

TRIBAL COLLEGE

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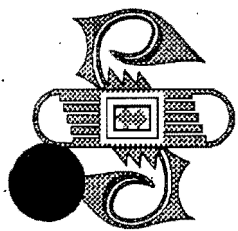


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Working Group on American Indians and Alaska Natives White House - Domestic Policy Council

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THE SECRETARY OF THE INTERIOR
WASHINGTON

JAN 24 1997

MEMORANDUM

To: Members of Working Group on American Indians and Alaska Natives

From: Secretary

Subject: Working Group Meeting, Tuesday, January 28, 1997

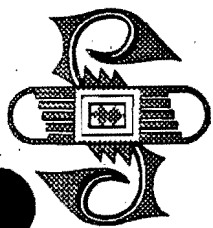
I invite you to the next meeting of the White House Domestic Policy Council's Working Group on American Indians and Alaska Natives to be held on Tuesday, January 28, 1997, from 11:00 a.m. to 12:00 p.m., at the Department of the Interior, Room 5160, 1849 C Street, N.W. I am attaching a meeting notebook that includes the agenda, subgroup reports and other material.

This will be our first meeting of the new year and I expect that we will continue meeting quarterly in 1997. Other than receiving updates from each of the subgroup chairs and an overview by OMB of major government-wide funding of Indian programs, the remainder of the meeting will focus on discussing what we should be accomplishing for 1997, assessing how we are doing, and addressing ways to improve our work. I ask that each of you be prepared to share your thoughts. My goal is to see the Working Group continue to take on the cross-cutting issues involving our agencies and reach solutions that will make a positive difference in Indian country.

I look forward to our meeting on the 28th and welcome your interest and involvement as we start the second term of the Clinton administration with renewed energy and commitment.

Attachment

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Working Group on American Indians and Alaska Natives White House - Domestic Policy Council

1-27-97

AGENDA

Tuesday, January 28, 1997
11:00 a.m. - 12:00 p.m.
Room 5160, Main Interior Building
1849 C Street, N.W., Washington, D.C.

Old Business

- 1) Approval of Minutes from Last Meeting (October 3, 1996)
- 2) Subgroup Reports:
 - *Education* - Gerald Tirozzi, Department of Education and Ada Deer, Department of the Interior
 - Status Report on Implementation of Tribal Colleges Executive Order: Representative from Vocational and Adult Education, Department of Education
 - *Environment and Natural Resource Protection* - Dana Minerva, Environmental Protection Agency and Ada Deer, Department of the Interior
 - *Consultation* - Thomas LeClaire, Department of Justice
 - *Religious Freedom* - James Simon, Department of Justice and Michael Anderson, Department of the Interior
 - *Reinvention* - Dr. Michael H. Trujillo, Indian Health Service and Hilda Manuel, Bureau of Indian Affairs

New Business

- 1) Update on Funding for Major Government-wide Indian Programs - T.J. Glauthier, Office of Management and Budget
- 2) Future Work plan for the Working Group on American Indians and Alaska Natives - Secretary Babbitt and Working Group Members





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**Draft Minutes of the Working Group on
American Indians and Alaska Natives
Meeting held on Thursday, October 3, 1996**

The meeting of the Working Group was convened by the Honorable Bruce Babbitt, Secretary of the Interior, on Thursday, October 3, 1996, at 11:10 a.m.

Secretary Babbitt welcomed members and their staffs and then began the meeting.

OLD BUSINESS

Minutes of Last Meeting: There being no additions or comments, the minutes were approved by the Members.

Subgroup on Education Dr. Tirozzi, Assistant Secretary of Elementary and Secondary Education, Department of Education began the report for the subgroup. He stated that the proposed executive order has been reviewed by the agencies for final comment, it is now before the Office of Management and Budget (OMB) which is coordinating final review. The Department of Education fully supports this endeavor and having it housed there and the Department is studying key issues such as staffing. Dr. Tirozzi noted that he and his co-chair Ada Deer, Department of the Interior, have been very pleased with the close collaborative process in developing the order. Dr. Tirozzi introduced Michael Cohen, Special Assistant to the President for Education, of the White House Domestic Policy Council and said he will explain the latest status on the proposed order.

Michael Cohen said he formerly was in Secretary Riley's immediate office at the Department of Education, before his current position which he assumed in July '96. The tribal college executive order is one of the first issues to be referred to him and one he says is very important. He congratulated Assistant Secretaries Deer and Tirozzi and the entire Working Group for their work and now the "baton" has been passed to him to get this before the President's desk. Mr. Cohen said that OMB had sent the proposed order to the agencies and the comments received thus far have been mainly editorial and not substantive, and that process was close to completion. He said he had an opportunity in late August to meet with tribal leaders and brief them on the order and he has met with the executive director of the American Indian Higher Education Consortium and tribal college presidents, whom are pleased with the executive order and potential Presidential signature. He noted that a steady stream of calls from Congress in support of the order has helped move it forward. The White House is looking at two potential events to make the announcement, the National Indian Education Association meeting in Rapid City, SD or the National Congress of American Indians meeting in Phoenix, AZ. He said that everyone is interested in seeing this happen in the White House but nothing is certain until the President actually signs the order.

Assistant Secretary Deer expressed her gratitude and Vicki Thornton of the Department of Energy said that it would be great if the order was signed in Indian Country but recognized this may be difficult given the President's schedule. Mr. Cohen said it would most likely be signed at the White House and announced at an event.

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Subgroup on Religious Freedom: Dawn Johnsen, Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice (Justice) said that Justice prepared and sent a memorandum to the Department of the Interior on the implications of the Devils Tower case wherein the National Park Service is enjoined from prohibiting commercial climbing licenses. Ms. Johnsen said that Justice believes the district court is incorrect and that in fact the Federal government has broad latitude. She said the Justice memorandum outlines its reasons and relies on Morton v. Mancari as being the basis for the U.S. Constitution recognizing the unique relationship of Indian tribes to the Federal government. Secretary Babbitt asked "how" you regulate is more important? Ms. Johnsen said yes and that Jim Simon who was delayed, would be talking about the proposed "practitioners guide" and the one year deadline in the order. Mike Anderson of Interior reported that Interior has formed a land managers working group to implement the order.

When Mr. Simon arrived later he commended the Office of Legal Counsel for their excellent memorandum and proposed that Justice work with a few agencies on developing a practice guide. The Secretary responded by saying that was a great idea and we should draft representatives from the Departments of Defense, Agriculture, Interior and Energy to help. Mr. Simon said that would cover ninety percent of federal land management agencies affected by the order. Dana Minerva of the Environmental Protection Agency (EPA) noted that EPA encounters sacred sites issues under their regulations; Mr. Simon responded that EPA and Justice should talk and EPA may need to be included. Secretary Babbitt reiterated that Justice convene the agencies to begin working on the practitioners guide.

Subgroup on Environment and Natural Resource Protection: Tom Wall, Acting Director of the American Indian Environmental Office, EPA gave the report stating that the subgroup has been involved in the exercise of "gap analysis" and putting together a matrix that has been presented to the Working Group previously. Mr. Wall passed out a handout that listed three major proposals the subgroup is interested in pursuing: 1) developing a "tribal environmental assistance handbook" 2) developing Federal guidance on the implementation of NEPA in Indian country and 3) developing a comprehensive Federal policy on environmental and natural resource protection in Indian country. He also mentioned two other ideas, tribes assuming more authority under PL 93-638 in the environmental area and bringing the Working Group and tribal environmental folks together for a meeting. Secretary Babbitt asked if these would be pursued simultaneously? Mr. Wall responded yes.

Mr. Kimble of the Administration for Native Americans (ANA) raised issues of the need for guidance and gave an example of ANA having an interest in this area because it funds tribes for environmental enhancement. Based on his experience there is a connection between the environment and the health of Indian communities that cannot be overlooked, plus a need to look at issues regionally. James Garvey with the Indian Health Service (IHS) applauded the subgroup's effort and said he could provide statistics on morbidity and mortality to Mr. Kimble.

Secretary Babbitt asked the Members if they had any comments on the subgroup's proposals and hearing none told Mr. Wall he had received his mandate to carry on. The Secretary

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complemented the subgroup on their imagination and commitment to work on these important matters.

Subgroup on Consultation: Craig Alexander, Acting Director of the Office of Tribal Justice, Department of Justice said that he and Mark Van Norman in the Office were now working on this; it was previously handled by the former director of the office, Herb Becker. He said the basis of the subgroup's work is in the Presidential Memorandum of April 1994 which mandates all agencies to consult with tribes on matters that affect them. Although there was a "tepid" response from the agencies on prior proposals, at the last meeting there was a group consensus that consultation is important and perhaps a directive memorandum from the White House would be in order. Mr. Alexander said that the subgroup will be drafting such a memorandum that will ask agencies to report on how they have implemented the Presidential Memorandum. Mr. Alexander said he felt OMB should be involved because they expressed concerns during the last round of proposals. Mr. Alexander suggested that perhaps at each Working Group meeting an agency could be highlighted as to how they are carrying out their policy toward Indian tribes including consultation. He mentioned that at the last meeting EPA gave a presentation on their consultation work.

In response, there was discussion amongst the Members including comments about what agencies have done regarding consultation such as regional "listening conferences", participation in national Indian meetings, and speeches and articles by their principals. Some members thought regional meetings were more effective and others mentioned being specific and definitive rather than a loose or unclear format when talking to tribes. There was a suggestion for minimum standards for consultation and a prescribed structure, but Mr. Alexander said that this was proposed before and the agencies rejected the notion. He said he was still willing to consider it.

Secretary Babbitt said that the subgroup should develop its memorandum, bring it back for Working Group discussion and then start agency presentations at upcoming meetings.

Subgroup on Reinvention: Hilda Manuel, Deputy Commissioner of Indian Affairs, Department of the Interior said that there is a report in the notebook that detailed the work thus far and that there was no major activity to report other than the BIA and IHS were working together on their joint projects.

NEW BUSINESS

Update on Funding for Major Government-wide Indian Programs: Janet Irwin, Office of Management and Budget said she was representing T.J. Glauthier. She said that the omnibus appropriations bill was signed and a funding table will be prepared for the Group. It was a reasonable outcome, far from ideal and fortunately several onerous provisions (seven out of nine) dealing with tribal sovereignty and tribal issues were removed. These provisions proved as significant as the funding provisions. She emphasized that she and T.J. have an open door policy if folks have questions. Secretary Babbitt commended OMB's efforts on behalf of the agencies and thanked them for their work.

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Accomplishments Reports of the Working Group Members: Faith Roessel, Special Assistant to the Secretary, Department of the Interior, informed the Members that at tab 9 in their notebooks, an annual report of the Working Group Members' activities was prepared for the White House sponsored national tribal leaders policy briefing held in August 1996. The basis of that report was taken from the accomplishments reports submitted by most agencies found at tab 11. Ms. Roessel encouraged each agency/Department to send their reports to tribes. She thanked everyone for their work on drafting the reports.

CONCLUSION

Secretary Babbitt closed the meeting by stating that he would like to lay a "working premise that we will be here next year" and rather than languish in the post-election, he proposes that we meet in early December. He said that way the Group can get a "leg-up" on the upcoming year and we can think about our work and how does this play into the next four years? He proposed that we spend more time at the next meeting discussing this and our work. The Secretary thanked everyone for their time and for another good meeting.

The meeting adjourned at 12:10 approximately.





STATUS REPORT

Subgroup On Education Working Group On American Indians And Alaska Natives The White House Domestic Policy Council

The Subgroup on Education of the White House Domestic Policy Council's Working Group on American Indians and Alaska Natives met on Thursday, December 12, 1997. The purpose of the meeting was to continue the ongoing activity for tribal colleges and universities that the Subgroup had initiated in FY 1996 and support the implementation of the Executive order the President had issued in October, 1996. A copy of the agenda and related materials are attached. Also participating in the meeting were interested Members of the Working Group and other representatives of Federal agencies and executive departments who had not previously participated on the Subgroup.

Ada E. Deer, Assistant Secretary - Indian Affairs, and Co-Chair of the Subgroup, welcomed participants and asked everyone to introduce themselves. Next, she made opening remarks. Assistant Secretary Deer stated there had been inter-agency collaboration over the last year and that the Subgroup had had representatives from most of the Federal agencies. She also noted that there had been strong staff support and executive leadership from the Secretary. In general, the work leading up to the order has reflected outstanding collaborative efforts and inter-agency commitments to work to improve education and to support tribal colleges. Assistant Secretary Deer also stated that she was pleased that the Subgroup had been able to support the Working Group and that the Domestic Policy Council had endorsed the concept of an Executive order for tribal colleges and that President Clinton had signed the order.

Michael Cohen, of the White House Domestic Policy Council and Special Assistant to the President on Education, reviewed the Executive order and noted how much good work had gone into it and how much support there had been for it. He commented that there would be a Presidentially-appointed Board of Advisors and a White House Initiative Office within the Department of Education. While he congratulated the Subgroup on their work, he noted the hard work still ahead to implement the order. He said the White House would continue to keep a watchful eye on the progress being made.

Gerald N. Tirozzi, Assistant Secretary, Office of Elementary and Secondary Education, and Co-Chair of the Subgroup stated that the Office of the White House Initiative On Tribal Colleges and Universities would be located in the Office of Vocational and Adult Education which houses the vocational programs and community colleges. Dr. Tirozzi introduced Dennis Berry from the Office of Vocational and Adult Education who was representing Trish McNeil, the Assistant Secretary for Vocational and Adult Education. Mr. Berry said Ms. McNeil was very supportive of the tribal colleges and that the program would be located in his Division of National Programs. Mr. Berry discussed the priority activities that they planned,

most notably - developing a budget, securing resources, completing a charter for the Board, and establishing a Board. Mr. Berry introduced Roberta Lewis of his staff who had been working with him on the project. Mr. Berry said he could not answer all the questions but that things would develop as the budget was established and the office took shape.

Faith Roessel, Special Assistant to the Secretary of the Interior, opened a discussion about what the agencies who were represented might be able to contribute or do to work with the tribal colleges. Ms. Roessel reminded the group that there were expected outcomes of the Executive order's goals (which are, in general, to promote opportunities for assistance to tribal colleges, increase tribal self-determination and individual achievement, advance the National education Goals, and enhance the status of tribal colleges).

There was general discussion about what the agencies were currently doing with tribal colleges and what some future possibilities may be. The discussion addressed several topics that included curricula, conservation education, faculty exchanges, economic development, and technology among other subjects.

Dr. Schuyler Houser, representing the American Indian Higher Education Consortium, (AIHEC), joined the meeting by conference call and provided a perspective of the organization and the member colleges. He emphasized that each college is unique and that the best insight to the colleges would be gained by visiting them. Federal managers would have a better understanding of the lack of resources and the educational challenges after making site visits. He reminded the agencies that the executive order supported an expanded definition of "partnerships" beyond dollars and he encouraged the concept of "partnerships" in access to expertise, assistance in information resource management, and access to data. He said that it is also important for the agencies to support tribal colleges as they continue to focus on economic development and tribal management so that tribal colleges can establish linkages with Federal programs, especially in the changing policy area of welfare reform, elementary, secondary, and vocational education, and community development. He noted that, perhaps, one of the most important features about tribal colleges is the continuous effort to preserve cultural, spiritual, historical, and linguistic strengths within the community based on their unique educational systems. Finally, Dr. Houser suggested a series of regional meetings to address the issues of defining needs and facilitating opportunities for partnerships. Dr. Houser's report was well received.

Comments were made by the agencies about whether placing the colleges in vocational education would be limiting their ability to grow. Dr. Tirozzi responded that they fitted well and that support and technical assistance was available. The Office of National Service and Educational Partnerships in the Department of Interior, and the Office of Adult and Vocational and Adult Education in the Department of Education were identified as lead offices for follow-up.

The meeting ended at 3:30 p.m. with the expectation that more details would be forthcoming from the Department of Education in a memorandum to the agencies on requirements that will need to be met.

Ada E. Deer

Ada E. Deer
Assistant Secretary -
Indian Affairs
Department of the Interior

Gerald N. Tirozzi

Gerald N. Tirozzi
Assistant Secretary, Office
of Elementary and Secondary
Education, Department of
Education

SUBGROUP ON EDUCATION
OF THE
WORKING GROUP ON AMERICAN INDIANS AND ALASKA
NATIVES
OF THE
WHITE HOUSE DOMESTIC POLICY COUNCIL

A G E N D A

Thursday, December 12, 1996
1:30 p.m. - 3:00 p.m.
Room 5160, Main Interior Building
1849 C Street N.W.

Welcome

Ada E. Deer, Assistant Secretary -
Indian Affairs, Department Of The
Interior

Review of Executive Order

Michael Cohen
Special Assistant to The President
for Education, Domestic Policy
Council, The White House

Implementation of Executive Order

- Status Report On
Creation of Office
(Within Department of
Education)
- Interagency Support
- Role of the Agencies
- Available Resources

Gerald Tirozzi, Assistant
Secretary, Office of Elementary
and Secondary Education,
Department of Education
OMB
Members of the Working Group
Members of the Working Group

Tribal Colleges' Perspective

- Feedback from Tribal Colleges
- Discussion

AIHEC
Meeting Participants



THE SECRETARY OF THE INTERIOR
WASHINGTON

DEC 3 1996

Memorandum

To: Deputy Secretary
Chief of Staff
Solicitor
Assistant Secretaries
Inspector General
Heads of Bureaus and Offices

From: The Secretary

Subject: New Executive Order on Tribal Colleges

I am pleased to tell you that Executive Order 13021 on tribal colleges was signed by President Clinton on October 19, 1996. A copy is attached.

The Order affects 29 Tribal colleges serving 25,000 students from over 250 tribes nationwide. Tribal colleges will now be afforded the same opportunities enjoyed by Historically Black Colleges and Universities (HBCUs) and Hispanic-Serving Institutions (HSIs) under Executive Orders the President signed in 1993 and 1994, respectively.

I expect bureaus and offices to be fully responsive to the mandates of Executive Order 13021. Tribal Colleges are vital, viable institutions. They represent a significant untapped resource for helping the Department carry out its important mission and achieve a culturally diverse workforce.

In the spirit and intent of this Order, I also want to reaffirm my support for Executive Order 12678 on HBCUs and Executive Order 12900 on Excellence in Education for Hispanic Americans. We must do much better in helping to strengthen HBCUs and HSIs through mutually beneficial partnerships and long-term collaborations.

Oversight for our minority college and university programs is provided by the Office of National Service and Educational Partnerships. Please feel free to call upon their guidance and expertise in working with these institutions. Bob Buechner, Acting Director, is available by phone on (202) 208-4753.

Attachment

Presidential Documents

Executive Order 13021 of October 19, 1996

Tribal Colleges and Universities

By the authority vested in me as President by the Constitution and laws of the United States of America, in reaffirmation of the special relationship of the Federal Government to American Indians and Alaska Natives, and, for the purposes of helping to: (a) ensure that tribal colleges and universities are more fully recognized as accredited institutions, have access to the opportunities afforded other institutions, and have Federal resources committed to them on a continuing basis; (b) establish a mechanism that will increase accessibility of Federal resources for tribal colleges and universities in tribal communities; (c) promote access to high-quality educational opportunity for economically disadvantaged students; (d) promote the preservation and the revitalization of American Indian and Alaska Native languages and cultural traditions; (e) explore innovative approaches to better link tribal colleges with early childhood, elementary, and secondary education programs; and (f) support the National Education Goals (20 U.S.C. 5812), it is hereby ordered as follows:

Section 1. Definition of Tribal Colleges and Universities. Tribal colleges and universities ("tribal colleges") are those institutions cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled Community College Assistance Act of 1978, (25 U.S.C. 1801 *et seq.*), and Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978, Public Law 95-471, title II (25 U.S.C. 640a note).

Sec. 2. Board of Advisors. (a) *Establishment.* There shall be established in the Department of Education a Presidential advisory committee entitled the President's Board of Advisors on Tribal Colleges and Universities ("Board"). Notwithstanding the provisions of any other Executive order, the responsibilities of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), with respect to the Board, shall be performed by the Secretary of Education ("Secretary"), in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) *Composition.* The Board shall consist of not more than 15 Members who shall be appointed by the President. The Board shall include representatives of tribal colleges. The Board may also include representatives of the higher, early childhood, elementary, and secondary education communities; tribal officials; health, business, and financial institutions; private foundations; and such other persons as the President deems appropriate. Members of the Board will serve terms of 2 years and may be reappointed to additional terms. A Member may continue to serve until his or her successor is appointed. In the event a Member fails to serve a full term, an individual appointed to replace that Member will serve the remainder of that term. All terms will expire upon the termination of the Board.

(c) *Role of Board.* The Board shall provide advice regarding the progress made by Federal agencies toward fulfilling the purposes and objectives of this order. The Board shall also provide recommendations to the President and the Secretary at least annually on ways tribal colleges can:

(1) utilize long-term development, endowment building, and master planning to strengthen institutional viability;

(2) utilize the Federal and private sector to improve financial management and security, obtain private sector funding support, and expand and complement Federal education initiatives;

(3) develop institutional capacity through the use of new and emerging technologies offered by both the Federal and private sectors;

(4) enhance physical infrastructure to facilitate more efficient operation and effective recruitment and retention of students and faculty; and

(5) help achieve National Education Goals and meet other high standards of education accomplishment.

(d) *Scheduled Meetings.* The Board shall meet at least annually to provide advice and consultation on tribal colleges and relevant Federal and private sector activities, and to transmit reports and present recommendations.

Sec. 3. Office of White House Initiative. There shall be established in the Department of Education the White House Initiative on Tribal Colleges and Universities ("Initiative"). The Initiative shall be authorized to: (a) provide the staff support for the Board;

(b) assist the Secretary in the role of liaison between the executive branch and tribal colleges;

(c) serve the Secretary in carrying out the Secretary's responsibilities under this order; and

(d) utilize the services, personnel, information, and facilities of other Federal, State, tribal, and local agencies with their consent, and with or without reimbursement, consistent with applicable law. To the extent permitted by law and regulations, each Federal agency shall cooperate in providing resources, including personnel detailed to the Initiative, to meet the objectives of the order.

Sec. 4. Department and Agency Participation. Each participating executive department and agency (hereinafter collectively referred to as "agency"), as determined by the Secretary, shall appoint a senior official, who is a full-time officer of the Federal Government and who is responsible for management or program administration, to serve as liaison to the White House Initiative. The official shall report directly to the agency head, or agency representative, on agency activity under this order and serve as liaison to the White House Initiative. To the extent permitted by law and regulation, each agency shall provide appropriate information in readily available formats requested by the White House Initiative staff pursuant to this order.

Sec. 5. Five-Year Federal Plan. (a) *Content.* Each agency shall, in collaboration with tribal colleges, develop and document a Five-Year Plan of the agency's efforts to fulfill the purpose of this order. These Five-Year Plans shall include annual performance indicators and appropriate measurable objectives for the agency. The plans shall address among other relevant issues:

(1) barriers impeding the access of tribal colleges to funding opportunities and to participation in Federal programs, and ways to eliminate the barriers;

(2) technical assistance and information that will be made available to tribal colleges regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, or contracts; and

(3) an annual goal for agency funds to be awarded to tribally controlled colleges and universities in:

(A) grants, cooperative agreements, contracts, and procurement;

(B) related excess property-type acquisitions under various authorities such as section 923 of the Federal Agriculture-Improvement and Reform Act of 1996 (7 U.S.C. 2206a) and the Federal Property and Administrative Services Act of 1949, chapter 288, 63 Stat. 377 (codified as described at 40 U.S.C. 471 note); and

(C) the transfer of excess and surplus Federal computer equipment under Executive Order 12999.

In developing the Five-Year Plans required by this order, agencies shall strive to include tribal colleges in all aspects and activities related to the attainment of the participation goals described in Executive Order 12928, "Promoting Procurement with Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals, Historically Black Colleges and Universities, and Minority Institutions." The Plans may also emphasize access to high-quality educational opportunity for economically disadvantaged Indian students; the preservation and revitalization of American Indian and Alaska Native languages and cultural traditions; innovative approaches to better link tribal colleges with early childhood, elementary, and secondary education programs; and the National Education Goals.

(b) *Submission.* Each agency shall submit its Five-Year Plan to the White House Initiative Office. In consultation with the Board, the White House Initiative Office shall then review these Five-Year Plans and develop an integrated Five-Year Plan for Assistance to Tribal Colleges, which the Secretary shall review and submit to the President. The Five-Year Plan for Assistance to Tribal Colleges may be revised within the 5-year period.

(c) *Annual Performance Reports.* Each agency shall submit to the White House Initiative Office an Annual Performance Report that shall measure each agency's performance against the objectives set forth in its Five-Year Plan. In consultation with the Board, the White House Initiative Office shall review and combine Annual Performance Reports into one annual report, which shall be submitted to the Secretary for review, in consultation with the Office of Management and Budget.

Sec. 6. Private Sector. In cooperation with the Board, the White House Initiative Office shall encourage the private sector to assist tribal colleges through increased use of such strategies as: (a) matching funds to support increased endowments;

(b) developing expertise and more effective ways to manage finance, improve information systems, build facilities, and improve course offerings; and

(c) increasing resources for and training of faculty.

Sec. 7. Termination. The Board shall terminate 2 years after the date of this Executive order unless the Board is renewed by the President prior to the end of that 2-year period.

Sec. 8. Administration. (a) *Compensation.* Members of the Board shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701-5707).

(b) *Funding.* The Board and the Initiative shall be funded by the Department of Education.

(c) *Administrative Support.* The Department of Education shall provide appropriate administrative services and staff support for the Board and the Initiative. With the consent of the Department of Education, other agencies participating in the Initiative shall provide administrative support to the White House Initiative Office consistent with statutory authority and shall make use of section 112 of title 3, United States Code, to detail agency employees to the extent permitted by law. The Board and the White House

Initiative Office shall have a core staff and shall be supported at appropriate levels.

William Clinton

THE WHITE HOUSE,
October 19, 1996.

[FR Doc. 96-27352

Filed 10-22-96; 8:45 am]

Billing code 3195-01-P

More Federal Aid for 29 Tribal Colleges in West

By The Associated Press

After decades of lobbying, officials of Indian colleges have persuaded the Government to expand Federal assistance for the 29 tribal-run colleges.

President Clinton signed an executive order this week directing Government agencies to strengthen the colleges' access to Federal grants and to encourage partnerships with business.

"This will enhance tribal sovereignty and create tools for Indian people to be more self-sufficient while preserving Indian language and culture," said Ada Deer, assistant secretary of the Bureau of Indian Affairs, a Federal agency.

Tribal officials and Indian educators say the colleges, which have 25,000 students from more than 250 tribes in 12 states, have often been overlooked for Federal financing because of their small size and remoteness. Most are two-year community colleges in the West.

Indian colleges received \$2,900 for each full-time student last year. The law allows for \$8,000, according to the Institute for Higher Education Policy, a research organization in Washington, but Congress has not

appropriated the money.

The executive order will not add money. But college officials said the order gave them an important lobbying tool. A similar executive order in 1980 helped muster support for historically black colleges, they said.

The institute said tribal colleges were particularly dependent on Federal aid, because about 85 percent of their students had incomes below the Federal poverty level.

The executive order, signed on Monday, seeks to improve avenues for tribal members to continue on in four-year colleges. It also calls for the creation of a board of advisers, appointed by the President, to prepare an annual report to evaluate the progress by Federal agencies in addressing the colleges' needs.

Here is a list of the eligible colleges:

Bay Mills Community College, Brimley, Mich.
Blackfeet Community College, Browning, Mont.
Cheyenne River Community College, Eagle Butte, S.D.
College of the Menominee Nation, Keshena, Wis.
Crownpoint Institute of Technology, Crownpoint, N.M.
D-Q University, Davis, Calif.
Dull Knife Memorial College, Lame Deer,

Mont.
Fond du Lac Community College, Cloquet, Minn.
Fort Belknap Community College, Harlem, Mont.
Fort Berthold Community College, New Town, S.D.
Fort Peck Community College, Poplar, Mont.
Haskell Indian Nations University, Lawrence, Kan.
Institute of American Indian Arts, Santa Fe, N.M.
Lac Courte Oreilles Ojibwa Community College, Hayward, Wis.
Leech Lake Tribal College, Cass Lake, Minn.
Little Big Horn College, Crow Agency, Mont.
Little Hoop Community College, Fort Totten, N.D.
Navajo Community College, Tsaile, Ariz.
Nebraska Indian Community College, Winnebago, Neb.
Northwest Indian College, Bellingham, Wash.
Oglala Lakota College, Kyle, S.D.
Salish Kootenai College, Pablo, Mont.
Sinte Gleska University, Rosebud, S.D.
Sisseton-Wahpeton Community College, Sisseton, S.D.
Southwestern Indian Polytechnic Institute, Albuquerque, N.M.
Standing Rock College, Fort Yates, N.D.
Stone Child Community College, Box Elder, Mont.
Turtle Mountain Community College, Belcourt, N.D.
United Tribes Technical College, Bismarck, N.D.

Funding order hailed by Indian educators

Improves ability to get tax dollars

By Steve Yozwiak
Staff writer

Indian educators from across the nation Monday praised an order signed by President Clinton that promises more federal tax dollars for Indian colleges.

The move was announced at the Phoenix Civic Plaza during the opening of a weeklong conference of the National Congress of American Indians.

"For our students, this executive order is tremendous news, because it expands their opportunities for training and their ability to really be participating members in their communities," said Janine Pease Pretty on Top, president of Little Big Horn College in Montana.

The move, announced by Assistant Interior Secretary Ada Deer, is similar to recent orders by Clinton boosting the ability of predominantly African-American and Hispanic colleges to obtain federal funds so they can compete with other public and private institutions of higher learning.



Michael Ging/Staff photographer

Assistant Interior Secretary Ada Deer announces the executive order. The nation's 29 Indian colleges get few funds from states and private institutions.

Clinton's order requires federal agencies to consider tribal colleges when drafting regulations, awarding federal contracts and building partnerships with various business and other organizations.

The move was especially welcomed by Tara Tsosie, 22, student-

body president at Navajo Community College, which in 1968 was the first tribal college in the nation.

"My reason for attending that school is so I can learn more about my culture and about my traditions so that I can help the younger people ... to learn that they are worthy, that they can make it out there," Tsosie said.

The nation's 29 Indian colleges receive little funding from states and private institutions.

Although past federal actions have promised Indian community colleges up to \$6,000 per student a year, actual appropriations last year were only \$2,900 per student, according to a report released Monday by the Institute for Higher Education Policy in Washington, D.C.

Deer sidestepped questions about the announcement's ties to the upcoming presidential election, saying, "I think we should all focus on the fact that it has been done, and that this will be another wonderful effort to assist the tribes to move into the 21st century."



NEWS

U.S. DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY
FOR IMMEDIATE RELEASE
October 21, 1996

Contact: Thomas W. Sweeney (202) 219-4152
Stephanie Hanna (202) 208-3171

29 TRIBAL COLLEGES IN 12 STATES TO BENEFIT FROM EXECUTIVE ORDER

President Clinton has signed an executive order that expands opportunities for federal assistance to tribal colleges and universities that serve approximately 25,000 American Indian and Alaska Native students. At the request of the White House, Secretary of the Interior Bruce Babbitt made the announcement in Phoenix, AZ, today before the opening session of the National Congress of American Indians.

President Clinton's Executive Order recognizes, for the first time, a government-wide federal commitment to tribal colleges. This order will: promote tribal sovereignty and individual achievement; strengthen tribal colleges and universities; offer expanded learning and future career opportunities for tribal members; improve tribal higher education so more tribal members will continue on to four-year institutions. This Executive Order also will advance National Education Goals and federal policy in Indian education.

President Clinton's approval of the Executive Order for Tribal Colleges and Universities promotes the same successful strategies as two other higher-education Executive Orders that he signed for Historically Black Colleges and Universities in 1993 and for Hispanic Serving Institutions in 1994.

"This Executive Order makes a solid connection between this Administration's priority to improve education and its ongoing efforts to strengthen the government-to-government relationship with tribes and tribal self-sufficiency," said Babbitt, who chairs the Working Group on American Indians and Alaska Natives of the White House Domestic Policy Council.

"We thank President Clinton for signing this Executive Order on behalf of American Indian tribes and their youth," said Assistant Secretary for Indian Affairs Ada E. Deer, who co-chairs the Working Group's Subgroup on Education. "This action also promotes the preservation and revitalization of American Indian and Alaska Native languages and cultural traditions."

To carry out these goals, the order calls for the creation of a presidentially appointed board of advisors and a White House Initiative Office within the Department of Education. Each participating federal agency, including the Interior Department, will be required to prepare a five-

-more-

year plan that details how it will assist tribal colleges in participating in federal programs, address barriers to funding opportunities, and eliminate inequalities and disadvantages. Annual progress reports also will be prepared by the agencies for review by the Secretary of Education in consultation with the Director of the Office of Management and Budget.

The tribal colleges are:

- Bay Mills Community College, Brimley, MI
- Blackfeet Community College, Browning, MT
- Cheyenne River Community College, Eagle Butte, SD
- College of the Menominee Nation, Keshena, WI
- Crownpoint Institute of Technology, Crownpoint, NM
- D-Q University, Davis, CA
- Dull Knife Memorial College, Lame Deer, MT
- Fond du Lac Community College, Cloquet, MN
- Fort Belknap Community College, Harlem, MT
- Fort Berthold Community College, New Town, ND;
- Fort Peck Community College, Poplar, MT
- Haskell Indian Nations University, Lawrence, KS
- Institute of American Indian Arts, Santa Fe, NM
- Lac Courte Oreilles Ojibwa Community College, Hayward, WI
- Leech Lake Tribal College, Cass Lake, MN
- Little Big Horn College, Crow Agency, MT
- Little Hoop Community College, Fort Totten, ND
- Navajo Community College, Tsaile, AZ
- Nebraska Indian Community College, Winnebago, NE
- Northwest Indian College, Bellingham, WA
- Oglala Lakota College, Kyle, SD
- Salish Kootenai College, Pablo, MT
- Sinte Gleska University, Rosebud, SD
- Sisseton-Wahpeton Community College, Sisseton, SD
- Southwestern Indian Polytechnic Institute, Albuquerque, NM
- Standing Rock College, Fort Yates, ND
- Stone Child Community College, Box Elder, MT
- Turtle Mountain Community College, Belcourt, ND
- United Tribes Technical College, Bismarck, ND

-DOI-

**UNITED STATES
DEPARTMENT OF EDUCATION****NEWS**

FOR RELEASE
October 21, 1996

Contact: Ivette Rodriguez
(202) 401-0262

**PRESIDENT CLINTON ESTABLISHES ADVISORY BOARD ON
TRIBAL COLLEGES AND UNIVERSITIES**

President Clinton today signed an executive order establishing an advisory board and a White House Initiative on tribal colleges and universities.

The Education Department will house and provide staff support for the new White House Initiative on Tribal College and Universities, as well as house the advisory board, which will consist of 15 presidentially appointed board members.

"These institutions provide an invaluable service," said U.S. Secretary of Education Richard W. Riley, "and it's time that we look for ways to increase their contribution. This initiative is another concrete example of our determination to assure every American with access to education beyond high school."

Among the board's goals are to help:

- o ensure that tribal colleges and universities are better recognized as accredited institutions;
- o establish mechanisms to increase accessibility to federal resources;
- o promote access to high quality education;
- o promote the preservation and revitalization of American Native and Alaska Native languages and cultural traditions;
- o explore innovative approaches to better link tribal colleges with early childhood, elementary, and secondary education programs; and
- o recommend ways in which tribal colleges and universities can strengthen their institutional capacity in support of the National Education goals.

-MORE-

-2-

The board will also report on the progress made by federal agencies in addressing these goals and will provide recommendations at least annually to the president and the secretary on ways to improve and promote quality postsecondary education for Native Americans and Alaska Natives.

Members of the board will include representatives of tribal colleges and may also include representatives of the higher, early-childhood, elementary and secondary educators; tribal officials; health, business and financial institutions; and private foundations. Board members will serve two-year terms.

According to executive order, the initiative will be authorized to:

- o assist the secretary in the role of liaison between the executive branch and tribal colleges;
- o serve the secretary in carrying out his responsibilities under this order; and
- o promote better use of the services, personnel, information, and facilities of other agencies in meeting the objectives of the order.

Twenty-nine tribal colleges and universities across the country serving 25,000 students from more than 250 tribes are covered under the order. Native American graduates from these primarily two-year institutions are four times more likely to complete bachelor's degrees than those Native American students who enter as freshmen.

Through the White House Initiative Office, the advisory board, executive departments, and federal agencies will collaborate with the tribal colleges to develop and document a five-year plan of goals and objectives. The initiative also will encourage the private sector to provide assistance to tribal colleges to strengthen institutional effectiveness and capability.

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

JAN 24 1997

OFFICE OF
WATER

MEMORANDUM:

SUBJECT: Report on the Activities of the Environment and Natural Resources Subgroup

FROM: Tom Wall, Co-Chair *Tom Wall*
Dr. Catherine Vandemoer, Co-Chair *C Vandemoer*
Environment and Natural Resources Protection Subgroup

TO: Domestic Policy Council Working Group on American Indians and Alaskan Natives

On October 3, 1996, the Working Group accepted three project proposals submitted by the Environment and Natural Resources Protection Subgroup:

- o development of a draft federal policy on natural resources and environmental protection in Indian Country;
- o preparation of draft guidance on implementation of the National Environmental Policy Act (NEPA) when federal actions affect Tribal environments or natural resources; and
- o development of a Tribal Environmental Assistance Handbook to help Tribes identify and, where possible, leverage all available federal programs, technical assistance and grant and loan opportunities to address their environmental needs.

Please see Attachment I for copies of the project proposals.

The Subgroup has made the following progress on our three projects:

- o **Draft NEPA guidance:** we have completed a review of the existing NEPA regulations, the draft Council on Environmental Quality (CEQ) guidance for addressing environmental justice under NEPA, draft U.S. Environmental Protection Agency (EPA) guidance for incorporating environmental justice in EPA's analysis of NEPA compliance, and other pertinent documents. Our next step is to consult with CEQ on the potential, key elements of a Tribal NEPA guidance and seek comment from the Working Group on a more detailed proposal.



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- o **Tribal Assistance Handbook:** the Handbook design is complete and most information on the programs and assistance available from relevant Departments and Agencies has been gathered. A team is now being formed to complete the first draft of the Handbook.
- o **Federal policy on environmental and natural resource protection in Indian Country:** the Subgroup has gathered and reviewed the Indian policies of the Departments and Agencies to identify common elements and gaps (see Attachment II for a list of the policies we reviewed). Based on this analysis, the Subgroup has identified a potential list of issues that may be appropriate for inclusion in a federal policy (see Attachment III).

The next step is to distribute a letter from our Working Group principals to other members of the Working Group requesting comments on the draft list of issues and inviting representatives from all Departments and Agencies to a meeting of the Subgroup to discuss the issues and identify others that might be included in a draft policy. Once we have agreement on the potential issues to be addressed in a draft policy, we propose to solicit comments from Tribal government representatives.

If you have any questions about the Subgroup or these projects, please ask a member of your staff to call one of us (Tom Wall, Acting Director of the EPA American Indian Environmental Office, at (202) 260-7939, or Dr. Catherine Vandemoer, Staff Assistant to the Department of Interior's Assistant Secretary for Indian Affairs, at (202) 208-7163)).

Attachments

Attachment I

DOMESTIC POLICY COUNCIL WORKING GROUP ON
AMERICAN INDIANS AND ALASKA NATIVES

ENVIRONMENT AND NATURAL RESOURCES PROTECTION SUBGROUP

PROJECT PROPOSALS
OCTOBER 3, 1996

FEDERAL POLICY ON ENVIRONMENTAL AND NATURAL RESOURCE PROTECTION IN INDIAN COUNTRY

Issue: The Subgroup on Environment and Natural Resources would like to propose a federal policy on environmental and natural resource protection in Indian Country.

Background: Only a few agencies (EPA, DOE, USDA) have an Indian policy generally defining that agency's tribal relations, and only the Environmental Protection Agency has a policy that specifically addresses the protection of human health and the environment in Indian Country. Thus, across the federal agencies there is an absence of consistent policy guidance on federal-tribal relations and specifically on the protection of the environment and natural resources in Indian Country. This absence has created some inconsistency among the different agency's relations with the tribes and hindered cooperative efforts in environmental protection and natural resource management.

Proposal: Working from agency policies that already address federal-tribal relations and environmental protection, the subgroup would draft a federal policy on environmental and natural resource protection. The proposal would then be submitted to the Working Group for review and comment. Assuming that the Working Group can reach closure on the policy, it would then be submitted to the participating agencies for concurrence. Assuming clearance through the participating agencies, the policy would be submitted to the President for issuance as a Directive, Memorandum, Executive Order, or as some other similar statement reflecting the Administration's policy on this issue.

Generally, the policy would acknowledge the need for interagency cooperation and open and early communication and consultation with the tribes. It would also address the federal government's role in the protection of the tribal environments and natural resources. In keeping with tribal self-determination, the policy would encourage, where possible and appropriate, the assumption of primary responsibility by the tribes for environmental protection and natural resource management in Indian Country.

FEDERAL GUIDANCE ON THE IMPLEMENTATION OF NEPA IN INDIAN COUNTRY

Issue: The Subgroup on Environment and Natural Resources would like to propose federal guidance on the implementation of the National Environmental Policy Act (NEPA) when federal actions affect tribal environments or natural resources.

Background: Many federal actions which must comply with NEPA take place in or adjacent to Indian Country. As such, Indian tribes and their environments and natural resources are often affected by these actions. While under NEPA regulations Indian tribes may be treated as cooperating agencies (40 CFR 1508.5), the tribes are not consistently informed of or consulted on these federal actions or requested to participate in the review of such actions under NEPA. Thus, federal projects and other projects which the federal government must permit or review may go forward with little or no consideration of the impacts on tribal environments or natural resources.

In addition, as tribes are beginning to enhance their participation in environmental regulation and natural resource management, they are preparing to assume primary responsibility for the implementation of such regulatory and management programs. Many tribes are already carrying out primary responsibility under NEPA for activities conducted by the Bureau of Indian Affairs. The Indian Health Service has proposed legislation that would encourage tribes to assume all of the responsibilities for environmental review, decision-making, and action pursuant to NEPA.

Proposal: Working with the Council on Environmental Quality (CEQ), the subgroup would draft a proposed federal guidance on the implementation of NEPA when federal actions affect tribal environments or natural resources. policy on environmental and natural resource protection. The proposal would then be submitted to the Working Group for review and comment. Assuming that the Working Group can reach closure on the guidance, it would then be submitted to the participating agencies for concurrence. Assuming clearance through the participating agencies, the guidance would be submitted to CEQ for issuance as federal guidance or as some other similar statement reflecting the Administration's policy on this issue.

Generally, the policy would acknowledge the need for open and early communication and consultation with the tribes and would address the federal government's role in the protection of the tribal environments and natural resources under NEPA. In order to support tribal self-determination and to promote tribal primacy in the area of environmental and natural resource protection, the guidance would also address the role of tribal environmental review codes (e.g. Tribal Environmental Policy Acts) and/or programs.

Tribal Environmental Assistance Handbook:

Part One:

Part One will contain a Matrix-Table which will break environmental programs into the following categories: Land/Waste, Air, Water, Pollution Prevention, Multi-Media, and Cultural Resources, and, within the proper categories, will include a listing of all environmental programs, training, funding opportunities, and assistance available to Tribes from the federal government. In effect, the Matrix-Table will serve as a summary of the entire Tribal Environmental Assistance Handbook. Part One will also contain a series of overlap maps which will indicate the various federal departments and agencies regional operations throughout the United States.

Part Two:

Part Two will be broken into the following sections: Land/Waste, Air, Water, Pollution Prevention, Multi-Media, and Cultural Resources. Each of these sections will contain a listing of all relevant environmental programs, training, funding opportunities, and assistance available to Tribes from the federal government. The lists will contain summary descriptions of the assistance available, and will also contain information regarding how to access the assistance as well as relevant contact offices and phone numbers. All information will be written in plain English.

Part Three:

Part Three will offer environmental enforcement information. This section will contain a synopsis of significant environmental statutes and regulations; as well as a step-by-step approach for contacting the proper enforcement authorities within the federal system.

Attachment II

FEDERAL INDIAN POLICIES, GUIDANCE, AND STATEMENTS**Presidential Orders and Memorandums**

- Government-to-Government Relations with Native American Tribal Governments
- Indian Sacred Sites

Domestic Policy Council Working Group on American Indians and Alaska Natives

- Federal/Tribal Consultation Process

Department of Interior

- Department of Interior's Federal Indian Trust Responsibility
- Departmental Manual Chapter on Departmental Responsibilities for Indian Trust Resources
- Trust Resource Policies and Procedures for:
 - Office of Environmental Policy and Compliance
 - Bureau of Reclamation
 - Fish and Wildlife Service
 - Bureau of Land Management
 - National Biological Society
 - National Park Service
 - Minerals Management Service
 - Geological Survey

Department of Justice

- Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations with Indian Tribes

Department of Energy

- American Indian Policy

Department of Agriculture

- Policies on American Indians and Alaska Natives

Environmental Protection Agency

- EPA Policy for the Administration of Environmental Programs on Indian Reservations
- Indian Policy Implementation Guidance
- Announcement of Actions for Strengthening EPA's Tribal Operations
- Federal, Tribal, and State Roles in the Protection and Regulation of Reservation Environments
- EPA Region 8 Policy for Environmental Protection in Indian Country

JAN 24 1997
Attachment III

**POTENTIAL ISSUES TO BE ADDRESSED IN A
FEDERAL POLICY ON ENVIRONMENTAL AND NATURAL RESOURCE
PROTECTION IN INDIAN COUNTRY**

Introduction

- General finding that protection of the environment and natural resources in Indian Country is a subject having substantial impacts on tribal health and welfare

General Principles

- Federal trust responsibility
- Tribal self-determination
- Government-to-government relationship
- Early and meaningful consultation with Tribes

Specific Issues

- Interagency cooperation and coordination
- Tribal access to federal environmental and natural resource protection programs generally available to State and local governments
- Information dissemination and training programs specifically directed to Tribes
- Financial and technical assistance for Tribes to develop capacity, to provide meaningful input in the consultation process, and to actively participate in partnership with the Federal Government in the management of programs for Indian Country
- Protection of cultural values and sacred sites in management of environmental programs and natural resources in Indian Country or otherwise affecting Tribal resources
- Protection of off-reservation, treaty-protected property and resources (i.e. ceded territory)
- Exhaustion of all other reasonable means before compromising Tribal interests or resources
- Process for alternative dispute resolution/mediation between federal agencies and Tribes

JAN 24 1997

Attachment III

- Non-Indians and fee lands within exterior boundaries of Indian Country
- Environmental justice in Indian Country
- Unique attributes of tribes in Alaska, Oklahoma, New England, and elsewhere subject to special federal legislation
- Hiring, training, and promoting American Indians and Alaska Natives in the administration of federal programs affecting the environment and natural resources in Indian Country.

Actions for Implementing the Policy

- Development of Department/Agency-specific policies or implementation strategies on environmental and natural resource protection in Indian Country
- Identification of procedural and legal impediments to carrying out this Policy and development of Department/Agency-specific plans for removing those impediments
- Annual progress reports to the Domestic Policy Council







U. S. Department of Justice

Office of the Deputy Attorney General

Office of Tribal Justice

Washington, D.C. 20530

MEMORANDUM

TO: Faith Roessel, Esq.
Office of the Secretary, DOI

FR: Mark C. Van Norman *MCV*
Deputy Director, OTJ

RE: Government-to-Government Consultation

DA: January 27, 1997

Following the September, 1996 meeting of Secretary Babbitt's Domestic Policy Council Indian Affairs Subcommittee, our office met with the staff of the DPC to request that the White House send out a follow-up memorandum to President Clinton's Executive Memorandum on Government-to-Government Relations with Native American Tribes to request information concerning the implementation of government-to-government relations by the executive departments and agencies. Enclosed is a copy of the draft memorandum that we sent to the DPC.

Due to some staffing changes, a follow-up memorandum has not yet gone out, but we hope such a follow-up memorandum will go out soon.

cc: Leanne Shimabukuro, DPC

MEMORANDUM

TO: Leanne Shimabukura, Esq.
White House Domestic Policy Council

FR: Mark Van Norman, Deputy Director
Office of Tribal Justice, Dept. of Justice

RE: Government-to-Government Relations with Indian Tribes;
Update for all agencies

DA: November 15, 1996

To ensure continuing implementation of the Executive Memorandum on Government-to-Government Relations with Native American Tribes, we suggest that the White House Domestic Policy Council issue the following statement to all agencies:

On April 29, 1994, President Clinton issued an Executive Memorandum to all Executive Departments and Agencies directing them to work on a basis of government-to-government relations with federally recognized tribal governments. (See April 29, 1994 Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments, enclosed.) We write to request the assistance of your Department or Agency in ensuring that the President's directive is appropriately implemented.

The April 29, 1994 Executive Memorandum is based on the unique historical and legal recognition of Indian tribes as governments and the fact that United States has ongoing governmental relations with tribal governments pursuant to treaties, statutes, executive actions, and judicial determinations. When executive action will impact government or treaty rights of Indian tribes or tribal trust property, the Executive Memorandum requires the responsible Department or Agency to consult with tribal governments concerning the impact of the federal action to the greatest extent practicable and permitted by law. Government-to-government consultations should be conducted with knowledge of, and sensitivity for, tribal governmental and treaty rights. In addition, Executive Departments and Agencies are required to take steps to remove procedural impediments to working directly and effectively with Indian tribes.

Several Executive Departments and Agencies have implemented the President's directive by adopting their own policies on Government-to-Government Relations with

Native American Tribal Governments. (See Department of Justice Policy and Department of Commerce Policy enclosed.) In addition, some Departments and Agencies have designated staff as liaisons with Native American Tribal Governments to facilitate the implementation of the President's directive and to ensure that tribal governments can access their organizations.

To assist us in ensuring that the President's directive is appropriately implemented, please send us the following: a) your Department or Agency policy on Government-to-Government Relations Native American Tribal Governments if you have such a policy; b) the name, position, address and telephone number of Department or Agency staff designated as liaisons with tribal governments; and c) a two or three page synopsis of your Department or Agency approach and activities in implementing the President's April 29, 1994 Executive Memorandum.

If possible, please return this information to us by _____ . Thank you for your assistance, etc.

Please call me to discuss at 514-8812. Thank you.



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DRAFT

January, 1997

TO: Domestic Policy Council Working Group on Native American Affairs

FROM: James Simon
Deputy Assistant Attorney General
Environment and Natural Resources Division
Department of Justice

Subject: Implementation of the Executive Order on Sacred Sites

At the last meeting of the Domestic Policy Council Working Group, we distributed a memorandum prepared by the Justice Department's Office of Legal Counsel (OLC) on the legal standards applicable to implementation of Executive Order No. 13,007 concerning Indian sacred sites on federal lands. In particular, the memorandum addresses a recent case involving the National Park Service's accommodation of tribal religious and cultural use of the Devils Tower National Monument in Wyoming. See Bear Lodge Multiple Use Association v. Babbitt (D. Wyo.). If you need additional copies of the OLC memo, we will have them available today.

We also undertook at the last meeting to report back to you on whether the OLC memorandum should be supplemented by a short "practitioner's guide" and on a process whereby land management agencies could work together on implementing the Executive Order. We have met with representatives of various agencies¹ and propose today for your consideration the following steps:

1. The Department of the Interior has already planned meetings in Denver and Portland in March to consult with Indian tribes about implementation of the Executive Order. The Interior Department representatives wish to propose that other land management agencies be invited to participate in this consultative process, which will provide economies not only to the agencies but also to the tribes. This would facilitate each agency's compliance with the Executive Order's requirement to report to the White House on implementation of the Order by May.
2. As each agency determines more specifically between now and May how it will implement the Executive Order, we will work on providing practical

¹ Represented at our meeting were the Departments of the Interior, Agriculture, and Energy, as well as the Army Corps of Engineers.

suggestions on doing so within the context of the agencies' missions and legal requirements. Below are some preliminary suggestions that may be broadly applicable.

3. The land management agencies and the Justice Department should form an informal working group to consult on an ongoing basis about implementation of the Executive Order.

4. Each agency should be encouraged to consult early with the Justice Department about issues involving accommodation of tribal religions, especially if litigation is likely. The Justice Department may be contacted through Judy Rabinowitz in the Environment and Natural Resources Division (202-514-2714) or Craig Alexander in the Office of Tribal Justice (202-514-9080).

Background of the OLC Memorandum

In the Bear Lodge litigation, several rock climbing outfitters represented by Mountain States Legal Foundation are challenging the Park Service's Climbing Management Plan for Devils Tower National Monument. The plaintiffs have alleged, inter alia, due process and Establishment Clause violations. The Plan, as originally issued in 1994, sought to accommodate American Indian ceremonial use of the Tower during the summer solstice by precluding the issuance of commercial climbing permits during the month of June and by requesting that non-commercial users voluntarily refrain from climbing during that month.

In June of 1996, the district court preliminarily enjoined the Park Service from enforcing the commercial climbing provision of the Plan on the ground that the plaintiffs were likely to succeed on the merits of their Establishment Clause challenge. The Park Service subsequently undertook a reconsideration of that portion of the Plan. In November of 1996, the Park Service issued a modified Plan that eliminates the distinction between commercial and non-commercial climbers and encourages all users to observe the voluntary closure.

The OLC memorandum concludes that the preliminary injunction motion in Bear Lodge was wrongly decided and that federal agencies have broad discretion under the applicable Constitutional standards to accommodate tribal use of sacred sites. The OLC memorandum elaborates on the application of Establishment Clause jurisprudence, and particularly the Lemon test, to the accommodation of federally recognized Indian tribes in the exercise of religion. See Lemon v. Kurtzman, 403 U.S. 602 (1971). Despite the OLC conclusion that the Lemon test should not apply with full force to accommodations of tribal religion due to the unique relationship between the federal government and federally recognized tribes, OLC nonetheless recommends adherence to Lemon in the implementation of

the Executive Order. This recommendation stems in part from the unsettled nature of the case law. OLC also advises that, where possible, agencies adopt regulations that are facially neutral with respect to religion.

Other legal and practical considerations

Decisions to accommodate tribal religious customs and uses, of course, may be subject to various legal requirements, such as the National Environmental Policy Act, statutes governing land use, and generally the Administrative Procedures Act. In compliance with these laws, the land management agency may be required to examine alternatives, compile an administrative record, or take other action. How these requirements apply to accommodation of tribal religions may come into sharper focus as each agency consults with tribes and prepares to report to the White House in May.

Some of the decisions to accommodate tribal religions may be challenged in court. An agency may wish to take some steps, whether or not required by statute or by the Establishment Clause, to provide a favorable record for such judicial review as may occur. Our preliminary suggestions of actions that an agency should, as a discretionary matter, take in accommodating tribal religious customs and uses are as follows:

- Engage interested parties in the decision-making process to attempt to build consensus and support for the accommodation, and be prepared to document this process in the record.
- Be mindful of the need to consult with interested tribes on a government-to-government basis. See President's Memorandum on Government-to-Government Relations with Native American Tribal Governments, April 29, 1994.
- Document the ways, if any, in which accommodations lift governmentally-imposed burdens on tribal religious use of sites.
- Consider a broad spectrum of alternatives when closure or curtailment of competing uses of a sacred site is contemplated, including the possibility of voluntary regimes (where such regimes adequately will accommodate religious exercise) coupled with education, outreach and publicity.
- Consider that, among alternatives, an option may be easier to defend if it is rationally related to (a) the lifting of a burden on the exercise of tribal religions or (b) correcting past burdens on tribal exercise of religion, but note that we do not concede that these are required criteria.

- With respect to temporary closures of areas to nonreligious uses, consider narrowly tailoring accommodations to the lifting of a burden and limit the duration of the closure accordingly.

- Where appropriate, document environmental, cultural, and aesthetic justifications related to accommodations of Indian sacred sites.

- Where appropriate, document historical and longstanding tribal religious uses of sacred sites.

- Where an accommodation is based on the sacred sites Executive Order, adhere to the principle that the government-to-government relationship runs only between the United States and federally recognized tribes.

Conclusion

We offer these suggestions as a starting point for discussion, acknowledging that each land use decision must be analyzed on its facts. It is our hope that coordination among agencies may assist in implementing the Executive Order.







DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Indian Health Service
Rockville MD 20857

Non-Medical Facilities/Quarters Project and Telecommunications Project Status Report January 1997

Shared Telecommunications

1. Introduction

The purpose of this project is to determine the technical feasibility of sharing telecommunications services between the Indian Health Services (IHS) and the Bureau of Indian Affairs (BIA). Because IHS and BIA support the same populations at similar locations, shared telecommunications should be mutually advantageous.

The project includes three phases as described below. Each phase will consider both the technical and security aspects of a shared network. Other factors such as circuit cost reimbursement and service level agreements will be considered later. The immediate goal is to test the technical aspects and feasibility of sharing resources.

- Phase I** Determine the feasibility of sharing IHS and BIA telecommunications facilities within New Mexico (NM).
- Milestone 1:** Establish IHS-BIA communications within Albuquerque, NM, using BIA's Metropolitan Area Network (MAN).
 - Milestone 2:** Establish IHS-IHS communications utilizing BIA MAN within Albuquerque, NM.
 - Milestone 3:** Establish IHS-IHS communications utilizing BIA extended MAN to a health facility within Albuquerque, NM.
- Phase II** Determine the feasibility of sharing IHS and BIA telecommunications facilities in Aberdeen, South Dakota (SD).
- Milestone 1:** Establish IHS-BIA communications between the Aberdeen IHS and BIA Area Offices.
- Phase III** Determine the feasibility of sharing IHS and BIA telecommunications facilities in remote locations.
- Milestone 1:** Establish IHS-IHS communications between IHS Headquarters West (HQW) and a remote site on the Navajo Reservation utilizing BIA telecommunications facilities.

2. Accomplishments/Progress to Date

Phase I

Milestone I (Completed)

BIA is currently using a US West provided 10 Megabit per second Metropolitan Area Network (MAN) in the City of Albuquerque, NM. As part of this project, BIA provided IHS with a high speed router for connecting to the MAN. The router is located at IHS Headquarters West (HQW). The link was tested and made operational by US West in July, 1996. IHS and BIA began testing on September 1, 1996. IHS has successfully transferred test data between IHS HQW and the BIA Area Office, Southwestern Indian Polytechnical Institute (SIPI), and other BIA locations within the Albuquerque metropolitan area. IHS and BIA have established e-mail connectivity, including attached file transfers.

Milestone 2 (In Progress).

The IHS Albuquerque Area Office is currently located in the same building as the BIA Office of Trust Funds Management (OTFM). The IHS will connect the Area Office to OTFM which in turn connects to the MAN. This connection will assist the Area Office in its upcoming move to the IHS HQW building. Albuquerque Area Office staff will continue to have access to computer services during the move. The move will take several weeks to complete.

Milestone 3 (Planning Phase)

The MAN will be extended to the Albuquerque Indian Hospital (AIH), also located in Albuquerque, NM. This will allow high speed access between IHS HQW, the Albuquerque Area Office, and AIH. In addition, the connection will improve Internet access for AIH staff.

Phase II

Milestone 1 (Planning Phase)

This phase will extend the connectivity to the Aberdeen Area Office, Aberdeen, SD. As the BIA and IHS are in the same building, the BIA will connect to the IHS's high speed backbone network. This will extend the shared testing between a remote site and the Albuquerque connection. This phase is very easy to implement as it will require a minimum outlay of money and will require only a cable to be run between the IHS on the third floor and the BIA on the 5th floor of the Aberdeen Federal Building.

Phase III**Milestone 1 (Planning Phase)**

The project team from both the IHS and the BIA have tentatively selected Tuba City, Arizona (AZ), for this portion of the project. Tuba City, AZ, is a very good selection as the IHS and BIA offices are within 100 feet of each other. The BIA already has a dedicated 56 Kbps line from Albuquerque, NM, to Tuba City, AZ. Thus the IHS can use the already installed line from the Albuquerque BIA to Tuba City.

3. Projected time lines for completing activities.**Phase I**

Milestone 1 was completed in September, 1996.

Milestone 2 should be completed by March 1, 1997.

Milestone 3 should be completed by June 1, 1997.

Phase II

Milestone I should be completed by April 1, 1997.

Phase III

Milestone I should be completed by June 1, 1997.

4. Benefits to the agencies and their customers.

The principle benefit to be derived from sharing telecommunications facilities will be reduced cost for IHS and BIA. Specific cost reductions will be determined as circuit cost reimbursement and service level agreements are finalized.

Joint Facilities/Housing Potential

1. Introduction:

As a result of a request from the National Performance Review Office, staff members of the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) were asked to identify areas where increased collaboration might result in greater program efficiency. One of the areas identified was sharing facilities management and quarters functions.

2. Progress to Date:

The IHS/BIA team charged with exploring potential joint projects in the areas of facilities housing have met and discussed the following:

- Explore combining maintenance functions for non-medical facilities.
- Explore combining quarters maintenance functions.
- Explore consolidating ownership of all quarters within one Agency.
- Explore combining real property inventories within one Agency.
- Explore sharing facilities maintenance equipment usage/ownership.
- Explore collaborating on quarters construction projects.

Some of the activities noted, such as allowing IHS employees to occupy empty BIA quarters, already occur at the local level. The same is true, often, with sharing equipment and setting of rental rates. At the local level, utility systems, sewage, and water treatment plan maintenance are usually accessed through the use of Memoranda of Understanding. The most serious and challenging issue noted appeared to be the overlapping administration of units of quarters by IHS, BIA, and sometimes the Forest Service.

The group discussed instituting a demonstration project in which one Agency would administer all quarters functions at a chosen location. This would include maintenance, rental agreements, etc. It will be necessary to identify areas where the two Agencies have a significant number of quarters and quarters inventories have been exchanged. Issues such as which Agency should be the lead Agency, maintaining ownership, consolidating staff and equipment need further discussion. In addition, policy decisions in areas where quarters rent is not sufficient to maintain the units need to be addressed. If the initial pilot results in success, the group felt that shared non-medical facility management should be considered.

In FY 1996 an Interagency Agreement for Use of Government Quarters was negotiated between IHS and BIA staff. The agreement allows for sharing housing between agencies and for payroll deduction of quarters allowances/rents. The final agreement was signed by the Director, IHS, in September, 1996, and co-signed by the Assistant Secretary for Indian Affairs in October. The document has been disseminated to all IHS and BIA Areas and is in general use at present.

3. Next Steps

The BIA and IHS are continuing discussions for the pilot project and canvassing their respective Area Offices to determine the interest and need for consolidating housing ownership and/or management functions.

4. Projected Time Lines for Completing Activities

Inventory facilities, February 28, 1997.

Develop criteria for site selection, March 7, 1977.

Identify potential pilot project sites, March 14.

Contact IHS/BIA Areas where pilot project might be considered, April 15.

Tribal consultation completed where pilot project might be considered, July 1, 1997.

Decision about location(s) for pilot project(s), September 2, 1997.



FEDERAL FUNDING OF INDIAN PROGRAMS
(Dollars in Thousands)

	<u>FY 1993</u> <u>Actual</u> <u>BA</u>	<u>FY 1994</u> <u>Actual</u> <u>BA</u>	<u>FY 1995</u> <u>Actual</u> <u>BA</u>	<u>FY 1996</u> <u>Actual</u> <u>BA</u>	<u>FY 1997</u> <u>Request</u> <u>BA</u>	<u>FY 1997</u> <u>Enacted</u> <u>BA</u>
Department of Agriculture	281,554	118,728	94,819	133,088	132,838	139,316
Department of Commerce	4,523	5,375	8,984	5,088	4,489	4,080
Department of Defense	8,530	8,400	8,000	8,000	0	8,000
Department of Education	458,508	473,744	438,723	411,901	447,699	521,895
Department of Health and Human Services	2,197,719	2,324,768	2,366,467	2,445,521	2,619,525	2,591,376
Department of Housing and Urban Development and Related Agencies	400,711	608,874	533,848	479,752	549,368	547,050
Department of the Interior	1,788,412	2,024,031	1,820,944	1,811,307	2,034,906	1,857,262
Department of Justice	3,769	6,796	11,599	17,001	10,925	18,725
Department of Labor	77,814	76,622	63,151	63,867	65,840	68,342
Department of Transportation	201,588	204,523	198,955	192,808	189,937	184,286
Department of Veterans Affairs	5,000	168	218	205	205	205
Environmental Protection Agency	38,314	38,493	51,898	72,302	98,758	104,968
Smithsonian Institution	17,450	22,900	37,200	32,800	22,800	22,000
Army Corps of Engineers	4,145	20,616	17,446	8,384	21,353	16,356
Other Independent Agencies	34,307	39,489	36,101	25,845	30,500	24,845
TOTAL	5,502,343	5,989,523	5,784,149	5,707,975	6,239,180	6,068,704

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