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For Immediate Release

INDIAN CLAIMS COMMISSION - NEWS RELEASE

The Indian Claims Commission today issued a significant decision in the Black Hills claim of the Sioux Nation of Indians, affecting the interests of Sioux residing in South Dakota, North Dakota, Montana, and Nebraska. The case involves a claim by the Sioux for compensation for their lands and other interests acquired by the United States by an act of Congress enacted February 28, 1877, and for compensation for gold removed from their reservation prior to that date. The land area involved in the claim is located in western South Dakota and contains in excess of seven and one-third million acres.

The Commission determined that the 1877 fair market value of the Black Hills land was \$17,100,000. The Commission further determined that the 1877 act of Congress constituted a taking of Sioux property under the Fifth Amendment to the United States Constitution. In a subsequent proceeding the Commission will determine the extent to which the Sioux have been compensated, if at all, for the property acquired by the United States. The Sioux will not be entitled to a judgment unless the Commission determines that they did not receive just compensation for their taken property.

The Commission also determined that the gold removed from the Sioux reservation prior to February 28, 1877, was taken by the United States under the Fifth Amendment, and that the value to the Sioux of this gold was \$450,000. The Sioux have not been compensated for this gold. The Commission held the Government liable to the Sioux in the principal amount of \$450,000,



plus an additional amount measured by 5% simple interest on that amount from November 17, 1875, until it is paid. In a subsequent proceeding the Commission will determine whether or not the United States is entitled to offsets for funds it expended to the benefit of the Sioux.

The opinion of the Commission was delivered by Commissioner John T. Vance, who was joined by Commissioners Richard W. Yarborough, Margaret H. Pierce, and Brantley Blue. The Chairman of the Commission, Jerome K. Kuykendall, dissented in part, on the ground that the Sioux Fifth Amendment claim had already been decided by the Court of Claims in 1942.



Hill, Administration Set Services Program

By Stuart Auerbach
Washington Post Staff Writer

The executive branch and Congress ended a two-year dispute yesterday over a \$2.5 billion program to provide social services to low-income families.

The agreement was forged by the unusual coalition of Sen. Walter F. Mondale (D-Minn.), a liberal, and Secretary of Health, Education and Welfare Caspar W. Weinberger, who is generally considered a conservative.

The result is legislation replacing a series of HEW regulations successfully opposed as too restrictive by Mondale and other congressmen, along with state governors, welfare administrators and private organizations.

But Congress and the administration also were worried that the states were raiding the federal treasury. Costs of the open-ended program skyrocketed to \$5 billion until Congress imposed a \$2.5 billion ceiling in 1972.

Under the loose regulations governing the program until 1972, states were refinancing traditional programs to get the 75 per cent federal aid. The money ended up being used for programs—including buying uniforms for prison guards—not generally considered as social services for low-income families.

The new bill, introduced yesterday, will replace the loosely worded 27-year-old legislation and the HEW regulations that governed the program.

Weinberger said he expects the bill to pass—before Congress adjourns this year, he hopes—because it has the support of members of the key committees.

It is sponsored in the Senate by Mondale, Robert Packwood (R-Ore.), Lloyd Bentsen (D-Tex.) and Jacob K. Javits (R-N.Y.). Chairman Wilbur Mills (D-Ark.) and Rep. James Corman (D-Calif.) of the House Ways and Means Committee are also sponsors.

Weinberger declined to say who compromised the most in the six-month negotiations.

The program affects an estimated 7 million Americans.

Under the proposed legislation, half the people served by the program in each state must be recipients of welfare programs such as aid to families with dependent children or supplementary security income.

But the real key to eligibility is income. People with incomes up to 80 per cent of the state median income get free services; those making between 80 and 115 per cent of the median income must make partial payments and those above 115 per cent pay in full.

This eligibility requirement replaces a loosely written section of the old law that allowed former, present or potential welfare recipients to qualify.

Among the programs the states are expected to provide are day care; training and treatment for the mentally retarded; foster care; child protection; family planning (for which the federal government contributes 90 per cent); help for the handicapped, including the blind, alcoholics and drug addicts, and aid to the elderly, including bringing hot meals to their homes.

Ruled out specifically is capital construction—one of the abuses of the old program.

Weinberger said the program ceiling remains at \$2.5 billion and the Ford administration is prepared to spend the full amount if the states require it. With state contributions, the program totals \$3.3 billion.

This year the federal expenditure is expected to be \$1.7 billion; in fiscal year 1974 it was \$1.55 billion.

MISS



MEMORANDUM
OF CALL

TO: _____

☐ YOU WERE CALLED BY—

☐ YOU WERE VISITED BY—

OF (Organization) _____

HEW

☐ PLEASE CALL →

PHONE NO.
CODE/EXT. _____

☐ WILL CALL AGAIN

☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL

☐ WISHES AN APPOINTMENT

MESSAGE _____

Kersman's # is

245-7627

RECEIVED BY _____

DATE _____

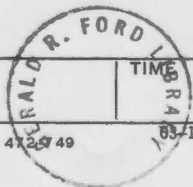
TIME _____

STANDARD FORM 63

REVISED AUGUST 1967

GSA FPMR (41 CFR) 101-11.6

☆ U. S. GPO: 1972 - 472-749



Bill Marrell

Jim Dwight-SRS

Stan Thomas

Steve Kurzman

Neal Jan

7911



**MEMORANDUM
OF CALL**

TO:

☐ YOU WERE CALLED BY—

☐ YOU WERE VISITED BY—

OF (Organization)

☐ PLEASE CALL →

PHONE NO.
CODE/EXT. _____

☐ WILL CALL AGAIN

☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL

☐ WISHES AN APPOINTMENT

MESSAGE

Alto B
726-3111

Handwritten signature
7/26

RECEIVED BY

DATE

TIME

STANDARD FORM 63

REVISED AUGUST 1967

GSA FPMR (41 CFR) 101-11.6

☆ GPO : 1971 O - 446-335

63-108

Day Care

Natal Re

Foster Homes

Employment Service

Child Protection Service

Tied to ~~AFDC~~

~~eligibility~~ Cash
assistance recipients --

SSI, state + income-tax
bases



Indian tribes can be
a service provider
under contract from
the State.

Do not meet & specification
of laws re discriminatory
allocation.



September 6, 1974

245-7414

245-7627

MEMORANDUM FOR:

STEVE KURZMAN
Assistant Secretary, Legislation
Health, Education and Welfare

SUBJECT:

Social Services Legislation and
Federally Recognized Indian Tribes

Following up my telephone call of today, I would appreciate the opportunity to sit down with you, Bill Merrill, Jim Dwight, Stan Thomas and others there, plus Ted Krenzke of the Bureau of Indian Affairs to explore whether, in the pending legislation concerning new social services programs, we should not include authorization for federally recognized Indian tribes to be direct sponsors or recipients, rather than have these new programs filter to tribes via States and counties. (We should probably exclude AFDC here, since those State-tribal relationships seem to be working satisfactorily.)

As you know, in the recent years, following the thrust of the July 8, 1970 Message, the Administration has moved in one case after another to espouse the idea that federally recognized Indian tribes should at least be eligible to be prime sponsors or direct recipients of important federal programs which benefit Indians. Beginning with the signing of the General Revenue-Sharing Act and more recently with the new CETA measure, community development, surplus government property and the Intergovernmental Personnel Act, we are making sure that such legislation has written into it at least the authority for the elected tribal governments of federally recognized tribes, as responsible governmental units in their own right, to step in and take over such programs directly, rather than compete or stand bat in hand at State capitals. This revised position of ours is greatly strengthened by the practically unanimous conviction on the part of Indian leaders themselves that they prefer this route, and that they consider themselves responsible governmental units not in any way subordinate to State officers, plans or planning boards. Of course all of BIA, plus HEW's own CNAP function according to this principle, and I know that the Administration on Aging is considering including this kind of new provision in its reauthorization legislation coming up.

Could we have a session sometime soon among the people mentioned to explore this further?

Bradley H. Patterson, Jr.

cc: Commissioner Thompson
Ted Krenzke



5455
New North
330
Indy Ave.

David Ford



PLANNING AND SPECIAL APPEALS

Research has been conducted by this unit on the necessity of drafting a statute giving this Division jurisdiction to bring legal actions to enforce the provisions of the Indian Bill of Rights (25 U.S.C. §§1301 et seq.) in circumstances where Indian tribes are engaged in a widespread "pattern or practice" of denying tribal members rights guaranteed by the Bill.

No conclusions have been reached in this area, and research material has been turned over to Attorneys Stoiber and Ickes for further consideration.



A BILL

To amend the Public Works and Economic Development Act of 1965,
as amended.

Be it enacted by the Senate and the House of Representatives
of the United States of America in Congress assembled, That
section 301(b) of the Public Works and Economic Development Act
of 1965, as amended, is amended by striking the period after
the word "hereof" in the first sentence and inserting in lieu
thereof a comma and the words "except that in the case of a
grant to an Indian tribe the Secretary is authorized to increase
the amount of the Federal share to 100 per centum."



STATEMENT OF PURPOSE AND NEED

The bill authorizes the Secretary of Commerce to make planning grants for up to 100 percent for Indian tribes pursuant to Title III, section 301(b) of the Public Works and Economic Development Act of 1965, as amended.

The present section 301(b) limits the maximum level for all planning grants to 75 percent. In the case of most Indian reservations the 75 percent limitation is tantamount to exclusion from reasonable participation in this program. Tribal revenues fall far short, in many instances, of meeting critical needs. Unlike local town and county governments, tribal governments do not have tax income; tribal members, with widespread unemployment and low income, can ill afford sales, income, and similar local taxes. However, tribal governments are often called upon to provide many of the same services to tribal members that other citizens receive from their local governments.

Those tribes that presently participate in this planning program have contributed, as their local matching share of costs, cash, and such in-kind items as office space, furniture, travel and per diem of selected individuals, telephone service, clerical help, and similar items. As severely limited as most of the tribes are, it is plain that these items have been diverted from other programs in which the tribe is involved.

Good planning is a necessity if the tribes are to realize the full economic potential of their reservations. This authority



is proposed in order to overcome the historic lack of planning in Indian areas and to encourage future planning by alleviating the economic burden now placed upon Indian tribes who seek planning assistance.



COMPARATIVE TEXT

Showing the change which would be made in Title III, section 301 (b) of the Public Works and Economic Development Act of 1965, as amended (P.L. 89-136).

(b) The Secretary is authorized to make grants to defray not to exceed 75 per centum of the administrative expenses of organizations which he determines to be qualified to receive grants-in-aid under subsection (a) hereof[.], except that in the case of a grant to an Indian tribe the Secretary is authorized to increase the amount of the Federal share to 100 per centum. In determining the amount of the non-Federal share of such costs or expenses, the Secretary shall give due consideration to all contributions both in cash and in kind, fairly evaluated, including but not limited to space, equipment, and services. Where practicable, grants-in-aid authorized under this subsection shall be used in conjunction with other available planning grants, such as urban planning grants, authorized under the Housing Act of 1954, as amended, and highway planning and research grants authorized under the Federal-aid Highway Act of 1962, to assure adequate and effective planning and economical use of funds.



2-1-1 Definition of Terms: Terms used in this chapter

context otherwise plainly requires, shall mean:

- (1) "Intoxicating liquor", any liquid either commonly used, or reasonably adapted to use, for beverage purposes, and containing in excess of three and two-tenths per centum of alcohol by weight;
- (2) "Low Point Beer", any liquid either commonly used, or reasonably adapted to use, for beverage purposes, and which is produced wholly or in part from brewing of any grain or grains, or malt or malt substitute, and which contains any alcohol whatsoever but not more than three and two-tenths per centum of alcohol by weight;
- (3) "Alcoholic beverages", any intoxicating liquor, any non-intoxicating beer, and any nonintoxicating wine as defined in this title;
- (4) "High Point beer", any beer having an alcoholic content in excess of three and two-tenths per centum by weight, and not in excess of six per centum by weight;
- (5) "Executive Committee", the official Executive Committee of the Rosebud Sioux Tribal Council;
- (6) "Sale", the transfer, for a consideration, of title to any alcoholic beverage;
- (7) "Package", the bottle or immediate container of any alcoholic beverage;
- (8) "Bulk container", any package, or any container within which container are one or more packages;
- (9) "Off-Sale", the sale of any alcoholic beverage, for consumption off the premises where sold;
- (10) "On-Sale", the sale of any alcoholic beverage, for consumption only upon the premises where sold;
- (11) "Wholesale", any person who sells alcoholic beverages to the retailers for resale;
- (12) "Retailer", any person who sells alcoholic beverages for other than resale;
- (13) "Package Dealer", any person other than a distiller, manufacturer, or wholesaler, who sells, or keeps for sale, any alcoholic beverage for consumption off the premises where sold;
- (14) "On Sale Dealer", any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold;
- (15) "Municipality", any incorporated city or town, which has a United States Post Office;
- (16) "Club", any corporation or duly organized organization which is organized under the laws of the State of North Dakota or the Rosebud Sioux Tribe for civic, fraternal,



*July 8, 74 Approved
14 for 5 approved*

- 1-1-2 "Sacramental wine", wine for sacramental use by regularly appointed and ordained priests, ministers, or pastors, or any church or established religious organization;
- (14) "Stamp", the various stamps required by this title to be affixed to the package or bulk container, or the same may be, to evidence payment of the tax prescribed by this title;
- (15) "Low Point Beer", both nonintoxicating beer and wine;
- (16) "Community", any recognized Indian Community as established by the Constitution, or By-Laws, or Ordinances of the Rosebud Sioux Tribe;
- (17) "Treasurer", the duly selected and acting Treasurer of the Rosebud Sioux Tribe;
- (18) "Tribal Council", the tribal council of the Rosebud Sioux Tribe.

1-1-2 No individual to hold license

No individual person may hold a liquor license under the provisions of this Ordinance. It is the intent of this Ordinance to allow only non-profit organizations, clubs, municipalities, Indian Communities, service, veterans, religious and fraternal organizations to hold liquor licenses.

No member of the Rosebud Sioux Tribal Governing Body, nor any member of his immediate family including; parents, spouse, or children or their wives shall directly, or indirectly have any financial interest in the production, transportation, or sale of intoxicating liquor or nonintoxicating beer or wine, or in any building or property in any way used in connection with any such business. This provision applies to obtaining of such interests during the time that a member of the Rosebud Sioux Tribal Governing Body is in office and does not apply to anyone who has or whose immediate family has an interest, either direct or indirect, before he or she becomes a Member of the Tribal Governing Body.

1-1-3 Traffic in Alcoholic Beverages Prohibited

No person shall sell, offer to sell, keep for sale, distill, manufacture, produce, bottle, blend, or otherwise concoct, or transport any alcoholic beverage except as authorized under the provisions of this title.

1-1-4 Unlicensed Business Prohibited

No organization, unless it first obtains a license provided by this title, shall transact the business authorized by this title to be conducted by such licensee.



1-1-5 Corporate Surety Required

All bonds required by this title shall be with a corporate surety as surety, or shall be by cash deposit. If said bond is placed by cash, it shall be kept in a separate escrow account within a legally chartered bank.

1-1-6 False Statements

Any person or organization who, in any application, report, or statement, filed with the Executive Committee or its duly authorized agent, knowingly makes a false statement as to any matter required by any provision of this title to be set forth in such application, report, or statement, shall be guilty of an offense and punished by a fine not exceeding \$360.00 or imprisonment in the Tribal Jail not less than 30 days nor more than 180 days or by both such fine and imprisonment.

1-1-7 Delivery of Beverages

No manufacturer, distributor or wholesaler shall sell or deliver any package containing alcoholic beverages manufactured or distributed by him for resale, unless the organization to whom such package is sold or delivered is authorized to receive such package in accordance with the provisions of this Ordinance. The Tribal Council shall, pursuant to 1-2-10 through 1-2-16 of this title, revoke the license of any manufacturer, distributor or wholesaler who violated the provisions of this section.

1-1-8 Storage of Beverages

No licensee under this title shall keep or store any alcoholic beverages at any place within the Rosebud Sioux Reservation other than on the premises where they are authorized to operate.

1-1-9 Severability

If any section, or provision of this title, or the application thereof to any party or class, or to any circumstance, shall be held to be invalid for any cause whatsoever, the remainder of this title other than those as to which it is held to be invalid, shall not be affected thereby and shall remain in full force and effect as though no part thereof had been declared to be invalid.



1-1 LICENSING PROCEDURES

1-1-1 Applications

Applications for licenses provided for by this title shall be made on forms prescribed by the Executive Committee of the Tribal Council, and shall be verified by the oath of at least two officers or elected officials of the applicant. Such application must contain such information as the Executive Committee of the Tribal Council shall require, and must show that the applicant is eligible for the license for which application is made.

1-1-2 Payment of Fee

Every application for a license under this Ordinance shall be accompanied by the required fee for such license either in cash or duly certified check payable to the order of the Treasurer of the Rosebud Sioux Tribe. In the event that the application is rejected, such fee shall be promptly returned by the Treasurer of the Rosebud Sioux Tribe to the applicant. In the event that the application is granted, the Treasurer of the Rosebud Sioux Tribe shall immediately delivery such fee to the depository as directed by the Executive Committee of the Rosebud Sioux Tribal Council.

1-2-3 Hearing And Notice

No license for a class A, B or D license, as the same are defined and classified under the provisions of this title, shall be granted to an applicant for any such license, except after public hearing, upon notice, as provided hereinafter in this Chapter.

1-2-4 Request for Notice of Hearings

If any resident of any Community as recognized by the Constitution, or By-Laws or Ordinances of the Rosebud Sioux Tribe, shall file with the Secretary of the Executive Committee of the Rosebud Sioux Tribal Council, a written request that he or she be notified of the time and place of hearing upon any specified application or applications for licenses for the On-or Off Sale at retail of alcoholic beverages, the Secretary, shall give notice to such person, by certified mail a sufficient length of time prior to the hearing upon such application as to allow such person a reasonable opportunity to be present. For the purposes of this section, the certified letter must be deposited with the U.S. Post Office at least 5 days before the scheduled date of the hearing.

1-2-5 Time and Place for Hearing

The Executive Committee of the Rosebud Sioux Tribal Council before whom the application for license is presented, shall fix



a time and place for hearing upon all such applications which may come before the Committee, and the Secretary of the Executive Committee of the Rosebud Sioux Tribal Council shall publish notice once in the official newspaper of such Community which notice shall be headed "Notice of Hearing Upon Application for Sale of Alcoholic Beverages," shall state the time and place when and where such applications will be considered by said Executive Committee, and shall state that any person interested in the approval or rejection of any such application may appear and be heard, which notice shall be published at least one week prior to such hearing. At the time and place so fixed, such board shall consider such applications and all objections thereto, if any, prior to final decision thereon.

1-2-6 Executive Committee to Grant Licenses

The Executive Committee of the Rosebud Sioux Tribal Council is hereby empowered to grant licenses provided for by this title. Upon granting any license, the Secretary of the Executive Committee shall forthwith report to the Rosebud Sioux Tribal Council, the name and business address of the licensee, and the class of license issued.

1-2-7 Transfer of Licenses

No license granted pursuant to the provisions of this Ordinance shall be transferred to another organization, club, municipality, or other party. If a transfer to a new location is requested by a licensee, the licensee must make application showing all the relevant facts as to such new location, which application shall take the same course and be acted upon as if an original application. No additional fee shall be required of an applicant who desires to transfer to a new location, however such applicant must pay the actual costs involved in the Notification of Hearing as published in the official newspaper.

1-2-8 Sale of Stock on Termination

Any licensee authorized to deal in alcoholic beverages, upon termination of its license, may at any time within 10 days thereafter sell the whole or any part of the alcoholic beverages included in its stock in trade at the time of such termination, to any wholesaler licensed under this title to deal in the alcoholic beverages so purchased by such wholesaler. A complete report of such purchase must be made by the wholesaler to the Executive Committee of the Rosebud Sioux Tribal Council.

1-2-9 Investigation for Violation

It shall be the duty of the Executive Committee, when it receives information of violation by any licensee of any provision of this ordinance, to make an immediate (within 20 days) investigation.



tion thereof. Any person may file with the Executive Committee a duly verified complaint as to any such violation by any agent, licensee, and immediately upon receipt thereof, the Executive Committee or its authorized agent shall make a thorough investigation and if there is evidence to support the charge made in such complaint, the Executive Committee must cause proceedings to be instituted under the provisions of the Ordinance for revocation of a license.

1-2-10 Revocation Proceedings

The Executive Committee on due notice to such licensee, conduct a hearing and on the basis thereof determine whether such license should be revoked. If the Executive Committee determines that such license should be revoked, it must make in writing findings of fact as to every such violation alleged in such complaint.

1-2-11 Subpoena by Executive Committee

For the purpose of conducting the hearing as prescribed above, the Executive Committee shall have the power to subpoena witnesses and to administer oaths. Witnesses so subpoenaed shall be paid at the then prevailing witness rate for the Rosebud Sioux Tribal Court, and said witness fees shall be paid from the Law and Order Account of the Rosebud Sioux Tribe.

1-2-12 Dismissal of Complaint

If the Executive Committee with which a complaint is filed pursuant to this Ordinance determines the license should not be revoked, it shall dismiss the complaint. If the Executive Committee determines the licensee should be revoked, it must make in writing findings of fact as to every such violation alleged in such complaint, and must by the time of the next Tribal Council Meeting, make a report to the Tribal Council, in session, of a transcript of the proceedings had, and all findings as to every such violation alleged in such complaint, and the recommendation of the Executive Committee, whereupon the Rosebud Sioux Tribal Council shall review such record and on the basis of the record only approve such of the findings of fact as it deems should be approved and disapprove the balance, and either approve or disapprove the recommendation of the Executive Committee.

1-2-13 Suspension in lieu of Revocation

The Tribal Council may, where such Executive Committee recommends revocation, mitigate the revocation to a suspension. The Tribal Council shall not, however, in any case whatsoever mitigate the revocation of a license to suspension thereof unless the licensee files with the Tribal Council a written consent to such suspension, which consent must include a waiver of any appellate review.



1-2-14 Public Hearing Required

All hearings under sections 1-2-14 through 1-2-18 inclusive shall be public, and in a place in the Tribal Building, such place to be specifically designated in the notice of hearing. It shall be permissible, when due notice has been given pursuant to 1-2-9, for the Executive Committee to hold hearing in the Community Hall of Community wherein the license is operative.

1-2-15 Order of Revocation

In any case where the Tribal Council approves a revocation of a license, it shall forthwith make an order for such revocation and upon service of notice thereof on the licensee or any of its duly elected officials all of its rights under such license shall terminate three days after such notice, except in the event of a stay on appeal.

1-2-16 Waiting Period for New License

Any licensee under this title, whose license is revoked shall not for a period of five years thereafter be granted any license under this title.

1-2-17 Suspension in lieu of revocation

When in any proceedings upon verified complaint, the Executive Committee is satisfied that the nature of such violation and the circumstances thereof were such that a suspension of the license would be adequate, it may instead of recommending revocation to the Tribal Council, suspend the license for a period of not exceeding 60 days, which suspension shall become effective 24 hours after service of notice thereof upon the licensee. During the period of such suspension, such licensee shall exercise no rights or privileges whatsoever under the license.

1-2-18 Appeal to Tribal Court

Any licensee whose license is revoked by the Tribal Council, regardless of how the proceedings were instituted, may appeal from such revocation to the Tribal Court of the Rosebud Sioux Tribe, which appeal shall be perfected by filing written notice thereof with the Executive Committee of the Rosebud Sioux Tribe within 5 days after notice to the licensee of such revocation, and which appeal shall operate to stay all proceedings for a period of 15 days thereafter, and for such additional period of such Rosebud Sioux Tribal Court may in its discretion extend such stay. Under no circumstances may the Tribal Court extend the stay for a period of more than 25 days including the original 15 day stay period. The Executive Committee shall forthwith, upon such appeal being made, certify to such Tribal Court the complete record in the



proceedings and the court shall thereupon fix a time and place for hearing, due notice of which hearing shall be given to the licensee, to the complainant, to the members of the Tribal Council, and to the duly elected and qualified community Chairman of the Community wherein the licensee is operating.

For the purposes of appeal under this ordinance, the appeal shall be heard by all duly qualified and selected judges of the Rosebud Sioux Tribal Court sitting in one body.

1-2-18 Review by Tribal Court

Upon the hearing pursuant to 1-2-18, the Tribal Court Judges shall review the record as presented to the Tribal Council by the Executive Committee and shall then, immediately during that Court date, enter an order either affirming or reversing the decision revoking such license. In reaching its determination, the Tribal Court Judges shall not hear any testimony, but shall examine the record as certified by the Executive Committee as to whether it disclosed evidence of any violation of law or rules or regulations charged in the complaint, and if the certified record so discloses any violation of law, they are bound to affirm the decision of the Rosebud Sioux Tribal Council.

An appeal will be denied unless a clear majority of the Tribal Judges sitting on the appeal vote for reversal. In the event of a tie vote, the actions of the Rosebud Sioux Tribal Council shall be affirmed, and the license revoked.



1-3 LOCAL OPTION AND COMMUNITY INVOLVEMENT

1-3-1 Any Indian Community as recognized by the Constitution, By-Laws or Ordinances of the Rosebud Sioux Tribe, shall have the power to make regulations concerning the conduct of retail traffic in alcoholic beverages, which regulations are not inconsistent with the provisions of this title, and this includes the regulation of the days of the week and the hours within which alcoholic beverages may be sold.

1-3-2 No part of this ordinance shall authorize the granting of any license by the Executive Committee of the Rosebud Sioux Tribal Council, until such time as the Indian COMMUNITY WITHIN which an applicant seeks to operate has conducted a Community election for the purpose of approving the retail sale of alcoholic beverages in that community. For the purposes of this Ordinance, the Executive Committee of the Tribal Council is prohibited from considering an application for a license in any community which has not affirmatively voted by a majority of those voting the approval of retail sale of alcoholic beverages in that particular community.

1-3-3 Election .

The local election to allow licensing of retail sale within a community of alcoholic beverages shall be conducted by the duly elected community officials upon proper notice having been given in advance of at least 15 days duration. The election shall be held among all the duly qualified voters of the Community as of the date of the election, and the rules and regulations pertaining to tribal elections shall apply in this election. Upon the completion of a community election, the ballots shall be transmitted forthwith to the Executive Committee along with the certification of the Elected Officials of the Community as to the outcome of the election. Any charges as to irregularities in the election shall be heard by the Executive Committee and their decision shall be final.

1-3-4 Distance from Schools and Churches

No license may be issued under this Ordinance, without the consent of the Community involved, to any licensee who will sell alcoholic beverages within 400 feet of any school which is open during the sale hours, or which will operate within 400 feet of any church of any religion.

1-3-5 Form of Question on Election

The form of submitting the question of whether intoxicating liquor is to be sold within the Community shall be, "Shall liquor licenses be permitted within this Community".



1-3-6 Purchase Invoices

A copy of each purchase invoice for intoxicating liquor supplies delivered to and signed by the licensee or its agent shall be filed monthly with the Treasurer of the Rosebud Sioux Tribe.

1-3-7 Waiting Period between Local Option Elections

When the question of whether liquor licenses shall be granted within the Community has been submitted to the voters of an Indian Community of the Rosebud Reservation, the same question shall not be resubmitted within a year thereafter.



1-4 LIQUOR LICENSES AND SALES

1-4-1 Applicability of Chapter

The provisions of Chapter 1-4 of this Ordinance, unless clearly indicated, shall be construed to relate only to intoxicating liquor, and not to nonintoxicating beer or wine.

1-4-2 Classes of Licenses

Classes of licenses, with the fee for each class, follow:

- (1) Class A - Package dealers - Four Hundred Dollars
- (2) Class B - On Sale Dealers - Four Hundred Dollars
- (3) Class C - Solicitors - twenty-five dollars
- (4) Class D - Transportation Companies - twenty-five dollars
- (5) Class E - Private Clubs with restricted membership - five hundred dollars.

1-4-3 One License Per Application

No more than one license of any or different classes under this chapter shall be issued to any one licensee: except that:

- (1) Both a class A and Class B license may be granted to an Indian Community.

1-4-4 Number of Licenses

On-sale licenses under this chapter shall be limited according to the population of the Indian Community where the licensee is to operate. There shall not be granted exceeding two such licenses for the first one thousand of population, and one additional license for every additional fifteen hundred of population.

1-4-5 Package Licenses

No more than two Off-Sale licenses shall be granted within any Indian Community of one thousand or less population, and no more than one additional license shall be allowed for each additional one thousand five hundred of population or fraction thereof.

1-4-6 Domestication requirement for corporate licenses

Any corporate licensee under this chapter must be corporation organized under the laws of the Rosebud Sioux Tribe or the State of South Dakota, provided that if the applicant is a foreign corporation, the applicant shall be deemed eligible if, prior to the application, it has complied with all the laws of the Federal, Tribal and State Governments concerning doing business within the Indian Reservation and the State of South Dakota.



1-4-7 Control of Premises

Any licensee under this Ordinance ~~must be the owner~~ or actual lessee of the premises where the applicant intends to conduct business.

1-4-8 Ownership of Business

Any licensee under this Ordinance must be the sole owner of the business to be operated under the license.

1-4-9 Discretion of Executive Committee

The applications of licenses shall be submitted in the first instance to the Executive Committee as enumerated in Chapter 1-2 of this Ordinance, and the Executive Committee shall have absolute discretion to approve or disapprove the same.

1-4-10 Cancellation of Surety Bond

The surety may cancel the bond required under this Ordinance as to future liability by giving thirty days' notice to the Executive Committee. Unless the licensee gives other sufficient surety by the end of the thirty day period, his license shall be revoked automatically at the end of the thirty days.

1-4-11 Surety Bond

Every application must be accompanied by a bond, which shall become operative and effective upon the issuing of a license unless the licensee already has a continuing bond in force. Said bond shall be in the amount of \$10,000.00. Such Bond must be on a form approved by the Executive Committee of the Rosebud Sioux Tribe and it shall be conditioned that the licensee will faithfully obey and abide by all the provisions of this title and all existing laws relating to the conduct of its business and will promptly pay to the Rosebud Sioux Tribe when due all taxes and license fees payable by it under the provisions of this title and also any costs and cost penalty assessed against it in any judgment for violation of the terms of this title.

1-4-12 Action of Bond for Injury

Any person injured by reason of the failure of any licensee to faithfully obey and abide by all the provisions of this title, or any act amendatory thereto, shall have a direct right of action upon the bond required in 1-4-11 for the purpose of recovering the damage sustained by such person, which action may be prosecuted in the name of the injured.



1-3-13 Agreement by licensee to grant access

Every application for a license under this Ordinance must include an agreement by the applicant that his premises, for the purpose of search and seizure laws of the Rosebud Sioux Tribe, shall be considered public premises, and that such premises and all buildings, safes, cabinets, lockers, and storerooms thereon will at all times on demand of the Executive Committee or its authorized agent, or a duly appointed tribal or federal policeman, be open to inspection, and that all its books and records dealing with the sale and ownership of intoxicating liquor shall be open to said person or persons for such inspection, and that the application and the license issued thereon shall constitute a contract between the licensee and the Rosebud Sioux Tribe entitling the Rosebud Sioux Tribe, for the purpose of enforcing the provisions of this title to inspect its premises and books at any time.

1-3-14 Duration of Licenses

The period covered by licenses under this Ordinance shall be from 12 o'clock midnight on the 31st day of December to twelve o'clock midnight on the 31st day of next December, except that the license shall be valid for an additional three days provided that proper application for a new license is in the possession of the Executive Committee prior to midnight on the 31st day of December when the license expires, and the full fee shall be charged for any license for a portion of such period.

1-3-15 Place of Business

Unless specifically authorized by Ordinance, no licensee shall engage in business as a dealer in intoxicating liquor of any of the classes provided herein in more than one place.

1-4-15 Sales Practices Prohibited

No licensee under this Ordinance shall attempt to promote its sales of liquor by tie-in sales arrangements or by any device such as gifts or other concessions of financial value to a customer, but shall limit its business practice to promoting sales on the basis of price competition, reliability as a supplier, and other ordinary competitive practices. Violations of this section shall form the basis for immediate revocation of license.

1-4-17 Sacramental Wines Exempt

The provisions of this Ordinance, except as otherwise provided, shall not apply to the purchase and sale of sacramental wines. Ordained rabbis, priests, ministers, or pastors of any church or



established religious organization within the state of South Dakota or the Rosebud Sioux Indian Reservation may buy sacramental wines from wholesalers either within or without the state in such quantities as necessary for their religious purposes only.

1-4-18 Refilling prohibited

No licensee shall buy or sell any package which has previously contained intoxicating liquor sold under the provisions of this Ordinance, or refill any such package.

1-4-19 Deliveries

No licensee under this Ordinance shall make any delivery of intoxicating liquor outside the premises described in the license.

1-4-20 Prohibited Sales

No licensee shall sell any intoxicating liquor:

- (1) To any person under the age of 21 years;
- (2) To any person who is intoxicated at the time, or who is known to the seller to be an habitual drunkard;
- (3) To any person to whom the seller has been requested in writing not to make such sale, where such request is by the Executive Committee, any police or peace officer, or the husband, wife, or child of the person;
- (4) To any mentally ill or mentally retarded person.

Whoever shall violate any of the provisions of this section shall be guilty of an offense and punished by a fine of not less than two hundred dollars nor more than three hundred sixty dollars, or by imprisonment in the Tribal Jail for a term not exceeding 90 days, or by both such fine and imprisonment, and, in addition, there shall be adjudged against such person a cost penalty of two hundred dollars.

1-4-21 Minors Barred

No on-sale licensee of any class shall permit any person less than 21 years old on the premises where the business under the license is authorized.

1-4-22 After Hours Sales

No licensee of any class shall sell, serve, or allow to be consumed on the premises covered by the license, intoxicating liquor other than in the hours permitted by its license.



1-4-23 Prohibited Activity

No licensee under this Ordinance shall allow any athletic contest or gambling or gambling devices on the licensee premises or permit any lewd or indecent entertainment on said premises.

1-4-24 Prohibited Sales

No person shall buy from any on-sale dealer any intoxicating liquor in a package, whether sealed or unsealed, or whether full or partially full.

1-4-25 Unsealed Packages in Public

No person shall have an unsealed package containing intoxicating liquor in his possession in any public place; other than a duly licensed facility authorizing such broken seal. For the purposes of this Section "Public Place" is identical to 35-4-88 S.D.C.L.

1-4-26 Violation as to Possession

Whoever shall violate any of the provisions of this Chapter 1-4 for which a penalty is not otherwise proscribed, shall be guilty of an offense and upon conviction shall be punished by a fine of not less than \$25.00 nor more than \$360.00, or by imprisonment in the Tribal Jail not exceeding 60 days or by both such fine and imprisonment, plus costs.

1-4-27 Prohibited Use

No person shall be permitted either to:

- (1) Consume any intoxicating liquor, or
- (2) To mix or blend any intoxicating liquor or alcohol with any other beverage whether or not such other beverage is an alcoholic beverage, in any public place other than upon the premises of a licensed on sale dealer as defined by this Ordinance, and the proprietor who knowingly permits such violations to occur upon his premises shall be equally responsible with the person performing the act for the violation of the terms hereof.

1-4-28 Citation of Liquor Control Law

This Ordinance shall be known and cited as the Rosebud Sioux Tribe Liquor Control Law.



1-5 SALES TAX

1-5-1 Tax Levied

There is hereby levied on all licensees licensed under this Ordinance a sales tax to be computed on all intoxicating liquors sold.

1-5-2 Amount of Tax

The sales tax based on the quantities of different kinds of alcoholic beverages shall be:

- (1) Beer in excess of 3.2% alcohol by weight, eight dollars per barrel of 31 gallons, or a prorata portion thereof in accordance with the size of the bulk container.
- (2) All light wines and diluted beverages (except sparkling wines) containing alcohol by weight to the extent of more than 3.2% and not more than 14%, one dollar and twenty cents per gallon.
- (3) All wines and diluted beverages (except sparkling wines) containing alcohol by weight to the extent of more than 14% and not more than 20%, one dollar and sixty cents per gallon.
- (4) All wines and diluted beverages (except sparkling wines) containing alcohol by weight to the extent of more than 20% and not more than 24%, all natural sparkling wines containing alcohol and all artificial sparkling wines containing alcohol, one dollar and eighty cents per gallon.
- (5) Low-Point Beer, containing 3.2% alcohol by weight or less eight dollars per barrel of 31 gallons, or a prorata portion thereof in accordance with the size of the bulk container.
- (6) All other alcoholic beverages not hereinbefore specified, three dollars and fifty cents per gallon.

1-5-3 Fractions of Gallons

In computing the sales tax on any package of alcoholic beverages, other than beer, a proportionate tax at a like rate on all fractional parts of a gallon less than 1/16 shall be taxed at the same rate as for 1/16 of a gallon.

1-5-4 Exemptions

The following beverages sold by licensees are hereby exempted from the tax levied in 1-5-2:

- (1) Sacramental wines.



1-5-5 Bond of Licensees

Any licensee liable for the payment of the sales tax levied under this chapter may be required by the Executive Committee to file with the Executive Committee a bond or bonds, in such amount and form as the Executive Committee shall prescribe, with corporate surety satisfactory to the Executive Committee. The amount of such bond shall not be more than \$10,000.00, and the Executive Committee may require the increase or permit the decrease of the amount of the bond to such sum as it deems necessary to assure payment of the tax. Such bond or bonds shall run to the Rosebud Sioux Tribe and shall be conditioned on the payment of all taxes levied by this chapter on or before the due date of payment, and on the payment of all fines and penalties lawfully imposed by reason of failure to pay any such taxes on the date payment is due. In lieu of such bond the Executive Committee may allow the licensee to furnish the amount of such bond in cash, or negotiable securities as it may approve.

1-5-6 Cancellation of Bond

The surety may cancel the bond required by the preceding section as to future liability by giving 30 days written notice to the Executive Committee and the licensee. Unless the licensee gives other sufficient security by the end of the 30 day period, its license shall be automatically revoked.

1-5-7 Monthly return and Payment

Licensees liable for the payment of the sales tax levied by this chapter shall file with the Treasurer of the Rosebud Sioux Tribe, a return, on such form as the Executive Committee may require, showing the kind and quantity of alcoholic beverages received, on hand and sold together with the names of the persons from whom received, the amount of tax due, and such other information as the Executive Committee shall by regulation prescribe. Said return, covering the period of one calendar month, together with payment of the tax due, shall be transmitted to the Treasurer of the Rosebud Sioux Tribe on or before the 25th day of the second month following the close of the reporting period.

1-5-8 Tax Stamps

The sales tax may, if required by the Executive Committee to assure collection of the tax be evidenced by an identification stamp to be affixed to each original package of alcoholic beverage for sale on this reservation.

1-5-9 Design of Stamp

The Executive Committee shall adopt the design of the



identification stamp and shall procure the manufacture of such stamp in such quantities as it shall deem necessary.

1-5-10 Penalty on Delinquency

If any licensee liable for any tax imposed by this chapter shall fail to pay such tax on the date payment is due, there shall be added to the tax 10% per month of the total amount of the tax unpaid from the due date of payment until paid. The amount of the tax and penalty shall bear interest at 10% per annum from the date of delinquency until paid. If any licensee shall file a false or fraudulent return, there shall be added to the tax an amount equal to the tax evaded, or attempted to be evaded, and all such taxes and civil penalties may be collected by assessment and distraint, and no court of this Tribe shall enjoin the collection of any such tax or civil penalty plus interest.

1-5-11 Reports Required

Any person outside the Rosebud Reservation who sells or ships alcoholic beverages to a retailer or dispenser within this Reservation shall forthwith forward to the Executive Committee such a report as the Executive Committee shall require, giving the name and address of the licensee or person making the purchase, the quantity and kind of alcoholic beverages sold, the manner of delivery and such other information as the Executive Committee by rule requires.

1-5-12 General Penalties

Any person violating any of the provisions of this chapter for which a specific penalty is not provided, as a first offense, shall be punished by a fine of not more than \$360.00 nor less than \$250.00 or by imprisonment in the Tribal Jail not less than 40 nor more than 360 days, or by both such fine and imprisonment. Any subsequent offense shall be punishable by a fine of \$360.00 or by imprisonment in the Tribal Jail for not less than 180 days, or by both such fine and imprisonment.

1-5-13 Deposit and Crediting of Taxes

Twenty per cent of all license fees and tax receipts received under the provisions of this Ordinance shall revert to the Indian Community in which the licensee paying the fee is located. The balance of all license fees and tax receipts shall be paid to the General Treasury of the Rosebud Sioux Tribe.



1-6 NON-INTOXICATING BEER AND WINE

1-6-1 The provisions of this chapter, unless the context otherwise clearly requires, shall be construed to relate only to non-intoxicating beer.

1-6-2 Class of Licenses

Classes of licenses under this chapter, with the fee for each class, follow:

- (1) Package dealers - Class F - \$250.00
- (2) Retailers, being both package dealers and on-sale dealers - Class G - \$500.00.

1-6-3 Sales Prohibited

No licensee under this chapter shall sell or give any non-intoxicating beer to any person who is less than 19 years old or to any person to whom the sale of other alcoholic beverages is prohibited under the provisions of subdivision (2) (3) and (4) of 1-4-20.

1-6-4 Employment Restriction

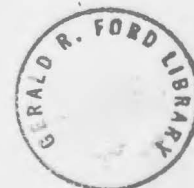
All persons less than 19 years of age are prohibited from serving beer in the place of business of any licensee under this Chapter.

1-6-5 Hours when sale and consumption prohibited

No package dealer or retailer licensee under this chapter shall sell, serve, or allow to be consumed on the premises covered by the license, any non-intoxicating beer or intoxicating beverage between the hours of 1:00 o'clock a.m. and 7:00 o'clock a.m. Monday through Saturday or between 1:00 a.m. and 12:00 p.m. on Sunday. Whoever shall violate any of the provisions of this section shall be guilty of an offense and punished by a fine or not less than \$100.00 nor more than \$360.00 or by imprisonment in the Tribal Jail for not more than 180 days or less than 10 days, or both such fine and imprisonment.

1-6-6 Importation restricted

Except as provided by this Ordinance, it shall be unlawful to transport any alcoholic beverages or non-intoxicating beer into the Rosebud Sioux Reservation for the use or sale therein unless the same shall be for delivery to a licensee authorized under this title to receive such imported non-intoxicating beer or alcoholic beverages.



1-7 AGE REQUIREMENTS

1-7-1 Furnishing beverage to child

It shall be unlawful to sell or give for use as a beverage any alcoholic beverage except non-intoxicating beer to any person under the age of 21 years, or sell or give for use as a beverage to any person under the age of 19 years any low-point or non-intoxicating beer. Any person who violates any of the provisions of this section shall be guilty of an offense and upon conviction thereof shall be punished by a fine of not less than \$100.00 nor more than \$360.00 or by imprisonment in the Tribal Jail for not less than 15 days nor more than 180 days, or by both such fine and imprisonment.

1-7-2 Purchase, Possession by minor

It shall be unlawful for any person under the age of 21 years to purchase, attempt to purchase or possess or consume alcoholic beverages, except non-intoxicating beer, or to misrepresent his age for the purpose of purchasing or attempting to purchase such alcoholic beverages from any licensee as defined by this Ordinance. Any person who violates any of the provisions of this section shall be guilty of an offense and upon conviction thereof shall be punished by a fine of not less than \$20.00 nor more than \$360.00 or by imprisonment in the Tribal Jail for a period not less than 10 days nor more than 30 days, or by both such fine and imprisonment.

1-7-3 Liquor I.D. Card

Any person between the ages of 21 and 25 years, inclusive except a veteran who has honorably been discharged after service on active duty, who produces satisfactory proof that he or she holds an honorable discharge and is 21 years of age, who is a purchaser or consumer of alcoholic beverages, shall carry and display on demand of any licensed dealer under the provisions of this title, a liquor purchase identification card. Such card shall be issued by the Tribal Clerk of Courts, under seal, on a form prescribed by the Executive Committee, and shall show a picture and certify the name, signature, date of birth and address of the person to whom issued. The clerk shall charge and receive a fee of \$1.00 for issuing each card. It shall be a violation of the provisions of this section for any person between the age of 21 and 25, inclusive, except such veterans, to purchase any alcoholic beverage unless he or she has in their possession a liquor purchase identification card issued to him or her pursuant to the provisions of this section. Any person who shall transfer, alter or deface such identification card, or who shall use or carry a false identification card or use the identification card of another, or shall furnish false information in obtaining such



card, or shall violate any provision of this section shall be guilty of an offense.

1-7-4 Purchase or Possession of Low-Point Beer

It shall be unlawful for any person under the age of 19 years to purchase, attempt to purchase, possess or consume low-point beer, non-intoxicating beer, or to misrepresent his age for the purpose of purchasing or attempting to purchase low-point beer or non-intoxicating beer from any licensee as defined by this title. Any person who violates any of the provisions of this section shall be guilty of an offense and upon conviction shall be punished by a fine of not less than \$10.00 nor more than \$150.00 or by imprisonment in the Tribal Jail for not less than 10 days nor more than 45 days, or both such fine and imprisonment.



Proposal - Presidential Initiative

Needed. A positive, viable, national thrust to create a different atmosphere under which Indian tribes and reservations can thrive in the contemporary environment and maintain Indian culture as a national heritage of America.

Background. The plight of the American Indian is well known. It was aptly described in the 1970 Indian Message. Continuing appeals to the nation's conscience have not and cannot stimulate a sustained response by Federal agencies or the general public. Such response, based entirely on sympathy, is transitory. Concrete evidence is available at every reservation where the conditions and environment are no better today than they were a century ago, in spite of an annual Federal expenditure of over a billion dollars.

Proposal.

1. Issue a new Indian Message to restate and clarify national Indian policy.
 - Indian control of his own destiny
 - Federal program support of Indian needs and priorities
 - Preservation of Indians and Indian culture for the benefit of the Nation and the general public
2. Initiate nationwide campaign to create, in the non-Indian population, a feeling of pride in the Indian background of our country and a need and desire to preserve and perpetuate Indians and Indian culture for our own benefit.
 - Indians proud to be Indians
 - Non-Indians proud of the Indian heritage of our country
 - Non-Indians personally proud to know and be known by Indians
3. Initiate a different approach to American History at elementary and high school levels.
 - Reorient American History courses to go back through the colonial period to the Indian and the history of our land rather than through the colonial period to Europe and the European history of whites
 - Make American History as a subject the history of the American land rather than the history of the whites who came in from Europe



FRIED, FRANK, HARRIS, SHRIVER & KAMPELMAN
(STRASSER, SPIEGELBERG, FRIED, FRANK & KAMPELMAN)

SUITE 1000, THE WATERGATE 600
600 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20037

(202) 965-9400
CABLE "STERIC WASHINGTON"
TELEX 440335

FRIED, FRANK, HARRIS
SHRIVER & JACOBSON

120 BROADWAY
NEW YORK, N. Y. 10005
(212) 964-6500
TELEX: 620223

1 THROGHORTON AVENUE
LONDON, E. C. 2, ENGLAND
(01) 588-0667
TELEX: 887606

FELIX S. COHEN (1932-1953)

RICHARD B. BERRYMAN
PETER D. EHRENSHAFT
MILTON EISENBERG
JOEL R. FEIDELMAN
STEPHEN P. GOLDMAN
PATRICIA ROBERTS HARRIS
WILLIAM JOSEPHSON
MAX M. KAMPELMAN
ARTHUR LAZARUS, JR.
RICHARD SCHIFTER
SARGENT SHRIVER
DANIEL M. SINGER

JAMES B. BLINKOFF
S. BOBO DEAN
KENNETH S. KRAMER
STEVEN D. NEWBURG-RINN
MATTHEW S. WATSON
SAMUEL H. WEISSBARD

HAROLD P. GREEN
COUNSEL

April 4, 1972

Mr. Bradley H. Patterson, Jr.
Executive Assistant to Mr. Garment
The White House
Washington, D. C.

Re: Highway Safety Act

Dear Mr. Patterson:

When we discussed the other day the need for amendments to the Highway Safety Act in order to make possible the operation of programs under the Act by Indian tribes on Indian reservations, you asked if I had any information on the extent to which highway safety programs have been made available to Indian reservations under the existing statutory framework which restricts funding to states and other subdivisions.

I am enclosing herewith a listing which I have obtained from the Department of Transportation of highway safety funds spent in Arizona counties in Fiscal Year 1971 and a cumulative list of Arizona highway safety programs through Fiscal Year 1970. These lists indicate that little, if any, Highway Safety Act funds have gone into areas within Indian reservations.

I understand that Mr. D. K. Kelly, New Mexico's Traffic Safety Director, estimates that the Indian traffic fatality rate in New Mexico is at least eighteen percent of all traffic fatalities, although Indians make up only seven percent of the State's population. Mr. Kelly also believes that his figures of Indian fatalities may be only fifty percent of the total number because they were compiled by counting incidents involving persons with Indian surnames, while many New Mexico Indians have English or Spanish surnames.



Mr. Bradley H. Patterson, Jr.
Page 2
April 4, 1972

I understand that it is the position of the New Mexico Traffic Safety Commission that while there is a substantial need for traffic safety programs on Indian reservations, under the existing law neither the State Traffic Safety Commission nor subdivisions of the State can operate programs under the Highway Safety Act on Indian reservations.

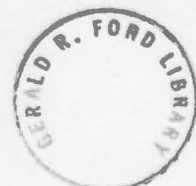
I am enclosing herewith proposed language which would amend the Highway Safety Act in order to set aside a special allocation of funds for highway safety programs on Indian reservations, as well as providing for full Federal financing of such programs where the Tribe does not have sufficient funds to provide the local contribution. An explanatory memorandum is also enclosed.

Sincerely,



S. Bobo Dean

Enclosure



FRIED, FRANK, HARRIS, SHRIVER & KAMPELMAN
(STRASSER, SPIEGELBERG, FRIED, FRANK & KAMPELMAN)

SUITE 1000, THE WATERGATE 600
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D. C. 20037

(202) 965-9400
CABLE "STERIC WASHINGTON"
TELEX 440335

FRIED, FRANK, HARRIS
SHRIVER & JACOBSON

120 BROADWAY
NEW YORK, N.Y. 10005
(212) 964-6500
TELEX: 620223

1 THROGMORTON AVENUE
LONDON, E.C.2, ENGLAND
(01) 588-0887
TELEX: 687606

FELIX S. COHEN (1932-1993)

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MILTON EISENBERG
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KENNETH S. KRAMER
STEVEN D. NEWBURG-RINN
MATTHEW S. WATSON
SAMUEL H. WEISSBARD

HAROLD P. GREEN
COUNSEL

April 10, 1972

MEMORANDUM

RE: Reservation Indians and the Highway Safety Act

The Highway Safety Act of 1966, Public Law 85-564, 23 U.S.C. § 401 et seq., provides for Federal financial assistance to local communities to improve highway safety. These funds can be used for inspection stations, safety equipment, driver education and adult training, including alcoholism programs, license training and reexamination stations, breathalyzer equipment, additional court personnel, maintenance, signs and markings to comply with Federal standards, traffic records, training for paramedical crews, ambulances, communications equipment, pedestrain safety and similar projects.

Most of the funds distributed to local communities under the Act are administered under Section 402 which provides for "block grants" to States, which, in turn, must distribute at least forty percent of these funds to their political subdivisions.



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Since Indian tribes have inherent sovereignty and are organized under Federal law, they are not political subdivisions of States. Felix Cohen, Federal Indian Law, pg.401; Opinion of the Attorney General of Arizona, August 1, 1969. Consequently, they do not presently share in Section 402 funds.

Theoretically, it may be possible for county governments containing Indian reservations to operate highway safety programs within such reservations. This is seldom done, however. In a letter, dated March 30, 1972, to the Department of Transportation, Mr. D. K. Kelly, New Mexico's Traffic Safety Director, says:

"In answer to Mr. Dean's question, 'Can the state make 402 money available to counties who in turn will provide traffic safety services and/or money to Indian communities?' I don't think that attempting to circumvent the law is a good practice; nor do I feel that counties bordering pueblos and reservations are knowledgeable enough to provide the help that is needed."

Attached hereto is a cumulative list of Highway Safety Act projects through Fiscal Year 1970 and a list of such projects for Fiscal Year 1971 for the State of Arizona. According to a study prepared in 1971 by Victor Roth for the Arizona State Government entitled "Emergency Medical Services in Arizona," the percentage of Indian population in Arizona counties is:



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Apache	75%	Cochise	0%
Coconino	25%	Gila	16%
Graham	11%	Greenlee	1%
Maricopa	1%	Mohave	4%
Navajo	49%	Pima	2%
Pinal	10%	Santa Cruz	0%
Yavapai	5%	Yuma	3%

A review of the attached listing of Highway Safety projects in Arizona indicates that a total of \$8,907 was spent in counties with more than 25% Indian population through Fiscal Year 1970. Nothing was spent in Apache County, which has the highest percentage of Indian population. In Fiscal Year 1971 \$29,000 was spent in counties with more than a 25% Indian population, but these funds went entirely to off-reservation predominantly non-Indian communities.

The lack of State-funded Highway Safety programs on Indian reservations in Arizona and New Mexico is not surprising in view of the fact that these States lack civil and criminal jurisdiction over Indians on reservations.

The need for Highway Safety programs on Indian reservations is well documented. In his letter of March 30, 1972, New Mexico Traffic Safety Director Kelly estimates that Indians account for between 18% and 36% of the traffic fatalities in New Mexico (18% is based on persons with



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Indian names - about half of New Mexico's Indians have English or Spanish surnames) although Indians constitute only 7% of the State's population.

Figures furnished by the U. S. Department of Transportation indicate that while Indians comprise 5.5% of Arizona's population, they contribute 13% of its traffic fatalities. The Indian traffic fatality rate in Arizona is 1 to 1,156 of population, as against the total Arizona fatality rate of 1 to 2,320, and the national rate of 1 to 3,636.

States with high Indian populations typically have high traffic fatality rates per 100,000,000 miles. The national rate is 4.7, while the Arizona rate is 6.3, the New Mexico rate is 7.6, the South Dakota rate is 5.1, the Montana rate is 6.5, the Alaska rate is 7.8, and the Idaho rate is 6.8.

Funds are available under the Highway Safety Act for alcoholism projects in view of the obvious relationship between traffic safety and alcohol abuse. The very high rate of alcoholism and alcohol-related offenses on Indian reservations is well documented. A recent study indicated that the Indian rate of arrest to alcohol-related crimes is twelve times the national rate. The same study reports that the overwhelming majority of Indian crimes committed in the Southwest, as well as in South



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Dakota, are committed under the influence of alcohol. ^{1/}

The Oglala Sioux Model Reservation Program completed in 1969 under a Department of Housing and Urban Development grant reports 3,000 alcohol-related offenses during 1967 among the 9,970 Oglala Sioux on the Pine Ridge Reservation. This constituted 60% of all offenses.

These figures are characteristic of many Indian reservations. On the Laguna Indian Reservation in New Mexico it is estimated that out of a population of 3,000, 400 Lagunas suffer from alcoholism, while an additional 2,000 are affected by the drinking problems of their immediate relatives. A Bureau of Indian Affairs Albuquerque Area Office study indicated that 70% of cases processed by the Laguna Tribal Court in 1967 involved alcohol. Bureau figures covering cases in the Pueblos of Cochiti, Santa Ana, Jemez, Santo Domingo, Sandia, Zia and San Felipe for 1967 indicated that out of 382 court cases, 367 involved alcohol.

A 1971 Indian Health Service report, prepared at the request of the Navajo Tribe states:

^{1/} Edward P. Dozier, "Problem Drinking Among American Indians," Journal of Studies on Alcohol, 73. See also, O. Stewart, "Questions Regarding American Indian Criminality," Hum. Organiz., 23; 61-66.



- 6 -

"The Indian Health Service considers alcoholism to be one of the most significant and urgent health problems facing the Indian and Alaska Native people today. Probably no other condition adversely affects so many aspects of Indian life in the United States...Previous special studies on alcoholism in the Navajo Area have shown it to be a major health problem and a major contributor to accidents, neglected children, broken homes, malnutrition, etc., which when added together, identify it as the major health problems of the Navajo people." 2/

A proposed amendment to the Highway Safety Act which would give Indian tribes a fair share of the Federal assistance which is now available to other local communities to deal with highway safety needs is attached to this memorandum.

2/ "Health Problems, Health Programs, Health Program Deficiencies," Navajo Area IHS, March 8, 1971, 46, 50.



ATTACHMENT I

This is cumulative to Fiscal Year 1970. (From Arizona's Report.)

N.H.S.B. Project No.	Federal Funds	FY	Title	Agency
PA 67-001	35,987	1968	Planning & Administration	AHD (GHSC)
PA 68-002	55,019	1969	Planning & Administration	AHD (GHSC)
DE 68-001	604		Commercial Driving Schools	AHD-MVD
DE 68-002	75,714		Traffic Survival Schools	AHD-TSD
DE 68-004	62,845		Driver Education Supervision	D of E
DE 68-006	45,494		Elementary School Education	AHD-TSD
DL 68-001	326		Medical Advisory Board - D.L.	AHD-MVD
DL 68-002	2,000		Motorcycle Safety Admin.	AHD-MVD
DL 68-003	33,274		Devl. of Medical Criteria for Licensing Operators of Mtr Veh	ASDH
CL 68-001	1,820		Codes for Arizona Cities/Towns	AHD (GHSC)
AL 68-001	15,172		Devl Statewide Alcohol Test	ASDH
EM 68-001	71,516		Emergency Medical First Aid	AHD
EM 68-002	174,456		Eval & Devl of Facilities & Personnel for Transporting & Treating Acct V	ASDH
PA 69-001	74,985	1970	Planning & Administration	AHD (GHSC).
DE 69-001	42,187		Mobile School Bus Driver	AHD-TSD
IS 69-001	93,302	1969	Highway Optical Data System	AHD
PT 69-001	16,956		Police Traffic Training	AHP
DE 70-001	122,840	1970	Driver Education Simulation	Scottsdale R Dist #212
DL 70-001	10,414		Driver License-Eye Testing	AHD-MVD
CD 70-001	76,467		Traffic Control Device Record System	AHD
TR 70-001	28,000		Highway Network Data System	MCHD
TR 70-002	45,877		Traffic Data File Management System	AHD
EM 70-002	9,066		Coconino County EMS	Coconino Co



AL 70-001	20,900	1970	Field G.C.I. Breath Test	Phoenix PD
AL 70-002	915		Street Safety & Accndt Prevention	Peoria PD
AL 70-003	202		Alcohol in Re: to Hwy Safety	Winslow PD
AL 70-004	830		Alcohol in Re: to Hwy Safety	Tolleson PD
AL 70-005	898		Alcohol in Re: to Hwy Safety	El Mirage PD
AL 70-006	1,607		Statewide Breathalyzer Training School	Phoenix PD
AL 70-007	1,731		Breathalyzer Training	Tucson PD
AL 70-008	457		Breathalyzer Training	DPS (Winslow)
AL 70-009	1,045		Breathalyzer Equipment	Prescott PD
AL 70-011	1,318		Breathalyzer Project	Flagstaff PD
AL 70-012	1,031		Traffic Safety re alcohol	Parker PD
AL 70-013	1,221		Breathalyzer Training	Yavapai Cty S.O.
AL 70-014	2,889		Breathalyzer Equipment - 3 Locations	Yavapai Cty S.O.
AL 70-015	789		Street Safety & Accndt Prev.	Benson PD
AL 70-016	1,084		Traffic Safety re Alcohol	Willcox PD
AL 70-019	913		Alcohol re Hwy Safety	Navajo Cty S
AL 70-020	1,077		Alcohol re Hwy Safety	Globe PD
AL 70-021	1,690		Alcohol re Hwy Safety	Tucson PD
AL 70-022	1,299		Alcohol Information Meeting	ASU
AL 70-023	1,301		Breathalyzer Training	Flagstaff PD
PT 70-001	18,978		Radar Speed Enforcement	Phoenix PD
PT 70-003	47,616		VASCAR Traffic Control	DPS
PT 70-004	3,594		VASCAR	Prescott PD
PT 70-005	1,232		Radar Equipment Replacement	Prescott PD
PT 70-006	3,341		VASCAR Speed Control	Flagstaff PD



PT 70-007	28,104	1970	Solo Motorcycle	Phoenix PD
T 70-008	1,669		VASCAR	Bisbee PD
PT 70-009	2,042		VASCAR	Globe PD
PT 70-010	2,731		VASCAR Installation	Peoria PD
PT 70-011	7,176		Motorcycle Traffic Control	Flagstaff PD
PT 70-012	13,592		Traffic Control Devices	MCSO
PT 70-013	51,225		Police Traffic Services	Tempe PD
PT 70-016	2,898		VASCAR Speed Control	NAU Sec. Div.
PT 70-017	1,468		VASCAR	Paradise Vall.
PA 70-001	75,000	1971	Planning & Administration	AHD (GHSC)
DE 71-001	28,564		Driver Ed for Students	Paradise Vall. High School
L 71-001	975		Breathalyzer Training	Globe PD
L 71-002	1,463		Breathalyzer Equipment	Yuma PD
L 71-003	899		Breathalyzer Acquisition & Training	Buckeye PD
L 71-004	1,830		Breathalyzer Test for D.W.I.	Chandler PD
L 71-005	970		Alcohol re Hwy Safety	Surprise PD
L 71-007	2,069		Breathalyzer Equip & Train	Yavapai Cty SC
L 71-008	1,105		Chemical Test-Train & Supv	Tempe PD
S 71-001	355,391		ALISS	AHD
S 71-002	30,000		Traffic Safety Div. (establishment of)	Phoenix, T.E.
M 71-001	6,394		Mohave County EMS	Mohave Cty
M 71-002	25,233		Improvement of Ambulance	Cocconino Cty
M 71-003	5,565		Apache County EMS	Apache Cty
M 71-004	7,994		Navajo County EMS	Navajo Cty
M 71-005	6,509		Yuma County EMS	Yuma Cty
M 71-006	11,544		Vol. Ambulance	Buckeye R.F.D.



EM 71-007	(40,249)	1971	Impv Ambulances & Equip	Mt. Graham Hospital Dis.
EM 71-008	6,931		Pima County EMS	Pima Cty
EM 71-010	13,490		Vol. Ambulance	Cavecreek/ Carefree
EM 71-012	4,375		Pinal County EMS	Pinal Cty
EM 71-013	4,375		Gila County EMS	Gila Cty
PT 71-001	8,386		Traffic Police Adm Training	DPS
PT 71-002	9,083		Northwestern U. Traffic Inst.	Scottsdale PD
PT 71-003	9,083		Northwestern U. Traffic Inst.	Phoenix PD
PT 71-004	1,589		VASCAR	Buckeye PD
PT 71-005	1,455		VASCAR Installation	Mammoth PD
PT 71-007	4,901		VASCAR Installation	Yuma PD
PT 71-008	20,323		Tucson VASCAR Speed Control	Tucson PD
PT 71-009	11,917		VASCAR Speed Control	Scottsdale PD
PT 71-010	1,651		VASCAR	Surprise PD
PT 71-011	2,141		VASCAR Installation	Coolidge PD





U.S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
WASHINGTON, D.C. 20590

IN REPLY REFER TO:

FISCAL YEAR 1971
SOURCE: NHTSA REGIONAL OFFICE

Mohave	20,000
Yuma	13,000
Coconino	32,000
Yavapai	5,000
Maricopa	182,000
Pinal	4,000
Pima	30,000
Santa Cruz	4,000
Navajo	23,000 DE 6,400 Lakeside -- EMS 16,800 Taylor
Apache	6,000 EMS St. Johns
Gila	1,000
Graham	30,000 EMS Safford
Greenlee	
Cochise	5,000



LEGEND

AHD	-	Arizona Highway Department
GHSC	-	Governor's Representative
MUD	-	Motor Vehicle Department
D of E	-	Department of Education
ASDH	-	State Department of Health
MCHD	-	Maricopa County Highway Department
PD	-	Police Department
SO	-	Safety Office
MCSO	-	Maricopa County Safety Office
AL	-	Alcohol
DE	-	Driver Education
PTS	-	Police Traffic Services
TR	-	Traffic Records
EMS	-	Emergency Medical Services
TCD	-	Traffic Control Devices

Vascar is a speed-measuring device much used by police departments.



S. _____

A BILL

To amend the Highway Safety Act of 1966 to provide for highway safety programs on Indian reservations and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled that this Act may be cited as the "Indian Highway Safety Act of 1972."

SECTION 1. Section 402 of the Highway Safety Act of 1966 is amended by inserting the following new subsection (h) immediately after subsection (9) thereof:

"(h) For the purpose of the application of this Section 402 on Indian reservations, 'State' includes the Secretary of the Interior and 'political subdivision of a State' includes an Indian tribe, provided that, notwithstanding the provisions of subparagraph (C) of subsection (b)(1) hereof, 95 percentum of the funds apportioned to the Secretary shall be expended by Indian tribes to carry out highway safety programs within their jurisdictions."

SECTION 2. Subsection (d) of Section 402 of the Highway Safety Act of 1966 is amended by inserting immediately after the first sentence thereof the following:

"and except that, in the case of a local highway safety program carried out by an Indian tribe, if the Secretary is satisfied that an Indian tribe does not have sufficient funds available to meet the non-Federal share of the cost of such program, he may increase the Federal share of the cost thereof payable under this Act to the extent necessary."





AMERICAN INDIAN CRUSADE

Box 377

Mission, South Dakota 57555

The hoop is no longer broken.

December 2, 1972

INDIAN TRIBAL DETERMINATION ACT

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For years Indians across the country have wanted to see the Bureau of Indian Affairs abolished. This bureaucratic, paternalistic, Indian destructing operation that revolves on the idea that Indian human beings must be controlled in accordance with regulations and rules pertaining to land, water, minerals, timber and other natural resources must cease with the year of 1974.

In the governmental structure of this nation there must be a birth. The birth of a federal Indian commission charged with the safe-keeping of Indian "Trust Lands" and a system designed to carry out the trust responsibilities of our government over Indian natural resources, while at the same time give Indian people the greatest possible tribal and individual freedom that is possible in a trustee situation such as the special relationship between the United States and the several groups of Indian people.

It is my personal opinion, developed over a 22 year period, that the federal government can legislate and institute a nation-wide Indian Tribal Determination Act that will generate national approval from the populace and a vast majority of the Indian people.

Never before in the history of this nation has the average American been so aware and concerned for the native Americans. It is an accepted fact among all Americans that the history courses utilized in our educational system does not reflect the true past of this country or that of the natives of this land. Our people, in general are searching for the truth and with truth, justice will come to bring equality.

THE ACT

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TITLE I - Legislation must be prepared to remove the Bureau of Indian Affairs from within the Department of the Interior by abolishing it completely. Congress can then establish a Federal Indian Commission that will be directly responsible to the President. It is hereby suggested that the name of Federal Indian Commission be utilized for this purpose.



The responsibilities of such a commission shall be as follows:

- a] The Federal Indian Commission shall maintain a complete record of all Indian trust lands and execute, manage, and administer any and all matters pertaining to the said lands in accordance with regulations prescribed by the President.
- b] The Commission shall monitor and record the actions of all governing bodies of the tribes to safe-guard all human, civil and property rights of native Americans in accordance with regulations prescribed by the President.
- c] The Commission shall monitor and record the actions of all governing bodies of the tribes whenever federally appropriated monies are expended in accordance with regulations prescribed by the President.
- d] The Commission shall manage, operate and administer the Indian Revolving Loan Fund of \$500,000,000 in accordance with regulations prescribed by the President; Provided, that individual Indians who cannot qualify for loans from his respective tribal organization shall be provided with the opportunity to obtain a direct loan from the Commission in accordance with regulations prescribed by the President.
- e] The Commission shall maintain a field representative on each separate tribal reservation which shall report directly to the Commission in accordance with directives from the President.
- f] The United States of America shall hold all Indian trust land in perpetual trusteeship; Provided, that any given tribe shall have the legal right to request and hold a tribal referendum vote of all enrolled tribal members regardless of residence on the question of terminating all federal trust responsibilities and trusteeship; Provided Further, that all referendum voting will be held in accordance with election procedures set forth within this Act.

TITLE II - TRIBAL GOVERNMENT

- a] Each federally recognized tribe shall have the right to form a government that best meets the needs of their specific cultural heritage; Provided, that each tribal governmental unit shall be consistant with the constitutional protections afforded the citizens of the United States and such constitutional protections shall be utilized to safe-guard individual rights against any kind of encroachment by those in control of the tribal government.



b] Each tribe shall adopt a judicial system that meets the total needs of its membership; Provided, that such a judicial system shall operate in a manner consistent with the Constitution and Laws of the United States; Provided Further, that each tribal judicial system shall utilize a Code of Federal Indian Law prescribed by regulations by the President.

c] Each tribe shall adopt a legislative system separate and apart from the administrative body to meet the needs of the respective tribe: Provided, that such a legislative body shall be empowered to control all internal affairs of the tribe; Provided, that the Indian Tribal Determination Act shall provide all necessary checks and balances necessary to protect the legislators and to equally protect the people the legislators represent.

The Act shall provide, conflict of interest laws, accountability laws, civil rights laws, impeachment and recall laws to legally remove elected tribal officials, limitation laws concerning the use of political influence on administrative decisions, voting rights laws, the right to hold office laws and other checks and balances necessary to assure a good government; Provided, that any legislative act to appropriate tribal money by mortgaging tribal lands maybe placed upon referendum vote by a petition containing 100 signatures of duly enrolled members of the tribe; Provided Further, that any proposed sale of tribal lands maybe placed upon referendum vote by a petition containing 100 signatures of duly enrolled members of the tribe; and Further Provided, that any proposed legislation to borrow money in excess of \$75,000 maybe placed upon referendum vote by a petition containing 100 signatures of duly enrolled members of the tribe.

d] Each tribe shall adopt an administrative system to meet the needs of their membership and such an administrative system shall be responsible for the following:

1. Each tribal administration shall maintain a educational branch, welfare branch, land branch, credit branch, health branch, economic development branch, Office of economic opportunity branch and such other branches as are necessary to conduct a good administrative governmental operation in the future.

Each tribal administration shall be empowered to execute resolutions, ordinances and directives from the legislative body, official documents, develop programs for submission to the legislative body, recommend legislation to assure proper function of the judicial system, accept and account for all funds appropriated by the legislative body which derives from tribal assets, accept and account for any and all federally appropriated funds after said federal funds have been duly appropriated by the legislative body, execute any and all legal documents necessary to mortgage, manage, operate, sell or otherwise encumber tribal lands and revert to trust status any other



real or personal property belonging to the tribe.

2. Each tribal administration shall be fully accountable for any and all federally appropriated monies and shall make a annual report to the General Accounting Office of the United States, to the President of the United States and to the tribal members of the given tribe; Provided, that all debts pledges, assignments, notes, mortgages or any other assests of the tribe shall be published annually at the end of each fiscal year; and Further Provided, that each tribe's financial records shall be available to any federal officials and to the membership of the said tribe upon the request of said persons or officials.

TITLE III - JURISDICTIONAL ACTS.

A] There shall be a part of the Indian Tribal Determination Act, laws, that make it a criminal offense to steal, misappropriate, illegally encumber in any manner tribal assets, or by other criminal means or intent defraud, conspire or coerse with other officials or employees to circumvent the intent of this Act.

It shall be unlawful for any tribal official or tribal employee to trade or otherwise do business with tribal members wherever such trade or business may conflict with the best interest of the tribe involved.

b] There shall be a part of the Indian Tribal Determination Act that gives each and every tribal member the right to hold elected tribal officials or employees accountable in federal court for their actions in any case where such an official or employee acts outside of the legal scope granted them.

c] There shall be a part of the Indian Tribal Determination Act which creates a complete tribal election law that pretains to every tribe; Provided, that this law shall make it a criminal offense to buy votes in any manner and make it possible for individual Indians to sue in Federal District Court whenever he must protect the right to vote or the right to hold elective office. Such a law should be styled after Title 28- USC- 1343 and 1344.

d] There shall be a part of the Indian Tribal Determination Act that provides for the impeachment and recall petition procedures to remove any tribal official duly elected and for the impeachment and recall petition procedures to remove any duly elected tribal legislative representative and for the outright forfeiture of office whenever a tribal official or legislator is convicted of a felony or crime of dishonesty while holding office.



TITLE IV - FEDERAL APPROPRIATIONS.

Until such time as each separate tribe becomes self-sufficient, the Congress shall appropriate all funds necessary to maintain the Federal Indian Commission, related agencies and the several tribal governing bodies.

All federal appropriations shall be made upon the request of the President in accordance with the recommendations of the several tribal governing bodies.

JUSTIFICATION FOR THE INDIAN TRIBAL DETERMINATION ACT

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For many years the Indian people and the wise tribal leaders elected by the people have been calling for reform within the Bureau of Indian Affairs. In recent years the cry has risen to a scream that has fallen upon deaf ears of the federal government. Many private commissions, Government Task Forces have laid out reforms that they felt necessary if the Indian was ever to take his place as a free citizen who contributed to the nation's well being instead of being a welfare client or just another Indian number among the government's files. The Indian must become a free citizen. Free to engage in commerce, free to be an Indian who is proud of his culture, religion and race.

The Indian has always hated with passion the smirking federal officials who belittled his intelligence by making him beg, lie or steal to feed his family. In the days past when few understood the whiteman's ways or language there might have been some justification for treating the Indian as land, trees or minerals while protecting his land but there is no longer that situation.

Today nearly 90% of the Indian people understand all too well the whiteman's ways and language. There is a steady buildup of resentment against the methods utilized by the Bureau of Indian Affairs officials and tribal elected officials who are enforcing federal regulations that were outmoded years ago. Indians and their property have been but a tool to make white farmer and ranchers rich at the expense of the Indian land owner and the United States.

The BIA has been a depository for business transactions between Indians and whitemen. Whitemen who are leasing, mining, fishing and cutting timber for less than one third of the real market value of Indian resources. If one was to document this legalized robbery, outright theft, graft and corrupt practices even the President and Congress would be shocked and outraged.



For example, one tribe was allowed by the BIA, SBA and EDA to borrow \$550,000 to build a furniture factory. A whiteman from St. Louis was given 49% interest in this furniture factory for a \$15,000 investment, then was given a managment contract over the entire operation with three of five members on the Board of Directors. This of course gives him full control, since his three board members can out vote the tribe's two directors. The Honorable James Haley, Chairman of the House Sub-Committee on Indian Affairs and other committe members were appraised of these facts in a public hearing, but failed to investigate any further.

These kind of facts are present all,over the nation's Indian reservation. Graft and corruption is common place on reservations where elected tribal leaders are making a mockery of justice and the intent of the laws of the United States. It is indeed a sad day when nine tribal elected tribal leaders can use federal funds appropriated to help poor Indian people to purchase an Aviation Corporation, then hire four white people to manage the Indain owned corporation.

We Indians are tired of being forced to beg for that which is already ours. Tired of begging for our lease money while our children starve, tired of begging welfare workers for assistance because there are no jobs, tired of bucking crooked tribal officials who are like "God" once they are elected since there are no proced-ures for recalling such tribal officials, tired of the rigged tribal elections where hundreds of Indians are denied of their voting rights with the approval of the BIA officials, tired of the derogatory manner that Indians are treated, tired of being cursed by doctors who are dodging the draft, tired of begging welfare workers for approval of surplus commodity applications, tired of having our lands placed in range units ofr the benifit of others, tired of leasing our farmlands cheap to wealthy whitemen while Indians cannot even earn a living, tired of the government setting up giant loan systems for every other kind of people except the Indian who in many cases owns more than 10 quarter sections of land (1600 acres) and tired of being forced to go into the agency office whenever we need to bury our dead.

We of the Indian race are demanding the right to regain our dignity, pride and self-respect by having our government act now to overcome all the shortcomings in the administration of Indian affairs. We are not children, we are not lacking in intelligence, we are not savages, nor are we heathens and we seek redress in peace if that is possible in this country. We only ask for what is right, right because we have been mistreated for hundreds of years and now seek to remedy our lives with the help of the federal government and those who become rich and powerful off the land that was once all Indian.



If the President of the United States of America will recommend legislation along these lines to Congress, he would be doing to very great things:

1. He would improve his own personal image while improving the image of the United States internationally. White America would begin to really look like it was taking care of its own backyard while it is helping the world.
2. The United States Government could with this plan cut federal appropriations by at least \$250,000,000 within three years after the adoption of this plan in Congress. The Indian Tribal Determination Act would also allow the federal government to cut the present 21,000 employees down to less than 3,000 employees.

Although there will be a continuing need for federal appropriations within the foreseeable future, Congress will be able to fund the Commission and tribes with less money every year after the first five years of operations. This will be true once the people of their respective tribes realize that they have a real responsibility towards the betterment of their future without any fear of termination. On the plus side of the ledger will also be the factor that each tribe and its people will begin to really contribute to the over-all society instead of being a burden. Indians have always wanted to be productive and are productive in many ways. Your dinner table proves this fact daily if you would but take the time to analyze the content of your meals.

Once Indians are given personal responsibilities they will rise to the challenge and prove beyond anyone's expectations that they too, have many capabilities. Oppressing regulations and rules have made the Indian lie and beg, but such forces has not changed the basic values of the Indian people. Indians are the water of this land just as water is to the human race. This is our land and we want to use it for the best interest of all our brothers who have joined us since the Almighty allowed you here in our Garden of Paradise.

I submit this in a spirit of trust and truth, for in the twenty one years I have dedicated to the Indian cause, I have gained much knowledge about their inner most feelings and their ever present thoughts about the land they love so deeply, for I too am an Indian.

In all the twenty one years there has never been a more favorable climate in which to deal with the real problems created for the American Indians and I feel it is now time to make an all out effort to secure the future for the Natives of this land.





AMERICAN INDIAN CRUSADE

Box 377

Mission, South Dakota 57555

The hoop is no longer broken.

I commend President Nixon for allowing Mr. Garment, Mr. Carlucci and Mr. Patterson to negotiate with the organizational leaders who were recently in Washington. Had this wise decision not been made there would have been senseless killing of many high-school youths who were taken into the city by those who would use anyone to gain newspaper headlines. Without any doubt, there was senseless, needless and totally unnecessary destruction and theft of federal property and Indian records. But the lives of babies, women and young people are much more important than all the records in the Indian world.

In closing I should like to add that Indians the nation over are looking to President Richard M. Nixon's Task Force to better existing Indian conditions so that those who would utilize violence, theft and arson will be forced by overwhelming numbers of the Indian people to subdue their wrath and vent it into more constructive channels.

I look forward to your comments concerning this plan for an Act of Congress. Of course, I would be the first to say or admit that it is a long ways from perfect and needs much work, but it is a start that can lead to a bright future for the Indians and the United States.

Respectfully submitted,

Robert Burnett,
Chairman,
American Indian Crusade





MESCALERO *Apache* TRIBE

Wendell Chino, President

Mescalero, New Mexico 88340

PU Box 176

November 16, 1973

BP

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

About three years ago you provided to Congress a great message on Indians and to this day many of the Indian Tribal leaders are cognizant of that message.

I am forwarding to you a copy of my testimony I gave almost three months ago concerning, "A New National Indian Policy". It is my sincere hope your office may see it proper to help us implement some of our goals and recommendations stated in my testimony.

Very truly yours,

Wendell Chino, President
Mescalero Apache Tribe

Enclosure



Testimony of

MR. WENDELL CHINO, PRESIDENT
Mescalero Apache Tribe

Before

FIELD HEARINGS
SENATE SUBCOMMITTEE ON INDIAN AFFAIRS

Held at

ISLETA PUEBLO
New Mexico

On

August 29, 1973

Concerning
A NEW NATIONAL INDIAN POLICY



Testimony of

**MR. WENDELL CHINO, PRESIDENT
Mescalero Apache Tribe**

Before

**FIELD HEARINGS
SENATE SUBCOMMITTEE ON INDIAN AFFAIRS**

Held at

**ISLETA PUEBLO
New Mexico**

On

August 29, 1973

Concerning
A NEW NATIONAL INDIAN POLICY

Mr. Chairman, members and staff of the Senate Subcommittee on Indian Affairs, ladies and gentlemen of the public. I am Wendell Chino and I am serving my eighteenth year as President of the Mescalero Apache Tribe. I have also served the Indian people nationally as President of the NCAI, as an officer of the NTCA and in numerous other capacities. I am presently serving as the Chairman of Governors Interstate Indian Council.

I would like to address you now on matters concerning national Indian policy.

My presentation will cover four areas:

First, I would like to discuss the *background of our present Indian policy*.

Second, I will tell you *what needs to be done in terms of National Indian Policy*, in my opinion.

Third, I will discuss with you my ideas on the *implementation of a new Indian policy*.

And fourth, let's talk about some *specific first steps that can be taken right now* to help Indian tribes become self-sufficient.

A Background of Present Indian Policy

It has been over four hundred years since the peoples of the Western European nations and the Indian nations of this continent have cast their lot together. Prior to this time the Indian nations were the sovereigns of these lands. They had spent milleniums developing their distinct cultures, civilizations, and representative self-governments. These nations were, and in many respects are still today, in my opinion, highly civilized and socio-politically quite sophisticated. These nations of human beings were quite capable of managing their own destiny, protecting their resources, enhancing the general welfare of their citizens, and developing their world for the future benefit of their peoples.

During the first two hundred years of our relationship, the sovereigns of Western Europe and many Indian nations saw mutual advantages to be gained. Regal degrees and papal bulls were

enacted to develop the self-interests of those concerned in return for the legal recognition and protection of the rights of the aboriginal sovereigns of the land. These legal frameworks and the policies implemented to realize them, became the foundation for the next two hundred years.

It has been almost two hundred years since the United States of America and the Indian nations of this land have thrown their lot together. During the first part of this period, the leaders of this government and many Indian nations saw mutual advantages to be gained. The new, weak and threatened United States Government needed the power of the Indians potential military alliances, or should that not be possible, at least they must have the peace and goodwill of the Indian Nations. The leaders of this then young nation needed the Indian knowledge of the land, they needed possession of the land to serve their national self-interests, they needed safe passage across the sovereignly-held Indian lands to new lands, they needed the water, they needed the resources, and yes, they even needed the servitude of the Indian people. Many Indian people also saw advantages in this relationship. They heard the good words of brotherhood spoken and read the fine language of high hopes in their treaties, and saw promise for the future generations of their people in the offers of help and assistance promised in return for their gifts to the new nation.

Recognizing the needs of the new nation, Congress enacted a great deal of legislation and put its hand to a number of treaties which would insure the Indian Nations' cooperation. In return, Congress granted treaties and passed legislation which gave legal recognition to the Indian nations and promised protection of their rights and assistance in gaining those advantages the Indian peoples saw in the Western European life-style.

Congress jealously guarded her newly won potentials. It recognized, as did the Indian Nations involved, the animosities that developed between the states and other units of local governments when thrown into direct proximity with the Indian nations. The conflicts of interest were undeniable. Congress and the Indian nations agreed, therefore, that the relationship between them would be direct, that Federal Law would protect the lives and resources of the Indian nations, that Indian nations would exercise

the powers of residual sovereignty; that Indian nations would have the protection of Federal troops and Federal agencies; and that the Federal Government would, in exchange for the Indians' gifts, help the Indian nations in the development they sought. The Indian Tribes, in return, agreed to recognize the Federal Government as their sole protector — they surrendered absolute sovereignty in exchange for residual sovereignty and the promise of the Federal Government to care for their best interests.

This four hundred years has witnessed many changes. The Indian people are no longer the proud, powerful, self-sufficient, sovereigns-over-all-the-lands they once were. The United States of America is no longer the new, weak, fledgling experimenter in democracy facing seemingly insurmountable odds it once was. Now the United States of America is the strongest and richest nation in the world. It is the world's protector of democracy and the most benevolent of all nations to foreign governments. I believe that the Indian nations of this country have played a very important part in this development through their alliances, and goodwill; through their gifts of land and pre-columbian practices in democracy, through their trust in the President and words of Congress, and through the services of their people in behalf of this government.

Today it is the foreign nations that this country has need of their goodwill and alliances. And it is the foreign nations that this nation now offers its word and works of trust, its treaties of promises and assistance, and its pledges of mutual cooperation and protection.

I regret that the Indian people have so little left to offer this nation. There are those who say that the Indian people now have nothing left which this Federal Government needs and therefore the Indian nations should be turned over to the state jurisdictions so that the states will be unencumbered in taking what little is left. Now it is the states that need Indian lands and Indian waters. Now it is the states that need Indian taxes.

I deeply regret, that, after all we have been through together, it is the Congress of the United States that is foremost among those who feel this way. And despite all you may say individually, it is

an undeniable fact that the "Indian Termination Law" has been written on the books and is the law of the land and the expressed will of Congress. This law is a dishonorable climax to four hundred years of dishonorable behavior. All other words of honor and help, of assistance and concern spoken or written by you, individually or collectively, must stand mute beside this horrid law.

This then, is the background, in my opinion, of our national Indian policy on which the Indian people must try to build the future.

Yes, over these past four hundred years we have been through a lot together. We have been friends and enemies, we have been benefactors, and subjectors, we have massacred each other, we have been givers and receivers, we have seen the Indian protect the Federal Government and the Federal Government protect the Indian. Our men have fought against you, beside you and with you. You have recognized our governments and we have recognized yours. We have promised to each other and broken promises to each other.

We each now find ourselves in our respective positions — economically, socially, culturally and politically. Our laws and court decisions and agency regulations, or in other words our "National Indian Policy" has covered a lot of time and a lot of changing situations. The same law which was used to keep white men off our lands became the very tool for white men to use in removing us from our old lands and then preventing us from leaving our new lands.

Our National Indian policy has covered a tremendous time span and complete flip-flops of situations. It seems to me that by now things are pretty well sifted out. You know a lot more about us and we know a lot more about you.

I believe it is time that we put our past behind us and began to build for the future. Let us now say that we have learned much from the past four hundred years and now it is time to design a policy, together, that will become the framework for the next four hundred years.

I disagree with the philosophy that says "now we've got all the Indian has to give, let's take what's left and get rid of him — he's nothing but a pain in the neck now and we have to get on with the important things, like getting the revolution squashed in Viet Nam and that horrible Watergate scandal". I say that the Indian nations of this country have a great deal to offer America. I think we have the capacity to develop, to grow, to become self-sufficient, and to add to that rich part of our national life that is honorable and proud.

I believe we can develop those lands which were once considered the worst land of the nation, and we can rise from the very depths to which we have sunk to give America something to be proud of. We will rebuild our lives in our own way, which by the very nature of our cultural origins and history must be different from the way the rest of the country would do it — but we will show you how. I know this democracy of ours is rich enough, and great enough, and magnanimous enough and free enough to permit and even encourage this diversity of effort. This country can stand the change of helping the Indian to develop differently — and may even enjoy doing it.

Despite all we have been through, the Indian's best, and often only, friend and ally is still the Federal Government of this great nation. It is for this reason and my faith that the Federal Government can behave honorably toward us that I present this testimony before you today.

What needs to be Done in Terms of a National Indian Policy

It is said that Indian law is so old and so complex today that few attorneys or judges claim any real knowledge of it. Much of that law has not been tested in the courts. And those cases that do come before the courts leave judges unsure of the will of the Congress and the application of the Constitution. It would therefore, seem appropriate for the Congress to take a major step in declaring its National Indian Policy.

It is my opinion that a careful review of past mistakes; consultation with Indian leaders; consultations with Indian groups

and peoples; consultation with knowledgeable persons from all walks of American life; and a review of Constitutional, Congressional and Supreme Court backgrounds would lead Congress to consider the following points, among others that I am sure many people will raise.

1. Indian lands and peoples present a situation which is uniquely different from any other group of this nation.
 - a. The Indian cultures have taken milleniums to develop and are strong, tenacious and sophisticated in many ways yet today. These cultures are uniquely different from Western European cultures which form the root of most other current groups in this country.
 - b. The American Indian people are the original and aboriginal sovereigns and owners of this land. Promises have been made, treaties ratified, and legal commitments entered into which cannot morally or legally be unilaterally discarded.
 - c. The Indian lands of this nation are very special lands in terms of our national legal and development history. These lands and the Indian people who live upon them have a very special status in their relationship with the Federal Government which cannot now be simply disregarded for the sake of convenience.
2. The direct relationship between the Federal Government and recognized Indian Tribes must be maintained. No state nor other unit of local government should have jurisdiction over those lands. The governments of the peoples residing on those lands have the power of residual sovereignty and are to be considered autonomous local governments ceding jurisdiction only to the Federal Government. For purposes of the administration of Federal programs, Indian tribes should be eligible for all programs that states are eligible for and should be accorded a status at least equal to state Governments.

Indian Tribes will deal directly with Federal agencies as individual units of governments.

3. Indian Tribes are the original and aboriginal owners of the first water right on any water which enters into, rises upon, or leaves an Indian Reservation. The use of this water right cannot be alienated from tribal ownership.
4. Treaties entered into between the Federal Government and an Indian tribe is an obligation of the highest degree upon this nation. Those agreements cannot be unilaterally lessened by the action of any Department of the United States. Past damages that have been suffered must now be corrected or fully and fairly compensated for.
5. Any lands alienated from tribal ownership by unilateral action of the Federal Government must now be returned to the tribe if the land is in the ownership of the Federal Government and the tribe has not been compensated. Tribes must be compensated for other lands similarly lost and title for which is now held by others or the tribe may choose to receive compensation for Federally owned lands similarly lost but not returned or compensated for.

The Federal Government will sell back to the tribes tribal lands that have been unilaterally removed from tribal ownership and for which, before the passage of the above policy, the tribe has been compensated. The re-purchase price shall be computed on the same basis as which compensation has been paid. Federal loan funds will be made available for the re-purchase, and land exchanges, based on equitable values, will be permitted.
6. Those tribes which suffered from premature termination under the provisions of the Indian Termination law will be given the option of reinstating Federal Trust jurisdiction and the states concerned shall retrocede all jurisdiction to the Indian tribe or Federal Government. Lands involved owned by Federal or state agencies shall be returned to the tribes and equitable compensation shall be paid for those lands lost. *Public Law 280 must be rescinded.*
7. Indian tribal lands may not be sold under any circumstances and are to remain Indian tribal estates into perpetuity.

8. Indians residing on Indian Reservation shall pay all applicable Federal taxes. Indian Tribal Governments will be considered units of local government for purposes of taxation as effected by Federal tax statutes. Indian Tribal Governments shall have the full power of taxation in the same manner that a state government is now afforded. No state or other unit of local government shall have any power to tax on Indian Reservation lands and shall consider Indian Tribes operating businesses off their respective reservations as equal entities of local government and as instrumentalities of the Federal government. Taxes levied by Indian Tribes shall be used by those governments to perform the services of government including production, development and operation of programs. State and other local governments will not be expected to provide services to Indian peoples.
9. Traditional tribal hunting and fishing habits will be protected by the Federal Government and recognized by state governments if occurring off of Reservation lands. States shall have no jurisdiction over hunting and fishing on Indian lands, and shall guarantee the safe conduct of legally taken game being taken off an Indian reservation.
10. All Indian Reservation laws shall be enforced by the Tribal government or by the Federal Government. The Federal Government will vigorously enforce Federal Indian Law and will take all measures necessary to protect the Indian Reservation human and national resources as so specified by Congress. Indian reservation legal authorities and systems shall have jurisdiction over crimes committed by Indians and non-Indians on the Reservation unless jurisdiction over certain crimes are reserved for Federal Enforcement by Congress.
11. Recognition is given by the Federal Government to the unique cultural, historical, and legal position of Indian tribes residing on Federally protected Indian Reservations. Congress may from time to time, in its own wisdom, provide assistance to these tribes in the effort to assist them in their development. Their development is clearly recognized as

being unique and different from other applications. Such provisions may also be provided as parts of broader legislation applicable to other communities.

In summation, the basic thrust of the above national Indian policy does the following:

- I. It states that Indian Tribes and Reservations are to be a part of the American scene into perpetuity. Indian Reservations are not just a passing phenomena to be used while convenient and then discarded.
- II. It recognizes and reaffirms past legal commitments to Indian tribes. And it states that past wrong-doing will be stopped and corrected whenever possible; and that future violations of legal commitments and agreements are to stop forever.
- III. It gives the right to Indians to be different than the great American mainstream. And it pledges the Federal Government's help in developing strong, stable, and self-sufficient communities. It also commits the Federal Government to recognition of the fact that Indian communities may need to use Federal tools in a different way than other communities and gives operating Federal agencies the latitude to so react.
- IV. It reaffirms the direct relationship between the Federal Government and recognized Indian tribes, reaffirms the principle of residual sovereignty to be exercised by those tribes, and commits Federal protection to Indian tribes as if they were Federal instrumentalities.

COMMENTS on Implementation of a New Indian Policy

These comments will concern themselves with some ideas on implementation of a new Indian Policy. Time is running out so I will concentrate my comments on a few basic principles I think should be taken into account. A major Congressional statement of policy will, of course, be a major step in implementation itself. Subsequent court decisions and formulation of agency regulatory controls will receive their basic guidance from such a statement. I

am concerned here with the Federal organizations or Federal agencies that are charged with implementing the Congressional will of the basic policy and subsequent legislation effecting Indian protection and development.

I. At the Local Level

First, Federal programs aimed at assisting Indian Tribes should, whenever possible, be administered through an appropriate branch of the tribal government. Federal guidelines, program review and fiscal audit integrity should be rigidly enforced, of course. This form of grant-in-aid, revenue sharing, or whatever gives the local people a degree of control over the operation of the program and needed experience in administrative growth. This concept follows the basic pattern now being used by the Federal Government in dealing with state governments. I emphasize, however, that such programs must flow directly from the Federal Government to the Indian Tribe.

Second, should a Federal employee or Federally operated program whose aim to help the tribe develop need to be stationed on an Indian Reservation, and I can see several areas where this will be needed, at least in some interim period; then I think the following procedures should apply:

- a. The appointment of the supervisory employee should be confirmed by the tribal council and the tribal council should also be given the right of consultation on submission and review of applicants.
- b. Federal payrolls should be administered through the tribal administrative body.
- c. Performance ratings, and promotions should be reviewed and approved by the appropriate tribal body.
- d. Program budgets should be developed in cooperation with the appropriate tribal organization and require approval of that organization.
- e. The supervisory Federal employee should be granted as much budgetary control, administrative flexibility, and

program adaptability in his conduct of programs as possible.

These procedures are suggested in order to strengthen the representative voice of the tribe in program conduct, and to make the programs really responsive to the local population need. They also give the program director latitude in directing his program and adapting its emphasis as local needs warrant.

II. At the Regional and National Level

Federal programs aimed at assisting Indians should be administered in such a way as to take into account the legal, cultural, historical and land-base differences found in Indian tribes. Indian assistance is not relatively large compared to the nation as a whole, but what is important is that it is different. Indians will require the flexibility and the specially trained and experienced people working with them that often makes the difference between successful and poor programs. I do not think the organization should be complex, indeed it should be as simple and economical as practical.

First, I suggest we establish an Indian Regional Office that performs a similar function to other regional offices proposed by this Administration. This office would be staffed by people specially trained and experienced in dealing with Indian problems. Various Federal programs would have their shops dealing with program administration located in this office. I further believe this Indian Regional Office should be located in Washington. I see no merit in spreading offices throughout the country simply because our programs are not that large and it isn't that hard to get to Washington, easier in fact than getting to most regional office cities for many of us. Also, all of us have a great deal of business to do in Washington anyway.

Second, I think each operating departments of the Federal Government should have an Indian desk which coordinates activities between the department and the Indian Regional Office. And that the Department concerned has an Indian appropriation line item in its budget.

Third, I think we should try the idea of letting each tribe, or group of tribes, have a representative who is employed by the tribe and who serves the tribe in Washington. He would be responsible for keeping his tribe informed and of representing them to various agency programs. This employee would be a tribal agent serving many functions.

Fourth, The concept of having each tribe or group of tribes prepare a single, total annual development program and presenting that program to the appropriate Congressional committee for appropriation review is intriguing to me. I think Congress would be much better informed of what is going on, see much better results for less money, and find the whole Indian development program more interesting.

Fifth, You will note that I haven't mentioned the Bureau of Indian Affairs until now. Some in the BIA take pride in the fact that it is the oldest Government agency in existence, by function at least. I think we should note that the BIA, in its present form, was formed at a time in our history when the Indian was the enemy. Keeping the Indian on the reservation, yielding ineffective the tribal traditional governments, providing rations, and keeping the Indian out of the way of westward expansion were all parts of that function then. I am not sure the agency has ever recovered from its conflicts with the military or the corruption that was so rampant then. Indian representation or Indian involvement in the agencies' function certainly had no place in its operation then and I don't think that has changed very much. Basically, the BIA exists for the benefit of the BIA, and the Indian gets whatever he can beg or push hard enough to get. We need to take a hard look at this Agency. As long as termination on that type is predominant, the Indian people will not let go of the BIA. Certainly, some functions of the BIA are desperately needed now. For instance, this Administration is in the process of destroying every program that is meaningful to the American Indian (OEO, EDA, HUD, DOL training, etc.). The BIA is all we have left right now.

Hopefully, once Congress rescinds the Indian Termination Law, passes a new Indian policy and our Indian people can again begin to trust their Government, then we can "do something" about the BIA. I would think that a combination of an Indian Regional Office, strong agency programs, Congressional backbone fighting for Indian rights, and strong tribal governments administering direct Federal Government development programs all coupled with adequate Congressional appropriations and a commitment to helping Indian Tribes exist indefinitely into the future; should be able to do the job. But that will take time – the time needed to restore trust. I would certainly not recommend scuttling the BIA now.

In summary then, I am recommending some ways that a new Indian policy could be implemented that I think will yield the progressive results that we all are hoping for. We have had some experiences with some of these. I am impressed with the effective delivery of Federal assistance by the EDA and OEO. For relatively little dollars the progress these agencies have helped us accomplish during the past decade are remarkable.

I disagree with the President. The OEO and EDA programs have been very successful as far as Indian development is concerned, during the past decade. Other programs, such as HUD, are just now getting started to be effective on Indian reservations. I am sick at heart to see this marvelous start stopped so tyrantically and callously. Somebody hasn't been doing their homework.

The administration of new programs needed to take heed of what we have learned –

- Direct Federal Relationships;
- Highly experienced and motivated Washington staffs in Indian desks and in Indian Regional Offices, using Indian line item appropriations;
- Encouraging Indian Tribes to operate their own programs;

- Tribal control over Federally operated programs on reservations, and permitting maximum authority and latitude to the supervisors of these programs;
- Tribal agents acting as tribal ambassadors in Washington;
- The possibility of total program development appropriations negotiated between Congress and the Indian Tribe.

And the need to re-establish the climate of trust between us.

You can probably expect some mistakes along the way, by way. After all — Indian tribes haven't even been given the right to design their own tribal governments, write their constitutions, or hire their own tribal attorneys until only relatively recently. It has been only during the past decades that tribes have been given the opportunity to see their own reservation BIA budgets, leave alone plan programs, dream, and operate their own programs. It will take time and experience for these tribes to become sophisticated operators of multi-million dollar estates. The point is the lesson has got to be learned — true, it should have happened two centuries ago with smaller and similar problems. But it wasn't — so it has to be done now.

Thus far in this presentation, we have been considering some pretty heady ideas. Dreams that it will take a lot of time and a lot of fighting to accomplish. But the need of the Indian people is yesterday — and since that's not possible let's get down to the subject of what can be done right now.

Specific Steps That Can Be Taken Right Now

First of all, let me express my heartfelt thanks and great appreciation for the fight this Congress is making to preserve our democratic system. I am just old-school enough to believe that the representatives of the people in this system is the Congress and I expect the Congress to pass and develop the programs I want. *I do not believe any man, President or presidential advisor included, has the right to subvert that process.* We are grateful for the fight this Congress is making to save the OEO, Economic Development Administration, HUD Housing and labor training and other

programs that have helped us so much and are so badly needed by the American Indian people.

I also believe that Congress must spend money carefully and set ceilings on itself. *I am next going to ask you to spend some money.* But I do not feel that this request is out of line. Congress has spent relatively little on Indians in the past and it now has some catching up to do. I must correct that last statement — in some ways you have spent money foolishly. Historians have often said that during the Indian war, the Federal Government spent a million dollars for every Apache they killed (and that was in the 1800's). Now I think you will find that a little development help will involve a lot less per-capita expenditure than that, even in these inflated times.

We at Mescalero have long believed in the "Balanced Development" approach to reach our goals of economic self-sufficiency — and I think our present success bears witness to the validity of that type of approach. What we mean here is the simultaneous, aggressive attacking of the total spectre of poverty. There are several problem areas that are especially in need of your immediate attention — and I would like to concentrate on these now.

First is Indian Housing: Indian housing is absolutely deplorable in this, the richest nation on earth. Housing is so important, in my opinion, because it affects every aspect of one's physical and psychological approach to life. Although the Congress has helped most Americans with their housing problems since the days of the great depression, it was not until the mid-1960's that Indians began to get Federal help. And just when we were beginning to solve some problems and get moving on this need, the administration began to shut the help pipestream off. I realize that public housing in some parts of this country has been a disaster and questions have arisen concerning the need for more. No one can say that Indians don't need housing help now.

I would suggest that Congress consider passing "Indian Housing Legislation". Such Legislation can stand apart on its own merits without getting all tied up in the central-city



arguments. Indian housing needs special legislation because Indian needs are so different — Indian housing is rural, Indian communities have different housing needs than greater America, and Indian public housing has no enemies. Our housing needs cover the entire universe from the elderly to the very poor and even the middle class. A massive effort is needed to bring up the housing standard — I call on your support today to help us get this support rolling. A Congressional investigation and evaluation of this need would be welcome. I think Congress would find the facts deserving of special attention.

Second is Economic and Community Facilities Development:

During the past decade significant steps have been taken by the Indian peoples to tackle their economic and community facility development problems. Thanks first and foremost to the Economic Development Administration and later to HUD and LEAA, important first steps have been taken. It is vitally important that this momentum be continued. It is also of utmost importance, in my opinion, that certain limitations on these programs be reviewed with an eye toward changing them and, that these vital programs be adequately funded in the future. We have learned a lot about these projects. First we have learned that many are underfunded and that that situation, compounded by inflationary erosion, has reduced many otherwise worthwhile efforts to results that are economically not viable. Those projects which have thus been built and have become millstones around tribal necks, need to receive supplementary funding in order to produce viable results.

We Indians have made and learned from our mistakes too. We know that some tribes are so poor that they need financial help in operating projects, at least during the crucial first years.

Community facility development is another area of great need on Indian reservations. We know, now that we have built some of these projects, just how helpful they are. Facilities such as jails, community centers, administration

centers, roads, sewers, educational facilities, rehabilitation centers, community playgrounds and parks are all needed. These too have suffered from the underfunding-inflation syndrome and need to be adequately funded in the future. Greater appropriations here too must be made to catch up on the backlog of rapidly piling-up needs and applications. Congress must consider here assistance to tribes during the first critical years of operation. Tribes need help during those first years when they are learning how to make these projects self-supporting and shaking out the bugs.

Third is Education: Here again tribes are begging in attempting to secure funds for the education of their children. JOM with attendant benefits should be maintained, summer employment for high school and college students should be implemented — intern programs for paraprofessionals should be expanded for college students to provide exposure to professions and pocket money for school.

Continuation of CAP and Headstart programs. Non-Indian communities may have had sad experiences, but Indian people have received great benefits from these programs and they need continuation and adequate funding.

Fee policies recently implemented by HEW for Headstart and Child Day Care Programs are impossible — and may well lead to the destruction of these vital programs. Think for a moment of a young Indian family with children, three young ones, who have just risen from the depths of poverty. The man works in a job paying just above the poverty line. The family is trying to obtain better living quarters and to acquire the material things to make life a little better. Now this family has a poor educational background and only a rudimentary knowledge of English. The mother decides to put the children in a Child Day Care Center for Working Mothers and in Headstart in order to enhance their cultural and educational opportunities. She also finds a job paying just above the poverty level. She soon finds that the Day Care and Headstart fees take all her real net earnings. She of course quits her job and pulls her kids out of these programs.

What a tragedy, and what a subversion of the will of Congress. Congress should study this situation and demand that consideration be given to working mothers, to the culturally disadvantaged, and other considerations involved. I think the fee schedule should be waived for all Indian Reservations due to the fact that we already have such a poor educational achievement record and are trying hard to overcome this problem at all levels. This year our Headstart Program will be cut in half due to these fees. Fees keeping our children out of these programs will only, again, set us back.

Indian tribes need help, too, in gaining community control over their schools. We need the legal help to break the tie that is strangling us and financial help in building and operating schools. The Indian education effort is either not working or working too slow to meet the need. A massive Federal study and program implementation effort is needed to change this situation. We need help in designing new programs including programs that work within the home in order to support and complement the education effort. Congress needs to prod HEW in an effort to get this organization more involved in Indian problems and Indian educational efforts.

Fourth is Health: We have accomplished much toward improving Indian Health conditions. Good health is a prerequisite toward taking those essential steps that result in the exercise of individual as well as community self-determination. One area that needs greater emphasis here is the ability to perform major surgery through PHS contract medical care. *The large backlog of such cases needs to be relieved without delay.* Continued support of PHS appropriations are strongly supported by all Indian leaders.

Fifth is Community Action: We strongly urge the Congress to continue fighting for the continuation of the Community Action Programs that have given us our first real taste of program implementation for the purpose of solving our own problems. This program has now been transferred to HEW

where the record in involvement with Indian tribes is poor. We hope Congress will support us in our efforts to change this situation.

Sixth is Utilization of Government Surplus and Excess Property:

This is a rather minor item and one that is fairly easy to solve. This administration has denied Federal Government Grantees access to GSA sources of supply and utilization of excess and surplus property. As a result, of course, our program conduct costs have risen dramatically and effectiveness has been lessened. All that this means is that its going to cost the Government more money to get the same program.

Indian tribes have never been given the opportunity to utilize Government excess property. Our local school board, (non-Indian) surround communities and the state agencies have the authorization but Indian governments don't. We can go and beg the BIA for the use of a piece of excess property but they have their own problems.

Now I think this is all wrong. An Indian tribal government should be able to have the same access to this property as other units of local governments. In fact, I think Indian tribal governments ought to have a higher priority than others due to the fact that we have a direct relationship with the Federal Government. This is just another obstacle we have to overcome in our development and protection efforts. Most Indian tribes are badly underequipped. Denial of access to surplus and excess property means we either have to do without or raise funds to get the job done. I think the government would get a better job done at less cost by permitting us access to this property and on a fairly high priority.

Article 10 of our treaty with the Federal Government states that "... the government of the United States will grant to said (Apache) Indians such donations, presents, and implements, and adopt such other liberal and humane measures as said government may deem meet and proper." We have been told by Interior Solicitors that this doesn't mean anything

and we have to go to Congress to get authorization. Well now I am speaking to the proper body and I think you ought to make this request meet and proper for all Indian tribes.

Seventh is Development of Indian Natural Resources: It is the Indian land base which ultimately must be looked to provide the substantial portion of Indian economic development. Congressional and agency interest in working on the improvement of that land base was waned in recent years. Indians have generally not been able to significantly utilize Department of Agriculture programs. The shifting of development thrust to Indian human and community development has been needed to aright the balance in development efforts. However, we must not forget the needs of our lands. Current trends and shifts in international agricultural economics indicate that agricultural production on Indian lands is a growing resource potential that many Indian tribes may wish to utilize to a greater extent in the future.

Program and appropriation efforts need to be strengthened in range managements, soil conservation, range water, outdoor recreation, forest improvement, irrigation programs and the host of other needs of which I am sure you are aware.

Eighth, is Correctioning of the Omission of Indian Problems From New Major Legislation: We have recently been faced with a number of very serious setbacks to our development efforts. Not only have our key development programs been abandoned but Indians have not been included in new legislation passed or now being considered by Congress.

Let me give you a few examples. Indians have been totally ignored in the Community Betterment Act. This important replacement legislation to HUD Programs will cripple us in future development if not corrected. Indians are not included in the drafts that I have seen of the Responsive Government Act. Indians have been excluded from the Uniform Relocation Act.

No one has been looking out for the Indian interest in Washington — we have had no lobby. I am sure you can see how important correcting this situation is.

I would recommend that amending legislation be immediately proposed to correct this situation. It would also be possible to correct this situation by passing the "Indian Housing Act" previously discussed with inclusion of the benefits of these acts. But by all means we implore you to correct this oversight as a first priority measure.

Furthermore, I think we should be working on a system to insure that such oversights do not again occur. The BIA should not be entrusted with this responsibility, judging from their past Congressional relations record. You can be assured that I will bring this matter before the NCAI and NTCA organizations.

In summation of this section, let me say that the future is clouded and uncertain. Most of the development programs that have meant so much to us over the past few years are now on the road of lethargy and extinction. The promised programs to replace them are not on the horizon, and, as far as we can tell, are not even in the drafting stage. Our plea to Congress is to continue the fight and solicit our help in helping us to save, create, strengthen, and make even more effective our programs in the areas of:

- Indian housing
- Economic and Community Facilities Development
- Education
- Health
- Community Action
- Natural Resources

In Conclusion

I have taken a great deal of your time. Most of what has been said here has been said before in more piecemeal fashion. I hope I have said nothing that will offend other Indian leaders and I am sure they have much more to add. Therefore, I will close so that they can continue with their views. I plea for the Congress to provide the beginning of hope for the American Indian people. The first step is to help us stabilize our position and let us know we have the right to exist as you



have so often promised before. Then obey your moral and legal commitments to our people. Help us protect and defend when you have told us before you would. Help us to help ourselves develop in our own way and our own time. I think you and all America will be proud of the result of these steps. I know America will be a better nation in the long run for doing so.

Thank you for your time and consideration.

As a final word, I would like to quote you from the *Albuquerque Journal* of August 16, 1973.

"On April 12, Raoul Berger, historian of the Harvard Law School, told members of three Senate subcommittees conducting a joint inquiry into "executive privilege": "you don't need more hearings; you need gumption".

Indian tribes and Indian affairs do not need any more hearings, we need the gumption of Congress to appropriate massive funds for the massive needs of our Indian people.

Our government has rebuilt Japan, Germany, Viet Nam with huge sums of money. Now it is time to give the same consideration and like sums of funds for our Indian people and their communities to build them up.



OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

February 20, 1974

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IS
Water
Rights

Mr. Bradley Patterson
The White House
Washington, D. C. 20500

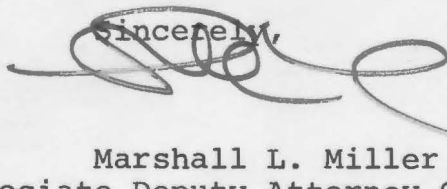
Re: Federal Protection of Indian
Natural Resource

Dear Mr. Patterson:

Attached is a short version of our original memorandum concerning the federal protection of Indian water rights, with some suggestions for remedial legislation. Also attached are the drafts of two proposed bills, with comments, which have been sent to the Justice Department's Office of Legislative Affairs to obtain the views of all interested parties. Your comments will be greatly appreciated.

And don't forget luncheon plans for 12:30 p.m. on Thursday, 28 February 1974, at the Peking Restaurant, 711 - 13th Street, N.W., where we hope to have some progress to report.

Sincerely,


Marshall L. Miller
Associate Deputy Attorney General

Attachments



FEDERAL PROTECTION OF INDIAN NATURAL RESOURCES

Indian Grievances

During the last century, the United States government undertook the obligation to protect the natural resources of the Indians. It was a solemn obligation, undertaken through numerous treaties and affirmed by executive orders, judicial decisions, and legislation. For their part, the Indians had been compelled to consent to treaties by which they agreed to restrictions concerning the sale of their real and personal property, to relinquish huge tracts of their lands, and to live in reservations which were not considered to be located in the most desirable areas of the Nation. It has been one of the major complaints of the Indians that the Federal government has been derelict in its duties toward them, especially as far as its trusteeship for Indian land and water rights is concerned.

In his message of July 8, 1970, by which President Nixon transmitted to the Congress his recommendations for Indian policy, the President recognized the justification of a number of Indian complaints, especially the problem of conflict of interest in the Department of Justice and the Interior. He was aware that it has arisen from the fact that the heads of the two departments must at the same time advance the national interest in the use of land and water and the private interests



of Indians in land and water which the government holds as trustee. In legal disputes the Federal government often found itself in a position where it had to represent two opposing clients. In order to correct this situation, the President requested Congress to establish an Indian Trust Counsel Authority to assure independent legal representation for the Indians' natural resources rights.

In his message, President Nixon declared it to be his policy to encourage the Indians in the exercise of greater self-determination and greater participation in the control and operation of federal programs. In order to aid in the elevation of Indian affairs, President Nixon recommended the establishment of the position of ^{an} Assistant Secretary of the Interior for Indian and Territorial Affairs who would report directly to the Secretary of the Interior.

Indian grievances also received attention from Senator Kennedy in his capacity as Chairman of the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary. In hearings between October 1971 and January 1972, the Indians were given an opportunity to state their side of the story as to how the United States has discharged its obligation to defend and protect Indian natural resources. Representatives of the Departments of Justice and the Interior were given an opportunity to respond.*

*See Federal Protection of Indian Rights, Hearings before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, 92d Cong., 1st Session, Part 1-7 (October 1971 - January 1972), hereinafter referred to as "Hearings"



The Indians complained that their water had been diverted without leaving them enough for their own needs, and that their land had been taken, trespassed upon and exploited for commercial use, all to the detriment of Indian natural resources, and often to the point of depriving the tribes concerned of their livelihood. The Indians claimed that such violations had occurred either by the Federal government itself, or with its permission, or without its taking any action. Many examples were given, among which three have been selected to serve as illustrations: the case of the Klamath Fish Ladders where the damage was caused by the building of a dam by the California-Oregon Power Company, and where the claims of the Indians were lost through governmental inaction; the case of Pyramid Lake, where the damage was caused by the building of dams by the Federal government with no consideration of prior Indian water rights; and the Eagle River cases, where justifiable fear has been created through the establishment of state jurisdiction by Act of Congress and its interpretation by the Supreme Court.

1. Klamath Fish Ladders

About 1940 the Indians complained that dams built across the Klamath River by the California-Oregon Power Co. (COPCO) had interefered with the migration of fish upstream. They



asked the United States government to bring suit against the company to put fish ladders in their dams. The case was first referred to the Department of Justice in 1942. After consideration for several years it was determined that a suit as requested by the Indians was not feasible and that an action should be brought for damages. But no action was filed. Fourteen years after the first request, in 1956, the case in the Justice Department was assigned to a new attorney who found he did not have enough evidence and who claimed that letters to counsel for the Indians and to the Department of the Interior for additional evidence remained unanswered. After about three more years the file was closed.

However, at the Kennedy hearings, Mr. Glen A. Wilkinson, former counsel for the Indians, submitted a copy of a memorandum respecting the damages prepared by the Howard M. Gullickson, District Counsel, Department of the Interior, dated October 4, 1946, which concluded that "evidence points conclusively to the fact that the construction of the two dams completely obstructed the passage of salmon up the Klamath River above the dam and into the Sprague and Williamson Rivers on the Klamath Indian Reservation where the fisheries were located."*

*Hearings 482-487.



Mr. Wilkinson further stated that this was supported by considerable evidence gathered from Indians and non-Indian residents in the area during the years 1940-42, and that as late as 1950 Department of Justice attorneys were assured by two Indians that they had clear recollections of the fisheries on the Sprague and Williamson Rivers and that they had been destroyed by the construction of the two dams. Mr. Wilkinson's firm communicated with the Justice Department until 1959, when the Department of the Interior disapproved a contract for continued representation.*

It seems that evidence was available in 1946, but no action was filed and no attempt was made to perpetuate the evidence for use in a trial. The rights of the Klamath Indians were thus lost by governmental inaction.

2. The Pyramid Lake Case

Pyramid Lake is a desert lake in Nevada. It was the principal source of livelihood of the Pyramid Lake Paiute Tribe of Indians who had lived in that area since time immemorial. The lake is the natural terminus of the Truckee River. The natural flow of the Truckee used to supply the lake with about 500,000 acre feet of water per year. Its overflow was able to supply a second lake, Lake Winnemucca.

*Id. 478-480.



In 1859 the Department of the Interior established the Pyramid Lake Indian Reservation comprising the area surrounding and including the lake and the immediate valley of the Truckee River. The reservation was confirmed on March 23, 1874, by an executive order signed by President Grant.

In 1902, Congress enacted the Reclamation Act. Under its authority the Secretary of the Interior, in 1903, approved the construction of the Newlands Reclamation Project. A dam, known as Derby Dam, and a canal were completed in 1905 to divert water from the Truckee River for use in the Newlands Irrigation Project. A small percentage of the water is used for irrigation within the Truckee division of the Newlands Project; most of the water is transported into the Carson River watershed for irrigation in the Carson Division of the Newlands Irrigation Project. As a result of this diversion the Pyramid Lake has dropped more than 70 feet since 1906, and the Winnemucca Lake has dried out. This situation has caused virtual destruction of the fish spawning areas in the lower reaches of the Truckee River. It threatens extinction of a specious of trout native to Pyramid Lake, has increased the salinity of the lake, caused land erosions, and endangers the continued usefulness of the lake.



In 1913, the United States initiated quiet title actions in the United States District Court for Nevada to adjudicate the rights of water users along the Carson and Truckee Rivers. In 1944, the court entered a decree* which recognized, among other rights, the right of the United States to use Truckee water for the Newlands Project and for irrigation of lands on the Pyramid Lake Indian Reservation with a priority date of December 8, 1859. The Indians were allocated only 30,000 acre feet for irrigation. They were unable to use it for this purpose because much of the land around Pyramid Lake is unsuitable for cultivation. When the Indians tried to use the water for Pyramid Lake, they were told by the Solicitor's Office of the Department of the Interior that they did not have the right to do this. Thus, irrigation water for which the Indians have the earliest priority of any of the claimants to Truckee River water was diverted and used by persons located upstream from Pyramid Lake Reservation whose priorities are junior to the Indians. In addition, excess water in the system was given to people upstream in excess of the amount to which they were entitled under the court decree and to people who had rights under state law. Water even went to waste due partly to inefficient operation, partly to outdated equipment.

*United States v. Orr Water Ditch Co., Equity No. A-3 (D.Nev. 1944)



It was claimed by experts in the field that with better operation of the system and additional funds for the installation of modern equipment sufficient water could be saved to keep Pyramid Lake at the present level. The amount needed for that purpose is 385,000 acre feet.

When the government brought the action for the adjudication of Truckee River water rights, it did not assert a right to sufficient water to maintain Pyramid Lake and the lower Truckee as a fishery and for other non-irrigation uses for the Indians.

On November 2, 1964, and again in April 16, 1969, the Solicitor of the Interior Department wrote to the Lands Division of the Justice Department requesting it to bring action to remedy the situation. In his 1969 letter the Solicitor pointed out that the matter had become urgent because of a proposed interstate compact between California and Nevada to govern the use of waters of the Lake Tahoe, Truckee, Carson and Walker River Basins with binding effect on the United States. The compact made no provisions for the use of water of the Truckee River for Pyramid Lake. The United States attempted to negotiate changes in the proposed compact, but without success. The two states submitted the compact to Congress for consent. Bills to grant consent were introduced in the 92d and 93rd Congress.*

*H.R. 6078, 92d Cong., 1st Sess.; HR. 15, 93rd Cong., 1st Sess.



So far, the Congress has taken no action, probably because of the opposition of the Departments of Justice and the Interior.

In August 1970 the Indians seized the initiative and filed an action in the U. S. District Court for the District of Columbia against the Secretary of the Interior. They asked the court to set aside a regulation issued by the Secretary because it delivered more water to the Truckee-Carson Irrigation District than required by applicable court decrees and improperly diverted water that otherwise would go into Pyramid Lake. The Court rendered a decision on November 8, 1972, amended on November 29, 1972, and supplemented on February 20, 1973.* It found from the evidence that the Secretary had disregarded interrelated court decrees, failed to exercise his authority to prevent unnecessary waste of water within the Carson-Truckee Irrigation District, and had acquiesced in excessive water deliveries to the farms. The court directed the Secretary to submit amended regulations to assure the delivery of at least 385,000 acre feet of water to Pyramid Lake. Subsequently, the court approved new operating criteria submitted by the Secretary. The government decided not to appeal.

* Pyramid Lake Paiute Tribe of Indians v. Morton, 354 F.S. 252 (D.C.D.C. 1973).



Because it was found necessary to have an adjudication of the respective rights of the States of Nevada and California and of the United States, under due consideration of the rights of the Indians, preferably from the Supreme Court, the United States, in September 1972, filed a motion in the Supreme Court for leave to file a complaint against Nevada and California (No. 59 Original, October Term 1972).

On June 11, 1973, the Supreme Court denied the motion, predominantly on the ground that the dispute was mainly between the United States and Nevada and within the jurisdiction of the Nevada District Court.

On December 23, 1973, the Department of Justice filed suit in the United States District Court for Nevada. It asked the court, among other things, to quiet the title of the United States in its fiduciary capacity to the right for the benefit of the Pyramid Lake Paiute Tribe of Indians, with a November 29, 1859, priority, to the use of the waters of the Truckee River to fulfill the purposes for which their reservation was created, including the maintenance and preservation of Pyramid Lake and the lower reaches of the Truckee River as a fishery. Named as defendants were the Truckee-Carson Irrigation District, the State of Nevada, and about 13,500 individual water users whose names fill 73 typewritten pages. The Solicitor's office



of the Interior Department had opposed this as too cumbersome, too costly, and too time consuming because each defendant would have to be individually served. Therefore that office suggested that the action should be brought only against the State of Nevada as parens patriae on behalf of all individual users who could intervene if they wished. However, the Land and Natural Resources Division of the Justice Department had doubts as to the binding effect of the judgment without special legislation. If Congress could be prevailed upon to enact legislation giving the district courts jurisdiction to adjudicate water rights disputes between the United States and a State as parens patriae, such nightmarish suits in which thousands of individuals have to be served could be avoided.

3. The Eagle River Cases

The two Eagle River cases involved the interpretation of the Act of July 10, 1952, 66 Stat. 560 (43 U.S.C. 666). By that Act Congress permits to join the United States "in any suit (a) for the adjudication of rights to the use of water of a river system or other source, or (b) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit."



The legislation was sponsored by Senator McCarran. From his statement in the Senate, it might appear that the purpose he had in mind was the waiver of sovereign immunity of the United States in state adjudications of water rights acquired under State laws. He said:

"Particularly in view of the fact that the United States has acquired its water rights from former owners who were subject to such suits, the committee is of the opinion that to allow the United States in its own right or as a trustee to have a better right than the former owner is not fair and just to the other water users on the stream.*

Accordingly, when in the two Eagle River cases the United States was joined as a defendant in state proceedings pursuant to that statute, the United States took the position that the statute was not meant to apply to federally reserved rights. However, the Supreme Court held that the statute also includes federally reserved rights.**

The Indians have been very unhappy with these decisions. They fear that they subject Indian water rights to the jurisdiction of the states and, according to the Indians, in the state courts they are systematically denied their rights.

* 82 Cong. Rec. 12947, 12948 (1951).

** United States v. District Court in and for the County of Eagle and State of Colorado, 401 U.S. 520 (1971); United States v. District Court in and for Water Division No. 5, 401 U.S. 527 (1971)



They also expressed resentment at the way the Justice Department dealt with Indian rights in that case. The Indians had urged the Department to explain in its Supreme Court briefs that Indian water rights were private rights, and that therefore the waiver of sovereign immunity of the United States in 43 U.S.C. 666 could not apply to the United States as trustee of Indian water rights. However, the Department refrained from doing this because no Indian water rights were involved in the two Eagle River cases. Rather than argue the question and expose Indian rights to an unfavorable Supreme Court ruling in a case where no Indian rights were involved, the Justice Department preferred to explain to the Court in a footnote that the question whether the consent statute covers water rights held by the United States in trust for specific Indian tribes was not before the Court, and that therefore the Court's decision would not extend to Indian rights.*

There is therefore no reason for the Indians to be alarmed that they were unable to bring their point of view before the court. Had the government done this in its briefs, as requested

*See United States brief in United States v. The District Court in and for Water Division No. 5, U. S. Supreme Court October Term 1970, No. 812, p. 10, note 3.



by the Indians, and had the Supreme Court responded with a dictum unfavorable to the Indians, very likely this dictum would have become the decision in a future case.

That does not mean that the Indians have no ground for concern, but their concern should be directed to the statute.

As the Supreme Court said, the language of 43 U.S.C. 666 is all inclusive. It includes appropriative rights, riparian rights and reserved rights. It contains no exemption of Indian water rights as other statutes do in which Congress gave certain states jurisdiction in civil actions to which Indians are parties.* Furthermore, the federal district courts have constantly refused to accept removal of an action brought in a state court under 43 U.S.C. 666 and their orders to remand cannot be appealed.

Originally, Senate Bill 18, 82d Congress, First Session, on which 43 U.S.C. 666 is based, contained a provision giving the United States a right of removal to the federal courts of any such suits in which it is a party, but this provision was omitted from the final version. In the Green River case the court interpreted this omission to mean that there should be no removal merely because the United is a party, but that

* See 28 U.S.C. 1360; 25 U.S.C. 233.



there has to be some reference under existing law.* The
666
court held that 43 U.S.C./waived immunity only in the state
courts and did not create jurisdiction of water rights suits
in federal courts. Water rights actions are in the nature of
quiet title actions. Before 1972, there was no express
provision conferring jurisdiction of such actions on the
federal district courts. The general removal statute,
28 U.S.C. 1441, permits removal from a state court to a federal
district court only of such actions of which the district
courts have original jurisdiction. Consequently, in the
Green River case the U. S. District Court for Utah refused to
accept removal of an action brought under 43 U.S.C. 666 in a
state court and remanded the case.**

In 1972 Congress enacted a new law conferring on the
district courts original jurisdiction of civil actions to quiet
title and waiving sovereign immunity for such actions.***
The statute expressly exempted trust or restricted Indian lands
and also water rights actions which could be brought under
43 U.S.C. 666.**** The legislative history explained that

* In re Green River Drainage Area, 147 F.S. 127 (D.C. Utah,
Central Div. 1956)

** Id.

*** P.L. 92-562, § 1, Oct. 25, 1972, 86 Stat. 1176, 28 U.S.C.
1346; 28 U.S.C. 2409a.

**** P.L. 92-562, § 3(a), Oct. 2, 1972, 86 Stat. 1176
28 U.S.C. 1346; 28 U.S.C. 2409a



water rights actions were excluded together with a number of other actions because they could be brought under other sections enumerated in the new law, among them 43 U.S.C. 666.*

It seems that Congress was under the impression that 43 U.S.C. 666 had conferred jurisdiction on the U. S. district courts of water rights actions against the United States. However, 43 U.S.C. 666 contains no jurisdictional clause and, as shown above, in the Green River case the court held that the statute did not create federal jurisdiction of water rights actions against the United States. The 1972 law, 28 U.S.C. 2409a, which gives the federal district courts jurisdiction of actions to quiet title, expressly exempts water rights. The result is that there is no express provision conferring on federal district courts jurisdiction of actions against the United States to quiet title to water rights. This permits a construction that the United States can be drawn into water rights cases in State courts, but cannot be sued in an original action in the federal district courts. It also gives strength to the district court's opinion in the Green River case that the elimination of the removal provision from the final version of 43 U.S.C. 666 was intended to prevent removal for the sole

*1972 U.S. Code Cong. and Administrative News, 92d Cong. 2nd Session, pp. 4547, 4556-4557



reason that the United States was made a party defendant in a State court, and, finally, it creates a situation in which Indian water rights are protected against suits in federal courts, but have no statutory protection against suits in State courts.

Obviously, such an anomalous situation cannot have been intended by Congress. Therefore, there is great need for new legislation which will eliminate these inconsistencies.

Suggested Remedies

As mentioned above, in his message to Congress on Indian policy of July 8, 1970, President Nixon suggested several remedies for the improvement of the Indian position, among them the creation of an Indian Trust Counsel Authority to assure independent legal representation, especially in matters concerning Indian natural resources, and the establishment of a new position of an Assistant Secretary of the Interior for Indian and Territorial Affairs.

The Indians themselves had made a number of suggestions during the hearings conducted by Senator Kennedy. The most important ones were an independent Bureau of Indian Affairs permitting more control and influence of the Indians, with its own legal counsel's office, distinct and separate from the Solicitor's office; the codification of existing statutes

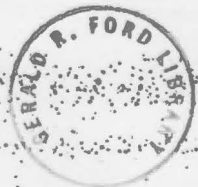


and court decisions pertaining to Indian law; a thorough inventory of Indian land, and water rights; and the establishment of some administrative way to determine Indian water rights in order to avoid cumbersome litigation.*

Another important suggestion came from Deputy Attorney General Richard Kleindienst in response to a letter from Senator Kennedy of October 19, 1971, to Attorney General John N. Mitchell. In that letter Senator Kennedy had stressed the significance of the concern of the Indian tribes with the impact of the Supreme Court's decisions in the Eagle River cases and had asked for the Justice Department's reaction. Mr. Kleindienst answered on December 1, 1971, and recommended that Congress amend 43 U.S.C. 666 to provide that this provision does not give congressional consent to adjudicate rights to the use of water held in trust by the United States for the Indians or, at least, to provide that all suits for the adjudication of water rights held by the United States may be removed to the appropriate United States District Court and shall not be subject to remand.**

* Hearings I, 95, 96; III, 720; IV, 867, 868

** I Hearings 11-14



Actions on the foregoing suggestions and present status
(as of February 15, 1974)

President Nixon's recommendations for the establishment of an Indian Trust Counsel Authority received no action in the 92d Congress aside from the introduction of two bills in the House. In the 93d Congress, 1st Session, a number of bills were again introduced, providing for the creation of an Indian Trust Counsel Authority. They are S. 1012, S. 1339, H.R. 6106, H.R. 6374, and H.R. 6494. With the exception of H.R. 6494, the bills are practically identical. They were referred to the Committees on Interior and Insular Affairs of the Senate and the House, respectively. Hearings were held on S. 1012 and S. 1339 on May 7 and 8, 1973, on H.R. 6106, H.R. 6374 and H.R. 6494 on September 27 and 28, 1973. Mr. Wallace H. Johnson, Assistant Attorney General in charge of the Land and Natural Resources Division, testified on behalf of the Department of Justice. With the exception of H.R. 6494, he recommended prompt and favorable action on all bills. As of February 15, 1974, no action has been taken.

President Nixon's request for the establishment of the position of an additional Assistant Secretary of the Interior for Indian Affairs has received a somewhat better response. On October 1, 1973, the House acted on this request and passed



H.R. 620. On December 4, 1973, Senator Jackson introduced S. 2777 for the same purpose. Like H.R. 620, it provides for the establishment of the position of an Assistant Secretary of the Interior for Indian Affairs, but S. 2777 adds a section 4 to provide for the amendment of the Alaska Native Claims Settlement Act.

On December 14, 1973, the Senate considered H.R. 620 passed by the House on October 1, 1973, but amended it by substituting for its text the provisions of S. 2777 and passed it as amended. The House disagreed to the amendment of the Senate to H.R. 620. On December 19, 1973, the Senate requested a conference with the House.* The House took no further action in the matter.** Therefore, the Senate passed S. 2777 on February 4, 1974 with unsubstantial changes. On February 5, 1974, S. 2777 was referred to the House Committee on Interior and Insular Affairs.

The Bureau of Indian Affairs is working on the preparation of water inventories. For the last two years they had an appropriation of 1.75 million dollars available for this purpose. Mr. Hans Walker, formerly in charge of water rights questions in the BIA, now in the Solicitor's Office of the Interior Department, estimates that it will take the BIA another 15 years

* Cong. Rec. daily ed. Dec. 19, 1973, p. S 23459

** See Senate Report 93-673 to accompany S. 2777 of January 31, 1974, p 7



to complete this work, unless the appropriations for this purpose will be increased.

Recommendations

As explained above, an anomalous situation has developed in which Indian water rights are protected against suits in federal courts, but not in State courts, and the United States can be drawn into water rights litigation in State courts, but cannot remove such suits to a federal court, and cannot be sued in a federal court. This situation should be corrected by amending 43 U.S.C. 666, 28 U.S.C. 1346 and 28 U.S.C. 2409a. 43 U.S.C. 666 should provide that all suits for the adjudication of water rights held by the United States may be removed to the appropriate United States district court and shall not be subject to remand, and that this statute does not give consent to adjudicate Indian water rights. In 28 U.S.C. 1346(f) which confers on the district courts "exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States," the words "including water rights" should be inserted after "real property," and the exemption of water rights should be eliminated from 28 U.S.C. 2409a.

Another badly needed improvement is a law to simplify and expedite litigation involving federally reserved water rights.



The federal district courts should be given jurisdiction of any action brought by the United States or any Indian tribe for the determination of federally reserved water rights, and the State in which such rights are in dispute should be the only necessary party representing all water users under state law. Individual water users would be permitted to intervene. Such a law would eliminate a necessity now existing in the Pyramid Lake case, where 13,500 water users have to be individually served, and would save considerable time and costs.

A draft of the two bills has been prepared together with a comment explaining the reason for requesting their enactment. They are attached hereto.

Serious consideration should also be given to the suggestions of the Indians for the codification of their laws and for the establishment of some administrative way to determine Indian water rights. Indian rights are now embodied in court decisions and numerous individual statutes. The uncertainty of those rights forces the Indians into constant litigation which is costly and endless. A codification of Indian laws is a long range project and might best be undertaken by the Bureau of Indian Affairs.

The Indians have suggested that the Bureau of Indian Affairs be made an independent commission or agency.*

* I Hearings, 96.

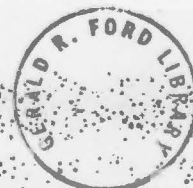


This would be a better way to avoid conflicts of interest than the establishment of the position of an Assistant Secretary of the Interior for Indian Affairs, because the head of an independent agency would not be under the Secretary of the Interior where he would have to compete with conflicting interests. It would also enable such a commission or agency to have its own Legal Officer who should be empowered to bring suits in the name of the United States in its trustee capacity, and to represent the United States in such cases. Sovereign immunity should be waived for such purposes. This would eliminate the need for a separate Indian Trust Counsel Authority.

In sum, the recommendations are:

-- to seek legislation to amend 43 U.S.C. 666 to provide that this statute does not give congressional consent to adjudicate rights to the use of water held in trust by the United States for Indians; that the United States shall have the right to remove all suits for the adjudication of water rights held by the United States in its own right or as trustee to the appropriate United States District Court, and that such suits shall not be subject to remand;

-- to amend 28 U.S.C. 1346 and 28 U.S.C. 2409 to include water rights in the jurisdiction of the district courts of actions to quiet title;



-- to establish an independent Commission or Agency of Indian Affairs with its own Legal Officer authorized to sue and be sued in the name of the United States in its trustee capacity;

-- to codify Indian laws, now scattered in statutes and court decisions, in order to create for them a more stable basis.

Hermine Herta Meyer
Attorney
Office of the Deputy Attorney General
February 15, 1974

