

HOUSING AND URBAN DEVELOPMENT

U.S. Department of Housing and Urban Development
Accomplishments

April 1995 to April 1996

Immediately upon completion of the historic meeting between the Nation's Tribal Leaders and the White House in 1994, the U.S. Department of Housing and Urban Development substantially strengthened its efforts on behalf of its Native American Programs.

Secretary Cisneros immediately issued a Department-wide policy echoing the President's direction for a government-to-government relationship with all Native American Nations. The policy was sent to all HUD Offices with instructions for its display in a prominent manner.

Homeownership: The First Generation

In the second year following this historic beginning, activities have been energetic and productive. Most significant has been the "Homeownership: First Generation" series of regional conferences featuring many federal agencies, non-profits and private entities committed to increasing homeownership in Indian Country. Regional sessions were held in: Scottsdale, AZ; Reno, NV; Oklahoma City, OK; Sioux Falls, SD; Gallup, NM; Seattle, WA; Minneapolis, MN; Anchorage, AK; and Tampa, FL.

In December 1995 the "Native American Homeownership Summit: Implementing the National Homeownership Strategy in Indian Country" was held in San Diego, CA. This tremendously successful meeting was attended by almost 400 tribal leaders. Presentations by National Homeownership Strategy Partners focussed on successes to date and outlined specific commitments to increasing homeownership in Indian country.

Section 184 Indian Loan Guarantee Program

The Section 184 Indian Home Loan Guarantee Program continues to grow as the best opportunity for true homeownership among Native Americans living throughout Indian Country. Wide acceptance of the Section 184 loan guarantee program by individual borrowers and Indian Housing Authorities (IHAs)

resulted in the maximum utilization of the FY 1995 appropriation and has been the catalyst for an escalation of applications and loan guarantees in Fiscal Year 1996. Over 500 Native American families representing 65 Tribes received Preliminary Commitments for loan guarantees in FY 1995.

In the past year, ONAP issued a detailed Section 184 question and answer booklet in response to the 100 most frequently asked questions by lenders and borrowers, published the Final Rule for the Section 184 Indian Home Loan Guarantee Program, completed the Final Guidelines to be published in April 1996, and provided one on one Section 184 loan guarantee guidance and information at consultation meetings conducted throughout Indian country. ONAP also published a Section 184 loan guarantee "How To" book that provides step by step understanding of the program for all Native Americans wishing to participate, and a video providing a step by step visual presentation of the Section 184 Indian Home Loan Guarantee Program. In addition, an average of (15) telephone inquiries per week from borrowers and lenders resulted in the forwarding of brochures and materials throughout Indian country.

Regulatory and administrative accomplishments include:

- The Office of Native American Programs implemented a policy change which has a major impact on rent calculations in the Indian housing rental program. In November 1995, a Notice was issued which changed the way ceiling rents are calculated. Prior to this time, ceiling rents were determined based on an imputed debt service amount. The Notice eliminates the use of imputed debt and replaces it with actual debt plus operating cost, thereby lowering the ceiling rent for many low-income families.

This will substantially reduce some of the concern expressed by Tribal leaders regarding the "30 percent" rule.

- ONAP published revised CDBG regulations for comment on July 27, 1994; final rule scheduled for publication before June 30, 1996.

Program Funding

In the face of budget rescissions which impacted housing programs, the Department administered Native American Program funding as follows:

- Provided over \$244 million to fund 2,325 new Indian housing units in FY 95.
- Funded 12 Indian HOME projects for \$14.4 million. HOME is a Tribal government housing program which provides great flexibility for the Tribe to develop its own housing program.
- Funded 106 Indian Community Development Block Grant projects for \$46 million. CDBG is used by Tribes for community infrastructure, land acquisition, job creation, economic development and housing rehabilitation.
- Provided \$1.5 million for Emergency Shelter Grants to 13 tribes. Emergency Shelter Grants allow Tribes to develop housing for temporary use by for the homeless.
- Of the 68 Indian Housing Authorities that applied for the Drug Elimination Program, 41 were funded for approximately \$9.3 million. This program is designed for use in eliminating drug related crime in public and Indian housing developments.
- Of the 81 IHAs that applied for the Youth Sports Program, 28 were funded for approximately \$3.3 million. The Youth Sports program was created to serve as an added component of the larger Drug Elimination Program to establish positive, drug-free activities for public and Indian housing youth.
- Of the 66 Resident organizations which applied for the Tenant Opportunity Program 15 were funded for approximately \$1.2 million. The program provides assistance to resident groups to fund training and other tenant opportunities. An additional \$300,00 was provided for regional and state resident organizations.
- Approximately \$162 million was provided to IHAs in

Fiscal Year 1995 for modernization of existing housing units. Of that amount, \$138 million was available to IHAs with over 250 units under the Comprehensive Grant Program, and \$24 million was provided to smaller IHAs on a competitive basis.

Providing the Legal Infrastructure Necessary for Private Financing

A series of activities designed to encourage and support the development of the necessary legal infrastructure for private financing in Indian country has been undertaken by ONAP. On October 23-24, 1995 a National Indian Housing Law Conference was sponsored by ONAP at Georgetown University. The conference addressed the legal environment of planning, development, and management of housing in Indian country, and provided a unique opportunity for attorneys, IHA staff, tribal representatives and others to assemble for discussions on current Indian housing law issues.

In conjunction with the National Indian Justice Center and ICF, Inc., ONAP has sponsored the development of a sample comprehensive housing code for use by tribes. ONAP has found that few tribal governments have enacted housing codes, and the lack of codes has caused substantial problems for tribal administrations, tribal court systems, Indian housing authorities, and individual homebuyers and tenants. The sample code developed includes commentary which provides a series of options for tribes to consider in evaluating and adapting the code to meet the needs of a specific tribe.

An ongoing project set to start in April 1996 will be a series of Indian Housing law quarterlies produced by the National Indian Justice Center. The quarterlies will be designed to provide in-depth legal information and analysis which will be useful as a permanent resource. Each issue will consist of a series of feature articles reflecting different points of view to promote discussion and debate.

Encouraging Culturally Relevant Design

In order to emphasize the development of "culturally-relevant" housing, HUD issued a Design Guide entitled "Our Home - Giving Form to Traditional Values". The objective of the Guide is to encourage the development of Indian Housing which stresses

community input and involvement in the design of housing. As a follow-up, in 1994, HUD conducted its first annual Cultural Design Award competition for HUD funded grants. Forty-three projects were submitted for consideration in the eight categories of awards and the winners were announced at a Design Conference for Indian housing authorities, architects, builders and engineers in June, 1995.

The 1995 Cultural Design Award winners were announced in April 1996. The award winners and their architects will be recognized in June 1996 at a national awards presentation ceremony.

Partners in Progress

In August 1995 ONAP initiated the Partners in Progress effort, an innovative approach to addressing the needs of Indian Housing Authorities which have ongoing performance problems. This approach involves a partnership between ONAP, the Tribe and the IHA, with the leadership role for ONAP taken by the field offices. The intent of Partners in Progress is to foster a long-term effort to improve the IHA's performance, including intensive on-site training and technical assistance, by providing resources needed by the IHA. To date, 31 IHAs have been identified to participate in Partners in Progress.

Partners in Progress has been established as one of the three priorities for ONAP field staff in FY 96. Major staff and travel resources are being devoted to these IHAs. In addition, ONAP has obligated \$2.1 million in contract technical assistance and training funds to three contractors to provide intensive on-site assistance to Partners in Progress IHAs. It is anticipated that additional contract funds will be utilized on Partners in Progress as these become available.

Training and Technical Assistance

- During the past year ONAP sponsored a series of Construction Contract Management Training sessions in each field office's jurisdiction. This course which featured an overview of the construction contract lifecycle, has as its goal the management of construction contracts for fewer disputes. Experienced

IHA attorneys and staff covered all aspects of recognizing, mitigating and handling problems related to the construction process.

- ONAP will conduct Community Relations and Involvement training entitled "Building Partnerships for Better Communities". The focus is to improve communication and to form partnerships to encourage teamwork in community building. The course will be offered to approximately 50 housing authority staff and residents in Albuquerque, NM in June 1996.
- Curriculum development is almost complete for a series of Financial Management Training sessions which will be held in each field office's area during the coming months. The pilot session was held in Seattle, WA during the week of April 2-4, 1996. These sessions focus on cash management, internal controls, budget analysis, investment strategies and reporting.
- HUD developed a model training course for new Executive Directors. The pilot was held in Denver, CO in April 1996. Materials are being formalized and further sessions will be offered in the remaining ONAP office areas to all Executive Directors with less than one year's experience.
- A successful series of project management and planning training sessions for the ICDBG program recipients continued this year. On-site technical assistance for current and potential ICDBG recipients will be ongoing through the fall of 1996.
- The Federal Indian Policy and Cultural Awareness Training program which was developed by the Office of Native American Programs (ONAP) was presented again this year to 30 HUD/ONAP employees. This award winning training course was designed to increase cultural awareness and sensitivity among HUD staff when working with Native Americans.

Youth Initiatives

In FY 1995 and 1996 the Office of Native American Programs (ONAP) intensified its commitment to addressing the social pathologies

that afflict the Native youth in this country. Of particular concern are the young Native Americans living on Indian reservations where they are trapped in poverty and where they grow up without positive role models or adequate social supports. ONAP is committed to providing and supporting alternatives that reduce drug and gang involvement and other criminal, violent and negative activities among Native children and youth who struggle to gain a sense of identity and worth.

- Secretary Cisneros sponsored six participants, including two teens, in the **White House Leadership Conference on Youth, Violence and Drug Abuse**, the only Native Americans in attendance.
- ONAP developed the "Children and Youth" piece in **Codetalk**, an Internet homepage developed by ONAP where government information needed by Tribal governments can be found.
- ONAP will utilize its portion of the FY 1996 Drug Elimination Technical Assistance Set-aside for various youth initiatives, including a national initiative to promote Boys & Girls Clubs in Indian housing communities and to train Indian housing residents and staff on how to establish a club. Preliminary discussions with executives of the Boys & Girls Club organization have already begun.
- Among the several youth leadership development retreats it sponsored, HUD sponsored a retreat in Tampa, Florida, hosted by the Seminole Nation, for ten teams of Indian housing youth and their adult sponsors from different parts of the country. The retreats prepare and motivate young people to serve as catalysts for positive change in their own lives and in their communities.

Other Initiatives

In addition, HUD undertook a number of other initiatives designed to increase the effectiveness and efficiency of its programs.

- In anticipation of passage of the legislation developed in conjunction with the HUD Blueprint, consultations have been conducted with Indian Housing Authorities to identify components of a formula for distributing new

housing development funds to tribes/IHAs. Discussions continue pending passage of legislation allowing for formula distribution of appropriations.

- Secretary Cisneros has personally met with Tribal leadership in many meetings in both Washington, DC and around the country. He has travelled to Alaska, South and North Dakota, Montana and New Mexico.
- HUD/ONAP co-sponsored the National Drug Elimination and Crime Prevention Conference at the Menominee Indian Reservation in Keshena, Wisconsin. The conference theme was "Building Positive Partnerships for a Brighter Tomorrow". The goal was to create a more solid relationship among IHAs, tribal governments, the law enforcement community and Native American housing associations.
- ONAP provided special assistance to the Cheyenne River Housing Authority units in partnership with Habitat for Humanity
- ONAP has taken the lead for the past year in the development of "Codetalk". All federal agencies that administer Native American Programs are working together to sponsor this information sharing network. Codetalk can be found on the World Wide Web at:

<http://WWW.codetalk.fed.us>

- Participation in the federal initiative to eliminate the "honey-bucket" from Alaskan housing.
- In FY 1995 the Office of Native American Programs conducted an American Indian Heritage Essay contest open to all Native American youth. The contest was an integral part of "Indian Homeownership - The First Generation" which provided the blueprint for increased consultation with other federal agencies, continued emphasis on program flexibility, self determination, and the celebration of the spirit and uniqueness of the Native American culture. Students submitting essays were asked to reflect their dreams of what they might be able to do in the future to bring about a better living environment for their people through housing

opportunities, community development and homeownership. The contest provided a challenge to young Native Americans to put their dreams in writing, to express the fresh way they look at life, while demonstrating their confidence and optimism in their future.

- Worked with the White House to assist urban Native Americans to find better access to HUD programs.

INTERIOR

Progress of the
DEPARTMENT OF THE INTERIOR
in Advancing the
Government-to-Government Relationship with Indian Tribes
and
Implementing the Trust Responsibility

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

August 16, 1996

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PREFACE

On April 29, 1994, President Clinton met with American Indians and Alaska Natives leaders at the White House and reaffirmed the Federal government's commitments to operate within a government-to-government relationship with federally recognized American Indians and Alaska Natives 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 trust resources.

This Report outlines the numerous actions undertaken by the Department of the Interior over the last year to meet these goals, and updates the One Year Later report of April 28, 1995.

1. Advancing Self-Governance and Self-Determination

The Department of Interior has made the advancement of self-governance and self-determination a priority through support of negotiated rulemaking processes with tribal governments and the transfer of federal funding and decisions from the Bureau of Indian Affairs to tribal governments.

✓ *Final Rule to implement Self-Determination Contract Reform Act*. The final rule to implement the Self-Determination Contract Reform Act signed by President Clinton was published on June 24, 1996. This rule, which will take effect August 23, 1996, was developed jointly by DOI, HHS and tribal representative using the guidance of the Negotiated Rulemaking Act. The Tribal Co-Chairs report on the negotiated rulemaking process stated.

✓ *Self-Determination Contracts*. In 1995, even prior to finalizing the implementing regulations, BIA had about 1500 Self-Determination contracts totaling about \$650 million with virtually every Federally Recognized American Indian and Alaska Native Tribe covering the full range of its activities.

✓ *638 Contract Authority*. The Area Offices have delegated 638 contract authority to their Agencies, in accordance with the DOI/BIA/Tribal Task Force recommendations. This action has transferred all contracting authority to the lowest possible level of the organization, thereby improving efficiency and shortening contract approval time(s). This is viewed as a considerable improvement by tribal customers.

✓ *Negotiated Rulemaking for Self-Governance Act*. For the past year, a joint tribal and federal negotiation team has been developing regulations for implementing the Self-Governance program. This committee includes representatives from tribes with both self-governance compacts and self-determination contracts as well representatives of every Interior agency.

✓ *Self-Governance Agreements with BIA*. For 1996, the number of Self-Governance annual funding agreements increased from 29 to 53. The funding amount is now about \$159 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. They allow the tribes maximum flexibility in establishing and funding tribal programs.

✓ *Self-Governance Agreements With Non-BIA Agencies.* In promoting the Department's efforts to expand self-governance to non-BIA agencies, the Bureau of Reclamation entered into Self-Governance agreements with the Salt River Pima-Maricopa Indian Community and Gila River Indian Community in Arizona for FY 1996. It also entered into "638" contracts and Memoranda of Agreement with Tribes to carry out various technical activities such as environmental studies with the Hualapai Tribe in Arizona, the Ute Mountain Ute Tribe and Southern Ute Tribes in Colorado, and biological resource studies with the Hoopa Tribe in California.

✓ *Increased Contracting and Compacting with Alaska Native Organizations.* The Department has been utilizing the Indian Self-Determination Act (P.L. 93-638), ANILCA Section 809, and other legislation to increase contracting with Native organizations through 13 Bureau of Indian Affairs (BIA) Self-Governance Agreements and other means. Over the past three years, more than \$125 million has been awarded in contracts or grants for a wide variety of items, including road construction and maintenance, Bureau of Land Management (BLM) cadastral surveys, data collection for wildlife and subsistence management by FWS and the Federal Subsistence Board, Indian business development, management and technical assistance, and delivery of BIA services such as welfare assistance, employment assistance, educational scholarship funds, and other programs.

✓ *Tribal Shares.* Established in April 1995, the Tribal Shares Workgroup (Workgroup) was tasked with implementing the Tribal Shares process for downsizing the Bureau of Indian Affairs (BIA) in accordance with P.L. 93-638 as amended, P.L. 103-413, and P.L. 104-430. The Workgroup identified estimated costs and required staff needed to perform the inherently federal functions of the BIA, as well as what functions were available for tribal shares. The package developed by the Workgroup reflects the entire BIA budget on a program-by-program basis. For the first time tribes, in partnership with the BIA, may identify their share of each BIA program, and decide whether they want a 638 contract, self-governance compact, or to leave their program share with the BIA. *This is the first time the BIA budget has been so precisely analyzed and illustrated.* Each Area has held or will hold formal tribal consultation meetings in 1996 with their respective tribes to review the package and conduct negotiations.

✓ *Sacramento Area Tribal Government Pilot Project.* Sacramento Area is currently operating a pilot project whereby all delegations of authority for tribal government have been delegated down to the Area by the Deputy Commissioner of Indian Affairs. In the second year of operation, the area has been able to provide more timely service to California tribes. In nearly all instances, the delegated authority has reduced processing and approval times by months and in some cases, by years.

✓ *P.L. 103-176, "Indian Tribal Justice Act"*. Following the passage of the Act, Judicial Services drafted regulations at 26 CFR Part 92, promulgating a proposed base support funding formula for tribal justice systems. A national tribal consultation on the proposed formula was held in June 1995. The regulation is currently undergoing internal clearance prior to publication in the Federal Register.

2. Implementing and Institutionalizing the Trust Responsibility

A Key goal of the Department has been to enhance the federal trust responsibility to American Indians and Alaska Natives through clear Secretarial policy directives.

✓ *Indian Trust Resource Protection Policies and Procedures*. After President Clinton's meeting with American Indian tribal leaders on April 29, 1994, the Secretary accelerated the Department's efforts to ensure that Indian trust resources are conserved and protected for current and future generations. On December 1, 1995, as part of this effort, Departmental Manual Chapter 512, Part 2 superseded the Secretarial Order making Interior's Indian Trust Protection Policy a permanent mandate. This action ensures that each Departmental bureau and office and its employees understand their trust obligations and conducts all activities according to the highest fiduciary standard.

Pursuant to the policy objectives outlined in the Departmental Manual Chapter, each bureau and office has adopted procedures to ensure that all potential impacts of Departmental activities on Indian trust resources are identified and explicitly addressed in planning, decision, and operational documents. Accordingly, bureaus and offices are engaging in meaningful consultation with tribal governments when impacts on trust resources, tribal rights, and tribal health and safety are identified. The new policies and procedures are removing obstacles to effective relationships with tribes and are enhancing the Department's capacity to serve as an effective and responsive trustee. As a result:

- Protection of Indian Trust Resources. In March 1996, a volume, entitled *Protection of Indian Trust Resources*, was released outlining how each Departmental bureau and office will integrate trust protection practices and policies into their daily operational activities. Features of these policies and procedures include evaluation of anticipated effects from proposed projects or actions on trust resources in the National Environmental Protection Policy Act process, consultation procedures and coordination of trust protection issues by the Office of American

Indian Trust. Copies have been mailed to all federally recognized tribes and all Interior bureaus and offices.

- Established Native American Liaison Desks or Offices. Appendix A is a list of each bureau's contact person.

These guidelines are now being implemented by the agencies. For example, based upon the National Park Service (NPS) policy guidance, now incorporated into *Protection of Indian Trust Resources* printed by the Office of American Indian Trust, several National Park units are developing memoranda of agreement to establish protocols for carrying out activities on a government-to-government basis.

Finally, to facilitate future implementation of these guidelines and procedures, OAIT is currently working on extending the Department Manual to spell out consultation criteria for Departmental bureaus and offices when working with Indian Tribes.

✓ *Raising Awareness of the Federal Trust Responsibility.* OAIT has also taken several steps to publicize the Federal government's trust responsibility to tribes to agencies within and outside Interior. These include providing training, and production of videos, various publication and other informational material:

- Training. Presentations have been made to the White House, Department of Justice, Department of Agriculture, Department of State, Department of Commerce, the United States Congress, the Intertribal Timber Council, the National Congress of American Indians, the National Association of Counties, and many other tribes, tribal organizations, and federal, state, and local government offices.
- Publications. Publications include a brochure on American Indians and Alaska Natives which answers frequently asked question on the legal status of American Indian and Alaska Native Tribes, the inherent powers of tribal governments, the relationship between the United States and tribes, the federal Indian trust responsibility, tribal self-determination and self-governance and treaty rights; a fact card on the Department of the Interior Policies for the protection, management and conservation of Indian trust resources; and a volume that contains Departmental bureaus and offices procedures for the protection of Indian trust resources.

- Production of Training Videos. The OAIT is in final production of a Federal/Tribal Government-to-Government Relationship video for distribution to tribes, Federal and private organizations. This will complement an earlier video produced on the Federal Indian Trust Responsibility which received the Bronze Telly Award in the Governmental Relations category. The Telly Award is a national competition recognizing outstanding film and video productions in more than 150 categories.
- Internet Homepage. The OAIT will be updating the existing Internet Homepage for the Assistant Secretary for Indian Affairs and adding a link regarding trust responsibilities and government-government relationship.

3. Advancing Tribal Sovereignty and the Intergovernmental Relationship

The Department continues to seek ways to improve support for tribes seeking federal recognition, supporting new tribes once they are recognized and supporting the exercise of their jurisdiction authority when it is unclear.

✓ *Implementing the Government-to-Government Relationship.* All Interior bureaus have begun to implement their plans to work with federally recognized tribes on a government-to-government basis. Several (including Fish and Wildlife Service, Reclamation, MMS and NPS) have also developed interim guidance for negotiations under the Tribal Self-Governance Act. To facilitate implementation, bureaus have instituted training and guidance for their personnel to raise awareness, in general, and statutory requirements, in particular. For example, in Alaska, most national wildlife refuge managers and key Regional Office staff of the Fish and Wildlife Service completed training in 1995 in their responsibilities under Title IV of the Indian Self-Determination and Education Assistance Act, as amended.

✓ *Primacy Under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).* SMCRA, which regulates coal mining and the surface effects of underground mining, while allowing states to assume regulatory responsibility (primacy) on non-Federal and non-Indian lands, does not provide tribes similar authority on their lands. Instead, that is currently given to the Secretary of the Interior. The Energy Policy Act of 1992 amended SMCRA to allow the Secretary to make grants to the Crow, Hopi, Navajo, and Northern Cheyenne Tribes to assist them in developing regulations and programs for regulating

surface coal mining and reclamation operations on Indian lands. OSM supports development of legislation that would allow the Tribes to assume primacy and issued grants totaling \$480,000 in FY 1996, to assist these Tribes establish their own surface coal mining regulatory units. Based on a series of ongoing discussions between OSM and Tribal representatives, the Navajo and Hopi have agreed to meet and work with the Crow, the Northern Cheyenne and OSM to begin development of enabling Tribal primacy legislation agreeable to all Tribal authorities and OSM. In addition:

- OSM is assisting the Tribes through training to develop their capabilities to assume additional regulatory responsibilities, and
- OSM transferred more than \$415,000 worth of surplus computer and office equipment to western Indian Tribes to help the Tribes move toward Self-Governance and primacy.

✓ *Acknowledgment.* In March 1994, revised regulations regarding the federal acknowledgment process became effective. These regulations streamlined the process, provided expedited review for petitioners with treaties, clarified the definitions and evidence required, and provided an opportunity for independent review and a public hearing. Since then, findings have increased from two in 1993 and two in 1994, to six in 1995. In 1996, the BIA Branch of Acknowledgment and Research expects to complete six new findings by July.

✓ *New Tribes.* Assistant Secretary Deer has acknowledged or clarified the status of more Indian tribes than any other Assistant Secretary since 1978. To date these tribes are: Ione Band of Miwok (CA), Mohegan Indian Tribe (CT), Jena Band of Choctaw (LA), Huron Band of Pottawatomi (MI), and the Samish Indian Tribe (WA).

4. Protecting Culture and Religious Freedom

✓ *Executive Order on Indian Sacred Sites.* 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 directs the federal land management agencies to avoid adversely affecting the physical integrity of such sites. Finally, the President directs agencies to provide Notices of Activities that may restrict access to sacred sites.

✓ *National Eagle Repository.* Substantial progress is being made in resolving any conflict between the use of eagle feathers in sacred Indian ceremonies with the need to protect bald and golden eagles from being threatened or endangered:

- The new National Eagle Repository in Denver, Colorado, is complete and fully operational. The facility was officially dedicated on May 22, 1996, at the Rocky Mountain Arsenal National Wildlife Refuge.
- In 1995, the Fish and Wildlife Service developed a user-friendly, self-explanatory eagle feather and permit application packet.

These actions enable the implementation of Federal laws protecting bald and golden eagles while providing for the use of eagle feathers for religious purposes by Native Americans of federally recognized tribes. They will make feathers and deceased birds collected by the FWS available to Native Americans through the National Eagle Repository.

✓ *Cheyenne River Buffalo Refuge.* The Cheyenne River Agency has received a donation of common stock on behalf of the Cheyenne River Sioux Tribe to purchase lands to establish a buffalo refuge. The purchase has been completed and land is being set aside for the refuge.

✓ *Preservation Fund Grants to Native Americans.* In accordance with section 101(e)(3)(B) of the National Historic Preservation Act, the National Park Service annually awards grants to support a broad range of projects to protect the historic places and cultural traditions of the native people of the United States. In 1995, the NPS received 138 proposals from 122 tribes requesting just over \$6.1 million, and awarded about \$2 million in grants to 49 separate Indian tribes, Alaska Native Groups and Native Hawaiian Organizations. For example, the NPS awarded over \$290,000 to Alaska Native groups for projects of their own design which included a museum development project at Akutan; the design and carving of a Tlingit Totem pole; a place name project in Kuigpagmiut; a cultural needs assessment in Seldovia; and a traditional arts project in Stevens Village.

✓ *Native American Graves Protection and Repatriation Act Implementation.* NAGPRA addresses the rights of lineal descendants, Indian tribes, Alaska Native villages and corporations, and Native Hawaiian Organizations to certain Native American human remains and cultural items with which they are

affiliated. Section 10 of the statute authorizes the Secretary of the Interior to make grants intended to assist these Native American entities in identifying and repatriating affiliated human remains and cultural items, including funerary objects, sacred objects of cultural patrimony. Under NAGPRA, NPS:

- Awarded \$2,233,200 in grants to 22 Indian tribes and 20 museums to carry out the provisions of the Act.
- Completed inventories of human remains and associated funerary objects before the statutory deadline of November 16, 1995. Inventories will be distributed to all culturally affiliated tribes by May 16, 1995. Overall, the inventory process identified 4,982 human remains from 100 different parks. So far the cultural affiliation of 77% of the human remains has been determined.
- Assisted the Village of Hoonah with the repatriation of human remains taken earlier from the park. Such assistance included helping village representatives travel to the holding museum and with the logistics of reburial at the original burial site.
- In October of 1995, hosted the national NAGPRA Advisory Committee meetings in Anchorage. These 3-day meetings, in coordination with the Alaska Federation of Natives (AFN), provided Alaskan Native groups opportunities to showcase their progress in the repatriation of human remains and associated items of cultural importance.

✓ *11,700 Year Old Mesa Prehistoric Site.* The Bureau of Land Management continued its field research at the Mesa prehistoric archeological site, the first well-documented Paleo Indian site discovered in Alaska. Radio-carbon dating suggests its age to be up to 11,700 years old, making it one of the oldest sites in the North America. Both the dating and artifact styles link the Mesa Site occupants with Ice Age hunters far to the south, adding new information to theories of early Native American migrations. Work done during summer of 1995 included further sampling the site, as well as researching more about the late Pleistocene (Ice Age) ecosystem that existed at the time when the first people lived there. Tribal elders and members of the North Slope Borough History, Language and Cultural Commission have twice visited this remote site to receive extensive presentations by researchers. Museum displays of the Mesa Site have been donated by BLM to the North Slope Borough Museum and Cultural Heritage Centers located in Barrow and Anaktuvuk.

✓ *Implemented Long Term Promotion of Alaska Native Culture, Arts and Crafts.* Working with Alaska Native representatives, the Department has modified policies and practices to better promote Alaska Native Arts and Crafts. Actions include sponsoring several Native arts and craft fairs and demonstrations, and improving heritage preservation through cooperative planning, and designation and rehabilitation of National Historic Sites, and protection of prehistoric archeological sites; implementation of the Native American Graves Protection and Repatriation Act (NAGPRA), museum development and curation, and recordation of ethnohistory.

✓ *Partnering in Preservation Planning.* NPS provided assistance to several Alaska Native groups to foster a distinctly tribal approach to planning and historic preservation issues which will serve as national models. The Sitka Tribe of Alaska Historic Preservation Plan and the Unalaska Preservation Plan embrace language, traditional practices, and the special places which creates a cultural identity in addition to the traditional developmental concerns of preservation planning efforts. NPS is working with the St. George Island Village Corporation and tribal council to rehabilitate the last fur sealing plant of its kind in the world. The unfolding preservation alternatives seek to balance the needs of the local community with tourism development. At the request of Ounalashka Native Corporation, NPS is also providing technical assistance to the Corporation to establish a park service presence on Native land to preserve and protect Aleut culture and resources.

✓ *Site Preservation Projects.* NPS provided technical assistance and over \$180,000 in direct support to Alaska Native groups for site specific projects. The projects brought together the diverse cultural needs of the Alaska Native community and the broad range of expertise available within the Service. Each project was a cooperative effort with substantial involvement of both the Native community and NPS staff. The projects improved employment opportunities for Alaska Native people and encouraged better overall communication on issues of mutual concern. At the request of Native groups the NPS provided technical assistance in several professional fields, including law enforcement to investigate and prosecute looting and grave robbing on corporation lands; historic architecture to rehabilitate a historic church; and an interdisciplinary team to document and make preservation recommendations for Native vernacular architectural structures. NPS also gave direct funding support to complete several ethnographic studies.

5. BIA Budget and Administration

✓ *FY 1996.* The FY 1996 President's Budget for the BIA was the largest requested, at \$1.9 billion. However, the final 1996 appropriations act for the Bureau was \$317 million below the request and \$137 million below the 1995 level. The reductions fell most heavily on tribal priority allocation (TPA) programs, which support tribal government, law enforcement, housing improvement, general assistance, Indian child welfare, adult vocational training, road maintenance, and other reservation programs. The final 1996 funding level reduced these programs by \$85 million, or 11% below 1995.

Funding for BIA schools was held at approximately the 1995 level, \$31.2 million below the amount requested in the budget to cover statutory teacher increases and an anticipated five percent increase in student enrollment in School Year 1996-97.

Other reductions eliminated or reduced economic development programs, child protection and tribal justice grants, reservation infrastructure projects, and BIA management improvements, including those related to fulfillment of trust responsibilities. Funding for Central Office was reduced by about one third below the request. Area Offices were also substantially reduced.

As a result of the final 1996 funding levels, BIA implemented a reduction in force which resulted in the elimination of 1,700 positions.

✓ *FY 1997.* The FY 1997 President's budget for BIA provides \$205 million over the 1996 enacted level in order to restore funding to the local reservation programs Tribes hold as their highest priority. The greatest share of the increase (+\$158 million) is directed at the Tribal Priority Allocation activity, providing funds needed for basic tribal government operations and services. An increase of \$43 million is requested for school operations to maintain academic standards for an increased student enrollment. Increases are also proposed for critical infrastructure needs and the delivery of basic trust programs.

✓ *Reduction in Administrative Costs.* BIA has significantly reduced administrative costs. In FY 1996, 90 percent of the BIA operating budget goes directly to the Tribes at the local level.

6. Improving Trust Funds and Assets Management

6.1 TRUST FUND AND ASSET MANAGEMENT

Over the past several years, progress has been made in correcting problems in Indian trust fund and trust asset management, most recently in accordance with the Secretary's Six Point Plan. All of these improvements help contribute to ensuring the Secretary 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.

✓ *Increased Staffing.* Adequate staffing of trust funds functions has been secured; the number of personnel in the Office of Trust Funds Management (OTFM) in Albuquerque, New Mexico grew from 22 FTE in 1990 to over 100 FTE in 1996.

✓ *Improved Accounting.* In 1995, OTFM also successfully converted to a core trust accounting and investment system, published standardized procedures for the management of Individual Indian Money (IIM) accounting operations nationwide, and has been reconciling all cash activity for both tribal and IIM accounts.

✓ *Special Trustee.* Last fall, the President appointed Paul Homan as the Special Trustee for American Indians 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.

✓ *Safekeeping of Securities.* In 1996, OTFM will contract for centralized custodial services for safekeeping of securities and engage an independent accounting firm to perform a limited scope audit for Fiscal Year 1995 which should allow for a complete audit of Fiscal Year 1996 activities and balances.

✓ *IIM Trust Funds Management.* In 1996, OTFM will also begin to address the numerous problems associated with IIM trust funds management. The Special Trustee has been provided with a thorough analysis of current IIM processes within the BIA and the steps that can be taken to remedy these problems.

✓ *Reconciliation of Tribal Trust Accounts.* A four year effort to reconcile tribal trust accounts over the twenty-year period from 1972 to 1992 was completed by Arthur Anderson LLP using procedures in a contract with the Bureau of Indian Affairs. Commencing in January 1996, 280 tribal account holders

were provided a report on the reconciliation of its accounts along with account statements that show account balances, reconciled transactions, and proposed adjustments. Each account holder was also provided account statements for the three year period from 1992 to 1995, which were reconciled internally by the Office of Trust Funds Management.

Subsequent to the distribution of the reconciliation report and account statements, a national meeting was held in Albuquerque, New Mexico, to explain the reconciliation methodology and report and account statement format, content and terminology. A series of five (5) regional meetings are scheduled from March to July to work directly with each account holder to address questions and issues on its specific report and account statements.

✓ *Future Improvements.* The 1997 Budget Request for the Office of the Special Trustee for American Indians is \$36.3 million, a \$20 million increase over 1996 enacted level (+122%). Roughly half of the requested funding will go towards on-going operations; the other half will be directed towards continued efforts to bring trust resource management, accounting, investment, and related systems up to industry standards.

✓ *Strategic Plan.* The Special Trustee has completed his initial assessment of the Department's Indian trust management functions and a conceptual strategic plan, and will complete a comprehensive strategic plan in FY 1997 to guide improvement efforts over the next three years. If requested funding is secured, the Special Trustee's comprehensive strategic plan is expected to be completed in March 1997. The first increment of funding will be primarily used to address the inadequacies and inefficiencies in current IIM trust related systems. Activities will include conversion preparation, systems design, improved record keeping, development activities, and improvements in operating procedures and legal guidance.

6.2 ENERGY AND MINERAL RESOURCES

✓ *Indian Royalty Assistance.* The Minerals Management Service has made special efforts to provide services to individual Indian mineral owners. MMS currently operates Indian Royalty Assistance Offices in three western locations. These offices provide direct and immediate assistance to Indian mineral owners with respect to royalty payments and other important issues associated with minerals

revenues. MMS also continues a "Circuit Rider" program, which is a cooperative Indian mineral outreach program to meet and consult on a recurring regular schedule with Indian minerals owners.

✓ *Indian Gas Valuation Study Negotiated Rulemaking.* A Committee, led by MMS and which includes members from BIA, Indian Tribes, Indian allottee groups, and the oil and gas industry, has been working on a proposed Indian gas valuation rule. When finalized, rules will be in place for the first time that apply solely to Indian leases. The regulation will also help maximize royalty revenues for tribes and allottees consistent with the Secretary's discretion to establish value.

✓ *Cooperative Audit Agreements.* MMS continues to fund annual cooperative audit agreements with Indian mineral owning Tribes to empower them to audit their own mineral leases and revenues. The tribes are able to focus audit efforts in areas they specifically identify and add to the audit coverage of their leases to increase revenues to the tribe.

✓ *Definition of Indian Lands Under SMCRA.* OSM is initiating a rulemaking which would amend the definition of "Indian lands" for purposes of surface coal mining regulatory jurisdiction under SMCRA. The rulemaking is required pursuant to an April 1995 settlement agreement between the Department of the Interior and the Navajo Nation and Hopi Tribe. The agreement, which settled tribal challenges to a 1989 Indian lands rulemaking, also requires the Bureau of Indian Affairs to propose changes to its regulations governing Indian coal leases. Under the Agreement, the Department recognizes tribal sovereignty over Indian minerals, clearing the way for the tribes to assert regulatory jurisdiction where doing so would not conflict with Federal regulations. Under an expanded definition of "Indian lands," tribes would be able to assert jurisdictions over additional areas; however, per the normal rulemaking process, any definition proposed is subject to change after notice and comment.

✓ *Management of Coal Mining on Indian Lands.* OSM, BLM and BIA are finalizing a western Memorandum of Understanding (MOU) for the management of coal mining on Indian lands. The MOU provides for the day-to-day procedures for cooperation and coordination among the agencies. Tribal governments will be included in a review of the procedures. The MOU will be signed by the agencies' field offices that have responsibilities on Indian lands. This MOU spells out detailed procedures to help ensure that the Department meets its trust obligations on Indian lands.

✓ *Indian Minerals Steering Committee.* The BIA, BLM, and MMS created the Indian Minerals Steering Committee to enhance inter-bureau coordination of American Indian mineral policy, activities, and

protection of Indian lessor trust assets. The IMSC has instituted tri-bureau cooperative efforts in allottee outreach and education and computer systems database planning. It also sponsored a National Performance Review Laboratory to consider consolidation of Indian mineral functions in a single office. The committee has recently added a fourth bureau, the Office of the Special Trustee, in recognition of that office's newly assumed responsibilities for Indian trust funds management.

✓ *Revised Oil and Gas Leasing Regulations.* The first major revisions in 57 years to critical energy and mineral regulations were published on July 8, 1996. These revisions to the tribal mineral leasing and allotted mineral leasing regulations, 25 CFR 211 and 212, respectively, became effective on August 7, 1996.

✓ *National Indian Minerals Conference.* The 1995 National Indian Minerals Conference presented the results of energy and mineral resources surveys conducted by the U.S. Geological Survey and sponsored by the BIA on behalf of tribal governments. This conference made industry sources aware of new energy and mineral information and provided a forum for tribal officials to discuss resource development opportunities directly with development company officials. A mineral resource evaluation for the Red Lake Band of the Chippewa Indians was displayed in a U.S. House of Representatives building in Washington, D.C. to increase awareness of the history and resources of the Red Lake Band.

7. Protecting Trust Resources and Tribal Rights

7.1 WATER RIGHTS

Water rights have historically been a contentious issue for tribal governments, and tribal interests have sometimes conflicted with States and other entities. The Department has successfully negotiated water settlements for several tribes. Some examples follow. Additionally, the BIA and the Bureau of Reclamation continue to provide staff and financial support for Departmental Indian water rights program.

✓ *Fort Hall Indian Reservation (Idaho).* As the result of efforts by the Department's Implementation Team, all negotiations have been completed with the State of Idaho and the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation to finalize the Fort Hall Indian Water Rights Settlement of 1990. This settlement is the only Indian water rights settlement in the Snake River Adjudication in Idaho.

✓ *Warm Springs Reservation (Oregon)*. The Department is also close to completion of the negotiation of water rights for the Warm Springs Reservation. This would be the first water rights settlement of Indian water rights in the State of Oregon.

✓ *Klamath Tribe (Oregon)*. Final preparations are being completed for the litigation of the water rights of the Klamath Tribe in the Klamath River Basin in Southern Oregon. The final filings for water rights are tentatively scheduled to open in August 1996 and close in December 1996. The Department has prepared comprehensive Indian water rights claims involving Klamath Lake and the streams that drain into it. These claims are designed to protect three species of endangered fish which are a traditional food of the Tribe and to provide water for other tribal purposes.

✓ *Northern Cheyenne (Montana)*. Water rights have been settled between the Northern Cheyenne Tribe and the State of Montana through an act of Congress. NEPA work associated with the development of additional storage in the Tongue River Reservoir necessary to partially satisfy the water rights claim of the Tribe has been finalized. Negotiations are being conducted with the Chippewa-Cree Rocky Boys Tribe, Fort Belknap, Crow, Blackfeet and Flathead Tribes.

✓ *Yavapai-Prescott Tribe (Arizona)*. The Department has essentially completed implementation of the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994. Implementation activities have included: securing the State of Arizona contribution (\$200,000) to the settlement; the Settlement Agreement's execution by all the parties; a state court approval of a judgement approving the stipulation of the settling parties in the Gila River general stream adjudication; and execution of contracts for the assignment of the Tribe's CAP contract and the City of Prescott's CAP subcontract together with the deposit of proceeds therefrom into the Verde River Basin Water Fund for the use of the settling parties.

✓ *Pyramid Lake Paiute Reservation (Nevada)*. Pyramid Lake, the principal water resource of the Pyramid Lake Paiute Tribe, is at the terminus of the Truckee River which flows from Lake Tahoe and is about the same size. Early this century, an irrigation project, the Newlands Project, was built to divert significant quantities of water from the Truckee River. This resulted, among other things, in a lowering of Pyramid Lake's level by about 70 feet, the extinction of the strain of giant Lahontan cutthroat trout, and the near extinction of the cui-ui, both fish only found in Pyramid Lake. Court-ordered remedies and Interior actions in the 1970s and 1980s reduced the water diversions and some progress was made in stabilizing and improving the lake environment. The Department is currently negotiating with Reno area governments and the Tribe to improve the quantity and quality of water flowing to the Reservation,

participating in efforts to restore the spawning habitat of the endangered cui-ui in the lower Truckee River, and developing plans to improve fish passage up the lower part of the river to aid spawning. Negotiations are also proceeding with the States of California and Nevada, the Tribe, and others on a Truckee River Operating Agreement which would improve spawning flows in the river while providing other environmental and drought protection benefits to the region.

✓ *Water Resource and Surveying Technician Training Programs.* The Bureau of Indian Affairs, in association with the Bureau of Reclamation and the Geological Survey, created this program to introduce talented Indian youth to the professional field of water resource evaluation, development, and management. After completing the program, individuals can help their Tribe knowledgeably use, conserve, or preserve their water and land resources. About 50 students were trained in 1995. American Indians also participated in USGS internal water-related training courses.

✓ *Hydrologic Studies.* USGS completed hydrologic studies, conducted at the request of tribes, for the Ft. Peck, Osage, Sac and Fox, Blackfeet, Ft. Belknap, and Navajo Reservations. Additionally, mineral and/or energy resource studies, conducted at the request of the tribes, were completed on the Goshute, Standing Rock Sioux, and Red Lake Reservations and the Pueblo of Nambe. Similar studies are in progress on the Duck Valley, Hoopa Valley, and Walker River lands. Such information is critical for evaluating and planning actions to conserve and use such resources and form part of the basis for decisions regarding land management and economic development which are critical to the Tribes' well-being.

7.2 HUNTING, FISHING AND SUBSISTENCE RIGHTS

✓ *Successfully Litigated Expansion of the Subsistence Fishing Priority.* Expanded protection for subsistence fisheries in Alaska is a goal long sought by Alaska Native groups. The Department 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.

✓ *Subsistence Regional Advisory Councils.* Since their establishment by Secretary Babbitt in 1993, the ten subsistence regional advisory councils, with excellent representation from Alaska Native communities, have substantially improved subsistence management and the quality of dialogue between subsistence users and the Federal Subsistence Board and helped establish annual revisions to subsistence harvest regulations. In the past two years, the councils have been instrumental in revising procedures for customary and traditional use determinations and in developing new regulations concerning harvests for ceremonial purposes.

✓ *Increased Involvement of Alaska Natives in Natural Resource Management.* The Department successfully has made a concerted effort to increase Alaska Native participation in a broad spectrum of resource management activities. This includes an expansion, to assure full consideration of Native concerns and insights, of coordination and participation in public use management plans, and wildlife management plans and strategies for species such as moose, caribou, brown and polar bear, mountain sheep, and a variety of waterfowl and marine mammals. Onshore and offshore environmental and socioeconomic studies by the Minerals Management Service (MMS) and other bureaus have also received emphasis in this effort. Examples include:

- Nushagak Peninsula Caribou Herd. This is an outstanding example of cooperation between the U. S. Fish and Wildlife Service, the State of Alaska, and residents of six northern Bristol Bay villages. In 1994, a cooperative management plan was developed with the Traditional Councils of Clark's Point/Ekuk, Aleknagik, Dillingham, Manokotak, Togiak, and Twin Hills to manage the 146 caribou reintroduced to the Nushagak Peninsula in 1988. The herd now numbers over 1,500. The 1994-95 winter marked the first time in over 100 years area residents had an opportunity to harvest caribou on the Nushagak Peninsula. Through continued cooperative management it is expected opportunities to harvest caribou will increase. In 1995, up to 300 animals were allowed to be harvested; however, lack of snow reduced this to 50 in the winter of 1995-96.
- Fortymile Caribou Herd. The Fortymile Caribou Management Plan is another excellent example of cooperative management involving the Bureau of Land Management, US Fish and

Wildlife Service, National Park Service, Canada's Yukon Department of Renewable Resources, Alaska's Department of Fish and Game and local users of caribou. The Fortymile Caribou Herd is one of the most important herds in Alaska and the Yukon for subsistence and recreation uses. However, since 1973 the herd rarely migrated into Yukon. Since the 1980s, competition for the Fortymile caribou has continued to increase. The five year cooperative management plan, completed in 1995, guides recovery of the herd and the ecosystem that depends upon it. Planning team participants want people to be able to, once again, witness the migration of thousands of caribou crossing the Taylor, Steese, and Top of the World Highways.

✓ *Alaska Native Involvement in Migratory Bird Management.* The Fish and Wildlife Service supported Alaska Native involvement in numerous projects designed to provide for a more meaningful role in management of migratory bird resources used for subsistence, including:

- signing of a protocol amendment to the U.S. Canada migratory bird treaty (not yet ratified by the U.S. Senate) that would allow for legal harvest of migratory birds during the closed season.
- exchanging information and consulting on management recommendations with the Association of Village Council Presidents' Waterfowl Conservation Committee and with individual villages on the Yukon-Kuskokwim Delta regarding the recovery of waterfowl populations harvested for subsistence.
- cooperative agreements with the Bristol Bay Native Association and Kawerak (the Bering Straits non-profit Native association) and contracts with individual Yupik Eskimos in the Yukon-Kuskokwim Delta and Togiak areas to collect migratory bird subsistence harvest information.
- hiring and contracting with local Native residents to conduct biological field studies of migratory birds in western Alaska
- training of Fish and Wildlife Service Native employees and contractors regarding laws, environmental education and sharing of traditional knowledge related to migratory birds used for subsistence.

7.3 LAND

✓ *Kodiak Refuge.* Over the past year, thirteen transactions have been approved whereby native allottees are selling allotment parcels in priority areas within the Kodiak Refuge to the Fish and Wildlife Service. Four more signed agreements are pending completion. The allottees received fair market value for their property. Since the land will be public land, the allottees will continue their subsistence lifestyle within the Refuge. This has demonstrated a high degree of interagency cooperation; the BIA was able to fulfill its trust responsibility to the allottees while the FWS met its obligation to protect fish and wildlife resources and consolidate Refuge inholdings.

✓ *Metlakatla Indian Reservation.* On September 26, 1995, Secretary Babbitt withdrew Departmental administrative decisions which would have excluded Warburton Island from the Metlakatlan Indian Community's reservation and resolved a dispute over its ownership. As a result of the Secretary's action, the Bureau of Land Management has included the island in its official survey of the Annette Islands reservation. The Metlakatla Indian Community is now secure in its possession of Warburton Island, which has a salmon run on its eastern shore. It is an important source of income for both individuals and the tribe.

✓ *Taking Land into Trust for Indians.* In response to a recent court decision, *State of South Dakota v. U.S. Department of the Interior*, 69 F.3d 878 (8th Cir. 1995), the Department of the Interior is establishing a procedure to ensure the opportunity for judicial review of administrative decisions to acquire title to lands in trust for Indian tribes and individual Indians under section 5 of the Indian Reorganization Act (IRA) (P. L. 73-383, 48 Stat. 984-988, 25 U.S.C. 465). This rule establishes a 30-day waiting period after final administrative decisions to acquire land into trust under the Indian Reorganization Act. The Department is establishing this waiting period so that parties seeking review of final decisions by the Interior Board of Indian Appeals or of decisions of the Assistant Secretary-Indian Affairs, will have notice of administrative decisions to take land into trust before title is actually transferred. Providing judicial review will assist the Justice Department to persuade the U.S. Supreme Court to uphold the Department's authority to take land into trust for Indians.

✓ *Facilitating Land Exchanges and Acquisitions.* Land exchanges and land acquisitions between Native organizations and the Department have taken place recently on Kodiak Refuge Island and six other national wildlife refuges in Alaska which directly benefit the Natives as well as help the Department meet resource management needs. For example, the widely-supported land acquisitions on

Kodiak Island benefitting three Native corporations involved: 51,233 acres in fee and 3,000 acres in conservation easements from AKI; 28,599 acres in fee and 3,000 acres in conservation easements from Old Harbor; and 59,689 acres in fee and 46,627 acres in a seven-year conservation easement from Koniag. Elsewhere, seven under-selected villages have been assisted to select over 50,000 acres in refuges to assure their entitlements can be met. The Kodiak transactions involved a special negotiator hired by the Department.

✓ *Accelerated Conveyance of Native Allotments.* Through priority setting of land conveyance workload and contract of land surveys with Native Corporations, a priority has been placed on completing conveyance of individual Native allotments as soon as it is fiscally possible. BLM Alaska initiated a national performance review laboratory to redesign the Alaska land transfer process. Its charter was signed May 9, 1996.

✓ *Realty Transactions in Alaska.* Over 600 BIA realty transactions such as leases, sales, gift deeds, easements, and mortgages were processed to approval during the past three years in Alaska. In some cases, this resulted in monetary benefits for the individual Native landowners. In others, water and sewer projects were completed which benefitted the Native community as a whole.

8. Protecting the Environment and Natural Resources

✓ *Institutionalizing Trust Responsibility in the NEPA Process.* Recognizing the importance and relationship of environmental justice and the fulfillment of the Federal government's responsibilities for Indian trust resources, in May, 1995, Interior issued formal guidance requiring that its agencies implement the Executive Order on Environmental Justice and the Secretarial Order on Indian Trust Resources in the formulation of their pre-decision documents produced pursuant to the National Environmental Policy Act (NEPA). The guidance, in the form of two Environmental Compliance Memoranda, require bureaus and offices to include in their NEPA-related documents, analysis of the effects of each option on minority and low-income populations and communities, and on the equity and distribution of the benefits and risks. The Memoranda provide specific guidance on compliance with Interior's environmental justice policy. They also require bureaus and offices to identify and evaluate any anticipated effects on Indian trust resources (which include water, fish, wildlife and other natural resources to which tribes are entitled) and to consult on a government-to-government basis with the affected tribe(s). Accordingly, all bureaus and offices are also working on updating their procedures for

implementing NEPA. The following examples illustrate how Interior agencies have incorporated and furthered consideration of environmental justice and trust responsibilities in the NEPA process:

- Minerals Management Service (MMS) Outer Continental Shelf (OCS) Oil and Gas Program in Alaska. The MMS consulted extensively with the affected Alaska Native communities in the development of the Environmental Impact Statement (EIS) for OCS Lease Sale 149 for Cook Inlet, Alaska. Additional areas of biological and cultural sensitivity were identified for appropriate protection, and the EIS analyses were expanded to include additional discussion and analysis of the social, psychological, and cultural effects of Sale 149 and anticipated post-sale activities on Native individuals and communities adjacent to the lease sale area. Specifically, (a) a new option was added with fewer tracts to lease, in order to reduce the risk of spilled oil affecting subsistence harvest areas used by Native communities; and (b) a lease stipulation would be added to ensure that oil and gas activities are coordinated with commercial fishing to minimize space-use conflicts. would be added to ensure that oil and gas activities are coordinated with subsistence fishing to minimize space-use conflicts.
- Grand Canyon National Park. In developing the Grand Canyon General Management Plan/Environmental Impact Statement, the National Park Service (NPS) consulted with Indian Tribes that have cultural ties to the area (i.e., the Havasupai, Hualapia, Hopi, Navajo, Kaibab, Shivarts, and San Juan Paiute). In the past, the Tribes have criticized the NPS for its lack of consultation with the Tribes in managing the park. These Tribes now have free access to the park to pursue traditional and spiritual activities.
- Elwha River Ecosystem Restoration, Olympic National Park, Washington. The NPS 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. As part of this effort, the NPS has undertaken the preparation of two EISs. The first final EIS, published in June 1995, is programmatic in nature, examined a range of reasonable alternatives for restoration of the Elwha River ecosystem. The NPS is currently awaiting publication of the second draft

EIS which will examine specific methods to remove the dams and manage the accumulated sediment. In these efforts, the NPS has worked closely with the Lower Elwha S'Klallam Tribe in the development of both EIS's. The restoration effort will also create jobs for tribal members and, once completed, improve their recreational use of the park.

✓ *Hopi Land Information Project.* OSM is assisting the Hopi Tribe develop "The Hopi Land Information Project" to create a Tribal land information system. The system is designed to develop sustained technical, managerial and scientific expertise for the Tribe. Funding for this project was received in September, 1995, and procurement is currently underway.

✓ *Idaho BLM Partnership with Shoshone-Paiute Tribes.* Idaho BLM and the Shoshone-Paiute Tribes of the Duck Valley Reservation are presently drafting an agreement to provide an initial framework for cooperative activities on the public lands in Owyhee canyonlands to which the Tribes have demonstrated geographic, cultural, historical or other ties. In association with this effort, BLM is assisting the Tribes set up a better communication system including the installation of mobile radios in some Tribal vehicles. This will help Tribal authorities not only deal with general health and safety related emergencies more promptly, it will also help resource surveillance and monitoring being undertaken by Tribe members in coordination with BLM resource staff. BLM has also been working closely with the Air Force and the Shoshone-Paiute Tribes on the EIS and land management plan for the withdrawal of lands for a proposed Air Force Training Range.

✓ *BIA Waste Management Program.* BIA's Waste Management program includes conducting surveys on Indian lands to determine the presence of potential hazardous waste sites, evaluating the potential threat to human health and the environment, and developing the necessary remedial actions. This program also deals with emergency situations, Federal facilities and activities affecting the environment, health and safety on land under the control of the Bureau of Indian Affairs. In 1995, the Bureau of Indian Affairs (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 Chippewa, Menominee, Hualapi, Hopi and Washo Tribes. Other key projects were water and soil sampling for lead by the Modoc Tribe in Oklahoma, petroleum waste management by the Quileute (Washington) and asbestos removal by the Manzanita Band of Indians (California).

✓ *Campo Band of Mission Indians Landfill.* On July 25, 1995, the United States Court of Appeals upheld Interior against a NEPA challenge by the County of San Diego to the Secretary's approval of the

construction of a sanitary landfill by Campo Band of Mission Indians on its reservation. The court's decision enables an impoverished small tribe to engage in what is likely to be a highly profitable business of disposing garbage from the urban area in and around San Diego.

✓ *Black-footed Ferret.* This endangered species' existence and return to the wild is now partially dependent on the resources of the Fort Belknap Tribe; the Tribe has 20,000 acres of prairie dog habitat. Prairie dogs make up 90 percent of the ferret's diet. The prairie dogs are being shipped to holding facilities operated by the State of Wyoming and the Fish and Wildlife Service. This program may eventually expand to a national level. Currently, six zoos are assisting in the ferret recovery program.

✓ *Increased Involvement in Resource Management Education.* The Department has significantly increased its role, through funding and staff, in educational camps and programs such as the Pribilof Stewardship Camp, the Northern Alaska Wildlife and Wildlands Education Camp (Earth Quest), Camp Sivunnigvik, the Resource Apprenticeship Program for Students (RAPS), Cooperative Education, and the Youth Conservation Corps. In addition, several national wildlife refuges (including Yukon-Delta, Tetlin and Innoko) operate day or residential science camps for rural high school age youths. These opportunities allow rural students to gain hands-on experience and insights with resource agency professionals. For example, in 1995, BLM Alaska RAPS staff raised \$151,762 of unappropriated money from several different sources (private industry, native corporations, foundations, and non-profit organizations) to cover expenses for 35 students including their educational stipends, travel, and room and board. A major goal of these efforts is to raise the students awareness and foster a desire for continued education and jobs in resource management. These programs have benefitted, and continue to benefit, Native students statewide.

✓ *Tribal NEPA Training Program.* The Bureau of Indian Affairs Minneapolis Area Office, which serves tribes in Minnesota, Wisconsin and Michigan, put together a Federal interagency team that provided a 2-day tribal training program in NEPA compliance and field work in each state, the first-ever comprehensive training provided to tribes.

✓ *Colorado Plateau Ecosystem Partnership Project.* The NPS will increase its focus on the Colorado Plateau Ecosystem Partnership Project (CPEPP). This is a collaborative effort between EPA, NPS, NBS, and Northern Arizona University to promote the sustainability of the Colorado Plateau. Over thirty tribes have traditional or cultural interests in the Colorado Plateau, which extends into Utah, Colorado, New Mexico, and Arizona. The tribal lands cover approximately thirty-nine thousand square miles of

the Colorado plateau. It is essential the CPEPP works with the Tribes to ensure the sustainability of the fragile ecosystem. Cultural anthropologists within NPS are also working on developing a strategy for the best means of incorporating the concerns of the Tribes into the project goals.

✓ *Water Resources Management.* Bureau of Reclamation assisted several tribes manage their water resources.

- Lummi Indian Reservation Water Needs Assessment. Under Reclamation's technical assistance program, a background description of reservation conditions was written, and an assesement of water system infrastructure needs conducted.
- Yakama Indian Reservation Drought Assistance. Two wells were completed in FY 1995.
- Yellowman Siphon Emergency Repairs. Yellowman Siphon is an integral component of the Navajo Nation's Fruitland Irrigation Project. It was determined that some pipe had deteriorated to the point where failure could occur at any time. Reclamation assisted the Navajo Nation in making these repairs by providing experienced construction inspectors, as well as construction safety training. Two more phases of pipe replacement are scheduled to complete repairs to the siphon.
- Trinity River Restoration Program. During FY 1995, the Trinity River Restoration Program began winding down which resulted in cutbacks in fish monitoring activities needed for the management of tribal and non-tribal fisheries. Reclamation modified an existing MOA with the Tribe so tribal staff could start gathering the much needed information and prevent any data gaps.
- Assessment of Available Spring/Well Water Flow for Development of Blackfeet Tribal Fish Hatchery. Reclamation worked with the Blackfeet Tribe to sample spring/well water flow because of tribal interest in establishing a fish hatchery on along one of the streams that runs into the reservation from Glacier Park. Data results indicated high quality water resources.

9. Economic Development

9.1 GENERAL ACTIVITIES

✓ *Community Development Banking and Regulatory Improvement Act.* Enacted in September 1994, the Act will bring technical and financial assistance to needy areas and populations. The Assistant Secretary - Indian Affairs is an advisory member of the Board of the Community Development Financial Institutions. The Act targets Indian Country as a study area.

✓ *Portland.* Puget Sound Agency provided approval authority for over \$4,000,000 for individual Indian borrowers residing on Indian trust land. Provided pre-counseling and granting approval authority for over \$15,000,000 for economic activity on various Indian reservations. (This amount was non-BIA funding). In addition, the agency requested and received eight new lenders to make loans of approximately \$600,00 to Indian people residing on Indian trust land. These lenders are Interwest Savings, Columbia Bank, Bank of America, Washington Federal Savings, Peoples' State Bank, Washington State Bank, and Washington Mutual Bank. Washington Mutual has earmarked \$25 million for the HUD program for Indian housing on reservations. Delinquent loans have dropped from 32 to only eight.

✓ *ANCSA Technical Amendment Packages.* Pursuant to a request by the Alaska Federation of Natives (AFN) and others, the Department devoted hundreds of hours to achieve a consensus ANCSA technical amendment package which was passed in 1995. The Department is once again working with AFN and others on a new set of amendments, including one amendment which will strengthen Section 1307 of ANILCA, and another which will streamline allotment conveyance.

✓ *Native Allotment for Vietnam Veterans.* Section 106 of the 1995 amendments to the Alaska Native Claims Settlement Act requires a report be prepared for Congress regarding the potential impact of legislation to allow Native veterans who served during the Vietnam Era to apply for Native allotments. Present information for that report indicates there are about 3,000 Alaska Natives who served during the Vietnam era, and, so far, based on a match of the BIA Enrollment data and Veteran's Administration data, there have been 425 direct contacts made to the BIA or tribal realty offices on this matter.

✓ *Expediting Native Alaska Allotments.* The AFN is also working with the Department on an amendment to legislatively approve those Native allotment applications which otherwise meet the legislative approval criteria of Sec. 905 of ANILCA and which would be capable of being deemed legislatively approved but for the filing and later withdrawal or dismissal of a State protest. As many as 1,500 parcels may fall within this category.

✓ *Strengthened Alaska Native Participation in Local Hire/Visitor Services/Visitor Facilities in Alaska.* The Department, working with the Alaska Native community and others, has in the last year made major strides to implement a 1994 Secretarial Directive to all Department employees in Alaska to promptly and thoroughly implement three specific provisions of the Alaska National Interest Lands Conservation Act (ANILCA) that are of particular importance to Alaska Natives. For example, the Department has issued guidelines concerning the establishment of administrative sites and visitor facilities on Native lands near conservation system units in Alaska to implement Section 1306 of ANILCA. Additionally, the Department has prepared draft regulations (soon to be published in final form) implementing Section 1307 of ANILCA which creates a preference in contracting to provide many kinds of revenue-producing visitor services in conservation system units for the Alaska Native Corporations most directly affected by the unit's establishment and to local residents, many of whom are Alaska Natives. Third, the Department has taken numerous positive actions to implement the special hiring procedures of Section 1308 of ANILCA. Section 1308 provides for employment by the Department in Alaska of people who have special knowledge or expertise concerning the natural or cultural resources of the lands managed by the Department. Many of the individuals now employed under the "local hire" provision of section 1308 are Alaska Natives.

✓ *Increasing Employment/Training Opportunities for Alaska Natives.* The Department empowered Alaska Natives to assist in negotiations with the TransAlaska Pipeline System. As a result the number of training and employment opportunities for Alaska Natives on the TAPS will increase significantly. The Alyeska Pipeline Service Company has committed to spend \$25 million between the years 1996 and 2007, to be spent at a rate of approximately \$2.1 million per year towards the employment and training needs of Alaska Natives. The Alaska Native Utilization Agreement, Initial Plan of Implementation was signed into effect in April 1996. The Department has committed to continue to work closely with Alaska Natives to ensure that the new agreement is implemented properly.

9.2 INDIAN GAMING

Over the past year, the Department, through the Bureau of Indian Affairs' Indian Gaming Management Staff, has:

- reviewed 44 tribal/state compacts and 46 amendments for approval/disapproval;
- provided training on gaming issues to participants in a real estate conference;
- conducted training for the Sacramento Area Office staff in land acquisitions for gaming;
- given technical assistance in obtaining and evaluating bids from management companies to three tribes;
- completed thirteen complete or partial Indian Gaming Regulatory Act Section 20 determinations;
- completed proposed regulations for 25 CFR 290 Tribal Revenue Allocation Plans, and sent those regulations to OMB for clearance prior to publication in the Federal Register;
- published in the Federal Register an Advanced Notice of Proposed Rulemaking, requesting comments on the Supreme Court decision in Seminole Tribe of Florida v. Florida;
- prepared 16 administrative records for litigation;
- testified before the California Assembly Committee on Governmental Organization on the process tribes are required to utilize in acquiring land, in trust;
- reviewed 23 agreements under Section 81;
- provided on-going technical assistance to BIA Area and Agencies Offices as well as tribes in all aspects of gaming.

9.3 ROADS AND TRANSPORTATION INFRASTRUCTURE

✓ *Bridge Replacement and Rehabilitation.* Since the enactment of the Intermodal Surface Transportation Efficiency Act in 1991, 152 Indian Reservation Roads deficient bridges have been replaced or rehabilitated in some 28 states using funds provided through the Highway Bridge Replacement and Rehabilitation Program.

✓ *Juneau.* The Juneau Area roads has completed projects in eleven villages totaling \$21.5 million. The work performed was 64 percent by 638 contract, 30 percent by 638 partnership and six percent by the State of Alaska. The 638 partnership was a particularly successful program which began in 1995. The program utilizes 100 percent project employment from the village where the project is located.

✓ *Seminole Tribe of Florida.* The Seminole Tribe, State of Florida and the BIA are currently under a Memorandum of Agreement to participate in a major road improvement and bridge replacement project to pave and widen sixteen miles of road that passes through the Brighton Indian Reservation. This is the first time the State of Florida has participated in a joint venture for a road project benefiting the Seminole Tribe.

10. Advancing Social Services

10.1 CHILD WELFARE

✓ *ICWA Regulations.* After extensive tribal consultation on revised regulations and methods of funding distribution, the final Indian Child Welfare Act (ICWA) regulations were published January 1994. The final rule converted a competitive ICWA grants system to a noncompetitive system for tribes, enabling all tribes access to recurring ICWA base funding for the first time since inception of the program, promoting long-term program planning and stabilization of tribal programs. The final rule also transferred grant administration and execution to the lowest level of operation, streamlined the grant application and appeals processes and established new requirements for internal evaluation processes for all grantees.

✓ *HHS/ACF/BLA.* Through collaboration with Health and Human Services' Administration for Children and Families (ACF) and Children's Bureau, three longstanding concerns in Indian Country have been satisfactorily addressed: 1) lack of tribal access to Social Security Title IV-B parts I and II - funds

administered by ACF for child welfare services, 2) family preservation funds and 3) continuing noncompliance by States with major provisions of the ICWA. Beginning in FY 1996, every tribe will, for the first time in history, be eligible for direct funding for Title IV-B child funds and additional tribes will receive family preservation funds. As a result of these efforts, Title IV-B funds have more than doubled for tribes. Also 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 ICWA.

✓ *National Child and Family Services Newsletter.* In response to tribal requests, after a two-year hiatus Social Services reinstituted in September 1995, a quarterly national newsletter that is disseminated to all tribal social services and child welfare programs. The newsletter contains current information and articles of national significance.

10.2 ALCOHOL AND SUBSTANCE ABUSE

✓ *UNITY.* The Office of Alcohol and Substance Abuse has assisted the United National Indian Tribal Youth (UNITY) Council with their national youth leadership training conference for the past two years. In 1995, Indian youth presented testimony before the Senate Select Committee on Indian Affairs regarding challenges facing today's Indian youth, particularly drug and alcohol abuse.

10.3 HOUSING AND OTHER SERVICES

✓ *Indian Housing Improvement Program.* This long-standing BIA program helps needy Indians improve their living environment. It makes assistance available to individual Indians to repair or replace existing Indian-owned houses within tribal service areas. This helps improve or maintain sanitary conditions and access to basic amenities, thus improving the health and safety of Indians in such areas. Each year, this program builds 80 to 100 new homes and repairs 900 to 1,100 dwellings. The current backlog of needs is estimated at over 7,000 new homes and over 40,000 in need of repairs.

✓ The new Section 1306 guidelines have already resulted in leased housing from Tanaq Corporation for seasonal employees, and purchase of a house lot from Choggiung Corporation for new employee housing.

This further expands the Department's existing record of doing business with Native Corporations or groups in Arctic Village, Bettles, Bethel, Chevak, Dillingham, Dutch Harbor, Emmonak, Galena, Kaktovik, Ft. Yukon, Kodiak, Kotzebue, McGrath, Tyonek, Selawik, St. Paul, St. George, Russian Mission, Tok, and Toksook Bay among others.

11. Improving Health and Safety Services

✓ *Structural Fire Protection Program.* The Acting Deputy Commissioner for Indian Affairs requested the Director, Office of Construction (now the Facilities Transition Project Staff, FTPS) to aid in the establishment of the Structural Fire Protection Program for the BIA. An Interim Fire Chief has been hired through FTPS. Funds have been designated to start retrofitting dormitories with compatible sprinklers, smoke detectors, and alarm systems. Equipment and training needs for structural fire fighters, to include the repair and replacement of existing major fire equipment have been identified. Funding needs also identify and support Memorandums of Agreements, contracts or other arrangements with local fire departments that provided fire protection services to BIA properties.

12. Improving Indian Education

✓ *Goals 2000.* Under the provisions of the President's Goals 2000: Educate America Act, the Office of Indian Education Programs (OEIP) and the National Indian Goals 2000 Panel have developed long range goals and benchmarks for the BIA funded school system:

- By the year 2000: 1) Increase current average daily attendance rate from 90 percent to 94 percent, 2) reduce the yearly dropout rate from 15.6 percent to 11.6 percent, 3) increase the enrollment retention rate of students from 93 percent to 97 percent.
- Starting in the 1996-97 school year, the number of students reaching the proficient and advanced levels will increase by five percent per year, based on new authentic assessments.
- Decrease substance abuse incidents by ten percent.

- Increase the number of schools submitting reform plans to 100 percent.
- Increase the number of schools with schoolwide programs to 100 percent.

✓ *Tribally Controlled Schools.* There has been an increase in tribally controlled schools in the past three years. As of 1996, more than 56 percent of BIA funded schools are controlled by tribal councils and/or tribal boards of education. Of the 187 facilities, 14 are dorms and 173 are schools. These 173 schools are accredited or are in the process of being accredited by the North Central Association or other regional accrediting association.

SCHOOL YEAR	CONTRACT/GRANT	BIA	TOTAL
1993 - 1994	92	93	185
1994 - 1995	93	92	185
1995 - 1996	98	89	187

✓ *Comprehensive School Health.* A cooperative effort between the Center for Disease Control, Indian Health Service, and the Bureau of Indian Affairs developed an integrated curriculum to address comprehensive school health issues relating to adolescents. Currently there are fifteen pilot sites.

✓ *Johnson-O'Malley (JOM).* In 1996 the JOM 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.

✓ *Blue Ribbon Schools.* This is a national recognition program sponsored by the Department of Education. The program identifies those public and private elementary, middle and secondary schools that provide outstanding academic programs. OIEP has had eight schools receive this national recognition in the last three years.

✓ *Challenge Grant.* The OIEP received one of nineteen Challenge Grants from the Department of Education. 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.

✓ *Consolidated School Reform Plan.* BIA is the first SEA in the nation to have all LEA's submit IASA funding requests in a Consolidated School Reform Plan.

✓ *Professional Development 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.

✓ *Charter Schools.* Leupp, Little Singer, Hanahville, Grey Hills, Greasewood and three Pima Agency schools were designated Charter Schools by their respective states.

✓ *Drug Free Schools Recognition Program.* This is a national recognition program that identifies those public and private elementary, middle and secondary schools exemplary Drug Free Schools programs. OIEP has had five schools receive this recognition since 1989.

✓ *School-to-Work Opportunities Program.* This program is a discretionary program made available through the Departments of Education and Labor for the purpose of preparing students for employment directly out of high school. Indian tribes are participating in this innovative program with successful results. The Puyallup, and Yakama tribes received grants in 1995 to implement the program. The Lac Courte Oreilles and Alamo Navajo Schools also received implementation grants in 1995. In addition, four BIA funded schools were awarded planning grants: Chief Leschi, Hannahville, St. Stephens Indian School, and Tohono O'odham High School.

✓ *Family and Child Education (FACE).* FACE is a family literacy program that serves children ages 0-5 and their parents. This program is a collaborative effort by Parents as Teachers, national Center for Family Literacy, High Scope Educational Foundation, and the Bureau of Indian Affairs. The program implements four components: 1) early childhood education, 2) parent and child time, 3) parenting skills and 4) adult education. In 1995-96, 22 BIA funded schools were selected for this program and served approximately 1,650 families. The BIA's FACE program consistently receives recognition for their exemplary progress.

✓ *New School Construction Process to be Reengineered.* For years there has been a growing concern by the Department of the Interior, Congress, and Tribes that the Bureau of Indian Affairs facilities construction process has been ineffective in providing timely delivery of completed new school construction projects to facility occupants. The current process can take seven to eight years to provide a new or renovated school facility. The Facilities Transition Project Staff has begun to reengineer the process used to plan, design and construct new school facilities within a three year (or less) time frame. This effort has been accepted by the Department of the Interior National Performance Review Team as a Reinvention Laboratory.

✓ *Bureau of Reclamation Technical Support.* Reclamation has provided technical training programs to several Indian Tribes in such areas as construction safety, concrete technology, and water resources. For example, Reclamation sponsors numerous workshops and training programs benefitting Indians at Arizona State University; Haskell Indian Nations University; and New Mexico State University. Reclamation is also providing assistance to:

- Central Washington University (CWU): Reclamation entered into an agreement with the CWU's Resources Management Program coordinators. The CWU's Departments of Geography and Land Studies and Anthropology offer an interdisciplinary graduate program which emphasizes the legislative process, policy formulation, fiscal management, and national and international systems and their effect on the management of both cultural and natural resources. A central part of the program is to respond to the needs identified by the Indian community.
- Southwestern Indian Polytechnic Institute: Reclamation entered into a Memorandum of Understanding in support of the College Bound Math and Science Enrichment Programs. These Programs are designed to increase the number of American Indian and Alaska Natives who graduate from high school and enroll in college. The Science Program also helps the tribes manage natural resources; develop environmental management plans; and work effectively with industry, government, and neighboring communities.

13. Advancing Justice and Law Enforcement

✓ *Fingerprint Checks.* In September, 1995, BIA Law Enforcement entered into an agreement with the Federal Bureau of Investigation to allow tribes to access criminal history checks with the FBI through the Operational Support Center of the Office of Law Enforcement Services (OLES). This resolved a longstanding problem for many tribes in ensuring that national criminal history information is available for those individuals who have contact with children. Service provided is efficient, cost effective and consistent in helping to protect the safety and well-being of Indian children.

✓ *Tribal Background Check Liaison.* BIA hired a Security Specialist in June 1995 to assist Indian tribes and to serve as a liaison with the FBI for fingerprint and national criminal history checks for tribes that are contract or grant recipients. The Specialist has initiated a memorandum of agreement between the BIA and OPM for tribes to obtain similar services for child care workers.

✓ *Archaeological and Cultural Antiquities Investigator.* The OLES has recruited a criminal investigator who specializes in the investigation of archaeological and cultural antiquities crimes.

✓ *Indian Law Enforcement Information Network (INLINE).* 300 personal computer systems were distributed to BIA and tribal law enforcement programs throughout Indian Country for use with a new computer-based Crime Reporting Information System. The software will comply with the FBI's National Incident Based Reporting System (NIBRS). Fifty law enforcement agencies are currently on-line and ten more are projected to be on-line by the end of the year.

✓ *Detention and Holding Facility Standards.* Final regulations and standards for detention, community residential and holding facilities have been developed and published. These standards, the first revision in sixteen years prospective implementation have total tribal support. An action plan was developed to identify all health and safety problems in BIA detention facilities to correct deficiencies and plan for addressing large scale facility problems.

✓ *Law Enforcement.* The Office of Management Risk and Public Safety supported a FBI/BIA round table conference which addressed violent crimes in Indian Country. It also assisted the BIA Police Academy, Artesia, N.M. in an overall Law Enforcement curriculum review to ensure the Federal Law Enforcement Training Center and the BIA were meeting current accepted training standards. During this past year this office assisted BIA management officials in Washington, D.C. concerning threats against employees and

assessed and subsequently recommended security improvements for the BIA, Branch of Acknowledgment and Research.

14. Reducing Burden on and Improving Relationships With Tribes

✓ *Regulatory Reform Action Team.* The Bureau of Indian Affairs has revamped Title 25 of the Code of Federal Regulations. As part of the President's initiative, each bureau was asked to remove obsolete regulations and reduce the regulatory burden on the general public by eliminating unnecessary rules and rewriting existing regulations in clear, more precise "plain English." The Bureau notified tribes of the President's initiative and identified the specific rules affected in a notice through the Federal Register on April 23, 1996. In this effort, the Bureau's work covered over 90% of the regulations with 64 rules undergoing changes through the National Performance Review process. The effort does not preclude any consultation currently planned or underway, and tribal consultation on regulations with substantive rulemaking is to continue as planned.

✓ *Farmington NPR Lab.* The Farmington Lab was initiated in 1995 to examine and re-engineer the Department's provision of trust services for individual Indian landowners in the Four Corners region of the southwest United States. The Lab's goals were to re-engineer the systems, processes, and work components of the Office to be more responsive, effective, efficient, and accountable in providing the services of a trustee to individual Indian mineral owners in the Four Corners area. The IMSC and the OAIT have been involved since the very beginning in the establishment of the Farmington Lab and have followed its progress closely. A pilot project is to begin in October, 1996.

JUSTICE

**DEPARTMENT OF JUSTICE
ACCOMPLISHMENTS ON INDIAN ISSUES FOR 1995-96**

Efforts to strengthen tribal self-government and to promote government-to-government relations are priorities for the Department of Justice, in accordance with the President's Memorandum on Government-to-Government Relations with Indian tribes and the Federal policy of self-determination for Indian tribes.

During the past year, the Department has taken the following steps to build a new partnership with Indian tribal governments:

A. Department of Justice Indian Sovereignty Policy

The Attorney General issued the "Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations with Indian Tribes," on June 1, 1995. The Justice Policy reaffirms the Department's acknowledgement of the sovereign status of federally recognized Indian tribes as domestic dependent nations, our support for tribal self-government, and our commitment to uphold the United States' trust responsibility and maintain government-to-government relations with Indian tribes. The Department's Indian Sovereignty Policy is intended to guide all of the components of the Department in activities affecting Indian tribes and Indian Country.

B. Operations of the Office of Tribal Justice

The Department has many important responsibilities in Indian Country and to Indian tribes, including criminal law enforcement, assisting the Department of the Interior in protecting the treaty rights and self-government rights of Indian tribes, protecting the civil rights of Indians as citizens of the United States, assisting Indian tribes in the development of institutions of self-government, and monitoring legislation affecting Indian tribes.

Based on the Department's responsibilities in the field of Indian affairs, tribal governments requested that Justice establish a permanent office to ensure that relations with Indian tribes are conducted in accordance with the principle of government-to-government relations. The Office of Tribal Justice (OTJ) was created in January 1995 within the Office of the Deputy Attorney General. The mission of OTJ is to coordinate Department policy on Indian affairs, both within the Department and with other federal agencies, and to serve as a permanent channel of government-to-government communications with federally recognized Indian tribes.

The creation of the Office of Tribal Justice also is one of the steps toward our goal of reinventing government and building a new partnership with Indian tribes. OTJ promotes internal uniformity of departmental policies, litigating positions, and

legislative efforts relating to Indian Country. By coordinating and focusing the Department's policies and positions on Native American issues, the Office of Tribal Justice allows existing Departmental programs to operate more effectively, which will lead to better service to Indian tribes, Indian people, and the general public.

C. **The Attorney General's Continuing Forums for Government-to-Government Communications with Indian tribes**

Shortly after President Clinton's historic meeting with the leaders of tribal governments at the White House in 1994, the Department of Justice sponsored the National American Indian Listening Conference together with the Departments of the Interior and Housing and Urban Development. In order to facilitate communication between the Department and Indian tribal governments, the Department hosted and participated in a number of conferences during 1995 and 1996.

- Department of Justice and Northwest Indian Nations Conference

Continuing this direct government-to-government dialogue with tribal government leaders initiated by the National American Indian Listening Conference, the Department sponsored the Department of Justice and Northwest Indian Nations Conference on June 2, 1995 in Salt Lake City, Utah. The leaders of 50 tribal governments met with the Attorney General in a one-day session to discuss issues, including reservation environment and natural resources, law enforcement, and tribal courts. Federal, state, and tribal court judges participated in the afternoon dialogue on the development of tribal courts as institutions of self-government.

- Symposium on American Indian Tribal Courts and Self-Governance

In an effort to further the dialogue on the development of tribal courts, the Department co-sponsored, with Harvard Law School and the Harvard Native American Program, the American Indian Tribal Courts and Self-Governance Symposium on December 2, 1995, at Harvard Law School. Federal, state, and tribal court judges, Northeastern tribal leaders, academics, Indian law practitioners, and Department of Justice personnel, participated with the Attorney General in the day-long conference.

- Department of Justice and Great Plains Indian Nations Conference

On July 16, 1996, the Department of Justice held a one-day session with tribal leaders from the Great Plains Tribes to

discuss tribal courts, law enforcement, and the reservation environment and natural resources.

- Hands-on Indian Country Environmental Management Conference, Flathead Indian Reservation

The Department participated, with EPA and various Indian tribes, in the May 1996 Indian Country Environmental Management Conference held on the Flathead Indian Reservation to discuss environmental issues and environmental enforcement on Indian lands.

- Harvard University Conference on the United Nations Draft Declaration on the Rights of Indigenous Peoples

In May 1996, the Department participated in a conference sponsored by Harvard University on the United States' and tribal governments' perspectives on the United Nations Draft Declaration on the Rights of Indigenous Peoples. The Conference identified many of the legal and policy issues generated by the current draft of the Declaration. The Harvard Conference will assist the United States in forming its views on the Draft Declaration as it participates in the working group of the Commission on Human Rights of the United Nations Economic and Social Council, where the Draft Declaration currently is being debated.

- The Federal Bar Association's 1996 Indian Law Conference

The Department participated in the April 1996 Federal Bar Association Indian Law Conference in Albuquerque, New Mexico. Mark Van Norman, Deputy Director, Office of Tribal Justice chaired the Conference. Environment Division Assistant Attorney General Schiffer gave the keynote address. Additional presentations were made by the Environment Division and the Solicitor General's Office.

- The American Bar Association's Indian Law Conference

In September 1995, the Environment Division and the Office of Tribal Justice made presentations to the American Bar Association's Indian Law Conference in Seattle, Washington concerning the United States' Indian law activities.

D. Tribal Courts Project

The Department recognizes that the capacity for self-governance through tribal justice systems is central to tribal sovereignty. Acknowledging the essential nature of tribal courts, the Department initiated the Tribal Courts Project, within the Office of Policy Development, to support the development and strengthening of viable tribal justice systems.

Specifically, the Tribal Courts Project aims to increase the visibility of tribal courts, encourage cooperative relations and mutual understanding among tribal, federal, and state judiciaries, and focus available technical assistance and training resources.

- Partnership Projects -- The centerpiece of the Department's tribal court initiatives is the Tribal Court - DOJ Partnership Project. In September 1995, the Attorney General designated 45 tribal governments as Tribal Court Partnership Projects, which the Department assists with technical assistance and training, with emphasis on judicial response to family violence and juvenile issues. The Department works with Partnership Projects to: 1) assess the needs of their justice systems and obtain public and private assistance to meet those needs; 2) develop cooperative training and technical assistance with the Department, U.S. Attorneys' Offices, and state and federal judiciaries; 3) facilitate the award of Department grants and programs to Partnership Projects; and, 4) share the activities of the Tribal Courts Project with tribal, state, and federal judiciaries.

- Magistrate Court Demonstration Project -- The lack of tribal court jurisdiction over crime committed by non-Indians may impede effective law enforcement in Indian country. Because federal courts are often located far from Indian reservations, certain violations -- including misdemeanor domestic violence, child abuse, weapons offenses, vehicle violations, substance abuse, and theft -- are left unaddressed. The Department has encouraged a partial solution to this problem -- the establishment of U.S. Magistrate Courts on or near certain Indian reservations to hear cases that involve offenses by non-Indians. The first such Magistrate Court has convened at the Warm Springs Reservation in Oregon, and reflects the cooperative efforts of the Warm Springs Tribal Council and tribal judges, the U.S. Attorney's Office, and the Federal District Court for the District of Oregon.

- Tribal-Federal-State Cooperation -- The Tribal Courts Project encourages cooperation among tribal, federal, and state judiciaries in the interest of mutual understanding and respect. The Department organized a symposium issue of Judicature magazine on tribal justice systems, with articles by tribal, state, and federal judges on judicial cooperation and traditional models of tribal justice. In addition, the Ninth and Tenth Circuit Courts of Appeals have created Task Forces on Tribal Courts, to improve communication between tribal and federal judiciaries. At the state level, the Conference of Chief Justices established a standing committee on federal, state, and tribal relations, and the Department has encouraged the inclusion of tribal judges in State-Federal-Tribal Councils.

- Joint Tribal-Federal Judicial Training -- The Department worked with the Federal Judicial Center to develop a much-needed joint training program for federal and tribal judges with regard to child sexual abuse cases in Indian country. Tribal and federal judges will obtain important instruction about the reporting, investigation, and adjudication of child sexual abuse in both tribal and federal forums. The joint training program, offered in September 1996, will provide not only education, but also an opportunity for increasing cooperation between federal and tribal courts to address child sexual abuse in Indian country.

- Certification -- Many federal courts currently employ a judicial procedural mechanism known as certification to enable them to obtain a state court's ruling on a question of ambiguous or unsettled state law. The development of certification procedures for tribal law questions could enhance respect and deference for tribal courts. Accordingly, the Department has urged tribal courts to consider the adoption of certification procedures to receive questions from federal court, and has urged federal courts to consider the use of these procedures where appropriate.

- Excess Property Transfer -- Due to lack of funds, tribal governments often have been forced to neglect the material and equipment needs of their tribal justice systems. To support the Tribal Courts Partnership Project, the Department of Justice, in conjunction with the Bureau of Indian Affairs, has established a pilot program to provide excess personal property to the tribal court partnership projects through Indian Self-Determination Act contracts. Excess property provided to the tribal courts will include books, computers, office equipment, office furniture and furnishings.

- STOP Violence Against Indian Women Grant Program -- The Office of Justice Programs, Violence Against Women Grants Office, will distribute \$5.2 million to tribal recipients in fiscal year 1996. In recognition of the Department's commitment to tribal justice systems, grants are available to each of the 45 tribal governments designated as Tribal Court-Department of Justice Partnership Projects. The discretionary grant program aims to encourage tribal governments to develop and strengthen the tribal justice system's response to violent crimes against Indian women and to improve services to Indian women who are victims of domestic violence and sexual assault.

E. Defense of Treaty Rights and Tribal Sovereignty

The Department brings affirmative litigation on behalf of tribes and against third parties (often states and their political subdivisions) seeking, among other things, to defend aspects of tribal sovereignty and treaty rights, to establish tribal water rights, quiet title to tribal lands, to resolve reservation boundary and survey disputes, and to redress trespasses to Indian lands.

1. The Office of the Solicitor General

The Office of the Solicitor General (OSG) represents the United States in cases before the Supreme Court and consistent with the United States special relationship with Indian tribes, OSG frequently participates in cases implicating tribal treaty rights and rights of self-government.

- Seminole Tribe v. Florida -- The United States argued as amicus curiae that under the Indian Commerce Clause, Congress had the power to authorize Indian tribes to sue states, notwithstanding the Eleventh Amendment, pursuant to the Indian Gaming Regulatory Act. The Supreme Court, reversing its 1989 decision in Pennsylvania v. Union Gas, held that Congress does not have the authority to abrogate states' Eleventh Amendment immunity under the Commerce Clause. Together with the Department of the Interior, the Department of Justice is studying the impact of this decision in order to determine how the compacting process will work in the wake of Seminole Tribe. The Department testified before the Senate Committee on Indian Affairs on the impact of Seminole Tribe on IGRA.

- Oklahoma Tax Commission v. Chickasaw Nation -- The United States argued as amicus curiae in the Supreme Court in support of the fundamental rule that absent congressional consent, states may not tax Indian tribes, reservation Indians, or Indian property in Indian country, and pursuant to that rule, the Chickasaw Nation's right to be free from certain state fuel taxes. The Supreme Court held that Oklahoma could not impose its fuel taxes directly on the Chickasaw Nation.

- South Dakota v. United States -- The United States has petitioned for certiorari, seeking review of a ruling of the Eighth Circuit Court of Appeals that § 5 of the Indian Reorganization Act, 25 U.S.C. § 465, 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. Recognizing that the Indian Reorganization Act is the cornerstone of modern federal Indian law, the United States argued that the Act provides a comprehensive and integrated framework for the exercise of secretarial discretion to acquire in trust land for Indians, and that the court of appeals' decision should be

vacated.

2. The Environment and Natural Resources Division

The Department's Environment and Natural Resources Division continues its substantial work on behalf of federally recognized tribes. The Division has a Section -- the Indian Resources Section -- that is devoted to fulfilling the United States' trust responsibility to tribes and individual Indians through litigation. That Section brings suits to promote tribal sovereignty, including the right of tribes to be free of state regulation and taxation, to establish and protect tribal land, water rights, and treaty-based hunting and fishing rights. The Division remains particularly active in securing federal reserved water rights for tribes throughout the Western United States.

The Division also defends the Secretary of the Interior's actions on behalf of tribes and the Environmental Protection Agency's treatment of tribes as states for purposes of regulating the reservation environment under federal environmental statutes. The Division's standing Amicus Committee has considered and acted upon several requests for the United States' participation as amicus curiae in suits implicating tribal interests. As the following cases illustrate, the Division has had a busy and successful year litigating cases on behalf of tribes.

Cases

- Reservation Telephone Cooperative v. Three Affiliated Tribes -- The Environment Division filed an amicus curiae brief in support of the exhaustion of tribal court remedies with regard to the plaintiffs' claim that tribal taxation of telephone rights-of-way over tribal lands is preempted by federal law. The Eighth Circuit recently agreed with our position affirming the district court's dismissal of the plaintiffs' suit for failure to exhaust tribal court remedies.

- Leech Lake -- The Division filed an amicus curiae brief in support of the Leech Lake Band of Chippewa Indians' appeal of the lower court's determination that the Band's reservation-based fee lands are subject to state ad valorem taxation.

- Yankton Sioux -- The Division filed an amicus curiae brief in this appeal urging the court to affirm the lower court's ruling that the original boundaries of the Yankton Sioux Reservation have never been diminished or disestablished.

- Tyonek v. Puckett -- The Division filed an amicus curiae brief in this case supporting the tribal status and sovereign immunity of the Alaska Native village of Tyonek. The brief explained the Secretary of the Interior's purposes in including Tyonek and other Alaska Native villages on the

Secretary's list of federally acknowledged tribes.

- 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 the County on Crow reservation coal. In 1975, Montana imposed a 30% severance tax on coal throughout the State and collected that tax from lessees mining Crow coal. The United States and the Tribe sued in 1978, challenging the application of the tax to reservation resources and asserting that the tax interfered with tribal sovereignty and economic development. The Court of Appeals agreed with the U.S. and the Tribes argument in 1987 and again recently. The Court further ordered the District Court to decide whether the State and County should pay interest on the funds they unlawfully collected.

- Snake River Basin Adjudication -- In this extraordinarily complex general stream adjudication of the surface and groundwater sources in the Snake River Basin in Idaho, we continue to vigorously defend the water rights of three tribes -- 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. Our 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.

- State of Washington v. Acquavella -- In this general stream adjudication the Superior Court of Washington awarded the Yakama Tribe a reserved water right to 142,000 acre feet of water annually -- the full amount claimed by the United States for the benefit of the Tribe -- in the on-reservation tributaries of the Yakima River. This amount is in addition to the Tribe's reserved right to 630,000 acre feet from the mainstem of the Yakima River. Significantly, the court also determined that the Tribe is entitled to instream flows throughout the Yakima River basin to maintain the Tribe's treaty-based fishing right. The Superior Court also held that the Tribe has reserved water rights for the needs of the resident, as well as the anadromous, fish population of the Reservation and that stored water, as well as natural flow, can be used by the Secretary to fulfill the needs of the fish.

- 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, we 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 tribes "usual and accustomed" fishing area.

- United States v. Michigan -- In this 23-year old Indian fishing rights case involving the Bay Mills Indian Community, Sault Ste. Marie Tribe of Chippewa Indians, and the Grand Traverse Bay Band of Ottawa and Chippewa Indians, the district court recently issued an order which adopted DOJ's and the Tribes' argument that the commercial harvest of salmon is not restricted by the 1985 consent order to a single area. The 1985 consent order, reached after a series of conflicts arose over a 1979 court ruling that the Tribes had a treaty right to fish in common with state licensed fishers, established an Executive Council to manage the fishery and to resolve disputes. This is the first time since entry of the consent order and the establishment of the Dispute Resolution Mechanism that the Judge has decided a "fisheries management" issue.

- United States v. Pend Oreille County Public Utility District -- In this suit, the Division secured \$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.

- United States v. Fluent -- The Division filed this suit on behalf of the Seneca Nation of Indians for ejectment and trespass against 16 non-Indian holdover lessees who have refused to sign new leases with the Seneca Nation. The defendants, who have not paid any lease monies to the Seneca Nation since 1991, are unlawfully occupying lands of the Seneca Nation. On July 9, 1996, the Magistrate Judge entered a recommended decision that, if adopted by the court, would order the defendants to vacate the tribal land. The decision is under review by the court.

- United States v. Tacoma -- The Division has filed a suit on behalf of the Skokomish Indian Tribe against the City of Tacoma for the illegal condemnation of Indian allotments in connection with the City's Cushman hydroelectric power project.

- United States v. Minerec -- In response to the Division's Clean Air Act suit against Minerec -- a chemical plant operator on the Tohono O'odham Reservation -- Minerec agreed to discontinue its production of hydrogen sulfide which had previously caused harm to Indian residents of the Reservation.

- United States v. Tenneco -- In January 1996 the Division filed a Safe Drinking Water Act suit on behalf of the Sac and Fox Nation of Oklahoma to remedy years of groundwater contamination caused by Tenneco Oil Company's improper oil and gas operations on the Sac and Fox Reservation.

- United States v. Pegasus Gold Corp. & Zortmann Mining - On July 22, 1996, the United States lodged with the District Court of Montana a consent decree, resolving a coordinated enforcement effort by the United States, the State of Montana,

the Assiniboine Tribe, the Gros Ventre Tribe and the Island Mountain Protectors Association for violations of the Clean Water Act and the Montana Water Quality Act at two mines located near the Fort Belknap Indian Reservation. The decree includes comprehensive injunctive relief, a \$2 million civil penalty, three supplemental environmental projects, and \$1 million to the Tribes in partial satisfaction of the Tribes' common law indigenous water rights claim.

- United States v. ASARCO -- This case concerns the Commencement Bay/Nearshore Tidelands Site, located in Tacoma and Ruston, Washington. In June 1996, the Division filed a complaint and lodged a consent decree under CERCLA and RCRA settling claims against ASARCO, Inc. Under the terms of the decree, ASARCO will reimburse response costs and implement remedial action in connection with the Asarco Tacoma Smelter and adjacent slag peninsula, an operable unit of the Commencement Bay Nearshore/Tidelands Superfund Site. The Puyallup Tribe owns land, and both the Puyallups and the Muckleshoot Indian Tribe claim trusteeship over natural resources, within the Commencement Bay Site. Both Tribes assert fishing rights.

- United States v. Yellowstone Pipe Line Company and Conoco Pipe Line Company -- In March 1996, the Division filed a complaint under the Clean Water Act, as amended by the Oil Pollution Act, against the owner and operator of a petroleum pipeline, seeking civil penalties and injunctive relief, over a 1992 discharge of oil within the boundaries of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation in Montana. The Tribes entered into a Consent Order with the defendants in Dec. 1993 that provides for injunctive relief and for an undisclosed natural resource damage payment to the Tribes.

- Montana v. EPA -- In this case of first impression, the district court upheld EPA's treatment of the Confederated Salish & Kootenai Tribes of the Flathead Reservation in the same manner as a state for purposes of setting environmental standards under the Clean Water Act within the Tribes' Reservation. The court rejected the State's assertion that the Tribes lack inherent authority to apply their clean water standards to nonmembers of the Tribes who reside on the Reservation.

- Williams v. Babbitt -- The Division successfully defended in federal district court the Department of the Interior'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 on appeal.

- Northwest Sea Farms v. U.S. Army Corps of Engineers -- The Division succeeded in defending against this challenge to 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. The federal court agreed with our position that the Corps properly denied the permit based on its potential to adversely impact the treaty-protected rights of the Lummi and Nooksack Tribes to take fish at customary sites.

Mediation/ Alternative Dispute Resolution

- The Navajo-Hopi Land Dispute -- In December 1995, after several years of negotiation, the Department 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. In negotiating the settlement the Department sought to fashion an agreement that respected both the Hopi Tribe's jurisdiction and the Navajo families' religious ties to their homesites on Hopi Partitioned Lands. To that end, monetary and other compensation to the Hopi Tribe is tied to the percentage of Navajo families who accept the Hopi Tribe's offer to allow them to remain on the Hopi Partitioned Lands under 75 year leases. The Department is hopeful that Congress will enact legislation extending 75 year leasing authority to the Hopi Tribe in order that the parties may effectuate the settlement.

- United States obo Torres-Martinez Tribe of Mission Indians v. The Imperial Irrigation District and The Coachella Valley Water District -- The Division recently completed settlement in an action initiated as a trespass action in 1982 on behalf of the Torres-Martinez Band of Mission Indians (now called the Torres-Martinez Desert Cahuilla Indians), seeking damages and injunctive relief from decades of continuing inundation by the defendant irrigation districts of approximately 11,000 acres of trust lands located within the Torres-Martinez Indian Reservation in Riverside and Imperial Counties, California. The settlement, signed on June 18, 1996, calls for payment of a total of \$14.2 million to the Tribe from both the defendant irrigation districts and the United States.

Indian Outreach

- State of Wisconsin v. EPA (Mole Lake), (E.D. Wisc.); State of Wisconsin v. EPA (Oneida I), (E.D. Wisc.); State of Wisconsin v. EPA (Menominee), (E.D. Wisc.); State of Wisconsin v. EPA (Lac du Flambeau), (W.D. Wisc), Jack Schweiner, et al. v. EPA (Oneida II); Brown County, et al. v. EPA (Oneida III) -- These six cases are challenges to EPA's decisions to treat various Indian tribes in Wisconsin in the same manner as states for purposes of setting water quality standards under the Clean Water Act. They include challenges by the state, county, and private parties to five tribes' "Treatment as State" approvals. In

connection with these cases, Division attorneys have met with EPA and the Tribes. Division attorneys have communicated their intent to work closely with the Tribes in defending these actions.

F. Protection of Indian Religious Freedom and Cultural Resources

1. Sacred Sites Executive Order -- On May 24, 1996, President Clinton signed an Executive Order directing federal agencies to protect the integrity of, and accommodate access to, sacred sites on federal lands to "the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions." The Department, in conjunction with the Department of the Interior and other land management agencies, assisted the White House in drafting the Executive Order. This Order represents an important step toward ensuring that American Indians have the ability to exercise their traditional religions.

2. Karuk Tribe Land Transfer -- A 3 acre tract of real property located in Siskiyou County, California was forfeited to the United States because its nonIndian owner had cultivated marijuana on the property. This property is significant to the Karuk Tribe, because it is located in the center of the ancient village of Katimin, considered by members of the Tribe to be the physical and spiritual center of their universe. Pursuant to the Attorney General's Guidelines on Seized and Forfeited Property (July 1990), forfeited real property generally is sold and the proceeds are shared by federal, state, and local law enforcement agencies. In this case, the state and local law enforcement agencies agreed to waive their share of the proceeds and the Attorney General has approved transfer of the forfeited property to the Department of the Interior to be held in trust for the Karuk Tribe.

3. Bear Lodge Multiple Use Ass'n v. Babbitt -- The Environment Division is currently defending 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 Management Plan imposes a temporary moratorium on commercial climbing during the month of June which is the height of tribal ceremonial use of the Monument. The plaintiff in Bear Lodge challenged the Management Plan as a violation of the Establishment Clause and, on June 8 won a preliminary injunction prohibiting the NPS from imposing the moratorium. In granting the preliminary injunction, the court held that the decision not to issue commercial guiding permits "amounts to an impermissible governmental entanglement with religion."

The Departments of Justice and the Interior believe that the Plan is a permissible government accommodation of religion, and

we are working to determine the best strategy for defending the Management Plan and protecting Indian religious exercise at Devils Tower National Monument.

G. Criminal Investigation and Enforcement in Indian Country

Crime exacts a tremendous price from the communities of this Nation. Indian communities have paid particularly high costs both in terms of broken lives and in dollars lost. By statute, the Department through the United States Attorneys' Offices is responsible for the prosecution of major and other crimes between Indians and non-Indians in most of Indian Country. The Department is committed to carrying out these responsibilities in a manner consistent with the government-to-government relationship between tribes and the federal government.

The United States Attorneys' Offices and the Criminal Division -- in conjunction with the Federal Bureau of Investigation (FBI), the Bureau of Indian Affairs (BIA), and the tribes -- are working to address the unique problems associated with combatting crime in Indian Country. The prosecution of violent crimes against victims in Indian Country is one of the Department's highest enforcement priorities, especially where the victims are children.

1. Federal Prosecution of Crime in Indian Country

We have taken several important steps aimed at improving the Department's responsiveness to crime and crime victims in Indian Country. United States Attorneys' Offices with significant Indian Country jurisdiction have focused on how to provide better service to the Native American population.

- Special Assistants for Indian Affairs -- The Department encourages United States Attorneys to appoint special assistants for Indian Affairs in order to develop better working relations with tribes and to provide a point of contact for crime victims and their families, tribal law enforcement officers, victim advocates, social workers, prosecutors, and other officials. In recognition of the importance of this task, in 1995-96, 26 additional Assistant United States Attorney positions have been provided to those districts containing significant amounts of Indian Country.

- Development of Agreements to Resolve Problems of Overlapping Jurisdiction -- The problems involving the scope of federal, state, and tribal jurisdiction present a barrier to effective law enforcement in Indian Country. 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.

- Training -- Within the Department, we are redesigning our training programs to ensure that federal prosecutors understand the jurisdictional framework for Indian Country, the law, and their responsibilities to American Indian communities. The FBI is providing similar training for agents assigned to Indian Country or having significant responsibilities in Indian Country. Our goal is to ensure that our federal enforcement responsibilities are carried out sensitively, responsibly, and effectively.

2. Federal Criminal Investigation in Indian Country

The FBI and the BIA work together to investigate federal crime which occurs on Indian Country. To be effective in reducing crime in Indian Country, increased prosecutorial resources must be mirrored by an increase in law enforcement personnel.

- Law Enforcement Cooperation -- 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 the Bureau of Indian Affairs (BIA) and other appropriate policing authorities.

- Additional Federal Law Enforcement Personnel and Training -- 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 wherein \$1.13 million will be provided by the FBI to expand and improve investigative and managerial training of Indian Country law enforcement agencies. This training initiative will facilitate the working relationship among Special Agents, Criminal Investigators and police officers to ensure more uniformity of law enforcement services provided in Indian Country.

- Tribal/Federal Cooperative Programs -- Because of the complex jurisdictional issues and the expanse of Indian Country, the FBI works with tribes to develop cooperative law enforcement efforts. These efforts include the initiation of Operation Safe Trails in cooperation with the Navajo Nation's Department of Law Enforcement. This program, which is designed to address major crime and sexual abuse in Indian Country, is staffed by a task force of FBI Special Agents and Navajo Nation Police Officers. The FBI recently established two more Safe Trails task forces and two additional proposed projects await final approval.

3. Building Tribal Capacity to Address Crime

Although the Department enforces federal law in much of Indian Country and works with tribes to prevent crime, the

solutions to the crime problem must come from within tribal communities. The Department is committed to enhancing the capacity of tribes to confront the problems of crime in Indian communities.

a. Community Oriented Policing Services Program -- The Community Oriented Policing Services (COPS) program was established under the Violent Crime Control and Law Enforcement Act of 1994. Through COPS, the Department provides grants to recognized Indian Tribal Governments as part of the Department of Justice's efforts to put 100,000 additional community oriented police officers on the streets of America. COPS is committed to helping Indian tribes control crime by helping them hire more police officers and expand their law enforcement capacity. Grants may be used to hire community oriented police officers, to procure equipment, technology support systems, and to provide training in community policing efforts.

- Grants -- Grants have been awarded to Indian Country under the COPS Office hiring programs (Police Hiring Supplement, Phase I, FAST, AHEAD, Troops to COPS and Universal Hiring) and its redeployment program (COPS MORE). 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. Eighteen Indian tribal applications are pending an award decision under Universal Hiring, and 26 under the COPS Domestic Violence Program. In addition, the COPS Office has granted 22 tribal jurisdictions a waiver of the matching funds requirement. The COPS Office also is planning to announce its Innovative Community Oriented Policing Grants (ICOP) in the near future.

- Training -- The COPS Office also provides funding to support training to implement the principles and practices of community policing. One source for this training is the Community Policing Consortium (CPC), the COPS Office designee to provide training and technical assistance to COPS grantees which require an additional level of support to implement their community policing initiatives. Of the 129 Indian Tribes that received funding to hire community police officers, 26 tribes were invited to receive training and technical assistance from the CPC.

Additionally, through an Inter-Agency Agreement with the Executive Office for United States Attorneys, 60 U.S. Attorneys received funding to work with their Law Enforcement Coordination Committee and their law enforcement working groups to develop innovative community policing in order to broaden the range of community policing training that is available in each state. This training supplements the training offered by the CPC. Of these 60 projects, 5 were directed to providing training for Indian Tribes.

Finally, as part of the COPS Office Targeted Training Initiative, 14 training targets were identified for funding, and one of the targets included training for tribes. The project came to the COPS Office through the U.S. Attorney's Office in Arizona, which submitted a proposal on behalf of the grantee, the Inter-tribal Council of Arizona. This project plans to present quarterly seminars using a multi-faceted approach to law enforcement training that is designed to enhance community policing strategies. The project also will develop training, technical support, and direct on-site technical assistance for tribes. This effort will support coordinating efforts between the twenty-one tribes and the forty law enforcement agencies with which they interface.

b. Violence Against Women Grants Office -- For FY95, 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, 9 pueblos and 5 tribes. For FY96, \$5.2 million will be allocated to the STOP Violence Against Indian Women Discretionary Grant Program.

c. Drug Courts -- For FY95, the Drug Court Grant program of the Violent Crime Control and Law Enforcement Act of 1994 made 4 grants to Indian and Alaskan Native courts totaling \$100,000.

d. Corrections Program Office -- For FY95, the Corrections Program Office awarded funding to the Sac & Fox Nation, Oklahoma and the Gila River Pima-Maricopa Indian Community, Arizona for Boot Camp planning grants totaling \$100,000.

e. Office for Victims of Crime (OVC) -- For FY95, OVC awarded 8 grants totaling \$800,000 to the Children's Justice Act (CJA) Discretionary Grant Program for Native Americans, \$54,000 for Court Appointed Special Advocates (CASA) in Indian Country, \$54,000 for travel and technical assistance for tribal personnel who handle complex child abuse and other child victim cases, \$105,000 for training and technical assistance to CJA grantees, and \$765,000 for the Victim Assistance in Indian Country program.

f. Office of Juvenile Justice and Delinquency Prevention (OJJDP) -- In FY95, OJJDP funded 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. The Tribe's funding for the first year was \$1.2 million.

The Washoe Tribe of Nevada and California was selected as a

demonstration site in OJJDP's funding for their program Intervention to Reduce Disproportionate Minority Confinement in Secure Detention and Correctional Facilities.

The Lummi Indian Nation, Washington, received funding to develop and coordinate treatment strategies to improve the juvenile justice system's impact on young offenders.

g. Bureau of Justice Assistance -- In FY95, Fort Peck Reservation in Montana and the Rosebud Reservation in South Dakota were selected as sites for the Tribal Strategies Against Violence (TSAV) program, a comprehensive planning and implementation strategy for Indian Country. The goal of this initiative is to empower Native American communities through the development and implementation of reservation-wide strategies to reduce crime, violence, and drug abuse. The initial funding for this federal-tribal partnership is \$300,000 per site. Up to four additional sites will be selected for FY96.

H. Protecting the Civil Rights of American Indians

The Department has been very active over the last several years enforcing statutes that prohibit discrimination against Native Americans. That activity includes the following:

- Housing -- On April 15, 1996, we filed a complaint in district court in Rapid City, South Dakota, against the First National Bank of Gordon, Nebraska, alleging the bank charged its Indian customers higher interest rates on consumer loans than similarly situated white customers, and that it took the race or national origin of its Indian customers into account in setting those higher rates. The bank has failed to provide a non-discriminatory explanation that fully justifies the disparity.

The alleged victims of this discrimination live on the Pine Ridge Indian Reservation in Shannon County, South Dakota, which is among the most impoverished counties in the nation. In our complaint, we allege violations of the Equal Credit Opportunity Act and the Fair Housing Act.

- Voting -- Over the last several years the Department has taken several 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 [U.S. v. State of Arizona], New Mexico [U.S. v. Cibola County, U.S. v. McKinley County, U.S. v. Sandoval County, U.S. v. Socorro County] and Utah [U.S. v. San Juan County].

During the past year we have: negotiated a revised consent

agreement affecting McKinley County, New Mexico, which is awaiting court approval; we have continued to monitor our consent agreements affecting Navajo and Pueblo speakers in three other New Mexico counties, and in counties in Arizona and Utah; and we have conducted investigations in two additional New Mexico counties, which we expect to lead those counties to adopt effective bilingual election programs.

LABOR

DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
OFFICE OF SPECIAL TARGETED PROGRAMS

DIVISION OF INDIAN AND NATIVE
AMERICAN PROGRAMS

LEGISLATIVE AUTHORITY

Public Law 97-300, Job Training Partnership Act (JTPA), as amended by Public Law 102-367, Job Training Reform Amendments of 1992

Title IV, Part A, Sec. 401 - Native American Programs
Title II, Part B, Sec. 251(a) - Summer Youth Programs

Public Law 102-477, Indian Employment, Training and Related Services Demonstration Act of 1992

PROGRAM DESCRIPTION

These programs are designed to increase the economic well-being of Native Americans, Native Alaskans and Native Hawaiians by direct placement into jobs and by providing job training and related services which will lead to placement in unsubsidized employment. The JTPA program currently has 189 designated grantees, and the majority are tribal governments and consortia. Other grants are awarded to Native American non-profit organizations serving urban areas. Grantees are designated for a two-year period. The current designation period began on July 1, 1995 and will end June 30, 1997 (Program Year's 1995 and 1996). There are currently 15 JTPA grantees with approved plans to participate in the P.L. 102-477 demonstration program. 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 Interior, Health and Human Services, and Labor.

The Department of Labor has strived to fulfill the President's commitment to Indian leaders by administering employment and training programs for Indian tribes founded on a government-to-government relationship. The Assistant Secretary for the Employment and Training Administration has designated the Division of Indian and Native American Programs (DINAP) with this responsibility, pursuant to Sec. 401(j) of the amended Act.

Advisory Council

The Native American Employment & Training Council was established by statute when the Act was amended in 1992 (JTPA, Title IV - Part A, Sec. 401). The Department views the Council as its direct link to the Native American community for advice, consultation and input on all matters impacting the Indian and Native American Program.

The Council must meet not less often than twice each program year and maintain a membership of no fewer than 17 Indians, Alaskan Natives and Hawaiian Natives. The Council's charter was renewed on July 1, 1995 and expires on June 30, 1997. On July 1, 1996, the Secretary of Labor appointed four new members and reappointed six existing members. The Council's first report to the Secretary of Labor and Congress, as required by the 1992 JTPA amendments, has been issued to all Indian and Native American grantees.

In order to make "partnership" a meaningful part of our dialogue with grantees, all major policy issues are presented to the Advisory Council for their consideration and advice.

Preparations are being made for an Advisory Council meeting to be held at the Department of Labor this October.

1996 Partnership Plan

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.)

Designation Process

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 with the right to waive competition for a grantee that is successfully administering a current grant. However, for the 1997-98 designation cycle, waivers will not be used thereby permitting all eligible entities, current grantees and non-grantees, an opportunity to compete for JTPA, Section 401 funding.

By the first of March 1997, the Department of Labor will announce which eligible entities have been designated as grantees for PYs 1997-98. Currently, one-hundred eighty-nine tribes and organizations are designated as Indian and Native American Job Training Partnership Act (JTPA) grantees for the two-year funding cycle that ends on June 30, 1997. The 189 grantees represent 97 federally recognized tribes, 16 tribal consortia, 15 Alaska Native organizations, 61 non-profit Indian-controlled organizations, one Hawaiian Native organization and one Hawaiian state agency.

SECTION 401 PROGRAM EVALUATION:

The Employment and Training Administration (ETA) awarded a contract in June of 1995 to conduct a 24-month evaluation study to determine the nature and quality of training, employment and supportive services provided by the Indian and Native American (INA) program. It is expected that the results of the study, culminating in a final report, will be used by ETA, program grantees and service providers, to improve the efficiency and effectiveness of the INA

program. The contractor is currently completing fieldwork, e.g., interviews, document reviews, etc.

Regulations

Proposed revisions of the section 401 regulations have been the subject of numerous consultation meetings with the Advisory Council, including working sessions with subcommittees of the Council. We have conducted this regulatory review activity in the spirit of partnership and negotiation. This has resulted in significant proposed changes in the current regulations, e.g., relaxing limits on certain enrollment activities, making selected practices optional rather than mandatory, revising the designation procedures, granting wider grantees latitude in program planning, and providing a general waiver provision for non-statutory requirements in the regulations. In addition, and on the advice of the Advisory Council, we modified the current format of the proposed regulations to make them more "user friendly". The Departmental internal review process should be completed during the current program year.

In addition, the Department in consultation with our 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 impede their ability to improve program management, results and outcomes.

U.S. Department of Labor

Assistant Secretary for
Employment Standards
Washington, D.C. 20210

MEMORANDUM FOR ROBERT A. SHAPIRO
Associate Solicitor for
Legislation and Legal Counsel

FROM:

Kathleen C. Frank for
BERNARD E. ANDERSON

SUBJECT: Administration's Annual Report on American Indians
and Alaskan Natives

The Employment Standards Administration (ESA) has the following comment regarding the Annual Report on American Indians and Alaskan Natives.

ESA wishes to note that its Office of Federal Contract Compliance Programs (OFCCP) has historically had an excellent working relationship with the Tribal Employment Rights Organization (TERO). OFCCP's commitment to TERO is an initiative that ensures Native Americans and Alaskan Natives have an opportunity to participate fully in employment with Federal contractors covered under Executive Order 11246, as amended. ESA believes that the TEROs serve as linkage sources which help Federal contractors find qualified Native Americans for employment opportunities. Additionally, TERO Directors and other Native American Leaders are also invited, by OFCCP, to participate in regional management meetings and express their concerns. We note that on July 15-19, Deputy Assistant Secretary Wilcher participated in an Alaskan Construction Initiative in Anchorage, Alaska, which included TERO representatives. She also met with the Alaskan Native Coalition on Employment and Training and with TERO Council members to hear their concerns.

TREASURY



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 25, 1996

MEMORANDUM FOR FAITH ROESSEL
SPECIAL ASSISTANT TO SECRETARY BABBITT

FROM: MICHAEL BARR *MB*
SPECIAL ASSISTANT TO SECRETARY RUBIN

SUBJECT: WORKING GROUP ON AMERICAN INDIANS
AND ALASKA NATIVES

At the conclusion of the January 31st meeting of the working group on American Indians and Alaska natives, Secretary Babbitt indicated that it would be helpful if Treasury would keep him updated on our activities of interest to the working group, and would let him know what process we would suggest to continue this dialogue on matters of importance to American Indians and Alaska natives. This memorandum is in response to that request.

Since that meeting, 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 was circulated to other agencies for comment on March 14. We met with interested agencies Friday.

On April 5 and 6, Treasury's FINCEN will host a tribal gaming compliance conference in Orlando, Florida, to which 142 tribal leaders have been invited.

This spring, 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, and community development investments. Finally, OCC highlighted bank provision of lending and services in Indian country at its February community development conference.

As I mentioned at the last Working Group meeting, the CDFI Fund will also be conducting a study this year of capital access barriers facing Native Americans.

On a broader front, on March 11, the President announced our new "brownfields" tax incentive, and called on the Congress to pass it. The incentive would permit new purchasers and others to deduct immediately the costs of environmental clean up, rather than capitalizing the costs over the life of the property. The incentive is targeted to, among other areas,

census tracts with 20 percent or more poverty. We believe this incentive would be a valuable tool in helping to get environmentally damaged properties productive again, including potentially sites in Indian country.

Last Tuesday, as part of the President's balanced budget, we released details of the tax incentives for a proposed second round of Empowerment Zones and Enterprise Communities, including the brownfields incentive, private activity bonds, and additional section 179 expensing. Indian reservations are eligible to compete for designations.

At your suggestion, we will be meeting with the Department of the Interior and others tomorrow for a small, informal meeting on tax and access to capital issues before the next Working Group meeting.

I would appreciate it if you would pass on this information to Secretary Babbitt.

cc: Assistant Secretary Samuels
Deputy Assistant Secretary Thompson
Deputy Assistant Secretary Morales Marks
Catherine Livingston
Peter Necheles

CORPORATION FOR NATIONAL SERVICE

Corporation for National Service

Funding Streams Supporting Programs
Directed by or Primarily Serving native American and Alaskan native Communities

"To lead is to serve and in doing so, help others to help themselves."

*Ross Swimmer, Principle Chief, Cherokee Nation
Address to Cherokee Nation Youth Leadership Program.*

AmeriCorps

AmeriCorps is the national service initiative signed into law by President Clinton which engage the energy of the American people in meeting the most critical education, public safety, human, and environmental needs of our communities. In return for a substantial commitment to service, AmeriCorps Members will earn an educational award to be used to pay back college loans or as a scholarship to college or vocational school. This year, through AmeriCorps--which includes AmeriCorps*VISTA, AmeriCorps*NCCC, and AmeriCorps*State, National, and Tribes--25,000 Americans of all backgrounds will engage in meaningful and demonstrable community service.

The Corporation is committed to maintaining and assisting in the development of service opportunities within native American and Alaskan native communities. In nearly every Corporation funding stream, from Learn and Serve K-12 to the Foster Grandparents program, volunteers are serving to meet most pressing needs of native american communities.

AmeriCorps

- **1% Set-Aside for native American and Alaskan native Programs**

The National and Community Service Trust Act of 1993 mandates that the Corporation for National Service set aside one percent of its AmeriCorps yearly allocation for federally recognized tribes. In 1995 this amounted to \$2.5 million. The Corporation currently funds six AmeriCorps and currently funds four programs in Montana, Washington, New York, Arizona, and Minnesota.

- **AmeriCorps*State**

Native American and Alaskan native organizations, including Indian Nations, higher education institutions, community based organizations and foundations may also apply for AmeriCorps funds through the State within which their organization lies by applying to the State Commission. State Commissions, in partnership with the Corporation, competitively select programs. A list of State Commission addresses is available from the Corporation upon request. The Corporation currently funds native American programs via State Commissions.

- **AmeriCorps*National**

AmeriCorps*National requires programs to apply directly to the Corporation for funding. There are four types of eligible applicants: entities which exist in more than one state, national non-profits, federal agencies, and professional corps. AmeriCorps programs currently operate in Indian communities under this.

Examples of AmeriCorps programs:

Ft. Belknap Indian Agency

Twenty AmeriCorps Members have implemented a comprehensive street and mile-marker signing project that will make the reservation eligible for 911 services, and have participated in the construction of a community education radio station. Members have also constructed six recreation sites and are building an education and community center.

Harlem, MT

"Rural CAP"

AmeriCorps Members are addressing early childhood development, mental illness and homelessness, and substance abuse prevention in native Alaskan communities. They are serving as teachers aides in Head Start programs, mental health counselors, and facilitators of a homelessness prevention initiative.

Anchorage, AK

Round Rock AmeriCorps

AmeriCorps Members use a culture-based curriculum to tutor Round Rock's children, improving both math and reading scores. Members also actively involve parents in their children's education.

Round Rock, AZ

AmeriCorps*VISTA

More than fifty AmeriCorps*VISTA Volunteers are currently serving within native American communities in more than fifteen states. Approximately \$400,000 was expended in FY '95 to place AmeriCorps*VISTAs within these communities.

San Juan Foundation for Higher Education

Blanding, UT

AmeriCorps*VISTA Members identify resources and support services available to at-risk youth, and design and implement school year and summer instructional and motivational programs for these youth. Primary focus is on the Navajo and Ute tribes.

Kodiak Area Native Association

Kodiak, AK

AmeriCorps*VISTA Members provides visioning, administrative support, and training to tribal governments to help them develop policies and procedures for sound financial management. The members have developed a museum outlet store staffed by 22 community volunteers and a cooperative involving 18 participants in the creation and sale of Kodiak area Native Art.

Learn and Serve America

K-12 and Higher Education

Learn and Serve*K-12

L&S*K-12 awards grants to programs that engage elementary and high-school age youth in service-learning. Service Learning is a method of teaching and learning that involves youth in service to their communities as part of an academic curriculum. Learn and Serve K-12 reserves up to three percent of its total allotment for Indian tribes and U.S. Territories. For FY 1995 that amounted to nearly \$1 million. Indian tribes may also apply for grants under the fund for the

Advancement of Service-Learning category. This is a competitive funding stream open to State Departments of Education, Indian tribes, and U.S. Territories.

Learn and Serve*Higher Education

L&S*Higher Ed. supports programs that foster an ethic of service among participating college and university students by funding programs which design and implement service-learning initiatives on college campuses nationwide. In 1995 approximately \$320,000 in grants was awarded to tribal colleges or higher-education institutions serving native Americans.

Examples of Learn and Serve programs follow:

Cherokee Nation

This program identifies community needs, develops tribal youth programs within schools, and helps to empower youth by allowing them to design and implement service projects in their community and schools.

Tahlequah, OK

Northland Pioneer College

This program will allow for the development of a service-learning center that will house information on community service activities and placements in order to integrate service into courses. Students will tutor and mentor school-age youth in the rural, two-county service area which includes the Navajo, Hopi, and White Mountain Apache Nations.

Holbrook, AZ

National Senior Service Corps

For more than three decades the NSSC has provided older Americans with the opportunity to use their skills and experiences to address critical needs in local communities. In 1995 NSSC expended \$5.6 million to support nearly 30,000 NSSC volunteers within native American and Alaskan native communities. National Senior Service Corps volunteers serving native communities can now be found in more than twenty states including Alaska, New Mexico, South Dakota, Washington, and Wisconsin. Some examples of these programs follow:

Foster Grandparent Program

Navajo Nation

This program utilizes the skills and experience of more than 156 foster grandparent volunteers within the Navajo Nation. Volunteers serve with Navajo children in a variety of areas including juvenile justice, education, and health services. Volunteer service is provided through 114 volunteer stations, including day-care centers and schools.

AZ, UT, NM

Senior Companion Program

Pueblo of Zuni

Senior Companions are providing a variety of services including shopping, personal care, and transportation to and from medical appointments to frail, homebound elders, thereby preventing unnecessary institutionalization.

Zuni, NM

Retired and Senior Volunteer Program

Fort Peck Indian Reservation

More than 200 RSVP volunteers are addressing critical community needs on the reservation, including health services, drug and alcohol abuse prevention, teen pregnancy prevention, and the reduction of high-school dropout and unemployment rates.

Wolf Point, MT

ENVIRONMENTAL PROTECTION AGENCY

The U.S. Environmental Protection Agency's Accomplishments
In Indian Affairs: Two Years Later

August 16, 1996

The U.S. Environmental Protection Agency (EPA) continues to demonstrate its commitment to strengthening public health and environmental protection in Indian Country and build upon the solid foundation of achievements described in last year's report. In February 1994, EPA Administrator Browner established a Tribal Operations Committee (TOC) to improve communication and build stronger partnerships with Tribes. The TOC includes 19 Tribal Leaders or their environmental managers and EPA's Senior Leadership Team. The TOC meets on a regular basis to discuss implementation of the environmental programs for which EPA and the Tribes share responsibility as co-regulators. In March 1994, Administrator Browner reaffirmed EPA's 1984 Indian Policy which recognizes Indian Tribal governments as the most appropriate parties to manage Tribal environments, wherever Tribes can demonstrate the ability to do so.

In October 1994, EPA established an American Indian Environmental Office to oversee implementation of the Agency's Indian Policy and ensure that all EPA Headquarters and Regional Offices implement their parts of the EPA Indian Program in a manner consistent with EPA's Trust responsibilities and Administration Policy to work with Tribes on a government-to-government basis and support Tribal self-governance. In July 1994, the Administrator issued an Action Plan for the Agency's Indian Program which outlined a number of steps for immediate implementation throughout the Agency.

The following report highlights accomplishments since EPA's initial report presented to Indian Tribes and the White House Domestic Policy Council in July 1995.

Major Accomplishments

- o The Agency has increased resources for its Indian Program from \$35 million in Fiscal Year (FY) 1994 to \$85 million in FY 96. The President has requested \$99 million in FY 97. Most of these monies are provided directly to Tribes as grants for Tribal environmental programs and activities or fund Tribal sanitation infrastructure.
- o 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.
- o 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.

- o In March 1996, the U.S. District Court in Montana upheld EPA's Decision to approve the Confederated Salish and Kootenai Tribes' Water Quality Standards Program for all waters on the Flathead reservation. The case is on appeal.
- o In June 1996, EPA worked with the Department of the Interior and the Department of Agriculture 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.

Main Report:

Advancing Self-Governance and Self-Determination:

- o EPA's 1984 Policy for Administration of Environmental Programs on Indian Lands, reaffirmed in 1994, recognizes Indian Tribal governments as the most appropriate parties to manage Tribal environments, wherever they can demonstrate the ability to do so. EPA provides grants to Tribal governments and intertribal consortia under the Indian Environmental General Assistance Program (GAP) Act of 1992 for planning, developing, and establishing Tribal environmental capability. EPA's grants to Tribes under the GAP Act have increased from the \$8.4 million appropriated in FY 94 to \$15 million in FY 96, the maximum amount authorized in the GAP Act. The President has requested \$28 million for GAP grants in FY 97. EPA supports S. 1834, a bill sponsored by the leadership of the Senate Committee on Indian Affairs that would lift the ceiling on GAP appropriations.
- o This year, EPA has proposed regulations for Tribal Solid Waste, Hazardous Waste and Lead Paint Abatement Certification programs. EPA anticipates completing the rule for Tribal Air Programs in December 1996.
- o EPA has increased grants for Tribal Water Programs and activities from \$5.1 million in FY 94 to \$7.7 million in FY 96. EPA increased grants for Tribal Air Programs from \$1.4 million in FY 94 to \$5.0 million in FY 96.

Advancing the Government-to-Government Relationship:

- o In April 1996, EPA Administrator Browner and James Fletcher, Chairman of the Tribal Caucus of EPA's Tribal Operations Committee (TOC), signed a Charter formalizing the goals, principles and operating procedures of the TOC. The TOC (comprised of 19 Tribal Leaders or their environmental managers and the Agency's Senior Leadership Team) continues to meet on a regular basis to enhance the government-to-government

relationship and exchange information on the operation of environmental programs.

- o Most EPA Regional Offices are supplementing this relationship by establishing Regional TOCs or, in Regions with fewer Tribes, convening regular meetings between all Tribal Leaders/environmental managers and the Agency's Senior Regional Leadership.
- o In order to advance the government-to-government relationship and build EPA's Indian Program in a manner consistent with Tribal priorities, EPA is working with all interested Tribes to develop Tribal/EPA Environmental Agreements. TEAs are meant to describe the past and current condition of a Tribe's environmental resources, the Tribe's long-term vision for the future of its environment, and the Tribe's near-term priorities for developing Tribal environmental programs or federal implementation of environmental programs on Tribal lands.

Advancing Tribal Sovereignty:

- o EPA has approved approximately 100 Tribes to implement approximately 150 programs under EPA's authority to treat Tribes in a similar manner as a State, including 18 Tribal regulatory programs. Approximately 20 Tribes operate pesticide programs under cooperative agreements with EPA.
- o In May 1995, EPA opposed proposed amendments to the Clean Water Act which could have significantly diminished Tribal authority to manage water quality on Indian reservations. In June 1995, EPA opposed similar amendments to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). In July 1996, EPA worked with the Department of Agriculture and Department of the Interior to ensure a revised but similar amendment was dropped from recently enacted Food Safety Reform/FIFRA legislation.

Increasing Environmental and Natural Resource Protection/ Protecting Trust Resources and Indian Lands:

- o The significant increases in grant funding for Tribal environmental programs and the forth-coming Tribal program regulations described above should significantly improve environmental and natural resource protection in Indian Country.
- o In FY 1996, EPA's underground storage tank program anticipates funding demonstration grants to eight Tribes or Tribal consortia and providing EPA technical assistance and training to 150 Tribes. 820 releases from underground storage tanks have been confirmed on Indian lands and remediation has been initiated at more than 500 of these sites. 246 cleanups have been completed.
- o EPA implements the Underground Injection Control Program and the program for issuing surface water discharge (NPDES) permits on a number of reservations.

- o 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.
- o Most EPA Regional Offices have developed a means for working in the field to assist Tribes including: 1) hiring Senior Environmental Employees who are located in the Regions to provide technical assistance and outreach to Tribes; 2) recruiting Americorp members from Alaska Tribes to work with Native Villages on solid waste management and sanitation issues and 3) providing a field presence through staff visits and inspections.

Protecting Religious Freedom and Cultural Resources:

- o EPA has significantly increased use of its authority to review federal projects for consistency with the National Environmental Policy Act (NEPA) to ensure federal agencies adequately evaluate, consider and, wherever possible, mitigate impacts on Tribal resources. Specific examples include the Agency's comments on:
 - a proposed freeway in Lawrence, Kansas that could significantly affect lands used for religious ceremonies and traditional cultural activities at Haskell University;
 - a proposal to relicense a hydropower dam without properly considering long-standing impacts on the Trust and Treaty resources of the Skokomish Tribe; and
 - a proposed mining project expansion that could significantly impact the Fort Belknap Reservation.
- o This year, EPA released interim guidance for considering environmental justice issues in the Agency's own actions, such as grants issuance and permitting, that are subject to review under NEPA.

Improving Indian Health:

- o EPA provided \$6.2 Million to help plan, design and build 22 Indian wastewater treatment projects in FY 1995. In FY 1996, EPA provided \$6.7 million for 25 projects.
- o EPA has provided \$15 million each year in FY 1994, FY 1995, and FY 1996 to address the serious sanitation problems in Native Alaskan Villages.
- o EPA works with the Indian Health Service to ensure the safety of public drinking water systems on most reservations.
- o EPA supports doubling the set-aside for Indian wastewater treatment systems under the

Clean Water Act infrastructure fund from one-half of one percent to one percent. The Agency supported a one and one-half percent set-aside as direct grants for Indian drinking water systems which was included in the recently passed Safe Drinking Water Act Reauthorization.

- o EPA is distributing funds to its Regional Offices to help Tribes develop Solid Waste Management Programs. The Agency is assisting the Indian Health Service to prioritize open dumps on Indian lands identified by IHS's recent survey.

Protecting Subsistence Activities:

- o The significant increases in grant funding for Tribal environmental programs and the forth-coming Tribal program regulations described above should significantly improve protection of subsistence resources in Indian Country.
- o On a national basis, EPA is working to improve the approaches used by States to evaluate fish contamination and set fish consumption advisories. Better information on fish contamination may increase the attention devoted to identifying and reducing sources of fish contaminants.
- o AIEO's guidance for Tribal/EPA Environmental Agreements (TEAs) calls for identification of Tribal cultural resources, including subsistence resources, that are or potentially could be threatened by pollution or environmental management practices.

Improving Indian Education:

- o EPA provides funding to the American Indian Science and Education Society (AISES) to support scholarships for Indian students who are pursuing technical/environmental careers.
- o EPA supports the Bureau of Indian Affairs' Water Technician training courses.
- o EPA provides guidance and training on many of its programs to Tribes who are interested in increasing their knowledge of EPA environmental and human health protection programs. Examples include:
 1. Development of an instruction manual for developing Quality Assurance Program and Project Plans. (EPA's Boston Office)
 2. Indoor Air Training for Tribes. (EPA's Denver Office with Northern Arizona University)
 3. Household Hazardous Waste Training (EPA's Kansas Office)

4. Support for the development of college level training courses on Pesticides at Haskell University. (Office of Pollution Prevention and Toxic Substances)
 5. In-house scholarships for Indian Students who are interested in environmental careers. (EPA's Denver Office)
 6. Water Quality Standards Academy Training. (Office of Water)
 7. Tribal Workshops to discuss protection and restoration of wetlands, flood plains, rivers and riparian areas. (Office of Water)
- o EPA has established an Indian program presence on the Internet. Many key documents, regulations and policies will be placed on a web site page for EPA's customers including the Tribes. An effort will be made to assist Tribes obtain computer equipment and access to the internet.
 - o EPA is working with other Agencies on a proposed Tribal College Executive Order that would increase support among the Agencies and outside of government for the 29 Tribally owned and operated colleges.

CQ Researcher

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Native Americans' Future

Do U.S. policies block opportunities for progress?

American Indians have the highest unemployment, poverty and disease rates of any ethnic group in the country. Yet Indian leaders say Americans are indifferent to their plight, as reflected in recent funding cuts for Indian programs. Congressional budget-cutters argue that Indians should share the burden of balancing the federal budget, but Indian advocates say aid programs for Indians are cited — and protected — in scores of treaties between tribes and the federal government. Many tribes see the key to their survival in economic development fueled by revenues from gambling. But Indian advocates say that mounting efforts to curtail their casino operations and other moves toward self-determination are only the latest in a long history of violations of Indian sovereignty guaranteed in the Constitution.



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Formerly Editorial Research Reports

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EDITOR

Sandra Stencel

MANAGING EDITOR

Thomas J. Colin

ASSOCIATE EDITORS

Sarah M. Magner
Richard L. Worsnop

STAFF WRITERS

Charles S. Clark
Mary H. Cooper
Kenneth Jost

EDITORIAL ASSISTANT

Tonya Harris

PUBLISHED BY

Congressional Quarterly Inc.

CHAIRMAN

Andrew Barnes

VICE CHAIRMAN

Andrew P. Corty

EDITOR AND PUBLISHER

Neil Skene

EXECUTIVE EDITOR

Robert W. Merry

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Native Americans' Future

BY MARY H. COOPER

THE ISSUES

To the somber thump of a cottonwood drum, eight young men and women filed into the dusty schoolyard. The men's bodies were striped with paint, red ocher symbolizing the blood of the Earth, white to ward off evil spirits. The men wore headdresses with majestic rams' horns; the women colorful dresses. Facing North, South East and West, they began dancing to the rasp of gourd rattles and the drum's slow cadence.

For centuries, the Havasupai Indians of northwest Arizona have performed the ram dance to conduct the spirits of their dead relatives to the next world. But today the sacred ceremony has become more than just a funeral rite. It is a vital teaching tool in the 650-member tribe's fight for cultural survival. On a recent afternoon, the dancers performed for a hushed audience of children and elders alike. Afterwards, everyone, including a non-Indian visitor, joined hands in a circle dance for peace.

"We use any occasion we can to dance before our tribe because our customs and language will die with us if we don't teach them to the next generation," says Matthew Putesoy, a dancer and member of the tribal council. "People from other tribes are surprised when they hear our kids speak because their kids speak English only. Our young people all speak Havasupai."

The Havasupais' concerns are shared by American Indians across the country. "I wasn't raised on the 'rez,' so I don't speak the language except for a few words," says Sen. Ben Nighthorse Campbell, R-Colo., a Northern Cheyenne and the only Native American in Congress. "But most tribes are trying to record their songs or dances and compiling dictionaries to preserve their languages."



To many observers, economic survival is an even more pressing concern for the country's 2.1 million Indians. They not only have the highest unemployment and poverty rates of any group in the United States but also the nation's worst disease rate. (See story, p. 608.)

But Americans seem indifferent to their plight, Indian leaders say, pointing to recent cuts in funding for the Bureau of Indian Affairs (BIA), which operates most housing, education and welfare programs on reservations. Even with the nation's Indian population growing at some 4 percent annually in recent years, Congress cut funding for Indian programs by \$160 million in fiscal 1996, down 9 percent from BIA's \$1.7 billion 1995 budget. And while President Clinton proposed restoring the 1995 spending levels for fiscal 1997, House and Senate budget committees have recommended even deeper cuts for BIA — as much as \$193 million below the 1995 level. These cuts follow a 20-year decline in funding for Indian affairs.

"American Indians have always been underfunded and short-changed," says Ada E. Deer, a member of Wisconsin's Menominee tribe, who

as assistant Interior secretary for Indian affairs heads the BIA. "This country was built on the land and the resources that were ceded to the government by the tribes. If the tribes had been allowed to develop in a more just way, we would not have some of the problems we have. But Congress doesn't understand or acknowledge the obligation of this country to the native peoples. This country can send a man to the moon, and we're talking about spending billions of dollars for space programs. We should be able to invest a few billion more in Indian tribes to address this historic injustice."

Congressional budget-cutters say Indians should share the burden of balancing the federal budget. For example, in addition to funding the BIA, the Interior appropriations bill now before Congress also funds a number of major, non-Indian programs, including the National Park Service, the Forest Service and many museums and cultural institutions. "It's probably safe to say that all of these groups are going to be treated fairly equally, because no one can get an increase over 1996 without someone else getting a decrease," says Sen. Slade Gorton, R-Wash., chairman of the Senate Interior Appropriations Subcommittee and an outspoken advocate of cutbacks in Indian programs. "And I don't propose to close national parks or the Smithsonian."

Indian advocates say their programs are legally protected because they are cited in scores of treaties between various tribes and the U.S. government. Though Congress granted Indians U.S. citizenship in 1924, they also are considered members of sovereign nations. "Indians are not a minority group," says Gwen Carr, a Cayuga who chairs the National Urban Indian Policy Coalition, a Chicago organization that represents Indians who live off reservations. "Indians are a distinct political entity, the only group of

"If We Could Develop Our Land . . .

It's an eight-mile hike down Havasu Canyon to the village of Supai, Ariz. The narrow switchback down the canyon wall eases into a winding, rocky descent among towering ochre cliffs toward the Colorado River. Pack horses carrying mail and supplies share the trail.

The clear blue waters of Havasu Creek mark the town limits. A narrow footbridge leads to the main street, a dusty road bordered by a 600-year-old irrigation ditch funneling precious water from the creek to the fields. A sign warns riders not to gallop in town. The road leads past the office where tourists pay their visitation fees, an elementary school and the administrative office of the Havasupai Tribe's seven-member council.

With no access to motor vehicles, Supai is the most remote village in the lower 48 states. While its location clearly distinguishes the 650-member Havasupai tribe from the other 551 federally recognized tribes in the United States, the problems the council members addressed recently could be heard almost anywhere in Indian country.

"The Havasupai people have been living here a long time," says Tribal Chairman Wayne Sinyella. "We've also been struggling a long time." Known as the Guardians of the Grand Canyon, the Havasupai once occupied hundreds of square miles of territory extending from the Grand Canyon southward about 80 miles, as far as present-day Flagstaff. But like other tribes across the country, the Havasupai lost most of their homeland to settlers and cattle ranchers after the mid-1800s. They suffered a major blow to their heritage after Teddy Roosevelt, awed by the Grand Canyon, declared the area a national park in 1903 and had the Indians driven out of the Colorado River basin — the Havasupai into adjacent Havasu Canyon. "The Forest Service bulldozed our homes, filled our wells and chased us out," Sinyella says. "Finally, this is where we

ended up."

Supai village once served as a summer refuge where the tribe grew corn, melon, beans and other crops. These they stored for use during the winter months, when they moved to the plateau above to hunt. The tribe's seasonal migrations ended, Sinyella says, "when the government insisted on our kids going to school." After a nine-year struggle to regain part of their aboriginal homeland, the Havasupais received 124,000 acres under the 1974 Grand Canyon Enlargement Act. "This was a fraction of what we claimed to be our aboriginal territory,"

Sinyella says.

Deprived of most of their winter hunting and gathering lands, they also suffered a radical change to their traditional way of life. Today only a few families live on the plateau, where the tribe grazes its horses and cows. Tribal members occasionally travel there to gather pine nuts and medicinal herbs or to hunt deer and rabbits. But most of the tribe now live permanently in Supai, close to the school and clinic as well as the small tourist hotel and rustic cafe.

Apart from territorial restrictions, the tribe's biggest concern, as it is throughout most of Indian country, is the impact of federal budget cuts on Indian programs. The 1975 Indian Self-Determination and Education Assistance Act (Public Law 93-638), dubbed "638," turned the administration of federal education, health, housing, law enforcement and other Indian programs over to the tribes that choose to manage them. The Havasupai run all the federal programs they participate in, except for law enforcement, which the Bureau of Indian Affairs (BIA) administers.

While 638 was welcomed by tribes as a means of achieving some independence from Washington, it was accompanied by progressive cuts in funding for Indian programs. The



The Havasupai tribal council grapples with issues faced by many tribes.

Mary H. Cooper

people [in the U.S.] who have two governments. There are treaties that were made between American Indians and the federal government, so there is a government-to-government relationship, just like the one between the United States and Italy or any other foreign country."

Gorton dismisses the notion that

tribal sovereignty makes Indians immune to budget cuts. "These are peculiar treaties because they are clearly the law of the land, but they can also be abolished by Congress at will," he says. "It's not like a treaty with Russia or Great Britain, where it's between two equal sovereigns." Such views have made Gorton a leading champion

of non-Indian property owners, who challenge tribal claims to water and hunting and fishing rights that conflict with their own property rights.

Tribes across the country feel their very survival is threatened by what they see as an increasingly hostile attitude toward Indians by a government that seems to have forgotten its

... We Could Become More Self-Sufficient"

Havasupai receive \$168,000 a year to run all their programs, or about \$255 for each member of the tribe. (The tribe says the state of Arizona's total contribution is \$4,000 a year.) "Allocations from BIA are very low," Sinyella says. "Congress approves dollars to the central office of BIA, but by the time every dollar comes down through the area offices to the tribes, we get only a few cents. We need more dollars to operate social services, senior citizens' program, education and housing. The list goes on and on."

Federal funds are crucial to the Havasupai because tourism is their only other source of income. Each year, about 25,000 visitors hike, ride horses or fly in by helicopter to see the spectacular waterfalls below Supai that have earned the tribe its designation as the "people of the blue-green water." The tribe was concerned that its fragile desert habitat was being harmed by the flow of tourists. But that concern has been replaced by a new worry: A devastating flood in 1991 and two later floods have all but destroyed the fragile falls, threatening the tribe's sole independent income base.

Desperate for an alternative, the tribal council tried to set up a casino in Williams, population 2,500 and 100 miles away — the closest town. "The plan was to set aside eight to 10 acres of city property," Sinyella explains. "The tribe would then go to the federal government to have the land converted to a reservation and later apply to the governor to negotiate a gaming compact." Negotiations were progressing with the town government, but Arizona Gov. Fife Symington rejected the proposal, refusing to discuss it with the tribe, and the deal fell through early this year.

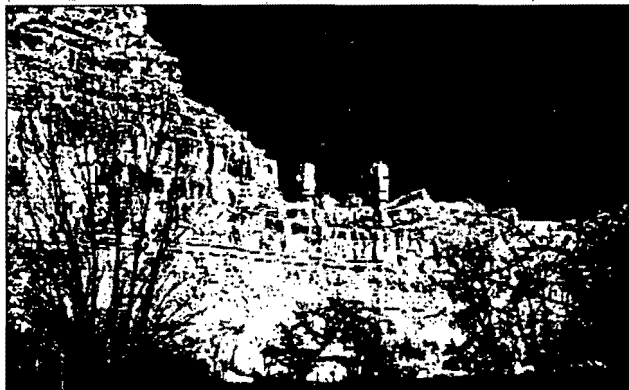
Now the tribe is seeking to have restrictions lifted on its use of reservation lands on the plateau, the only part of the reservation that is accessible by car. "We want Congress to

change restrictions that say we can't harvest timber or mine or even issue public hunting permits on our land," Sinyella says. "We'd also like to build up on top, maybe a motel, a restaurant, an RV park and a gas station. Our people need jobs, and these things could help meet the essential needs of our community. If we could develop and improve our land, we could become more self-sufficient instead of depending only on the BIA year after year."

The Havasupai Tribe's isolation is not all bad, tribal members concede. For one thing, young people have been largely spared exposure to urban gangs that have plagued other reservations. For another, it has been easier for tribal elders to pass on their language and culture to the next generation. Like other Indian children of his generation, Sinyella was taken from his family at an early age to attend school far from home, speak English and renounce his traditions. Sinyella and other Havasupai children were sent to school at Fort Apache, hundreds of miles away. "We were there for

nine months a year for six years," he says. "Our parents became strangers to us. When we weren't speaking English, we spoke Apache. I didn't want this to happen to my kids."

Today children attend an elementary school in Supai, and all of them speak Havasupai. After the eighth grade, however, they must go on to high school in Kingman or Flagstaff, where most live with relatives. Far from home, as many as two-thirds drop out before obtaining a diploma. Despite the lack of employment opportunities in Supai, young people tend to return to the reservation to live. "Most young people come back to the reservation after school," Sinyella says. "Very few stay out for more than a year."



An 8-mile path down Havasu Canyon leads to the Havasupais' remote village in northwestern Arizona.

Mary H. Cooper

debt to the country's "first people." Some tribes see economic development — fueled by revenues from gambling operations — as the key to their survival. Since the 1988 Indian Gaming Regulatory Act (IGRA) allowed the nation's 552 tribes to set up casinos and other gambling operations on their reservations, 220 Indian

casinos have cropped up in 26 states.

Indeed, gambling is by far the most lucrative industry in Indian country, and a few Indian casinos have been spectacularly successful. The Foxwoods Casino Resort in Ledyard, Conn., operated by the tiny Mashantucket Pequot Tribe, amassed profits of \$319 million last year.³ But Indian gaming has come under in-

creasing attack in states that oppose gambling on moral grounds or already have non-Indian casino operations that don't want competition from the Indians.

Some Indians see the opposition to Native American gaming as yet another expression of racism by a society that can't come to grips with its bloody past. "It's very, very difficult for people to

deal with successful Indians," says Marjorie Mitchell Bear Don't Walk, a Flathead and director of the Indian Health Board, a clinic in Billings, Mont. "Has Congress reacted to Donald Trump in the same way? I don't think so. We're being punished if we're successful in the free-market system."

Opponents of Indian gambling won an important victory March 27, when the U.S. Supreme Court ruled that Florida's Seminoles could not force the state to allow them to launch casino operations. While the ruling did not jeopardize existing Indian gaming operations in other states, it effectively placed a moratorium on new ones in states that oppose Indian gambling.

Most tribes, however, probably could not profit from gambling even if they could open casinos. Reservations typically are located in isolated areas far from the large population centers that gaming enterprises need to flourish. Some tribes rely entirely on tourism: The Havasupai run a small hotel to house visitors who hike, ride or helicopter into the canyon to visit the spectacular waterfalls along Havasu Creek. Other tribes, such as the Oneidas of Wisconsin and the Mississippi Band of Choctaw Indians, are entering the mainstream economy by setting up factories on their reservations that employ both Indians and non-Indians.

"Native American people want to be contributors to this society just as much as anyone else," says Oneida Chairman Deborah Doxtator. "We don't want a handout. But we also need to be given the means to bring ourselves up by our bootstraps. We're willing and able, but we've not always had the opportunities

in front of us in a viable way."

As Indians look for ways to prosper in the American economy while protecting their unique heritage, these are some of the issues they face:

Do Indian tribes depend too heavily on aid from the federal government?

Many tribes on remote reservations



"The single group of people who have had the most systematic and longest-lasting welfare system are at the same time the group of people who are most despairing, most out of the mainstream, generally speaking have low educational attainments and a very high percentage of unemployment."

— Sen. Slade Gorton, R-Wash.

with no tourist attractions or other economic enterprises depend almost entirely on government assistance to run their schools, health clinics, tribal governments and other institutions. These reservations are often the most severely afflicted with unemployment, alcoholism, crime and a pervasive sense of hopelessness.

Some critics of federal Indian policy say it's to blame for the desperate living conditions in many Indian communities. One thing is certain: No other issue sparks such heated exchanges between Indian advocates and their opponents.

"The single group of people who have had the most systematic and longest-lasting welfare system are at the same time the group of people who are most despairing, most out of the mainstream, generally speaking have low educational attainments and a very high percentage of unemployment," says Sen. Gorton. "So that association is absolutely clear. When you're deprived of the ability to make your own decisions, you're not very likely to do the kinds of things that are necessary to improve your condition. The fact that the system has gone on longer and is more pervasive [among Indians] than any place else and that its failure has been overwhelming simply can't be argued by anyone."

"It's not dependency that has fomented those things," counters Carr of the Urban Indian Policy Coalition. "It's genocide." Carr agrees with Gorton that the government is to blame for the misery in Indian country. But where the senator sees paternalistic welfare handouts as the culprit, she blames a long history of betrayals. "Picture the Jewish people being in concentration camps for the past

200 years, and ask them if that's about the welfare state," Carr says. "I don't think so. It's much deeper and much uglier than that."

But even on reservations where residents depend almost entirely on government programs, the recent federal budget cutbacks are being seen as a boost for Indian self-reliance. "Some

Indian people are looking at the cut-backs as a blessing in disguise," says Tom Arviso Jr., managing editor of *Navajo Times* in Window Rock, Ariz. "They say we've become too complacent, that we're too dependent on the government and that now we need to get off our butts and start working and taking care of things on our own."

The Navajos are the second-largest tribe in the country, counting some 300,000 members, about 250,000 of whom live on the vast reservation overlapping parts of Arizona, New Mexico and Utah. The Navajos have few prosperous enterprises. Like the Hopi, whose reservation lies inside Navajo lands, the Navajos have rejected gaming on moral grounds. They are hoping instead to enhance their small tourist industry by building hotels and restaurants to draw more visitors to the reservation's natural and archaeological treasures, such as Canyon de Chelly, Chaco Canyon and Monument Valley.

Like other rural tribes, the Navajos also view the revival of their traditional livelihood as a way out of their current problems. "We need to go back to farming and livestock and stop depending so much on buying food at the supermarket and using the microwave," says Arviso. "We need to start growing our own traditional foods again, like corn, melons and squash, and taking care of our water and livestock so we can fend for ourselves like we used to. We've gotten too far away from that kind of lifestyle."

While self-sufficiency remains a widely accepted goal, Indian advocates point to significant obstacles. Few people realize, for example, that the

federal government holds reservation lands in trust for the tribes. Since they don't own the land and thus can't use it for collateral for loans, tribes often cannot obtain credit as easily as non-Indians to start up their own businesses.

"Indian people generally have said that they would welcome the same opportunities that anybody else has to develop factories or to build jobs, and if they did they probably wouldn't need so much government help," says

people long ago, they would be very happy to give up any government subsidies or programs," Campbell says. "In lieu of that, Indians feel they have a special right to earn whatever they can through 20th-century America's normal system of business. But at the same time, the government has a trust responsibility to them."

Is gambling the Indians' best hope for economic development?

Since Congress passed the Indian Gaming Regulatory Act in 1988, gambling has become an important source of revenue for many tribes. Operations ranging from one-room bingo halls to glitzy casinos generated \$3.4 billion in gross earnings for tribes in 1994.⁴

Supporters of Indian gaming say it is by far Native Americans' most promising avenue to prosperity. "Gaming has had the broadest impact on economic development for the tribes and has produced the greatest amount of revenue on a broad basis for the tribes that are engaged in it," says Tom Acevedo, a member of the Confederated Salish and Kootenai Tribes in Montana and executive director of the National Indian Gaming

Commission.

The IGRA requires tribes to invest their gaming profits in tribal services. After meeting its obligations under the act, the Foxwoods casino in Connecticut distributes \$200,000 annually to each of the tribe's 200 adult members.⁵

But opponents of gambling point to the phenomenal success of Foxwoods and other casinos as proof that gambling is socially destructive. They cite nationwide data showing that about a quarter of casino and state lottery prof-



Oneida Bingo and Casino

The casino opened by Wisconsin's Oneida tribe in 1991 has provided revenue for investments in a hotel, convenience stores and a printing plant.

Sen. Campbell. "The fact of the matter is, they can't do it. If you're in an Indian tribe and you want to build a factory on the reservation, you can't get the investment capital to do it because you have nothing you can put up for collateral."

Given such obstacles, Campbell and other advocates remind budget-cutters of the events that placed Indians in their current desperate straits. "If you gave back all the lands that were taken by force or subterfuge from Indian

Health and Social Problems Plague Native Americans

If health statistics provide a reliable barometer of a group's well-being, Indians are at the very bottom of the ladder in American society. No group fares worse than Indians on a number of health indicators, according to the federal Indian Health Service, which serves recognized tribes and Alaska Natives.

The death rate among Indians from alcoholism is four and a half times that of the total U.S. population; from tuberculosis, three and a half times higher; from accidents and from diabetes mellitus, about one and a half times higher. Suicide and homicide also claim a disproportionately high number of Indians.¹

Ever since Europeans first introduced whiskey to the New World, alcoholism has exacted a huge toll among Indians. Although the death rate among Indians from alcoholism has fallen by half since the early 1980s, it continues to plague Indian communities, even on reservations where tribal councils have banned alcohol altogether. Some scientists have suggested that a genetic anomaly explains Indians' susceptibility to alcoholism, a theory that may soon be tested by genetic mapping.²

But many Indians reject this theory and attribute alcoholism and most other health and social problems among Indians to their mistreatment by U.S. society. "Because there is institutional racism against Indians in this country, we have needed to comfort ourselves with food, alcohol and drugs," says Marjorie Mitchell Bear Don't Walk, executive director of the Indian Health Board of Billings, Mont. "If you are constantly told that you are no good, how can you be good? If you put other people down, you teach them not to be self-sufficient, you teach them that they are not capable of taking care of themselves. And yet the very people who do that don't want to support Indians by paying taxes to fund Indian programs."

Bear Don't Walk's outpatient clinic is one of 34 urban facilities established under the 1976 Indian Health Improvement Act to provide health care to non-reservation Indians or those who do not qualify for federal Indian programs because their tribal affiliations are not recognized by the government. Not being officially considered a Native American is blamed for contributing to alcoholism among Indians wherever they live. "My dad was a full-blood Little Shell Chippewa who was born and died without ever being a legal Indian in the eyes of the United States government," she says. "How do you think he felt about himself? My dad was stabbed to death when he was drunk."

Alcoholics don't always die of liver disease, but often succumb to suicide and accidents. "My experience of being around alcoholics my whole life and directing this facility

for 10 years is that alcoholics who survive alcoholism will become diabetics," says Bear Don't Walk. Obesity, another persistent health problem among Indians, also is a contributing factor in diabetes. "My grandparents probably never ate more than 5 percent of what we eat today," says Bear Don't Walk. "The natural foods that they ate and the exercise they got are extremely different from what is socially acceptable for our way of life today."

Indian women, Bear Don't Walk says, die from alcoholism at 10 times the rate of non-Indian women, of diabetes at triple the rate and of cervical cancer at twice the rate of non-Indian women. "We have more than a 50 percent chance of having gall bladder problems and diabetes," she says. "Indian women are now drinking at the same rate as Indian men, and some studies show that of childbearing-age women, one in four is giving birth to children with fetal alcohol syndrome or other effects of the mother's alcohol abuse."

Poverty contributes not only to disease but also to social problems within the Indian community. Per capita income in 1989 among Indians was \$8,284, compared with \$14,420 for the total U.S. population, the Census Bureau reported in its 1990 survey. Nearly a third of Indians live in poverty, more than twice the overall U.S. poverty rate. And unemployment on some reservations exceeds 50 percent, especially those far from towns and job opportunities.

But proximity to urban centers is a mixed blessing for many reservations. Like young people in poverty-stricken inner cities across the country, Indian youth are falling prey to gang violence. "We've got stabbings, shootings, beatings and deaths every weekend, and most of them go unreported," says Tom Arviso Jr., managing editor of *Navajo Times* in Window Rock, Ariz. Although alcohol is banned on the Navajo reservation, he says, "Most of the time alcohol and drugs are involved."

Most of the gang activities are introduced by Indians or non-Indians from major cities such as Albuquerque or even from smaller towns, such as Gallup, N.M., and Flagstaff, Ariz., that lie just outside the vast reservation's borders. "The reason gangs take hold is that there's not a whole lot for our young people to do," Arviso says. "Without jobs, young people wander because they have too much idle time. It's really scary because we've all been touched in one way or another by the gang violence. Loved ones are killed needlessly, and our young people are killing themselves for no reason. It's hurting us and our culture."

Indian Health Service, *Trends in Indian Health* — 1993, p. 5.
See Rick Weiss, "Discovery May Be Brewing in Search for Genetic Link to Alcoholism," *The Washington Post*, July 1, 1996.

its come from just 5 percent of all players, evidence that gambling is addictive.⁶ "There's very little socially re-

deeming about gambling," says Sen. Gorton. "The social pathology — the family breakup, the welfare created by

widespread organized gambling — is an extremely serious problem. I'm relatively indifferent as to who gets the

profits from it, so my concentration isn't on Indian gambling, though at the present time most of the expansion is through Indian tribes."

Some Indian tribes have resisted the economic lure of gambling for some of the same reasons cited by non-Indian critics. "There are a lot of tribes who have done quite well using Indian gaming to better themselves, but here on the Navajo reservation we turned it down," says Arviso. "Just last week our council voted for the second time against legalizing gaming. We feel there are better ways to generate revenue."

"Gaming just creates more problems," Arviso adds. "Alcoholism and drug abuse would go up, and people would be [throwing away] their money. The general belief is that it would be a large negative."

In comparison with Las Vegas or Atlantic City, Indian gambling is a small-stakes industry. Indian casinos raked in less than 10 percent of the \$40 billion in U.S. gambling revenues in 1994. Like their non-Indian counterparts, most highly profitable Indian gaming operations are near population centers. "But those in the Midwest or the West — where the populations are small — are doing very modestly," says Acevedo. "So while gaming is a plus for them, it clearly isn't answering all their needs."

Some tribes that have prospered from gaming are investing their profits in new enterprises. Wisconsin's Oneidas, whose reservation encompasses part of Green Bay, found themselves in the same financial bind as other tribes. "We have properties, but they're in trust status with the government," says tribal Chairman Doxtator. "So

they cannot be encumbered for bonding or financing purposes."

But the Oneidas, blessed by their urban location, have been able to develop a wide variety of new businesses using the revenues earned from a bingo hall that opened in 1976 and, since 1991, a casino. "Gaming has taken away a lot of the development



**"This country was built on the land
and the resources that were ceded to
the government by the tribes. . . .
But Congress doesn't understand or
acknowledge the obligation of this
country to the native peoples."**

**— Ada E. Deer, Assistant Interior
Secretary for Indian Affairs**

barriers that we've run into over the years," Doxtator says. "It's a very quick source of revenue that has given us the leverage to do things that we could not do before." The tribe now runs a 301-room Radisson Hotel at the local airport, a chain of convenience stores and a small printing plant.

The Wisconsin Oneidas have been so successful that they are currently

negotiating to buy some of the tribe's aboriginal lands near another Oneida reservation in New York state. The tribe also is branching out into off-reservation ventures. The Wisconsin Oneidas now own a one-third interest in a local bank, making them the first tribe with a federally chartered financial institution. In mid-June, the tribe broke ground on a new \$6.9 million plant on the reservation that will produce computer chips for automatic car-door openers, medical devices and other electronic equipment. The joint venture between Oneida Nation Electronics and Plexus Corp., a high-technology firm based in Neenah, Wis., will employ almost 400 Indians and non-Indians from the Green Bay area.

A few tribes have managed to establish a foothold in their local economies without the benefit of gaming revenues. With little to offer but their members' labor, the Mississippi Band of Choctaws attracted a General Motors electronics assembly plant to their reservation outside Philadelphia, Miss. (The tribe later set up a riverboat gambling operation as well). The Salish and Kootenai Tribes co-manage a privately owned hydroelectric dam that has generated revenues enabling the tribes to invest in other businesses on and off their Montana reservation. But these are the exceptions. "Each of these enterprises has worked for those individual tribes," says Acevedo, "but they don't have the same general impact that gaming has had for all the tribes that are engaged in it."

***Are Indians today victims of
widespread discrimination?***

Few Americans would challenge the

notion that Indians have long been victimized. From the time Columbus landed in the New World, whites seeking gold, farmland or simply a new homeland established their claims at the expense of the continent's original inhabitants. Even after the United States was founded, official policy continued to discriminate against Indians, who reluctantly ceded their ancestral lands before the inexorable push westward. Decimated by new diseases, vanquished during decades of Indian Wars, deprived of their traditional hunting way of life and confined to infertile reservation lands, Indians died by the hundreds of thousands in the first two centuries of U.S. history.

Many American Indians say the victimization continues unabated. Less apparent than the outright massacres of the past, critics say, the federal government's Indian policy today is still based on a form of racism that relegates Indians to the bottom rungs of the country's social and economic ladder. "The history of Indian-American governmental relations is full of betrayal, bloodshed and tears," says Carr of the Urban Indian Policy Coalition. "The Indian people represent collectively this country's shame. The entire BIA is dedicated to having Indians not be successful. So they keep them in a corner, out of sight, to manage them."

BIA head Deer says the Clinton administration is trying to change things. "Government policy is moving away from paternalism toward self-determination and self-governance," Deer says. But she agrees that racism still permeates American views of Indians. "There's always been an underlying racism in this society," she says. "This was the attitude from day one. Many tribes met the settlers with peace and friendship, but this was not reciprocated. The country still does not want to recognize our history, and we need to."

Racism directed against Indians continues to crop up in the society at large.

"The Freeman that just left Jordan ranch [in Montana] in mid-June refer to Indians as prairie niggers, and this attitude is not limited to extremists," says Marjorie Bear Don't Walk. "People in Billings call the local K-Mart the Crow-Mart as a putdown because there are a lot of [Crow] Indians there. As a people, we have suffered racism since Columbus landed. The laws of this country are founded on racist attitudes from Europe. Racism today is a fact of life for us."

Bear Don't Walk says racism toward Indians is far more prevalent in the West, but others disagree. "You should go up to Connecticut" if you want to see racism, says Herb Becker, director of the Justice Department's Office of Tribal Justice. "It's not necessarily region-peculiar anymore."

Becker sees anti-Indian racism in the Northeast springing directly from the phenomenal success of the Mashantucket's casino. "I'm a firm believer that non-Indians just can't stand to see Indians prosper." He says recent actions in his home state of New Mexico back up his claim. In compliance with the 1988 gaming act, Republican Gov. Gary E. Johnson signed compacts with a number of tribes allowing them to open casinos. But last summer the state Supreme Court ruled the agreements were invalid because they had not been ratified by the Legislature. When some tribal leaders refused to close their casinos, claiming that Indian gaming falls under federal jurisdiction, the state court ruled that no one in New Mexico could operate casino-type gaming.

"The Supreme Court ruled that gaming as a matter of public policy is illegal," says Becker. "But this was a blatant lie. In New Mexico you've got horse racing, you've got parimutuel betting, you've got every fraternal organization with slot machines and card rooms. They said that just so they could try to shut off tribal gaming." Becker concludes that racism is at the heart of the decision. "You still have racism in the South, of course, but it's

no longer institutional," he says. "That has been replaced by institutional racism against Indians in the West and other places where tribes are successful." *

Critics of Indian gaming adamantly deny that racism colors their views. "Racism doesn't have anything to do with it," says Sen. Gorton. "It has to do with the feeling that gambling itself is highly socially undesirable." The senator backs a bill now before Congress that would establish a special commission to study the impact of gambling, including state lotteries and both Indian and non-Indian casinos, on players' behavior, on local crime patterns and on local and state economies. ■

BACKGROUND

Early Treaties

In the four centuries since Columbus' "discovery" of the Western Hemisphere in 1492, the indigenous peoples of what became the United States were nearly wiped out through war, starvation, disease and U.S. policies that many call genocidal.⁷

Today, federal relations with Indian tribes are based on treaties that were drawn up by the British during Colonial times and later by the U.S. government.⁸ During the Colonial period, as European settlers competed for lands, they negotiated at least 175 treaties with tribes and tribal alliances, such as the powerful Iroquois confederacy in the North and the Creek confederacy in the South.

Under Article II of the U.S. Constitution, treaties must be ratified by a

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* New Mexico's Indian gaming operations are running pending the outcome of a court challenge to the shutdown.

Chronology

1800s *Settlers, ranchers and prospectors push westward, forcing Indians to abandon much of their aboriginal territory.*

Aug. 13, 1868

The last Senate-ratified Indian treaty is signed, with the Nez Perce Tribe of Idaho, bringing the number of ratified Indian treaties to 370. Three years later, Congress abolishes the ratifying process as a means of dealing with tribes.

1887

The General Allotment Act forces Indians to accept non-Indian ownership of reservation lands under a system that permits the federal government to purchase and resell reservation parcels not claimed by Indians under the law's terms.

1900-1950s

Goals of federal Indian policy shift between forced assimilation and exclusion of Indians.

1905

U.S. Supreme Court upholds Indian treaty rights in *United States v. Winans*.

1924

Indians are granted U.S. citizenship.

1934

The Indian Reorganization Act ends the allotment policy and provides funding for economic development on reservations.

1945

Over the next 15 years, some

12,000 Indians are "terminated," as the federal government rescinds official recognition of their tribes and removes 2.5 million acres of Indian land from protected status.

1960s-1980s

Self-determination becomes the watchword of federal Indian policy.

July 7, 1970

President Richard M. Nixon denounces termination policies and promises federal assistance to help Indians achieve greater autonomy.

1973

Two Indians die and an FBI agent is wounded during a shootout between federal agents and followers of the militant American Indian Movement (AIM) who had occupied the village of Wounded Knee on the Pine Ridge Reservation in South Dakota.

1975

The Indian Self-Determination and Education Assistance Act enables tribes to elect to administer federal education, health and other Indian programs. In *Antoine v. Washington* the U.S. Supreme Court rules that treaty rights hold for U.S.-tribal agreements signed after formal treaty-making ended.

1978

The Indian Child Welfare Act allows tribes to have limited authority to prevent adoption of Indian children by non-Indians.

1988

The Indian Gaming Regulatory Act (IGRA) allows tribes to negotiate compacts with their state governors to operate casinos. The same year House Concurrent Resolution 331 reaffirms "the constitutionally recognized government-to-government relationship with Indian tribes."

1990s *Indian rights are challenged by cuts in the funding of federal Indian programs and efforts to curtail Indian gaming.*

April 29, 1994

President Clinton holds an unprecedented White House conference with more than 300 tribal leaders to hear their grievances.

1995

Amid growing resistance to Indian gaming, the New Mexico Supreme Court rules that existing gaming compacts are illegal and orders the casinos shut down. In December, Sen. John McCain, R-Ariz., introduces a bill that would shift authority away from BIA headquarters in Washington to area offices to give tribes greater influence over BIA decisions.

March 27, 1996

The U.S. Supreme Court challenges the IGRA by ruling in *Seminole Tribe of Florida v. Florida* that the tribe cannot force the state government to negotiate an agreement allowing it to open casino operations in Florida.

Not All Native Americans Are Indians

The term Native American is widely used today to describe the tribal peoples, or Indians, who were the original inhabitants of what is now the United States. But they are not the country's only Native Americans.

The aboriginal people of Alaska are Native Americans, too. They include three distinct groups: Indians, Aleuts and Eskimos. Like the ancestors of the Indians who populate the rest of North and South America, the ancestors of Alaska's Indians are believed to have migrated from Asia between 20,000 and 35,000 years ago, crossing the "land bridge" then connecting Siberia and Alaska (now the Bering Strait). Like Indians in the lower 48 states, Alaska's Athabaskan and coastal Indians live in tribes and speak languages that are distinct from the other Alaskan aboriginal peoples.¹

The Aleuts crossed the land bridge later, though still in prehistoric times, and traditionally inhabited western Alaska and the Aleutian Islands. As many as 80 percent of the Aleuts died from disease and violence after coming in contact with Russian fur traders in the mid-1700s. Alaska's Eskimos, or Inuit, arrived still later and settled along the coasts and riversides as far north as the Arctic Ocean. Like the Aleuts, Eskimos traditionally lived in family units, or clans.

All three groups of Alaska's Native Americans have fared better than their counterparts in the lower 48 states. Under the 1971 Alaska Native Claims Settlement Act, these groups

received collectively \$1 billion in cash and 44 million acres of land rich in natural resources. They established regional corporations, in which all Native Alaskans are entitled to shares, to develop timber and oil industries and fisheries in Alaska, and to invest outside Alaska.

Native Hawaiians comprise another distinct group of Native Americans, a title many disdain because of their turbulent relations with the United States. Descendants of Polynesians who sailed thousands of miles to settle in the Pacific island chain between 1,000 and 1,500 years ago, Native Hawaiians first came into contact with Europeans in 1778, when Captain James Cook landed. Some 90 percent of the island's 300,000 inhabitants soon died from diseases they contracted from the newcomers.

Hawaii was a sovereign country with a constitutional monarchy until a coup backed by American businessmen in 1893 overthrew the government. It became a U.S. territory in 1900. In 1959, Hawaii became the 50th state. Despite numerous laws aimed at improving their lot, many Native Hawaiians continue to live in severely impoverished conditions.

See Jack Linn, *Alaskan Indians* (1981), pp. 14-17.
See "From Fur-Trading to Portfolios," *The Economist*, May 25, 1996, p. 31.

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two-thirds majority of the Senate. Article VI further states that treaties are binding on the states and others as "the supreme law of the land." U.S. treaties with Indian tribes, many of which predated the Constitution itself, were subsequently considered to be Article II treaties. As such, they had the same legal force as treaties with other countries, and were filed with the State Department.

But after the War of 1812 assured American sovereignty, Indian tribes lost their value as military assets, and treaty-making slowed. The last Senate-ratified Indian treaty was signed Aug. 13, 1868, with the Nez Perce tribe of Idaho, bringing the number of ratified Indian treaties to 370. At the same time, resentment toward the treaty-making process was building in the House of Representatives, which was responsible for funding the Indian programs emanating from treat-

ties approved by the Senate.

In 1871, Congress abolished the constitutional treaty-making process with Indians. The law expressly refrained, however, from challenging the legal status of existing Indian treaties: "... [N]othing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe."⁹

When Native Americans speak of treaty rights, they often take pains to note that they are not referring to rights that were given to them by the federal government, but rather to rights they retained for themselves in exchange for land they handed over to the United States. The U.S. Supreme Court upheld this interpretation in 1905 in *United States v. Winans*, noting that "the treaty was not a grant of rights to the Indians, but a grant of rights from them."¹⁰ By the same token, Indian reservations are by law

not a kind of ghetto to which tribal members are to be confined, but rather a small portion of a treaty-making tribe's ancestral homeland that it "reserved" for its exclusive domain.

Because westward expansion continued well into the 20th century, Indian tribes were forced to continue negotiating reductions in their land holdings with the federal government long after formal treaty-making ended in 1871. Subsequent Indian pacts, called "agreements," were subject to approval by both houses of Congress and generally were attached as riders to appropriations bills covering funding for Indian programs. Almost 100 such agreements were ratified by Congress. The last Indian land agreement, with the Wiminuche Band of Southern Ute Indians in Colorado, was approved in 1913.

After 1913, all future agreements between the federal government and Indian tribes were treated by Congress as any other initiative in the legislative pro-

cess. But in its 1975 ruling in *Antoine v. Washington*, the Supreme Court declared that traditional treaty rights pertain to Indian agreements concluded after 1871 as well. "Once ratified by Act of Congress, the provisions of the agreements become law, and like treaties, the supreme law of the land."¹¹

Indians Pushed Out

As a matter of political reality, however, Indian treaty rights were largely forgotten whenever they blocked other national policy goals. Since the early 1800s, Indians have been at the mercy of the policy pendulum. Successive generations of lawmakers have tried to solve the "Indian problem" by conflicting programs aimed either at segregating Indians or assimilating them into the larger society.

Beginning in the early 1800s, waves of settlers moved westward into Indian country. To make way for them, tribes were forcibly relocated from 1817 until the mid-1880s. The first to go during this so-called "removal era" were virtually all the Eastern tribes, including the Delaware, Seminole and Cherokee, who were pushed west of the Mississippi and forced to relocate in Oklahoma, then considered to be of no interest to white settlers. By the 1880s, more than 40 tribes were in Oklahoma.

Even as it was relocating Indians far from white society, however, Congress in 1819 began appropriating money for a "Civilization Fund" run by missionaries. Its aim: to convert Indians to Christianity.

After the United States extended its territory to the Pacific Ocean under the 1848 Treaty of Guadalupe Hidalgo, westward expansion moved still deeper into Indian country, triggering the Indian wars of 1860-1880. Treaties were made and broken as successive waves of ranchers, prospectors and other newcomers took over Indian lands.

Forced Assimilation

During the last half of the century, efforts to assimilate Indians gave rise to Indian boarding schools, where children were forced to live away from their families, speak English and adopt American dress and customs.

Further changes in Indian life were carried out under the 1887 General Allotment Act, which ended Indians' communal ownership of reservation lands. The act forced Indians to adopt the European model of land ownership, allotting 160 acres to every reservation family head. The parcels were not actually owned, however, but were to be held in trust by the federal government.

In addition, the act permitted surplus lands within reservations to be sold by the government to non-Indians, with the proceeds to be used for the tribes' benefit. As a result of the allotment policy, which continued into the 1930s, more than half the people living within the boundaries of many reservations today are non-Indians.

Indians were granted U.S. citizenship in 1924. But the policy of forced assimilation proved a dismal failure for most Indians. Confined to marginal lands, deprived of the buffalo that had been slaughtered by non-Indians during the westward expansion, Indians were beset by poverty, alcoholism and disease. The federal government finally acknowledged the failure of forced assimilation in 1928.

Allotment Policy Ends, Termination Begins

In another policy about-face, the 1934 Indian Reorganization Act ended allotment, provided funding for economic development on reservations and restored some degree of tribal self-governance. Concluding that the federal government had failed as an effective administrator of Indian affairs, Congress also that year gave the states a greater role in administering some Indian programs.

Barely a decade later, however, federal Indian policy again shifted, this time

ushering in the so-called termination period of 1945-1960. Tribes occupying valuable lands, such as the Klamath who lived in Washington's timber forests and the Agua Caliente of Palm Springs, Calif., were among more than 100 tribes that were "terminated." In other words, they were deemed no longer qualified to own reservation land or receive benefits reserved for Indians.

In addition to making valuable land available to non-Indians, termination reduced the federal government's welfare burden and enabled it to physically relocate Indians to cities where they were expected to blend into the dominant society. By 1962, some 12,000 Indian people had lost official recognition, while some 2.5 million acres of Indian land were removed from protected status.¹²

Self-Determination

Termination gave way to self-determination as a major goal of Indian policy after 1960. Presidents John F. Kennedy (1961-63) and Lyndon B. Johnson (1963-69) called for investments in economic development on reservations. The 1968 Indian Civil Rights Act further prohibited states from assuming jurisdiction over Indian lands without obtaining tribal consent.

President Richard M. Nixon (1969-74) went further than any of his predecessors in denouncing termination and in supporting Indian autonomy while continuing federal assistance programs. "Self-determination among the Indian people can and must be encouraged," Nixon proclaimed July 7, 1970. "This, then, must be the goal of any new national policy toward the Indian people."¹³ With presidential support, Congress passed a number of laws in the 1970s to strengthen Indian self-determination.

Key legislation of this period included the 1975 Indian Self-Determination and Education Assistance Act (Public Law 93-

638), which Indians often refer to as 638. By funneling federal monies directly to tribes through contracts and grants, 638 encourages tribal councils to assume control over school, health, housing, law enforcement and other programs formerly administered by federal agencies. In this way, the federal government grants tribes some autonomy in much the same way as it does other localities.

The self-determination movement continued through the 1970s and '80s, with several Supreme Court decisions strengthening Indian sovereignty. The movement reached a climax in 1973 when a group of Indians led by Russell Means of the militant American Indian Movement (AIM) occupied the village of Wounded Knee, S.D., on the Pine Ridge Reservation. Two Indians died and an FBI agent was critically wounded in the shootout with federal agents ending the 71-day siege. AIM, which had been founded to help Indians who had been displaced to cities, lost much of its support among Indians after Wounded Knee.

Though President Ronald Reagan (1981-89) reaffirmed his support for Indian self-determination and economic development, budget cuts during his administrations reduced federal spending for Indian programs. Still, Indian tribes obtained a congressional statement of support for their unique status in U.S. society. A House resolution adopted Oct. 4, 1988, reaffirmed "the constitutionally recognized government-to-government relationship with Indian tribes which has been the cornerstone of the nation's official Indian policy." It also acknowledged the government's "need to exercise the utmost good faith in upholding its treaties with the various tribes."

Indian Gaming

In 1988, the same year that the House reaffirmed tribal rights, Congress also passed legislation defining conditions under which Indians could engage in gambling operations. Gam-



"If you gave back all the lands that were taken by force or subterfuge from Indian people long ago, they would be very happy to give up any government subsidies or programs. In lieu of that, Indians feel they have a special right to earn whatever they can through 20th-century America's normal system of business."

— Sen. Ben Nighthorse Campbell, R-Colo.

ing not only became the most promising source of revenue for many tribes but also "by far the most politically charged economic issue in Indian country during this final decade of the 20th century," according to Professor Jack Utter of the Center for

Indian Bilingual Teacher Training at Prescott (Ariz.) College. ¹⁴

Although many tribes traditionally engaged in various forms of gambling, it was not until 1979, when the Seminoles opened a commercial bingo operation, that any tribe operated profitable gambling halls. Consistent with its support of Indian self-determination, the Reagan administration endorsed Indian gaming. As many tribes across the country followed the Seminoles' lead, however, conflicts erupted among state, federal and tribal governments over jurisdiction over the new gambling operations.

The issue was at the center of a landmark dispute between California and the Cabazon Band of Cahuilla Mission Indians, who ran a gambling operation on their reservation 20 miles east of Palm Springs. A federal court ruled in *California v. Cabazon* — and the U.S. Supreme Court affirmed — that tribes could legally engage in forms of gambling that were not expressly prohibited by the state in which the tribe is located.

The Supreme Court further held that because all state gaming regulations fall under civil law — under which Indian tribes cannot be held accountable — states are required under federal law to enter into negotiations with tribes to establish mutually acceptable regulations of Indian gaming operations.

The states can only refuse to negotiate compacts for types of gambling that they expressly prohibit under criminal law.

To establish a regulatory framework for Indian gaming, Congress passed the 1988 Indian Gaming Regulatory Act. The law defines three classes of

Indian gambling. Class I, including traditional Indian games, are under the exclusive jurisdiction of tribes. Class II games, comprising bingo, lotto, pull tabs and some card games, are allowed on Indian lands if they are conducted in a state that allows them for any other group. Only two states, Hawaii and Utah, prohibit all gambling. The tribes share regulatory jurisdiction over Class II gaming with the National Indian Gaming Commission, created under IGRA.

Class III gaming includes all other forms of gambling, primarily the games found in casinos, such as slot machines, roulette, blackjack and any electromechanical versions of games such as video poker and video bingo. Horse and dog racing also fall into this category. A tribe can offer Class III gaming only after it has negotiated a compact with the state stipulating the size and type of gaming facilities. Because of resistance to Indian gambling either from the non-Indian gambling industry or citizens who oppose gambling on moral grounds, some state governments have refused to negotiate compacts for Class III gaming. In several cases, as a result, tribes have sued their states for failing to negotiate with them in "good faith," as the law requires. ■

CURRENT SITUATION

Clinton's Policy

Continuing a policy outlined by President George Bush (1989-93), President Clinton early in his term championed tribal sovereignty and Indian self-determination. He appointed Deer, a Menominee, to head the BIA. "President Clinton said he wanted a government that looked like America," says Deer. "So here I am, the first woman to serve in this position. And I'm not doing things in the way they've been done in the past."

On April 29, 1994, Clinton and his top officials listened to the concerns of more than 300 tribal leaders invited to air their grievances at an unprecedented White House conference on Indian issues. Following the meeting, Clinton ordered the heads of 15 federal departments and agencies to consult directly with tribes when dealing with Indian issues "in order to

ensure that the rights of sovereign tribal governments are fully respected." ¹⁵

"This is the first time that any administration has taken the time and energy to put together a procedures document for each one of its resource agencies that deals with Indian tribes," says Jim Pace, a spokesman for the Interior Department's Office of American Indian Trust. The office was set up in 1991 by the Bush administration as a separate entity from BIA to strengthen the federal government's trust responsibility toward Indian tribes. "The procedures are dynamic," Pace says, "in that the agencies can change them as they need to, to make sure they're meeting the needs of the tribes."

The policy of tribal self-determination also is changing the way tribes receive federal support. Deer says that about 55 tribes to date have chosen to take advantage of this new approach by signing self-governance compacts with the federal government that enable them to receive federal monies in block grants, which they then spend according to their particular needs. "In the past, a lot of control and decision-making were exerted by the federal government," she says. "But now there is much more flexibil-



Fydel A. Jones

Ceremonial dancers from Arizona's Havasupai tribe performed this year at the SuperBowl and the Arizona Indian Festival, both in Phoenix.

ity. Government policy is moving toward self-determination."

The Clinton administration also has tried to increase funding for Indian programs. "This administration has submitted the largest budget request for the BIA ever, and that was the \$1.9 billion budget request for fiscal 1997," says Deer. "This reflects the sensitivity of the administration in trying to meet the longstanding needs in Indian country. Also under this administration, 12 new tribes have been recognized."

The administration is not without critics among Indians, however. Urban Indian activist Carr faults the president for failing to defend Indian programs from the budget ax. "I think he's a decent man who's in a lousy job and has to make incredibly unpleasant decisions," she says. "Because American Indians are a segment of the population that is not a huge voting bloc, we are at the mercy of the whims of someone else's conscience. The monies that they cut from the budget are not going to balance the budget. What they're going to do is create starvation, disease and despair in people who have had more than a bellyfull of all those things."

Program Cuts

The administration's advocacy of Indian rights lost momentum after Republicans won control of both houses of Congress in the November 1994 elections. As balancing the budget became the overriding priority for Congress, spending for Indian programs fell dramatically. The fiscal 1996 budget for BIA programs totaled \$1.6 billion, a decrease of \$160 million from the year before.

Budget cutbacks are taking a heavy toll on the tribes. A 4 percent annual increase in the school-age population on reservations, for example, means that education programs can't keep up

with the need. "The per student allocation of the bureau is about \$3,000, which is about half that of the public schools," says Deer, who notes that Indian child welfare protection services, law enforcement and family services are among the programs that have suffered as a result of budget cuts. "Cutting these funds is like blaming the victim. It gets really tedious. As President Nixon stated back in 1970, by any socioeconomic indicator, Indians and Alaska Natives are at the bottom of the ladder. The funding that has been approved will not enable the tribes to get over this. I don't even know if it will maintain the status quo."

Although the Clinton administration requested \$1.8 billion in BIA funding for fiscal 1997, there is little support in Congress to boost spending for Indian programs. Despite charges from the White House that the fiscal 1997 appropriations bill for the Interior Department would violate Indian rights by eliminating services promised in treaties, the House on June 20 passed a \$12.3 billion spending bill that includes \$239 million less than Clinton requested for BIA.

There is little indication that the Senate will augment the bureau's budget. "Basically, we'll have a freeze," says Sen. Gorton, who chairs the Appropriations Subcommittee overseeing Interior Department funding. "We'll have the same amount of money for 1997 as for 1996 for the Interior Department, and out of that total I've got to fund almost all of the Indian programs, as well as national parks and monuments, the Bureau of Land Management, the National Forest Service, energy conservation and all of our cultural institutions."

The conflict over funding Indian programs is pitting a Republican-dominated Congress against a Democratic White House. But Indian policy is not a strictly partisan issue. The most vocal advocates on both sides of the debate over Indian rights in Congress — Arizona Sen. John McCain, an Indian supporter, and opponent Gorton — are both

Republicans. And the lone Indian member of Congress, Campbell of Colorado, was elected in 1992 as a Democrat but switched to the Republican Party in March 1995 because he supported the GOP call for a constitutional amendment to balance the budget.

Lawmakers on both sides of the budget debate agree on the need to restructure the oft-criticized BIA. Citing a General Accounting Office finding released May 3 that government auditors were unable to account for an astounding \$2.4 billion held in trust accounts for Indian tribes, McCain charged the agency at a recent hearing with "theft from the Indian people. I'm afraid the BIA's approach has been as bad as the land-grabbing policies of the past by which United States agencies separated Indians from their lands. This time-weary way of handling Indian assets has got to stop."¹⁶

In December, McCain introduced a bill that would shift authority away from BIA headquarters in Washington to area offices in order to give tribes greater influence over bureau operations.

Tribal Sovereignty

At the same time that Indian tribes are suffering program cutbacks at the hands of Congress, they are facing a mounting challenge from states over the extent of tribal sovereignty.

The U.S. Supreme Court handed a number of states a key victory in their quest to limit the ability of tribes to start gaming operations. On March 27, the court ruled in *Seminole Tribe of Florida v. Florida* that states cannot be sued in federal court for refusing to engage in good-faith negotiations with Indian tribes over opening casinos. The 5-4 ruling challenges the 1988 IGRA, which granted tribes the right to sue recalcitrant states over this issue.

The *Seminole* decision does not

Continued on p. 618

At Issue:

Should Congress make it easier for non-Indians to adopt Indian children?

REP. GERALD B.H. SOLOMON, R-N.Y.

FROM TESTIMONY BEFORE THE SENATE INDIAN AFFAIRS
COMMITTEE, JUNE 26, 1996

as some of our sociologists and social workers have noted, negative stereotypes about adoptive families, it is up to those of us who work with the personal experience of adoption to relay this information to the formation of our children and the parenting of the family.

It is up to those of us who have been adopted not only to share our stories with others but to speak out in favor of the adoption decision. My support has grown out of my fundamental view that every human life is precious and that every person deserves the right to life and a happy home.

I, myself, was blessed to be adopted by a generous stepfather and raised in a loving family. For these reasons, I wholeheartedly supported recent adoption legislation in the House, HR 3286. This bill makes adoption an option for families of all income levels by offering a \$5,000 tax credit while also streamlining the process for interracial cases. This groundbreaking legislation will decrease the backlog of children in foster care and help find caring homes for all children. This legislation is extremely important in reforming adoption regulations. In the limited legislative schedule we have remaining, we must finish work on this bill to allow for the soonest relief for American families.

I am here today to also offer my full support for reform of the Indian Child Welfare Act to add to this adoption legislation. The Indian Child Welfare Act was passed in 1978 in response to a terrible problem within the Indian community; the high numbers of Indian children being placed in foster care and the breakup of many Indian families because of the unwarranted removal of their children by non-tribal public and private agencies.

The problem that the act was created to correct, namely the inordinate number of Indian children in foster care, has actually risen since its enactment because of the increased authority the act can give an Indian tribe.

There have been cases of parents being blocked from adopting children because the Indian Child Welfare Act allows retroactive registration even after the biological parents have given up all legal rights to the child.

This legislation is extremely important to the families of this country, Indian and non-Indian. Adoption plays a vital role in strengthening the family unit and protecting the values of this great nation. We must remember that the best interests of the children must be paramount in all child custody proceeding. Congress must work diligently to remove barriers to adoption and provide a sense of security to adoptive parents and children that their adoptions will be permanent.

SEN. DANIEL K. INOUE, D-HAWAII

FROM TESTIMONY BEFORE THE SENATE INDIAN AFFAIRS
COMMITTEE, JUNE 26, 1996

the removal of Indian children from their families and tribal communities has been a blot on this country. From the very beginning of our history as a nation, deliberate efforts by Europeans to "civilize" and "Christianize" the inhabitants of this country were directed at Indian children.

These attitudes have served to promote the removal of Indian children from their homes and place them in adoptive homes. . . . The adoption of Indian children became popular at a time when there was a decline in healthy, white children available for adoption by childless couples. Religious groups also encouraged their members to become foster or adoptive parents to Indian children. The Latter-day Saints placement program removed as many as 2,000 Hopi and Navajo children every year from their reservations, placing them in Mormon homes throughout the country.

In the early 1970s, the erosion of Indian family life received extensive publicity. Surveys conducted in 1969 and 1974 by the Association on American Indian Affairs disclosed the shocking disparity in placement rates for Indian and non-Indian children. These surveys revealed that over 25-35 percent of all Indian children were separated from their families and placed in foster homes, adoptive homes or institutions.

The Indian Child Welfare Act was a reform measure enacted by the Congress in 1978 to combat "the wholesale separation of Indian children from their families" and tribal communities. With the passage of the act, federal law required that preference be given to Indian families, and Indian foster care and group homes in the placement of Indian children by state and private social service agencies. The act authorized an Indian tribe to intervene on behalf of a child in court proceedings that involve child custody matters and the placement of Indian children.

Despite its shortcomings, the Indian Child Welfare Act serves as a ray of hope and promise to Indian people striving to retain their heritage and pride in a pluralistic society. The law was enacted by Congress to secure a long-overdue protection for Indian children. Tribal leaders have been resisting the removal of their children for over two and a half centuries. For each time an Indian child is taken from their ranks, their very existence as a culturally distinct people is diminished, and this nation's first Americans are threatened to the point of extinction.

I believe that it is time that Washington hears from Indian country on this matter that is of such critical importance to their efforts to preserve Indian families. After all, it is their children that will be affected by any amendments to the act.

FOR MORE INFORMATION

BUREAU OF INDIAN AFFAIRS, Interior Department, Main Interior Bldg., 18th and C Sts. N.W., Washington, D.C. 20240; (202) 208-3711. The main agency involved in federal Indian policy administers programs benefiting federally recognized tribes, mostly on reservations.

NATIONAL CONGRESS OF AMERICAN INDIANS, 900 Pennsylvania Ave. S.E., Washington, D.C. 20003; (202) 466-7767. The largest advocacy group representing Indians monitors legislation and regulations and provides information on member tribes.

NATIONAL INDIAN GAMING COMMISSION, 1441 L St. N.W., 9th floor, Washington, D.C. 20005; (202) 632-7003. Created under the 1988 Indian Gaming Regulatory Act, the commission oversees the management of casino gambling operations run by Indian tribes.

NATIONAL URBAN INDIAN POLICY COALITION, 4753 N. Broadway, Suite 1126, Chicago, Ill. 60640; (312) 784-0808. The coalition represents the interests of non-reservation Indians, who comprise more than half the Indian population and who do not qualify for most government support programs.

the reservation," says Gorton, who advocates abolishing Indian rights to sovereign immunity. "I believe that Indian self-determination and sovereignty are totally appropriate to the extent that they apply to the affairs of the members of the tribe," he says. "I do not believe that they should grant them special rights against their non-Indian neighbors, who can't vote in their elections and who aren't members of their tribe."

States won another concession June 20, when the House granted them more power to collect taxes on all Indian-run businesses. Under current law, tribes may buy land outside reservations and place it in trust with the government, thus shielding any businesses opened there from retail sales taxes. The new measure, an amendment to the \$12.3 billion Interior appropriations bill for fiscal 1997, would require tribes to agree with states on tax collection before the land could be placed in trust.¹⁷ The measure has long been sought by states such as New York, where Republican Gov. George E. Pataki plans to begin this summer taxing sales at gas stations and convenience stores run by the Senecas and other tribes.¹⁸

Another challenge to Indian sovereignty now before Congress would restrict the authority of tribes to intervene in the adoption of Indian children by non-Indians. (See "At Issue," p. 617.) A measure passed May 10 by the House to provide a tax credit of up to \$5,000 to defray adoption expenses would also prohibit officials from making race the determining factor in adoption decisions. This would overturn a provision of the Indian Child Welfare Act, enacted in 1978 to halt longstanding adoption practices that handed as many as a third of Indian children over to non-Indian parents.¹⁹

Calling the measure "well-intended but misguided," McCain promised to try to keep the restriction on tribal authority out of the adoption measure

jeopardize existing gaming compacts, but it does call into question tribes' ability to open new casinos as the law allows. "The question is, in the long run, when some of these compacts have to be renewed, whether *Seminole* will impact them," says gaming commission Director Acevedo. "For those tribes that have not compacted with states, the ruling in effect acts almost like a moratorium on new gaming operations."

Because the 1988 law allows tribes to turn to the Interior Department for help when they run into obstacles with states over gaming, the Supreme Court ruling effectively left the issue in the hands of Interior Secretary Bruce Babbitt. But hostility to Indian gaming runs high in states that could prove influential in the November presidential election, such as Florida and California. For this reason, observers agree that it is highly unlikely that Babbitt will force the issue until after the election.

Meanwhile, states'-rights advocates welcomed the Supreme Court ruling. "I think it is entirely wrong to tell a state, whether it's Washington or Florida, that it cannot control the gambling within its boundaries," says

Gorton. "I'm opposed to the expansion of Indian gambling because I'm opposed to the expansion of all gambling unless it's the decision of the people of an entire state that they want to go ahead with the activity. Under those circumstances, obviously I approve of the Supreme Court decision."

Gorton is at the center of another challenge to Indian rights in his home state of Washington, where the Lummi tribe is contesting the rights of non-Indian homeowners on their reservation to have unlimited access to reservation water. As a result of the allotment policies that enabled non-Indians to purchase reservation land, about half the residents of the Lummi Reservation are non-Indian homeowners. When the tribe dug a large well close to these private properties, the homeowners complained that the Lummis were threatening their water supply.

The homeowners cannot sue the tribe, however, because it is protected by the Indians' longstanding right to sovereign immunity. "It is the feeling of the non-Indians that what the Indians want to do is to make their property close to worthless, buy it at distressed prices and drive them off

when it goes to the Senate floor. "Nothing is as precious as our children," he said. "This is as true for Indians as for non-Indians."²⁰ ■

OUTLOOK

Taking Control

Many experts on Indian policy see the assault on tribal sovereignty by Congress and the states as a threat to Indians' ability to survive. Joseph Kalt, director of Harvard University's Project on American Indian Economic Development, believes that sovereignty is the key to economic development on reservations. "Our research says quite clearly that the successful tribes, which have broken their institutional dependency on the federal government, have done it in a two-step process of first asserting and taking control of their own sovereignty, and second, backing that up by building their own institutions of government," Kalt says.

Kalt compares Indian lands to Eastern Europe. "The countries like Hungary and the Czech Republic, which got out early from under the Soviet umbrella and are succeeding now, were able to establish the rule of law," Kalt says. "The story is the same in Indian country, where we keep finding that sovereignty precedes economic development."

To thwart current moves to erode tribal sovereignty, many Indian advo-

cates are calling for greater participation by tribal members in local and national politics. "There should be more Indians here, or none at all," says Sen. Campbell. "One [Native American in Congress] is the wrong number; I can't do enough because I don't have the resources. There are 1.3 million enrolled Indians in this country, and anthropologists say there may be as many as 15 million Americans who have Indian ancestry that are not on a [tribal] roll. I can't very well say I speak for all Indians because they're not alike."

Campbell may have company after this fall's elections. At least three Indians are running on the Democratic ticket for the House — Bill Yellowtail, a Crow from Montana, Joe Bowen, an Upper Skagit from Washington state, and Georgianna Lincoln, an Athabaskan from Alaska.

Meanwhile, younger Indian leaders are gaining experience in tribal government with an eye toward higher office. "This is definitely the way we are going to have to go," says the Oneidas' Dextator, who at 35 is thought to be the youngest female tribal leader in the country. "I'm not at the point of entering national politics just yet, but I do have that as a goal down the road for myself. That's the way we're going to be able to help America know and understand what our issues are on a political level." ■

Notes

¹ See "How to Succeed, How to Fail," *The Economist*, April 6, 1996, pp. 25-31.

² For a critical view of Gorton's record on Indian affairs, see Paul Shukovsky, "Sin-

cerely Yours," *Common Cause Magazine*, fall 1995, pp. 22-23.

³ See Howard Rudnitsky, "Big Chief Kerzner," *Forbes*, April 22, 1996, pp. 176-180.

⁴ From testimony by Associate Deputy Attorney General Seth P. Waxman at hearings before the Senate Indian Affairs Committee held May 9, 1996.

⁵ See Bruce Upbin, "Indian Chief," *Forbes*, May 20, 1996, pp. 179-180.

⁶ See Blaine Harden, "Gambling Study Clears Senate Hurdle," *The Washington Post*, May 11, 1996. See also "Gambling Boom," *The CQ Researcher*, March 18, 1994, pp. 241-264.

⁷ For background, see "Native Americans," *The CQ Researcher*, May 8, 1992, pp. 385-408.

⁸ Unless otherwise specified, material in this section is based on Jack Utter, *American Indians* (1993).

⁹ *Ibid.*, p. 46.

¹⁰ *Ibid.*, p. 50.

¹¹ *Ibid.*, p. 54.

¹² *Ibid.*, p. 256.

¹³ *Ibid.*, p. 257.

¹⁴ *Ibid.*, p. 134.

¹⁵ The White House, "Memorandum for the Heads of Executive Departments and Agencies," April 29, 1994.

¹⁶ McCain, chairman of the Senate Indian Affairs Committee, spoke June 11, 1996, at the committee's hearing on Indian trust fund management.

¹⁷ See Allan Freedman, "House Passes Interior Bill, But Difficulty Lies Ahead," *Congressional Quarterly Weekly Report*, June 22, 1996, pp. 1748-1749.

¹⁸ See Raymond Hernandez, "Reservations May Be Taxed on Some Sales Outside Tribes," *The New York Times*, May 5, 1996.

¹⁹ See Lori Nitschke, "Panel Votes to Delete Limits on Tribal Role in Adoptions," *Congressional Quarterly Weekly Report*, June 22, 1996, p. 1767. See "Adopting Native American Children," in "Adoption," *The CQ Researcher*, Nov. 26, 1993, pp. 1033-1056.

²⁰ Utter, *op. cit.*, pp. 258-259.

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Gattuso, John, ed., *Insight Guides: Native America*, Houghton Mifflin, 1994.

Introduced by an insightful overview of American Indian history, this tour guide of Indian country describes the culture and history of individual tribes of North America.

Matthiessen, Peter, *Indian Country*, Penguin, 1979.

A noted naturalist and author cites 10 tragic episodes of encroachment by whites on Indian lands that reflect mainstream society's threat to Indian culture.

Utter, Jack, *American Indians: Answers to Today's Questions*, National Woodlands Publishing Co., 1993.

A professor at the Center for Indian Bilingual Teacher Training at Prescott (Ariz.) College offers an excellent review of legal, cultural and social issues facing Indians today.

Articles

"The Native — and Not So Native — American Way," *The New York Times Magazine*, Feb. 27, 1994, pp. 45-52.

Two articles point out differing approaches to economic development. In "The Apaches," Eric Eckholm describes a tribe that is trying to survive by combining traditional enterprises with assembly shops. In "The Pequots," Francis X. Clines shows how a small Eastern tribe has struck it rich with casinos.

Reno, Janet, "A Federal Commitment to Tribal Justice Systems," *Judicature*, November-December 1995, pp. 113-117.

The U.S. attorney general reviews the history of U.S.-Indian relations in the area of law enforcement and the courts in an issue of the magazine dedicated entirely to the Indian tribal court system.

Shukovsky, Paul, "Sincerely Yours," *Common Cause Magazine*, fall, 1995, pp. 22-23.

With his campaigns to defend non-Indian property rights and reduce funding for many Indian programs, Sen. Slade Gorton, R-Wash., has earned a reputation as the one of the most ardent critics of Indian sovereignty in Congress.

Van Biema, David, "Bury My Heart in Committee," *Time*, Sept. 18, 1995, pp. 48-51.

Many of the country's poorest Indians, such as the Pine Ridge Oglala Sioux, live on remote reservations with few employment opportunities. They faced even greater destitution last fall as Congress cut funding for Indian programs.

Reports and Studies

Cornell, Stephen, and Joseph P. Kalt, *Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations*, Harvard Project on American Indian Economic Development, March 1992.

The authors examine the myriad obstacles to economic development in Indian country and conclude that success depends on three factors: sovereignty, effective governing institutions and a realistic economic plan that harnesses each tribe's particular assets.

Indian Health Service, U.S. Department of Health and Human Services, *Trends in Indian Health 1995*.

The Indian Health Service, set up in 1954 to provide health care to members of recognized tribes, publishes statistics that provide a barometer of health in Indian country. Indians are far more likely to suffer from alcoholism, diabetes and a number of other diseases than other Americans.

National Indian Gaming Association, *A Historical Review of Gaming in the United States*, April 1994.

An advocacy group presents an overview of both Indian and non-Indian gambling in the United States and assess the impact of Indian gaming on the industry as a whole.

Walke, Roger, *Indian Issues in the Second Session of the 104th Congress*, Congressional Research Service, Feb. 23, 1996.

The author, an analyst at the Library of Congress' research branch, found that more than 340 bills introduced during the current session of Congress have provisions that would affect Indian tribes.

The Next Step

Additional information from UMI's Newspaper & Periodical Abstracts database

American Indian Civil Rights Movement

Ayers, Jane, "Leonard Peltier should be freed," *San Francisco Chronicle*, June 5, 1996, p. 21.

Ayers examines the case of Leonard Peltier, a member of the American Indian Movement who has been listed for the 20th year in a row on Amnesty International's list of "prisoners of conscience." She concludes by calling for the Clinton administration to free Peltier.

Barnes, Dave, "Protest turns to prayer as street is renamed," *Chicago Tribune*, Aug. 4, 1995, p. 1.

Forty representatives from the Chicago and Joliet, Ill., chapters of the American Indian Movement traveled to Prairie Grove, Ill., to lend their support to local efforts to change the name of Squaw Creek Rd. because it was viewed as offensive.

Boaz, Amy, "Becoming part of what is known: The autobiography of Russell Means," *Library Journal*, Oct. 15, 1995, p. 68.

Russell Means' forthcoming autobiography, *Where White Men Fear To Tread*, illuminates a sensational life. Means has been a leader of the American Indian Movement since the early 1970s.

Glier, Ray, and Chuck Murr, "AIM secures permits, plans Series protests," *USA Today*, Oct. 19, 1995, p. 3.

At the 1995 World Series games between the Cleveland Indians and Atlanta Braves in Atlanta-Fulton County stadium, American Indian protesters will rally against both clubs. In order to protest outside Jacobs Field in Cleveland, the American Indian Movement had to go to federal court to secure permits.

"Indian trial documents open to public," *Denver Post*, Oct. 10, 1995, p. 4.

For the first time, FBI reports and tape-recordings from the trials of Leonard Peltier and Dennis Banks and materials documenting the work of Indian activists in the emerging American Indian Movement in the 1970s and 1980s have been donated to the University of New Mexico and will be available to the public.

McKay, David, "UP Indians hole up in protest," *Detroit News & Free Press*, Aug. 24, 1995, p. B4.

About 20 members of the Keweenaw Bay Indian Community in the western Upper Peninsula of Michigan continued their occupation on Aug. 23, 1995, of a tribal center

in a dispute over their loss of voting rights. The tribal chairman, however, said the protesters were making a grab for shares in the tribe's casino gambling profits.

Bureau of Indian Affairs

Anderson, Terry L., "How the government keeps Indians in poverty," *The Wall Street Journal*, Nov. 22, 1995, p. 10.

Anderson discusses the causes of "the appalling economic conditions" on Indian reservations in the U.S. and places part of the blame on BIA trusteeship of Indian land, which he says imposes layers of bureaucracy and legal constraints on Indian land-use decisions. Anderson urges Congress and federal bureaucrats to give Native Americans "the freedom they deserve" and loosen the grip of the BIA.

"Cuts in Indian budget would hamstring tribes," *Denver Post*, Aug. 10, 1995, p. 10.

An editorial comments on the proposed deep cuts in the Bureau of Indian Affairs budget by the GOP-controlled Congress in 1995, arguing that the cuts are so deep that tribal governments may cease to exist.

"How to succeed, how to fail," *The Economist*, April 6, 1996, p. 25-31.

The difference between success and failure for Indian tribes lies in keeping the Bureau of Indian Affairs at arm's length. A tribal government that fosters initiative and insulates the tribe from petty politics also helps.

"Indian Bureau sees 'devastation' in its budget," *The New York Times*, Sept. 10, 1995, p. 29.

The Bureau of Indian Affairs says that layoffs it plans because of cuts in its budget expected to be approved by Congress will gut its administrative staff and "wreak devastation" on tribes. The bureau plans to eliminate at least 3,000 full-time and part-time positions, about a fourth of its work force, on the assumption that Congress will go ahead with a 15 percent budget cut approved by the Senate in August 1995.

McAllister, Bill, "BIA plans to cut at least 2,600 from work force," *The Washington Post*, Sept. 7, 1995, p. 1.

The Bureau of Indian Affairs plans to lay off between 2,600 and 4,000 of its 12,000 workers, the most severe personnel cuts any federal agency has undertaken in the round of budget reductions in 1995.

Miniclier, Kit, "Budget ax due to chop up to 3,000 jobs at BIA," *Denver Post*, Sept. 9, 1995, p. B1.

Back Issues

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