinions through their alternates or other means (e.g. letter). Recommendations and actions will be made by RTOC members and will reflect the spirit of consensus to the extent possible.

Meetings will be open to EPA employees, and all Tribal members and staff. Tribal Leaders are invited to attend. Persons other than EPA staff or Tribal members and staff may be invited to attend at the discretion of the RTOC.

ADMINISTRATION

EPA will staff the RTOC. EPA will arrange RTOC meetings; distribute information, agenda & minutes to members; provide support for particular projects or tasks. Tribal representatives on the RTOC will be compensated for their participation to the fullest extent possible.

CHARTER AMENDMENT AND REVIEW

As the RTOC's role and responsibilities evolve, it may change this document as necessary. This Charter will be reviewed at least annually.

TRIBAL EPA AGREEMENTS (TEAs)

- ***EPA ADMINISTRATOR, CAROL BROWNER MANDATED THAT THE AGENCY NEGOTIATE WORKPLANS (NOW REFERRED TO AS AGREEMENTS) WITH ALL TRIBES IN HER JULY 1994 MEMO.***

- ***REGION 9 TARGETED THE 15 INDIVIDUAL TRIBES WHO HAD GENERAL ASSISTANCE GRANTS AT THE BEGINNING OF FY95 AS THE FIRST TRIBES WITH WHOM WE WOULD PURSUE THE OPPORTUNITY OF DEVELOPING TEAs.***

  THE REGION 9 PROJECT OFFICERS FOR THE 15 GENERAL ASSISTANCE RECIPIENTS INITIATED DISCUSSIONS WITH THOSE TRIBES TO PROPOSE THE DEVELOPMENT OF TRIBAL EPA AGREEMENTS.

- ***THE AGREEMENTS ARE TO BE USED AS A "PLANNING TOOL" FOR THE TRIBE AND EPA AND TO IDENTIFY THE TRIBAL NEEDS AND EXPECTATIONS FOR ENVIRONMENTAL PROTECTION. THE AGREEMENT IS NOT INTENDED TO BE LEGALLY BINDING ON EITHER PARTY NOR IS IT INTENDED TO BE AN EXPLICIT COMMITMENT FOR ACCOMPLISHMENTS OR RESOURCES.***

  TEAs WILL BE SIGNED BY THE REGIONAL ADMINISTRATOR AND THE TRIBAL LEADER.

- ***IN FY96 THE REGION WILL BEGIN DISCUSSIONS WITH APPROXIMATELY 40-60 TRIBES AND DRAFT TEAs WILL BE DEVELOPED WITH RECEPTIVE TRIBES.***

  PROGRAM STAFF WHO ARE CONDUCTING PROGRAM ACTIVITIES (DIRECT IMPLEMENTATION, GRANT ACTIVITY) MAY BE CALLED UPON TO PARTICIPATE IN THE TEA PROCESS (ESP. IN FY96 AND BEYOND).

- ***THE AMERICAN INDIAN ENVIRONMENTAL OFFICE (EPA-HQS) PREPARED A <u>TEMPLATE FOR EPA/TRIBAL ENVIRONMENTAL AGREEMENTS</u>, DATED MARCH 17, 1995 AS GUIDANCE. REGION 9 HAS CONVERTED THE TEMPLATE INTO SAMPLE TEA LANGUAGE AND IS AVAILABLE TO INTERESTED TRIBES ON COMPUTER DISK.***

- ***THE AGREEMENTS WILL BE TRIBE SPECIFIC AND CAN BE CRAFTED TO MEET THE NEEDS OF EACH TRIBE.***

- ***THE TEMPLATE AND REGION'S SAMPLE TEA IS ONLY ONE APPROACH. TRIBES WISHING FOR A SIMPLER LESS FORMAL DOCUMENT CAN PURSUE A DIFFERENT APPROACH (I.E. A LETTER WHICH SPELLS OUT THE COMMUNICATION LINKS BETWEEN EPA AND THE TRIBE AND HIGHLIGHTS THE TRIBE'S ENVIRONMENTAL NEEDS, INCLUDING FUNDING.)***

DRAFT

[SAMPLE LANGUAGE FOR A TEA]

TRIBAL/EPA AGREEMENT

BETWEEN

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 9
SAN FRANCISCO, CA

AND

(NAME OF TRIBE)
(LOCATION OF TRIBE, CITY AND STATE)

I. PARTIES

This TRIBAL/EPA AGREEMENT (hereinafter referred to as "Agreement" or "TEA") between the name of tribe (hereinafter referred to as "Tribe") and the U.S. Environmental Protection Agency, Region 9 (hereinafter referred to as "EPA") concerns the protection of human health and the environment on the name of reservation/rancheria.

II. STATEMENT OF PURPOSE

It is the purpose of this Agreement to promote strong environmental protection on Tribal lands; promote a government-to-government relationship in recognition of Tribal sovereignty in environmental protection of treaty resources; provide an understanding of the Tribe's individual and unique environmental needs and identify areas under which the Tribe intends to pursue program responsibilities; cooperatively develop, implement and maintain comprehensive Tribal environmental programs; build environmental capacity in order for the Tribe to operate programs for the long-term; identify areas where EPA needs to plan for and carry out direct implementation; include the Tribe in Agency planning while addressing specific Tribal problems; build equal partnerships and work collectively as the Tribe establishes its priorities for environmental protection; and enhance and foster communications between EPA and the Tribe.

III. ROLES AND RESPONSIBILITIES

The above mentioned parties agree to work in partnership in the development of and implementation of programs to protect human health and the environment on name of reservation/rancheria.

EPA:

EPA maintains responsibility for implementing all federal environmental programs, until such time as the Tribe is granted approval/authorization/delegation/primacy to implement such programs in lieu of EPA. EPA shall perform its duties in accordance with the principles of this Agreement, all the principles included in the Agency's Indian Policy and Federal environmental laws and their implementing regulations and with respect to existing Tribal laws.

EPA will make all efforts to provide the tribe with timely advice on available grants and other sources of available funding, training and on-going meetings that will affect the Tribe.

EPA recognizes that there are Tribal cultural concerns such as subsistence needs and traditional uses of natural resources that require protection beyond the scope of our Federal authorities. To the degree that EPA can address these concerns when making agency decisions on implementing federal environmental programs, it will do so. EPA will also support the development of Tribal environmental programs to protect these resources, where the Federal programs may not.

THE TRIBE:

The Tribe will identify areas where EPA will need to plan for and carry out direct implementation. In addition the Tribe will identify for EPA their needs (resources, technical assistance, training) to build or maintain environmental capacity for environmental protection programs the Tribe wishes to operate over the long-term.

BOTH:

The parties to this Agreement recognizes that communication is a key principle to successfully address environmental issues of mutual concern. And as such, both parties will aspire to communication which is open, clear, direct, timely and between persons authorized and responsible for addressing those concerns.

The tribe and EPA recognize that accountability within each other's organization is critical to the successful implementation of this Agreement. Therefore, the Chairperson/President/Governor and/or his/her designee and the Regional Administrator will direct appropriate staff to follow the principles and guidelines of the Agreement.

In order to successfully implement this Agreement, the tribe and the EPA will ensure that its organization, decision-making process and relevant personnel are known by the parties to the Agreement.

IV. TRIBE/EPA ACTION PLAN

Include information regarding the following in this section:

1. ENVIRONMENTAL PROGRAM AREAS WITH TRIBAL INVOLVEMENT (grants, joint implementation with EPA, inspections only, etc.)

2. TRIBAL PROGRAM ASSUMPTION (list program areas, timeline etc)

3. FUNDING NEEDS (identified by program, time period)

4. FEDERAL DIRECT IMPLEMENTATION (areas where EPA maintains sole responsibility)

5. EPA OUTREACH AND TRAINING (identify subject matter)

6. IDENTIFY OTHER TRIBAL NEEDS (infrastructure, accountability)

7. OTHER BENEFICIAL INFORMATION MIGHT INCLUDE:

   A. Describe Tribe's goals objectives and desire outcomes.

   B. Identify short-term resource needs (next 2 years).

   C. Identify long-term goals/resource needs (through next 3-4 years, if possible).

   D. Provide methods for implementing the program(s)--including enforcement and for treaty resources of the reservation. This would include an identification of contributions made by EPA, Tribe and other Federal agencies. Areas in which the tribe may want to pursue working with the State or with a Tribal consortia may be included.

E. List specific Tribal priorities in addition to general program assumption, such a developing Tribal codes, carrying out monitoring, developing a profile of Tribal resources, etc.

F. Define the Tribe's cultural, resource and technical expertise, including current staffing and future staffing needs.

G. Provide a method for monitoring progress.

V. TERMS OF THE AGREEMENT

In order to implement the purpose, roles and responsibilities and the action plan of this Agreement set forth in Sections II, III and IV above, the parties agree to the following terms:

Cooperation: Each party shall cooperate to the greatest extent possible with the other party in fulfilling the purpose of this Agreement.

Timely Notification: Each party shall act in a timely manner to provide information and documentation for planned and proposed actions (i.e. funding requests, program assumption, on-site inspections, enforcement actions, technical assistance, training, program approvals) of interest to the other party of this Agreement. When the proposed action of a party may directly affect the program(s) or interest of the other party, the proponent of such action shall solicit input from the other party.

Funding: EPA shall make every effort to assure timely processing of funding requests, and adequate program development and implementation funds to the extent permitted by available resources, applicable laws and Tribe's eligibility.

Compliance: EPA will have responsibility for enforcing Federal environmental laws and regulations. The Tribe will have responsibility for assuring that any facilities or systems for which the Tribe is owner and/or operator are in compliance with Federal environmental laws and regulations.

Review: EPA and the Tribe will review progress in the implementation of this Agreement annually.

Revisions/Amendments: This Agreement may be amended at any time. Amendments shall be made by supplemental Agreements executed in writing by both parties to this Agreement.

Written Communications: Written communications pursuant to the provisions of this Agreement shall be delivered or mailed as follows:

1. TO THE EPA: Regional Administrator, EPA Region 9
   75 Hawthorne Street
   San Francisco, CA 94105-3901

2. TO THE TRIBE:

VI. DURATION AND TERMINATION OF AGREEMENT

This Agreement shall continue in effect until ether terminated by joint agreement of the parties, or any party terminates its participation in this Agreement. Written notice of termination must be given to the other party of the Agreement in advance of the termination. Such termination shall not relieve any party of responsibilities otherwise proscribed by law or regulation.

VII. EXECUTION

This Agreement shall be effective upon date of execution by both parties.

(Tribal leader name and Title) (Tribe name)	Date
Felicia Marcus Regional Administrator, EPA Region 9	Date

OVERVIEW: REGION 9 INDIAN PROGRAM

EPA REGION 9'S INDIAN TRIBES

There are 139 Federally recognized Indian tribal entities within the states of Arizona, California and Nevada. This represents 25 percent of the Tribes nationwide, and 22 percent of the national Tribal population, and 40 percent of the national Tribal land area.

Land Bases and Economics

Arizona - Individual Tribal lands range in size from 85 acres to 10 million plus acres. Approximately 27 percent of the land in Arizona is Tribally held. Tribal land topographies in Arizona range from timbered forests, arid deserts to rocky mesas. Several of the Arizona tribes have lands which include lakes and rivers. Groundwater is the primary source of water within the State. The economic bases of the tribes include industry, mining, agriculture and recreation.

California - Individual tribal lands range in size from less than one acre to 93,000 acres. Tribal land topographies in California include coastal, mountainous, timbered forests, deserts and valleys. Several tribes in California have lands which include surface waters of rivers, streams, ocean and lakes. Within California, both surface and groundwater are sources of water for the tribes. The economic bases of the tribes include agriculture and recreation.

Nevada - Individual Tribal lands range in size from less than one acre to 450,000 acres. Tribal land topographies in Nevada range from arid desert to sparsely vegetated grazing lands. Although several of the Nevada tribes have lands with surface waters such as lakes and rivers, the primary source of water is groundwater. The economic bases of the tribes include agriculture and recreation.

ENVIRONMENTAL CONCERNS FACING TRIBES

Tribes face the full range of environmental concerns, including:

- Air quality due to particulate matter and fugitive dust, pesticide aerial spray, as well as off-reservation sources.
- Water quality contamination from mining, pesticide use, inadequate wastewater treatment or poorly maintained waste disposal systems.
- Drinking water problems from inadequate sources and insufficient infrastructure for operation and maintenance of systems.
- Solid waste disposal problems associated with open dumping and open burning.
- Soil and groundwater contamination from leaking underground storage tanks.
- Problems associated with inappropriate disposal of hazardous waste through illegal and indiscriminate dumping of waste.

As of February 1, 1995 there are 140 Federally recognized tribes in Region 9. Other statistics are not available.

EPA'S INDIAN PROGRAM

In 1984, EPA issued an Indian Policy in which it committed to working with Indian Tribes in a government-to-government relationship, recognizing that tribal governments are the primary parties for setting standards, making environmental policy decisions and managing environmental programs on reservations. The Agency further committed to encourage and assist Indian tribes in assuming regulatory and program management responsibilities.

Until such time as tribes develop environmental regulatory programs, EPA has responsibility for assuring that activities conducted on Indian lands are in compliance with the Federal environmental laws and regulations.

The Indian Program Team in the Office of External Affairs, coordinates the Agency's environmental activities pertaining to Tribal lands within EPA Region 9, and manage the multi-media General Assistance grant program (GAP), which supports Tribal environmental programs. Region 9 currently is serving as Lead Region for Tribal issues.

Environmental program offices within EPA Region 9 maintain responsibility for all activities related to EPA's implementation of the Federal environmental programs (i.e., permitting, inspections and enforcement), project officer responsibilities for categorical program grants. and the approval of tribal programs for authorization, delegation and primacy.

PROFILE OF TRIBES, BY REGION[1]

EPA Region	# of Tribes	Tribal Population	% of National Population	Tribal Land Area	% of National Tribal Land Area
1	8	6,111	0.6	167,164	0.3
2	7	15,548	1.6	118,199	0.2
3	0	0	0	0	0
4	6	18,914	1.9	231,082	0.4
5	24	56,964	5.7	1,271,604	2.4
6	63	373,639	37.3	8,984,667	16.6
7	10	8,742	0.9	101,906	0.2
8	27	141,615	14.1	16,028,487	29.6
9	139	217,970	21.8	21,899,972	40.5
10	264	161,938	16.2	5,268,841	9.7

[1] Based on data gathered from the EPA Regional Coordinators in 1994. Additional tribes were added in 1995.

FEDERALLY RECOGlNZED CALIFORNIA TRIBAL ENTITIES: 101
(Per February 16, 1995 Federal Register)

Reservations: 48

Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation

Augustine Band of Cahuilla Mission Indians of the Augustine Reservation

Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation

Bridgeport Paiute Indian Colony

Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation

Cahuilla Band of Mission Indians of the Cahuilla Reservation

Campo Band of Diegueno Mission Indians of the Campo Indian Reservation

Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation

Viejas (Brown Long) Group of Capitan Grande of Mission Indians of the Viejas Reservation

Chemehuevi Indian Tribe of the Chemehuevi Reservation

Coyote Valley Band of Pomo Indians

Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation

Death Valley Timbi-Sha Shoshone Band

Fort Bidwell Indian Community of Paiute Indians of the Fort Bidwell Reservation

Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation

Hoopa Valley Tribe of the Hoopa Valley Reservation

Hopland Band of Pomo Indians of the Hopland Reservation

Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation

Ione Band of Miwok Indians

Jamul Indian Village

Karuk Tribe of California

La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation

La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation

Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation

Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation

Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation

Morongo Band of Cahuilla Mission Indians of the Morongo Reservation

Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony

Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation

Pala Band of Luiseno Mission Indians of the Pala Reservation

Paskenta Band of Nomlaki Indians

Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation

Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation

Ramona Band or Village of Cahuilla Mission Indians

Rincon Band of Luiseno Mission Indians of the Rincon Reservation

Round Valley Indian Tribes of the Round Valley Reservation (formerly known as the Covelo Indian Community)

San Manual Band of Serrano Mission Indians of the San Manual Reservation

San Pasqual Band of Diegueno Mission Indians

Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation

Santa Ynez Band of the Chumash Mission Indians of the Santa Ynez Reservation

Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation

Soboba Band of Luiseno Mission Indians of the Soboba Reservation

Sycuan Band of Diegueno Mission Indians

Torres-Martinez Band of Cahuilla Mission Indians

Tulé River Indian Tribe of the Tule River Reservation

Twenty-Nine Palms Band of Luiseno Mission Indians

Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation

Yurok Tribe of the Yurok Reservation

Rancherias: 53

Alturas Indian Rancheria of Pit River Indians

Bear River Band of the Rohnerville Rancheria

Berry Creek Rancheria of Maidu Indians

Big Lagoon Rancheria of Smith River Indians

Big Sandy Rancheria of Mono Indians

Big Valley Rancheria of Pomo and Pit River Indians

Blue Lake Rancheria

Buena Vista Rancheria of Me-Wuk Indians

Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria

Cahto Indian Tribe of the Laytonville Rancheria

Cedarville Rancheria of Northern Paiute Indians

Cher-Ae Heights Indian Community of the Trinidad Rancheria

Chicken Ranch Rancheria

Cloverdale Rancheria of Pomo Indians

Coast Indian Community of Yurok Indians of the Resighini Rancheria

Cold Springs Rancheria of Mono Indians

Cortina Indian Rancheria of Wintun Indians

Dry Creek Rancheria of Pomo Indians

Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria

Elk Valley Rancheria

Enterprise Rancheria of Maidu Indians

Greenville Rancheria of Maidu Indians

Grindstone Indian Rancheria of Wintun-Wailaki Indians

Guidiville Rancheria

Jackson Rancheria of Me-Wuk Indians

Kashia Band of Pomo Indians of the Stewarts Point Rancheria

Lytton Rancheria

Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria

Mechoopda Indian Tribe of Chico Rancheria

Middletown Rancheria of Pomo Indians

Mooretown Rancheria of Maidu Indians

Northfork Rancheria of Mono Indians

Picayune Rancheria of Chukchansi Indians

Pinoleville Rancheria of Pomo Indians

Pit River Tribe of California
- Big Bend Rancheria
- Lookout Rancheria
- Montgomery Creek Rancheria
- Roaring Creek Rancheria
- XL Ranch

Potter Valley Rancheria of Pomo Indians

Quartz Valley Indian Community of the Quartz Valley Reservation

Redding Rancheria of Pomo Indians

Redwood Valley Rancheria of Pomo Indians

Robinson Rancheria of Pomo Indians

Rumsey Indian Rancheria of Wintun Indians

Santa Rosa Indian Community of the Santa Rosa Rancheria

Scotts Valley Band of Pomo Indians

Sheep Ranch Rancheria of Me-Wuk Indians

Sherwood Valley Rancheria of Pomo Indians

Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract)

Smith River Rancheria

Susanville Indian Rancheria of Paiute, Maidu, Pit River and Washoe Indians

Table Bluff Rancheria of Wiyot Indians

Table Mountain Rancheria

Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria

United Auburn Indian Community of the Auburn Rancheria

Upper Lake Band of Pomo Indians of Upper Lake Rancheria

INDIAN TRUST LAND AND UNTERMINATED RANCHERIAS

INDIAN TRUST LAND ○

1. Agua Caliente
2. Alturas
3. Augustine
4. Barona
5. Benton – Paiute
6. Berry Creek
7. Big Bend
8. Big Lagoon
9. Big Pine
10. Big Sandy
11. Bishop
12. Bridgeport
13. Cabazon
14. Cahuilla
15. Campo
16. Capitan Grande
17. Cedarville
18. Chemehuevi
19. Cold Springs
20. Colorado River
21. Colusa
22. Cortina
23. Coyote Valley
24. Cuyapaipe
25. Dry Creek
26. Enterprise
27. Fort Bidwell
28. Fort Independence
29. Fort Mojave
30. Quechan
31. Grindstone Creek
32. Hoopa Extension
33. Hoopa Valley
34. Hopland
35. Inaja – Cosmit
36. Jackson
37. Jamul
38. Karuk Tribe (Yreka, Happy Camp & Orleans)
39. La Jolla
40. La Posta
41. Laytonville
42. Likely
43. Lone Pine
44. Lookout
45. Los Coyotes
46. Manchester-Pt. Arena
47. Manzanita
48. Mesa Grande
49. Middletown
50. Montgomery Creek
51. Morongo
52. Pala
53. Pauma & Yuima
54. Pechanga
55. Pit River
56. Ramona
57. Resighini
58. Rincon
59. Roaring Creek
60. Robinson
61. Round Valley
62. Rumsey
63. San Manuel
64. San Pasqual
65. Santa Rosa Rancheria
66. Santa Rosa Reservation
67. Santa Ynez
68. Santa Ysabel
69. Sherwood Valley
70. Shingle Springs
71. Sobobo
72. Stewarts Point
73. Sulphur Bank
74. Susanville
75. Sycuan
76. Table Mountain
77. Torres-Martinez
78. Trinidad
79. Tule River
80. Tuolumne
81. Twenty-Nine Palms
82. Upper Lake
83. Viejas
84. Washoe Tribe of Nevada – California
85. X-L Ranch

UNTERMINATED RANCHERIAS □

87. Big Valley
88. Blue Lake
89. Buena Vista
90. Chicken Ranch
91. Cloverdale
92. Crescent City (Elk Valley)
93. Greenville
94. Mooretown
95. North Fork
96. Picayune
97. Pinoleville
98. Potter Valley
99. Quartz Valley
100. Redding
101. Redwood Valley
102. Rohnerville
103. Smith River
104. Table Bluff

NON TRUST LAND INDIAN RESIDENCE ☆

1. Camp Antelope
2. D-D University
3. Red Wind Foundation
4. Ya-Ka-Ama
5. Death Valley (Timbisha/Shoshone – Federally Recognized)

FEDERALLY RECOGNIZED ARIZONA TRIBAL ENTITIES: 21
(Per February 16, 1995 Federal Register)

Reservations

Ak Chin Indian Community of Papago Indians of the Maricopa, Ak Chin Reservation

Cocopah Tribe of Arizona

Colorado River Indian Tribes of the Colorado River Indian Reservation

Fort McDowell Mojave-Apache Indian Community of the Fort McDowell Indian Reservation

Fort Mojave Indian Tribe

Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation

Havasupai Tribe of the Havasupai Reservation

Hopi Tribe

Hualapai Tribe of the Hualapai Indian Reservation

Kaibab Band of Paiute Indians of the Kaibab Indian Reservation

Navajo Nation (AZ, NM and UT)

Pascua Yaqui Tribe

Quechan Tribe of the Fort Yuma Indian Reservation (CA Tribe considered AZ Tribe)

Salt River Pima-Maricopa Indian Community of the Salt River Reservation

San Carlos Apache Tribe of the San Carlos Reservation

San Juan Southern Paiute Tribe

Tohono O'odham Nation (formerly known as the Papago Tribe incl. Sells, Gila Bend and San Xavier Reservations & Florence Village)

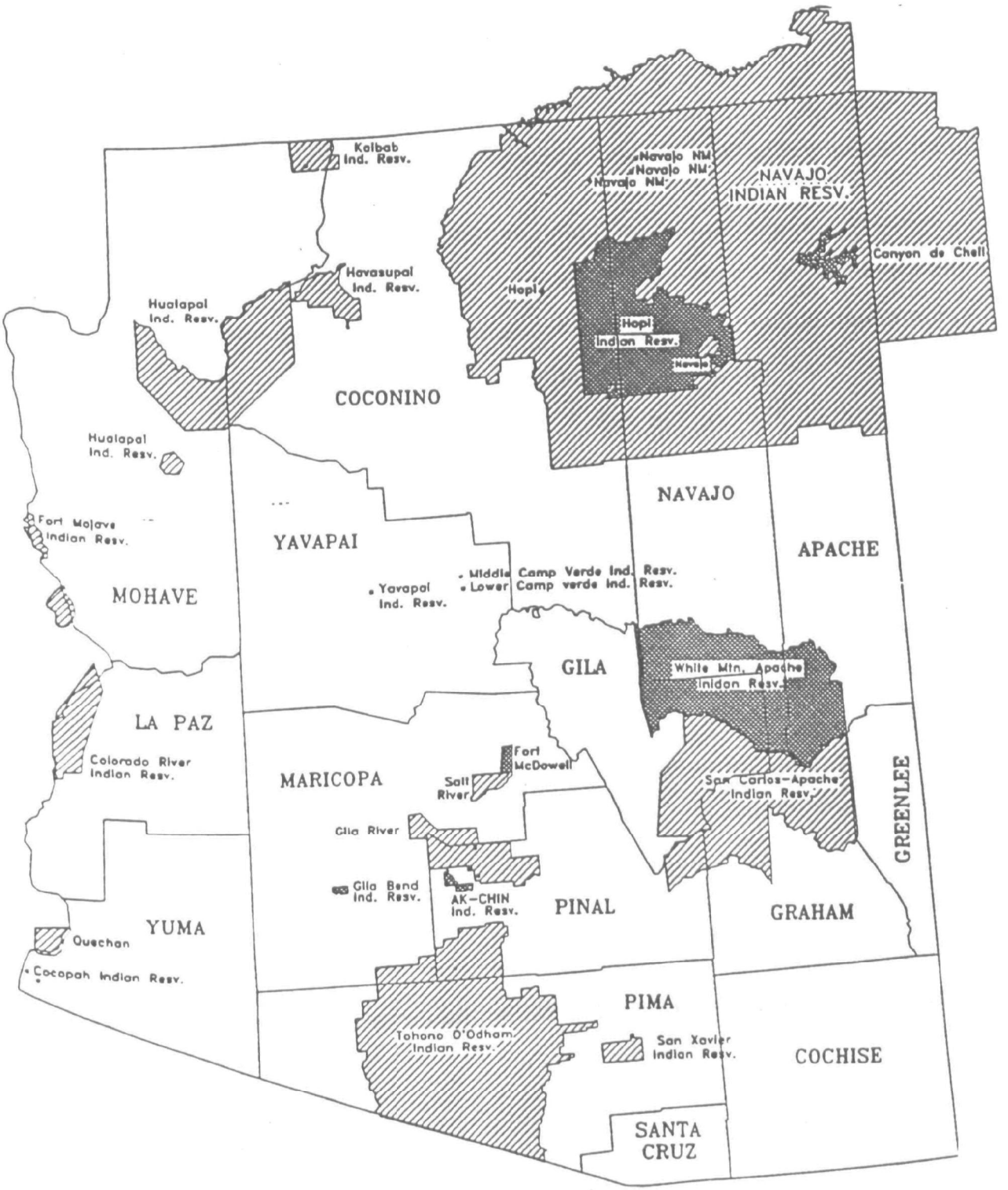
Tonto Apache Tribe

White Mountain Apache Tribe of the Fort Apache Reservation

Yavapai Apache Nation of the Camp Verde, Middle Verde and Clarkdale Reservations

Yavapai-Prescott Tribe of the Yavapai Reservation

ARIZONA
INDIAN RESERVATIONS



FEDERALLY RECOGNIZED NEVADA TRIBAL ENTITIES: 18
(Per February 16, 1995 Federal Register)

Reservations

Confederated Tribes of the Goshute Reservation, NV & Utah

Duckwater Shoshone Tribe of the Duckwater Reservation

Ely Shoshone Tribe of Nevada

Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation

Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada

Lovelock Paiute Tribe of the Lovelock Indian Colony

Moapa Band of Paiute Indians of the Moapa River Indian Reservation

Paiute-Shoshone Tribe of the Fallon Reservation and Colony

Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation

Reno-Sparks Indian Colony

Shoshone-Paiute Tribes of the Duck Valley Reservation

Summit Lake Paiute Tribe

Te-Moak Tribes of Western Shoshone Indians
Bands: Battle Mountain, Wells, Elko, South Fork

Walker River Paiute Tribe of the Walker River Reservation

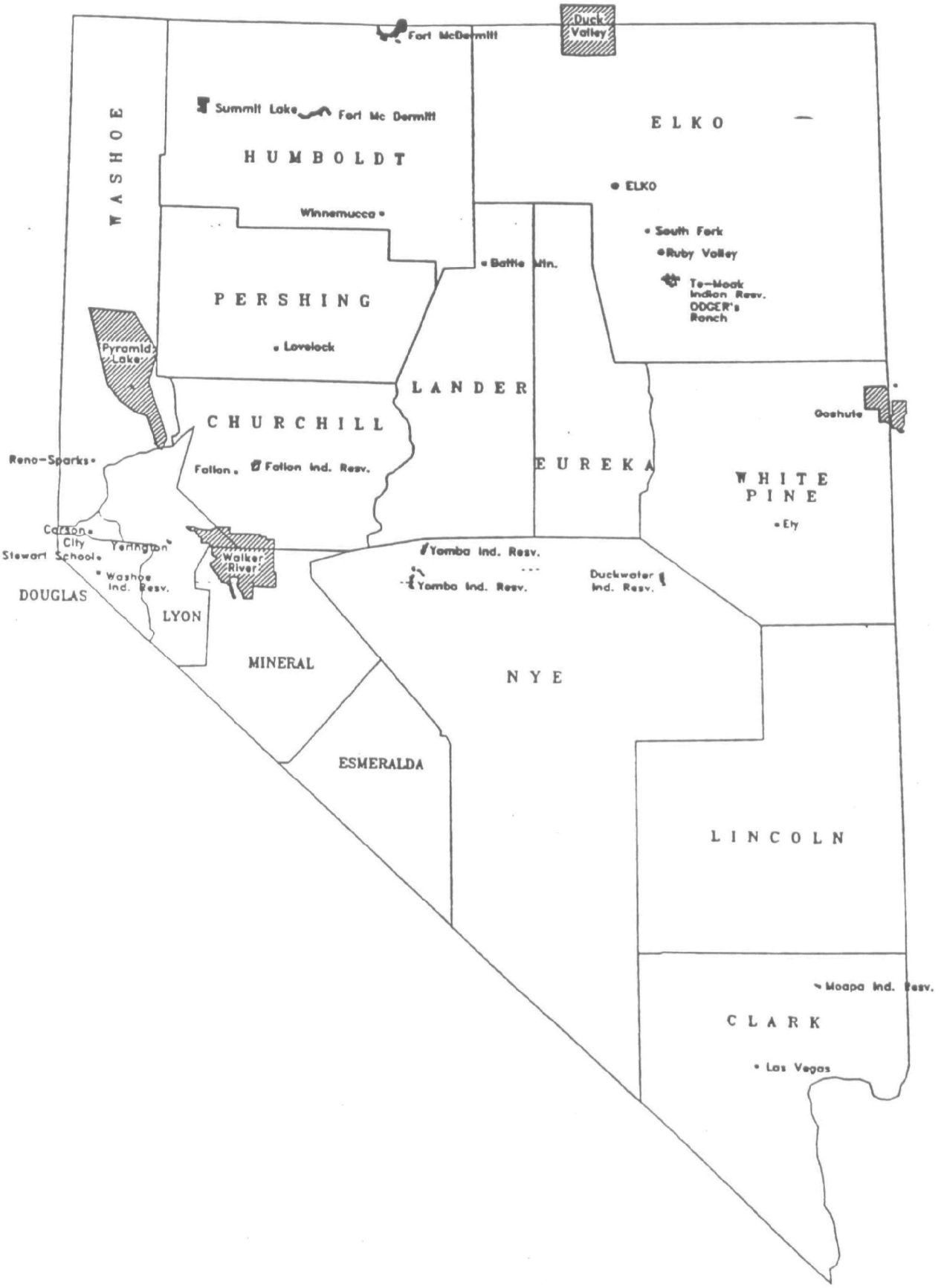
Washoe Tribe of Nevada & California
- Carson Community
- Dresslerville Community
- Woodsfords Community
- Stewart Community
- Washoe Community

Winnemucca Indian Colony

Yerington Paiute Tribe
- Yerrington Colony
- Campbell Ranch

Yomba Shoshone Tribe of the Yomba Reservation

NEVADA
INDIAN RESERVATIONS



Legal History

IV

Overview of Indian Law Issues

1. Tribes

-Indian tribes are sovereign governments, subject to federal but not state power. Tribal members are citizens of the United States, of their tribes, and, for some purposes, of states.

-In the late 19th century, Congress encouraged non-Indians to settle reservations. This policy was discontinued, but large parts of some reservations are now owned in fee by non-Indians.

2. EPA Indian Policy and Statutes

-Under its 1984 Indian Policy EPA works with tribes on a government-to-government basis, with tribes playing the same role on reservations that states play elsewhere.

-Beginning in 1986, the Safe Drinking Water, Clean Water, Clean Air Acts, and CERCLA have been amended to authorize EPA to treat tribes in the same manner as states. Agency regulations allow tribes to qualify for "treatment as states," through a process tribes have criticized as creating paperwork burdens, and which the Agency has proposed a regulation to revise. Air Act regulations will soon be proposed.

3. Jurisdiction on Reservations

-Tribal civil authority over tribal members and lands is generally unchallenged. Tribes lack criminal authority over non-Indians. Tribal civil authority over non-Indians and non-Indian lands ("fee lands") within reservations is a difficult issue, that sometimes leads to confrontations between tribes and states.

-EPA recognizes that tribes, as governments, have inherent sovereign authority over activity on fee lands that "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."

> -This test, which EPA applies in its Water Act regulations, involves a fact-specific analysis, recognizing that environmental activities generally have serious effects. Tribes can usually demonstrate authority over environmental matters throughout reservations.
>
> -Some states are uncomfortable with this approach. See Flathead materials.

-Congress has broad authority over tribal affairs and may, by statute, delegate authority to tribes, extending tribal authority to areas that may be beyond the tribe's inherent authority.

-EPA intends to propose Clean Air Act regulation providing that, approved tribe will exercise authority over all air activities within the borders of a reservation, not just those within tribe's inherent authority.

-Novel interpretation. May have some legal risk.

-Differs from interpretation of Water Acts. May be pressure to construe Water Acts as delegations, or to seek amendatory language.

-Delegation approach emphatic in treating reservations as cohesive administrative units; moves toward limiting state presence on reservations.

-Provides clarity, predictability.

-Raises jurisdictional issue squarely and attempts to resolve it through rule-making, rather than case-by-case as with inherent authority.

4. EPA-Tribal Concept Paper

-The Agency has never expressly foreclosed approval of a state program on a reservation.

-In 1991 EPA's Administrator generally endorsed a Regional Concept Paper which would effectively preclude almost any state programs anywhere on a reservation, even in areas where tribe lacked inherent authority.

-The Agency has never explicitly followed this approach, and has not discussed it in any regulation governing reservation jurisdiction, including those promulgated since Concept Paper. Nevertheless, Paper is sometimes cited as a statement of official Agency policy.

-If the Agency intends to implement this approach, it should announce it formally in a forum that provides full notice to all affected parties.

5. Funding for Tribes:

-Grants are principal component of Indian program to date; Agency has authorized handful of tribes to operate federal programs, has awarded hundreds of grants.

-Tribes are eligible for categorical grants for work in individual programs, such as water or air.

-EPA has special authority to award grants to tribes for the purpose of developing general capacity to manage reservation environments. This program grew out of an Agency initiative to identify how best to meet the needs of tribes.

BUREAU OF INDIAN AFFAIRS
NAVAJO AREA OFFICE

LAND TERM DEFINITIONS

1. Tribal Trust Lands - Land in which title is held in trust by the United States for the Navajo tribe of Indians. Composed of lands set aside by Treaty, Executive Order, Act of Congress, United States purchase, and railroad reconveyed or relinquished lands. These lands are non-taxable and require tribal consent before BIA approval of land transaction.

2. Allotted Trust Lands - A parcel of land granted to an individual Indian in trust by the United States. The land is non-taxable and requires the consent of the land owner(s) before BIA approval of any land transaction.

3. Indian Homestead - Land filed upon in accordance with the Homestead Laws administered by the Bureau of Land Management. A trust patent is usually issued to Indians who qualify for homesteads and are then treated the same as allotments. Non-Indian Homesteads are treated as private lands.

4. Navajo Fee Patent Land - Land owned by the Navajo Tribe in fee title, not in trust. These lands are considered privately owned lands and can be owned individually or by the Navajo Tribe. These lands are taxable and do not require BIA approval for land transactions.

5. Government Withdrawn Lands - Lands withdrawn from the Public Domain by Public Order, usually for proposed exchange or resettlement purposes. These lands are administered by the BIA (Property and Supply) and do not require tribal consent for land transactions.

6. Administrative Reserves - Land specifically set aside by Executive Order or Statute to be used as administrative sites for agency and school purposes. These lands are administered by the BIA (Property and Supply) and do not require tribal consent for land transactions.

7. Public Domain - Land owned by the United States Government and administered by the Bureau of Land Management.

8. Split Estate Lands - Lands which the surface rights are as defined in thru 4, and the mineral rights are owned and may be developed by others, including the United States.

11/1/84

CHAPTER 1--INDIAN LAW AND POLICY

Introduction

Federal law is a reflection of Federal policy and vice verse. Which comes first is like the chicken and the egg. However it evolves, we need to understand the history of Federal policy to understand the legal status of Indians and their attitudes toward the Government, Self-Governance, and other issues today.

The following chronology shows the milestones in Federal Indian policy. Notice how several major shifts in policy occurred over very short periods of time. It is not surprising, therefore, that American Indians today are cautious to embrace new Federal policies.

Indian Relations in Colonial Times

Basic Law of Discovery (1492-1776)

The history of western civilization is a chronicle of conquest. Central to European law in the 1500's through the 1700's was the Right of Discovery. It held that the country that discovers another land has title to the land and that the laws of discovering country apply in the new land. The fact that the new land was inhabited made little difference to many, particularly if the language, dress, and culture of the inhabitants were significantly different from those of European society.

Although many Europeans felt that aboriginal people were not civilized, perhaps not even human, and certainly without rights, there were those who were more enlightened. Franciscus de Vitoria was one of them.

Vitoria was a Spaniard during the Age of the Conquistadors. In 1532, he argued that "aborigines undoubtedly had true dominion in both public and private matters, just like Christians, and that neither their princes nor private persons could be despoiled of their property on the ground of their not being true owners." [De Indis Et De Iure Belli Relectiones 128 (E. Nys ed., J. Bate trans. 1917)]

Vitoria said that European nations could exercise power over the Indians or acquire their property only because of conquest in a "just" war or through a voluntary cession and agreement by the Indians. Vitoria's views became accepted by writers on international

law of the 16th, 17th, and 18th centuries. The thin pretext for many "just" wars and the coerced "voluntary cessions" are infamous, dark moments in Western history.

Although some land in America was claimed by Spain, (e.g., California, Arizona, New Mexico, Florida and Texas), and some by France, (the Louisiana Purchase), the land which the United States occupied at the time of its creation had been claimed by England. Therefore, English law applied, but the policies (originally offered by Vitoria) were the same.

Under English law, Indians had a right of occupancy--sometimes called Original Indian Title. Only a sovereign nation could treat with Indian Tribes. In the colonies as early as 1651, individual colonists were prohibited from purchasing land from Indian Tribes unless the purchase was authorized by the Crown or colonial government. English law also required just compensation for the taking of land. This applied to treaties with Indians as well as purchases.

Sovereign Nations--Government to Government Relationships

During the colonization of America, the British Crown dealt with Indian Tribes formally as sovereign nations through treaties. As the colonies grew, the colonists encroached on Indian land and otherwise treated Indians poorly.

In response, the Crown assumed the role of protector. In 1763, it forbade cessions of Indian land west of the crest of the Appalachians. It also centralized the process of licensing and approving all Indian land cessions east of the Appalachians.

The following year, the Crown proposed a plan to control all other regulation of Indian Affairs through the Indian agents. The plan was only partially implemented and never formally approved. It was abandoned in 1768. In 1775, however, the Crown revived the concept of centralized management of Indian affairs and appointed Indian agents who were directly responsible to London. The following year, the colonists declared independence.

Indian Relations with the New Nation

With independence, the new nation found itself facing the same issues concerning Indian rights. It also wanted to avoid Indian wars, which were a drain on the treasury and a potential tool for foreign powers. The Government realized that if Indian affairs were

left to the individual States, the greed for land certainly would cause more Indian unrest.

Therefore, the authors of the Constitution gave the power to treat with Tribes to the Federal Government rather than to the States. Only the President could make treaties and only with the consent of the Senate. The Federal government also was given the power to regulate interstate commerce and trade, including that with Indians.

In 1778, the first treaty was signed between a Tribe (The Delaware) and the new government. By signing this treaty, the government affirmed the British and European tradition of dealing with Tribes as political entities.

Trade and Intercourse Acts (1790-1834)

The Trade and Intercourse Acts were a series of laws passed to protect Indians. The laws distinguished between Indians and non-Indians and made all trade with Indians subject to Federal regulation.

The laws also changed the Federal-Tribal relationship. Tribes lost a measure of internal sovereignty. A Tribe's right to enforce its laws was not only restricted to its territory, it further was generally restricted to its own people.

The Trade and Intercourse Acts did the following:

- Prohibited non-Indians from acquiring Indian land by treaty or purchase;
- Prohibited non-Indian settlement on Indian lands;
- Prohibited non-Indians from hunting or grazing animals on Indian lands;
- Made trade with Indians subject to Federal regulation and license;
- Made crimes against Indians committed by non-Indians a Federal crime and provided for compensation to Indians;
- Government provided for compensation of non-Indians who prevailed in damage cases involving Indians;
- Authorized the War Department to appoint Indian agents; but

- Did not regulate the conduct among Indians (e.g., trade between Indian individuals or Indian nations).

Supreme Court Shapes The Federal Relationship

Johnson v McIntosh (1823) -- The First Supreme Court Case Dealing with Indian Affairs

Before the Non-Intercourse Acts clearly outlawed the purchase of Indian lands by individuals, the sale of Indian land to individuals was not uncommon. In 1823, the Court was asked to review one such transaction.

The Court ruled that the transaction was not valid. Only the Federal Government had that right. Prior to the founding of the new government, only England had the right to treat with Indian Tribes. With the Declaration of Independence, that right transferred to the new nation. Speaking for the majority of the Court, Chief Justice Marshall stated that "The Indians retained the right of occupancy which only the discovering sovereign could extinguish, either by purchase or by conquest."

Cherokee Nation v Georgia (1831) --.The First of the Cherokee Cases

In the early 1800's, Georgia enacted laws that divided the Cherokee territory among counties. Georgia extended State law to these counties, thereby invalidating Cherokee law. Moreover, the State made it illegal for the Cherokee government to pass or enforce laws. The Cherokees sued.
The case is a landmark because the Court had to decide whether the Cherokees had the right to sue a State in Federal court. Central to that issue was whether the Cherokee Tribe was a "foreign state" within the meaning of the Constitution at provision giving the Court jurisdiction over suit between foreign nations and ones of the United States.

Writing for the majority of the Court, Chief Justice Marshall concluded:

> The Tribe succeeded in demonstrating it is a state, a "distinct political society separated from others and capable of managing its own affairs and governing itself."

Yet, the Court held that the Tribe was not a foreign nation for its lands were within the boundaries of the United States. Marshall concluded:

> "They [Indian Tribes] may, more correctly, perhaps be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will which must take effect in point of possession, when their right of possession ceases. Meanwhile, they are in a state of pupilage; their relation to the U.S. resembles that of a ward to his guardian."

Indian Tribes were "dependent nations." Unlike other nations, Indian nations had fewer rights. For example, the land of foreign nations, such as France or Spain could not be claimed by the United States, but the United States could claim ownership of the land occupied by the Tribes. This meant, among other things, that the United States would not recognize a treaty between a Tribe and another nation--something Tribes had done during the Revolutionary War and the War of 1812.

As a dependent nation, a Tribe was something between a State and a foreign government. (The Constitution clearly did not recognize Indian Tribes as States.) This placed Indian Tribes in a unique position that required the special protection of the Federal government. They were the wards of the United States; and in the eyes of the Court, that made the Government a trustee.

In law, a trust responsibility is one that must meet exacting standards of ethical conduct--such as in trust established by Last Wills and Testaments. In recognizing the Government as a trustee, the Court has required that the United States follow high standards when dealing with or representing the interests of American Indians.

The Government still has that trust responsibility today. It is a tough role in which the Government must defend and protect American Indian interests while encouraging Indians to become more independent. At the same time, the government is responsible for all the other interests for which it has responsibilities. Unfortunately, the Government's stewardship as a trustee over the past 150 years often has fallen below the high standards envisioned in law.

Worcester v Georgia (1832) -- The Second Cherokee Case

A year after the Court handed down its famous "dependent nation" rule, it heard another case concerning Cherokees in Georgia. Georgia authorities had arrested several missionaries for violating a State law that required non-Indians residing in Cherokee territory to be licensed by the State. Two of the missionaries appealed to the Supreme Court.

Chief Marshall concluded that Georgia had no jurisdiction. The Tribe had "exclusive jurisdiction" within the boundaries of the reservation. This case formed the basis for Indian jurisdictional law.

The Government As A Trustee

Although the Court was favorable to Indians, Congress and the Executive Branch often were not. In the 19th century, it was the "Manifest Destiny" of the United States to expand and "civilize" the frontier. Indian Tribes were impediments to that goal. Repeatedly, they were forced to move farther west to new reservations--to land that the white-man did not want--until later.

Movement to Reservations (1830-1887)

1830 -- Indian Removal Act

This legislation authorized the forced removal of Indians to reservations. The Trail of Tears and other removal efforts resulted from this legislation.

1871 -- Congress passed a law stopping the making of treaties with Indians.

A significant reason for ending treaty making was the House of Representatives objecting to only the President and the Senate making Indian policy decisions.

> Both the Board of Indian Commissioners and the abolition of the treaty system were the result of growing resentment in the House of Representatives over the Senate's paramount role in Indian policy. The House did not participate in the conclusion of treaties by the Executive or their ratification by the Senate but had to appropriate the funds to carry them out. The House held up the Indian appropriations bill in 1869, and the Board of Indian Commissioners was the compromise that broke it loose. The House refused all compromise in 1871, and the Senate acceded to an act that abolished the treaty system - without, however, invalidating existing treaty obligations.

[Quote from footnote 4 on page 214 of Robert M. Utley's Frontier Regulars THE UNITED STATES ARMY AND THE INDIAN 1866-1891.]

Reservations established after 1871 were authorized by statute or executive order. This removed Tribes from the category as quasi-foreign political entities and weakened their political status.

Congress's intent was to distance Indians/Non-Indians. It also wanted to civilize the Indians and assimilate them into American culture. The law did not change the requirement for mutual agreement. Tribal consent was still a necessary part of Federal actions. However, the need for mutual agreement and tribal assent may be accurate only for negotiated agreements when the Indians were stronger than the Non-Indians. Military force was used when the Indians wouldn't agree or comply, before and after the end of treaty making. Food was withheld to force the Sioux to give up the Black Hills and other land.

1883 -- Courts of Indian offenses were established--fashioned after Federal/State model.

1883 -- Crow Dog Case: The murder of an Indian by an Indian.

The Court ruled the murder was a Tribal matter and that Tribal laws applied. In response to the ruling, Congress passed the Major Crimes Act declaring murder and other serious crimes on Indian lands to be Federal offenses that could be heard only in Federal court. This law severely eroded Tribal sovereignty and traditional Tribal roles.

Allotment Period (1887-1928)

The Allotment Act of 1887

In the late 19th and early 20th centuries, the Government decided that Tribal governments were really unnecessary and that Indians should be given the same rights and privileges as other citizens. One major way to accomplish this was to give Indian land to Indian individuals. Congress believed that the Indians would farm the land, become typical landowners, and assimilate into American society. (Individual allotment Acts were passed before 1887.)

It was a noble concept for some and a way of getting Indian land for others. Thus, in 1887, Congress passed the General Allotment Act (Dawes Act 24 Stat. 388). This law did not apply to some Indians - see 25 USC 339 and 349.

The Act gave 160 acres to the head of the family and 80 acres to others in the family. Twice that amount was allotted if the land was suitable for grazing. Later, the amounts were reduced.

The land was held in trust for 25 years, while the Indians learned to manage their affairs. After that time, the land conveyed to the allottee in fee, free of encumbrances and subject to taxes.

Indians who received allotments became citizens of the United States, subject to State and local criminal and civil laws, but enjoying the protection of these laws as well. (Thirty-seven years later, the Indian Citizenship Act of 1924 made all Indians citizens of the United States.)

The Act also authorized the Secretary to negotiate with the Tribes for disposition of all "excess" lands remaining after allotments. This land was used for the settlement of non-Indians.

Results of allotment period

The effect was devastating to Indian Tribes and culture. Tribal governments were severely undermined, if not eliminated. Without a land base, these governments had no authority separate from the States; and as Indians became citizens of the United States, the Tribal governments lost their authority over their membership. In the Government's eye, Tribes became little more than clubs or associations.

The amount of land over which Indian Tribes lost control was staggering: from 138 million acres in 1887 to 48 million acres in 1934. Of this remaining land, over one acre in 10 was desert or semi-desert land, scarcely capably of supporting any type of agriculture.

Indian Reorganization and Preservation of Tribes (1928-1953)

The allotment period did not bring the changes and prosperity Congress expected. Instead, it brought greater poverty and hardship to many Indians. Thousands of Indians never had a chance to farm their land--they lost it instead to the white-man. Indian Tribal governments, although greatly weakened, did not disappear. Both Congress and the President recognized the need for a major change in public policy.

Merriam Report (1928)

In 1928, the Secretary of Interior commissioned an independent study of Indian affairs in the United States and the role and effectiveness of the BIA. Conducted by the Institute of Government Research, and funded by John D. Rockefeller, Jr., the Merriam Report, as it was later called, recognized the disaster created during the allocation period, and recommended that the Government reaffirm and strengthen it's trust responsibility to Indian people and Tribes. Recommendations of the Merriam report were incorporated in the Indian Reorganization Act.

Indian Reorganization Act (1934)

This law was passed in response to the Merriam report and in reaction to the disaster of the allotment period. The Act excluded some Tribes but most Tribes had to vote to reject coming under the IRA. If they did not vote, they are covered. As a result, some Tribes are not under the Indian Reorganization Act (IRA) and are referred to as "Treaty Tribes" or "Traditional Tribes." Some of the strongest Tribes are not organized under the IRA such as Navajo, Yakima, Colville, Red Lake, most Pueblos, etc. The IRA--

- Recognized and Strengthened Tribal governments.
- Extended indefinitely the period of land held in trust.
- Restored to Tribal ownership the "surplus" lands acquired from Tribes under the Allotment Act.
- Gave Tribes the right to employ legal counsel, with Secretarial approval.
- Secretary could issue charter of incorporation.

Trust period extensions were provided for (25 USC 348 1st proviso, 348a) as was the earlier ending of the trust period (25 USC 349, 357, 372, 373, 378, 379). Allotting was ended in 1934 (25 USC 461) for Tribes where allotting was still possible if the tribe met the following criteria:

- Was not excluded from the IRA under 25 USC 473 as amended by 473a, and
- Did not reject the IRA under 25 USC 478 and 478a.

The IRA also provided an indefinite extension of trust periods for Tribes subject to the IRA (25 USC 462). That provision was extended to all Tribes and Indian trust lands in 1990 (25 USC 478-1).

In 1936 Congress passed the Oklahoma Indian Welfare Act (25 USC 501-509). It is sort of a compromise or lesser IRA for Oklahoma (except Osage).

Termination and Relocation (1953-1968)

Twenty years later, the pendulum was moving in the opposite direction again. Congress wanted out of the Indian trustee business. It wanted "as rapidly as possible to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States." H. Con.Res. 108, 83rd Cong., 1st Sess., 67 Stat. B132 (1953).

Over 100 Tribes were terminated during this period. Nearly all were small Tribes or bands, with the exceptions of the Menominee of Wisconsin and the Klamath of Oregon.

With termination, the special relationship with the Federal government ended. Tribes were subject to State laws. Lands were converted into private ownership and generally sold.

During this period, the BIA established the Relocation Program, which encouraged Indians to leave the reservation and seek jobs in urban areas. Although thousands of Indians relocated to major cities across the country, many American Indians did not give up their culture nor did Tribal governments disintegrate. Total assimilation did not occur.

Public Law 83-280: A Blow to Tribal Sovereignty

In the 1950's, Congress dealt the final blow to Tribal sovereignty in several States with the passage of P.L. 83-280. This law gave the following States civil and criminal jurisdiction over Indian communities:

California	Minnesota (except Red Lake)
Nebraska	Oregon (except Warm Springs)
Wisconsin	

The law allowed other States to assume jurisdiction by statute or by a State constitutional amendment. Several States assumed partial or total jurisdiction under this authority. They were:

Arizona	Iowa	North Dakota
Florida	Montana	Utah
Idaho	Nevada	Washington

Alaska (except Metlakatla) was added by amendment in 1958.

Consent of the affected Tribes was not required and usually not sought. Ike's signing statement for P.L. 93-280 said it was deficient because it didn't require Indian consent and he asked Congress to amend it to remedy that deficiency. A consent provision was added in 1968 but was not retroactive. The 1968 amendments also provided a way for the States to retrocede jurisdiction they had acquired back to the U.S.

The law did not, however, give States general regulatory power. Nor did it give them the right to tax Indian property held in trust or to interfere with hunting and fishing rights.

Tribal Self-Determination (1968 -1982)

In sharp contrast to the 1950's, the 1970's was a decade in which the Government reorganized and supported Tribal governments. Just as had happened in the 1930's, Congress, the Administration, and the Courts recognized the dislocation, poverty, and many other problems caused by termination policies. The Government reacted strongly and enacted a series of measures designed to support Tribal governments.

1968 -- Indian Civil Rights Act (ICRA)

This law imposed on Tribes most of the requirements of the Bill of Rights

- Protection of free speech
- Free exercise of religion
- Due process
- Equal protection of laws

There was some disagreement over whether a Tribe could define "due process" and "equal protection." There also was disagreement about whether the ICRA gave Federal courts the power to hear cases that arose within the Tribe.

The ICRA placed restrictions on the power to Tribal governments. Vine Deloria, Jr. (Custer Died For Your Sins - An Indian Manifesto, page 238) said:

> With the passage of the 1968 Civil Rights Act, Indian Tribes fell victim to the Bill of Rights. The Stage, is now set for total erosion of traditional customs by sterile codes devised by the white man. Some Tribes are now [1969] fighting to get the law amended because the law allows reliance on traditional Indian solutions only to the extent that they do not conflict with State and Federal laws.
>
> Although the Bill of Rights is not popular with some Tribes, the Pueblos in particular, I do not believe that it should be amended. With the strengthening of Tribal courts Indian Tribes now have a golden opportunity to create an Indian common law comparable to the early English common law.
>
> Many national leaders have encouraged Indian judges to write lengthy opinions on their cases incorporating Tribal customs and beliefs with State and Federal codes and thus redirecting Tribal ordinances toward a new goal.

ICRA also amended P.L. 83-280 to require Indian consent for States to assume jurisdiction.

1970 -- Nixon's Indian Policy

President Nixon stressed the continuing importance of the trust relationship. He urged the development of programs to allow Tribes to manage their own affairs with the maximum amount of autonomy. He also recognized that Tribal governments were permanent fixtures of Indian society and culture, and he supported strengthening these governments.

1971 -- Alaska Native Claims Settlement Act (ANSCA)

Under ANSCA the Federal government developed a new relationship with the Native people in Alaska. Among other things, ANSCA extinguished aboriginal

land and hunting and fishing claims. It provided for regional and village corporations under State law (bypassing Tribes) with a 20 year restriction on stock alienation. An extension of the restriction by the corporations was authorized in 1988. The corporations could select land and get unrestricted fee title to it.

1974 -- Indian Financing Act

This law provides for a revolving loan fund to aid in the development of Indian resources.

1975 -- Indian Self-Determination Act (P.L. 93-638)

This law reflects President Nixon's policy to strengthen Tribal governments and to allow Tribes to have more control over their affairs. Under this law, a Tribe can contract with the BIA and IHS to operate any program or portion of a program that those agencies provide to the Tribe. This law has recently been amended to include other programs within the Department of Interior.

1975 -- The Mazurie Decision

The Supreme Court held that the self-governing character of Tribes enables the Congress to delegate power to them that would be impermissible if delegated to a non-governmental entity. A unanimous decision written by Justice Rehnquist involved Non-Indians convicted of selling liquor on reservation without a tribal license. The Court upheld the 1953 Federal law allowing Tribes to regulate liquor on reservation.

1978 -- The Martinez Decision

This case resolved some issues created by the ICRA. The Supreme Court ruled that Congress had not intended Federal courts to hear cases arising from the ICRA, except in special circumstances involving Indian people who were in jail. The Court held that Tribal courts had jurisdiction for other cases.

1978 -- The Oliphant Decision

In this case, the Supreme Court ruled that Indian Tribal courts do not have criminal jurisdiction over non-Indians on the reservation.

1978 -- Indian Child Welfare Act

This law governs adoption and child custody proceedings involving Indian children. Under the law, Tribal courts have exclusive jurisdiction over the custody of Indian children residing on the reservation and of Indian children who are wards of the Tribal court regardless of where the children reside or are domiciled. Tribal courts have concurrent jurisdiction over Indian children who are Tribal members or eligible for Tribal membership even though the children reside or are domiciled off reservation.

Self-Governance (1982 - Present)

Today, Indian affairs appear to have evolved to a new period--the period of Self-Governance. American Indians have moved beyond the right to have their own governments and courts. More and more Tribes are successfully operating their own programs and exerting a wide range of governmental powers. There appears to be a growing acceptance among the Federal, State, and local governments of the right of Tribal governments to exercise authority over its members.

1982 -- Indian Tribal Government Tax Status Act

Allowed Tribes to qualify for Federal tax advantages, including the ability to issue tax-exempt bonds to finance government projects.

1983 -- President Reagan reaffirmed the earlier Nixon policy.

1983 -- Bingo halls opened on Tribal lands.

1987 -- The Cabazon Decision

The Supreme Court ruled that Tribes have the right to have bingo on Tribal land and are not subject to State regulation.

1988 -- Indian Gaming Regulatory Act

This law provides for Federal and Tribal regulation of Bingo and some other gaming on reservations. It requires a Tribal-State compact for the regulation of slot machines and casino type gaming not barred by State law and public policy.

A Gaming Commission was established to regulate Indian gaming not covered by a compact. Traditional Indian gaming is left to exclusive Tribal jurisdiction.

1988 -- Tribal Self-Governance Demonstration Project

This experimental project allows Tribes to negotiate a compact with the BIA for programs they want to operate. Tribes have greater flexibility in the operation of these programs and how they use the money than they had under the P.L. 93-638 procedures. Tribal leaders are involved with the compacts, much like they were with treaties.

Some Tribal leaders oppose self-governance projects. They view the policy as another move toward termination.

1990 -- The Duro v Reina Decision

The Supreme Court said that Tribal courts did not have jurisdiction over Indian non-Tribal members.

1991 -- Public Law 102-137

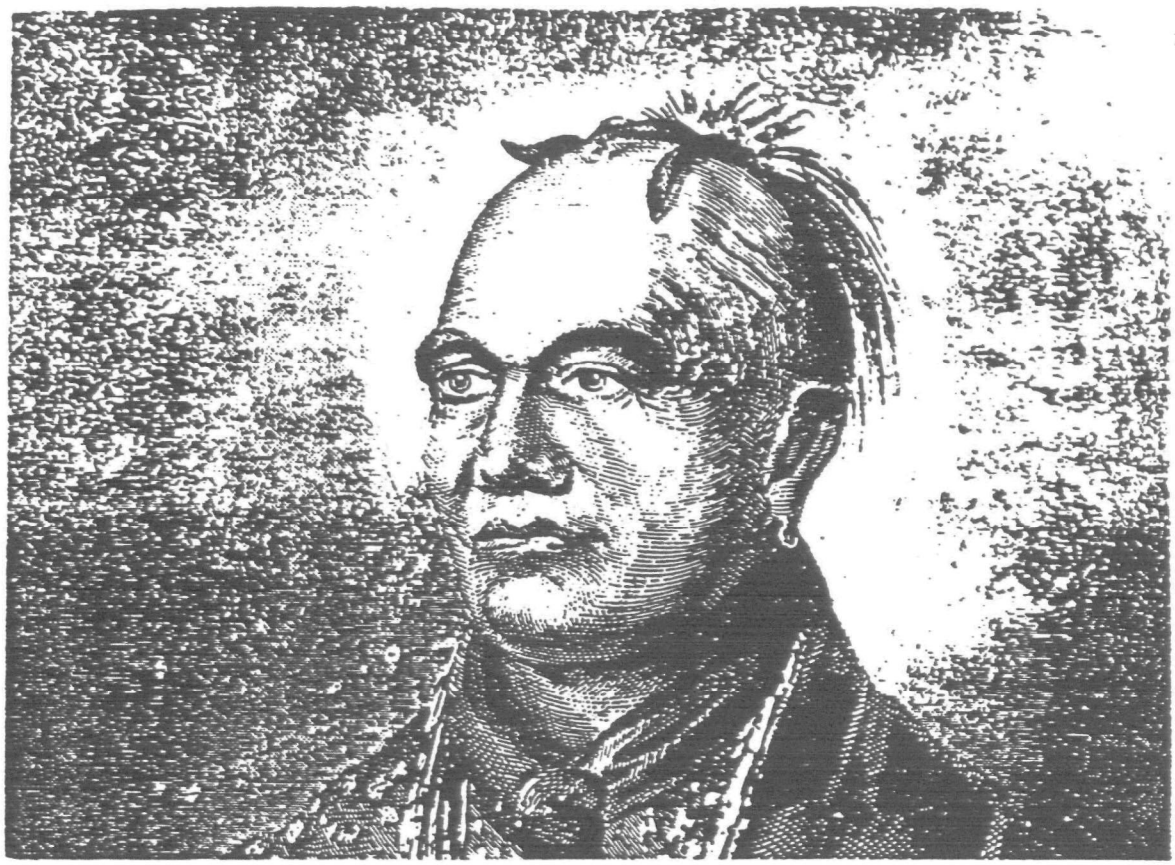
Congress provided Tribal courts authority over Indian non-Tribal members for acts committed on Tribal land. This effectively renders moot the *Duro* decision.

1991 -- President Bush reaffirmed the government-to-government policy.

1991 and 1992 -- The Yakima Cases

In two different cases, the Supreme Court has ruled that fee land on the reservation is under the jurisdiction of the State. In many situations, the State can zone and tax fee land on reservations.

1994 -- President Clinton reaffirmed the government-to-government policy.



We are of the same opinion with the people of the United States; you consider yourselves as independent people; we, as the original inhabitants of this country, and sovereigns of the soil, look upon ourselves as equally independent, and free as any other nation or nations.

–Joseph Brant, Mohawk

WHAT IS SOVEREIGNTY?

A. General Definition

"Sovereignty" is a difficult word to define. Sovereignty is a difficult word to define because it is intangible, it cannot be seen or touched. It is very much like an awesome power, a strong feeling, or the attitude of a people. What can be seen, however, is the *exercise* of sovereign powers.

Sovereignty is also difficult to define because the word has changed in meaning over the years. For our purposes, a good working definition of sovereignty is: THE SUPREME POWER FROM WHICH ALL SPECIFIC POLITICAL POWERS ARE DERIVED. Sovereignty is inherent; it comes from within a people or culture. It *cannot be given* to one group by another. Some people feel that sovereignty, or the supreme power, comes from spiritual sources. Other people feel that it comes from the people themselves.

Indian people have offered these definitions of SOVEREIGNTY:

- The Bishop Paiute: "Our tribe's in-

herent right to select its own system of government, define its membership, and to negotiate with other entities as a nation without loss of independence.

- Oneida Nation (Wisconsin): "Our existence as a nation with the power to govern ourselves in regard to political, social and cultural aspects that meet the needs of our people.
- Kickapoo Nation (Kansas): "The inherent right of a group or groups of people with the power of self-government to exist without external exploitation or interference.

Still other people believe that sovereignty is derived from the "law of nature." Some feel that it comes from the unique capabilities of a single ruler by whom the people consent to be governed. Whatever the case, sovereignty cannot be separated from people or their culture.

B. European Origins

The concept of sovereignty began in Europe around the time of the birth of Christ. Roman judges, drawing upon Greek philosophy, described *majestas* or sovereignty as the "proper authority by which people make laws."[1] Under the reign of Louis XIV, King of France (1643-1715), the concept of proper or supreme authority became associated with the word "sovereignty" which literally means rule or power above all else. During this period, sovereignty almost always meant the absolute power of a ruler—the king, queen, czar or emperor. Since sovereignty was said to come from God, kings ruled by "divine right." They were responsible only to God for their actions. The theory of *divine right of kings* was generally accepted because of the continual warfare and turmoil Europeans found themselves in during the 17th century. With a strong individual leader, stability was more easily maintained.

Toward the end of the 17th century, the large European empires were beginning to break up and the concept of nation-states evolved. Nations were made up of people of similar cultures, who shared similar attitudes toward life and who organized under a system of law and government. Many theories developed about where sovereignty came from. One was the divine right theory just discussed. Under this system a king who got his power from God was the absolute ruler and had a monopoly over the administration of justice.[2]

A second theory developed by the Englishman, John Locke (1632-1704), was that sovereignty evolves when the people of a nation consciously make a contract with a ruler or king to govern them. According to Locke, the people of a nation grant to a central government or ruler the power to govern them. At the same time, they reserve certain individual rights which no centralized government can take away.[3] One can see that the political theories of John Locke heavily influenced the founding fathers of the United States government.

A third theorist who greatly influenced European thought was the Frenchman, Jean Jacques Rousseau. Rousseau developed the "Social Contract" theory of sovereignty. This states that sovereignty is derived from an agreement among the people of a nation to combine their individuality into a General Will. Sovereignty, in other words, is the General Will or common interest which binds people together. It is sacred and absolute. According to Rousseau, the General Will consists of a sense of membership, a feeling of community and responsibility, and the actual participation of people in public affairs.

Although the modern concepts of sovereignty were formally developed and written about by European philosophers and political scientists, the ideas associated with sovereignty are part of many cultures. Throughout the world, people who live together, who come from similar cultural backgrounds, and who share common

attitudes toward life feel they have the right to be sovereign. Thus, the word is used today to mean the special quality that nations have which enables them to govern themselves.

C. Sovereignty and Independence

Does sovereignty mean complete independence? Again in the *ideal* sense, sovereignty means the absolute or supreme power of a people to govern themselves, completely independent from interference by or involvement with other sovereign nations. Yet no nation in the world today is completely independent. Our industrialized world of mass communications, global transportation, and soaring populations makes national isolation virtually impossible. Economic and political considerations, such as the need for raw materials or military assistance, make nations dependent upon each other. In reality, the economic dependence of one nation on another often leads to political limitations as well. Consequently, even such large and powerful countries as the United States and the Soviet Union are limited in their capacity to act by the small oil-rich nations of the world. This dependence has been continually demonstrated during the energy crisis of recent years.

Examples of nations which have semi-dependent relationships with others are too numerous to list. According to international economic theory, it is neither possible nor desirable for a nation to be economically self-sufficient.[4] Consequently, nations rely on one another to provide many human and industrial needs such as grain, meat, minerals and oil. There are many nations of the world whose technology is such that they cannot yet compete effectively in the world trade market. Thus, they must rely on aid from other nations. India, for example, requires over one billion dollars in foreign aid annually. Nevertheless, while India may be less "powerful" than those nations which lend her support, she is a sovereign nation.

D. The International Recognition of Sovereignty

We have talked about nations being sovereign; we have talked about interdependence among nations; we have talked about economic and political power. One might then ask, "Isn't a nation's sovereignty dependent upon whether or not other nations of the world recognize it as sovereign?"

In theory, the answer to this question is "no." It has been a common practice for nations to refuse to "recognize" the existence of another nation because of the type of government the nation has or because of certain political actions taken by a nation. That nation's sovereignty, however, is no less real because other nations refuse to recognize its existence. The key is whether the people within the nation support its existence. The People's Republic of China is a good example of this. For almost thirty years the United States has refused to officially recognize the existence of the People's Republic of China. Yet it still exists; it is no less a reality.

But the recognition of a nation's sovereignty by other nations can strengthen the claim to sovereignty and alter in a positive way that nation's relations with the rest of the world. Certainly, if no other countries in the world will recognize a particular nation, it may have difficulty in providing for its people. But if it is accorded recognition as a sovereign, its stature among nations increases, it can trade its products in the world market, and it is subject to less interference in its internal affairs.

The problem with international recognition of sovereignty is that there is no generally accepted formula for determining which nations are in fact sovereign and no formula for when recognition should be given or withheld. People and governments often neglect to examine the basis for their conclusions about which nations are sovereign and which are not. If a nation in fact operates as a sovereign with the consent of its people that nation is a sovereign nation, whether it is recognized as such or not.

E. How is Sovereignty Related to Nations, Government, Politics?

Some people fall into the trap of equating sovereignty to nationhood, government or politics. While sovereignty, nationhood, government, and politics are related, it is important to remember that sovereignty is absolute and comes before nations, governments, and politics. In theory, sovereignty is the supreme power which binds a nation together. It cannot change. The manifestations of sovereignty (nations, governments, politics) can change and take on different forms from time to time.

Before we end our discussion about the meaning of sovereignty, let's briefly define these other terms which are frequently confused with sovereignty.

What is a Nation? The American Heritage Dictionary defines a nation as "a people, usually the inhabitants of a specific territory, who share common customs, origins, history and frequently language or related languages."[5] Webster's says that a nation is "a community of people composed of one or more nationalities and possessing a more or less defined territory and government."[6] Webster's also says that a nation is "a tribe or federation of tribes (as of American Indians)."[7]

What is Government? Government is the system or machinery through which a political unit or nation exercises its sovereignty.

What is Politics? Politics is the art of interpreting the will of the people and influencing the actions and functions of government.

What is Sovereignty, Again? Sovereignty is the supreme power from which all specific political powers are derived. Sovereignty is the inherent power that causes people to band together to form a nation and govern themselves.

F. What are the Powers Exercised by Sovereign Nations?

Sovereignty has the most meaning in a practical sense when we look at the sovereign powers exercised by a government. So the most basic power of a sovereign people is the power to select their own form of government.

What kind of government it is or how it functions does not affect the sovereignty of the nation. Throughout the world, democracies, monarchies, theocracies, and dictatorships all exercise sovereign powers to one extent or another.

The exact methods of governing also vary widely. Some governments operate under written constitutions, others under customary or spiritual laws handed down from generation to generation. Some have highly structured institutions, others have relatively simple, informal organizations. Many nations operate under a system which allows for orderly change in leaders and powers. A change in the form or pro-

cedures of government or in one of its institutions, however, does not affect the sovereignty of a nation.

In addition to the power to select a form of government, sovereign nations have many other powers necessary for self-government. Among these powers may be the following:

1. The power to make and enforce laws.
2. The power to define and regulate the use of its territory.
3. The power to determine membership or citizenship.
4. The power to regulate trade within its borders, among its members and between its members and those of other nations.
5. The power to impose and collect taxes.
6. The power to appropriate monies.
7. The power to regulate domestic relations (including marriage, divorce, adoption).
8. The power to regulate property.
9. The power to establish a monetary system.
10. The power to make war and peace.
11. The power to form alliances with foreign nations through treaties, contracts and agreements.

There is no magic formula about how many and which of these powers a nation must exercise in order to be sovereign. How and if a nation uses any or all of these powers is dependent on many things, including: (1) the will and needs of the people; (2) the history and religion of the people; (3) internal and external economics; (4) internal and external politics. A nation may be able to operate well, for example, without exercising the power to make war or print money. It may choose to have another nation exercise certain of the powers for it. Certainly, the greater number of powers a nation gives up or loses to another, the more interference it may expect in its internal affairs. But this does not necessarily mean that it has given up its sovereignty. Indeed, it would be a sovereign act for a nation to decide to give up some of its sovereign powers or to temporarily not exercise them. According to principles of international law, a nation may do this without losing its place in the family of nations.

A good example of a European nation giving up certain powers is San Marino. San Marino, one of the world's smallest nations, is located completely within the boundaries of Italy. In 1862, the tiny nation entered into a "treaty of peace and friendship" with Italy. By this treaty, Italy agreed to provide protection for San Marino, which has a land area of 23.5 square miles and a population of 20,000. In addition, San Marino receives financial assistance from Italy and uses the Italian lira as its monetary unit. In return, San Marino agreed to let Italy handle much of its international affairs. So San Marino gave up some of its powers in return for services and benefits which it felt were desirable for its people. San Marino is still a sovereign nation which enjoys a substantial amount of independence. In fact, it is a member of the International Court of Justice.

G. Are Indian Nations Sovereign?

Anthropologists estimate that at the time European explorers first arrived on the North American continent there were about one million Indians living in the area now comprising the United States.[8] They were organized into over 600 different tribes, bands, and groups and had thriving social, political, and cultural institutions.[9] Although they shared certain cultural characteristics and attitudes toward life, each group was distinct from the others.

Some, for example, had loosely structured governments in which local or band leaders exercised most of the political power. Others had hereditary systems of government in which governing power was

passed from one generation to another. Some had individual leaders whose power flowed from religious sources.

Most Indian governments were democratic in the sense that power was spread among several individuals or institutions.

The Iroquois Confederacy was an example of a strong Indian governmental system. Formed as an alliance to keep peace among the Mohawks, Senecas, Oneidas, Cayugas, and Onondagas, the Confederacy eventually controlled half of the area east of the Mississippi River. The Confederacy's governing council was composed of representatives of member nations. It was given certain sovereign powers by the member nations. This arrangement permitted member nations to exercise all sovereign powers not delegated to the Confederacy, including the power of local self-government.[10]

> **All of the colonial powers and later the United States . . . recognized the sovereignty of Indian nations by entering into over 800 treaties with Indians.**

This confederacy concept, where political power flowed *up* from a sovereign people through units of local government to a central government, was an extraordinary political achievement. The confederacy brought peace and stability to its members for over 200 years. And this was during a time when much of the rest of the world was in political and economic turmoil.

The democratic ideas which the Iroquois and other Indian nations had were new to western political theory.[11] But Thomas Jefferson and other writers of the U.S. Constitution recognized their value. In fact, some of the democratic ideas contained in the Constitution were borrowed from Indians.[12]

Additional evidence of the national character of Indian nations is found in the attitudes of Indian people. In 1838, the Cherokee people were facing eviction from their traditional lands by the United States government. In an attempt to prevent forced removal, the Cherokees passed a resolution defending their right to control their own affairs:

> The title of the Cherokee people to their lands is the most ancient pure, and absolute known to man; its date is beyond the reach of human record; its validity confirmed by possession and enjoyment antecedent to all pretense of claim by any portion of the human race. The free consent of the Cherokee people is indispensable to a valid transfer of the Cherokee title. The Cherokee people have existed as a distinct national community for a period extending into antiquity beyond the date and records and memory of man. These attributes have never been relinquished by the Cherokee people, and cannot be dissolved by the expulsion of the Nation from its territory by the power of the United States government.[13]

But regardless of the particular form of organization, all the Indian nations exercised the powers of sovereign nations. They recognized the sovereignty of one another by forming compacts, treaties, trade agreements and military alliances.

All of the colonial powers, and later the United States, also recognized the sovereignty of Indian nations by entering into over 800 treaties with Indians. Under international law, treaties are a means for sovereign nations to relate to each other, and the fact that Europeans and the United States made treaties with Indian nations demonstrates that they recognized the sovereignty of Indian nations.

In *Worcester v. Georgia,* the United States Supreme Court said that ". . . the

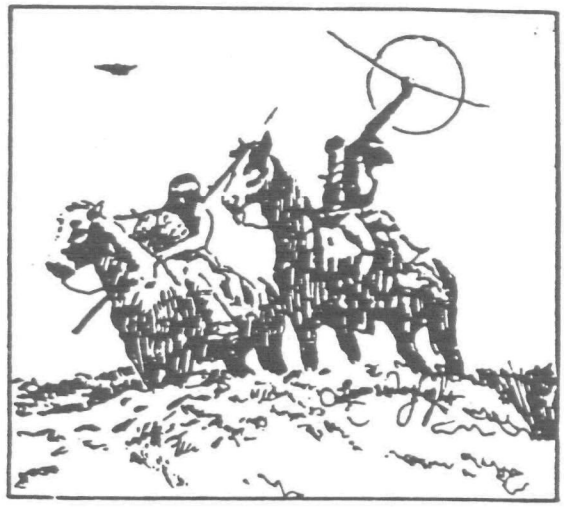
very fact of repeated treaties with them recognizes [the Indians' right to self-government] and the settled doctrine of the law of nations is that a weaker power does not surrender its independence—its right to self-government—by associating with a stronger, and taking its protection."[14] The power of Indian nations to wage war was pointed out by the Supreme Court on several occasions as evidence of their sovereign character.[15] And when critics complained that Indian tribes were not "nations" in the European sense, the Court responded that:

> The words "treaty" and "nation" are words of our language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians as we have applied them to other nations of the earth. They are applied to all in the same sense.[16]

While the exercise of sovereign powers by Indian governments has been restricted to some extent (see following section), there can be no doubt that the United States and other nations have recognized the inherent sovereignty of Indian nations and their right to self-government.[17]

H. What are the Sovereign Powers Exercised by Indian Nations?

Throughout the political history of Indian nations, the colonial powers, the United States and state governments, the struggle over which government may exercise sovereign powers in a particular situation has been crucial. Which government prevailed was sometimes determined



". . .Our nation was respected by all who came in contact with it, for we had the ability as well as the courage to defend and maintain our rights of territory, person and property against the world. . . ."

Black Hawk, Sac and Fox

by military power, and sometimes by political bargains in the form of treaties and agreements. The result of these struggles was that powers were dispersed among the various units of government.

The distribution of governmental powers between the federal government on the one hand and the original 13 states on the other hand was made in the U.S. Constitution. The states delegated certain powers to the federal government and retained others. Included in this delegation was the power to make treaties with Indian nations.

The distribution of governmental powers between the United States government and each Indian nation was somewhat similar. It may be viewed as a process of dividing up a bundle of sticks. Each stick represented a sovereign power. So there was a power to declare war, a power to impose taxes, a power to regulate property, and so forth. Originally the tribe held the entire bundle of sticks and so had complete power over the geographical area it controlled and the people living within that area. It was an absolute sovereign.

Over the decades and for various reasons, each tribe granted certain of those powers to the United States government in ex-

change for certain benefits and rights. This was done by treaty or agreement. In other cases some powers were taken from the tribe by war or coercion.

The point to remember is that all of the powers were once held *by the tribes,* not the U.S. government. Whatever powers the federal government may exercise over Indian nations it received from the tribe, not the other way around. This is important because if the United States gave sovereign powers *to* the Indian nations, then it could also take them away whenever and however it wanted to. Some people say this is the case.

The law is clear, however, that an Indian nation possesses all the inherent powers of any sovereign government except as those powers may have been qualified or limited by treaties, agreements, or specific acts of Congress.[18] Therefore, while tribes have lost some of the "sticks in the bundle" they retain all the rest. So they can and do exercise many sovereign powers.

Included among these inherent powers of Indian governments are the following:

1. The power to determine the form of government.
2. The power to define conditions for membership in the nation.
3. The power to administer justice and enforce laws.
4. The power to tax.
5. The power to regulate domestic relations of its members.
6. The power to regulate property use.

1. The Power to Determine Form of Government

As previously stated, the most important attribute of a sovereign people is the power to choose the form of government under which they wish to live. Since sovereignty means the power or authority to govern, and tribes are sovereign, they must be allowed to choose the manner and form by which they will govern.

Since 1832 the Supreme Court has been fairly consistent in acknowledging that Indian nations have the power to develop forms of self-government in accordance with their political and cultural history.[19] Many Indian nations have chosen to adopt governmental models similar to that of the United States. Others, such as the Six Nations Confederacy and the Pueblo tribes, for example, have chosen to retain their traditional forms of government. In *Pueblo of Santa Rosa v. Fall,*[20] the Supreme Court confirmed that tribes are not required to function under a "normal" constitutional government if they elect not to.

Other Supreme Court cases have said that since the states have no duties or responsibilities to Indian nations, they cannot levy taxes on Indian traders operating on Indian lands and thus interfere with the right of Indian self-government.[21]

Associated with this power to determine the form of government are the following rights:

a. The right to pass laws, interpret laws, and administer justice.
b. The right to define powers and duties of governmental officers.
c. The right to determine whether acts done in the name of the government are authoritative.
d. The right to define the manner in which governmental officers are to be selected and removed.

There are, however, certain federal constraints on *how* tribal governments function. Unlike all other governmental units in America and because of their unique status as sovereigns, Indian nations are not bound by the Bill of Rights in the U.S. Constitution. In 1968, however, Congress passed the Indian Bill of Rights,[22] which places on tribal governments and tribal courts restrictions similar but not exactly like those placed on the U.S. and state governments by the Constitution. Enactment of this law was met with resistance in the Indian com-

munity but it remains in force today. For a further discussion of this act and its provisions see Chapter II of this book.

2. The Power to Define Conditions for Membership in the Nation

An Indian government has, in most cases, complete authority to determine its membership. Standards for tribal membership may be established by custom, historical practice, written law, treaties with the United States, or agreements between Indian nations. Tribal governments have exercised this power by establishing procedures for:

a. Abandonment of membership.
b. Adoption of non-Indians.
c. Adoption of persons holding citizenship in another Indian nation.[23]

But the Secretary of Interior has, in certain circumstances, assumed authority to determine tribal membership. For example, by the Act of June 30, 1919,[24] Congress gave the Secretary power to draw up a final membership role for purposes of distributing tribal funds.

Unfortunately, the language of the Act is very broad: ". . . wherever *in his* (the Secretary's) *discretion* such actions would be *for the best Interests of the Indians. . .* " (emphasis added). Despite such broad authority, many court cases have held that an Indian nation has complete authority to determine all questions of membership unless there is express Congressional legislation to the contrary.[25] In an 1888 Opinion of the Attorney General it was emphasized that Indian people should determine membership for themselves, since they would ultimately participate in the benefits of that relationship.[26]

A 1927 case decided by the Court of Appeals of New York declared that the power of an Indian government to decide questions of membership comes from its status as a sovereign nation:

> . . .[T]he right to enrollment. . . depends upon the laws and usages of the Seneca Nation and is to be determined by that Nation for itself without interference or dictation from the supreme court of the state.
>
> The conclusion is inescapable that the Seneca tribe remains a separate nation; that its powers of self-government are retained with the sanction of the state, that the ancient customs and usages of the nation, except in a few particulars remain, unabolished, the law of the Indian land; that in its capacity of a sovereign nation, the Seneca Nation is not subservient to the orders and directions of the courts of New York State; that above all, the Seneca Nation retains for itself the power of determining who are Senecas, and in that respect it is above interference and dictation.[27]

In 1924 Congress passed an act which gave U.S. citizenship to all Indians living within the territorial limits of the United States.[28] While there can be no doubt that, according to U.S. law, all Indians are U.S. citizens, many Indians refuse to accept this grant of citizenship. They will not accept it because of the fear they would be forced to give up their citizenship in an Indian nation. The fear is not well-founded, however, since the concept of dual citizenship is well-established in both domestic and international law. Thus Indians can be U.S. citizens as well as citizens of an Indian nation. The courts have held that the 1924 Citizenship Act did not destroy the existence or sovereignty of Indian nations or their jurisdiction over tribal members.[29]

3. The Power to Administer Justice and Enforce Laws.

As sovereign governments, Indian nations generally have the power to: (1) make laws governing the conduct of persons, both Indians and non-Indians, within reservations;[30] (2) establish bodies such as tribal police forces and courts to enforce those laws and administer justice;[31] (3) exclude non-tribal members from the reservation;[32] and (4) regulate hunting, fishing, and gathering.[33]

The power of tribes to make their own laws has been recognized in a number of areas including domestic relations, taxation, and property use.[34] The power of Indian tribes to make and enforce laws also extends generally to the exercise of criminal jurisdiction over persons who commit crimes on the reservation.[35]

The power of a tribe to establish tribal courts is also firmly established in the law. In *Iron Crow v. Oglala Sioux Tribe,*[36] a federal court of appeals upheld the jurisdiction of a tribal court to punish members of the tribe for violating a tribal law and to enforce a tribal tax on non-Indians who leased land on the reservation. The court stated that the power of the tribe to establish courts to enforce its laws was not dependent upon any federal law, but was inherent in the tribe's sovereignty.

Another aspect of an Indian tribe's power to administer justice is its power over the extradition of persons accused of crimes. (Extradition is the surrender of a person accused of a crime to another government for trial.) A federal appeals court has upheld the power of a tribal government to determine whether or not it will extradite an Indian within its jurisdiction for trial in another state.[37] In that case, the court said that extradition was governed by tribal law, not the law of the state.

Although the power of Indian tribes to make and enforce their laws has been recognized as an aspect of Indian sovereignty, federal courts have said that this power is subject to limitation by treaty or express acts of Congress.[38] For example, three federal laws—the Major Crimes Act,[39] Public Law 280,[40] and the Indian Civil Rights Act[41]—limit the power of Indian tribes to make and enforce laws free from interference. The Major Crimes Act allows certain major crimes, including murder, rape, and robbery, to be tried in federal court even though the crimes occur on the reservation. Under Public Law 280, Congress has authorized certain states to assume civil and criminal jurisdiction over Indian reservations within those states. And under the Indian Civil Rights Act, tribal governments and courts must guarantee certain individual rights, such as right to trial by jury in criminal cases.

But to the extent that Congress has not expressly limited the exercise of power, Indian governments remain free to exercise their sovereign power to administer justice and enforce their own laws.

4. The Power to Tax

Generally, a tribe has the power to collect taxes from its members and from non-Indians residing on or doing business on the reservation, unless a treaty or act of Congress places restrictions on the exercise of that power. Like other sovereign powers, the power to tax is not a privilege or right given to Indian nations by the federal government. It is an inherent sovereign power.[42]

The power to tax has long been recognized by the federal government to include the power to tax both members of the nation and non-Indians within the reservation. A 1934 opinion of the Solicitor of the Interior Department states:

> Chief among the powers of sovereignty recognized as pertaining to an Indian tribe is the power of taxation. Except where Congress has provided otherwise, this

> power may be exercised over members of the tribe and over non-members, so far as such non-members may accept privileges of trade, residence, etc., to which taxes may be attached as conditions.[43]

The federal courts have also upheld the taxation powers of Indian governments. Early court cases said that since Indian nations could exclude non-Indians from their territory, they could also set the terms, such as payment of a tax, under which non-Indians would be permitted to enter and conduct business within Indian territory.[44] Later cases have simply held that the power to tax is "an inherent attribute of tribal sovereignty which continues unless withdrawn or limited by treaty or by act of Congress. . . ."[45]

While few Indian governments exercise their power to tax, they still have that power.[46] Powers of sovereign governments are not given up by nonuse.[47] The power to tax may become much more important to Indian governments in the future as a means of providing services to its members, regulating non-Indian activities on the reservation, and preventing the imposition of state taxes within the reservation.[48]

5. The Power to Regulate Domestic Relations of Its Members

Power to govern the domestic relations of its members is another aspect of an Indian nation's inherent sovereignty.[49] Included in this power is the authority to make rules governing marriage, divorce, illegitimacy, adoption, guardianship, and support of family members.

Marriages in accordance with Indian laws or customs are just as valid as marriages in accordance with state laws and have been recognized as valid by federal statutes.[50] Even when Indian law and custom have permitted polygamy, the power of the tribe to approve such marriages has been upheld against state interference:

> We must either hold that there can be no valid Indian marriage, or we must hold that all marriages are valid which by Indian usage are [regarded as valid]. [The Indians] did not occupy their territory by our grace and permission, but by a right beyond our control. They were placed by the constitution of the United States beyond our jurisdiction, and we had no more right to control their domestic usages than those of Turkey or India.[51]

The power of an Indian nation to grant divorces, adoption, and guardianship according to tribal law has also been recognized by the courts.[52]

6. The Power to Regulate Property Use

Indian nations, as both sovereign governments and as landowners, generally have the power to regulate the use of property by their members and by non-Indians within their jurisdiction.[53] The courts have held that this is true except where that power has been limited by Congress or by constitutional provisions.[54] An Indian government may exercise its power to regulate property use in a variety of ways, such as *licensing* provisions, *zoning* laws and rules for the *inheritance* of property.

The United States Supreme Court stated in *United States* v. *Mazurie* that ". . . Indian tribes are unique aggregations possessing attributes of sovereignty over both their members *and their territory*. . . ."[55] In that case the Court upheld a criminal conviction for operating a bar on an Indian reservation without complying with the tribe's liquor licensing ordinance.

The power of Indian governments to regulate property use within the reservation through tribal zoning laws free from state interference has also been recognized, even in those states in which Public Law 280 applies.[56] In striking down the application of a county zoning ordinance within the Santa Rosa reservation, a federal court of appeals stated that ". . . extension of local jurisdiction is inconsistent with tribal self-determination and autonomy."[57]

Indian nations, as sovereigns, also have the power to regulate the inheritance of property of their members.[58] Originally this power was absolute[59] but it has been restricted somewhat by federal laws relating to the inheritance of restricted Indian lands.[60] Federal law does not, however, limit the power of Indian nations to govern the inheritance of unrestricted lands or personal property.

Conclusion

The above explanation of sovereign powers of Indian nations is not intended to be a complete list of powers. Nor is it intended to suggest that *all* tribes exercise *all* of these powers. The powers a particular nation does or does not exercise depends upon its history, its relationship with the United States, the status of its tribal government and the wishes of its people.

Many Indian people believe that Indian nations could and should return to the treaty-making process in their relationship with the United States. There is some basis for this belief because even though the United States Congress passed an act in 1871 prohibiting treaty-making between the United States and Indian nations,[61] it continued to make "agreements" with them for decades after that.

"Treaties" were negotiated by the Executive and ratified by the Senate. "Agreements" were negotiated also by the Executive but they were ratified by *both* the Senate and the House of Representatives. Legally though there is little difference between them. U.S. courts have recognized that the 1871 act merely changed the procedure for approving negotiated settlements with Indian nations.[62] "Treaties" and "agreements" have the same legal effect. Furthermore, the 1871 act did not alter the legal force of the treaties made before that act.[63]

Many Indian people believe that Indian nations could and should return to the treaty-making process in their relationship with the United States.

The last "agreement" made between an Indian nation and the United States government was in 1911. There is no reason, however, why the process of making agreements between Indian nations and the United States could not resume today. In fact, under Public Law 93-638 it has already resumed in a way.[64]

Some Indian people also say that Indian nations should resume making treaties with other nations of the world. While the power to do so may exist, some tribes have agreed in treaties to restrict their right to exercise it. For example, several treaties have been interpreted by the courts to mean that by accepting the "protection" of the United States, certain Indian nations have relinquished their powers to deal with other nations of the world. For example, in the Treaty with the Kaskaskias:

> The United States will take the Kaskaskia tribe under their immediate care and patronage, and will afford them a protection as effectual against the other Indian tribes and against all other persons whatever as is enjoyed by their own citizens. And the said Kaskaskia tribe do hereby engage to refrain from making war or giving any insult or offense to any foreign nation, without hav-

> ing first obtained the appropriation and consent of the United States.[65]

The Supreme Court has given a similar interpretation to the Treaty of Hopewell between the Cherokee Nation and the United States:

> The undersigned Chiefs and Warriors, for themselves and all parts of the Cherokee nation, do acknowledge themselves and the said Cherokee nation, to be under the protection of the said United States of America, and of no other sovereign whosoever; and they also stipulate that the said Cherokee nation will not hold any treaty with any foreign power, individual state, or with individuals of any state.[66]

In other treaties Indian governments agreed to restrictions upon trade and the sale of lands. In some cases the restrictions were explicit and in others they were vague. In the Treaty of the Osage of November 10, 1808, the Osage nation gave up the right to:

> . . .(C)ede, sell or in any manner transfer their lands to any foreign power, or to citizens of the United States or inhabitants of Louisiana, unless duly authorized by the President of the United States to make the said purchase or accept the said cession on behalf of the government."[67]

Many treaties implied that regulation of trade was relinquished by the Indian nation with a phrase such as follows:

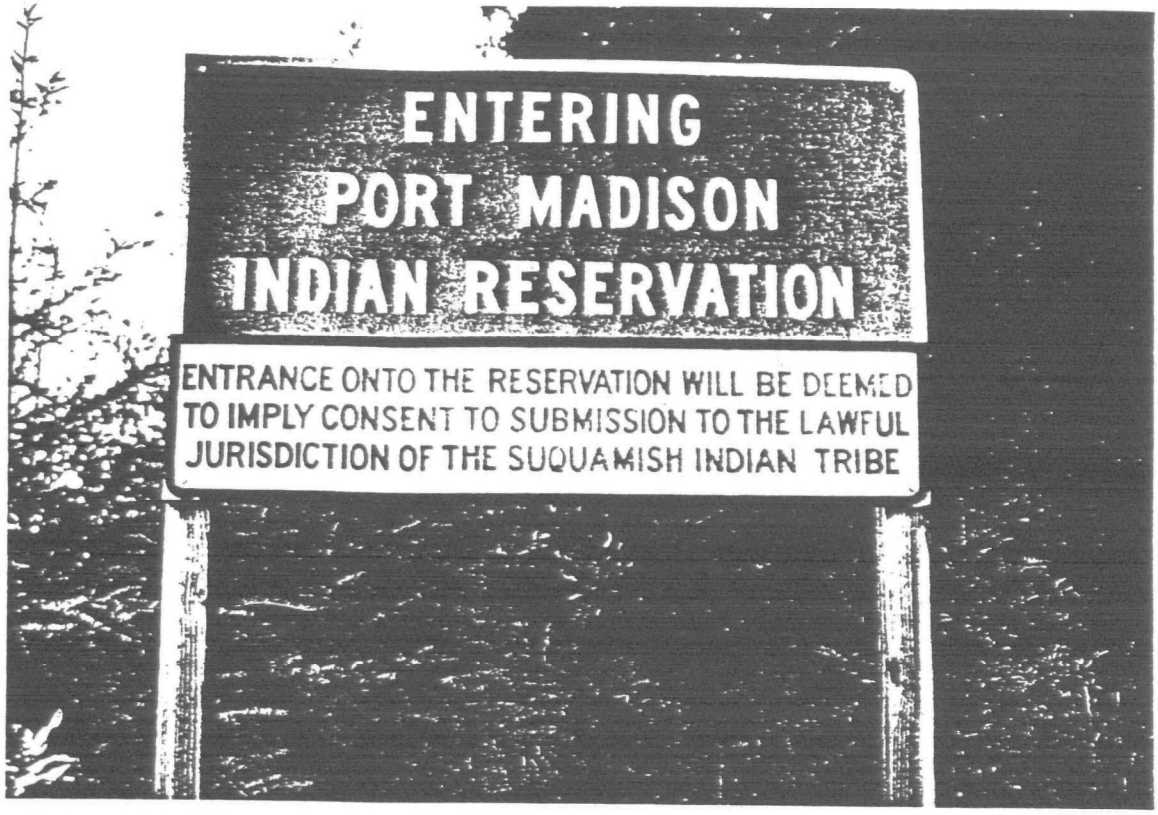
> It is agreed on the part of the Cherokees, that the United States shall have the sole and exclusive right of regulating their trade.[68]

Sometimes, Indian nations were prohibited from trading outside the boundaries of the United States as in the Treaty with the Nisqualli, Puyallup, etc. of December 26, 1854:

> The said tribes and bands finally agree not to trade at Vancouver's Island, or elsewhere out of the dominions of the United States; nor shall foreign Indians be permitted to reside in their reservations without consent of the superintendent or agent. . . .[69]

It is possible that a return to the treaty relationship or at least some variation of it, along with an accompanying recognition of sovereignty, is the only way to prevent non-Indian governments from interfering in the affairs of Indian nations. For example, in November, 1972, the Trail of Broken Treaties Caravan presented a paper to the U.S. government in which a call for the restoration of the treaty relationship was made. Central to the demands made in the 20-point paper was the insistence that the U.S. reopen treaty negotiations with Indian nations. The leaders of the Caravan pointed out that there is no valid reason why Indian nations cannot make treaties or reach agreements with the U.S. government today. Treaty-making could start again if Congress repealed the 1871 act. And Congress has never specifically prohibited the making of "agreements" with Indian governments. Both the U.S. government and Indian governments apparently have the legal capacity to reach new agreements which would clarify or redefine their relationship. New treaties or renegotiated old treaties would form the basis for a legal relationship in which Indian sovereignty would be preserved.

For further discussion of treaties and other issues facing Indian nations today, see Chapter III of this book.



Kirke Kickingbird

I.

AN OVERVIEW OF INDIAN JURISDICTION

A. INTRODUCTION

From time immemorial the governments of Indian nations have been meeting the varied needs of their people by passing laws, by enforcing those laws, and when necessary by resolving conflicts. The means by which any one Indian nation performs these three basic governmental functions (legislative, executive and judicial) depends on its unique culture, political and economic circumstances and historical relationships with other nations of the world. Like any national government, the right or authority of an Indian nation to govern itself stems from its sovereignty.

Sovereignty is the "supreme power from which all other specific political powers are

derived."[1] Since Sovereignty is inherent and comes from within a people and culture, it is unique in every case. It is this collective sovereign will that gives rise to self-government and the exercise of governmental powers. Such powers include choosing a form of government, making and enforcing laws, regulating the use of territory, determining membership, regulating trade, collecting taxes, appropriating monies, regulating domestic relations and forming alliances with foreign nations.

The sovereignty of Indian nations was recognized by the earliest European colonists. One of the first sovereign acts of the newly formed United States government was to recognize the sovereignty of Indian tribes by making treaties with them.[2] Indeed the United States Government has repeatedly recognized the sovereignty of Indian nations through statutes, administrative policies and court decisions.

Nevertheless, since the coming of the first Europeans there has been a constant struggle between Indian, colonial, federal and state governments over just who may exercise sovereign governmental powers in particular fact situations. This "struggle" which makes up the meat of that extremely complex area of Federal Indian Law known as *jurisdiction*, continues to this day. Who has jurisdiction is important because it determines who will make the laws and who will enforce them. It also determines who will control the land, the natural resources and the every day lives of the people who live on the land. In other words, whether or not an Indian nation has jurisdiction in certain situations will affect its ability to continue its political tradition and way of life now and in the future.

This chapter is intended to provide an overview for attorneys and laymen alike on this confusing and often emotionally charged subject. As such, it will attempt to give simple and straightforward answers to such questions as: What is jurisdiction? Who has jurisdiction in Indian Country? Why do people fight over who has jurisdiction? In addition, the chapter will highlight the general state of the law which is discussed in more detail in the four remaining chapters of this book.

B. WHAT IS JURISDICTION

Jurisdiction is a common word to officials of tribal governments. It often brings to mind images of courts and police and conflicts between Indian governments and counties, states and/or federal governments. Yet when defining jurisdiction, people give many different answers. This illustrates the complexity of the subject as well as the confusion which surrounds it. For the purpose of this book, jurisdiction shall be defined as ***the legal power or authority of a government to rule or govern its people and territory.*** Jurisdiction deals with the powers that government uses to control people and property within distinct geographical boundaries. Jurisdiction is one of the specific political powers derived from sovereignty.

Regardless of the form of government, it can generally be stated that all governments exercise legislative (make laws), executive (enforce laws) and judicial (interpret laws) functions. All three of these governmental functions are involved in the exercise of jurisdiction. Jurisdictional powers are broad and cover such things as defining crimes and punishment for those crimes, and regulating such things as domestic relations, hunting and fishing, taxation, zoning and economic development.

1. Criminal and Civil Jurisdiction

Since it is customary in the American legal system to differentiate between matters of criminal law and civil law, it is also customary to treat matters related to criminal jurisdiction or civil jurisdiction separately. Criminal law deals with wrongs against society at large. Crimes are prosecuted by governments and can involve punishment in the form of fines and/or imprisonment of the violator. Civil law, on the other hand, pertains to the rights of the individual citizens of a nation. These rights affect such things as domestic relations, land use and control of property. In civil cases, governments provide a forum for settling disputes between individuals (including corporations) by

ordering that a wrong be corrected and/or damages be paid.

Criminal jurisdiction refers to a government's authority to pass laws making certain acts criminal. It also refers to the power to enforce such laws by arresting, prosecuting, fining and/or jailing individuals who are violating them. Civil jurisdiction refers to the authority of governments to enact civil regulatory laws such as taxing, zoning and hunting and fishing codes. It also refers to the authority of tribal, federal or state courts to decide civil cases. Civil cases can be broadly defined as any law suit that is not a criminal prosecution. A divorce proceeding is an example of a civil case.

2. Exclusive and Concurrent Jurisdiction

Criminal or civil jurisdiction within Indian Country can be either exclusive or concurrent. Exclusive jurisdiction means that only one government, be it tribal, federal or state, has the right to exercise jurisdiction. For instance, tribal courts have been found to have exclusive jurisdiction to decide a child custody dispute where all the parties involved were tribal members residing on the reservation.[3] Concurrent jurisdiction means that two or more governments can assume jurisdiction over the same thing at the same time. This is frequently the case in matters related to Indian jurisdiction.

3. "Indian Country"

As discussed above, jurisdiction has a territorial dimension. In order to effectively exercise sovereign powers, a government must have a place or territory within which to do so. Under Federal Indian Law, "Indian Country" is the common term for such a place. A federal statute has classified three types of land holdings as "Indian Country": (a) reservations, (b) dependent Indian communities and (c) Indian allotments.[4]

a. Reservations

The historic concept of Indian Country is "roughly equated with Indian reservation boundaries because lands within those boundaries were held in trust for the sovereign entity of the tribe."[5] These reservations usually represent the aboriginal territory of an Indian nation and/or lands negotiated for by an Indian government with the United States or a colonial government. According to the statute, Indian Country includes "all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation."[6]

b. Dependent Indian Communities

The late 19th century ushered in the allotment period and the development of other types of Indian land holding. No longer was the Indian's relationship to his land base as clear and simple as it had been with the aboriginal title and possession[7] and subsequent reservation status. According to federal law, Indian Country also refers to "all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state."[8]

The concept of "Dependent Indian Communities" began in 1913 when the Supreme Court in *United States v. Sandoval* held that certain Pueblo lands were "Indian Country" even though they were not part of a formal Indian reservation[9] and were held in communal fee by the Pueblos. The important factor was that the Pueblos were in a trust relationship with the United States and federal laws enacted for the protection of Indian tribes should be applicable on Pueblo land.

In addition, the Supreme Court in *United States v. McGowan*,[10] held that Reno Indian Colony in Nevada was Indian Country insofar as it comprised federal land set aside for the tribes. The Indians in the colony had "been afforded the same protection by the govern-

ment as that given Indians in other settlements known as "reservations",[11] and they too, as the Pueblo Indians, looked to Congress as trustee and protector.

c. Allotments

In addition to reservations and dependent Indian communities, federal law includes as part of Indian Country, all allotments, "the Indian titles to which have not been extinguished, including rights-of-way running through the same."[12]

In the late 19th century Congress was anxious to dissolve Indian nations and civilize the tribes by breaking up the Indian land base and thereby passed legislation to accomplish that goal.[13] Tribally-held land was divided and subdivided with a certain acreage going to each tribal member. After a certain period during which this land was held in trust for the Indian, he was then free to do whatever he wanted with it. Although an inordinate amount of these allotted lands were transferred to non-Indians,[14] it is the unconveyed Indian allotments to which Indian Country refers.[15]

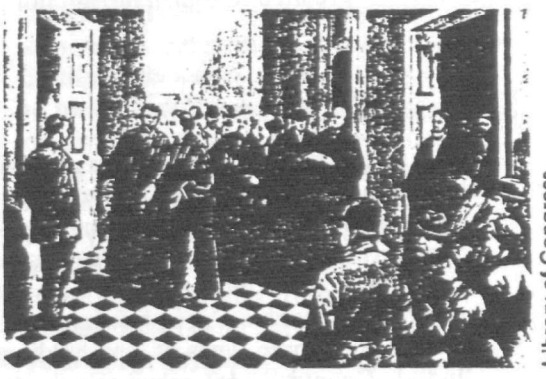
It is important to remember that this definition of Indian Country was used originally by the United States when referring to matters of criminal jurisdiction. Today, however, the definition is generally applied to civil cases as well. It is also important to note that because of pending land claims[16] and the history of treaty violations by the United States,[17] many Indian nations disagree with the United States as to the extent of their territories. Therefore, the extent of "Indian Country" will vary greatly depending on who is defining it. For practical purposes, however, the above definition of Indian Country will be used in this book, although the definition itself has generated some controversy.

C. THE STRUGGLE FOR JURISDICTION

Before we attempt to summarize the current state of the law with respect to the jurisdiction of Indian nations, let us first examine the dynamics involved in the struggle for jurisdiction among the usual cast of characters: tribal governments, state governments, and the federal government. Jurisdictional problems arise when one government gets in the way of another. Thus, prior to the arrival of the white man on this continent, Indian governments had complete and original jurisdiction over their people and territory. From time to time, Indian governments did find themselves embroiled in jurisdictional conflicts with other Indian nations. But it was not until the arrival of the Europeans, the establishment of the federal government, and the expansion of state governments that jurisdictional conflicts became a very real and ongoing threat to tribal self-government.

For social, political and economic reasons, Indian nations want to make, enforce and interpret laws concerning their people and territory. It is natural for a people to want to control their own lives, preserve their culture and promote their own interests. State governments, too, want to do things their own way for similar reasons. Wearing two hats, the federal government is frequently in the middle of conflicts between the tribes and the states. Racism too often muddies the already emotionally charged waters.

In this section we will attempt to define the political relationships among tribal, federal and state governments and examine why each government feels entitled to assume some jurisdiction in Indian Country.



Library of Congress

The Chief Justice and Associate Justices of the U.S. Supreme Court, 1881

1. Indian Governments vis à vis the Federal and State Governments

The basis for the American system of government is the United States Constitution which was ratified in 1789. The Constitution established a federal system of government. A federal system means that separate units of government agree to join together under one central government. This is what happened when the thirteen original colonies joined to form the United States of America giving up many of their individual sovereign powers to the centralized federal government.

Under Article VI of the Constitution the national government has more power than the various state governments, thus enabling it to override state actions which conflict with the policies and laws of the national government. Article VI also gives the national government the power to determine the nature of state political institutions and to forbid the states from exercising certain types of powers. For example, states cannot make treaties with the other nations. The 50 states have legal governments with "residual" powers—those not delegated to the United States by the Constitution, nor prohibited by it to the states.[18]

For social, political and economic reasons, Indian nations want to make, enforce and interpret laws concerning their people and territory.

Indian tribes are sovereign nations existing within the boundaries of the United States who because of historical circumstances enjoy a special relationship with the federal government, not the states. In fact, within the American governmental system, Indian tribes enjoy a status higher than states.[19] The states cannot interfere in this special relationship except through representatives they elect to the federal government.

The basic characteristics for the relationship between Indian governments and the United States was established in the 1830's in two cases before the Supreme Court. In the first case, *Cherokee Nation. v. Georgia*,[20] the Cherokee Nation brought suit to prevent the State of Georgia from exercising jurisdiction over the Cherokee Nation. In his decision, Chief Justice John Marshall avoided the issue of federal-state supremacy by declaring that the Cherokees could not sue in the Supreme Court because they were not a foreign nation within the meaning of the Constitution. "They may, more correctly, perhaps be denominated domestic dependent nations. . . . Their relation to the United States resembles that of a ward to his guardian."[21]

Only a year later in the case of *Worcester v. Georgia*,[22] the issue of Cherokee sovereignty went to the Supreme Court a second time. In this decision the Supreme Court declared that Indian nations ". . . had always been considered as distinct, independent political communities, retaining their original natural rights. . . ." Writing for the majority, Chief Justice Marshall did not refer to the Indians' dependent status which he had described in the earlier Cherokee case. On the contrary, he affirmed the sovereignty of the Cherokee Nation when he said that "the settled doctrine of the law of nations is that a weaker power does not surrender its independence—its right to self-government—by associating with a stronger, and taking its protection. . . ."[23] The court in this decision rejected the idea that state laws could have any force and effect on Indians within tribal boundaries.

2. From the Point of View of the Federal Government

The United States Government generally uses three arguments to support its assumption of jurisdiction over Indian territory: the federal-Indian trust relationship, the plenary power doctrine, and the doctrine of geographical incorporation.

Today, the United States government considers itself to have a trust or fiduciary relationship with Indian people and governments. Growing out of treaties, court decisions, federal statutes and the Constitution itself, this

trust relationship can be defined as "the unique legal and moral duty of the United States to assist Indians in the protection of their property and rights."[24]

Unfortunately, one cannot turn to a written document and find all the specific duties the United States has under the trust relationship, for it is too ill-defined, too vague, and too vulnerable to change for a detailed list to be accurate for all tribes in all situations. There are, however, three broad areas in which the trust duties fall:

1) Protection of Indian trust property.
2) Protection of the Indian right to self-government.
3) Provision of those social medical and educational services necessary for the survival of the tribe.

Congress is said to be the ultimate trustee in the relationship. This means that only Congress has the power to change and redefine the scope of the relationship. Although it is often assumed that the Bureau of Indian Affairs is the trustee, the BIA is merely the principle agent of the Congress in administering the trust responsibility. Other federal agencies may also act as agents.

In its endeavor to "protect" Indian people and governments, Congress has seen the necessity from time to time to pass laws which enable the United States to assert jurisdiction over them. Perhaps this sentiment is expressed best in the Northwest Ordinance of 1787:

> "The utmost good faith shall always be observed toward the Indians; their lands and property shall not be taken from them without their consent; and, in their property, rights, and liberty, they never shall be invaded or disturbed unless in just and lawful wars authorized by Congress, but laws founded in justice and humanity shall, from time to time, be made for preventing wrongs being done to them and for preserving peace and friendship with them."[25]

It is because the courts recognize that Congress has these special trust duties with respect to Indian nations that they have allowed Congress broad power in Indian affairs. While the Constitution does not actually give the federal government, and specifically the Congress, any authority to govern Indian people in Indian territory, the United States courts have come to describe Congress' power over Indian tribes as plenary. "Plenary" means complete or almost absolute.

The Congress has used the plenary power doctrine to pass laws such as the Major Crimes Act and Public Law 280 which, as we will see in discussions below and throughout this book, seriously infringed upon the exclusive jurisdiction of the tribes.

Finally, United States courts have convinced themselves that since an Indian nation's territory is within the geographical boundaries of the United States, the United States has ultimate "title" to all lands which are held in "trust" for the Indians. This theory of geographical incorporation has enabled the United States to claim that Indian land is technically federal land and thus the United States has a right to assert jurisdiction over it.

3. From the Point of View of Indian Nations

By virtue of the fact they were here first, Indian governments have original jurisdiction over civil and criminal matters within Indian Country. This jurisdiction is derived from the inherent sovereignty of each Indian nation. Since Indian governments do not receive their sovereignty from the United States, in their view the United States has no right to assert jurisdiction over them. An exception to this feeling would be in cases where they have specifically granted jurisdiction to the United States in treaties and agreements. In treaties many tribes agreed to accept the general protection of the United States. Nevertheless there are few instances where tribes granted to the United States exclusive jurisdiction over their affairs.[26]

Generally speaking, Indian nations have not entered into special agreements with state gov-

ernments and therefore do not accept the jurisdiction of states over matters occurring within their boundaries.

Indian people feel that Indian reservations and trust lands were set aside by their ancestors for the exclusive use of future generations of Indians. In the view of Indian governments, however, without the ability to assert jurisdiction over their people and territory, the future of their tribe is in jeopardy.

By virtue of the fact that they were here first, Indian governments have original jurisdiction over civil and criminal matters within Indian Country.

4. From the Point of View of the States

There are many reasons why states believe they should have a right to assume jurisdiction in Indian territory. As can be expected the primary one is economic in nature. But states also voice concern for law and order and efficiency in government. Underlying all three, unfortunately, is racial prejudice.

a. Economic Factors

First, assumption of jurisdiction within Indian Country has very real economic ramifications with respect to taxation and natural resource development. Although within the boundaries of a state, Indian lands are exempt from state taxation because of their independent sovereign status. Although studies have shown that federal involvement within the state because of trust obligations more than make up for the loss of tax revenues, special interest groups continue to push for taxation.

Many politically powerful interest groups within states view Indian treaty rights as giving unfair advantage to the tribes. For example, commercial and sport fishermen[27] in several states feel that Indian treaty rights threaten their profit-making capability. Sport fishermen are equally upset claiming that treaty rights make Indians "super citizens" and therefore violate the equal protection clause of the United States Constitution.[28]

Similar arguments support state efforts to assume jurisdiction over natural resources, including water, and economic development.

b. Law and Order

Sporadically throughout the history of the United States-Indian relations states have felt the necessity to assume criminal jurisdiction in Indian territory because of what they have felt to be inadequate law and order administration. This assertion is partially founded on racial prejudice.

In most cases, however, states have claimed that criminal jurisdiction is needed because tribes either do not have the inclinations or the institutions to establish and enforce discipline within their territory, thus making reservations sanctuaries for law-breaking Indians and a danger to Anglos living nearby.[29]

c. Efficiency of Government

Many interests within states argue that because the law related to jurisdiction in Indian Country is so vague and unclear conflicts will continue to occur which result in lengthy court battles and other costly expenditures. Many of these people do not believe, as a practical matter, that Indian governments and non-Indians can work together successfully. Consequently, they believe that in the interest of government efficiency, the states should have sole control.

d. Prejudice

Pervading all arguments put forth by states and their interests with respect to the assumption of jurisdiction in Indian Country is the fear of Indians exercising control over the behavior and/or economic interests of non-Indians on Indian reservations. Many non-Indians appear to be threatened by the fact that they may place themselves under the jurisdiction of a culturally foreign government when they enter an

Indian reservation, a fact that does not seem to bother them when they enter another state or a foreign country.

In support of their arguments, non-Indians (some of whom have organized themselves into groups such as "Montanans Opposed to Discrimination" and "Inter-State Congress on Equal Rights and Responsibilities") claim that their constitutional rights are violated when they are forced to submit themselves to tribal jurisdiction. The basis for this claim is that non-Indians are generally prohibited from participating in the voting franchise within the reservation community. Again, this situation exists throughout the United States where individuals own property in more than one state.

D. GENERAL STATE OF THE LAW

It is difficult to summarize the general state of the law concerning the question, "Who has jurisdiction in Indian Country?" The answer depends on a number of complex and often conflicting variables such as treaties a tribe may have made with the federal government, statutes passed by Congress, federal court decisions, specific tribal laws, state laws and the economic and political climate at any one time. Nevertheless, in this section we will attempt to describe in as general and simple terms as possible what United States law says on this topic.

First we will state the general rule which is highly supportive of Indian sovereignty. Then we will discuss two legal doctrines which are applied by United States Courts to determine when it is appropriate for federal and/or state courts to assume jurisdiction. Finally we will discuss and trace the creeping jurisdiction of both the federal government and the states with respect to criminal and civil matters.

1. General Rule

A formidable body of law favorable to American Indian people and tribes has been developed which, if properly administered and applied, will protect Indian self-government and enhance their potential for social and economic growth. From this body of law can be gleaned a general rule concerning jurisdiction in Indian Country.

> Because of their inherent sovereignty Indian nations have exclusive jurisdiction over their people and territory with respect to criminal and civil matters except where limited or taken away by treaties or Acts of Congress.[30]

Many individual Indian governments have chosen to limit their own jurisdictional powers. These limitations usually appear in tribal constitutions and codes or in treaties and agreements they have made with the federal government. The federal government claims the right to limit tribal exclusive jurisdiction on the basis that it is the trustee of Indian governments and must "protect" them. States have no authority over Indian affairs, tribal governments or reservation lands. Any power of the states to regulate relations with Indian nations is a delegated power accorded to states by either the federal government or by the Indian nation itself.

Thus, to determine whether it has jurisdiction in a specific situation, an Indian tribe must ask the following questions: Do our own laws and customs, including our constitution, permit us to exercise this power? Did we cede this power to the federal government in a treaty? Has the federal government delegated the power to itself or a state through a federal statute? If so, do we still have concurrent jurisdiction?

a. Federal Preemption Doctrine and Infringement Test

We have seen that despite the original jurisdiction of Indian tribes over criminal and civil matters within their territory, United States law permits both the federal government and the states to assume jurisdiction in Indian Country in certain circumstances. To help the courts determine when such circumstances are appropriate two legal doctrines have evolved.

The first is the Federal Preemption Doctrine which stems from the unique federal-Indian

trust relationship. The *federal preemption doctrine* says that the plenary power of Congress to regulate Indian affairs can preempt state jurisdiction over Indian nations and their territories. This means, for example, that if there is a federal statute regulating an activity on an Indian reservation, the state cannot regulate that same activity.

What happens, however, if there is no federal statute and a state wants to assume jurisdiction? In such cases, the infringement test, not the federal preemption doctrine, applies. The infringement test is used by the courts to determine whether the tribe or a state has jurisdiction in the absence of a federal statute. Refined through numerous court decisions[31] the *infringement test* essentially says that the state has jurisdiction only in cases where the state's action does not infringe on the right of Indian nations to make their own laws and be ruled by them.

When states attempt to assert jurisdiction over non-Indians within an Indian reservation, both doctrines, the federal preemption doctrine and the infringement test, are potentially applicable.

One can readily see that these two doctrines still leave many unanswered questions. Confusion arises frequently over whether there is a governing act of Congress and whether or not a state action actually "limits tribal self-government."

United States law permits both the federal government and the states to assume jurisdiction in Indian Country in certain circumstances.

In summary, court decisions seem to indicate that if there is a "governing" Act of Congress, the federal preemption doctrine applies. If there is no such act, the infringement test applies. If non-Indians are not involved, the states have no interest and therefore cannot assume jurisdiction under any circumstance. See Chapters II and III of this text for a more detailed discussion of these doctrines.

2. Criminal Jurisdiction

It is in the area of criminal jurisdiction that most of the controversies among the federal government, the various states, and Indian nations have arisen. In this section we will highlight the detailed discussion of this emotionally charged subject which appears in Chapter II of this text.

To determine which of the three has jurisdiction in a criminal matter one must first establish: (1) what crime was committed; (2) whether the defendant is an Indian; (3) in which state the crime occurred; and (4) what tribal laws and treaties are applicable to the case, if any. Still the general rule applies that Indian tribes have exclusive jurisdiction unless a treaty or a federal statute states otherwise.

a. Federal Assumption of Criminal Jurisdiction

Soon after the founding of the new nation, the United States Government found it necessary to pass laws concerning the conduct of its own citizens within Indian Country. This early series of laws known as the Trade and Intercourse Acts[32] was passed largely because the fledgling nation was concerned that the fraudulent conduct of its citizens might provoke Indian nations to war. Although the motives behind the acts were to protect Indian tribes, they succeeded in firmly establishing the power of the federal government to control its own citizens and their dealings with the Indians.

The Trade and Intercourse Acts were only the beginning of the steadily creeping federal jurisdiction over Indian Country. In 1816 Congress passed the General Crimes Act[33] which made all federal criminal laws applicable to Indian Country except where: (1) offenses are between Indians; (2) an Indian has already been punished under tribal law; or (3) exclusive jurisdiction over a particular offense has already been reserved by a tribe in a treaty. With minor modification, the act is still in effect today.

The Major Crimes Act of 1885[34] is the first major federal statute which allowed the federal government to assert jurisdiction over purely Indian matters in Indian territory. The act as

amended gives federal courts jurisdiction over fourteen violent crimes even in cases where the crime was committed by one Indian against another. These crimes include murder, manslaughter, rape, incest, assault with intent to kill, arson, burglary, robbery and kidnapping.[35]

A 1946 Supreme Court decision[36] applied the Assimilative Crimes Act of 1825[37] to Indian Country. The result was to make state criminal laws apply to federal enclaves in the absence of a specific federal law. This decision greatly increased the number of crimes (such as simple assault) subject to federal prosecution within Indian Country.

More recently, in 1978, there was a serious attack against Indian sovereignty and self-government when the Supreme Court decided the case of *Oliphant v. Suquamish Tribe*.[38] In this case the court found that tribal courts did not have the power to try and punish non-Indians who commit crimes on the reservation and are arrested on the reservation. This unfortunate decision was based on poor legal analysis and guided by the out-of-date prejudice that Indian judicial systems are inferior to the non-Indian system.

b. State Criminal Jurisdiction over Indian Country

Since the establishment of the United States, state governments have continually attempted to exercise criminal jurisdiction over Indian territory. Nevertheless, the general rule still applies today: states have no jurisdiction unless a specific Act of Congress has granted it to them. As we said earlier, states have no jurisdiction over Indians unless the tribes or the United States Congress has specifically granted them that jurisdiction. Such a grant happened in 1953 when Congress passed, without the consent of the tribes, Public Law 280. See discussion below and in Chapter IV.

Limited state criminal jurisdiction in Indian territory aside from P.L. 280 has been allowed by the federal government in certain circumstances. The legal rationales are too erratic and confusing, however, to discuss them in a short space. See the more detailed discussion in Chapter II.

c. Criminal Jurisdiction and the Tribes

We have already seen that the tribes have exclusive jurisdiction unless it was specifically given up in a treaty or it was denied in an Act of Congress. We have also seen that there have been a series of congressional acts which have infringed upon tribal sovereignty and chipped away at their exclusive jurisdiction. It is important to note, however, that there are still many areas where tribal exclusive jurisdiction is intact. With the exception of the fourteen offenses listed in the Major Crimes Act, Indian nations retain exclusive jurisdiction over offenses committed by Indians which do not affect the person or property of non-Indians. And where an existing treaty between the federal government and an Indian tribe guarantees the tribal court exclusive jurisdiction, no other court may hear the case.[39]

In addition, it is important to remember that the legislative history of the Major Crimes Act and other legislation does not support the notion that the federal government, in claiming jurisdiction over Indian Country in certain matters, claimed *exclusive* jurisdiction. When offenses against the person or property of non-Indians are committed by Indians, tribal and federal governments share *concurrent* jurisdiction. Indeed, strong arguments can be made to support concurrent jurisdiction in most cases where the federal government or the states have assumed jurisdiction over Indian Country.[40]

3. Civil Jurisdiction

In the area of civil jurisdiction over Indian Country the working rule remains that the Indian nations retain all their jurisdictional powers over the people and property within their territory except where restricted by a treaty provision or an Act of Congress.

a. Federal Civil Jurisdiction

Just as there are statutes authorizing federal assumption of criminal jurisdiction in Indian Country, Congress has passed several laws asserting federal civil jurisdiction in Indian

affairs. The forum in which both powers are exercised, however, differs. Federal criminal jurisdiction is administered in the federal court system, whereas federal civil jurisdiction is primarily a question of administrative law carried out by federal executive agencies such as the Bureau of Indian Affairs in the Department of the Interior.[41]

Indian tribes have exclusive jurisdiction unless a treaty or a federal statute states otherwise.

The Bureau of Indian Affairs plays the major role in exercising federal civil jurisdiction over Indian nations, for it is the primary agency within the government for carrying out trust obligations to Indian tribes. The major authorizing legislation for the BIA, the Snyder Act of 1921 and the Johnson O'Malley Act of 1934,[42] give the BIA the power to expend funds and set up programs in all areas of tribal life,[43] including education, social welfare, health care, economic development, and tribal government. The administration of these programs and other trust responsibilities has enabled the BIA and other federal agencies to exert so much control over tribal self-government, that they all too frequently have invaded the area of tribal self-government.[44]

It was not until the passage of the Indian Civil Rights Act (ICRA) of 1968, however, that a major protest was heard from tribes. This legislation made most of the United States Bill of Rights applicable to tribal criminal and civil procedures. Consequently the Act seriously affected the cultural values by which Indian tribes operated their governments and court systems.

The extent of federal civil jurisdiction under the Act was unclear. Ten years of confusion followed until 1978 when the United States Supreme Court clarified the scope of the ICRA.[45] In that decision, the Court restricted the jurisdiction of federal courts solely to habeas corpus cases. The Court, realizing that the ICRA incorporated two distinct and often competing congressional purposes of protecting individual Indians from unjust actions of tribal government and promoting Indian self-government, decided that the latter must prevail.

b. State Civil Jurisdiction

As in the case of criminal jurisdiction, states generally do not have civil jurisdiction over Indian Country. But the courts themselves have said that there can be no rigid rule in this matter. Thus the area of state civil jurisdiction in Indian Country is very confusing. In trying to determine whether a state would have jurisdiction one must first look to see whether a specific federal statute would "preempt" state involvement, or specifically grant the jurisdiction to the state as in the case of Public Law 280. In the absence of a specific federal statute, the courts use the infringement test to see whether state jurisdiction would "infringe" upon tribal self-government and tribal sovereignty. If it is found that state action would not infringe upon tribal self-government, states can be granted civil jurisdiction by the courts. In such cases, however, there is a strong argument for tribal concurrent jurisdiction.

c. Tribal Civil Jurisdiction

Indian governments have inherent jurisdiction to regulate their own affairs as well as all activities occurring within their territory. As part of this jurisdiction they have the power to make and enforce their own laws. This has been upheld in numerous court decisions.[46] United States courts have upheld a tribe's power to enforce its laws regarding crimes and taxation, thus it can reasonably be concluded that tribal jurisdiction extends to all aspects of civil law.

A recent United States Supreme Court decision supported the principle that tribes have exclusive civil jurisdiction over matters occurring on the reservation involving tribal members.[47] (See discussion of *Fisher v. District Court* in Chapter III. C). Tribes have the right to impose oil and gas severance taxes upon non-Indian lessees of tribal trust lands.[48] Tribes have the fundamental right to determine citi-

zenship.[49] Tribes have exclusive jurisdiction in regulating domestic relations and child custody.[50] This includes marriages and divorces, as well as the ability to make rules governing division of property and support of family members. Marriages in accordance with Indian laws and customs are as valid as marriages under state laws.[51]

Indian nations also have exclusive jurisdiction over the regulation of property and land use. Indian nations have the authority to regulate both Indian and non-Indians by taxing and licensing people and activities (commercial dealings, contracts, leases or other arrangements) when that person enters or that activity occurs in Indian Country.[52]

It is through its courts that a tribe can exercise and enforce potentially all matters involving the internal affairs of the tribe, including the enforcement of its own laws and regulations. Many tribes, however, have denied themselves civil jurisdiction over non-Indians on the reservation. These limitations are often written in a tribal code or constitution. The self-enforced limitations are unfortunate because the United States Supreme Court has recognized tribal civil jurisdiction over non-Indians in many situations. Tribes would greatly enhance their powers of self-government by attempting to regulate all people and activities within their territories.

4. Special Cases

While Indian nations throughout the United States retain many jurisdictional powers either exclusively or concurrently, tribes in certain regions, because of political and historical circumstances, are particularly confused and lack confidence in carrying out their duties of self-government. Particularly, these are tribes located within the geographical boundaries of states who were delegated limited jurisdiction over Indian Country by the federal government through Public Law 280 and in the State of Oklahoma. For this reason, we have devoted two separate chapters in this book to these subject areas.

a. Public Law 280

Perhaps the most widely denounced federal Indian legislation in recent years is Public Law 83-280. Passed in 1953, P.L. 280 gave the states of Wisconsin, Oregon, California, Minnesota, and Nebraska criminal and civil jurisdiction in Indian Country and provided a mechanism whereby the states could assume permanent jurisdiction over Indian nations. The law applied to most of the Indian land within the boundaries of those five states.

In 1958 Alaska was added to the list of states. In later years additional states opted to assert full or partial civil and/or criminal jurisdiction without the consent of Indians. Tribal governments protested forcefully and in 1968, P.L. 280 was amended to require the consent of Indian nations before states could assume jurisdiction.[53]

In the area of criminal jurisdiction the act provided that the Major Crimes and the General Crimes acts would no longer apply and the state would assume jurisdiction over such crimes. It is important to note, however, that because of the federal-Indian trust relationship, P.L. 280 states are not allowed to assume jurisdiction over Indian trust or restricted real or personal property, including water. Consequently, states are not able to tax or otherwise place restrictions on Indian lands or property. Moreover, rights retained by tribes in treaties and other agreements made with the federal government are preserved for the tribes. These include hunting, fishing and trapping rights.

With respect to civil jurisdiction Public Law 280 placed under state jurisdiction only those laws of general application, that is, which applied to everyone within the state.[54] Local laws, such as zoning ordinances are not under state jurisdiction.

By passing Public Law 280 Congress attempted to secure the cheapest solution to the problem of alleged lawlessness on Indian reservations. No federal funds were ever committed for the practicalities of law enforcement. It was left entirely to the states to provide and pay for policing the reservations. Because of the high costs and inefficiency many

states today are attempting to return jurisdiction to the tribes and the federal government.

It is also important to remember that no matter how much Public Law 280 has infringed upon tribal sovereignty, it theoretically has not seriously affected tribal jurisdictional powers. Recently, federal court decisions and opinions of the Solicitor of the Department of Interior[55] have upheld that P.L. 280 does not extinguish concurrent tribal jurisdiction over its own members.

b. Oklahoma

Perhaps nowhere else has state encroachment on tribal jurisdiction been more confusing than in Oklahoma. Up until recently the State of Oklahoma has been held by the courts not to be "Indian Country"[56] for jurisdictional purposes because of the "lack" of reservations, a problem created by the General Allotment Act of 1887. The legal reasoning behind this contention has been seriously defective. Other states with similar allotment situations did not have their reservation boundaries "lifted." Nor can legal scholars find a specific act or order which generally nullifies reservation boundaries within the State of Oklahoma. Nevertheless, the State with the help of federal agency officials, successfully perpetuated the myth.

Compounding the confusion are historical circumstances and the fact that Congress has passed numerous laws affecting the exercise of sovereign powers of certain tribes (primarily the Five Civilized Tribes). Over the years many of these laws have been applied incorrectly to tribes throughout the state.

Until recently, this confusing set of circumstances has made the Indian nations located within the State with the second largest Indian population afraid to assert their sovereign powers particularly in the area of jurisdiction. Since 1977 two court decisions[57] have held that activities occurring on tribal lands and trust allotments are under the jurisdiction of the tribes and/or the federal government and not the State of Oklahoma. Today, tribes throughout Oklahoma are exercising more of their inherent sovereign powers and are working to develop and enhance their law enforcement capabilities.

E. CONCLUSION

Despite the numerous and sometimes conflicting rules of law, court decisions and statutes concerning jurisdiction in Indian Country, the general rule remains that tribes have jurisdiction over their own people and territory unless restricted by a treaty provision or an Act of Congress. Where assumptions of jurisdiction have been taken by the federal government or the states, we have seen that in most instances tribes retain concurrent jurisdiction.

Indeed United States law endorses Indian sovereignty and tribal self-government and generally supports the exercise of tribal jurisdiction within Indian territory. Nevertheless, tribes can expect continued attempts by both the federal government and the states to assert jurisdiction over them. There are several reasons for this. First, Indian nations are in effect nations within a nation. Consequently, they do not enjoy the advantage of physical separation by clearly delineated national boundaries such as exists between the United States and Canada or the United States and Mexico.

As in the case of criminal jurisdiction, states generally do not have civil jurisdiction over Indian Country.

Second, within Indian Country there are often sizeable non-Indian populations creating court-inspired problems of enforcement of both civil and criminal jurisdiction.

Third, although the relationship between the federal government and Indian nations is said to be exclusive, in practical terms there have been many intrusions upon sovereignty through state encroachment, federal-state agreements, and federal laws such as P.L. 280. Each time an encroachment takes place it supports further creeping jurisdiction.

Fourth, shortages of natural resources and the never-ending need for tax revenues will continue to encourage attempts by states to assume jurisdiction over civil matters.

Despite such negative factors, however, there are also encouraging indicators supporting the return of more and more criminal and civil jurisdiction to the tribes. For example, recent experience has proven to federal and state governmental officials and politicians that local government is not only more effective than federal government but it is also less expensive. It is reasonable to forecast that Indian societies will also be more efficient and orderly when they live under a governmental and legal system reflecting Indian values and administered by Indians. Moreover, current federal policy supports tribal self-government and recent court decisions have followed suit.

Indian people are looking to their own governments to meet their needs, solve their problems, and build their futures. They are refining their traditional governmental institutions to meet contemporary needs. They are reestablishing law enforcement and court systems, amending constitutions and passing laws enabling their governments to exercise greater jurisdiction over their internal affairs. In order to preempt attempts by states to regulate economic development and taxation, tribes are creating tribal codes covering such matters.

Each tribe must decide for itself which of its sovereign jurisdictional powers it wants to exercise. Yet, more and more tribes are coming to realize that if they do not exercise these powers, there is a very good chance that the federal or state governments will. It is only by pushing to retain or reacquire jurisdiction over their own land and people that Indian governments can ensure the survival of their tribes.

Bob Gessner

IV.
PUBLIC LAW 280

A. Overview

Previous chapters have discussed the general rule that states have no jurisdiction over Indian Country unless a tribe or a specific Act of Congress has granted it to them. Such a "grant" of jurisdiction by the federal government to the states occurrred in 1953 with the passage of Public Law 83 280.[1] Perhaps the most widely denounced federal Indian legislation in recent years, Public Law 280 gave the states of Wisconsin, Oregon, California, Minnesota and Nebraska criminal and civil jurisdiction in Indian Country and provided a mechanism whereby the states could assume permanent jurisdiction over Indian nations. The law applied to most of the Indian land within the boundaries of these five states. To some extent, under PL 280, tribal laws and customs were honored, but if there was a conflict, it was to be decided by the state and not by tribal law. Indian lands were still to be held in trust by the federal government, and no taxation or other encumbrance upon these lands was to be

allowed. Indian hunting, fishing and trapping rights were to be retained by the tribes, and were not to be subjected to state control. The states were limited to applying only laws "of general application," which means that local and county ordinances such as zoning regulations were not to be applied.

In 1958, Alaska was added as one of the states that possessed full civil and criminal jurisdiction over Indians. In addition to these states, any other state could opt to assert full or partial civil and/or criminal jurisdiction without consent of the affected Indians. Many did. These partial assertions have been the cause of much litigation. In 1968, PL 280 was amended so that states could no longer assert jurisdiction over Indians without their consent. However, the 1968 Amendments only allowed for a retrocession, or giving back, of jurisdiction acquired under the 1953 Act at the states' request instead of at tribal request. Only the state could make the offer of retrocession, and only the federal government, through the Secretary of the Interior, could accept that offer. Indians were still excluded from the decision-making process.

Today . . . many states are seeking to return jurisdiction to the tribes for a variety of reasons most of which are economically based.

In passing PL 280 Congress bowed to state pressures to secure the cheapest solution to the problem of alleged lawlessness on Indian reservations. Today, however, many states are seeking to return jurisdiction to the tribes for a variety of reasons most of which are economically based. And many tribes within those states are firming up their governmental structures and institutions in order to accommodate the return of such jurisdiction.

1. Why Study It?

An understanding of Public Law 280 (PL 280) is necessary not only for those tribes and individuals subjected to it, but also for all concerned Indian and non-Indian people who recognize the concept of inherent sovereignty as being vital to the survival of Indian nations. Indeed, Public Law 280 infringes upon tribal jurisdictional powers by limiting both individual and tribal rights.

In an effort to help tribal governments overcome the devastating implications of this Act and prevent future legislation with similar intent and shortcomings from being passed, this chapter will discuss the legislative history of the Act, including its political predecessors, analyze in detail what the Act does, and discuss how the courts have both limited or extended the Act's rather vague provisions over the years.

B. Historical Background

Beginning in the 1920's with the publication of the Merriam Report[2] and extending through the 1930's, federal policy and legislation[3] strongly affirmed tribal sovereignty and supported mechanisms which would assist tribes in strengthening their governments and institutions and consolidating their land bases severely fragmented by allotment. After decades of broken promises, moral disillusionment, the ravages of disease, and abrupt changes in lifestyle, Indian governments and their people were beginning to pick up the pieces and forge new self-determined futures. World War II put an end to the United States' spirit of commitment to Indian self-determination and the reforms made during the 1930's.

While the war years marked a dormant period in Indian-United States relations, the post-war years (late 1940's through the early 1960's) saw the development and implementation of a "new" policy which brings chills to the spines of almost every Indian who hears the word today. When the nation emerged from the War, Congress began to look upon Indians, who had participated in great numbers in the war effort, as financial burdens. In 1953, therefore, Congress passed House Concurrent Resolution No. 108 declaring the United States policy toward Indian tribes to be that of *termination*.

1. Termination: An Old Policy With A New Twist

Termination was presented as a method of making Indians first-class citizens, even though they had been made United States citizens in 1924.[4] By terminating the special trust relationship and sovereign status of Indian nations, the United States government would be promoting their "assimilation"—socially, culturally and economically—into the mainstream of American society. Through termination Indians would be given the same rights and responsibilities of all other citizens, thereby making them first class and "fully taxpaying citizens."[5]

Americans have always held close to their hearts the idea that this society is a "melting pot" where peoples from all over the world have come to make their fortunes and live happily ever after with each other. One does not have to visit many ghettos of large cities or the many rural enclaves of distinct ethnic groups which dot the land to know that the melting pot is more theory than fact. Nevertheless, the ultimate passage of House Concurrent Resolution 108 in 1953 affirming the terminationist policy towards Indians had as a basis this out-dated and uniquely American myth.

The report of the Hoover Commission,[6] published in 1949, advocated complete integration into the dominant society. With Indian advocacy in the federal sector at a low point, this outlook quickly gained momentum. Certainly, some legislators sincerely believed that integration was both equitable and a desirable solution for the endemic problems encountered by the rural and isolated nature of Indian reservations. This concern, combined with the political realities of a newly elected and popular Republican president, Republican and conservative majorities in both Houses of Congress, and nationalistic post-war "Americanism" led to an easy passage of HCR 108.[7]

> Whereas it is the policy of Congress, as rapidly as possible to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, and to grant them all the rights and prerogatives pertaining to American citizenship; and
>
> Whereas the Indians within the territorial limits of the United States should assume their full responsibilities as American Citizens:
>
> Now, therefore be it resolved . . .

Without looking too far afield, we can see above sentiments expressed in the 1980's, by the so-called backlash groups such as Montanans Opposed to Discrimination (MOD) and the Interstate Congress on Equal Rights and Responsibilities (ICERR).

Although a statement of policy only, HCR 108 was quickly followed by the notorious Public Law 280 in August of the same year and subsequently by many pieces of legislation which "terminated" the special relationship between Indian tribes and the United States.

The real effect of the termination policy was to make Indian lands subject to state property taxes. Indians were too poor to pay the taxes and thus states began to confiscate Indian lands for nonpayment. Over 70 Indian tribes and rancherias fell victim to the termination policy.[8] Again short-sightedness on the parts of the federal government and states neither took into consideration the effect that the cessation of federal dollars to Indians would have on states or the debilitating social burden which would become the states' responsibility. Today, as in the case with Public Law 280, many tribes have had their "federally recognized" status reinstated through Congressional legislation.

2. Legislative History

Fueled by federal reports such as the Hoover Commission Report, HCR 108, the loss of Indian advocates in policy-making positions in the federal government, the economic climate, and the generally conservative mood of the nation, the imposition of civil and/or criminal jurisdiction over Indians by certain states through passage of PL 280[9] was not surprising.

a. Earlier Legislation

Earlier attempts by states to obtain through federal legislation civil and/or criminal jurisdiction over Indian Country had been carried out subsequent to World War II. For example, North Dakota was accorded criminal jurisdiction over the Devils Lake Reservation in 1946,[10] and Iowa was given criminal jurisdiction on the Sac and Fox Reservation in 1948.[11] In 1949 California was accorded full civil and criminal jurisdiction over the Agua Caliente Reservation,[12] a decision prompted more by a desire of the "fashionable" city of Palm Springs to be rid of the "Indian problem" than a concern for the successful integration of Indians into the mainstream of society. It was the State of New York's successful attempt to assert both civil and criminal jurisdiction over Indian tribes that served as the first serious "test" for Public Law 280.

(1) The New York Example

In July, 1948 an Act of Congress granted to the State of New York criminal jurisdiction "over offenses committed by or against Indians on Indian reservations within the State of New York. . . ."[13] A comparison of the legislative history of this act with that of PL 280 reveals similar rationales for passage: lawlessness on reservations and the subsequent threats to neighboring Anglos.[14] The following excerpt from the House Report on the New York Act underscores this concern:

> The need of this legislation arises from the fact that in certain instances, Indian tribes do not enforce the laws covering offenses committed by Indians and law and order should be established on the reservations when tribal laws for the discipline of its members have broken down.[15]

New York State's civil jurisdictional act was passed in 1950,[16] and allows for tribal laws and customs as certified by the Secretary of the Interior, to govern in all civil cases if a tribal law or custom is at issue in the suit. September 13, 1952 was the date that state civil jurisdiction became effective.

b. The Evolution of Public Law 280

Concurrently with the passage of the jurisdictional acts in New York, Congress began formulating pieces of legislation which would grant states across the nation civil and/or criminal jurisdiction over Indian Country for both general application and in particular instances.[17] At this time, jurisdiction over Indians in Indian Country was under tribal or federal control, except in cases of treaty provisions, special feature statutes or court cases allowing state intrusion due to the involvement of non-Indians.[18]

The early bills often favored only concurrent criminal jurisdiction for states over Indians on reservations.[19] The Department of the Interior opposed such bills because they provided for no tribal consent provision before imposition of state jurisdiction and the Interior Department favored the greater flexibility of state-by-state application of jurisdiction,[20] the position historically preferred by Interior. Although introduced in the 80th and 81st Congresses, the bill failed to gain passage by both Houses.

In the 82nd Congress, it was amended to include only certain states, provide for Indian consent, and preserve Indian hunting and fishing rights. Interior still opposed it in favor of state-by-state control approval,[21] prophetically citing problems such as discrimination against Indians in state courts, reluctance of states to provide adequate law enforcement on reservations, the already efficiently functioning law and order and tribal court systems on some reservations, and the unfamiliarity of Indians with state laws in general.[22] But claiming that tribal referenda were too costly, the Interior Department said it favored tribal consultation.[23] A revised version of the bill died in the 82nd Congress.

c. *A Bill Becomes Law*

At the beginning of the 83rd Congress, the House Subcommittee on Indian Affairs revised a bill transferring criminal and civil jurisdiction over Indians in California into a bill of general application.[24] That bill, HR 1063, became PL 280. The full text of the bill appears in the appendix at the end of this book. The bill was favored in theory by some tribes, but objected to by at least five tribes.[25] Despite Indian opposition to the bill, the House of Representatives passed it without amendment on July 27, 1953.[26]

After deleting section eight, which dealt with federal liquor laws, the Senate passed it without amendment. It then was returned to the House to concur in the deletion of section eight. This was done on August 1, 1953.[27] Interior had not stated its previous objections to conferral of jurisdiction without tribal referenda or consultation as it had in the past. This lack of consultation apparently bothered President Eisenhower too, as he stated that he had grave doubts about portions of the bill:[28]

> I have . . . signed it because its basic purpose represents still another step in granting complete political equality to all Indians in our Nation . . .
>
> My objection to the bill arises because of the inclusion in it of sections six and seven. These sections permit other states to impose on Indian tribes within their borders, the criminal and civil jurisdiction of the State, removing the Indians from Federal jurisdiction, and, in some instances, effective self-government.
>
> The failure to include in these provisions a requirement of full consultation in order to ascertain the wishes and desires of the Indians and of final federal approval, was unfortunate. I recommend, therefore, that at the earliest possible time in the next session of the Congress, the Act be amended to require such consultation with the tribes prior to the enactment of legislation subjecting them to State jurisdiction, as well as approval by the Federal Government before such legislation becomes effective.[29]

It was some fifteen years before the President's recommendations became law.

C. Provisions of the Act

In examining the provisions of the Act, it becomes clear that the grant of jurisdiction to the states was indeed a broad one, limited primarily by the language contained in section 2 (b):

> (b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

1. Criminal Jurisdiction

Sections one and two accorded criminal jurisdiction, with certain exceptions to the states of California, Minnesota, Nebraska, Oregon, and Wisconsin. Alaska was included by a 1958 Amendment.[30] Specifically excluded from state control was trust or restricted real or personal

property, including water rights. No taxation, encumbrance, or other restrictions upon Indian lands or other property was allowed in the Act, and the primacy of the Federal-Indian relationship with regard to treaties, agreements, or federal statutes was acknowledged, as were Indian hunting, fishing, and trapping rights.

Congress attempted . . . to secure the cheapest solution to the problem of alleged lawlessness on Indian reservations.

Section 2 (c) also provided that both the Major Crimes Act[31] and the General Crimes Act[32] would no longer apply in those areas now covered by PL 280.

What Congress attempted to accomplish by the sections was to secure the cheapest solution to the problem of alleged lawlessness on Indian reservations. No federal funds were ever committed toward the practicalities of law enforcement. It was left up to the states to provide and pay for the policing of Indian reservations.

2. Civil Jurisdiction

Sections 3 and 4 provided for civil jurisdiction, with the same limitations on the states regarding trust or restricted property contained in the grant of criminal jurisdiction under section 2. The Act stated that ". . . those civil laws of such State that are of general application . . ."[33] shall apply.

The words "of general application" proved to be key ones, as much litigation has been decided by judicial interpretations of the phrase. What is a state law "of general application?" For example, a law prohibiting gambling on horse races throughout the State of Utah is a state law of general application; it applies to everyone throughout the state. A law of local or limited application would be something such as a zoning ordinance that prohibits shopping centers in San Bernadino, California, but does not affect other counties in California.

a. "General Application" Defined and Redefined

In 1975, the 9th Circuit Federal Court of Appeals squarely addressed the issue of interpreting what constitutes a state law of general application. In *Santa Rosa Band of Indians v. Kings County*,[34] the court not only discussed the "general application" doctrine, it also clarified the "encumbrance"[35] exception contained in section 4 (b) of PL 280. The Court chose to interpret the term "encumbrance" broadly, and relied on several Supreme Court decisions for its authority.[36] In *Santa Rosa*, the court held that a certain county zoning ordinance restricting the use of mobile homes did not apply on the Santa Rosa Rancheria in California, a PL 280 state. It found the county ordinance not a state law of general application under PL 280. The ordinance said that prior approval from the county was required for use of a mobile home and then the use was limited to not more than two years. Had the law restricting mobile homes been statewide, even then the court would not have reached a different decision, as we shall see below, because of the "encumbrance" doctrine.

After deciding that the ordinance was not a law of general application, the court addressed the issue of "encumbrance." The standard set by the court here for an "encumbrance" would be any state regulation which effects the ". . . value, use and enjoyment of the land."[37] The Court then said,

> "Following the (Supreme) Court's lead, and resolving, as we must, doubts in favor of the Indians, we think that the word (encumbrance) as used here may reasonably be interpreted to deny the state the power to apply zoning regulations to trust property."[38]

The court further stated that,

> ". . . application of state or local zoning regulations to Indian trust lands threatens the use and economic development of the main tri-

bal resource—here it even handicaps the Indians in living on the reservation—and interferes with tribal government of the reservation."[39]

Thus, the zoning ordinance was an impermissible encumbrance on the right of Indian nations to determine the proper usage of their lands.

One year later, the U. S. Supreme Court examined §4 (b) of PL 280 and those principles discussed in the *Santa Rosa* case in *Bryan v. Itasca County*,[40] and found that states clearly could not tax an Indian's personal property located on federal trust lands. Here, a Minnesota Chippewa living on the Leech Lake Reservation was taxed by the county for personal property—a mobile home—located on trust land. The court found that,

> ". . . if Congress in enacting Public Law 280 had intended to confer upon the States general civil regulatory powers, including taxation, over reservation Indians, it would have expressly said so."[41]

As it did not, the tax was an impermissible one. In a footnote, the Court made reference to both the Indian Financing Act of 1974 and the Indian Self-Determination Act of 1975 as indications that Congressional policy seemed to be returning to that of strengthening tribal government. State and local general civil laws, including taxation, should not apply to reservation Indians, as such a policy would have a devastating effect on tribal governments. Section 4 (c) did allow for "any tribal ordinance or custom" adopted by an Indian nation to be given "full force and effect" so long as it was not inconsistent with a state law. This language has been held by the U. S. Supreme Court to ". . . contemplate the continuing vitality of tribal government."[42] Tribal self-government through tribal courts and therefore tribal jurisdiction survives despite PL 280, as we see from a series of recent federal and Supreme Court cases.[43]

3. Concurrent Jurisdiction

Recently, a federal court in Washington State held that PL 280 does not extinguish concurrent tribal jurisdiction over its own members.[44]

An opinion of the Solicitor of the Department of the Interior dated November 14, 1978, entitled, "Criminal Jurisdiction on the Seminole Reservation in Florida," holds that the Seminole Tribe possesses concurrent criminal jurisdiction along with the PL 280 criminal jurisdiction accorded to the State of Florida. Florida assumed civil and criminal jurisdiction over all reservations pursuant to PL 280.[45]

As long as there is no inherent inconsistency in the concurrent exercise of state and tribal jurisdiction, no conflict exists and only by express Congressional action could the tribe lose its power of jurisdiction over Indians in Indian Country. PL 280 does not expressly extinguish such jurisdiction, and therefore concurrent criminal jurisdiction remains in the tribe.

Recently, a federal court in Washington State held that PL 280 does not extinguish concurrent tribal jurisdiction over its own members.

In *U. S. v. Wheeler*,[46] the Supreme Court upheld the right of a tribe to enact and enforce criminal laws against members as a fundamental right of tribal self-government. Any reading of PL 280 as an implied withdrawal of tribal criminal jurisdiction would constitute an intrusion upon tribal jurisdictional powers.[47]

Section 5 of PL 280 was a technical section which repealed civil and criminal jurisdiction over the Agua Caliente Reservation, so as to assure a uniformity of jurisdiction throughout the State of California.

4. The Mandatory and Optional States

The five states "granted" jurisdiction in Indian Country in the original bill—California, Minnesota, Nebraska, Oregon, and Wiscon-

sin, joined by Alaska in 1958—are the so-called "mandatory" states. These states were given immediate civil and criminal jurisdiction as of the date of passage of the Act without any requirement of tribal consent, nor was any affirmative state action required by any of the "mandatory" states.[48] Thus, we have six mandatory states.

Prior to PL 280's 1968 amendments, any other state may have assumed criminal and/or civil jurisdiction over Indians within its borders, simply by deciding to do so. No Indian consent or consultation was required. These are "optional" states. Optional states are divided into two categories: those without any barriers to assuming jurisdiction in either their state constitutions or enabling acts,[49] and those with disclaimers of jurisdiction over Indians.

When territories became states, they either were required to acknowledge in their state constitutions, or it was put into the Federal Enabling Act making them a state, that the state had no right to jurisdiction over Indians within its borders. Eight states fell into the category of having either enabling act or state constitutional disclaimers; Arizona, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Washington.[50] Section 6 allowed the eight optional states with disclaimers to amend their constitutions or statutes, where necessary, to assume jurisdiction. A provision was included which stated that the assumption of jurisdiction would not be effective until such amendment was accomplished.

The U. S. Supreme Court interpreted section 6 on January 16, 1979. In *Washington v. Confederated Bands and Tribes of the Yakima Indian Nation*,[51] it was held that a partial assumption of civil and criminal jurisdiction under section 6 of PL 280 was valid, even though Washington State's constitution disclaimed jurisdiction over Indians and the state failed to amend its constitution when it assumed partial jurisdiction in 1963. The Court predicated part of its decision on the wording of section 6 and said that the phrase "where necessary" in this case did not apply to Washington because it had assumed jurisdiction prior to the 1968 amendment to PL 280, and it was not necessary to amend its constitution, as passage of the 1963 Washington State statute asserting jurisdiction was sufficient to effectively confer jurisdiction.

The stricter standard of close compliance with the intended procedures envisioned by PL 280 was disregarded. Instead, the Court determined that any affirmative legislative action was sufficient. Thus, it was not necessary for Washington State to amend its constitution. The mere passage of the state statute asserting partial jurisdiction was sufficient to satisfy this "affirmative legislative action" standard.

5. The 1968 Amendments

As federal-Indian policy gradually shifted from its termination phase into what is called the self-determination era, the practical problems underlying assertion of state jurisdiction without federal funding and without tribal consent became obvious. Without federal funds states were (and are) reluctant to assert their criminal jurisdiction. They want Indian lands removed from their tax exempt trust status. Without either federally or tribally based funding sources, states find it economically impractical to assert jurisdiction and the surrounding non-Indian community cites Indians' alleged "non-taxpaying status" as a justification for discrimination in providing state services to Indian communities.

Responding to the shift in federal policy away from termination and in an attempt to rectify the lack of tribal consent to assertion of state jurisdiction, the 90th Congress passed amendments to PL 280 as part of a package which included the Indian Civil Rights Act.[52]

There are two major provisions of the 1968 amendments to PL 280. First, in section 401 (2), 402 (2), and 406, a tribal consent provision is included to require a tribal referendum before assumption of either civil and/or criminal jurisdiction by the state. Second, under section 403 (3), any state which already had acquired either partial or full civil and/or criminal jurisdiction can retrocede, or give back, all or part of that jurisdiction to the federal government.

The legislative history of the measure indicates both a dissatisfaction with the policy of

termination and a shift toward a new policy of self-determination for Indian people.[53] It is useful to place ourselves within a historical frame of reference. President Johnson was in office, many of his civil rights programs were being implemented, the Congress had a heavy Democratic majority in both Houses, and the bitterness and dissatisfaction with the United States' handling of the Vietnam War had not yet fully taken hold. In short, it was an opportune time for assertion of Indian rights.

President Johnson's endorsement of the Indian Civil Rights bill is informative:

> Fifteen years ago, the Congress gave to the States authority to extend their criminal and civil jurisdictions to include Indian reservations where jurisdiction previously was in the hands of the Indians themselves.
>
> Fairness and basic democratic principles require that Indians on the affected lands have a voice in deciding whether a State will assume legal jurisdiction on their land.
>
> I urge the Congress to enact legislation that would provide for tribal consent before such extensions of jurisdiction take place.[54]

The amendments to PL 280, contained in HR 2516, passed the Senate on March 11, 1968. The House then passed the bill without going to conference. PL 280 now no longer permitted a state to unilaterally assert civil and/or criminal jurisdiction without Indian consent by popular vote. It must be remembered that such assertions only applied prospectively. That is, according to the provisions of section 403 (b), jurisdiction previously acquired under PL 280, unilaterally imposed or not, was not affected. There was no retroactive consent requirement, so those states which had acquired either full or partial jurisdiction prior to the 1968 amendments still retained it.

a. Retrocession

Since the major provisions of the 1968 amendments to PL 280 ensured Indian consent before imposition of jurisdiction, it quickly became clear that the more controversial provision would be the retrocession procedure. Under the terms of the Act, (see section 403) either a mandatory or an optional state could retrocede all or a part of the jurisdiction over Indians which it possessed. The process is simple: the *state* initiates the retrocession, and it is within the discretion of the Secretary of the Interior whether or not to accept such retrocession, in whole or in part.[55] It is presently unclear whether the term "state" means the state legislature or the executive (governor). Either or both may be sufficient to have a valid retrocession process begin.

In some PL 280 states there is a growing sentiment that retrocession is both equitably and economically necessary and the support of these states may be forthcoming in a retrocession movement.

The retrocession provisions are inadequate, as they still do not provide for mandatory Indian input in a retrocession procedure. A tribe may not initiate retrocession of its own accord. The procedure begins with the state and is decided by the federal government. Indians are still excluded from the decision-making process. Such a process is not in accord with a federal policy of Indian self-determination. Despite the obvious problems, the potential for a substantial retrocession movement is promising. Intensive lobbying of the Senators and Representatives affected by states may be the answer. S. 1722, The Criminal Code Reform Act of 1979, a comprehensive revision of the federal criminal code, contained in section 161 a provision for retrocession of state jurisdiction over Indians. In some PL 280 states there is a growing sentiment that retrocession is both equitably and economically necessary and the sup-

port of these states may be forthcoming in a retrocession movement.

D. The Effects of PL 280

What are some of the effects of criminal jurisdiction under PL 280 on Indian reservations? The answer, not suprisingly, is inadequate law enforcement, and poor relations between Indians and surrounding communities, and general confusion. Since the federal government allowed the states to assume jurisdiction over Indians the law enforcement situation in Indian Country has worsened. States were accorded jurisdiction from the federal government but no federal dollars were appropriated to pay for the costs of policing the reservations. States and localities had to fund such enforcement, with the actual financial burden most often falling on county and local governments, which had not asked for jurisdiction over their Indian neighbors. These municipalities view Indians and Indian lands as non-tax paying entities, and usually refuse to spend "their" tax revenues for on-reservation enforcement. In addition, the rural setting and isolated nature of most Indian communities nearly ensures poor law enforcement. Tribes and individual Indians cite numerous cases of local police departments failing to respond to calls for assistance.

Poor community relations between Indians and the surrounding non-Indian population often results in discriminatory treatment toward Indians in the state and local criminal justice system. The non-Indian local administrations cannot identify with Indian culture, moral values, and social standards, with more inequitable treatment as the end result.

Confusion abounds in those states which have asserted only partial jurisdiction under PL 280. Police officers in certain counties in Washington State need tract books (books describing land boundaries and giving the names of the owners of each parcel of land) to effectively enforce the partial checkerboard jurisdiction that state has chosen to assert. Other counties are well known for their failure to enforce the law at all in Indian Country.

The ultimate effect of this situation is a generally deplorable state of law enforcement in Indian Country, with no resolution of the problem other than complete retrocession of all criminal jurisdictional assertions by the states.

Appendix A

PL 83-280

PUBLIC LAW 280 CHAPTER 505

AN ACT

To confer jurisdiction on the State of California, Minnesota, Nebraska, Oregon, and Wisconsin, with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such States, and for other purposes.

August 15, 1953
[H. R. 1063]
67 Stat. 588

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 53 of title 18, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1151 of such title the following new item:

Indians.

"1162. State jurisdiction over offenses committed by or against Indians in the Indian country."

State jurisdiction over criminal offenses.

SEC. 2. Title 18, United States Code, is hereby amended by inserting in chapter 53 thereof immediately after section 1161 a new section, to be designated as section 1162, as follows:

"§ 1162. STATE JURISDICTION OVER OFFENSES COMMITTED BY OR AGAINST INDIANS IN THE INDIAN COUNTRY

"(a) Each of the States listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of	Indian country affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State, except the Menominee Reservation

[1]"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

[1] 589

Taxation of property, etc.

"(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section."

State jurisdiction over civil causes.

SEC. 3. Chapter 85 of title 28, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1331 of such title the following new item:

"1360. State civil jurisdiction in actions to which Indians are parties."

SEC. 4. Title 28, United States Code, is hereby amended by inserting in chapter 85 thereof immediately after section 1359 a new section, to be designated as section 1360, as follows:

"§ 1360. STATE CIVIL JURISDICTION IN ACTIONS TO WHICH INDIANS ARE PARTIES

"(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of	Indian country affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State, except the Menominee Reservation

Taxation of property, etc.

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section."

⊥590

Repeal.

⊥SEC. 5. Section 1 of the Act of October 5, 1949 (63 Stat. 705, ch. 604), is hereby repealed, but such repeal shall not affect any proceedings heretofore instituted under that section.

Removal of legal impediment.

SEC. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.

SEC. 7. The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.

Consent of U.S. to other States.

Approved, August 15, 1953.

Cultural General

V

PREPARING PRESENTATIONS FOR AN AMERICAN INDIAN AUDIENCE

Indian Water Issues

Indian water rights evolved from the Supreme Court decision of Winters v. United States in 1908. The case involved the Fort Belknap Reservation in Montana. The Reservation was created by an agreement in 1880 from a larger area that had been set aside for the Tribes. The agreement described one boundary of the reservation as being the middle of the Milk River, but it did not mention the use of water. Thereafter, white settlers off the reservation built dams that diverted the flow of the river and interfered with agricultural uses by the Indians. The settlers claimed they owned the water after the reservation was established but prior to any use of water by the Indians.

The Supreme Court held that when the Fort Belknap lands were reserved by the 1888 agreement, water rights for the Indians were also reserved by necessary implication. The Court thought it unreasonable to assume that Indians would reserve lands for farming and pasture without also reserving the water to do these things. The Court also held that this implied reservation of water was unaffected by the subsequent admission of Montana into the Union "upon an equal footing with the original States."

Despite the clear ruling of Winters, Indian water rights were largely ignored for many decades. Indian people had to fight long and hard to finally get rulings on water issues is the 1960's and after. Water issues, as you know, are very controversial and sometime very personal issues in Indian country.

The Role of the Federal Government

The Tribal Perspective

Tribes view all Federal agencies as having a "trust responsibility" to Indian Tribes. They believe they are entitled to the water they need and to the right to contract for the operation and maintenance of any water facilities.

The Federal Perspective

The U.S. Congress generally decides who gets water under certain settlements. Sometimes they aiso decide the issue of who contracts for the operation and maintenance of Reclamation projects. The Tribes are not always entitled to what they believe they should have.

Reclamation is also responsible for providing water and power to many non-Indians. They must consider the needs and entitlements of both groups. How does Reclamation balance these issues? How does the Park Service or the Bureau of Land Management balance Indian and non-Indian concerns?

Think Indian

When you address an Indian audience, put yourself in their place. What is their perspective? Are they happy you built a dam on their land or traded some of their land for other land? What did that project do to their land, their culture, their lifestyle? Have they historically supported your project? What did the dam or project do the land, culture, and lifestyle of the non-Indians in the community?

Avoid cliches

Never start your presentation by trying to convince your audience that you are "part Indian". If you are a member of an Indian Tribe and want to share that fact, fine. If you are not a member of a Tribe but you think you have some Indian ancestry, keep it to yourself.

Do your homework and talk about the specific history of the Tribes you are addressing. Don't talk in generalities like "all Tribes had treaties with the Federal Government." These kind of statements alert your audience that you don't know your facts. Therefore, they will assume you cannot be trusted.

The list of Tribes on the following page show the distribution of Tribes by State. If you are making a presentation in California refer to the number of Tribes and learn something about some of them.

Don't Talk Down to Your Audience

Don't put yourself in the role of the "Great White Father" and assume you know more than your audience. Avoid using large words and bureaucratic jargon, but don't deliver a presentation prepared for children.

How to Dress for Your Message

First and foremost you must be comfortable with how you look. If you always wear a suit, then a suit is what you should wear for a presentation to an Indian audience. (Try to avoid navy blue, it looks like the FBI coming to the reservation).

If you are working with a Tribe over a long period and have built a good working relationship, you can dress down after your initial meetings. Slacks and a shirt with an open collar and bolo tie is a friendly look then a three piece suit.

Indian women often wear slacks. If you are a woman, start your meetings with business clothes but again, as you build a relationship you may want to trade your suit for a jean skirt and cotton sweater. Don't go native with too much Indian jewelry and Indian design! Remember, even when you spend a lot of time on the reservation and have a good relationship with Tribal members, you are an outsider.

How to Evaluate Your Presentation

If your audience shows the usual response of clapping and asking questions, you are lucky. If you are thanked by a Tribal representative and presented with a gift, you a lucky. If your message was bad news and people simply got up and left, then they heard your message. If people were rude, they also heard you.

Don't take an unfriendly response personally! That is very difficult advice to follow but sometimes you are simply seen as the "Federal Government doing it again!"

Generally, Tribal people are very appreciative of Federal employees taking the time to meet with them. They will treat you kindly, feed you and joke with you. To measure the success of your presentation, you must be honest with yourself about the message. Ask yourself the following questions:

- Was it good news or bad?
- Was it honest?
- Was it fair?
- Did your presentation show respect for the Tribe?
- Did you do your homework and address the Tribe's history, or did you talk in generalities?

If you avoid stereotypes and show Indian people the respect they deserve, generally they will do the same.

Relax, enjoy your audience, and learn history from another perspective.

In the chart which follows, an attempt has been made to describe key values adhered to by most Indian groups. Educational considerations to reflect upon are also mentioned. The chart covers many fundamental values, attitudes, and behaviors but is by no means exhaustive.

Some individuals reviewing the chart will argue that not all American Indians believe or behave in this way. However, there are enough similarities to warrant the inclusion of each characteristic described. It is also important that an open discussion about cultural beliefs, including important tribal taboos, be initiated.

During such discussions it is important to remember that many of the values and characteristics described are also shared by members of other cultures and that no culture is uniformly unique in its values, beliefs, and characteristics. It should also be noted that variations occur among Indians. This listing is not designed to establish still another set of sterotypes.

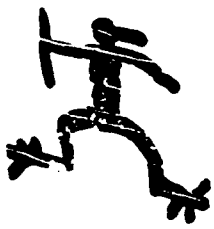
It should also be noted that the specific characteristics highlighted here are defined in ways that show impact on the educational processes used in teaching children and adolescents. It is in the spirit of encouraging improved rapport between Indians and non-Indians that the chart is presented.

Indian Values, Attitudes, and Behaviors, Together with Educational Considerations

Values	Attitudes and behaviors	Educational considerations
1. Cooperation	1. Cooperation is highly valued. The value placed on cooperation is strongly rooted in the past, when cooperation was necessary for the survival of family and group. Because of strong feelings of group solidarity, competition within the group is rare. There is security in being a member of the group and in not being singled out and placed in a position above or below others. Approved behavior includes improving on and competing with one's own past performance, however. The sense of cooperation is so strong in many tribal communities that democracy means consent by consensus, not by majority rule. Agreement and cooperation among tribal members are all-important. This value is often at odds with the competitive spirit emphasized in the dominant society.	1. A common result of the disparity between cooperation and competition is that, under certain circumstances, when a fellow Indian student does not answer a question in class, some Indian children may state they too do not know the answer, even though they might. This practice stems from their noncompetitive culture and concern that other individuals do not lose face.
2. Group Harmony	2. Emphasis is placed on the group and the importance of maintaining harmony within the group. Most Indians have a low ego level and strive for anonymity. They stress the importance of personal orientation (social harmony) rather than task orientation. The needs of the group are considered over those of the individual. This value is often at variance with the concept of rugged individualism.	2. One result of the difference between group and individual emphasis is that internal conflict may result since the accent in most schools is generally on work for personal gain, not on group work. The Indian child may not forge ahead as an independent person and may prefer to work with and for the group. Some educators consider this to be behavior that should be discouraged and modified.
3. Modesty	3. The value of modesty is emphasized. Even when one does well and achieves something, one must remain modest. Boasting and loud behavior that attract attention to oneself are discouraged. Modesty regarding one's physical body is also common among most Indians.	3. Indian children and their parents may not speak freely of their various accomplishments (e.g., traditional Indian dancing; championships or rodeo riding awards won). Therefore, non-Indians are generally unaware of special achievements. Regarding the matter of physical modesty, many Indian students experience difficulty and embarrassment in physical education classes and similar classes in which students are required to undress in front of others.

Indian Values, Attitudes, and Behaviors, Together with Educational Considerations (Continued)

Values	Attitudes and behaviors	Educational considerations
4. Autonomy	4. Value is placed on respect for an individual's dignity and personal autonomy. People are not meant to be controlled. One is taught not to interfere in the affairs of another. Children are afforded the same respect as adults. Indian parents generally practice noninterference regarding their child's vocation. Indians support the rights of an individual. One does not volunteer advice until it is asked for.	4. A conflict in these essential values is evident in circumstances in which Indians resist the involvement of outsiders in their affairs. They may resent non-Indian attempts to help and give advice, particularly in personal matters. Forcing opinions and advice on Indians on such things as careers only causes frustration.
5. Placidity	5. Placidity is valued, as is the ability to remain quiet and still. Silence is comfortable. Most Indians have few nervous mannerisms. Feelings of discomfort are frequently masked in silence to avoid embarrassment of self or others. When ill at ease, Indians observe in silence while inwardly determining what is expected of them. Indians are generally slow to demonstrate signs of anger or other strong emotions. This value may differ sharply from that of the dominant society, which often values action over inaction.	5. This conflict in values often results in Indian people being incorrectly viewed as shy, slow, or backward. The silence of some Indians can also be misconstrued as behavior that snubs, ignores, or appears to be sulking.
6. Patience	6. To have the patience and ability to wait quietly is considered a good quality among Indians. Evidence of this value is apparent in delicate, time-consuming works of art, such as beadwork, quillwork, or sandpainting. Patience might not be valued by others who may have been taught "never to allow grass to grow under one's feet."	6. Educators may press Indian students or parents to make rapid responses and immediate decisions and may become impatient with their slowness and deliberateness of discussion.
7. Generosity	7. Generosity and sharing are greatly valued. Most Indians freely exchange property and food. The respected person is not one with large savings but rather one who gives generously. Individual ownership of material property exists but is sublimated. Avarice is strongly discouraged. While the concept of sharing is advanced by most cultures, it may come into conflict with the value placed by the dominant society on individual ownership.	7. Some educators fail to recognize and utilize the Indian students' desire to share and thus maintain good personal relations with their peers.



Values	Attitudes and behaviors	Educational considerations
8. Indifference to Ownership	8. Acquiring material goods merely for the sake of ownership or status is not as important as being a good person. This was a value held by many Indians in times past. The person who tried to accumulate goods was often viewed with suspicion or fear. Vestiges of this value are still seen among Indians today who share what little they have, at times to their own detriment. Holding a "give-away" at which blankets, shawls, and numerous other items, including money, are publicly given away to honor others is still a common occurrence, even in urban areas. Because of this traditional outlook, Indians tend not to be status conscious in terms of material goods. Upward social mobility within the dominant non-Indian society is not actively sought.	8. Non-Indians frequently have difficulty understanding and accepting the Indian's lack of interest in acquiring material goods. If the student's family has an unsteady or nonexistent income, educators may incorrectly feel that economic counseling is in order.
9. Indifference to Saving	9. Traditionally, Indians have not sought to acquire savings accounts, life insurance policies, and the like. This attitude results from the past, when nature's bounty provided one's needs. Not all food could be saved, although what meat, fruit, or fish that could be preserved by salt curing or drying was saved. Most other needs (e.g., food, clothing, shelter, and land) were provided by nature in abundance, and little need existed to consider saving for the future. In Indian society, where sharing was a way of life, emphasis on saving for one's own benefit was unlikely to be found. This value may be at odds with the dominant culture, which teaches one to forgo present use of time and money for greater satisfactions to come.	9. Emphasis on the European industrial viewpoint in most educational systems causes frustration and anxiety for the Indian student and parent, since it conflicts sharply with so many other values honored by Indians (sharing, generosity, and so on).
10. Indifference to Work Ethic 	10. The Puritan work ethic is foreign to most Indians. In the past, with nature providing one's needs, little need existed to work just for the sake of working. Since material accumulation was not important, one worked to meet immediate, concrete needs. Adherence to a rigid work schedule was traditionally not an Indian practice.	10. Indians often become frustrated when the work ethic is strongly emphasized. The practice of assigning homework or in-class work just for the sake of work runs contrary to Indian values. It is important that Indians understand the value behind any work assigned, whether in school or on the job.

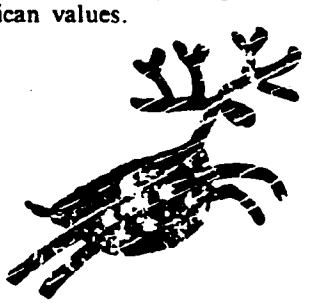
Indian Values, Attitudes, and Behaviors, Together with Educational Considerations (Continued)

Values	Attitudes and behaviors	Educational considerations
11. **Moderation in Speech**	11. Talking for the sake of talking is discouraged. In days past in their own society, Indians found it unnecessary to say hello, good-bye, how are you, and so on. Even today, many Indians find this type of small talk unimportant. In social interactions Indians emphasize the feeling or emotional component rather than the verbal. Ideas and feelings are conveyed through behavior rather than speech. Many Indians still cover the mouth with the hand while speaking as a sign of respect. Indians often speak slowly, quietly, and deliberately. The power of words is understood; therefore, one speaks carefully, choosing words judiciously.	11. The difference in the degree of verbosity may create a situation in which the Indian does not have a chance to talk at all. It may also cause non-Indians to view Indians as shy, withdrawn, or disinterested. Indians tend to retreat when someone asks too many questions or presses a conversation. Because many Indians do not engage in small talk, non-Indians often consider Indians to be unsociable.
12. **Careful Listening**	12. Being a good listener is highly valued. Because Indians have developed listening skills, they have simultaneously developed a keen sense of perception that quickly detects insincerity. The listening skills are emphasized, since Indian culture was traditionally passed on orally. Storytelling and oral recitations were important means of recounting tribal history and teaching lessons.	12. Problems may arise if Indian students are taught only in non-Indian ways. Their ability to follow the traditional behavior of remaining quiet and actively listening to others may be affected. This value may be at variance with teaching methods that emphasize speaking over listening and place importance on expressing one's opinion.
13. **Careful Observation**	13. Most Indians have sharp observational skills and note fine details. Likewise, nonverbal messages and signals, such as facial expressions, gestures, or different tones of voice, are easily perceived. Indians tend to convey and perceive ideas and feelings through behavior.	13. The difference between the use of verbal and nonverbal means of communication may cause Indian students and parents to be labeled erroneously as being shy, backward, or disinterested. Their keen observational skills are rarely utilized or encouraged.
14. **Permissive Child Rearing**	14. Traditional Indian child-rearing practices are labeled permissive in comparison with European standards. This misunderstanding occurs primarily because Indian child rearing is self-exploratory rather than restrictive. Indian children are generally raised in an atmosphere of love. A great deal of attention is lavished on them by a large array of relatives, usually including many surrogate mothers and fathers. The child is usually with relatives in all situations. Indian adults generally lower rather than raise their voices when correcting a child. The Indian child learns to be seen and not heard when adults are present.	14. In-school conflicts may arise since most educators are taught to value the outgoing child. While an Indian child may be showing respect by responding only when called upon, the teacher may interpret the behavior as backward, indifferent, or even sullen. Teachers may also misinterpret and fail to appreciate the Indian child's lack of need to draw attention, either positive or negative, upon himself or herself.

Values	Attitudes and behaviors	Educational considerations
15. View of Time as Relative	15. Time is viewed as flowing, as always being with us. Time is relative; clocks are not watched. Things are done as they have to be done. Time is, therefore, flexible and is geared to the activity at hand. This attitude is rooted in the past, when only the sun, moon, and seasons were used to mark the passage of time. Many Indian languages contain no word for time as well as no words to denote a future tense. This view of time is radically different from that of the dominant society, for which careful scheduling of activities is important. In that view time is linear and moves at a fixed, measurable rate. Emphasis is placed on using every minute.	15. Because of the influence of the traditional view of time, some Indian students and parents may clash with educators when they do not arrive at the appointed hour for class or a meeting. Non-Indians may mistakenly interpret Indians' different attitude toward time as irresponsible.
16. Orientation to the Present	16. Indians are more oriented to living in the present. There is a tendency toward an immediate rather than postponed gratification of desires. Living each day as it comes is emphasized. This value is closely tied to the philosophy that one should be more interested in being than in becoming.	16. One result of the disparity between the Indian's present orientation and the European's future orientation is that frustration often results when Indian students are pressured to forgo present needs for future vague rewards.
17. Pragmatism	17. Most American Indians are pragmatic. Indians tend to speak in terms of the concrete rather than the abstract or theoretical.	17. In learning situations educators frequently place primary emphasis on the memorization of abstract theories, concepts, formulas, and so on and provide examples only to validate a particular theory. Indian students often learn more rapidly if there is greater emphasis on concrete examples, with discussion of the abstract following.
18. Veneration of Age	18. Indian people value age. They believe that wisdom comes with age and experience. Tribal elders are treated with great respect. It is not considered necessary to conceal white hair or other signs of age. This stage of life is highly esteemed. To be old is synonymous with being wise. The talents of the elders are utilized for the continuance of the group. Hence, even today there is little evidence of a generation gap, since each age group is afforded respect. The Indian view of aging is at odds with the emphasis on youthfulness and physical beauty evident in the dominant culture.	18. Conflict may result when Indians are influenced by non-Indian attitudes toward youthfulness. A generation gap may result, causing a loss to Indian people of the wisdom and knowledge of the elders, who are the speakers of native languages and the carriers of the culture.

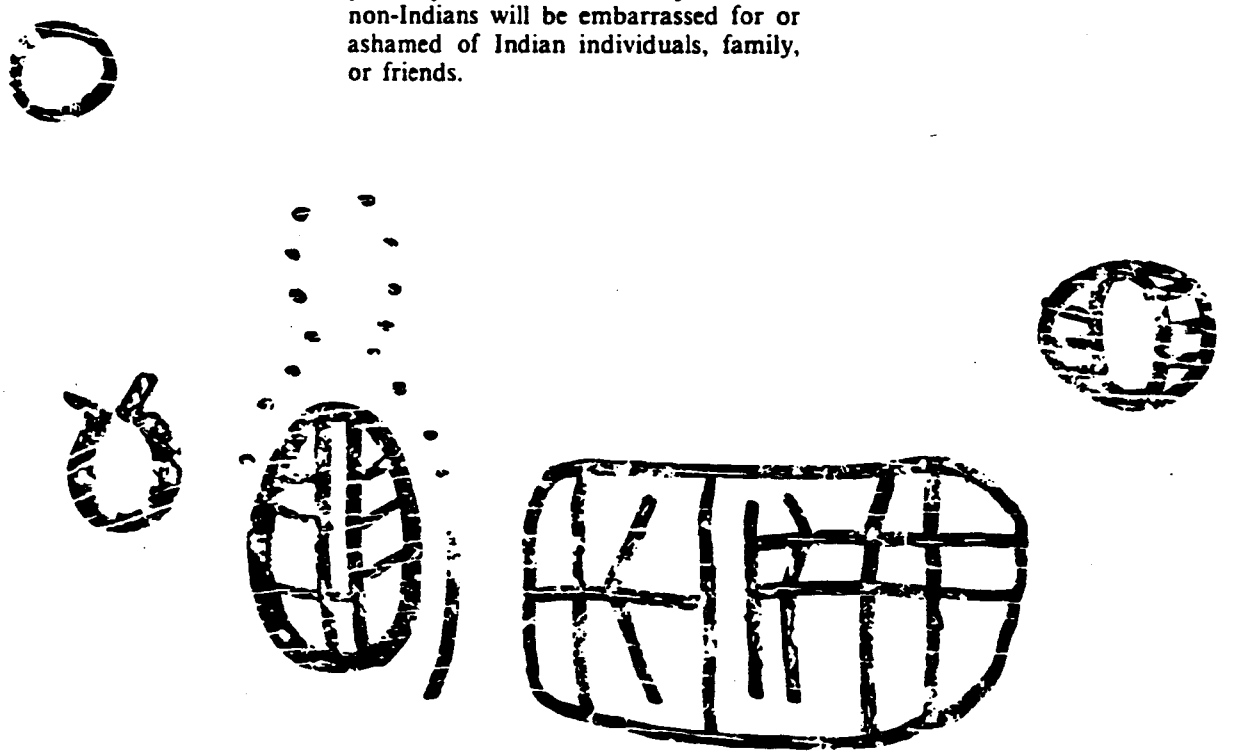
Indian Values, Attitudes, and Behaviors, Together with Educational Considerations (Continued)

Values	Attitudes and behaviors	Educational considerations
19. Respect for Nature	19. Because nature cannot be regulated, Indians formed a cooperative way of life to function in balance with nature. If sickness occurs or food is lacking, the Indian believes that the necessary balance or harmony has somehow been destroyed. Nature is full of spirits and hence spiritual. Indians fashioned their way of life by living in harmony with nature. As a result, even today most Indians do not believe in progress at the expense of all else. Many Indians have also been taught to reject a strictly scientific explanation of the cosmos in favor of a supernatural one. Certain tribes adhere to restrictions against touching certain animals. The Indian respect for nature is in opposition to the value others place on the importance of controlling and asserting mastery over nature.	19. Although the general public, including the school system, is becoming more conscious of ecology, the continuing emphasis on man's attempts to control nature runs contrary to what Indian students are taught by their people. In science classes young Indians may also have difficulties because of their particular tribe's taboo against touching, let alone dissecting, frogs and other reptiles. In general, because of their respect for all of nature, the practice of using animals in science experiments is met with revulsion by many Indians.
20. Spirituality	20. Indians hold to a contemplative rather than a utilitarian philosophy. Religious aspects are introduced into all areas of one's life. Much emphasis is placed on the mystical aspects of life. Religion is an integral part of each day; it is a way of life. There is no evidence that any Indian group ever imposed its system of religious beliefs on another group, nor were there separate denominations that sought to attract members.	20. The Indian value placed upon the spiritual is frequently misunderstood by non-Indians. Additional frustration may result when spirituality is avoided in most school discussions, since it is not seen as being an integral part of a person's life. This practice ignores an aspect of life considered essential and natural to Indians.
21. Discipline	21. Indians believe that demeaning personal criticism and harsh discipline only damage a child's self-image and are thus to be avoided. Most Indian parents do not practice spanking. Noncorporal means of discipline are preferred. Traditional forms of noncorporal punishment include frowning, ignoring, ridiculing, shaming, or scolding the individual or withholding all praise. Sibling pressure and peer pressure are also important means to control behavior. Among many Indian groups, relatives other than the natural parents are responsible for disciplining the Indian child (e.g., the mother's brother), thereby leaving the father free for a closer, nonthreatening relationship with the child. In addition, criticism of another is traditionally communicated indirectly through another family member rather than directly as in the dominant society. In general, Indians still use withdrawal as a form of disapproval.	21. The difference in attitude toward discipline frequently causes problems when educators and social service workers consider Indian parents to be unfit because they will not spank their children or otherwise punish them in public. In addition, since Indian children are sometimes disciplined by ridicule, they may fear making a mistake in class if they are not prepared adequately. Additional communication problems may arise when educators directly criticize an Indian student or parent, an act that is viewed by traditional Indian standards as rude and disrespectful.

Values	Attitudes and behaviors	Educational considerations
22. Importance of the Family	22. The importance of and value placed on the Indian extended family cannot be underestimated. Aunts are often considered to be mothers, just as uncles may be considered fathers; and cousins may be considered brothers and sisters of the immediate family. Even clan members are considered relatives. Thus, Indian cultures consider many more individuals to be relatives than do non-Indian cultures. This large network of relatives provides much support and a strong sense of security. Occasionally, a grandparent, an aunt, or other relative may actually raise the child. Since traditional Indian homes were small, family members became accustomed to being in close proximity to one another.	22. Educators and social service personnel often fail to understand the validity of various Indian relatives who function exactly as natural parents do and may consider the natural parents to be lax in their duties. Indian children sometimes live with relatives, even when there are no problems at home. Whether an Indian child resides (temporarily or permanently) with members of the extended family, this behavior should not be considered abnormal or indicative of problems.
23. Importance of Cultural Pluralism	23. Indians resist assimilation and, instead, emphasize the importance of cultural pluralism. Indian people desire to retain as much of their cultural heritage as possible. They leave the reservation to find city jobs and educational opportunities, not to stop being Indian. Indians avoid educators with reformist attitudes who strive to propel Indian students into the American mainstream. In reservation communities and even in urban areas where there are anti-Indian attitudes among the non-Indian population, Indians tend to stay among Indians and go into non-Indian areas only when necessary.	23. Confusion and misunderstanding often result when Indians go through the motions of assimilating outwardly (e.g., adopting the use of material items, clothing, and so on) when they have not really accepted European-American values. 
24. Avoidance of Eye Contact	24. Most Indian people avoid prolonged direct eye contact as a sign of respect. Among some tribes, such as the Navajo, one stares at another only when angry. It is also a simple matter of being courteous to keep one's eyes cast downward.	24. Frequently and erroneously, non-Indians presume that Indians are disrespectful, are behaving in a suspicious manner, or are hiding something when they fail to look a person in the eye. Since educators consider direct eye contact as a measure of another's honesty and sincerity, they often become upset with Indian students and say, "Look at me when I speak to you!" when the student is looking down out of respect.
25. Holistic Approach to Health	25. Sickness implies an imbalance within the individual and between the individual and his or her universe. Indians believe in a holistic approach to health (i.e., the whole individual must be treated, not merely one physical segment of the body).	25. Many Indians still prefer being attended by an Indian medicine person rather than by or in addition to a non-Indian physician. The use of chemical prescriptions may be avoided. When counseling an Indian family on health concerns, educators and social service personnel must recognize the validity of Indian

Indian Values, Attitudes, and Behaviors, Together with Educational Considerations (Continued)

Values	Attitudes and behaviors	Educational considerations
26. Importance of Bilingualism	26. It is important to Indians to retain their native languages. Many cultural elements are contained within the context of a native language. Certain words and concepts are not easily translatable into English. Each Indian language contains the key to that society's view of the universe.	26. Often, non-Indians become impatient with Indians who still speak their own language and whose grasp of English may not be as strong as or as fluent as the non-Indians would prefer. The Indian parent and student may need a longer time to formulate a response, since they may be thinking in their native language and must translate into English before verbalizing. Clear and accurate communication between Indians and non-Indians may be difficult, since words do not always translate identically in either's language. Because the general population prefers that everyone speak English, the importance of native languages goes unrecognized.
27. Caution	27. Indians use caution in personal encounters and are usually not open with others. Information about one's family is not freely shared, and personal and family problems are generally kept to oneself. Indians may have difficulty communicating their subjective reactions to situations. Some of the personal caution stems from a hesitancy about how they will be accepted by others. Because of past experiences Indians may fear that non-Indians will be embarrassed for or ashamed of Indian individuals, family, or friends.	27. Because the American ideal is to appear friendly and open, although one may be hiding one's true feelings, Indians and non-Indians may be uncomfortable with each other because of these differing modes of behavior. While non-Indians may see Indians as aloof and reserved, Indians may see European-Americans as superficial and hence untrustworthy.



COMPARISON OF LIFESTYLES
[Edwards, 1977; Palema, 1975; Miller & Bishop 1974]

	Nurturing System (Native American)		Sustaining System (Anglo-Dominant Culture)
	Social Structure		
a.	Non-status seeking	a.	Status seeking
b.	Decentralized government Family/clan governance predominate	b.	Centralized government
c.	Life family centered	c.	Life divided between family, work and outside interests
d.	Extended family	d.	Nuclear family
e.	Frequent, ongoing contact with relatives	e.	Sporadic contact with relatives
f.	Family, a producing unit of society	f.	Family, consuming unit of society
g.	Matrilineal orientation	g.	Patrilineal orientation
h.	Loosely continued rules and regulations	h.	Legalistic approach to governance
	Economics		
a.	Depend on food availability	a.	Money economy
b.	Sharing of basics of life expected to be cared for	b.	Self-sufficiency
c.	Not accept private ownership of land	c.	Ownership of land promoted
d.	Work limited to meeting family needs	d.	Work ethic
e.	Harmony with nature-environment	e.	Subdue the earth
f.	Use only what is needed	f.	Accumulation valued
g.	Slow pace--time sense rhythmical and in harmony with surrounding	g.	Rapid pace--time an economic commodity
h.	Present orientation	h.	Future orientation
	Family		
a.	Family, work centered	a.	Family, activity and support centered
b.	Family, first priority	b.	Family may be placed last
c.	Discipline threat from external sources	c.	Discipline from parents
d.	Discipline in form of threats to physical well-being or harmony with environment	d.	Discipline withdrawal of love-support
e.	Formal education often questioned	e.	Formal education supported and highly stressed
f.	Family shares common dwelling areas--hogan, tepee	f.	Separate living space esteemed and sought (own bedroom)

Family (Continued)

g.	Giving valued and expected	g.	Receiving often expected (matter of rights)
h.	Orientation of meeting others' needs	h.	Self-gratification increasingly stressed
i.	Retiring approach valued	i.	Assertiveness valued
j.	Family members expected to be quiet--respectful	j.	Family members often verbal and challenging
k.	Respect for all things	k.	Respect of authority
l.	Dress: modest	l.	Dress: sexy

Communications

a.	Limited eye contact	a.	Eye contact expected
b.	Decisions-making by consensus	b.	Decision-making by authority and for representation
c.	Emotions controlled--no words for many emotions	c.	Emotions expressed--verbalized
d.	Silence contemplative	d.	Talk and sharing expected
e.	Affection not shown publicly	e.	Encourage open expression of affection
f.	Soft speaking voice	f.	More boisterous or louder speaking voice

Time

a.	Servant of people	a.	Time controls

Courtship

a.	Structured	a.	Dating and free choice

Leisure

a.	Family-centered	a.	Person/skill/interest
b.	Participate in total family	b.	Centered often away from family

Death

a.	Little or no ceremony around body
b.	Great fear of dead
c.	Ceremonies in memory of deceased--as in the "give-away"

AMERICAN INDIANS TODAY

ANSWERS TO YOUR QUESTIONS

1991

THIRD EDITION

Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) in the U.S. Department of the Interior, is the federal agency with primary responsibility for working with federally-recognized Indian tribal governments and with Alaska Native village communities. Other federal, state, county and local governmental agencies may work with Indians or Alaska Natives as members of ethnic groups or as U.S. citizens. The BIA relates its work to federal tribal governments in what is termed a "government-to-government" relationship.

It must be made clear at this point that BIA does not "run Indian reservations." Elected tribal governments run Indian reservations, working with the BIA whenever trust resources or Bureau programs are involved.

Under a U.S. policy of Indian self-determination, the Bureau's main goal is to support tribal efforts to govern their own reservation communities by providing them with technical assistance, as well as programs and services, through 12 area offices and 109 agencies and special offices.

A principal BIA responsibility is administering and managing some 56.2 million acres of land held in trust by the United States for Indians. Developing forest lands, leasing mineral rights, directing agricultural programs and protecting water and land rights are a part of this responsibility in cooperation with the tribes, who have a greater decision-making role in these matters now than in the past.

Most Indian students (about 89 percent) attend public, private or parochial schools. BIA augments these through funding of 180 Bureau education facilities, many of which are operated by tribes under contract with the Bureau. The BIA also provides assistance for Indian college students; vocational training; adult education; a solo parent program; and a gifted and talented students program.

A part of the Bureau's work is also to assist tribes with local governmental services such as road construction and maintenance, social services, police protection, economic development, and enhancement of governance and administrative skills.

The BIA was established in 1824 in the War Department. It became an agency of the Department of the Interior when the Department was created in 1849. Until 1980, BIA was headed by a Commissioner who by law was a presidential appointee requiring confirmation by the U.S. Senate. The post remained vacant until 1991 when the post of Deputy Commissioner was filled by David J. Matheson, an enrolled member of the Coeur d'Alene Tribe of Idaho, who is responsible for the day-to-day operations of the Bureau. His post as Deputy Commissioner does not require Senate confirmation. From 1980 to 1991, the BIA was administered by an Assistant Secretary - Indian Affairs (or his deputy), a post that was created in 1977 by the Interior Secretary. Five successive Indians have been appointed by the President to the office. Since 1989, Eddie F. Brown, an enrolled member of the Pasqua Yaqui Tribe of Arizona, has held the post. He sets policy for the BIA.

About 87 percent of BIA employees are Indian through Indian preference in hiring. Under federal law, a non-Indian cannot be hired for a vacancy if a qualified Indian has applied for the position. To qualify for preference status, a person must be a member of a federally-recognized Indian tribe or be of at least one-half Indian blood of tribes indigenous to the U.S.

BIA EDUCATION PROGRAMS

Legislation -- Since the 1970's, two major laws have restructured the BIA education program. In 1975, the Indian Self-Determination and Education Assistance Act (P.L. 93-638) authorized contracting with tribes to operate education programs. The Educational Amendments Act of 1978 (P.L. 95-561) and technical amendments (P.L. 98-511, 99-89 and 100-297) mandated major changes in both Bureau-operated and tribally contracted schools, including decision-making powers for Indian school boards, local hiring of teachers and staff, direct funding to schools, and increased authority to the director of Indian Education Programs within the Bureau.

Federal Schools -- In 1990-91, the BIA is funding 180 education facilities including 48 day schools, 39 on-reservation boarding schools, five off-reservation boarding schools and eight dormitories operated by the Bureau. Additionally, under "638" contracting, tribes operate 62 day schools, 11 on-reservation boarding schools, one off-reservation boarding school and six dormitories. The dormitories enable Indian students to attend public schools.

Indian Children in Federal Schools -- Enrollment in schools and dormitories funded by the BIA for 1991 is about 40,841 including 39,092 instructional and 1,749 dormitory students.

Public School Assistance (Johnson-O'Malley Program) -- The BIA provides funds to public school districts under the Johnson-O'Malley Act of 1934 to meet the special educational needs of about 225,871 eligible Indian students in public schools.

Indians in College -- Approximately 15,000 Indian students received scholarship grants from the BIA in the 1990-91 school year to enable them to attend colleges and universities. About 432 students receiving BIA assistance are in law school and other graduate programs. The total number of Indian college students is not known, but is estimated to be more than 70,000. Total appropriations provided through the BIA for Indian higher education was about $30.2 million in fiscal year 1991.

Tribally Controlled Colleges -- Currently, the BIA provides grants for the operation of 22 tribally controlled community colleges. The number of Indian students enrolled in these colleges in school year 1990-91 was approximately 7,050 with a total funding of $23.3 million.

BIA Post-Secondary Schools -- The BIA operates two post-secondary schools: Haskell Indian Junior College in Lawrence, Kansas, with an enrollment of about 816 students, and Southwestern Indian Polytechnic Institute at Albuquerque, New Mexico, with about 427 students.

Handicapped Children's Program -- Under the Handicapped Children's Act (P.L. 94-142), the Bureau provides financial support for the educational costs of an average of 226 such children annually in some 28 different facilities

Substance/Alcohol Abuse Education Program -- BIA education programs in substance and alcohol abuse provide Bureau schools with curriculum materials and technical assistance in developing and implementing identification, assessment, prevention, and crisis intervention programs through referrals and added counselors at the schools.

BIA HOUSING

The BIA Housing Program administers the Housing Improvement Program (HIP), a grant program to which Indians may apply who are unable to obtain housing assistance from other sources, to repair and renovate existing housing. In some special cases, HIP provides for the construction of new homes. It also provides financial help to qualified Indians for down payments in the purchase of new homes. The grants are made only to those Indians who do not have the income to qualify for loans from tribal, federal or other sources of credit.

The 1989 BIA inventory of housing needs on reservations and in Indian communities shows that of a total of 155,539 existing dwellings, 100,037 met standards and 55,502 needed replacement (39,516 of which can be renovated). With the numbers of dwellings needing total replacement (15,986) and families needing housing (35,886), the BIA Housing Program estimates that a total of 51,872 new homes are required. The program budget for fiscal year 1991 is $20.1 million.

The program works cooperatively with the Indian Health Service which provides water and sewage facilities for the homes, and the Housing and Urban Development (HUD) program which builds new homes.

The President's American Indian Policy

On June 14, 1991, President George Bush issued an American Indian policy statement which reaffirmed the government-to-government relationship between Indian tribes and the Federal Government.

The President's policy builds upon the policy of self-determination first announced by President Nixon in 1970, reaffirmed and expanded upon by the Reagan-Bush Administration in 1983. President Bush's policy moves toward a permanent relationship of understanding and trust, and designates a senior staff member as his personal liaison with all Indian tribes. President Bush's policy statement follows:

Reaffirming The Government-to-Government Relationship Between The Federal Government and Tribal Governments

On January 24, 1983, the Reagan-Bush Administration issued a statement on Indian policy recognizing and reaffirming a government-to-government relationship between Indian tribes and the Federal Government. This relationship is the cornerstone of the Bush-Quayle Administration's policy of fostering tribal self-government and self-determination.

This government-to-government relationship is the result of sovereign and independent tribal governments being incorporated into the fabric of our Nation, of Indian tribes becoming what our courts have come to refer to as quasi-sovereign domestic dependent nations. Over the years the relationship has flourished, grown, and evolved into a vibrant partnership in which over 500 tribal governments stand shoulder to shoulder with the other governmental units that form our Republic.

This is now a relationship in which tribal governments may choose to assume the administration of numerous Federal programs pursuant to the 1975 Indian Self-Determination and Education Assistance Act.

This is a partnership in which an Office of Self-Governance has been established in the Department of the Interior and given the responsibility of working with tribes to craft creative ways of transferring decision-making powers over tribal government functions from the Department to tribal governments.

An Office of American Indian Trust will be established in the Department of the Interior and given the responsibility of overseeing the trust responsibility of the Department and of insuring that no Departmental action will be taken that will adversely affect or destroy those physical assets that the Federal Government holds in trust for the tribes.

I take pride in acknowledging and reaffirming the existence and durability of our unique government-to-government relationship.

Within the White House I have designated a senior staff member, my Director of Intergovernmental Affairs, as my personal liaison with all Indian tribes. While it is not possible for a President or his small staff to deal directly with the multiplicity of issues and problems presented by each of the 510 tribal entities in the Nation now recognized by and dealing with the Department of the Interior, the White House will continue to interact with Indian tribes on an intergovernmental basis.

The concepts of forced termination and excessive dependency on the Federal Government must now be relegated, once and for all, to the history books. Today we move forward toward a permanent relationship of understanding and trust, a relationship in which the tribes of the nation sit in positions of dependent sovereignty along with the other governments that compose the family that is America.

Federal Appropriations for Indian Affairs

Over the past decade, the annual budget for the BIA has averaged pproximately $1 billion. The fiscal year 1991 appropriation for the BIA is 1.5 billion for the principal program categories of: Education, $554.5 illion; Tribal Services (including social services and law enforcement), 338.9 million; Economic Development, $14.6 million; Navajo-Hopi Settle- ıent, $1.4 million; Natural Resources, $139.7 million; Trust Responsibil- :ies, $74.7 million; Facilities Management, $94.2 million; General dministration, $112.0 million; Construction, $167.6 million; Indian Loan uaranty, $11.7 million; Miscellaneous Payments to Indians, $56.1 million; nd Navajo Rehabilitation Trust Fund, $3.0 million.

Under the Indian self-determinatio.ı policy, tribes may operate their own eservation programs by contracting with the BIA. In fiscal year 1990, tribal overnments contracted programs totalling $415 million, over 30 percent of he total BIA budget.

Appropriations for other federal agencies with Indian programs, for FY 991, are: Indian Health Service, $1.4 billion; and Administration for Native mericans, $33.3 million (both agencies of the Department of Health and Iuman Services); and the Office of Indian Education in the U.S. Department f Education, $75.3 million.

Other federal departments, such as Agriculture, Commerce, and HUD, lso receive funds specifically designated for Indian programs.

American Indians and Alaska Natives

POPULATION:

According to U.S. Census Bureau figures, there were 1,959,234 American Indians and Alaska Natives living in the United States in 1990 (1,878,285 American Indians, 57,152 Eskimos, and 23,797 Aleuts). This is a 37.9 percent increase over the 1980 recorded total of 1,420,400. The increase is attributed to improved census taking and more self-identification during the 1990 count. The BIA's 1990 estimate is that almost 950,000 individuals of this total population live on or adjacent to federal Indian reservations. This is the segment of the total U.S. Indian and Alaska Native population served by the BIA through formal, on-going relations.

RESERVATIONS:

The number of Indian land areas in the U.S. administered as Federal Indian reservations (reservations, pueblos, rancherias, communities, etc.) total 278. The largest is the Navajo Reservation of some 16 million acres of land in Arizona, New Mexico and Utah. Many of the smaller reservations are less than 1,000 acres with the smallest less than 100 acres. On each reservation, the local governing authority is the tribal government. The states in which the reservations are located have limited powers over them, and only as provided by federal law. On some reservations, however, a high percentage of the land is owned and occupied by non-Indians. Some 140 reservations have entirely tribally-owned land.

TRUST LANDS:

A total of 56.2 million acres of land are held in trust by the United States for various Indian tribes and individuals. Much of this is reservation land; however, not all reservations land is trust land. On behalf of the United States, the Secretary of the Interior serves as trustee for such lands with many routine trustee responsibilities delegated to BIA officials.

INDIAN TRIBES:

There are 510 federally recognized tribes in the United States, including about 200 village groups in Alaska. "Federally-recognized" means these tribes and groups have a special, legal relationship to the U.S. government and its agent, the BIA, depending upon the particular situation of each tribe.

URBAN AND OFF-RESERVATION INDIAN POPULATIONS:

Members of federal tribes who do not reside on their reservations have limited relations with the BIA, since BIA programs are primarily administered for members of federally-recognized tribes who live on or near reservations.

NON-FEDERAL TRIBES AND GROUPS:

A number of Indian tribes and groups in the U.S. do not have a federally-recognized status, although some are state-recognized. This means they have no relations with the BIA or the programs it operates. A special program of the BIA, however, works with those seeking federal recognition status. Of 126 petitions for federal recognition received by the BIA since 1978, eight have received acknowledgment of tribal status and 12 have been denied. Twelve other groups gained federal recognition outside the BIA process through action by the U.S. Congress.

Indian Health Service

The primary Federal health resource for American Indians and Alaska Natives is the Indian Health Service (IHS), an agency of the Public Health Service of the U.S. Department of Health and Human Services. The IHS operates hospitals and clinics on reservations and provides related health services for Indian communities. Like the BIA, the IHS contracts with tribes to operate some of its programs. Some of the significant statistics related to the state of Indian health in 1991 are as follows:

Birth Rate -- Birth rates were 28.0 births per 1,000 in 1986-88. The U.S. all races rate was 15.7 births per 1,000 in 1987.

Infant Death Rate -- The infant death rate was 9.7 per 1,000 live births in 1986-88, while the U.S. all races was 10.1 per 1,000 births in 1987.

Life Expectancy -- In 1979-81, life expectancy was 71.1 years (males, 67.1 years and females 75.1 years). These figures are based on 1980 census information.

Causes of Death -- Diseases of the heart and accidents continue to be the two major causes of death among American Indians and Alaska Natives. The 1988 age-adjusted death rate for diseases of the heart was 138.1 per 100,000 of the population and 166.3 per 100,000 for all U.S. races. In the same period, the age-adjusted death rate from accidents was 80.8 percent per 100,000, including 44.7 related to motor vehicle accidents and 36.1 from other accidents. The U.S. all races 1988 age-adjusted rate was 35.0 per 100,000, including 19.7 related to motor vehicle accidents and 15.3 related to other accidents.

Suicide Rate -- The age-adjusted suicide death rate for the population has decreased 29 percent since its peak in 1975 (21.1 deaths per 100,000 population). The Indian rate for 1988 was 14.5 compared to the U.S. all races rate of 11.4.

HIV/AIDS -- The numbers of AIDS cases among American Indians and Alaska Natives is, as yet, relatively low (236 in the period 1982-1990). There are, however, no firm statistics on the numbers of those who may be HIV-positive. The IHS is, therefore, directing its attention to education/prevention, surveillance, and treatment programs in cooperation with the BIA in its school systems, with tribal leaders, and local and state health departments. The Centers for Disease Control (CDS) provides some funding support toward the total fiscal year 1991 budget for this work of $3.1 million.

Answers to Frequently Asked Questions

Who is an Indian?

No single federal or tribal criteria establishes a person's identity as an Indian. Government agencies use differing criteria to determine who is an Indian eligible to participate in their programs. Tribes also have varying eligibility criteria for membership. To determine what the criteria might be for agencies or tribes, you must contact them directly.

For its purposes, the Bureau of the Census counts anyone an Indian who declares himself or herself to be such.

To be eligible for Bureau of Indian Affairs services, an Indian must (1) be a member of a tribe recognized by the federal government and (2) must, for some purposes, be of one-fourth or more Indian ancestry. By legislative and administrative decision, the Aleuts, Eskimos and Indians of Alaska are eligible for BIA services. Most of the BIA's services and programs, however, are limited to Indians living on or near federal reservations.

What is an Indian Tribe?

Originally, an Indian tribe was a body of people bound together by blood ties who were socially, politically, and religiously organized, who lived together in a defined territory and who spoke a common language or dialect.

The establishment of the reservation system created some new tribal groupings when two or three tribes were placed on one reservation, or when members of one tribe were spread over two or three reservations.

How does an Indian become a member of a tribe?

A tribe sets up its own membership criteria, although the U.S. Congress can also establish tribal membership criteria. Becoming a member of a particular tribe requires meeting its membership rules, including adoption. Except for adoption, the amount of blood quantum needed varies, with some tribes requiring only a trace of Indian blood (of the tribe) while others require as much as one-half.

What is a reservation?

In the U.S., there are only two kinds of reserved lands that are well known -- military and Indian. An Indian reservation is land a tribe reserved for itself when it relinquished its other land areas to the U.S. through treaties. More recently, Congressional acts, executive orders and administrative acts have created reservations. Some reservations, today, have non-Indian residents and land owners.

Are Indians required to stay on reservations?

No. Indians are free to move above like all other Americans.

Did all Indians speak one Indian language?

No. At the end of the 15th century, more than 300 languages were spoken by the native population of what is now the United States. Some were linked by "linguistic stocks" which meant that widely scattered tribal groups had some similarities in their languages. Today, some 250 tribal languages are still spoken, some by only a few individuals and others by many. Most Indians now use English as their main language for communicating with non-tribal members. For many, it is a second language.

Do Indians serve in the Armed Forces?

Indians have the same obligations for military service as other U.S. citizens. They have fought in all American wars since the Revolution. In the Civil War, they served on both sides. Eli S. Parker, Seneca from New York, was at Appamattox as aide to Gen. Ulyssess S. Grant when Lee surrendered, and the unit of Confederate Brigadier General Stand Watie, Cherokee, was the last to surrender. It was not until World War I that Indians' demonstrated patriotism (6,000 of the more than 8,000 who served were volunteers) moved Congress to pass the Indian Citizenship Act of 1924. In World War II, 25,000 Indian men and women, mainly enlisted Army personnel, fought on all fronts in Europe and Asia, winning (according to an incomplete count) 71 Air Medals, 51 Silver Stars, 47 Bronze Stars, 34 Distinguished Flying Crosses, and two Congressional Medals of Honor. The most famous Indian exploit of World War II was the use by Navajo Marines of their language as a battlefield code, the only such code which the enemy could not break. In the Korean conflict, there was one Indian Congressional Medal of Honor winner. In the Vietnam War, 41,500 Indians served in the military forces. In 1990, prior to Operation Desert Storm, some 24,000 Indian men and women were in the military. Approximately 3,000 served in the Persian Gulf with three among those killed in action. One out of every four Indian males is a military veteran and 45 to 47 percent of tribal leaders today are military veterans.

Are Indians wards of the government?

No. The federal government is a trustee of Indian property, it is not a guardian of individual Indians. The Secretary of the Interior is authorized by law, in many instances, to protect the interests of minors and incompetents, but this protection does not confer a guardian-ward relationship.

Do Indians get payments from the government?

No individual is automatically paid for being an Indian. The federal government may pay a tribe or an individual in compensation for damages for resulting from treaty violations, for encroachments on Indian lands, or

for other past or present wrongs. A tribe or an individual may also receive a government check for payment of income from their lands and resources, but this is only because their resources are held in trust by the Secretary of the Interior and payment for their use has been collected from users by the federal government in their behalf. Fees from oil or grazing leases are an example.

Are Indians U.S. citizens?

Yes. Before the U.S. Congress extended American citizenship in 1924 to all Indians born in the territorial limits of the United States, citizenship had been conferred upon approximately two-thirds of the Indian population through treaty agreements, statutes, naturalization proceedings, and by "service in the Armed Forces with an honorable discharge" in World War I. Indians are also members of their respective tribes.

Can Indians vote?

Indians have the same right to vote as other U.S. citizens. In 1948, the Arizona supreme court declared unconstitutional disenfranchising interpretations of the state constitution and Indians were permitted to vote as in most other states. A 1953 Utah state law stated that persons living on Indian reservations were not residents of the state and could not vote. That law was subsequently repealed. In 1954, Indians in Maine who were not then federally recognized were given the right to vote, and in 1962, New Mexico extended the right to vote to Indians.

Indians also vote in state and local elections and in the elections of the tribes of which they are members. Each tribe, however, determines which of its members is eligible to vote in its elections and qualifications to do so are not related to the individual Indian's right to vote in national, state or local (non-Indian) elections.

Do Indians have the right to hold federal, state and local government offices?

Indians have the same rights as other citizens to hold public office, and Indian men and women have held elective and appointive offices at all levels of government. Charles Curtis, a Kaw Indian from Kansas, served as Vice President of the United States under President Herbert Hoover.

Indians have been elected to the U.S. Congress from time to time for more than 80 years. Ben Reifel, a Sioux Indian from South Dakota, served five terms in the U.S. House of Representatives. Ben Nighthorse Campbell, a member of the Northern Cheyenne Tribe of Montana, was elected to the U.S. House of Representatives in 1986 from the Third District of Colorado, and is currently serving in his third term. He is the only American Indian currently serving in Congress.

Indians also served and now hold office in a number of state legislatures. Others currently hold or have held elected or appointive positions in state judiciary systems and in county and city governments including local school boards.

Do Indians have the right to own land?

Yes. As U.S. citizens, Indians can buy and hold title to land purchased with their own funds. Nearly all lands of Indian tribes, however, are held in trust for them by the United States and there is no general law that permits a tribe to sell its land. Individual Indians also own trust land which they can sell, but only upon the approval of the Secretary of the Interior or his representative. If an Indian wants to extinguish the trust title to his land and hold title like any other citizen (with all the attendant responsibilities such as paying taxes), he can do so if the Secretary of the Interior or his authorized representative, determines that he is able to manage his own affairs. This is a protection for the individual.

Do Indians pay taxes?

Yes. They pay the same taxes as other citizens with the following exceptions applying to those Indians living on federal reservations: (1) federal income taxes are not levied on income from trust lands held for them by the United States; (2) state income taxes are not paid on income earned on a federal reservation; (3) state sales taxes are not paid on transactions made on a federal reservation, and (4) local property taxes are not paid on reservation or trust land.

Do laws that apply to non-Indians also apply to Indians?

Yes. As U.S. citizens, Indians are generally subject to federal, state, and local laws. On federal reservations, however, only federal and tribal laws apply to members of the tribe unless the Congress provides otherwise. In federal law, the Assimilative Crimes Act makes any violation of state criminal law a federal offense on reservations.

Most tribes now maintain tribal court systems and facilities to detain tribal members convicted of certain offenses within the boundaries of the reservation. A recent U.S. Supreme Court decision restricted the legal jurisdiction of federal tribes on their reservations to members only, meaning that an Indian tribe could not try in its tribal court a member of another tribe even though that person might be a resident on the reservation and have violated its law. There currently are bills in the Congress that would restore tribes' right to prosecute any Indian violating laws on an Indian reservation.

Does the United States still make treaties with Indians?

Congress ended treaty-making with Indian tribes in 1871. Since then, relations with Indian groups are by congressional acts, executive orders, and executive agreements.

The treaties that were made often contain obsolete commitments which have either been fulfilled or superseded by congressional legislation. The provision of educational, health, welfare, and other services by the government to tribes often has extended beyond treaty requirements. A number of large Indian groups have no treaties, yet share in the many services for Indians provided by the federal government.

The specifics of particular treaties signed by government negotiators with Indians are contained in one volume (Vol. II) of the publication, "Indian Affairs, Laws and Treaties," compiled, annotated and edited by Charles Kappler. Published by the Government Printing Office in 1904, it is now out of print, but can be found in most large law libraries. More recently, the treaty volume has been published privately under the title, "Indian Treaties, 1778-1883."

Originals of all the treaties are maintained by the National Archives and Records Service of the General Services Administration. A duplicate of a treaty is available upon request for a fee. The agency will also answer questions about specific Indian treaties. Write to: Diplomatic Branch, National Archives and Records Service, Washington, D.C. 20408.

How do Indian tribes govern themselves?

Most tribal governments are organized democratically, that is, with an elected leadership. The governing body is generally referred to as a "council" and is comprised of persons elected by vote of the eligible adult tribal members. The presiding official is the "chairman," although some tribes use other titles such as "principal chief," "president" or "governor." An elected tribal council, recognized as such by the Secretary of the Interior, has authority to speak and act for the tribe and to represent it in negotiations with federal, state, and local governments.

Tribal governments generally define conditions of membership, regulate domestic relations of members, prescribe rules of inheritance for reservation property not in trust status, levy taxes, regulate property under tribal jurisdiction, control conduct of members by tribal ordinances, and administer justice.

Many tribes are organized under the Indian Reoganization Act (IRA) of 1934, including a number of Alaska Native villages, which adopted formal governing documents (Constitutions) under the provisions of a 1936 amendment to the IRA. The passage in 1971 of the Alaska Native Claims Settlement Act, however, provided for the creation of village and regional corporations under state law to manage the money and lands granted by the Act. The Oklahoma Indian Welfare Act of 1936 provided for the organization of Indian tribes within the State of Oklahoma. Some tribes do not operate under any of these acts, but are nevertheless organized under documents approved by the Secretary of the Interior. Some tribes continue their traditional forms of governments.

Prior to reorganization, the tribes maintained t
developed, systems of self-government.

FEDERALLY REC

ED INDIAN TRIBES

Do Indians have special rights different from other citizens?

Any special rights that Indian tribes or members of those tribes have are generally based on treaties or other agreements between the United States and tribes. The heavy price Indians paid to retain certain "sovereign" rights was to relinquish much of their land to the United States. The inherent rights they did not relinquish are protected by U.S. law. Among those may be hunting and fishing rights and access to religious sites.

How do I trace my Indian ancestry and become a member of a tribe?

The first step in tracing Indian ancestry is basic genealogical research if you do not already have specific family information and documents that identify tribal ties. Some information to obtain is: names of ancestors; dates of birth, marriages and death; places where they lived; their brothers and sisters, if any, and, most importantly, tribal affiliations. Among family documents to check are bibles, wills, and other such papers. The next step is to determine whether any of your ancestors are on an official tribal roll or census. For this there are several sources. Contact the National Archives and Records Administration, Natural Resources Branch, Civil Archives Division, 8th and Pennsylvania Ave., NW, Washington, D.C. 20408. Or you may contact the tribal enrollment officer of the tribe of which you think your ancestors may be members. Another source is the Bureau of Indian Affairs, Branch of Tribal Enrollment, 1849 C St. NW, Washington, D.C. 20240. The key in determining your Indian ancestry is identification of a specific tribal affiliation.

Becoming a member of a tribe is determined by the enrollment criteria of the tribe from which your Indian blood may be derived, and this varies with each tribe. Generally, if your linkage to an identified tribal member is far removed, you would not qualify for membership, but it is the tribe, not the BIA, which makes that determination.

What does tribal sovereignty mean to Indians?

When Indian tribes first encountered Europeans, they were dealt with from strength of numbers and were treated as sovereigns with whom treaties were made. When tribes gave up lands to the U.S., they retained certain sovereignty over the lands they kept. While such sovereignty is limited today, it is nevertheless jealously guarded by the tribes against encroachments by other sovereign entities such as states. Tribes enjoy a direct government-to-government relationship with the U.S. government wherein no decisions about their lands and people are made without their consent.

What does the term "federally recognized mean?

Indian tribes that have a legal relationship to the U.S. government through treaties, Acts of Congress, executive orders, or other administrative actions are "recognized" by the federal government as official entities and receive services from federal agencies. Some tribes are state-recognized, but

do not necessarily receive services from the state. Others have neither federal or state recognition and may not seek such recognition. Any tribe or group is eligible to seek federal recognition by a process administered by a program of the Bureau of Indian Affairs or through direct petition to the U.S. Congress. Only the Congress has the power to terminate a tribe from federal recognition. In that case, a tribe no longer has its lands held in trust by the U.S. nor does it receive services from the BIA.

Do all Indians live on reservations?

No. Indians can and do live anywhere in the United States that they wish. Many leave their home reservations for educational and employment purposes. Over half of the total U.S. Indian and Alaska Native population now lives away from reservations. Most return home often to participate in family and tribal life and sometimes to retire.

Why are Indians sometimes referred to as Native Americans?

The term, "Native American," came into usage in the 1960s to denote the groups served by the Bureau of Indian Affairs: American Indians and Alaska Natives (Indians, Eskimos and Aleuts of Alaska). Later the term also included Native Hawaiians and Pacific Islanders in some federal programs. It, therefore, came into disfavor among some Indian groups.

The Eskimos and Aleuts in Alaska are two culturally distinct groups and are sensitive about being included under the "Indian" designation. They prefer, "Alaska Native."

Does the BIA provide scholarships for all Indians?

The Bureau provides some higher education scholarship assistance for eligible members of federally-recognized tribes. For information, contact the Indian Education Program, Bureau of Indian Affairs, 1849 C St. NW, Washington, D.C. 20240.

Where to Find More Information About Indians

The first and best local resource for finding information about Indians is your library. Libraries have (1) reference books that include Indian information, (2) books on Indian tribes, people, or on various aspects of Indian life or history, and (3) periodicals with articles about Indians. If your library is a Federal Depository Library (there were some 1,400 in 1988), materials published by federal agencies, including the Bureau of Indian Affairs, may also be available in the reference collections. Librarians are professionals trained to help you find materials or obtain them from other libraries on an inter-library loan basis. You may also consider contacting one of the Indian organizations listed on pages 35-36 of this booklet if you have questions about areas of their expertise. The following are other major resources:

Library, U.S. Department of the Interior, 1849 C St., NW, Rm. 1041, Washington, DC 20240 (202) 208-5815. The Interior Library has a large collection of books on Indians available to the public or through inter-library loan, as well as research periodicals for current information about Indians.

Indian Arts and Crafts Board, U.S. Department of the Interior, 1849 C St. NW, Rm. 4004-MIB, Washington, DC 20240 (202) 208-3773. The Board publishes information related to contemporary Native American arts and crafts, including directories of Native American sources for these products, available upon request.

Indian Health Service, U.S. Department of Health and Human Services, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857 (301) 443-1397. The IHS has information on Indian health matters, including programs supported by the federal government, and statistics.

Bureau of the Census, U. S. Department of Commerce, Racial Statistics Branch, Population Division, Washington, DC 20233 (301) 763-2607. The Liaison with American Indians office provides 1990 Census information including statistical profiles of the American Indian, Eskimo and Aleut population for the United States.

National Archives and Records Service, U.S. General Services Administration, Civil Reference Branch, 7th St. and Pennsylvania Ave., NW, Washington, DC. 20480 (202) 523-3238. The Archives assists scholarly research into the history of the federal-Indian relationship and those concerned with the legal aspects of Indian administration. Pertinent materials are among the old records of the Department of War, the Bureau of Indian Affairs, and the General Land Office. They include papers related to Indian treaty negotiations; annuity, per capita and other payment records; tribal census rolls; records of Indian agents; and maps of Indian lands and reservations. You may inquire to use these records or obtain copies of specific segments for a small fee.

Smithsonian Institution, Public Affairs Office, Department of Anthropology, National Museum of Natural History, 10th Street and Constitution Ave., NW, Washington, DC 20560 (202) 357-1592. The Handbook Office is preparing a 20-volume series on the history, culture and contemporary circumstances of North American Indians. The series is entitled, *Handbook of North American Indians*, of which nine volumns have thus far been published.

Library of Congress, General Reading Room Division, 10 First St., SE, Washington, DC 20540 (202) 707-5522. Reference librarians will help you use the general or special collections of the Library of Congress. Its resources are collections of over 84 million items -- books, maps, music, photographs, motion pictures, prints, manuscripts -- some of which contain much material for research on American Indians.

Newberry Library Center for the History of the American Indian, 60 West Walton St., Chicago, IL 60610 (312) 943-9090. One of America's foremost research libraries, the Newberry makes its resources available to academic and lay scholars. The library has more than 100,000 volumes on American Indian history.

National Indian Law Library, Native American Rights Fund, 1522 Broadway, Boulder, CO 80302 (303) 447-8760. A clearinghouse for Indian law-related materials, the Library contains 14,000 court proceedings in every major Indian case since the 1950s and 4,000 non-court materials. It has a government documents and tribal codes and constitutions collection. A catalogue of holdings is available ($75) as well as two supplements (1985, $10; 1989, $30). Copies of materials under six pages are free. More than six cost 15 cents per page.

The National Native American Cooperative, PO Box 1000, San Carlos, Arizona, 85550-0301 (602) 230-3399, periodically publishes a directory that includes a calendar of American Indian events and celebrations and information on arts and crafts. Separate card sets are also available listing this and other information. There is a fee for these publications.

PHOTOGRAPHS

The BIA does not have photographs of Indians available to the public. The following sources provide copies for a fee.

National Anthropological Archives, Smithsonian Institution, Museum of Natural History, Washington, DC 20560 (202) 357-1986, has a large collection of photographs dating back to the early 1800s. Inquiries should specify names of individuals, tribe name, historical events, etc. Researchers with broad or numerous interests should visit the NAA which has, in addition to photographs, manuscripts, field notes, sound tapes, linguistic data, and other documents including vocabularies of Indian and Inuit languages and drawings.

Photo Lab, Museum of History and Technology, Smithsonian Institution, 14th and Constitution Ave., NW, Washington, DC 20560 (202) 357-1933, prints photographs upon request after research has been completed at the Smithsonian. You need to provide a negative number from source files.

Still Pictures Branch, National Archives and Records Service, Washington, DC 20408 (202) 501-5455, receives photographs from government agencies, principally the BIA, grouped by subject. Make inquiry as specific as possible, including names, dates, places, etc.

Library of Congress, Prints and Photographs Division, Washington, DC 20540 (202) 707-6394, has available an historic collection of prints and photographs of American Indians. Go to the library to do your research (open Monday-Friday, 8:30 a.m. to 5:00 p.m.). The Library responds to a limited amount of mail.

National Museum of the American Indian, Smithsonian Institution, Photograph Department, 3735 Broadway, New York, NY 10032, (212) 283-2420, has a large collection of objects and photographs of Native Americans. Much of the Museum's collection will be moved to Washington, D.C., when the National Museum of the American Indian is built on the Mall to house the the collections currently located in New York City.

AUDIO-VISUALS

Audio-visual materials are available from the following source:

Native American Public Broadcasting Consortium, PO Box 8311, Lincoln, NB 68501 (402) 472-3522, maintains the Nation's largest quality library of Native American video programs for public television, instructional and information use. Topics range from history, culture and education to economic development and the arts. Programs are available for rent or purchase. A free catalogue is available.

Bibliography: North American Indians

(This bibliography was prepared with the assistance of Cesare Marino, Smithsonian Institution, Washington, DC)

Bureau of Indian Affairs:

Commissioner of Indian Affairs, 1849-1967, Annual Reports to the Secretary of the Interior, Washington, D.C. U.S. Government Printing Office (Reprinted by AMS Press, New York, 1976-1977).

Kvasnicka, Robert M., and Herman J. Viola, eds. 1979, The Commissioners of Indian Affairs, 1824-1977. Lincoln, Nebraska: University of Nebraska Press.

Meriam, Lewis, et. al., 1928, The Problem of Indian Administration. Report of a survey made at the request of the Honorable Hubert Work, Secretary of the Interior, and submitted to him, February 21, 1927. (Originally published by the U.S. Government Printing Office). Baltimore, Maryland: John Hopkins University Press.

Taylor, Theodore W., 1984, The Bureau of Indian Affairs. Boulder, Colorado: Westview Press.

Economic Development:

Lovett, Vincent, et al., 1984, American Indians (U.S. Indian Policy, Tribes and Reservations, BIA: Past and Present, Economic Development) Washington, D.C.: U.S. Government Printing Office.

Presidential Commission on Indian Reservation Economies, 1984, Report and Recommendations to the President of the United States. Washington, D.C.: U.S. Government Printing Office.

White, Robert H., 1991, Tribal Assets, The Rebirth of Native America, 1990. New York: Henry Holt & Co.

Education:

Fuchs, Estelle, and Robert J. Havighurs t, 1972, To Live on This Earth: American Indian Education. Garden City, New York: Doubleday.

Indian Nations at Risk Task Force, 1991, Final Report to the Secretary of Education. Washington, D.C.: U.S. Department of Education.

National Advisory Council on Indian Education, U.S. Department of Education, Annual Reports, 1973- . Washington, D.C.: U.S. Government Printing Office.

Prucha, Francis Paul, 1979, The Churches and the Indian Schools, Lincoln, Nebraska: University of Nebraska Press.

Szasz, Margaret, 1975, Education and the American Indian: the Road to Self-Determination, 1928-1973. Albuquerque, New Mexico: University of New Mexico Press.

United States Congress, Senate Committee on Interior and Insular Affairs, 1970, Comprehensive Indian Education Act. Hearings, 92nd Congress, 2nd session, on S. 2724. Washington, D.C.: U.S. Government Printing Office.

United States Congress, Senate Special Subcommittee on Indian Education, 1969, Indian Education: A National Tragedy, A National Challenge. 91st Congress, 1st Session. Senate Report No. 91-501. Washington, D.C.: U.S. Government Printing Office.

Guides and Directories:

Fleming, Paula R., and Judith Luskey, 1986, The North American Indian in Photographs from 1850 to 1920. New York: Harper & Row.

Hill, Edward E., 1974, The Office of Indian Affairs, 1824-1880: Historical Sketches, New York, Clearwater Publishing Company.

Hill, Edward E., comp., 1981, Guide to Records in the National Archives of the United States Relating to American Indians. Washington, D.C.: National Archives Trust Fund Board, U.S. General Services Administration.

Hirschfelder, Arlene B., et al., 1983, Guide to Research on North American Indians. Chicago: American Library Association.

National Archives Trust Fund Board, 1984, American Indians: A Select Catalog of National Archives Microfilm Publications. Washington, D.C.: National Archives Trust Fund Board, U.S. General Services Administration.

Prucha, Francis Paul, 1990, Atlas of American Indian Affairs, Lincoln, Nebraska: University of Nebraska Press.

U.S. Department of Commerce, 1974, Federal and State Indian Reservations and Indian Trust Areas. Washington, D.C.: U.S. Government Printing Office.

Waldman, Carl, 1985, Atlas of the North American Indians. Facts on File Publications.

Health:

Dorris, Michael, 1989, The Broken Cord. New York: Harper & Row.

Nabokov, Peter, 1981, Indian Running. Santa Barbara, California: Capra Press.

Trends in Indian Health, 1991. Rockville, Maryland: U.S. Department of Health and Human Services, Indian Health Service.

Vogel, Virgil J., 1970, American Indian Medicine. Norman, Oklahoma: University of Oklahoma Press. (Reprint, in paperback, 1973, New York: Ballantine Books).

Indian Policies:

Abernethy, Thomas Perkins, 1959, Western Lands and the American Revolution. New York: Russell and Russell.

American Indian Policy Review Commission, 1977, Final Report, Submitted to Congress May 17, 1977. Washington, D.C.: U.S. Government Printing Office.

Deloria, Vine Jr., and Clifford M. Lytle, 1984, The Nations Within: The Past and Future of American Indian Sovereignty. New York: Pantheon Books.

Johanson, Bruce, E., 1982, Forgotten Founders: Benjamin Franklin, The Iroquois and the Rationale for the American Revolution. Ipswich, Massachusetts: Gambit.

Kelly, Lawrence C., 1983, The Assault on Assimilation: John Collier and the origins of Indian Policy Reform. Albuquerque, New Mexico: University of New Mexico Press.

Philp. Kenneth R., 1977, John Collier's Crusade for Indian Reform: 1920-1954. Tucson: University of Arizona Press.

Prucha. Francis P., 1984, The Great Father: The United States and the American Indians. 2 vols. Lincoln, Nebraska: University of Nebraska Press.

Prucha. Francis P., 1990, Documents of Unites States Indian Policy. (2nd edition, expanded). Lincoln/London: University of Nebraska Press.

Schaaf. Gregory, 1990, Wampum Belts and Peace Trees, George Morgan, Native Americans and Revolutionary Diplomacy. Golden, Colorado: Fulcrum Publishing.

Taylor. Theodore W., 1972, The States and Their Indian Citizens, Washington, D.C.: U.S. Department of the Interior, Bureau of Indian Affairs.

Taylor, Theodore, 1983, American Indian Policy. Mt. Airy, Maryland: Lomond Publications, Inc.

Tyler, S. Lyman, 1973, A History of Indian Policy. Washington, D.C.: U.S. Department of the Interior, Bureau of Indian Affairs.

Washburn, Wilcomb E., 1973, The American Indian and the U.S., A Documentary History. 4 vols. New York: Random House.

Indian-White Relations:

1982, Indian-White Relations in the United States: A Bibliography of Works Published, 1975-1980. Lincoln, Nebraska: University of Nebraska Press.

Berkhofer, Robert F., Jr., 1978, The White Man's Indian: Images of the American Indian from Columbus to the Present. New York: Alfred A Knopf.

Deloria, Vine, Jr., 1974, Behind the Trail of Broken Treaties, New York: Dell Publishing Company.

Hagan, William T., 1979, American Indians (Revised edition). Chicago: The University of Chicago Press.

Haynie, Nancy A., comp., 1984, Native Americans and the Military, Today and Yesterday. Fort McPherson, Georgia: U.S. Army Forces Command Information Branch.

Josephy, Alvin M., Jr., 1973, The Indian Heritage of America. New York: Alfred A. Knopf.

Matthiessen, Peter, 1983, In the Spirit of Crazy Horse. New York: Viking Press.

Prucha, Francis P., 1971, Indian Peace Medals in American History (State Historical Society of Wisconsin, Madison). Lincoln, Nebraska: University of Nebraska Press.

Prucha, Francis P., 1977, A Bibliographical Guide to the History of Indian-White Relations in the United States. Chicago: University of Chicago Press.

Rosenstiel, Annette, 1983, Red and White: Indian Views of the White Man, 1492-1982. New York: Universe Books.

Stedman, Raymond W., 1982, Shadows of the Indian: Stereotypes in American Culture. Norman, Oklahoma: University of Oklahoma Press.

Utley, Robert M., and Wilcomb E. Washburn, 1977, The American Heritage History of the Indian Wars. New York: American Heritage Publishing Company.

Washburn, Wilcomb E., 1974, The Indian in America (The New American Nation Series). New York: Harper & Row.

Viola, Herman J., 1990, After Columbus, The Smithsonian Chronicle of the North American Indians. Washington, D.C.: Smithsonian Books.

Washburn, Wilcomb E., 1987, History of Indian-White Relations. Handbook of North American Indians, Vol. 4, William C. Sturtevant, gen. ed. Washington, D.C.: Smithsonian Institution.

Land:

Kickingbird, Kirke, and Karen Ducheneaux, 1973, One Hundred Million Acres (The social, historical and legal significance of Indian land problems). New York: Macmillan Company.

O'Donnell, Janet, 1991, The Dispossession of the American Indian, 1887-1934. Bloomington: University of Indiana Press.

Ross, Norman A., comp., 1973, Index to Expert Testimony Before the Indian Claims Commission: The Written Reports (The Library of American Indian Affairs). New York: Clearwater Publishing Company.

Sutton, Imre, 1975, Indian Land Tenure, Bibliographical Essays and a Guide to the Literature. New York: Clearwater Publishing Company.

Sutton, Imre, 1985, Irredeemable America: The Indians' Estate and Land Claims. Albuquerque: University of New Mexico Press.

United States Indian Claims Commission, 1980, Final Report, 1979. 96th Congress, 2nd Session, House Document No. 96-383. (Serial No. .3354). Washington, D.C.: U.S. Government Printing Office.

Languages:

Campbell, Lyle, and Marianne Mithun, eds., 1979, The Languages of Native America: Historical and Comparative Assessment. Austin, Texas: University of Texas Press.

Indian Law:

Brakel, Samuel J., 1978, American Indian Tribal Courts: The Costs of Separate Justice. Chicago: American Bar Foundation.

Cohen, Felix S., 1942, Handbook of Federal Indian Law. Albuquerque: University of New Mexico Press. (Reprinted: The Michie Company, Law Publishers, Charlottsville, Virginia, 1982).

Deloria, Vine, Jr., and Clifford M. Lytle, 1983, American Indians, American Justice. Austin, Texas: University of Texas Press.

Peavar, Stephen, 1983, The Rights of Indians and Tribes (ACLU Handbook). New York: Bantam Books.

Native American Rights Fund, 1985, Indian Cases: The 1984-1985 Supreme Court Term. The NARF Legal Review, Spring. Boulder, Colorado.

U.S. Commission on Civil Rights, 1980, American Indian Civil Rights Handbook, 2nd ed., Clearinghouse Publications, No. 35. Washington, D.C.: U.S. Government Printing Office.

1981, Indian Tribes: A Continuing Quest for Survival. Washington, D.C.: U.S. Government Printing Office.

Profiles and Biography:

Dockstader, Frederick J., 1977, Great North American Indians: Profiles in Life and Leadership. New York: Van Nostrand Reinhold Company.

Eastman, Charles A. (Ohiyesa), 1918, Indian Heroes and Great Chieftains (Reprint, 1991. Lincoln, Nebraska: Bison Books, University of Nebraska Press).

Neithammer, Carolyn, 1977, Daughters of the Earth: The Lives and Legends of American Indian Women. New York: Macmillan.

Religion:

Deloria, Vine, Jr., 1973, God is Red. New York: Grosset & Dunlap.

Huyltkranz, Ake, 1987, Native Religions of North America. New York: Harper & Row.

Hurdy, John M., 1970, American Indian Religions. Los Angeles: Sherbourne Press.

Native American Rights Fund, 1979, We Also Have a Religion: The American Indian Religious Freedom Act and the Religious Freedom Project of the Native American Rights Fund. Announcements (Winter) 5(1). Boulder, Colorado.

United States Federal Agencies Task Force, 1979, American Indian Religious Freedom Act Report (P.L. 95-341). Chairman, Cecil D. Andrus, Secretary of the Interior, Washington. D.C.

Peterson, Scott, 1990, Native American Prophecies; Examining the History, Wisdom and Startling Predictions of Visionary Native Americans. New York: Paragon House.

Treaties:

Kappler, Charles J., comp., 1904-1941, Indian Affairs: Laws and Treaties. 5 vols. Washington, D.C.: U.S. Government Printing Office (Reprinted: AMS Press, New York, 1971).

Tribal Government:

Lopach, James J., Brown, Margery Hunter, and Clow, Richmond L., 1990, Tribal Government Today, Politics on Montana Indian Reservations. San Francisco, Boulder, London: Westview Press.

O'Brien, Sharon, 1989, American Indian Tribal Governments. Norman, Oklahoma: University of Oklahoma Press.

Taylor, Graham D., 1980, The New Deal and American Indian Tribalism. Lincoln, Nebraska: University of Nebraska Press.

Tribes:

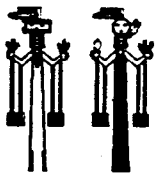
Hodge, Frederick W., ed., 1907-1910, Handbook of American Indians North of Mexico. 2 vols. Bureau of American Ethnology Bulletin 30 (Reprinted 1971. New York: Rowman and Littlefield).

Sturtevant, William C., gen. ed., 1978, Handbook of North American Indians. 20 vols. Washington, D.C.: Smithsonian Institution. 1978 vol. 8, California; 1978 Vol. 15, Northeast; 1979 Vol. 9, Southwest (Pueblos); 1981 Vol 6, Subarctic; 1983 Vol. 10, Southwest (Navajo, Apache, etc.); 1984 Vol. 5, Arctic; 1986 Vol. 11, Great Basin; 1989 Vol. 4, History of Indian-White Relations; 1990 Vol. 7, Northwest Coast; (1992 Vol. 13, Plains).

Phone Numbers and Address Lists

VI

REGIONAL EPA CONTACTS



Region 9 Address: **75 Hawthorne Street**
San Francisco, CA 94105

OFFICE OF THE REGIONAL ADMINISTRATOR

Felicia Marcus, Regional Administrator (415) 744-1001

John Wise, Deputy Regional Administrator* (415) 744-1001
Chair, Indian Program Steering Committee

OFFICE OF EXTERNAL AFFAIRS

Deanna Wieman*, Director (415) 744-1566

EPA Region 9 Indian Program Team

Steve Pardieck*, Senior Indian Program Officer (415) 744-1607

Roccena Lawatch* (415) 744-1602
Regional Indian Program Coordinator, contact for the following Arizona tribes: Navajo, Hopi, San Juan South Paiute, Gila River, Ak-Chin, Tohono O'Odham, Pascua Yaqui, Yavapai Prescott, Yavapai Apache, and Tonto Apache.

Stephen Etsitty (415) 744-1593
Contact for the following Arizona Tribes: White Mountain Apache, San Carlos, Fort McDowell, Salt River, Kaibab, Havasupai, Ft. Mojave, Chemhuevi, Colorado River, and Cocopah.

Vijaya Duvvuri (415) 744-1603
Contact for California Tribes

Clarice Olson, (415) 744-1606
Contact for Nevada Tribes

Christiane Camp (415) 744-1490
Lead Region Coordinator, Region 9 Indian Program Committee Coordinator

Bill Clarke (415) 744-1595
Senior Environmental Employee (SEE) focusing on providing general EPA information to California Tribes.

II. OFFICE OF REGIONAL COUNSEL

Gail Cooper*, Deputy Regional Counsel (415)744-1364

Greg Lind*, Regional Indian Law Attorney (415)744-1376

III. OFFICE OF POLICY AND MANAGEMENT

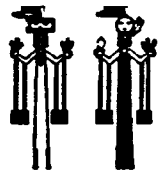
Mike Schulz*, Chief, Contracts & Planning Branch (415)744-1623

Pam Overman*, Grants Specialist	(415)744-1707
Dave Taylor*, Quality Assurance/Laboratory	(415)744-1497
IV. OFFICE OF FEDERAL ACTIVITIES	
Jeanne Geselbracht, NEPA	(415)744-1576
V. OFFICE OF CRIMINAL ENFORCEMENT	
David Wilma, Special Agent-in-charge	(415)744-2485
VI. AIR AND TOXICS DIVISION	
Carl Kohnert*, Deputy Director	(415)744-1219
Doug McDaniel*, Air Quality	(415)744-1246
Bob Kaneshiro, Pesticides-Navajo	(415)744-1099
Karen Salkind, Pesticides-ITCA	(415)744-1100
Allen Demorest, Pesticides-Gila River	(415)744-1096
Louise Hill, Radon	(415)744-1046
Don Lanier, Lead/PCBS	(415)744-1123
Pat Maravilla, Asbestos	(415)744-1122
VII. HAZARDOUS WASTE MANAGEMENT DIVISION	
Keith Takata, Deputy Director Superfund	(415)744-2355
Don White*, Chief, Superfund Planning/Response	(415)744-2353
Bob Mandel, CERCLA-Emergency Response	(415)744-2290
Barbara Joy, SARA Title III	(415)744-2342
Carolyn Douglas, CERCLA/SARA Navajo-Gila	(415)744-2343
Greg Czajkowski, RCRA-Hazardous Waste	(415)744-2107
April Katsura, RCRA-Hazardous Waste Grants	(415)744-2030
Rebecca Jamison*, RCRA-Solid Waste	(415)744-2098
Matt Small, RCRA-Underground Storage Tanks	(415)744-2078
Mary Keil, RCRA-UST/Navajo	(415)744-2080
Bill Wilson, Pollution Prevention	(415)744-2010
VIII. WATER MANAGEMENT DIVISION	
Cat Kuhlman*, Chief, Permits and Compliance Branch	(415)744-2001
Bill Thurston, Drinking Water Protection Branch	(415)744-1817
Su Cox*, Public Water Supply-Northern CA	(415)744-1855
Harold Rush, Public Water Supply - Southern CA	(415)744-1850
Jill Korte, Public Water Supply - AZ	(415)744-1853
Will Pack, Public Water Supply - NV	(415)744-1849

Danny Collier, Public Water Supply - Navajo	(415)744-1856
George Robin, Groundwater Protection	(415)744-1819
Cynthia Sans, Underground Injection	(415)744-1837
Loretta Vanegas, Construction Grants	(415)744-1946
Terry Oda, NPDES Permits	(415)744-1923
Jeremy Johnstone, NPDES Compliance	(415)744-1895
Stephanie Wilson, Wetlands	(415)744-1968
Laurne Fondahl, Pretreatment/Sludge	(415)744-1909
Wendell Smith*, Water Quality (§106, §314, §319)	(415)744-2018
James Romero, Water Quality 401 Certification	(415)744-1967
Ed Liu, Water Quality Monitoring	(415)744-1934

* member of Region 9 Indian Program Committee

REGIONAL TRIBAL CONTACTS



NATIONAL TRIBAL OPERATIONS COMMITTEE - REGION 9 TRIBAL REPRESENTATIVES

ARIZONA

Gila River Indian Community
Cecil Antone, Lt. Governor
P.O. Box 97
Sacaton, AZ 85247

Hualapai Nation
Louise Benson, Vice-Chair (A)
P.O. Box 179
Peach Springs, AZ 86434

Navajo Nation EPA
Lorenda Joe, Acting Director
P.O. Box 339
Window Rock, AZ 86515

CALIFORNIA

Morongo Band of Mission Indians
Jim Fletcher, Planner
11581 Potrero Road
Banning, CA 92220

Campo EPA
Mike Connolly, Director (A)
1779 Campo Truck Trail
Campo, CA 91906

NEVADA

Nevada Indian Environmental Coalition
Tom Burton, Executive Director
1280 Terminal Way #22
Reno, NV 89502

(A) - Alternate Representative

REGION 9 REGIONAL TRIBAL OPERATION COMMITTEE - TRIBAL REPRESENTATIVES*

ARIZONA

Ft. McDowell Indian Community
Stephanie Ostrom, Envir.Manager
P.O. Box 17588
Fountain Hills, AZ 85269

Hopi Tribe
Nat Nutongla, Water Resources
P.O. Box 123
Kykotsmovi, AZ 86039

Hualapai Nation
Clay Bravo, Natural Resources
P.O. Box 300
Peach Springs, AZ 86434

NORTHERN CALIFORNIA

Hoopa Valley Business Council
Hilton Hostler, Jr., Councilman
P.O. Box 1348
Hoopa, CA 95546

Yurok Tribe
Sid Nix, Councilman
517 Third St. Suite 18
Eureka, CA 95501

CENTRAL CALIFORNIA

Fort Independence Council
Richard Wilder, Chairman
P.O. BOX 67
Independence, CA 93526

SOUTHERN CALIFORNIA

Cahuilla General Council
Michele Salgado, Chairperson
P.O. Box 391760
Anza, CA 92539

Torres Martinez Business Cmte
Mary E. Belardo, Chairperson
66-725 Martinez Road
Thermal, CA 92274

NEVADA

Duck Valley Shoshone-Paiute
Bill Beck, Envir. Specialist
P.O. Box 219
Owyhee, NV 89832

Walker River Paiute Tribe
Sam Stegeman, Water Resources
P.O. Box 220
Schurz, NV 89427

* National TOC Members also sit on the Regional TOC

AMERICAN INDIAN ENVIRONMENTAL OFFICE
EPA PROGRAM OFFICE STAFF LIAISONS

Voice - (202) 260-7939
Fax - (202) 260-7509

PROGRAM OFFICE	LEAD CONTACT/BACKUP	TELEPHONE
Office of Air and Radiation	**Tom Wall**	** (202) **260-1489**
	Kathleen Simpson	260-8202
Office of Water	**Caren Rothstein**	260-9872
	Marlene Regelski	260-7284
Office of Prevention, Pesticide and Toxic Substances	**Richard Longmire**	**(703) 305-6005**
	Marlene Regelski	260-7284
Office Solid Waste and Emergency Response	**Marlene Regelski**	**260-7284**
	Tom Wall	260-1489
Office of Enforcement & Compliance Assurance	**Caren Rothstein**	**260-9872**
	Elizabeth Bell	260-8106
Office of General Counsel	**Elizabeth Bell**	**260-8106**
	Additional Person	260-7958
Office of Environmental Justice	**Elizabeth Bell**	**260-8106**
	Marlene Regelski	260-7284
Administration of Regional SEE Program, Data/Reporting, National and Headquarters Indian Workgroups	**Clara Mickles**	260-7519
General Assistance Program (GAP)	**Ray Hall**	**260-9304**

** - All phone numbers are area code (202) unless otherwise noted.

Bureau of Indian Affairs
Field Offices Nevada and Arizona

Arizona

Colorado River Agency
Rt. 1 Box 9-C
Parker, AZ 85344
(520) 669-7111

Fort Yuma Agency
P.O. Box 1591
Yuma, AZ 85364
(619) 572-0248

Tohono O'Odham Agency
P.O. Box 578
Sells, AZ 85634
(520) 383-3286

Salt River Agency
10000 E. McDowell Rd.
Scottsdale, AZ 85256
(602) 640-2168

Traxton Canon Agency
P.O. Box 37
Valentine, AZ 86437
(520) 769-2286

Fort Apache Agency
P.O. Box 560
Whiteriver, AZ 85941
(520) 338-5353

Hopi Agency
P.O. Box 158
Keams Canoyn, AZ 86034
(520) 738-2228

Pima Agency
P.O. Box 8
Sacaton, AZ 85247
(520) 562-3326

San Carlos Agency
P.O. Box 209
San Carlos, AZ 85550
(520) 475-2321

San Carlos Irrigation Project
P.O. Box 250
Coolidge, AZ 85228
(520) 723-5439

Nevada

Eastern Nevada Agency
155 Shoshone Circle
Elko, NV 89801
(702) 738-0569

Western Nevada Agency
1677 Hot Springs Rd.
Carson City, NV 89706
(702) 887-3500

Bureau of Indian Affairs
Phoenix Area Office
P.O. Box 10
Phoenix, AZ 85001-0010
(602) 379-6600

Navajo Area Office
P.O. Box 1060
Gallup, NM 87305-1060
(505) 863-8200

BUREAU OF INDIAN AFFAIRS

FIELD OFFICES

CENTRAL CALIFORNIA AGENCY
1824 Tribute Road, Suite J
Sacramento, Ca. 95814
(916) 978-4337

HAROLD BRAFFORD
Superintendent

NORTHERN CALIFORNIA AGENCY
1900 Churn Creek Road
P.O. Box 494879
Redding, Ca. 96049-4879
(916) 246-5141

Dr. VIRGIL AKINS
Superintendent

PALM SPRINGS FIELD STATION
555 South Palm Canyon Drive
P.O. Box 2245
Palm Springs, Ca. 92263
(619) 322-3086

TERRY BECKWITH
Superintendent

SOUTHERN CALIFORNIA AGENCY
3600 Lime Street, Suite 722
Riverside, CA. 92501
(714) 351-6624

VIRGIL TOWNSEND
Superintendent

KLAMATH FIELD OFFICE
241 Salmon Avenue
P.O. Box 789
Klamath, Ca. 95548
(707) 482-6421

NORMON McLEMORE
Field Representative

BUREAU OF INDIAN AFFAIRS
SACRAMENTO AREA OFFICE
2800 Cottage Way (Federal Office Building)
Sacramento, Ca. 95825

RONALD JAEGER
Area Director

(916) 978-4691 (Main Info.)
978-4703 (Don Knapp)

National Indian Organizations

American Indian Graduate Center
4520 Montgomery Blvd., N. E.,
Suite 1B
Albuquerque, NM 87109
(505) 881-4584

American Indian Science and
Engineering Society
1630 30th St. Suite 301
Boulder, CO 80301
(303) 939-0023

Adminstration for Native American
Hubert H. Humphrey Bldg. Room 344-F
200 Independence Avenue
Washington, D.C. 20201
(202) 690-7776

Council of Energy Resource Tribes
1999 Broadway, #2650
Denver, Colorado 80202
(303) 297-2378

Inter-Tribal Agricultural Council
100 N. 27th St. Suuite 500
Billings, MT. 59101
(406) 259-3525

Inter-Tribal Timber Council
4370 N.E. Halsey St.
Portland, Oregon 97213
(503) 282-4296

National Indian Gaming Association
904 Pennsylvania Av. SE
Washington, D.C. 20003
(202) 546-7711

National Center for American Indi
Enterprise Development
953 East Juanita
Mesa, AZ 85204
(602) 5445-1298

National Congress of American
Indians
900 Pennsylvania Ave. SE
Washington, D.C. 20201
(202) 466-7767

National Tribal Environmental
Council
1225 Rio Grande N.W.
Albuqerque, NM 87104
(505)242-2175

Native American Rights Fund
1506 Broadway
Boulder, CO 80302-6296
(303) 447-8760

National Indian Justice Center
McNear Building #7
4th St., Suite 46
Petaluma, CA 94952
(707) 762-8113

Regional Indian Organizations

American Indian Resources Institute
319 MacArthur Blvd.
Oakland, CA 94610
(510) 834-9333

California Indians for Cultural & Environmental Protection
Star Route, Mesa Grande
Santa Ysabel, CA 92070

California Indian Legal Services
819 North Barlow Lane
Bishop, CA 93514
(619) 873-3581

California Indian Legal Services
120 W. Grand Av., #204
Escondido, CA 92025
(619) 746-8941

California Indian Legal Services
510-16th St., #310
Oakland, CA 94612-1500
(510) 835-0284

Inter-Tribal Council of Arizona
4205 N. 7th Ave, #200
Phoenix, AZ 85013
(602) 248-0070

Inter-Tribal Council of Nevada
P.O. Box 7440
Sparks, NV 89510
(702) 355-0600

Inter-Tribal Sinkyone Wilderness Council
190 Ford Rd., #333
Ukiah, CA 94582

InterTribal Council of California
835 Klein Way Way
Sacramento, CA 95831-4717
(916) 973-9851

Native American Water Association
P.O. Box 511
Minden, NV 89432
(702) 782-6636

National Indian Justice Center
McNear Building #7
4th St., Suite 46
Petaluma, CA 94952
(707) 762-8113

Nevada Indian Environmental Coaliti
1280 Terminal Way #22
Reno, NV 89502
(702) 323-6432