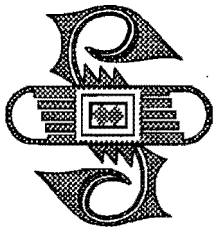


*Working Group
on
American Indians
and
Alaska Natives*

*White House
Domestic Policy Council*



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

10-3-96

AGENDA

Thursday, October 3, 1996
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 Held on July 8, 1996
- 2) Subgroup Reports:
 - *Education* - Gerald Tirozzi, Department of Education and Ada Deer, Department of the Interior

Status Report on Tribal Colleges Executive Order: Michael Cohen, Special Assistant to the President for Education, Domestic Policy Council, White House
 - *Environment and Natural Resource Protection* - Tom Wall, Environmental Protection Agency and Catherine Vandemoer, Department of the Interior
 - *Consultation* - Craig Alexander, Department of Justice
 - *Reinvention* - Hilda Manuel, Bureau of Indian Affairs
 - *Religious Freedom* - Jim Simon, Department of Justice

Implementation Guidance on Sacred Sites Executive Order: Dawn Johnsen, Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice

New Business

- 1) Update on Funding for Major Government-wide Indian Programs - Janet Irwin, Office of Management and Budget
- 2) Accomplishments Reports of the Working Group Members - Faith Roessel, Department of the Interior



Nation to Nation

Volume 1, Issue 1

August 1996

Message From Attorney General Janet Reno

The Tribal-Federal Partnership

*Greetings To Friends and Partners in
Indian Country:*

I extend to all a warm welcome on the first publication of NATION TO NATION, the official newsletter of the Office of Tribal Justice. By sharing information on tribal issues and concerns, our goal is to honor and enhance the government-to-government relationship with tribes. On April 29, 1994, President Clinton reaffirmed the policy of self-determination for Indian tribes in his Executive Memorandum on Government-to-Government Relations with Indian tribes. The President's historic government directive requires federal agencies and departments to work directly with tribal governments and consult with tribes before taking federal action that will impact treaty or self-government rights. As Attorney General, I am committed to ensuring that the Department of Justice carries out its

responsibilities in a manner consistent with the government-to-government relationship between tribes and the Department.

Fulfilling the federal trust responsibility to Indian nations means enhancing tribal sovereignty. When I signed the Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations With Indian Tribes on June 1, 1995, I reaffirmed the government-to-government relationship emphasized by President Clinton in his Executive Memorandum. The DOJ Policy explains that the United States has recognized Indian sovereignty since its earliest days. The Constitution itself recognizes Indian tribes as nations with the power to enter treaties and the earliest United

States court opinions recognized the inherent right of Indian nations to self-governance. *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831).

In our efforts to improve relations with the tribes of this nation, we have learned a crucial lesson in building a federal-tribal relationship: **the need to listen.** At the National American Indian Listening Conference in May 1994, I listened to tribal representatives describe their vision of how a government-to-government relationship should proceed. It became apparent that the Department needed to establish a permanent channel for tribes to communicate their concerns to the Department. We created the Office of Tribal Justice to consult with Indian tribes and coordinate the DOJ response to their concerns. I urge all tribal representatives to communicate your concerns to Herbert Becker and his staff in the Office of Tribal Justice when you have questions or concerns regarding Department activities.

I am acutely aware of the broad range of complex issues confronting Indian tribes. In the current budgetary climate, tribes must address these concerns with limited resources. The Justice Department cannot replace reduced funding, but we can work together with limited resources to address the most critical problems facing the First Americans. Please accept my invitation to work together to accomplish our objectives. You, the members of the Native American community, must continue to forge a vision of stronger, safer, tribal communities and we will listen and learn and assist where we can.

Sincerely,

Janet Reno
Attorney General

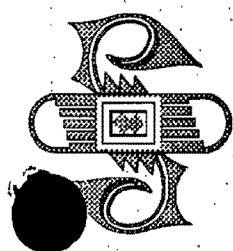


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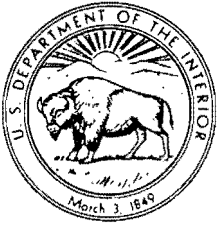
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Working Group on American Indians and Alaska Natives White House - Domestic Policy Council

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THE SECRETARY OF THE INTERIOR
WASHINGTON

SEP 27 1996

MEMORANDUM

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

From: Secretary *Frederick B. Bryant*

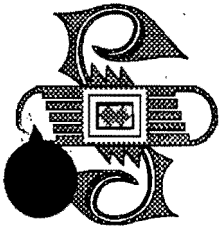
Subject: Working Group Meeting, October 3, 1996

I invite you to the next meeting of the Domestic Policy Council's Working Group on American Indians and Alaska Natives to be held on Thursday, October 3, 1996, from 11:00 - 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 fourth meeting of the year and I am pleased we have kept on schedule with meetings each quarter. Looking back over the year, I commend this Group in staying involved and active in the areas of consultation, reinvention, education, environment and natural resource protection, religious freedom, tax policy and lending -- all in the context of working with tribes. We have "Codetalk" up and running and on-line; the President signed the sacred sites Executive order; we again produced an annual report of accomplishments; the tribal colleges Executive order is now pending at the White House; and each subgroup is pushing ahead.

As I expressed in January, my goal for 1996 was to see this Working Group achieve meaningful and tangible results that will make a difference in how we do business with Indian tribes and with each other on their behalf. Our work shows we are making progress. I value your continuing interest and work and look forward to seeing you on the 3rd.

Attachment



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

10-1-96

AGENDA

Thursday, October 3, 1996
11:00 a.m. - 12:00 p.m.
Room 5160, Main Interior Building
1849 C Street, N.W., Washington, D.C.

Old Business

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- 2) Subgroup Reports:
 - *Education* - Gerald Tirozzi, Department of Education and Ada Deer, Department of the Interior
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 - *Religious Freedom* - Craig Alexander, Department of Justice
 - Implementation Guidance on Sacred Sites Executive Order: Dawn Johnson, Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice
 - *Environment and Natural Resource Protection* - Tom Wall, Environmental Protection Agency and Catherine Vandemoer, Department of the Interior
 - *Consultation* - Craig Alexander, Department of Justice
 - *Reinvention* - Hilda Manuel, Bureau of Indian Affairs

New Business

- 1) Report on White House Tribal Leaders Policy Briefing and Meeting - Tom Shea, Office of Deputy Chief of Staff, White House
- 2) Update on Funding for Major Government-wide Indian Programs - Bruce Beard, Office of Management and Budget
- 3) Accomplishments Reports of the Working Group Members - Faith Roessel, Department of the Interior

**Draft of Minutes of Working Group on
American Indians and Alaska Natives
Meeting held July 8, 1996**

The meeting of the Working Group was convened by the Honorable Bruce Babbitt, Secretary of the Interior, on July 8, 1996, at 10:00 a.m.

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

OLD BUSINESS

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

Subgroup on Religious Freedom: Mike Anderson made a few introductory remarks noting that the President signed the Executive Order on Sacred Sites. Mike recognized the work of the Department of the Interior and Department of Justice, and recognized the Secretary of the Interior and the White House including the Legal Counsel's office for their work. Mike stated that this is the first Presidential Executive order on Indians since 1968. Mike turned over the presentation to Bob Anderson, Associate Solicitor, Indian Affairs, who described briefly each of the sections of the Order. Mike then introduced Roger Kennedy who gave a presentation on how the National Park Service has been working to accommodate Indian religious practice and how it will continue to do so since the Order was signed. Mr. Kennedy said managers will be instructed one more time on accommodating Indian religious practices and this time with the force of the President behind it. Mr. Kennedy introduced Deborah Leggitt, Superintendent of Devils Tower National Monument to describe how she is handling the consultation process with several tribes. Ms. Leggitt stated that the process was born out of conflict between traditional Indian religious use versus recreational use of the area. She said it was important that the tribes designate their spokespersons. She has held two sessions with the tribes and said it is difficult, takes time and is rewarding when consensus is reached.

Seth Waxman, Associate Deputy Attorney General, Department of Justice, stated the strong support of the Department of Justice and explained that it is critical that actions to implement the Executive order are constitutional and supported by the courts. DOJ is planning to issue a 1) legal memo stating constitutional actions the agencies can take to protect Indian sacred sites; 2) a memorandum to agencies on how to go about doing so, e.g. adhering to the Administrative Procedures Act, and 3) would recommend that a panel be set up to consult and provide a forum to strategize on actions, avoid pit falls, and meet as needed or regularly. Much discussion followed which focused on the suggestion to set up some type of review panel or group.

Secretary Babbitt noted the need to strike a balance between lawyers and land managers such that we do not intimidate the land managers and we avoid a bureaucratic "mess". Seth thought that the agencies would self-initiate and identify problem cases so it would not be too cumbersome. The Secretary asked if we could have an implementation plan in one year. Seth responded yes.

Finally the discussion ended with an agreement to use the subgroup on Religious Freedom as the body to come up with issues to resolve, for example, constitutional land management plans and consultation guidelines, and to report at the next meeting on progress. Secretary Babbitt remarked that it is ironic that for over the past 50 years the federal government and Congress have been talking about multiple use and this is the first time multiple use includes the needs of the first occupants of the land.

Subgroup on Education: Ada Deer reported that the proposed Executive order on tribal colleges is ready for transmittal to the Domestic Policy Council and a consensus draft has been produced after final review and comments by the Working Group members. Ada said the subgroup on education recommends that the letter and consensus draft be sent immediately. Secretary Babbitt agreed he would send the letter and package.

Subgroup on Environment and Natural Resource Protection: Kate Vandemoer reported that the subgroup has produced a matrix to look at programs across government and identify "gaps". She stated that the next step for the subgroup is to identify impediments. In the course of the subgroup's work it has identified the need for more training for tribes and more tribal participation in programs. Also, not all agencies have Indian policy statements and often those that do, do not have implementation guidelines. Ms. Vandemaer said it would help if agencies had policy statements and consultation guidelines. She said the subgroup would have more to report at the next meeting.

Subgroup on Consultation: Co-chair, Dom Nessi began the report detailing the history to date in trying to promote consultation. Two years ago, he said we first began with setting the minimum level agencies ought to do when consulting with tribes and that CODETALK was developed. Dom said, on the first proposal there were some comments but agencies felt that they did more than what was suggested, and that there is no one way to consult with tribes. The second proposal the subgroup circulated described the method for each agency as to how they would consult. This time only OMB provided comments. Herb Becker, co-chair, stated that agencies need to take a hard look at the issue of consultation. Secretary Babbitt responded that we have two choices: 1) do nothing or 2) we get aggressive, pushy and do something. Dana Minerva, EPA, circulated a paper on consultation and how EPA communicates with tribes. Hilda Manuel added that BIA is rewriting its consultation guidelines from the 1970's and pledged this would be completed by mid-September. Dr. Boufford, HHS, said we need to reaffirm the importance of consultation and we should be aggressive. She added that the tendency in HHS is to refer issues of consultation to Indian Health Service but obviously it covers a much broader area. She said, we should push ahead. Robert Alcock, Department of Energy, suggested that perhaps tribes ought to critique the agencies.

The suggestion was made to have the White House send out some type of instructional memo to agencies reminding them of their obligations and asking them how they are implementing the Presidential memorandum on government-to-government relations that requires consultation with tribes. Ideally, agencies should report back by mid-September. The discussion ended with the commitment to work with the White House and get agencies to report on where they are with consultation.

Subgroup on Reinvention: Secretary Babbitt said there is a written report in the notebook and due to a lack of time, he recommended that the members read the report.

NEW BUSINESS

Fannie Mae Presentation: Jack Gallagher, Vice-President for Public Finance, Fannie Mae, stated that Fannie Mae has started an initiative of investing in Indian country. Fannie Mae is working with HUD, BIA-Ada Deer, the Native American Indian Housing Council and the National Urban Indian Council. On June 19, on Capitol Hill, Fannie Mae signed an agreement with the Navajo Nation to purchase conventional loans privately issued on trust lands. Mr. Gallagher stated, the initiative involves several partners from private industry and the BIA plays a very important role of conducting the title search. The current process, however, takes 6-9 months to approve the loans which, Mr. Gallagher believes will inhibit private lending since time is of the essence. Fannie Mae would like to see BIA standardize their forms nationwide. Hilda Manuel, BIA responded that it is not that simple but BIA is willing to look at this. She responded in answer to the question of whether the BIA would extend its leasing authority to 50 years, that BIA does support this and Ada Deer will be sending a letter to tribes stating such. Bob Anderson, SOL, remarked that federal laws do not allow an extended time period and he suggested that Fannie Mae and his office sit down and discuss this and other legal issues.

Dr. Boufford mentioned that HHS is talking with HUD regarding small capital projects to build migrant and Indian clinics and emphasized the need for loans.

Department of Defense-Environmental Mitigation Program on Indian Lands: Peter Walsh gave an update on the DOD program authorizing environmental mitigation activity on Indian lands due to DOD activity. DOD is required to report to Congress on its implementation of the \$8 million authorization. This program was originally carried out by the Administration on Native Americans but now DOD has assumed full authority. DOD is creating a base line of all contaminated sites. It is starting consultation with tribes and will be creating four demonstration sites. DOD will be using Indian companies to do remediation and will be working with tribal colleges for training programs. Regarding consultation with tribes, Mr. Walsh described that DOD has been involved with tribes on a variety of issues, including the Native American graves repatriation law, missile sites and access to religious sites.

One Year Later Report: Faith Roessel referred the members to the draft report that updates government-wide accomplishments in Indian Affairs from April 1995, to the present. She said, the report would be finalized for possible distribution to tribes and asked for everyone's comments on the draft.

ADJOURNMENT

The Secretary thanked everyone and closed the meeting, stating that the target date for the next meeting is for mid-September.

The meeting adjourned at 11:45 a.m. approximately.



SEP 16 1996

MEMORANDUM

TO: The Secretary, Department of the Interior
Chairman, Working Group on American Indians and Alaska Natives of the White House Domestic Policy Council

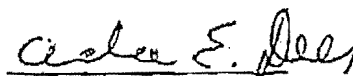
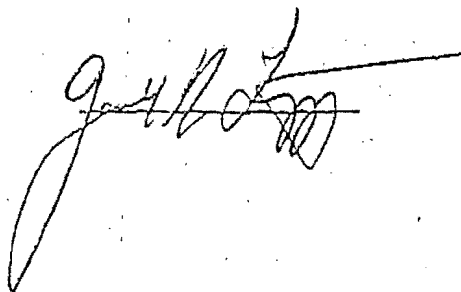
FROM: Assistant Secretary - Indian Affairs
Department of the Interior

Assistant Secretary, Elementary and Secondary Education
Department of Education

SUBJECT: Status Report - Proposed Executive Order for Tribal Colleges and Universities

At the third meeting of the Working Group On American Indians and Alaska Natives this year in July, the members unanimously accepted the Subgroup On Education's proposal for an Executive Order for Tribal Colleges and Universities. The subgroup is chaired by Ada Deer, Assistant Secretary - Indian Affairs, Department of the Interior, and Gerald Tirozzi, Assistant Secretary, Office of Elementary and Secondary Education, Department of Education. On August 19, Secretary Babbitt, Chairman of the Working Group, transmitted to Carol Rasco, Chair of the Domestic Policy Council the proposed "Executive Order for Tribal Colleges and Universities" with a strong letter of endorsement and attachments. The Domestic Policy Council forwarded the proposal to the Office of Management and Budget. The OMB called for Agencies to comment on the proposed "Executive Order for Tribal Colleges and Universities" during the week of September 6. Attached is a copy of the letter from Secretary Babbitt to Carol Rasco transmitting the information package. The letter with these attachments was also sent to the members on August 20.

On behalf of our Subgroup on Education, a brief summary will be given by Dr. Tirozzi, who will introduce Michael Cohen of the Domestic Policy Council. Mr. Cohen will provide a brief update.





THE SECRETARY OF THE INTERIOR
WASHINGTON

AUG 19 1996

Ms. Carol Rasco
Assistant to the President for Domestic Policy
The White House
Washington, D. C. 20500

Dear Ms. Rasco:

As the Chair of the Working Group on American Indians and Alaska Natives of the White House Domestic Policy Council, I am extremely pleased to present for your review a proposed Executive order for tribal colleges and universities that was approved by the Members of the Working Group on July 8, 1996 -- our third meeting this year. On behalf of the Working Group, it is my strong recommendation that the Executive order be signed by the President.

The co-chairs of the Working Group's Subgroup on Education, Ada E. Deer, Assistant Secretary-Indian Affairs, Department of the Interior, and Gerald N. Tirozzi, Assistant Secretary for Elementary and Secondary Education, Department of Education, have worked closely with their respective Departments in the development of the proposed order. They have also spent a considerable amount of time conferring with the Working Group Members including the Office of Management and Budget, consulting with tribal educators, and working with the staff of the White House Initiative Offices for Historically Black Colleges and Universities and Hispanic Serving Institutions. We hope that this consensus-building approach will expedite consideration and approval of the proposal.

President Clinton has already signed two other higher education Executive orders, one for Historically Black Colleges and Universities (September, 1993) and the other for Hispanic Serving Institutions (February, 1994). The Working Group believes that if the Executive order is signed by the President, it will 1) promote opportunities for Federal assistance to tribal colleges, 2) increase tribal self-determination and individual achievement, 3) advance the National Education Goals and Federal Indian education policies, and 4) clarify that tribal colleges and universities are eligible recipients for the many Federal programs in which there is currently limited or no participation by these institutions.

To carry out these purposes, this proposal creates a Presidentially-appointed Board of Advisors and a White House Initiative Office within the Department of Education. Each participating agency would prepare a five-year plan on how they will provide opportunities for tribal colleges and universities and report annually on progress made towards fulfilling the purposes of the order. The proposal incorporates the best components of the two existing orders and adds sections that encourage innovation and recognize the unique circumstances of tribal colleges and Indian communities.

There is significant bi-partisan support for the concept of a tribal college Executive order. In the last Congress, both the Senate and the House introduced resolutions expressing the sense of Congress on this issue. The Senate version, S. Res. 264, passed the Senate unanimously on September 21, 1994. In this Congress, Senate and House members have sent letters of support to the President urging his action.

The proposed order is consistent with our Administration's policies that reaffirm the commitment to a special relationship with American Indians and Alaska Natives in the spirit of the Presidential Memorandum of April, 1994, on Government-to-Government Relations with Indian Tribes. It also focuses attention on the needs of Indian education -- long neglected, at a time when education, generally, is a national priority for the President.

I reiterate the support of the Working Group to approve this proposal that has enormous potential for making a real difference not only for the tribal colleges and universities, but in the daily lives of many Indian children, students, parents, elders, educators, and leaders who rely on these institutions in some way or another. They and their communities face fierce challenges and stress at this time, and adoption of an Executive order would complement this Administration's ongoing efforts to bolster the quality of life and standard of living in Indian Country.

I am enclosing a copy of the memorandum from the Subgroup on Education, the proposed Executive order for tribal colleges and universities, a section-by-section explanation, and letters of tribal and bi-partisan congressional support. If you or your staff have any questions, please contact Faith Roessel, a Special Assistant in my office, at 202-208-5904.

Sincerely,



Enclosures

cc: Mr. Tom Shea, Office of the Deputy Chief of Staff, White House
Hon. Jacob J. Lew, Acting Director, Office of Management and Budget
Honorable Richard Riley, Secretary, U. S. Department of Education
Members of the Working Group on American Indians and Alaska Natives



U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D. C. 20530

September 18, 1996

**MEMORANDUM FOR BRUCE BABBITT
SECRETARY OF THE INTERIOR**From: Christopher H. Schroeder
Acting Assistant Attorney General

Re: Permissible Accommodation of Sacred Sites

We have been asked to provide our views on the obligations imposed by the Establishment Clause on the treatment of sacred sites under Executive Order No. 13007. That Order states that each federal agency with responsibility for the management of federal lands "shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites." Exec. Order No. 13007, 61 Fed. Reg. 26,771 (1996). The executive order defines "Indian tribe" to mean "an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and 'Indian' refers to a member of such an Indian tribe." Id.

Questions concerning the permissible means for implementing this executive order have arisen in the wake of a recent federal district court decision enjoining a National Park Service regulation that prohibited the issuance of commercial climbing licenses at Devils Tower, a sacred site in Wyoming, during the religiously significant month of June.¹ We believe that this case was wrongly decided and that the federal government has broad latitude to accommodate the use of sacred sites by federally recognized Indian tribes.²

¹ See Bear Lodge Multiple Use Ass'n v. Babbitt, No. 96-CV-063-D (D. Wyo. Jun. 8, 1996).

² It is our understanding that Executive Order No. 13007 only requires accommodations for federally recognized tribes.

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In the first section of this memorandum, we lay out the general principles that govern the accommodation of religion under the Establishment Clause. In the second section, we address the principles applicable to the accommodation of sacred sites. We then apply those principles to the Devils Tower case.

I. BACKGROUND

The Supreme Court has held that the Establishment Clause generally prohibits the government from singling out religious organizations for special, preferred treatment, whether in the form of a direct benefit or an exemption from a government requirement. See Board of Educ. of Kiryas Joel v. Grumet, 114 S. Ct. 2481, 2487 (1994) (plurality opinion) (the government must "pursue a course of 'neutrality' toward religion favoring neither one religion over others nor religious adherents collectively over nonadherents" (citation omitted)); Epperson v. Arkansas, 393 U.S. 97, 104 (1968) (same).³ At the same time, however, the Court "has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause." Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 334 (1987) (quoting Hobbie v. Unemployment Appeals Comm'n of Fla., 480 U.S. 136, 144-45 (1987)).⁴ The accommodation doctrine permits the government to single out religion for special treatment under certain circumstances, usually when a generally applicable regulation interferes with the exercise of religion.

Although the accommodation doctrine permits the government, at times, to single out religion for special treatment, in general it does not excuse the government from complying with traditional Establishment Clause principles in other respects. Those traditional principles are embodied in the familiar Lemon test. See Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971).⁵ Under Lemon, the government must demonstrate that a law implicating the Establishment Clause (1) has a "secular legislative purpose," (2) has "a principal or primary effect" that neither advances nor inhibits religion, and (3) does not foster excessive governmental entanglement with religion. Recent Supreme Court cases make clear that purported accommodations must have a "secular legislative purpose" -- namely, to lift a special, government-imposed burden on religious exercise. Such a permissible purpose generally will, in addition, prevent the

³ The Establishment Clause of the First Amendment provides that "Congress shall make no law respecting an establishment of religion." U.S. Const. amend. I.

⁴ The Free Exercise Clause sometimes requires the government to accommodate religious exercise. This memorandum concerns principles that allow the government to provide religion with special treatment when not mandated by the Free Exercise Clause.

⁵ In recent cases, the Supreme Court has moved away from rigid application of the Lemon framework. See, e.g., Rosenberger v. Rector & Visitors of the Univ. of Virginia, 115 S. Ct. 2510 (1995); Kiryas Joel, 114 S. Ct. 2481. At the same time, however, the Court has continued to apply the principles articulated in Lemon, where relevant. Because the Court has not announced a new test, we also use the Lemon principles to organize our analysis, and we supplement those principles where appropriate.

accommodation from having the impermissible effect of advancing religion over non-religion. If an accommodation passes these two tests, it will satisfy Lemon so long as it does not foster excessive government entanglement with religion.

Importantly for present purposes, however, even where accommodations satisfy the Lemon test, the Establishment Clause still might be implicated where the accommodation is for the benefit of some denominations and not others; indeed, government actions that discriminate among religions typically are subject to strict scrutiny. See Larson v. Valente, 456 U.S. 228, 246 (1982).

A. Permissible Secular Purpose

Under Lemon, laws and government practices that benefit religion must serve a "secular legislative purpose." 403 U.S. at 612. There is no requirement, however, that a law's purpose be unrelated to religion. As the Supreme Court has said, "that would amount to a requirement that the government show a callous indifference to religious groups, and the Establishment Clause has never been so interpreted." Amos, 483 U.S. at 335 (quotations and citation omitted). But the government may not act "with the intent of promoting a particular point of view in religious matters." Id.

Although this is hardly a bright line, one application is certain: "Under the Lemon analysis, it is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions." Amos, 483 U.S. at 335 (emphasis added); see also Lyng v. Northwest Indian Cemetery Protective Ass'n, 485 U.S. 439, 454 (1988) ("[t]he Government's rights to the use of its own land . . . need not and should not discourage it from accommodating religious practices").⁶ As a general rule, however, the government may only lift a burden that it has imposed. The Supreme Court has repeatedly emphasized that the accommodation doctrine allows the protection

⁶ In Amos, for example, the Supreme Court upheld an exemption for the secular, nonprofit activities of religious organizations from Title VII's prohibition on religious discrimination in employment. 483 U.S. 327. Although a previous version of the statute already exempted such employers from the ban on religious discrimination with respect to their religious activities, the Amos Court reasoned that "it is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious" and that such "[f]ear of potential liability might affect the way an organization carried out what it understood to be its religious mission." Id. at 336. Congress was entitled to lift this burden, the Court held.

In Lyng, the government adopted a plan permitting timber harvesting and road construction in an area of national forest that was traditionally used for religious purposes by members of three American Indian Tribes. After rejecting the tribes' argument that the Free Exercise Clause prohibited the government from establishing its plan, the Court, in dicta, encouraged the government to implement the plan in a manner that accommodated tribal religious practices. 485 U.S. at 454-55. This was true even though there was no assurance that other religions (or even other federally recognized tribes) would receive similar accommodations.

of religious organizations from governmental interference.⁷ In addition, the government may only lift a burden that specially affects the exercise of religion, or religious activity. In the absence of a special burden on religious exercise, the government simply has nothing to accommodate.⁸

It is also clear that the Court at times will examine the purpose behind regulations that do not on their face refer to religion.⁹ Thus, drafting a regulation without reference to religion will not necessarily shield it from Establishment Clause scrutiny. However, the Supreme Court has suggested in dicta that in the context of government zoning and land-use regulations, facially neutral accommodations of religion — that is, regulations that are designed to accommodate religion but that do so without explicitly referring to religion — are likely to withstand Establishment Clause review, even when designed to accommodate only one religious group.¹⁰

⁷ In addition to Amos and Lyng, see, e.g., Kiryas Joel, 114 S. Ct. at 2493 ("[p]rior decisions have allowed religious communities and institutions to pursue their own interests free from governmental interference"); id. at 2492 ("the Religion Clauses do not require the government to be oblivious to impositions that legitimate exercises of state power may place on religious belief and practice"); Texas Monthly, Inc. v. Bullock, 489 U.S. 1, 15 (1989) (plurality opinion) (exemption must "remov[e] a significant state-imposed deterrent to the free exercise of religion").

In Estate of Thornton v. Caldor, Inc., 472 U.S. 703 (1985), the Court invalidated a statutory exemption that alleviated a privately imposed burden on religious exercise. The Court reasoned that the statute, which required employers to excuse employees from working on their designated Sabbath, took "no account of the convenience or interests of the employer or those of other employees who do not observe a Sabbath." Id. at 709. As a general matter, Thornton suggests the importance of weighing the interests of third parties when accommodating religious exercise. Although there is no explicit requirement that the government consider the effect of a religious accommodation on third parties, the Court has characterized exemptions that "burden[] nonbeneficiaries markedly" as "unjustifiable awards of assistance to religious organizations" rather than permissible accommodations. Texas Monthly, 489 U.S. at 15 (quotations and citation omitted).

⁸ The Court applied this logic in Texas Monthly to invalidate a state tax exemption for religious periodicals. Rejecting the state's argument that the Free Exercise Clause compelled the tax exemption, the plurality observed: "[T]he State has adduced no evidence that the payment of a sales tax by subscribers to religious periodicals . . . would offend their religious beliefs or inhibit religious activity. . . . No concrete need to accommodate religious activity has been shown." 489 U.S. at 18. Because the tax exemption singled out religious periodicals for a benefit and could not "reasonably be seen as removing a significant state-imposed deterrent to the free exercise of religion," the plurality found that it constituted an impermissible subsidy to religion. Id. at 15.

⁹ See Gillette v. United States, 401 U.S. 437, 452 (1971) ("The question of government neutrality is not concluded by the observation that [a statute] on its face makes no discrimination among religions, for the Establishment Clause forbids subtle departures from neutrality, 'religious gerrymanders,' as well as obvious abuses."). In McGowan v. Maryland, 366 U.S. 420 (1961), for example, the Court examined the purpose behind the state's Sunday Closing laws, even though those laws merely prohibited commercial activity on Sunday and made no reference to religion. The Court upheld the laws, despite their apparent religious purpose, because they advanced several important secular goals. Id. at 433-35.

¹⁰ See Lyng, 485 U.S. at 453-54 ("Nothing in our opinion should be read to encourage governmental insensitivity to the religious needs of any citizen. The Government's rights to the use of its own land, for example, need not and should not discourage it from accommodating religious practices like those engaged in by the Indian

Furthermore, the Court will not strike down a law (facially neutral or otherwise) on purpose grounds unless the law has no apparent secular purpose or its (impermissible) religious purpose predominates.¹¹

B. Nonpreferential Effect

Under Lemon, the primary effect of a government regulation cannot be to advance religion over non-religion. The Supreme Court has held, however, that when the government lifts a burden it has imposed on the exercise of religion, it does not impermissibly advance religion. See Amos, 483 U.S. at 336-37. Although the government may thereby enable religion to better advance itself, such an effect does not automatically offend the Establishment Clause. Id. at 337. Furthermore, the Court has stated, where "government acts with the proper purpose of lifting a regulation that burdens the exercise of religion, [there is no] no reason to require that the exemption comes packaged with benefits to secular entities." Id. at 338.

C. No Excessive Entanglement

Finally, Lemon prohibits the government from accommodating religion in a manner that creates a risk of excessive governmental entanglement with religion. Under Lemon, impermissible entanglement may occur when the government intervenes in religious affairs or when religious organizations assume governmental functions.¹²

respondents."); id. at 454 (noting with approval the "many" ameliorative, facially neutral measures that the Forest Service planned -- including building a road so as to avoid Indian sacred sites -- and implicitly suggesting that such "solicitous" choices would not violate the Establishment Clause despite their obvious purpose to accommodate religious exercise). At the very least, the Establishment Clause is not seriously implicated by facially neutral zoning regulations that benefit religious as well as other, "like" institutions. See Larkin v. Grendel's Den, Inc., 459 U.S. 116, 121 (1982) ("there can be little doubt about the power of a state to regulate the environment in the vicinity of schools, churches, hospitals, and the like by exercise of reasonable zoning laws"); id. at 123 ("[t]here can be little doubt that [protecting spiritual, cultural, and educational centers from the 'hurly-burly' associated with liquor outlets] embraces valid secular legislative purposes" under Lemon).

¹¹ See Wallace v. Jaffree, 472 U.S. 38, 56-60 (1985) (invalidating moment of silence statute where the record not only establishes a religious purpose but reveals no secular purpose); Edwards v. Aguillard, 482 U.S. 578, 590 (1987) (finding legislation invalid if backed by "preeminent religious purpose"); id. at 599 (Powell, J., concurring) (observing that "religious purpose must predominate" for legislation to be invalid).

¹² For example, in Larkin, the Court invalidated a statute that granted religious bodies veto power over applications for liquor licenses. Despite the State's otherwise valid interest in protecting churches, schools, and like institutions from "the 'hurly-burly' associated with liquor outlets," 459 U.S. at 123, the Court found that the statute created an impermissible "fusion" of governmental and religious functions. Id. at 126. Similarly, in Kiryas Joel, the Court invalidated a statute creating a school district for the Satmar Hassidim in part because it "delegat[ed] the State's discretionary authority over public schools to a group defined by its character as a religious community." 114 S. Ct. at 2487.

D. Nondiscrimination

Even where religious accommodations satisfy all three Lemon prongs, they also must satisfy the "clearest command of the Establishment Clause": "that one religious denomination cannot be officially preferred over another." Larson, 456 U.S. at 244. It follows that a discriminatory accommodation typically will be subject to strict scrutiny. Id. at 246.¹³

II. ACCOMMODATION AT SACRED SITES

Although the accommodation doctrine generally permits the government to single out religion for special treatment in order to alleviate government-imposed burdens on religious exercise, it nonetheless ordinarily prohibits the government from enacting regulations that prefer one religion over others, that foster excessive entanglement with religion, or that lift privately imposed burdens. However, these general prohibitions do not apply to regulations that accommodate the religious practices of federally recognized Indian tribes.

A.

In Morton v. Mancari, 417 U.S. 535 (1974), the Supreme Court held that preferences for federally recognized Indian tribes are subject to less exacting scrutiny under the Equal Protection Clause than racial or ethnic preferences because of the historical guardian-ward relationship between those tribes and the federal government. In upholding an employment preference for Indians contained in the Indian Reorganization Act, the Court held that "[a]s long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed." Id. at 555. Applying this standard, the Court found that the preference before it was "reasonable and rationally designed to further Indian self-government" and did not constitute racial discrimination. Ibid. In fact, according to the Court, the preference was not even racial in nature because it favored a quasi-sovereign or political group consisting of federally recognized Indian tribes, rather than a discrete racial group consisting of Native Americans. Id. at 554 & 553 n.24.

¹³ In Larson, the Supreme Court invalidated a portion of Minnesota's charitable solicitation registration and reporting requirements that exempted only those religious organizations that received more than half of their funding from members or affiliated organizations. Applying strict scrutiny, the Court found that the exemption was not closely fitted to further the government's interest in protecting its citizens from abusive solicitation practices because there was no evidence that predominantly member-funded organizations committed such practices less frequently than organizations receiving the majority of their funding elsewhere. Id. at 244-46. More recently, in Kiryas Joel, the Supreme Court invalidated a statute creating a special school district only for the religious enclave of Satmar Hassidim. It reasoned, in part, that the statute violated the principle that "government should not prefer one religion to another, or religion to irreligion" because the benefit flowed only to a single sect and there was "no assurance that the next similarly situated group seeking a school district of its own will receive one." 114 S. Ct. at 2491. Citing Larson, the Court concluded that, "whatever the limits of permissible legislative accommodations may be . . . it is clear that neutrality as among religions must be honored." Id. at 2493.

Two Courts of Appeals have extended the logic of Morton to the Establishment Clause context. In Rupert v. Director, U.S. Fish and Wildlife Serv., 957 F.2d 32 (1st Cir. 1992) (per curiam), the First Circuit upheld an exemption for federally recognized Indian tribes from the federal criminal prohibition on the possession of eagle feathers. Faced with the question of whether to apply the strict scrutiny standard of Larson or the rational basis test of Morton, the court concluded that the principles articulated in Morton govern "where the government has treated Native Americans differently from others in a manner that arguably creates a religious classification." Id. at 35 (emphasis in original). The court reasoned that such preferential treatment -- as with the preferential treatment at issue in Morton -- "finds its source in Congress' historical obligation to respect Native American sovereignty and to protect Native American culture." Id. The court also found that such treatment is

uniquely supported [in this context] by the legislative history and congressional findings underlying the American Indian Religious Freedom Act [42 U.S.C. § 1996], which declares a federal policy of "protect[ing] and preserv[ing] for American Indians their inherent right of freedom to believe, express and exercise the[ir] traditional religions . . . , including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."

Id. at 35 (quoting 42 U.S.C. § 1996; other citation omitted).

Similarly, in Peyote Way Church of God, Inc. v. Thornburgh, 922 F.2d 1210 (5th Cir. 1991), the Fifth Circuit upheld statutory exemptions for the Native American Church from federal and state laws prohibiting peyote possession. After construing the exemptions as political classifications rather than as religious classifications, the court stated:

The unique guardian-ward relationship between the federal government and Native American tribes precludes the degree of separation between church and state ordinarily required by the First Amendment. The federal government cannot at once fulfill its constitutional role as protector of tribal Native Americans and apply conventional separatist understandings of the establishment clause to that same relationship.

Id. at 1217.

Given the special trust relationship between the federal government and federally recognized Indian tribes that Morton, Rupert, and Peyote Way recognize, there is a strong argument that neither Lemon nor Larson should apply to accommodations of tribal religious practices or sacred sites, because such accommodations are not religious preferences in the usual sense of that term. Rather, they are political preferences conferred by the federal government on a quasi-sovereign in furtherance of the federal government's duty to promote tribal self-determination in all of its forms. The fact that the accommodated rituals might be viewed as religious in some sense (because of the way in which the distinction between church and state

has been understood in traditional Establishment Clause jurisprudence) is not dispositive when the government benefits those rituals in order to promote tribal self-determination. Such accommodations are political ones under Morton because they are "reasonably designed to further the cause of Indian self-government." 417 U.S. at 554.

But, even if traditional Establishment Clause principles apply, they must be applied in a manner that takes account of the special considerations that underlie Morton. As Morton clearly states, the Constitution gives the federal government broad power in dealing with federally recognized tribes as quasi-sovereigns. The Establishment Clause cannot appropriately be read to diminish the government's ability to exercise this power, as would result from a direct application of standard Establishment Clause analysis in the context of tribal religious accommodations. Indeed, as the Peyote Way court suggested, such analysis is plainly incompatible with the federal government's duty toward the tribes.

The special relationship between the federal government and tribes -- a relationship that envisions active assistance from the federal government -- thus, at the very least, necessitates a modification of the usual Establishment Clause analysis when evaluating accommodations of tribal religious practices and sacred sites. At a minimum, as Morton suggests and Rupert and Peyote Way hold, the federal government may, without triggering Larson strict scrutiny, single out federally recognized Indian tribes for special treatment that is not provided to other groups, if other Establishment Clause principles are satisfied.¹⁴ Moreover, we think that the government may do more than simply lift a government-imposed burden on tribal religious practices, and may in addition alleviate burdens imposed by private parties. While the Lemon test ordinarily requires the government to lift a burden of its own making when accommodating religion to deter back-door attempts to benefit religion, the special relationship contemplates direct benefits for tribes. Furthermore, such accommodations arguably may include a degree of involvement with Indian tribes that exceeds the normal entanglement boundaries between government and religion. While the Lemon test typically forbids excessive government entanglement with religion, the special relationship between the government and the tribes entails a degree of government involvement in tribal religious practices. In short, the federal government has considerable discretion to enact accommodations on behalf of federally recognized tribes.¹⁵

¹⁴ To the extent the Establishment Clause or any other provision of law prohibits the federal government from discriminating between similarly situated federally recognized tribes, we note that Executive Order No. 13007, which provides that federal agencies "shall, to the extent practicable . . . accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners," ensures that all such tribes will receive accommodations where possible, and we read that Order to intend that similarly situated federally recognized tribes shall be treated similarly. Cf. Kiryas Joel, 114 S. Ct. at 2491 (invalidating statute creating school district for the Satmar Hassidim where there was "no assurance that the next similarly situated group seeking a school district of its own will receive one").

¹⁵ Prior to Rupert and Peyote Way, this Office took a narrower view of the effect on Establishment Clause analysis of the special relationship between the federal government and federally recognized tribes. See Peyote Exemption for Native American Church, 5 Op. O.L.C. 403, 419-20 (1981) (concluding that special relationship

We should not be understood to suggest that the government's discretion to accommodate tribal religious practices is unlimited, even under the broadest understanding of Morton's effect on Establishment Clause analysis. For example, the rationale of Morton would not permit the government to act with the impermissible purpose of diluting tribal religious practices or establishing a national Indian religion. We do not decide here the precise limits of our analysis. We believe, however, that Morton leaves the government with broad latitude to accommodate tribal religious practices.

Although we believe that the Lemon test does not apply with full force to tribal religious accommodations, no court has had occasion to address this precise issue. Rupert and Peyote Way upheld laws that singled out tribes for special treatment, but those laws complied with Lemon in other respects. Because the law is unsettled in this area, we recommend that federal agencies comply with Lemon to the extent feasible in implementing Executive Order No. 13007. Thus, where possible, we would advise agencies to minimize the risk of governmental entanglement and to target government-imposed burdens on access to, or ceremonial use of, sacred sites.¹⁶ If these hurdles are cleared, the only remaining obstacle will be a question of Larson-like differential treatment; and Rupert and Peyote Way have held (correctly, in our view) that, in light of Morton, such differential treatment is permissible when it is to the benefit of federally recognized tribes.

We also suggest that, where feasible, agencies adopt regulations that are facially neutral with respect to religion -- i.e., that do not on their face give priority to any religious use of the sites. Although such neutral regulations would not be immune from traditional Establishment Clause scrutiny, they may engender fewer constitutional challenges. Furthermore, as noted above, the Supreme Court has suggested that in the context of government zoning and land-use regulations, such neutral accommodations of religion are likely to withstand Establishment

does not affect Establishment Clause analysis). In that Opinion, we stated that the unique status of federally recognized tribes does not justify special treatment of tribal religious practices. Because the tribes' unique status derives from their political position as quasi-sovereign nations, we reasoned that it only extends to preferences that further tribal authority and self-governance, not tribal religious observance. We note that that Opinion was drafted without the benefit of Rupert or Peyote Way and substantial commentary arguing that tribal religious practices are integral to tribal self-governance. See, e.g., Richard Herz, Legal Protection for Indigenous Cultures: Sacred Sites and Communal Rights, 79 Va. L. Rev. 691, 703-04 (1993); Michael J. Simpson, Accommodating Indian Religions: The Proposed 1993 Amendment to the American Indian Religious Freedom Act, 54 Mont. L. Rev. 19, 34 (1993); Jack F. Trope, Protecting Native American Religious Freedom: The Legal, Historical, and Constitutional Basis for the Proposed Native American Free Exercise of Religion Act, 20 N.Y.U. Rev. L. & Soc. Change 373, 393 (1993). In addition, we do not believe that Morton's holding is limited to legislation directly related to Indian self-government functions. The reasoning in Morton should apply as well to legislation that is rationally related to the furtherance of Congress's unique obligation toward federally recognized tribes. See, e.g., Alaska Chapter v. Pierce, 694 F.2d 1162, 1167 (9th Cir. 1982).

¹⁶ In many cases, it might be argued that the federal government imposed a burden on tribal religious practices when it occupied the land on which a sacred site is located. More often, it might suffice that the government's prior Indian regulations, as well as its prior zoning and land-use decisions -- including those that permit private parties to make use of the land on which the site sits -- created a burden on tribal religious exercise.

Clause scrutiny.

B.

For the reasons outlined above, we believe that the district court in Bear Lodge erred in declaring the National Park Service ("NPS") management plan unconstitutional. That plan provides, in relevant part: "commercial use licenses for June climbing guide activities will not be issued [by the NPS] for June 1996 and beyond." Nat'l Park Service, Final Climbing Plan Management Plan at 22 (Feb. 1995). A group of commercial climbers sought to enjoin the operation of this part of the plan as a violation of the Establishment Clause. The district court granted a preliminary injunction, characterizing the no-commercial-climbing rule as "affirmative action by the NPS to exclude a legitimate public use of the tower for the sole purpose of aiding or advancing some American Indians' religious practices." Bear Lodge, slip op. at 11.¹⁷ Furthermore, the court found that the restriction "coerce[d]" climbers to conform their conduct to the Indians' religious practices in a way that would entangle the government in regulating behavior. Id.¹⁸

The district court incorrectly analyzed the Devils Tower no-commercial-climbing rule. As discussed above, regulations that accommodate tribal religious practices generally are permissible under Morton and its progeny either because they are political (and not religious) preferences or because they are subject to a different, less restrictive test under the Establishment Clause.

Indeed, the rule in this case is perhaps the least problematic form of accommodation on our analysis because it satisfies traditional Establishment Clause principles in every respect, with the possible exception of one. For example, the no-commercial-climbing rule creates no risk of excessive entanglement because it does not involve the government in tribal affairs or vice versa. It merely regulates third parties (i.e., commercial climbers) — parties that have been long subject to NPS regulation and permitting authority. Furthermore, it does so in a manner that neither requires the government to conform climber conduct to tribal religious practices, nor requires the climbers to conform their own conduct to those practices, as the district court

¹⁷ The court relied on Badoni v. Higginson, 638 F.2d 172, 179 (10th Cir. 1980), cert. denied, 452 U.S. 954 (1981), in which the Tenth Circuit rejected a Free Exercise claim asserted by Indians seeking to completely exclude tourists from a national monument. We note that nothing in Badoni — which merely held that the federal government need not exclude tourists from the monument under the Free Exercise Clause — precluded the government from voluntarily accommodating the tribal religious exercise under the Establishment Clause. As the Supreme Court has observed, "[i]t is well established . . . that the limits of permissible state accommodation to religion are by no means co-extensive with the noninterference mandated by the Free Exercise Clause." Amos, 483 U.S. at 334 (quotations and citation omitted). Thus, "[t]here is ample room under the Establishment Clause for benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference." Id. (quotations and citation omitted).

¹⁸ The court thus analogized the climbing ban to the tribes' request in Badoni that the government require tourists to act in a respectful and appreciative manner when visiting the site.

suggested. Far from entangling the government in monitoring climber conduct at the site, the rule simply forecloses commercial climbing activity for a limited period of time.

To the extent that the climbing ban lifts a burden imposed by NPS in permitting commercial climbing at the site in the first instance, it satisfies this aspect of the purpose prong of Lemon. It is true that the rule was designed, at least in part, to accommodate tribes and tribal religions and not other groups or religions. It achieves this purpose, however, without referring to tribal religious practices or singling out religious uses of Devils Tower for preferential treatment. Thus, in order for the rule to survive constitutional review, the government need rely upon Morton only insofar as that case makes clear that the government may act with the purpose of accommodating tribes without providing a comparable accommodation to other religions. We believe Morton easily supports this modest application and that the no-commercial-climbing rule therefore comports with the Establishment Clause. Although the district court reached the opposite conclusion, its decision has no binding precedential effect on other courts.¹⁹

¹⁹ The district court's decision is unpublished and was issued in the context of an expedited motion for preliminary injunction. Briefing on the merits has yet to commence.



U. S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

DATE: 9/18/96

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

SEP 16 1996

MEMORANDUM

TO: Domestic Policy Council
Subgroup on American Indians and Alaskan Natives

FROM: Catherine Vandemoer, Ph.D. and Tom M. Wall *Catherine Vandemoer*
Co-Chairs, Environment and Natural Resources Subgroup *Tom Wall*

SUBJECT: Status of Subgroup Activities

As of this writing, we have completed the development of a matrix which provides a listing across several key federal agencies of the programs and policies that provide assistance to or create a framework for the protection of American Indian and Alaskan Native environments and natural resources. To aid our analysis, agency activities were considered across several environmental media (i.e., water, air, land, waste, multi-media and cultural resources). Attachment I presents the most recent rendition of the matrix. Agencies which have not yet completed this listing are still encouraged to do so to ensure that the subgroup's analysis is as comprehensive as possible.

Categories of Agency Coverage

In brief, the types of coverage federal agencies provide to American Indians and Alaskan Natives for natural resources and environmental protection fall into several categories:

- Programs designed specifically for American Indians and Alaskan Native environmental and natural resource protection (e.g., tribal grants, technical assistance).
- Funding set asides for tribal grants within general agency funds appropriated for the implementation of overall agency mandates (e.g., Clean Water Act) and tribal programmatic components to such mandates (e.g., §518 of the Clean Water Act).
- Policies which provide a framework for American Indian and Alaskan Native participation in agency activities and decision-making, including government-to-government relations and consultation.

- Policies designed specifically to address American Indian or Alaskan Native natural resource or environmental protection activities, including technical assistance and the development of tribal programs.

Gap Analysis of Agency Activities for American Indian and Alaskan Native Resources and Environments

In brief, gaps in agency program coverage for American Indian and Alaska Native natural resource and environmental protection fall into several categories:

- Comprehensive, as well as programmatic, guidance/policies for the development and implementation of tribal environmental and natural resource programs.
- Comprehensive, as well as programmatic, guidance/policies for federal activities affecting American Indians and Alaska Natives.
- Awareness and understanding within agencies and among agency staff regarding Indian policies, the trust responsibility, and protocol for working with American Indians and Alaska Natives.
- Development and implementation of tribal programs, including tribal capacity building, technical and financial assistance, and tribal assumption of federal environmental and natural resource programs.
- Interagency coordination and communication

We have also completed a preliminary review of interagency Memoranda of Understanding (MOU), which have been developed to address specific natural resource or environmental issues. Such MOUs typically identify the issue to be addressed and a funding mechanism, as well as a mechanism for tribal participation. A preliminary review of the MOUs between agencies for the protection and management of tribal environments and natural resources reveals as many overlaps in coverage as there are gaps.

A preliminary evaluation of the relative success of these MOUs reveals that, in general, significant activities have been undertaken. For example, the Environmental Protection Agency (EPA) and the Indian Health Service coordinate extensively in the supervision of public water systems on Indian lands and oversight of wastewater infrastructure projects. However, in many instances progress has been constrained by the lack of funding, agency mission restrictions, or failure to develop an effective implementation plan for activities contemplated under the MOU. Most importantly, the failure to fully realize the cooperation and coordination envisioned in many of these MOUs could be attributed to the absence of a mechanism for comprehensive planning across the federal government for the development of tribal environmental and natural resource

programs. While many of the agencies have general agency-wide Indian policies (e.g., the Department of Energy, EPA), there is no common vision for a coordinated federal response to the environmental problems facing American Indians and Alaska Natives.

Next Steps for the Subgroup

The next step for our workgroup is to propose strategies for improving the coverage and comprehensiveness of American Indian and Alaska Native environmental and natural resource protection and undertake specific projects and/or case studies. The following is a list of potential options for this next step.

- Expanding the use of PL 93-638 contracts to include more agencies and more natural resource and environmental programs. An expanded use of such contracts may help to eliminate agency gaps, as well as overlaps, provide a higher level of funding, increase tribal participation in environmental and natural resource management, and promote self-governance.
- Development of federal guidance for improving the implementation of the National Environmental Policy Act as it relates to American Indians and Alaska Natives. Such guidance could help to improve tribal participation in this broad, fundamental environmental statute and support the development of Tribal Environmental Policy Acts so that tribes could undertake their own environmental assessments.
- Development of a federal government policy/guidance on the protection of American Indian and Alaska Native environments and natural resources. Such a policy would address the gaps and overlap identified thus far by the subgroup and attempt to coordinate some basic concepts of about federal Indian policies, protocol, and consultation.
- Development of specific model projects and/or case studies with tribes that can be used to demonstrate the benefits of effective interagency cooperation, such as the development of tribal environmental codes and enforcement capacity, expanded use of Tribal Environmental Agreements to include agencies other than EPA, and improved delivery of technical assistance to tribes through coordinated federal efforts.

7

SUBGROUP ON CONSULTATION

REPORT TO BE PROVIDED AT MEETING

**Presented by Craig Alexander
Office of Tribal Justice
Department of Justice**

INDIAN HEALTH SERVICE/BUREAU OF INDIAN AFFAIRS

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 and 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 facility 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 plant maintenance are usually accessed through the use of Memorandums of Understanding (MOU). 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 needed 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.

At present, a MOU which would allow for payroll deduction of quarters allowances/rents has been developed by the IHS. Staff at the BIA have developed comments and proposed modifications to the draft IHS MOU. IHS staff met with the relevant BIA staff in Albuquerque to discuss the proposed modifications which were then incorporated into the document. IHS expects to have developed a final MOU which we expect to be signed by the IHS Director during the last quarter of Fiscal Year 1996.

3. Next Steps

After the MOU is signed by both IHS and BIA, both BIA and IHS will canvass the Area Offices to determine interest and need for a "shared" quarters program.

INDIAN HEALTH SERVICE/BUREAU OF INDIAN AFFAIRS
Telecommunications Project
Status Report
September 13, 1996

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 are now testing e-mail connectivity. Testing should be completed by the end of September, 1996. E-mail testing will include 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. E-mail testing should be completed by the end of September, 1996.

Milestone 2 should be completed by November 1, 1996.

Milestone 3 should be completed by June 1, 1997.

Phase II

Milestone I should be completed by January 1, 1997.

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Phase III

Milestone I should be completed by March 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.

For further information or clarification please call Tom Fisher, Director, Division of Telecommunications Management, Office of Information Resources Management, Indian Health Service, at 505-837-4219.

THE WHITE HOUSE

WASHINGTON

**Policy Briefing
for American Indian and Alaska Native Tribal Leaders
Friday, August 23, 1996**

AGENDA

9:00 - 9:30 am	Welcome by Assistant to the President for Intergovernmental Affairs Marcia Hale
	Opening Prayer by Governor Rick Vigil, Pueblo of Tesuque tribe
9:30 - 10:00 am	Remarks by Secretary of Housing and Urban Development Henry Cisneros followed by a Question and Answer period
10:00 - 10:30 am	Remarks by Secretary of the Interior Bruce Babbitt followed by a Question and Answer period
10:30 - 11:00 am	Remarks by Attorney General Janet Reno followed by a Question and Answer period
11:00 - 11:30 am	Remarks by Mike Cohen, Senior Policy Analyst, Domestic Policy Council, followed by a Question and Answer period
11:30 am	First Lady Hillary Rodham Clinton

Two Years After the President's Meeting With Tribal Leaders

Annual Report

of the

Administration Working Group on American Indians and Alaska Natives

August 1996

PREFACE

On April 29, 1994, President Clinton reaffirmed the Federal government's commitments to operate within a government-to-government relationship with federally recognized American Indian and Alaska Native tribes, and to advance self governance for such tribes. He also directed federal agencies to build a more effective working relationship with tribes, consult with them openly and candidly, and fully consider their views prior to undertaking actions that may affect their well-being.

To advance President Clinton's goals, the White House established the "Working Group on American Indians and Alaska Natives" as part of the Domestic Policy Council. The purpose of the Working Group is to coordinate and share information on Indian tribes and programs, provide a forum for resolution of issues amongst Federal agencies, ensure the implementation of Presidential directives on Indian policy and promote initiatives to better serve Indian tribes and their members. The Honorable Bruce Babbitt, Secretary of the Interior, chairs the Working Group, and five subgroups have been created to carry out work in the following areas:

- ▶ **Religious Freedom**
- ▶ **Consultation**
- ▶ **Education**
- ▶ **Reinvention**
- ▶ **Environment and Natural Resource Protection.**

The Administration is pleased to report substantial progress over the past year in improving our relationships with American Indian and Alaska Native tribes.

This Report summarizes the numerous actions undertaken over the last year to meet the President's commitments, and updates the *One Year Later* report of April 28, 1995.

Additional details on this Report can be obtained from Faith Roessel, Department of the Interior, at (202) 208-5904.

Federal Funding for Indian Programs

The following table provides a breakdown of Federal budget authority for Indian programs across the Federal government in billions of dollars:

	FY 1995 Actual	FY 1996 Actual	FY 1997 Administration Request
Bureau of Indian Affairs	1.729	1.578	1.782
Indian Health Service	2.156	2.202	2.400
All Others	1.891	1.923	2.032
TOTAL	5.777	5.702	6.215

Note: Totals may not add due to rounding.

- BIA is shifting programs to local tribal levels. Tribes can prioritize the basic reservation programs within the Tribal Priority Allocation (TPA) budget activity according to their unique needs and circumstances. In the last three years, the TPA budget has comprised an increasingly greater share of the BIA operations budget. In FY 1992, TPA comprised less than 30 percent of the BIA operations budget; the FY 1997 TPA budget provides over 50 percent of the BIA operations budget.
- The BIA has made significant reductions in administrative costs. In FY 1996, 90 percent of the BIA operating budget goes directly to the tribes at the local level.

Advancing Self Governance and Self Determination

- The final rule on Self Determination was published on June 24, 1996. This rule, which will take effect August 23, 1996, was developed jointly by the Department of the Interior (DOI), Health and Human Services (HHS) and tribal representatives using the guidance of the Negotiated Rulemaking Act.
- In 1995, the Bureau of Indian Affairs (BIA) had about 1,500 Self Determination contracts, totaling about \$650 million, with virtually every Federally Recognized Indian Tribe, covering the full range of its activities.

- In 1995, within BIA, the number of Self Governance annual funding agreements increased from 29 to 53. The funding amount is now about \$150 million and covers approximately 180, or a third of all, Federally Recognized Indian Tribes. These agreements cover activities ranging from social services to law enforcement to trust related programs.
- In anticipation of self governance, self-determination and devolution of several activities to tribes, BIA will, for the first time, identify each tribe's share of its budget.
- Approval of P.L. 93-638 requirements has been delegated by BIA to area offices.
- Rules and regulations for administering the Self-Governance program are being developed by a joint Federal and Tribal negotiation team. Participants include DOI, HHS and numerous tribal representatives.
- The Department of Justice (DOJ) has initiated a Tribal Courts Project to assist tribal governments in strengthening their justice systems. This project includes establishment of:
 - U.S. Magistrate Courts on certain reservations. The first such court has convened at the Warm Springs Reservation in Oregon.
 - Partnership Projects. DOJ will help 45 tribal governments strengthen their justice systems, particularly their abilities to respond to family violence and juvenile issues.
- At the end of FY 1995, the Indian Health Service (IHS) transferred more than \$770 million to support health delivery programs of tribal nations, through self-determination contracts and self-governance compacts. This represents approximately one-third of the IHS services budget for that year.
- The IHS has negotiated 29 self-governance compacts and 42 annual funding agreements for FY 1996, and transferred approximately \$300 million to 197 tribes in Alaska and 28 tribal governments in the lower 48 States. The process to select an additional 30 tribes to participate in self-governance compacting has been initiated.
- Pilot projects have been initiated with two compacting tribes, the Jamestown S'Klallam and the Mille Lacs Band of Ojibway Indians, to assess the impact of stable funding on a tribe's ability to plan for and manage health service programs. (IHS)

Advancing the Government-to-Government Relationship

- Many Departments and agencies have strengthened or begun to implement policies to deal with Federally Recognized Indian Tribes on a government-to-government basis. These include the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, Transportation, Treasury, and the Environmental Protection Agency. As part of this effort, several Departments and agencies have instituted Indian "offices" and "desks."

- IHS is being restructured with the direct involvement of tribal and urban Indian health leaders. This restructuring will eventually lead to delegating greater power and authority to local health care service sites.
- The Department of Energy (DOE) has comprehensive cooperative agreements with the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, the Yakima Indian Nation, the Pueblos of Cochiti, Jemez and Santa Clara, and the Shoshone-Bannock Tribes which allow for the development of tribal environmental capabilities to address health and safety issues and tribal cultural concerns resulting from Environmental Management activities.
- The Environmental Protection Agency (EPA) and 24 tribal governments have signed Tribal/EPA Environmental Agreements (TEAs) that identify tribal priorities for developing environmental programs and EPA technical and program assistance. EPA anticipates that an additional 15 TEAs will be signed by September 30, 1996.
- Following the Supreme Court's decision in Adarand Constructors v. Peña--which held that the Constitution requires strict judicial scrutiny of race-based affirmative action programs--DOJ has reviewed Federal programs which use race as a factor to ensure that they are constitutional. In this review, DOJ determined that federal government programs for Indian tribes are founded on the government-to-government relationship between the United States and Indian tribes and, therefore, based on that unique political relationship, not race.
- U.S. Department of Agriculture's (USDA's) Forest Service signed formal agreements with most Southeast Alaska Tlingit and Haida tribal communities which acknowledge they are governments and require ongoing consultation regarding national forest programs and activities.
- The Forest Service is consulting actively with several affected tribes on the planning and management and activities of its units. For example, the Chippewa National Forest in Minnesota is working with the Leech Lake Reservation on a formal agreement regarding tribal reserved rights on the forest. Similarly, National Forests in the Pacific Northwest Region have included tribes in discussions of timber, fisheries and other natural resource issues (since they have reserved hunting, fishing, and gathering rights in those areas).

Advancing Tribal Sovereignty

- BIA acknowledged or clarified the status of six tribes in 1995.
- DOI's Office of Surface Mining is working to extend "primacy" (regulatory jurisdiction) to coal-producing Indian tribes with respect to regulating coal mining on their lands.
- Approximately 100 tribes now have EPA approval to administer 150 surface water, drinking water and solid waste programs in a similar manner to a state under federal law, including 18 regulatory programs. Approximately 20 tribes operate pesticide programs under cooperative agreements with EPA.
- In June 1996, EPA worked with DOI and USDA to successfully oppose an amendment to the

Federal Insecticide, Fungicide and Rodenticide Act that would have limited tribal authority to regulate pesticide usage on Indian reservations.

- DOJ continues to pursue litigation on behalf of tribes and against third parties:

- Seminole Tribe v. Florida. Despite DOJ's arguments, the Supreme Court held that Congress does not have the authority to abrogate states' Eleventh Amendment immunity under the Commerce Clause and allow tribes to sue states. DOJ and DOI are studying, and have testified on, this decision's impact on the compacting process under the Indian Gaming Regulatory Act.
- Oklahoma Tax Commission v. Chickasaw Nation. DOJ argued successfully before the Supreme Court that absent congressional consent, states may not tax Indian tribes, reservation Indians, or Indian property in Indian country, and accordingly Oklahoma could not impose fuel taxes directly on the Chickasaw Nation.
- Reservation Telephone Cooperative v. Three Affiliated Tribes. DOJ successfully argued before the 8th Circuit for dismissal of the telephone cooperative's suit for failure to exhaust tribal court remedies.
- Crow Tribe and the United States v. State of Montana. The Ninth Circuit recently ruled that the State of Montana and Big Horn County must pay the Tribe \$46 million and \$11 million respectively. These amounts represent taxes imposed and collected by the State and County on Crow Reservation coal since 1975. The Court of Appeals further ordered the District Court to decide whether the State and County should pay interest on the funds they unlawfully collected.
- Leech Lake. DOJ filed a brief supporting the Leech Lake Band of Chippewa Indians' appeal of a lower court's determination that its reservation-based fee lands are subject to state ad valorem taxation.

Protecting Trust Resources and Indian Lands

- Each agency within DOI has institutionalized the Secretary's Order on protecting Indian trust resources. This includes incorporating such considerations into the National Environmental Policy Act process.
- Because of DOI's successful actions on behalf of the Metlakatla Indian Community, it is now secure in its possession of Warburton Island and its eastern salmon run.
- DOI is establishing a procedure that would uphold the Department's authority to take land into trust for Indian tribes.
- South Dakota v. United States -- Recognizing that the Indian Reorganization Act is the cornerstone of modern federal Indian law, DOJ is seeking review of an Eighth Circuit Court of Appeals' decision that a portion of the Act, which empowers the Secretary of the Interior to acquire land in the name

of the United States in trust for Indians, violates the non-delegation doctrine.

- United States v. Pend Oreille County Public Utility District -- DOJ helped secure \$3,030,000 in trespass damages on behalf of the Kalispel Tribe and certain tribal allottees for the Utility's longstanding flooding of lands within the Kalispel Reservation.
- Williams v. Babbitt -- DOJ successfully defended in district court DOI's interpretation of the Reindeer Industry Act of 1937 as having reserved the reindeer industry in Alaska for the benefit of Alaska Natives. The case is currently under appeal.
- United States v. Washington -- In this landmark, longstanding case, the United States has continued its support and defense of Indian treaty fishing rights. Most recently, in Sub-proceeding 89-3, DOJ succeeded in obtaining a ruling from the district court that largely extended the 50/50 allocation rulings applicable to salmon to all species of shellfish wherever found in a tribe's "usual and accustomed" fishing area.
- United States v. Michigan -- In this 23-year old Indian fishing rights case involving the Day Mills Indian Community, Sault Ste. Marie Tribe of Chippewa Indians, and the Grand Traverse Band of Ottawa and Chippewa Indians, the district court recently issued an order which adopted DOJ's and the tribes' argument that commercial harvest of salmon is not restricted by the 1985 consent order to a single area. This is the first time since entry of that consent order and the establishment of the Dispute Resolution Mechanism that the Judge has decided a "fisheries management" issue.

Improving Trust Funds and Asset Management

- Over the past several years, progress has been made in correcting the management of Indian trust funds and assets. These improvements help ensure the Secretary of the Interior meets his fiduciary responsibilities to Individual Indian beneficiaries and tribes, by ensuring safe investment of trust funds at favorable rates of return, providing timely and accurate account holder information, and correcting decades of accounting inaccuracies. Some of the more significant improvements include:
 - The Special Trustee for American Indians was appointed and the Office of Special Trustee was created as authorized by the American Indian Trust Fund Management Reform Act of 1994. The special Trustee is responsible for oversight, reform, and coordination of the policies, procedures, systems and practices used by various Departmental agencies in managing Indian trust monies.
 - Adequate staffing of trust funds functions has been secured. The number of personnel in the Office of Trust Fund Management (OTFM) in Albuquerque, New Mexico, is now about 100 FTE.
 - In 1995, OTFM successfully converted to a core trust accounting and investment system for tribal accounts.
 - In 1996, the Office of Special Trustee has begun to address the numerous problems associated with Individual Indian Money (IIM) trust funds management. With funding

requested in the 1997 President's Budget, the Office of Special Trustee plans to implement a critically needed IIM accounting system.

- The Special Trustee will complete a comprehensive strategic plan in 1997 for further improving trust management functions, including trust resource management systems improvements; the installation of an accounts receivable (billing) system; improvements to the land records and ownership systems; and improved record keeping.

Protecting Religious Freedom and Cultural Resources

- On May 24, 1996, the President signed an Executive Order directing federal land management agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners. In addition, the President directed the federal land management agencies to avoid adversely affecting the physical integrity of such sites, and to provide tribes notice of activities that may restrict access to sacred sites.
- The National Eagle Repository was opened on May 22, 1996 in Denver. The repository receives eagle carcasses and distributes eagle parts which helps resolve conflicts between the use of eagle feathers in sacred religious ceremonies with the need to protect bald and golden eagles. (DOI/FWS)
- DOI provided about \$4 million to about 50 Native American groups to help protect historic places, cultural practices and artifacts, and to identify and repatriate human and cultural items found in graves in both 1995 and 1996.
- In August 1995, DOE issued its final version of the Environmental Guidelines for Development of Cultural Resource Management Plans. This document, developed in consultation with the National Congress of American Indian and the National Park Service, provides DOE facilities with the necessary framework to develop their own cultural resource management program.
- Bear Lodge Multiple Use Association, v. Babbitt -- DOJ and DOI are working to defend, as a permissible governmental accommodation to religion, a legal challenge to the National Park Service's (NPS) Climbing Management Plan for Devil's Tower National Monument, a sacred site for several northern plains tribes. The Plan imposes a temporary moratorium on commercial climbing during June, the height of tribal ceremonial use of the Monument. The plaintiff in Bear Lodge challenged the Plan as a violation of the Establishment Clause. On June 8, the court granted a preliminary injunction prohibiting the NPS from imposing the moratorium. The Federal government is asking the court to stay the proceedings while the NPS reconsiders its plan in light of the court's concerns.
- The Bighorn National Forest in Wyoming has successfully worked with the Crow, Northern and Southern Cheyenne, Shoshone, Arapaho, and Sioux Tribes and their tribal spiritual practitioners to accommodate the access to and ceremonial use of the "Medicine Wheel," a national historic landmark and sacred site of many Indian tribes and their members. This was accomplished with the support of local communities, State Historic Preservation Officers, and many others. (USDA)
- DoD created a set of maps based on a geographic information system displaying DoD installations

and historic and current Indian lands. Currently, the map data are being refined. A users' manual is being created and spatial and text data are being prepared for electronic dissemination on the Internet World Wide Web. The Department of the Navy has also published a two-map set that will provide information which will serve as the basis for its consultation efforts.

- In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), over 50% of Navy's archeological collections have been identified and assessed.
- The Army assessed the need for NAGPRA summaries at 167 Army installations, placing it at the forefront of compliance which will assist consultation with over 200 tribes.
- Nellis Air Force Base, Nevada, began a long term Native American Interaction Program with 18 Shoshone, Paiute and other tribes in January 1996 to examine archaeological collections, provide input on recent Air Force proposals regarding land management decisions, and the base's cultural resources management program.

Protecting Water Rights

- DOI, with DOJ's active involvement, has successfully negotiated water settlements for several tribes and reservations including Northern Cheyenne Tribe (Montana), Yavapai-Prescott Tribe (Arizona), and the Pyramid Lake Paiute Reservation (Nevada).
- State of Washington v. Acquavella -- In this general stream adjudication, the DOJ successfully asserted a water right for the benefit of the Yakima Nation.
- In the extraordinarily complex general stream adjudication of surface and groundwater sources in the Snake River Basin, Idaho, DOJ continues to defend the water rights of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, the Nez Perce Tribe, and the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation. DOJ's most recent victory was a decision rendered July 5, 1996, by the Idaho Supreme Court upholding the 1990 Fort Hall Indian Water Rights Agreement against attack by non-Indian water users.

Protecting the Civil Rights of American Indians

DOJ has been very active over the last several years enforcing statutes that prohibit discrimination against American Indians. These include actions challenging discrimination related to housing or voting rights:

- In April 1996, DOJ filed a complaint in district court in Rapid City, South Dakota, against the First National Bank of Gordon, Nebraska, alleging that the bank charged Indian customers higher interest rates on consumer loans than similarly situated white customers, and that it took the race of its Indian customers into account in setting those higher rates.
- Over the last several years DOJ has taken numerous actions that have resulted in significant increases in Native American voter registration and voter turn-out. Consent decrees entered in lawsuits filed under the minority language provisions of the Voting Rights Act have established

extensive continuing programs to provide information and assistance in the Navajo and Pueblo languages for counties in Arizona, New Mexico, and Utah.

Improving Indian Health

- Indian health facilities operated by the IHS include 40 hospitals in 12 States, 64 health centers in 27 States, and 5 school health centers and 50 health stations in 18 States. Eighty percent of all IHS hospitals and clinics are in 9 States--Arizona, New Mexico Nevada, North Dakota, South Dakota, Oklahoma, Montana, Minnesota, and Washington.
- The Health Care Financing Administration and IHS are working on an agreement that would raise Federal medical assistance coverage to 100% for Medicaid-funded services in tribally owned, operated or leased facilities.
- HHS is undertaking targeted Indian health care initiatives to address problems or issues specific to Indian youth, women and elders.
- USDA's Rural Development Water and Waste (WW) and Community Facilities (CF) programs which help replace contaminated water supplies, provide running water, treat waste water and build essential medical facilities in the communities, invested \$38.5 million in 15 states in FY 1993-95. This represents an increase of 145% in funding and 100% in tribal coverage over the previous 3-year period.

Improving Indian Housing

- The Department of Housing and Urban Development (HUD) is coordinating activities among the 20 (or more) federal and private sector partners to implement the action items in the President's National Homeownership Strategy initiative pertaining to Native Americans. On June 18, 1996, the Department hosted a national program, entitled "Putting the Pieces Together," to address the numerous facets involved in bringing homeownership to a reservation including planning, developing a legal and physical infrastructure, and selecting and counseling home buyers.
- HUD continued its efforts to bring new and improved housing and associated amenities to Indian communities. These include:
 - Over \$244 million for new 2,325 housing units in FY 1995. \$160 million is available in FY 1996.
 - \$162 million for modernizing existing housing units in FY 1995. \$140 million is available in FY 1996.
 - \$23 million for the Indian Home Loan Guarantee Program in FY 1995. \$37 million is available in FY 1996.
 - \$14 million for Indian HOME projects in FY 1995. \$14 million is available in FY 1996.

- HUD changed the method of rent calculation in the Indian housing rental programs lowering the rent ceiling for many low-income families.
- In conjunction with the President's Homeownership Initiative, the USDA's Rural Development Rural Housing Service (RHS) identified barriers (USDA, tribal, and interdepartmental) to delivery of the Section 502 Direct Single Family Housing Loan Program within tribal trust land boundaries and developed recommendations to reduce these barriers and increase home ownership in Indian country.
- Under the Rural Housing Native American pilot loan program, 25 tribes will work in partnership with USDA and Fannie Mae to obtain guaranteed Section 502 housing loans for at least 250 homes on restricted lands within each reservation's boundary. BIA will be responsible for the title searches. RHS and Fannie Mae have reached an agreement with the Navajo Nation, and an agreement with the Grand Traverse Band of Ottawa and Chippewa Indians is close at hand.

Protecting Subsistence Activities

- Expanded protection for subsistence fisheries in Alaska is a goal long sought by Alaska Native groups. DOI has now prevailed in court on the critical issue that the scope of the rural subsistence priority for the harvest of fish and wildlife on public lands in Alaska (which is guaranteed under Title VIII of the Alaska National Interest Lands Conservation Act) should be expanded to include navigable waters where a federal reserved water right exists. Navigable waters were excluded from subsistence protection previously under an earlier, more restrictive interpretation of the subsistence statute, even though most important subsistence fishing generally takes place in navigable waters. To implement the recent court decisions, the Department published an Advance Notice of Proposed Rulemaking in the Federal Register in April 1996 which identifies the specific navigable waters where the subsistence priority will apply in the future and which seeks public comment on the Department's proposal.

Settling Land Disputes

- The Navajo-Hopi Land Dispute -- In December 1995, after several years of negotiation, the DOJ settled multiple lawsuits by the Hopi Tribe against the United States for the failure to protect the Tribe's rights against use of its land by members of the Navajo Nation. This historic settlement paves the way for a consensual resolution of the longstanding dispute between the Hopi Tribe and the Navajo Nation over use of lands partitioned to the Hopi Tribe in 1979. DOJ is hopeful that Congress will enact legislation that may effectuate the settlement.

Increasing Environmental and Natural Resource Protection

- For FY 1996, DOE allocated over \$25.5 million to support American Indian initiatives and activities. Much of this is devoted to addressing environmental issues, and to advance science education for American Indians. Specific activities include:

- Assisting Cochiti and Santa Clara Pueblos, New Mexico, develop a HAZMAT plan and response team.
- Undertaking studies to evaluate the potential health risks to Indian communities in the vicinity of Los Alamos.
- Cooperative agreements with the Yakima Indian Nation, Confederated Tribes of the Umatilla Indian Reservation, and Nez Perce Tribe to support their involvement in the environmental restoration and waste management activities on the Hanford Site and transportation issues involving reservation lands.
- EPA has increased resources for its Indian Program from \$35 million in FY 1994 to \$85 million in FY 1996. The President has requested \$99 million in FY 1997. Most of these monies are provided directly to tribes as grants for tribal environmental programs and activities or fund tribal sanitation infrastructure.
- In 1996, EPA initiated a Tribal Watershed Project and issued demonstration grants to four tribes. This project is intended to help tribes all across the country better document the condition of their landscapes and identify activities that threaten Tribal resources.
- Under President Clinton's AmeriCorps program, the Earth Conservation Corps manages 80 youth from the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, the Yakima Indian Nation, the Shoshone-Bannock Tribes, and the Warm Springs Tribe to implement tribal fisheries and watershed projects to restore salmon runs within the Columbia River watershed.
- In 1995, BIA invested \$1.5 million for tribal waste management projects. These included closure of landfills affecting the Santee Sioux; Taos, Laguna and Isleta Pueblos; Grand Portage and Red Lake Chippewas; Menominee, Hualapi, Hopi and Washo Tribes.
- The National Park Service (DOI) is currently working toward restoring the Elwha River Ecosystem and reviving salmon fisheries through partial or complete removal of the Glines Canyon and Elwha Dams and hydroelectric plants which have been in existence since the early part of this century. The dams have dramatically reduced the treaty fisheries of at least four federally recognized tribes--the Lower Elwha S'Klallam, the Port Gamble S'Klallam, the Jamestown S'Klallam, and the Makah. Restoration of the Elwha River ecosystem and native fisheries, which could cost about \$100 million or more, would help uphold the federal trust responsibility to affected Indian Tribes.
- DOJ recently completed settlement in an action initiated in 1982 as a trespass action on behalf of the Torres-Martinez Desert Cahuilla Indians seeking damages and injunctive relief from decades of continuing inundation by the defendant irrigation districts of about 11,000 acres of trust lands located within the Torres-Martinez Indian Reservation in Riverside and Imperial Counties, California. The settlement, signed June 18, 1996, calls for a payment of \$14.2 million to the tribe from both the defendants and the United States.
- United States v. Minerec -- In response to the DOJ's Clean Air Act suit against Minerec, a chemical plant operator on the Tohono O'odham Reservation, agreed to discontinue its production of hydrogen sulfide which had previously caused harm to Indian residents of the Reservation.

- Montana v. EPA -- DOJ successfully defended EPA's treating the Confederated Salish & Kootenai Tribes of the Flathead Reservation as a state for purposes of setting environmental standards under the Clean Water Act within the Tribes' Reservation.
- Northwest Sea Farms v. U.S. Army Corps of Engineers -- DOJ successfully defended the Army Corps of Engineers' decision to deny Northwest Sea Farms' application for a permit to construct salmon net pens in an area of Puget Sound because of its potential to adversely impact the treaty-protected rights of the Lummi and Nooksack Tribes to take fish at customary sites.
- On May 3, 1996, the Department of Defense (DoD) established principles for consultation with Native Americans on its land management decision-making as part of its environmental conservation program. The principles were established based on consideration of the strong religious and cultural ties to natural areas. Currently, the Departments of Army, Air Force, and Navy are all working on guidelines geared specifically towards consultation between Native American organizations and their activities.
- DoD issued its Environmental Planning and Analysis Instruction on May 3, 1996, which emphasizes partnering with and involvement of local governments and local communities in DoD's environmental planning process. It also directs that compliance with the National Environmental Policy Act must incorporate the analysis required under Executive Order 12898 on Environmental Justice.
- In response to Congressional direction, the DoD devised a comprehensive program to: (1) establish a management information systems to house existing information on environmental impacts on Indian land; (2) conduct preliminary assessments to determine the appropriate responses to these impacts; (3) develop a priority model for allocating resources to address these impacts; (4) undertake model/demonstration projects; and (5) develop training material and prototype training programs with Native American and Tribal Colleges and Universities.

Enhancing Economic Development

- Indian reservations would be eligible to compete for designations, under the President's proposed second round of Empowerment Zones and Enterprise Communities. Potential benefits include access to "brown field" tax incentives to help with environmental clean-up, certain, private activity bonds, and additional expensing of business costs that would otherwise have to be capitalized.
- The Department of Housing and Urban Development (HUD) provided \$43 million for Indian Community Development Block Grants in FY 1995 for 106 projects. \$50 million is available in FY 1996.
- HHS' Administration for Native Americans (ANA), which promotes the goal of social and economic self-sufficiency for Native Americans, announced the availability of FY 1996 funds for its three grant programs in a consolidated funding Program Announcement in the Federal Register on September 7, 1995. This announcement combined into one comprehensive document, the following ANA grant programs: 1) Social and Economic Development Strategies (SEDS); 2) Environmental Regulatory Enhancement; and 3) Native American Languages Preservation and Enhancement. ANA

awarded 217 new competitive grants and continuations under six application closing dates.

- Treasury and the IRS have completed a draft of the Indian Assistance Handbook, which was undertaken to ensure that the administration of the tax laws as they affect Indian tribes, is consistent across the country. The Handbook is to be circulated to all tribes through the National Indian Gaming Commission. Copies may also be requested from the IRS.
- Reclamation (DOI) is nearing completion of rural water supply systems for the Three Affiliated Tribes of the Fort Berthold Reservation, the Standing Rock Sioux of the Standing Rock Reservation, and the Spirit Lake Nation of the Fort Totten reservations. It is also constructing the Mni Wiconi Project, a municipal, rural and industrial water system that will provide water for the Oglala Lakota tribe of the Pine Ridge Reservation, the Rosebud Sioux, and the Lower Brule Sioux Tribe.
- In conjunction with the issuance of regulations that impact tribal gaming, Treasury's Financial Crimes Enforcement Network (FinCEN) convened a compliance conference in Orlando, Florida, on April 4-5, 1996. These regulations, which became effective August 1, 1996 (see 61 FR 7054-7056) subject tribal casinos to the same reporting and recordkeeping requirements and anti-money laundering safeguards of the Bank Secrecy Act (BSA) as those in place for state-licensed casinos. The conference was attended by over 250 tribal government leaders, casino operators and other interested persons.
- Treasury's Office of the Comptroller of the Currency (OCC) plans to release an information guide for national banks, examiners, tribal governments and individuals on mortgage lending to residents of Indian reservations who face unique lending issues because of tribal sovereignty and trust land issues. OCC also plans to collect information about successful programs and partnerships involving national banks lending and investing in Indian country. Moreover, OCC continues to provide technical assistance to Indian tribes regarding the new Community Reinvestment Act (CRA) rule, community development investments and tribally-owned banks. OCC is working with the DOJ and other federal bank regulators to address policy issues on tribal acquisition and chartering of financial institutions. Finally, OCC highlighted bank provisions of lending and services in Indian country at its February community development conference.
- Treasury worked to enact legislation ensuring that tribes are able to offer 401(k) retirement plans to their employees. The Administration proposed the necessary legislative change in the FY 1997 budget and worked with Congress to ensure that the change was included in the Small Business Job Protection Act of 1996.
- In recognition of the importance of economic development in Indian country, the Assistant Secretary - Indian Affairs has been appointed a member of the Community Development Advisory Board established under the Community Development and Regulatory Improvement Act of 1994. (DOI/BIA)
- USDA Rural Development issued a policy statement acknowledging the rights of federally recognized tribal governments to impose Tribal Employment Rights Ordinance (TERO) requirements on subcontracts and subgrants under contracts and grants to the tribal governments and those for the benefit of tribal members.

- USDA's Rural Development Rural Business-Cooperative Service, which makes grants to finance development of small and emerging private business enterprises, has nearly doubled the investment in federally recognized tribes--from \$3.5 million to \$6.6 million--between FY 1994 to FY 1995.
- An interagency agreement was signed by USDA and the Administration for Native Americans (ANA) to improve the economies of eight tribes and the surrounding communities.

Enhancing Employment and Job Training

- Under the Job Training Partnership Act (JTPA), as amended, the Department of Labor's (DOL's) Employment and Training Administration has 187 designated grantees representing 97 federally recognized tribes, 16 tribal consortia, 15 Alaska Native organizations and 61 non-profit Indian-controlled organizations. Other grants are awarded to Native American non-profit organizations serving urban areas. Grantees were designated for a two-year period beginning on July 1, 1995. 15 JTPA grantees have approved plans to participate in the Indian Employment, Training and Related Services Demonstration Act demonstration programs. This program permits federally recognized Indian tribes, including Alaska Native villages, to submit plans that integrate employment and training formula based funds from the Departments of the Interior, Health and Human Services, and Labor.
- The charter of the Native American Employment & Training Council established under the Job Training Partnership Act, as amended in 1992, was renewed on July 1, 1995. In order to make "partnership" meaningful, all major policy issues are presented to the Advisory Council for their consideration and advice. The Council's first report to the Secretary of Labor and Congress has been issued to all Indian and Native American grantees. (DOL)
- The "waiver of competition" provision included in the 1992 JTPA Amendments was successfully implemented for the first time during the 1995-96 designation process. The law provides the Secretary of Labor with the right to waive competition for a grantee that is successfully administering a current grant. However, waivers will not be used for the 1997-98 designees (to be announced March 1, 1997) thereby permitting all eligible entities, current grantees and non-grantees an opportunity to compete for JTPA, Section 401 funding. (DOL)
- The finalized 1996 Partnership Plan was issued to all grantees on July 19, 1996. This second Program Year Partnership Plan serves as a blueprint for further improving program performance management and results. 90 percent of the 1995 Partnership Plan goals were met. (DOL)
- DOL, in consultation with its Section 401 partners, published in the Federal Register a regulation waiver provision that became effective November 1995. The waiver provision allows grantees to seek waivers of regulations that impedes their ability to improve program management, results and outcomes.
- DOL's Employment Standards Administration (ESA) excellent working relationship with and commitment to the Tribal Employment Rights Organization (TERO) ensures Native Americans have an opportunity to participate fully in employment with Federal contractors covered under Executive Order 11246, as amended. TERO Directors and other Native American Leaders are also invited to

participate in regional management meetings and to express their concerns. DOL participated in an Alaskan Construction Initiative which involved TERO representatives. DOL also met with the Alaskan Native Coalition on Employment and Training and with TERO Council members to hear their concerns.

- The Family Support Act gave Indian tribes and Alaska Native organizations an opportunity to apply to operate a Job Opportunities and Basic Skills Training (JOBS) program. Currently, there are 76 Indian tribes, consortia of tribes and Alaska Native organizations operating a JOBS program. In FY 1996, the tribal JOBS grantees received \$8.5 million to operate their programs on behalf of Native American AFDC recipients residing in the service areas of the tribal grantees. In fiscal year 1995 the tribal JOBS grantees helped over 1,250 AFDC recipients gain employment at an average hourly wage of \$6.36. (HHS/Office of Family Assistance).

Increasing Indian Energy

- In fiscal year 1996, 12 grants totaling \$1.65 million were awarded for increasing energy efficiency and renewable resource use to the following tribes: Ute Mountain Ute, Nambe Pueblo, Devil's Lake Sioux, Manzanita Band of Mission Indians, Mohegan, Picuris Pueblo, Native Village of Chignik Lagoon, Haida Corporation, Cape Fox Corporation, Atka Native Village, Jicarilla Apache, and Standing Rock Sioux. (DOE)

Enhancing Indian Agriculture

- Several USDA agencies are working together to heighten awareness of USDA services available to American Indian and Alaska Native communities. A 2-year grassroots outreach campaign is being conducted through a contract with the Intertribal Agriculture Council (IAC).
- USDA's Farm Service Agency (FSA) is making a concentrated effort to ensure that American Indian producers have equitable access to the new 7-year production flexibility program. To ensure the protection and lease value of American Indian agricultural land, FSA is working closely with--and authorized--BIA to sign these 7-year contracts. In addition, FSA is working directly with tribes to communicate all aspects of the new programs to every eligible farmer and has enlisted BIA support in ensuring they take full advantage of the new program sign up.
- With the support of Foreign Agricultural Service (FAS) Agricultural Attaches in Asia, the American Indian Trade Development Council has successfully promoted such products as range-fed beef, buffalo meat, and seafood products in Japan, Hong Kong, and Singapore. FAS also provides training to American Indian exporters on how to participate in the Market Assessment Program (MAP). FAS continues to work closely with IAC outreach coordinators to identify export-ready American Indian companies, and to recruit those companies for participation in MAP and other trade promotion activities. A trade mission will be conducted to Hong Kong and China in the fall of 1996 to promote American Indian products.
- The Extension Indian Reservation Program (EIRP), administered by USDA's Cooperative State Research, Education, and Extension Service (CSREES), provides extension agents to selected

American Indian tribes. The extension agents conduct programs of instruction on reservations in response to needs identified by the tribes. The programs help American Indians develop agricultural enterprises ranging from rearing and restocking salmon in Washington, to growing specialty seed crops in Arizona, to establishing a farmers market in North Carolina, to vegetable gardening in Alaska. These efforts aim to bring the benefits of the land-grant universities to the Reservations, and to increase quality of life, income, and self-esteem.

Base Realignment and Closure Program

Each military department is committed to working with Indian tribes interested in acquiring military property under the Base Closure process and laws. In 1995, the President announced another round of closures which prompted renewed interest from tribes. At the federal screening level, DOI usually makes the request on behalf of a tribe, and the affected military department coordinates with all parties. Following are examples of significant actions related to base closures which involve both DOI and military services:

- K.I. Sawyer Air Force Base, Marquette, MI - The Sault Ste Marie Tribe of Chippewa signed a lease for 275 housing units, three industrial buildings and two commercial buildings. The tribe is screening business proposals and expect to start major redevelopment activities by spring. Cooperation between the Local Redevelopment Authority (LRA), Air Force Base Conversion Agency, and the tribe is greatly aiding the success of job creation of the base and redevelopment of the community.
- Williams Air Force Base, Mesa Arizona - Air Force recently negotiated the sale of the base golf course to the Gila River Indian Tribe. DOI has made a request on behalf of the tribe for other "excess" federal property.
- Loring Air Force Base, Limestone, ME - Former military housing units are being transferred to DOI on behalf of the Aroostook Band of the Micmac Tribe, a recently recognized tribe which, as yet, has no land base. To enhance the tribe's economic and governmental self-sufficiency, other property is also planned to be transferred to DOI.
- Naval Station Sand Point, Seattle, Washington - The City of Seattle and the Muckleshoot Tribe are finalizing an agreement that will address the tribe's interests and the community's redevelopment plan by giving the tribe land in the area of the closing base and access to part of the base. The agreement also provides the tribe fishing rights and piers formerly part of the base.
- Fort Wingate, Gallup, New Mexico - The Navajo Nation and Zuni Pueblo, working with the Council of Governments is drafting an economic redevelopment plan. This closure involves DOI-withdrawn public domain lands which will revert to DOI for the benefit of both tribes. Currently, the Navajo Nation is using excess warehouse space for food distribution to American Indians and an excess building for vehicle maintenance to service the food distribution vehicles.
- Sierra Army Depot, Herlong, CA - Members of the Susanville Indian Rancheria serve on the Local Redevelopment Authority's Executive Council and will participate in redevelopment planning. The rancheria desires excess property to establish the State of California's first Regional Youth Treatment Facility and are working with the local community in this process.

Advancing Indian Child and Family Welfare

- The Health and Human Services (HHS) Administration for Children and Families (ACF) working with BIA and the Children's Bureau, satisfactorily addressed three longstanding concerns in Indian Country. Specifically,
 - Beginning in FY 1996, every tribe will, for the first time, be eligible for direct funding for Social Security Title IV-B parts I and II - funds administered by ACF for child welfare services.
 - In FY 1996, tribes will receive family preservation funds for the first time ever.
 - In FY 1996, as a condition for receiving Federal funds, ALL States must submit plans to HHS outlining tribal consultation methods for tribes within their State to address their method of compliance with the Indian Child Welfare Act.
- Through a three percent set-aside in the HHS' Child Care and Development Block Grant, approximately \$28 million was awarded in FY 1995 to 226 tribal grantees representing over 500 Indian tribes, Alaska villages, and tribal consortia.
- Child Welfare Services, whose goal is to help keep families together, awarded \$2.2 million in FY 1996 funds to Indian tribes, as of July 24, 1996. (HHS/Children's Bureau)
- The Children's Bureau's Family Preservation and Family Support Services, which helps state child welfare agencies and eligible Indian tribes establish and operate integrated, preventive family preservation services and community-based family support services for families at risk or in crisis, awarded \$2.1 million in FY 1996 funds to Indian tribes, as of July 24, 1996. (HHS)
- HHS' Office of Community Services (OCS) and Administration for Native Americans (ANA) are planning to hold a national tribal workshop from October 30 to November 1, in Washington, D.C.
- In FY 1996, the American Indian Head Start Program network operated by HHS' Head Start Bureau has 130 funded grantees. These grantees, located in 25 states, include 118 federally recognized tribes who directly operate programs; 4 Inter-tribal consortia representing 26 reservations, 12 colonies and 14 rancherias; and 8 Alaska Native Regional Corporations serving 35 villages and cities.
- In FY 1996, there were 18,858 children enrolled in the American Indian Programs Branch Head Start Programs. Indian Head Start program staff totaled 3,965 for School Year 95-96. The Indian network has 487 centers and 919 classrooms.
- HHS' Head Start Bureau held eight tribal consultation meetings around the country to provide elected tribal leadership an opportunity to offer input and feedback on current regulatory and policy issues related to Indian Head Start.
- The Office of Child Support Enforcement (OSCE) provided technical assistance to the Congress on

proposed amendments to welfare reform legislation related to services for Native Americans. The final conference agreement on the welfare reform legislation, the Personal Responsibility And Work Opportunity Reconciliation Act of 1996, reflected some of these discussions and adds a state plan requirement under which child support agencies may enter into agreements with Indian tribes for the cooperative delivery of child support enforcement services in Indian country. The legislation also allows the Secretary of HHS, in appropriate cases, to make direct payments to Indian tribes with an approved child support enforcement plan under title IV-D of the Act. (HHS)

- OCSE has formed a Native American Work Group with federal, state and tribal representatives. The goals of the work groups include identifying barriers and opportunities for states and tribes to expand CSE services to the Native American population. (HHS)
- OCSE's regional office staff coordinated a wide range of activities and provided technical assistance to support the Child Support Enforcement program's mission, e.g., it provided assistance in the development of support guidelines and a Policy and Procedures Manual for the Navajo Nation. (HHS)
- HHS' Family Violence Prevention and Services Program funded 120 tribes and tribal organizations for the purpose of reducing family and intimate violence through coordinated prevention and services strategies. The program provides funds for the provision of shelter services to victims of family violence and their dependents. In addition, the funds provide support for related services in shelter programs such as legal advocacy, family violence prevention counseling, and other prevention activities.
- As part of the HHS' Administration for Children and Families (ACF) Tribal Initiative, representatives from over 400 tribes were invited to participate in the following three tribal partnership events the week of August 5, 1996 in Denver, Colorado:
 - The ACF Tribal Building Bridges Forum.
 - The Northwest Head Start Conference.
 - The Annual National Tribal Child Care Conference.
- USDA's Food and Consumer Service (FCS) sponsored a national meeting for Indian State agencies that administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) in Albuquerque on February 6-8, 1996. FCS developed a new packet of WIC materials to increase awareness of Fetal Alcohol Syndrome (FAS) among American Indians and Alaska Natives. Of the more than 7 million WIC participants, nearly 117,000 are women, infants, and children of American Indian or Alaskan Native descent. It is estimated that American Indians and Alaska Natives have a FAS rate two to three times higher than the overall population. The materials include the nationally recognized film, "Sacred Trust."

Improving Food and Nutrition

- About 325,000 American Indians and Alaska Natives receive food stamps each month. (USDA)

- The Food Distribution Program on Indian Reservations (FDPIR) food package was received by about 114,000 other participants in 1995. New products such as lower-fat frozen ground beef and reduced-fat macaroni and cheese have been added to the food package, and product specifications have been modified to reduce fat, sodium, and sugar. USDA plans to initiate a comprehensive FDPIR food package review in FY 1996, in full partnership with Native American cooperators.
- In FY 1995, USDA, through programs for needy families donated about \$4.8 million of ground beef, canned poultry, pork and vegetables, and dried egg mix to Indian tribes.
- USDA's Food Consumer Service (FCS) is working to improve the nutritional quality and variety of commodities provided under the Food Distribution Program on Indian Reservations program. In a major departure from standard procedures, USDA established a pilot project under which fresh produce was made available to two tribes participating in the FDPIR which had restricted the food package to items with long shelf lives due to the relative isolation of reservations and their limited storage capacities. In FY 1997, USDA plans to expand the pilot to encompass up to 18 additional sites.

Reducing Alcohol and Drug Abuse

- In FY 1995, the Department of Housing and Urban Development (HUD) Public and Indian Housing Drug Elimination Program (PIHDEP) awarded \$9.3 million to 41 IHA grantees.
- HUD's Youth Sports Program provided 28 grants to IHAs totaling \$3.3 million in FY 1995. This program was not funded in FY 1996, however, most eligible activities under this program are eligible under the Public and Indian Housing Drug Elimination Program.
- Five schools were recognized under the national Drug Free Schools Recognition Program for public and private elementary, middle and secondary schools. (DOI/BIA)
- USDA's Rural Development Community Facilities program funded construction of a 10,000-square-foot substance abuse facility on the Yankton Sioux Tribe Reservation, South Dakota, to house up to 20 full-time patients.

Improving Indian Education

- The Department of Education (ED), as co-chair of a working group with DOI, has been working during this past year with other Federal agencies on a draft Executive Order for tribal colleges. This draft order was presented to the Domestic Policy Council for White House consideration and review. The purpose of the Order is to expand Federal assistance for Indian institutions of higher education, promote tribal sovereignty and individual achievement, and advance the National Education Goals and Federal policy in Indian education. Importantly, tribal sovereignty and the Federal Government's unique relationship to American Indians and Alaska Natives would be reaffirmed by the order.
- ED's Indian Education programs serve 430,000 students in the public and BIA schools in 42 states

through nearly 1,300 projects. Indian Education programs are not administered by the states; funds go directly to school, district, or tribal grantees.

- In FY 1996, American Indian students were served by approximately \$226 million dollars in Impact Aid funds for schools nationwide.
- In 1994, 45 percent of American Native High School graduates earned the core credits recommended by *A Nation at Risk* -- a dramatic increase over the 7 percent reported in 1982. This demonstrates the high levels to which native students can achieve upon completion of high school. However, the proportion of Native American high school graduates taking the recommended core credits is still below that for all high school students (52 percent in 1994).
- Scores on the Scholastic Assessment (SAT) for Native Americans have improved between 1987 and 1995. Native Americans students' scores increased by an average of 10 points for verbal and 15 points in mathematics. Likewise, between 1986 and 1995, Native Americans showed the largest gains among all racial groups on the ACT assessment.
- The number of Native Americans taking Advanced Placement exams in English, mathematics, science, and history increased by 481 percent from 1986 (415 students) to 1995 (2,412 students) compared to an increase of 220 percent for all races and ethnic groups. Native Americans represented 0.5 percent of all AP test-takers, about half their representation in the student population.
- Under the provisions of the President's Goals 2000: Educate America Act, the Office of Indian Education Programs (OEIP/BIA) and the National Indian Goals 2000 Panel have developed long range goals and benchmarks for the BIA funded school system. These goals include:
 - By the year 2000, increasing the average daily attendance rate from 90 percent to 94 percent, reducing the yearly dropout rate from 15.6 percent to 11.6 percent, and increasing the enrollment retention rate of students from 93 percent to 97 percent.
 - Increasing the number of students reaching the proficient and advanced levels by five percent per year, based on new authentic assessments.
 - Decreasing substance abuse incidents by ten percent.
- As of 1996, 105 of the 187 BIA funded schools, i.e., 56 percent, are controlled by tribal councils and/or tribal boards of education.
- A cooperative effort between the Centers for Disease Control, IHS, and BIA developed an integrated curriculum to address comprehensive school health issues relating to adolescents. Currently there are fourteen pilot sites.
- In 1996, the Johnson-O'Malley program was transferred to the Tribal Priority Allocation category of the Tribal Budget System. Using a national student count from 1995, funds were transferred into each participating tribe's base funding level under the TPA. This move has increased tribal control over education funds.

- The OIEP received one of nineteen Challenge Grants from ED. This five year \$5 million grant will assist schools in integrating technology into the curriculum. Corporations such as Microsoft, Intel and Apple are partners in this project.
- BIA is the first State Education Association (SEA) in the nation to have all Local Education Associations (LEAs) submit IASA funding requests in a Consolidated School Reform Plan.
- BIA was one of two SEAs that provided a model Professional Development Plan for 9 LEAs for 13 months providing on- and off-site training, and supplying each school with technology and integration of technology into the curriculum.
- Leupp, Little Singer, Hanahville, Grey Hills, Greasewood and three Pima Agency schools were designated Charter Schools by their respective states.
- Eight Indian schools were recognized as Blue Ribbon Schools under a national recognition program sponsored by ED. The program identifies those public and private elementary, middle and secondary schools that provide outstanding academic programs. (OIEP/BIA)
- Indian tribes and schools are participating in an innovative School-to-Work Opportunities Program administered through the Departments of Education and Labor. The Puyallup, and Yakima tribes received grants in 1995 to implement the program, as did the Lac Courte Oreilles and Alamo Navajo Schools. In addition, four BIA funded schools were awarded planning grants: Chief Leschi, Hannahville, St. Stephens Indian School, and Tohono O'odham High School.
- In 1995-96, 22 BIA funded schools serving approximately 1,680 families were selected for the Family and Child Education (FACE) program, a family literacy program that serves children ages 0-5 and their parents. This program, a collaborative effort by Parents as Teachers, the National Center for Family Literacy, the High Scope Educational Foundation, and BIA, is designed to enhance early childhood education, parent and child time, parenting skills and adult education.
- ED worked successfully with Indian organizations on the restoration of funding for ED's Indian Education program after the House Appropriations Committee voted to eliminate that funding in the FY 1996 Interior Department appropriations bill. ED has continued, since then, to work closely with the Indian community on budget issues.
- In its proposal for reauthorization of the Carl Perkins vocational education program, the Administration proposed the continuation of separate programs for Indian tribes and organizations, and for tribally controlled vocational institutions.
- Youthbuild is a program designed to help disadvantaged young adults who have dropped out of high school to obtain the education and employment skills necessary to achieve economic self-sufficiency and develop leadership skills and a commitment to community development in low-income communities. The Notice of Funding Availability (NOFA) for Youthbuild was published in the Federal Register on Monday, March 4, 1996, announcing availability of up to \$37.5 million. The maximum award for a Youthbuild implementation grant is \$700,000. Grants are expected to be awarded by the end of August 1996. (HUD)

- The Corporation for National Service is implementing a 1% set-aside equivalent to \$2.5 million for Native American and Alaska Native programs.
- USDA's Food and Consumer Service (FCS) included the 29 tribal colleges given land-grant status by President Clinton in October 1994 in an agency program which provides excess computer equipment at no cost to land-grant colleges.
- The USDA's Higher Education Programs office established an endowment fund for the above mentioned 29 Tribal Colleges, authorized under P.L. 103-382. In 1996, the first of an anticipated series of five contributions of \$4.6 million has been invested by the U.S. Treasury. The interest earned for fiscal year 1996 will amount to about \$100,000 for use in fiscal year 1997 and will be distributed to the institutions by means of a statutory formula. The total for the endowment fund at the end of 5 years will amount to \$23 million. These funds will be used to facilitate teaching programs in the food and agricultural sciences. (USDA)
- USDA's Communities Facilities program funded phases two and three of the Pinon Unified School District project in Arizona, in the amount of \$2,800,000 to help upgrade education for the Navajo Nation.
- In 1996, the office of Higher Education Programs launched the Tribal Colleges Education Equity Grants Program. This formula grants program provides \$50,000 for each of the 29 Tribal Colleges designated as 1994 land-grant institutions to improve teaching programs. (USDA)
- The Children, Youth, and Families at Risk Initiative--supported by USDA's Cooperative State Research, Education, and Extension Service (CSREES) in partnership with State and county Cooperative Extension Services--provided funding and technical support for numerous programs focusing on Native American needs. Examples include 4-H Yukon Fisheries, Oklahoma After School Care Program, Wind River Reservation Youth and Families at Risk Project, Wyoming.

Advancing Justice and Law Enforcement

- United States Attorneys' Offices with significant Indian Country jurisdiction have focused on how to provide better service to the American Indian population. In 1995-96, 26 additional Assistant United States Attorney positions have been provided to districts containing significant amounts of Indian Country. In addition, several U.S. Attorneys' Offices have worked with federal, tribal, and state agencies to develop memoranda of understanding to address problems caused by overlapping jurisdictions. Finally, training programs are being redesigned to ensure that federal prosecutors understand the jurisdictional framework for Indian Country, the law, and their responsibilities to American Indian communities.
- The FBI and the BIA work together to investigate federal crime which occurs on Indian Country. In 1995 and 1996, the United States Attorneys have encouraged the further development of tribal police and law enforcement programs and aggressive cross-designation of tribal police with BIA and other appropriate policing authorities. Twenty-seven additional FBI agents will be assigned to supplement the agents currently conducting investigations in Indian Country. In addition, the FBI, BIA Law Enforcement, and the Federal Law Enforcement Training Center (FLETC) have entered

into a memorandum of understanding providing \$1.125 million from the FBI to expand and improve investigative and managerial training of Indian Country law enforcement agencies.

- DOJ has several programs to build tribal capacity to address crime:
 - The Community Oriented Policing Services (COPS) program, established under the Violent Crime Control and Law Enforcement Act of 1994, is committed to helping Indian tribes control crime by helping them hire more police officers and expand their law enforcement capacity. To date, 129 Indian Tribes have been approved for estimated funds totaling \$22,998,450. This includes 177 different grants in 24 states, and 367 funded police officer positions. The COPS Office also provides funding to support training to implement the principles and practices of community policing.
 - For FY 95, 4% of the STOP Violence Against Women formula grant program was set aside for Indian tribal governments. Of the \$1,040,000 designated for grants to tribal governments, a total of 14 grants were awarded to 11 tribal governments and 3 consortiums representing 35 villages and 14 tribes. For FY 96, \$5.2 million will be allocated to this program.
 - Office of Juvenile Justice and Delinquency Prevention (OJJDP) in FY 95, provided \$1.2 million to the Fort Belknap Indian Community, Montana for the Safe Futures program, a five year comprehensive and coordinated delinquency prevention and intervention treatment program for at-risk and delinquent juveniles.

Other Social Services

- The National Senior Service Corps spent \$5.6 million to support 30,000 volunteers serving in Indian communities in 20 states.