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INTRODUCTION

THE ORIGINS OF THE  
AMERICAN INDIAN LEADERS ADVISORY COUNCIL

A major concern of Tribal leaders has been the lack of consultation between past administrations and Tribal leaders. While many other units of government such as cities, counties, and states have been afforded the opportunity to consult on administration policies, Tribal Governments have not been able to have any input into the policy formation process. Tribal Governments are the only entities that have a constitutionally mandated (Congressionally-recognized) government-to-government relationship with the United States. American Indians are not just another special interest group. The American Indian Leaders Advisory Council represents an effort to insure necessary consultation by developing a method for the Reagan administration's efforts to deal with Tribes in drafting administration policy.

It was an agreement of the participants that assembled at the first meeting in Phoenix, Arizona that a major priority must be the development of a consultation process that could address the needs of the Tribal governments as well as the administration.

The participants considered various methods that could provide an effective consultation mechanism. It was decided that any mechanism developed must be able to respond to day-to-day consultation requirements of the administration, provide a broad base for discussion of policy, and provide an opportunity for direct contact between all Tribal Governments and the administration.

The consultation policy of the Reagan administration will be to consult with Tribal leadership through three levels of consultation.

First, the national Indian organizations (including the National Congress of American Indians, Council of Energy Resource Tribes, and National Tribal Chairmans Association) will be utilized on a day-to-day basis for consultation. These organizations will be able to provide the administration with an immediate response if the need should arise.

These groups are comprised of Tribal leadership, and their policy development is reflective of Tribally expressed ideas. Additionally, they are located in the Washington, D.C. area precisely for the ability to respond immediately to administration initiatives.

Second, the major Inter-Tribal organizations of the United States, as well as the national organizations, will be utilized to provide a broad based consultation method. The use of these organizations would provide the most extensive representation without causing the meeting to be too large or unmanageable.

There are approximately 18 Inter-Tribal organizations presently operating throughout the United States. Representatives of these Inter-Tribal organizations were involved in the original planning session in Phoenix.

Third, the administration will host meetings in which all Tribal Governments of the United States will be invited to participate.

This will provide the administration the opportunity to meet with all Tribal leaders directly affected by any administration policy initiative.

It is our hope that a new consultation method can be initiated by this administration. Indian Tribal Governments cannot and do not wish to be notified of new policies only after the decisions have been made. Institutionalizing this consultation process will lead to greater cooperation between the federal government and Tribal Governments, and will serve to enhance the effectiveness of federal funding programs for reservations.





# NATIONAL CONGRESS OF AMERICAN INDIANS

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## BACKGROUND

The National Congress of American Indians (NCAI) has the distinction of being the oldest and most representative national Indian organization in the United States. It was formed in 1944 by a group of concerned Indian individuals who saw the need for unity among the Tribes to address those issues and concerns which were common to all. From its modest beginnings, NCAI today represents the interests of approximately 150 member Tribes whose combined population is over 400,000 Indians and Alaskan Natives.

NCAI is organized along the lines of the U.S. Congress. Tribes vote in their own Councils to become members of NCAI and select a delegate to represent them. In NCAI executive council sessions, the Tribal delegates vote on major policies and make decisions on broad national issues of concern to them. NCAI, therefore, speaks for Indians with one voice on these national issues.

Headquartered in Washington, D.C., the seat of the U.S. Congress and the national government whose actions most affect NCAI's constituencies, the organization serves its membership in various ways, but primarily through policy analysis, policy development, and information dissemination.

NCAI's activities have been supported mainly through membership dues, a variety of small private donations, government contracts for projects, and special fund-raising events and sales.

The needs of American Indians are very great. On the average, our constituents have the lowest per capita income, the highest unemployment rate, the lowest level of educational attainment, the shortest lives, the worst health and housing conditions, and the highest suicide rate in the United States. NCAI has been fighting these deplorable conditions since 1944.

NCAI is, by its constitution and by-laws, fully committed to the preservation of Tribal rights and resources and the protection of Tribal self-determination.





## POLICY ANALYSIS/POLICY DEVELOPMENT

NCAI provides guidance and assistance to its member Tribes, groups and organizations to enable them to furnish substantive input into the administration of existing programs, the implementation of current Indian policy, and the formulation of future programs and policies. The objective is to provide Tribal governments and Indian people a Policy Analysis and Development Program which will allow for greater response to public policy affecting their lives.

NCAI has formed nine issue committees to significantly enhance the development program and intensify the analysis effort. The nine issue areas are as follows:

1. HEALTH--The Committee analyzes health areas of concern such as P.L. 95-437, environmental health, tribal contracting.
2. EDUCATION--The Committee analyzes areas such as P.L. 95-561, Johnson-O'Malley funding, boarding schools, vocational education
3. TRIBAL SOVEREIGNTY/LITIGATION--The Committee analyzes areas that impact the sovereignty of Tribes such as Martinez v. Santa Clara Pueblo, free-flow across international boundaries, and hunting, fishing, and water rights.
4. NATURAL RESOURCES--The committee analyzes areas such as timber, coal, fishing, gas, uranium, etc.
5. ECONOMIC DEVELOPMENT--The Committee analyzes areas such as Development and Resource Development Bank, business development, and rural home loans.
6. HOUSING--The Committee analyzes areas such as Indian housing programs, section eight (8) housing, weatherization, etc.
7. HUMAN RESOURCES--The Committee analyzes areas such as social welfare Title XX, Community services, Manpower and Child Welfare.

8. ALCOHOLISM--The Committee analyzes areas such as alcoholism programs, Indian Health Services, and the National Institute of Alcohol Abuse and Alcoholism.
9. INDIAN PREFERENCE--The Committee analyzes areas such as Section 7(b) of the Indian Reorganization Act of 1934, the Buy Indian Act, etc.

Based upon the analysis of each issue area, recommendations and resolutions are developed which reflect NCAI policies, providing the basis staff operations throughout the year.



## INFORMATION DISSEMINATION

The Sentinel, NCAI's newsletter, is published on a regular basis and distributed to all members of NCAI. The Sentinel covers various types of pertinent information for Indian Nations, including:

- o summaries on pending and current legislation;
- o announcements on meetings, conferences, and program funding available for Indians;
- o updates on the federal budget;
- o articles of special interest to Indians; and
- o reports on the internal activities of NCAI.

A copy of the latest edition of The Sentinel is included in this section.

# NCAI SENTINEL

A REPORT ON INDIAN ISSUES



National Congress of American Indians • 202 E Street, N.E. • Washington, D.C. 20002 • (202) 546-1168

## BLOCK GRANTS: IMPLICATIONS FOR TRIBES

*By Dr. William Leap with background from Action, Inc.*

This paper summarizes major issues and concerns surrounding the BLOCK GRANT proposals that several Federal departments and agencies have included in their budget plans for FY 82. Federal Social Services (DHHS), Education services (DED), Health Services (DHHS) and Emergency Assistance of various types are each to be involved in BLOCK GRANTING if existing plans offered by the departments and agencies are enacted. In each instance, BLOCK GRANTING calls for: (1) a consolidation of funds from several specific programs into one, more inclusive funding operations; (2) a single award of such consolidated funds from the federal department or agency to the state or local level; such that (3) the state and local level authorities have the freedom to decide how, within a general set of restrictions or guidelines, funds from each block grant are to be directed to meet locally determined needs and concerns.

All parties are NOT in agreement, however, as to the wisdom of such proposals. On the one hand, supporters of BLOCK GRANTING claim that BLOCK GRANTS allow for more coordinated and flexible use of federal funds than is currently allowed under existing program and project-specific options. Opponents, on the other hand, fear that local flexibility may lead to abuses in the use of federal funds, especially given the lack of experience of many local authorities in planning and management tasks at this scale; the absence of guarantees of federal oversight over the use of federal funds once they have been BLOCK GRANTED is also of concern to some.

The procedures that the participating departments or agencies will use to administer their BLOCK GRANT program are likewise subject for consideration and concern. Not

all of the departments or agencies have worked out all of the mechanical dimensions of their proposals. Changes in the legislation which enables each of the programs to be consolidated into each of the BLOCK GRANTS will be required in almost every case. This may entail separate actions by each of the Congressional Committees having jurisdiction of each of these programs before a consolidation of funding for BLOCK GRANT purposes can be attempted.

The Department of the Interior's proposal to consolidate and BLOCK GRANT ten of the different programs enabled by Snyder Act funds may be the one BLOCK GRANT proposal which will NOT require such legislative action. Unanswered questions about the BIA's preparedness to shift to BLOCK GRANT formats pose equally serious barriers to the implementation of the Department of Interior's plan; Senate and House Committees have made it clear that approval will come only after those questions have been resolved.

Questions about tribal access to BLOCK GRANTED funds coming from non-BIA sources-- e.g. the Department of Health and Human Services and the Department of Education-- also need to be answered. BLOCK GRANTED funds from these sources could be directed to the tribes through any one of several options, including: (1) BLOCK GRANTING from the federal agency directly to each tribe, as though they were states; (2) BLOCK GRANTING to the tribes through the middle-man action of the BIA (that is, BIA would function as a 51st state for BLOCK GRANTING purposes); (3) a set-aside provision in each state's BLOCK GRANT to be directed by state authorities to the tribes within their boundaries.

Congressional attitude on the BLOCK GRANT question, under these circumstances, is hardly surprising: Congressional authorities seem NOT to be opposed to BLOCK GRANTS so much as to be concerned that

## BLOCK GRANTS (CONTINUED)

BLOCK GRANTING requires more detailed analysis, more careful consideration, and more cautious review before it can be implemented. BLOCK GRANTING authority may not be given to any of the federal departments or agencies until FY 83, for this reason.

Even so, Tribes need to decide, given the specifics of each tribe's individual needs and interests, whether BLOCK GRANTING will benefit or hinder tribal efforts toward self-sufficiency and self-determination. Tribes also need to decide if BLOCK GRANTING is adopted, which procedure for delivery of funds to tribal authorities and tribal programs will be the most effective again in the light of tribal needs and interests. Both decisions must be made immediately! The WORST thing that could occur, under these circumstances, would be for BLOCK GRANTING to become a reality with tribes NOT prepared to take full advantage of these programs.

## DOI PROPOSES REVISIONS IN 93-638 REGULATIONS

*By Dr. William Leap*

Acting under the mandate of the Interior Solicitor's Office, the office of the Interior Assistant Secretary for Indian Affairs has released a set of proposed revisions in the regulations governing the Indian Self-determination and Educational Assistance Act of 1975. The regulations propose to change 93-638 from what Secretary Watt terms a "contract (i.e. procurement) mode" to what he terms a "grant (i.e. assistance) posture." The basic regulations governing what used to be termed "638 contracts" (25 CFR 271) as well as the regulations governing Johnson O'Malley funds (25 CFR 273) and Tribally Controlled Community College funds (25 CFR 274) are all affected by this proposal; the term "grant" replaces the term "contract" in all such instances.

The revised regulations have been mailed to tribal governments as of May 6, 1981. Concerned tribal members need to be certain that their tribal authorities have received the hefty packet, AND that tribal authorities review the proposals and assess the changes most carefully. The Assistant Secretary's Office wants input from tribes BEFORE the revised regulations are published in the Federal Register. Tribes should also note

that the Assistant Secretary intends to begin implementing these changes; that is, shifting all 638 contracts into a grant-like "posture" as of October 1, 1981, so that transitions will be completed before the FY 83 budget becomes official.

Tribes are urged to respond immediately to the proposed regulations. NCAI will continue to keep tribes advised of latest developments on this matter.

## LEGISLATIVE CONCERNS

*By ATB with Background from Action, Inc.*

With both the Senate and the Congress having set spending targets for the Fiscal Year 1982 budget closely in line with President Reagan's Program for Economic Recovery, the focus of attention is now centered on the Authorization and the Appropriations Committees in both Houses of Congress. Authorization Committees write the laws that either create, modify, or abolish programs; while the Appropriations Committees provide money to carry out those programs ascertaining that the Budget Committee's spending ceilings are maintained.

For Indian tribes, in light of the forthcoming block grant program (see article on BLOCK GRANTS in this issue), it is essential that the authorizing legislation contain special provisions for tribes in the various programs. The following is a report on authorizing legislation that is of particular importance to tribes.

OLDER AMERICAN ACT. The Administration has recommended that the age guideline for Indians be changed from sixty to "older Indians" in order to permit greater participation and flexibility for American Indian tribes. Introduced by Sub-Committee on Aging Chairman Ike Andrews (D-NC), the language has been accepted by the Sub-Committee and stands a good chance for passage by the full Committee. It is probable that a clause will also be added regarding the rights of elderly Indians to a diet that conforms to tradition, culture and religious beliefs.

ECONOMIC OPPORTUNITY ACT. The House is proceeding with the entire Act, including the Community Service Administration/(CSA), the Administration for Native Americans (ANA) and Headstart, with no major changes anticipated until it reaches the floor of the House. The House remained in tact with no changes of any

## LEGISLATIVE CONCERNS (CONTINUED)

consequence. The only Headstart change was to strike the automatic cost-of-living increases earmarked for Migrant and Indian programs. With the threat of future cuts for the whole program, it is difficult to argue against the unfairness of these cuts while everyone else is taking a cut. The Senate does not plan on reauthorizing CSA, but will attempt to proceed with passage of ANA and Headstart only. Senator Denton (R-AL), Chairman of the Sub-Committee on Aging, Family and Human Services will be submitting legislation that will authorize ANA for two years.

THE ALCOHOL AND DRUG ABUSE EDUCATION ACT. This Act was approved by the full House Education and Labor Committee on April 28, with language added by Austin Murphy (D-PA) that will provide for Indian governments and organizations to have direct access to the technical assistance that is currently only provided to states and school agencies. The Administration is planning to add this program to the Health Block Grant; therefore, progress in the House and Senate are uncertain at this time.

LOW INCOME ENERGY ASSISTANCE. The House Ways and Means Sub-Committee on Public Assistance and Unemployment Compensation is writing a new law that will cover Unemployment, Aid to Families with Dependent Children, Workfare, and Emergency Energy Assistance. Congressmen Pete Stark (D-CA) and Bill Brodhead (D-MI) introduced language that would permit tribes to apply to the Secretary of Energy for direct funding if the Secretary approves. Currently the States decide whether or not to make direct grants to tribes. This Energy title is a modified version of the Block Grant approach that the Administration advocates but has not yet moved through the Senate.

WEATHERIZATION. The House Banking Finance and Urban Affairs Sub-Committee on Housing and Community Development is marking up Weatherization as a part of the Bill that will include Housing and Economic Development. The Administration plans to Block Grant large parts of these programs and has recommended the elimination of the weatherization program. Congressman Bruce Vento (D-MN), supported by his colleagues Bob Garcia (D-NY), an Lundine (D-NY), and Mike Lowry (D-WA), has offered an amendment that would permit Indian

tribes or organizations to apply to the Secretary of Energy to receive weatherization funds. Current regulations require that the Governor submit this application. The Amendment does not change existing requirements that the Secretary determine that Indians are not being equitably served and the tribes application would better meet the needs of Indians.

THE VOCATION EDUCATION ACT. Action on these programs has been postponed by both the House and the Senate until next session and will not be in effect until the 1982 or 1983 school year.

THE AGRICULTURE AND FOOD ACT OF 1981. Senator Jesse Helms (R-NC) has amended Section 1412 (a) Section 2 of the Watershed Protection and Flood Preservation Act (16 U.S.C. 1002) to read: "...any Indian tribe or tribal organization, as defined in section 4 of the Indian Self-Determination and Education Assistance Act...having authority under Federal, State, or Indian tribal law to carry out, maintain, and operate the works of improvement." Indians will thus be enabled to participate in watershed programs as sponsors. S. 884 has been reported out of Committee with the amendment retained.

## KEN SMITH IS OFFICIAL

In a Swearing-in Ceremony held at the Interior Auditorium on May 15, 1981, Mr. Kenneth Smith, a Wasco Indian from the Warm Springs Reservation of Oregon, officially assumed the position of Assistant Secretary in Interior for Indian Affairs.

Interior Undersecretary Hodel introduced Mr. Smith, as "one Indian who is not seeking the resignation of Secretary Watt." According to Mr. Hodel, Mr. Watt persuaded Ken to join Interior to help Indian Self-Determination become a reality.

Mr. Smith views his job as a "big challenge." He is currently involved in the recruitment of a team to work with him in developing and carrying out the Administration's Indian policy and its commitment to self-determination.



## EDUCATION

By Dr. William Leap

### DEPARTMENT OF EDUCATION BLOCK GRANT PROPOSAL UNVEILED

Secretary of Education Terrel Bell unveiled his plan for block-granting federal education funds directly to State Education Agencies in a letter to House Speaker Tip O'Neil dated April 28, 1981. Two such block grants are proposed: The first consolidates funds formerly appropriated under Title I, ESEA with other programs meeting "special educational needs" of designated students. Those funds will be block-granted to each state, to be regranted by the states to the school districts within each state's jurisdiction. The second block-grant goes directly to each state and is then to be used at the state-level to provide services formerly supplied by a broad range of federal education programs. Programs supported by the second block grant must meet one general requirement--they must in some way "improve the resources and performance of schools", says Bell's letter--but each state still has the leeway to decide what sorts of responses they wish to make under this mandate. Some states may want to allocate these funds for construction purposes; others may choose to strengthen the library and instruction resource materials available for local classroom instruction. The decision re: how to utilize the monies provided by the second grant is left to each state's discretion and priority.

Where does this leave the tribes? There is some comfort in the fact that Title IV, Indian Education Act, has not been included in the block grant proposal. Title IV will continue to operate as it has in previous years--applications go directly to the Office of Indian Education, funds are awarded from OIE directly to tribes and local school districts.

Beyond this, the use of the state as the focal point for the distribution of federal education monies seems somewhat problematic. Treaties and trust agreements would clearly be violated if federally recognized tribes were required to receive education funds from states, and not directly from the federal level. Bell's proposal recognizes this, in part: A one-percent set-aside is included in the funds

appropriated for each of the two block grants. These sets-aside are to be used to support education programs in the Pacific Trust territories, Guam and American Samoa. Out of that same 1 percent set-aside comes the funds which will be used to support such programs within on-reservation schools and contract schools operated or funded by BIA. The Secretary of the Interior is assigned responsibility for supervising the allocation of those funds, according to Bell's proposal.

Off reservation school programs which serve Indian students will receive federal support for such efforts in the same way that all other public school programs will receive their support--through funds provided by state governments out of the block-grant awarded to each state.

Tribes need to evaluate the impact this proposal could have on their education programs. Tribes then need to make their feelings known to Secretary Bell (c/o Office of the Secretary, U.S. Department of Education, 400 Maryland Ave. S.W., Washington, D.C. 20202) and to their Congressmen and Senators.

We will be discussing this proposal, and its implications for tribes, at the Education Committee meetings during the NCAI Mid-year Conference, May 27-29, 1981. Tribes are urged to bring their position statements on this matter to the Mid-year discussion.

The National Congress of American Indians is a private, non-profit membership organization, established in 1944 to advocate for the rights of American Indian tribes and individuals.

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## THE SUPREME COURT: NEW CAUSE FOR ALARM

By The Indian Law Resource Center

It has now become clear that the time for optimism about Indian rights law has ended. The decisions of the Supreme Court over the past three years indicate that the Court is systematically doing away with many of the principles which have helped to protect the rights of Indian nations or tribes for the past two centuries. Gone are the confident days of the past decade when there was much buoyant talk about the vindication of Indian rights in the federal courts.

Instead we are seeing a truly alarming trend. The Supreme Court has repeatedly ignored, rejected or overruled long-established principles of federal Indian law, has announced new rules cutting back sharply the powers of Indian governments, has tended to uphold state powers at the expense of Indian governments, and has still further enhanced the almost limitless power of the federal government over Indians. Unless the Supreme Court changes direction, we may experience yet another era like the allotment and termination eras in which massive efforts are made to destroy Indian rights in general.

Just a few years ago the national press featured "Indians on the Lawpath" winning their rights in the federal courts. But as the Supreme Court of Chief Justice Warren Burger continues to undermine the rights of Indians, the new symbol of the persistent Indian demands for respect of their rights may be marches and direct actions such as that of the defiant Crow people wading into the Big Horn River which flows through Crow territory, guaranteed by treaty to the Crow people for their "absolute and undisturbed use." This Crow march of April 16, 1981 was called to reaffirm Crow ownership of the Big Horn River and to protest the March 1981 decision of the United States Supreme Court in Montana v. United States.

That decision declared that the Big Horn River where it flows through the Crow Reservation is owned by the State of Montana rather than by the Crows who have been thought to own that portion of the river for at least the past 400 years. The decision has sent a shock wave through Indian country. Many Indian leaders and Indian rights supporters are convinced that this latest pronouncement of the Supreme Court is

another bald taking of Indian property. As with all prior federal confiscations of Indian rights, this taking of a part of Indian territory by the United States Government was accomplished in the name of law. Unlike some other federal takings, this one was carried out by the judicial branch instead of the legislative or executive arms of the United States Government.

In its decision, the Supreme Court told the dismayed and angry Crow Tribe that its "trustee," the United States, had given a Crow river to Montana. The Court also denied the Crows the power to police much of the hunting and fishing on the Crow reservation. This loss of territorial and police powers threatens many other Indian communities as well.

Violating a long string of precedents on treaty interpretation, the Supreme Court ruled that the 1868 Treaty of Fort Laramie would not be interpreted the way the Indians understood it but would be interpreted to the advantage of the non-Indian citizens of Montana. Since the word "rivers" is not found in the treaty, the Court said that the rivers flowing through the reservation were not guaranteed as part of Crow territory.

Using almost laughable reasoning, the Supreme Court ruled that the Crow Nation did not own the Big Horn River because the United States had never conveyed the title to the river to them. The United States, therefore, retained that title which, by a legal presumption, was passed to the State of Montana when the State was later created. There is not one word about how the United States supposedly got "trust title" to that river in the first place. It appears that the Crow Tribe's own lawyers had conceded that the United States acquired such trust title at some unspecified time. The Court seized upon this concession that the United States held title and reasoned that the Crow did not own the river unless the United States conveyed it to them.

By turning history and law upside down in this way, the Supreme Court ignored the legal principles settled since John Marshall was Chief Justice in the early 1800's, that aboriginal Crow territory and its rivers are retained by the Crow Nation unless and until the Crow Nation cedes them to the United States. Crow territory and all of its rivers and resources have been owned by the Crow Nation since long before the nomadic white (The Supreme Court continued on page 6)

## THE SUPREME COURT (CONTINUED)

citizens of the United States roamed west of the Mississippi into Indian country.

But the Crow case is not the first shock wave created by the Supreme Court. In 1978, there came the shock of Oliphant v. Suquamish, which denied Indian nations and tribes the most basic jurisdictional right to police their own Indian communities. Because of Oliphant, Indian reservations became the only communities in the entire country which were forbidden to bring to trial outsiders who endanger their members by drunken reckless driving, by assaults on their police, or by other criminal acts. The Supreme Court purported to strip Indians of this jurisdiction and transferred police powers to neighboring non-Indian courts with non-Indian judges and juries, a decision which impliedly finds that Indians are not able or willing to be fair and just to non-Indians accused of crimes against the Indian community.

In this manner the Burger Court has been rewriting much of Indian law. Until recently it was well established in United States law that Indian reservations of land and Indian governmental rights are not something given by or delegated from the United States but are inherent rights "reserved" by the Indian peoples to themselves. Many Supreme Court decisions had honored this principle. But in the last few years this fundamental underpinning of Indian-federal relations has been seriously eroded. In Oliphant, in the Crow case, and other decisions, the Supreme Court has signaled that it is inclined to severely restrict Indian sovereign rights.

One of the new rules announced by the Court is that inherent powers of Indian tribes or nations will be allowed to stand under United States law only if they "would not be inconsistent with the overriding interests of National Government" and only if the Indian governments have not been "divested" of such rights "by necessary implication of their dependent status." This vague new rule makes it far easier for the federal government to take away or ignore Indian rights because it lets the federal courts decide what powers have been taken away by implication and what powers are inconsistent with the interests of the United States.

The case of Washington v. Confederated Tribes of the Colville Indian Reservation (1980) shows how this amorphous rule can be used to deny Indian rights. Applying the new rule in the Colville case, the Supreme Court permitted the State of Washington to extend broad State taxing authority into the Colville reservation and thereby destroy the thriving smokeshop industry which had become the economic mainstay of that Indian community. The same vague standards appear in United States v. Wheeler (1978) in which Indian sovereignty is again damned with faint praise and where federal criminal jurisdiction over Indian reservations is strongly re-affirmed.

It appears that the Supreme Court is bent on treating Indian governments as some new kind of federal municipalities whose powers flow exclusively from or exist only at the grace of the federal government. This "hand-out" theory of Indian sovereignty--in which Congress conveys or extinguishes Indian powers at its whim--leaves Indian governments totally subject to political power plays in Washington. The raw political power over Indians held by the federal government is underscored in a 1978 decision of the Supreme Court which includes this sobering statement: "Congress has plenary authority to limit, modify or eliminate the powers of local self-government which the tribes otherwise possess." In short, termination is "legal" in the 1980's just as it was in the 1950's. Ironically, this reaffirmation of termination powers is part of the most favorable Supreme Court Indian rights ruling of the past five years, Santa Clara Pueblo v. Martinez (1978), a case which upheld the right of Indian peoples to determine their own membership but which pointedly reminded Indian governments that they had such a sovereign right only as long as Congress did not take it away. To the present Supreme Court, Indian sovereignty exists only by the grace of Congress.

In this setting, the Indian victory in the Washington fishing rights case, Washington v. Washington State Commercial Passenger Fishing Vessel Assn. (1979), seems to be insecure and subject to political repeal, for Congress may, with its "plenary power," do as it wishes with the Northwest Tribes. Out-right abrogation of the treaty rights on which the Indian victory was built is a definite, "legal possibility. The 1981 bill to enact a "Steelhead Trout Protection Act" (The Supreme Court continued on page 7)

## THE SUPREME COURT (CONTINUED)

(S. 874) is just such a political effort to abrogate treaty fishing rights. The fact that such a bill can actually threaten Indian treaty rights which have been upheld by the federal courts is testimony to the failure of the Supreme Court to provide firm legal protection for Indians.

Several other recent Supreme Court decisions also show the Supreme Court's alarming direction. In United States v. Mitchell (1980), the Court ruled that the United States cannot be sued for damages for wrong-doing as trustee for tribes unless some federal statute or regulation expressly make the federal government liable. A trustee which cannot be held responsible for wrong-doing to the beneficiary is, in truth, no trustee at all. To take another example, in the Black Hills case last year, the United States v. Sioux Nation, the Court took the occasion to again note with approval the power of the United States to take aboriginal Indian land without due process or compensation. This power to take property without any constitutional restriction applies to no one but Indians.

As it becomes increasingly clear that the Supreme Court is prepared to ignore or put an end to legal doctrines which have protected Indian rights, we may expect to see new strategies developed by Indian governments. Strategies which leave important Indian interests in the hands of the Supreme Court are likely to appear increasingly foolish. At present, we cannot expect, much less rely upon, the Supreme Court to follow earlier decisions which have since the founding of the United States given at least some legal protection to the right of Indian self-government, Indian rights to land and water, and other basic rights.

We may expect to see more active resistance to Supreme Court decisions which are seen as fundamentally unjust. The reaction of the Crow people for example stands in contrast to the generally quiet acceptance which met the Oliphant decision a few years ago. Resistance to adverse Supreme Court decisions may take the form of legal actions to avoid, limit, or undercut the Court's decision, or it may take the form of active political resistance such as seeking corrective legislation from Congress, or it may take the form of direct political actions to secure the interests that the Indian people

feel to be indispensable. Another development that we may expect is increasing resort to international procedures such as filing complaints with the United Nations or with the Inter-American Commission on Human Rights. Already Indian governments have begun to take such steps, and some Crow leaders are talking publicly about raising the Crow case at the international level.

A very healthy development which may come as the result of decisions like the Crow case is that Indian governments may begin exercising more strict supervision over their attorneys in order to be sure that their attorneys are actually arguing for the position which the tribe or nation has taken. The actions taken by the Oglala Sioux Tribe in the wake of the Black Hills decision last year may be an indication of what other tribes will do. The Tribe roundly repudiated the work of the attorney who claimed to represent them in that case seeking money damages only and directed one of their own Sioux attorneys to proceed with a claim of actual ownership of the Black Hills.

It may be that the disastrous recent decisions of the Supreme Court will cause a fundamental reexamination of the kinds of arguments that have been made by Indian rights attorneys in past years. For example, the danger of conceding that the United States somehow owns the underlying title to Indian land is growing more obvious. Perhaps this reexamination will lead to greater insistence by Indian governments that their attorneys assert positively that Indians indeed own Indian land and Indian rivers, a proposition that should not be as controversial today as it was in John Marshall's time.

Thus, we may find that this very dangerous trend of the Supreme Court is met by Indian governments assuming far greater control over their own legal affairs and over their attorneys in particular. It may lead toward a more cautious and realistic approach to the United States' courts and United States' legal system and toward greater reliance on other kinds of actions to win and protect Indian rights and resources.

THE LISTING OF SENATORS AND STAFF ASSISTANTS FOR INDIAN AFFAIRS THAT APPEARS ON THE FOLLOWING TWO PAGES CAN BE CLIPPED AND SAVED FOR YOUR FUTURE REFERENCE.

<u>SENATORS</u>	<u>ROOM NUMBER</u>	<u>TELEPHONE NUMBER</u>	<u>INDIAN AFFAIRS STAFF ASSISTANTS</u>
Vice President BUSH, George (TX)	D-2203	224-2424	
ABDNOR, James (SD)	D-4327	224-2321	Richard Deubrava
ANDREWS, Mark (ND)	R- 417	224-2043	Jane Wrem
ARMSTRONG, William L. (CO)	D-1321	224-5941	Buettner
BAKER, Howard H., Jr. (TN)	D-4123	224-4944	Henrietta Stegemeier
BAUCUS, Max (MT)	D-1107	224-2651	Dave Foulis
*BENTSEN, Lloyd (TX)	R- 240	224-5922	Judy Gonzales
BIDEN, Joseph R., Jr. (DE)	R- 431	224-5042	Mark Gitenstein
BOREN, David L. (OK)	R- 440	224-4721	David Cox
BOSCHWITZ, Rudy (MN)	D-2317	224-5641	Liz Hardy
BRADLEY, Bill (NJ)	D-2107	224-3224	Anna Marie Booth
BUMPERS, Dale (AR)	D-3229	224-4843	Tom Courtway
*BURDICK, Quentin N. (ND)	R- 451	224-2551	Paulette Hansen
*BYRD, Harry F., Jr. (VA)	R- 245	224-4024	Joanne O'Neil
*BYRD, Robert C. (W.VA)	R- 133	224-3954	Joan Drummond
*CANNON, Howard W. (NV)	R- 259	224-6244	Kelton Abbott
*CHAFEE, John H. (RI)	D-5229	224-2921	Jamie Pound
*CHILES, Lawton (FL)	R- 437	224-5274	Linda Goodgame/Jim O'Hare
COCHRAN, Thad (MS)	R- 328	224-5054	Anna Marie Barnes
COHEN, William S. (ME)	D-1251	224-2523	Tim Woodcock
CRANSTON, Alan (CA)	R- 229	224-3553	Martha Baker
D'AMATO, Alfonse M. (NY)	R- 321	224-6542	Dave Garland
*DANFORTH, John C. (MO)	R- 460	224-6154	Bill Arnet
*DeCONCINI, Dennis (AZ)	D-3230	224-4521	John Mulkey
DENTON, Jeremiah (AL)	R- 363	224-5744	John Schrieber
DIXON, Alan J. (IL)	R- 456	224-2854	Lauren Barber
DODD, Christopher J. (CT)	R- 404	224-2823	Mike Naylor
DOLE, Robert (KS)	D-2213	224-6521	Randy Miller
DOMENICI, Pete V. (NM)	D-4239	224-6621	Joe Trujillo
*DURENBERGER, David (MN)	R- 353	224-3244	Shirley Hunt
EAGLETON, Thomas F. (MO)	D-1209	224-5721	Rindy O'Brien
EAST, John P. (NC)	D-5107	224-3154	Tom Ellis
EXON, J. James (NE)	D-3313	224-4224	John O'Berg
FORD, Wendell H. (KY)	D-4107	224-4343	Craig Infanger
GARN, Jake (UT)	D-5207	224-5444	Fred Axelgard
GLENN, John (OH)	D-2235	224-3353	Michael Wack
GOLDWATER, Barry (AZ)	R- 337	224-2235	Phyllis Thompson
GORTON, Slade (WA)	D-3327	224-2621	Chris Cook
GRASSLEY, Charles E. (IA)	R- 232	224-3744	Sarah Tomason
HART, Gary (CO)	R- 254	224-5852	Caroline Kamlet
*HATCH, Orrin G. (UT)	R- 125	224-5251	Les Titus
HATFIELD, Mark O. (OR)	R- 463	224-3753	Jeff Boothe
HAWKINS, Paula (FL)	D-1327	224-3041	Baker Spring
*HAYAKAWA, S.I. (Sam) (CA)	D-6217	224-4841	Dennis Parobek
HEFLIN, Howell (AL)	D-3107	224-4124	Mary Stansel
*HEINZ, John (PA)	R- 443	224-6324	Steve Perry
HELMS, Jesse (NC)	D-4213	224-6342	Ralph Hill
HOLLINGS, Ernest E. (SC)	R- 115	224-6121	Ralph Everett
HUDDLESTON, Walter D. (KY)	D-2121	224-2541	Tim Dudgeon
HUMPHREY, Gordon J. (NH)	D-4203	224-2841	Dan Friehofer
INOUE, Daniel K. (HI)	R- 105	224-3934	Tina Kanemoto
*JACKSON, Henry M. (WA)	R- 137	224-3441	Bob Turner
JEPSEN, Roger W. (IA)	D-5327	224-3254	Ron Langston

(continued on page 7)

SENATORSROOM  
NUMBERTELEPHONE  
NUMBERINDIAN AFFAIRS STAFF ASSISTANTS

JOHNSTON, J. Bennett (LA)	R- 421	224-5824	Laura Hudson
KASSEBAUM, Nancy Landon (KS)	R- 304	224-4774	Kent Wells
KASTEN, Bob (WI)	R- 221	224-5323	Kathy Sullivan
*KENNEDY, Edward M. (MS)	R- 109	224-4543	Michael Forscey/Kitty Haggins
LAXALT, Paul (NV)	R- 315	224-3542	Hal Furman
LEAHY, Patrick J. (VT)	R- 427	224-4242	Margaret Grass
LEVIN, Carl (MI)	R- 140	224-6221	Judy Parker
LONG, Russell B. (LA)	R- 217	224-4623	Lula Davis
*LUGAR, Richard G. (IN)	D-1113	224-4814	John McGovern
MATHIAS, Charles McC., Jr. (MD)	R- 358	224-4654	Marian Morris
*MATSUNAGA, Spark M. (HI)	D-5121	224-6361	Elma Henderson
MATTINGLY, Mack (GA)	D-6241	224-3643	Mitch Delk
McCLURE, James A. (ID)	D-3121	224-2752	Tom Hill
*MELCHER, John (MT)	R- 253	244-2644	Ginny Boylan/Max Richtman
*METZENBAUM, Howard M. (OH)	R- 347	224-2315	Lyn McDermitt
*MITCHELL, George J. (ME)	R- 344	224-5344	David Ray
*MOYNIHAN, Daniel Patrick (NY)	R- 442	224-4451	Jim Morris
MURKOWSKI, Frank H. (AK)	D-2104	224-6665	John Iani
NICKLES, Don (OK)	D-6327	224-5754	Blythe Thomas
NUNN, Sam (GA)	D-3241	224-3521	Kirby Thompson
PACKWOOD, Bob (OR)	R- 145	224-5244	Barbara Lipkin
PELL, Claiborne (RI)	R- 325	224-4642	William Bryant
PERCY, Charles H. (IL)	D-4321	224-2152	Josh Ripple
PRESSLER, Larry (SD)	R- 411	224-5842	Jackie Stahl
*PROXMIRE, William (WI)	D-5241	224-5653	Ruth Fleischer
RYOR, David (AR)	R- 248	224-2353	Annie Leshar
WAYLE, Dan (IN)	R- 359	224-5623	Tim O'Neill
RANDOLPH, Jennings (W.VA)	D-3203	224-6472	Rosemarie Sanders
*RIEGLE, Donald W., Jr. (MI)	D-1207	224-4822	John Graykowski
*ROTH, William V., Jr. (DE)	D-3215	224-2441	Don Westmore
RUDMAN, Warren (NH)	D-4104	224-3324	Belinda Buescher
*SARBANES, Paul S. (MD)	D-2327	224-4524	Debbie Gurtler
*SASSER, Jim (TN)	R- 260	224-3344	Greg Schuder
*SCHMITT, Harrison "Jack" (NM)	D-5313	224-5521	Larry Morgan
SIMPSON, Alan K. (WY)	D-6205	224-3424	Mary Anne Klink
SPECTER, Arlen (PA)	R- 342	224-4254	Jackie Abelman
*STAFFORD, Robert T. (VT)	D-5219	224-5141	Vick Murke
*STENNIS, John C. (MS)	R- 205	224-6253	Marvin Rees
STEVENS, Ted (AK)	R- 127	224-3004	Marianne Simpson
SYMMS, Steven D. ((ID)	R- 452	224-6142	Bill Fay
THURMOND, Strom (SC)	R- 209	224-5972	Jim Babb
TOWER, John (TX)	R- 142	224-2934	Phil Charles
ISONGAS, Paul E. (MA)	R- 362	224-2742	Chris Chamberlain
*WALLOP, Malcolm (WY)	R- 704	224-6441	Sandy Dunn
WARNER, John W. (VA)	R- 405	224-2023	Charles Goodspeed
*WEICKER, Lowell P., Jr. (CT)	R- 313	224-4041	Julie Sutphen
*WILLIAMS, Harrison A., Jr. (NJ)	R- 352	224-4744	Gerry Wyrsh
*ZORINSKY, Edward (NE)	R- 432	244-6551	Kathryn Canfield

\*See Below

POLITICAL NOTE: The Senators indicated with (\*) above and the entire House of Representatives are up for re-election in 1982. Follow their activities with regard to Indians closely so that you can better determine how to cast your vote.

## HOUSE VOTE ON GRAMM-LATTA

By Robin Shield

The following is the list of the 63 House Democrats who voted for the budget resolution sponsored by Representatives Phil Gramm(D-TX) and Delbert L. Latta(R-OH) which was substituted for the resolution sponsored by Representatives James R. Jones(D-OK), Chairman of the Budget Committee, and Thomas P.(Tip) O'Neill, Speaker of the House. Gramm-Latta is supported by President Reagan because the budget limits it proposes for fiscal year 1982 are even lower than what the President had proposed and that the Senate had passed. The Jones-O'Neill budget resolution had restored most of the social programs, including all Indian programs, proposed to be reduced or eliminated by President Reagan, all 190 House Republicans voted for the Gramm-Latta substitute. All other Democrats opposed the measure, with the exception of William R. Cotter of Connecticut and Speaker of the House Thomas P.(Tip) O'Neill, Jr. of Massachusetts, who did not vote. There are 4 vacancies in the 435-member House.

ALABAMA - Bevill, Flippo, Nichols, Shelby.  
ARIZONA - Stump.  
ARKANSAS - Anthony  
CALIFORNIA - Patterson.  
FLORIDA - Bennett, Chappell, Fuqua, Gibbons, Hutto, Ireland, Mica, Nelson.  
GEORGIA - Barnard, Brinkley, Evans, Ginn, Hatcher, Jenkins, Levitas, McDonald.  
INDIANA - Evans, Jacobs.  
KENTUCKY - Mazzoli, Natcher.  
LOUISIANA - Breaux, Huckaby, Roemer, Tauzin.  
MARYLAND - Byron, Dyson, Long.  
MICHIGAN - Albosta.  
MISSISSIPPI - Bowen, Montgomery.  
MISSOURI - Skelton, Volkmer Young.  
NEVADA - Santini.  
NORTH CAROLINA - Andrews, Fountain.  
OHIO - Hall, Luken, Motti.  
OKLAHOMA - English.  
PENNSYLVANIA - Atkinson, Yatron.  
SOUTH CAROLINA - Derrick, Holland.  
TENNESSEE - Bouquard, Jones.  
TEXAS - Gramm, R. Hall, S. Hall, Hance, Hightower, Leath, Stenholm, White, Wilson.  
VIRGINIA - Daniel.

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## SENATE APPROVES ITS FY'82 BUDGET

By Robin Shield

On Tuesday, May 12, the Senate voted 78 to 20 to approve its version of President Reagan's budget for fiscal year 1982. According to the Washington Post newspaper of May 13, the measure marks "a dramatic reversal of spending habits for social welfare dating to the New Deal." The Senate voted on its \$700.8 billion budget after modifying its earlier proposal to cut \$7.9 billion from Social Security and other federal retirement programs.

Although the House and Senate will meet in conference committee to iron out minor discrepancies between their respective budgets, both budgets make deep cuts in education, health, welfare, housing, employment and other social programs, while proposing, according to the Post, "the biggest peacetime increase in defense spending in history."

The budget only sets spending targets for the authorization and appropriation committees. However, the Senate had previously voted to require committees to make more than \$36 billion in program cuts, as did the House in its budget resolution.

The Senate voted against two separate amendments which, if approved, would have restored some funds for social programs. The first, sponsored by Bill Bradley(D-NJ), would have restored \$1 billion to social programs. It was not approved by a vote of 76-to-22. The second amendment, sponsored by Donald W. Reigle, Jr.(D-MI), would have taken \$2.2 billion from defense and shifted it over to social programs. The amendment was rejected by a vote of 81-to-17.

The following is the vote by which the Senate approved its 1982 budget resolution:  
REPUBLICANS FOR: Abdnor(SD); Andrews(ND); Armstrong(CO); Baker(TN); Boschwitz(MN); Chafee(RI); Cochran(MS); Cohen(ME); D'Amato(NY); Danforth(MO); Denton(AL); Dole(KS); Domenici(NM); Durenberger(MN); East(NC); Garn(UT); Goldwater(AZ); Gorton(WA); Grassley(IA); Hatch(UT); Hatfield(OR); Hawkins(FL); Hayakawa(CA); Heinz(PA); Helms(NC); Jepsen(IA); Kassebaum(KS); Kasten(WI); Laxalt(NV); Lugar(IN); Mattingly(GA); McClure(ID); Murkowski(AK); Nickles(OK); Packwood(OR); Percy(IL); Pressler(SD); Quayle(IN); Roth(DI); Rudman(NH); Schmitt(NM); Simpson(WY); Spec

(PA); Stafford(VT); Stevens(AK); Symms(ID); Thurmond(SC), Tower(TX); Wallop(WY), and Warner(VA).

DEMOCRATS FOR: Baucus(MT); Bentsen(TX); Biden(DL); Boren(OK); Bumpers(AR); Burdick(ND); Byrd(VA); Byrd(W.VA); Chiles(FL); DeConcini(AZ); Dixon(IL); Ford(KY) Heflin(AL); Huddleston(KY); Inouye(HI); Jackson(WA); Johnson(LA); Long(LA); Matsumaga(HI); Melcher(MT); Mitchell(ME); Numm(GA); Proxmire(WI); Pryor(AR); Randolph(W.VA); Sasser(TN); Stennis(MS), and Zorinsky(NE).

REPUBLICANS AGAINST: Humphrey(NH) and Weicker(CN).

DEMOCRATS AGAINST: Bradley(NJ); Cranston(CA); Dodd(CN); Eagleton(MO); Exon(NE); Glenn(OH); Hart(CO); Hollings(SC); Kennedy(MA); Leahy(VT); Levin(MI); Metzenbaum(OH); Moynihan(NY); Pell(RI); Reigle(MI); Sarbanes(MD); Tsongas(MA), and Williams(NJ).

ABSENT AND NOT VOTING: Cannon(D-NV) and Mathias(R-MD).

## SENATE VOTES TO CUT SOCIAL SECURITY

*By Robin Shields*

On Friday, May 8, the Senate voted to cut Social Security and other federal retirement programs by nearly \$8 billion next year. By a vote of 49-to-42, the Senate accepted a proposal of its Budget Committee, chaired by Senator Pete V. Donemici(R-NM), to save \$7.9 billion by reducing the automatic cost-of-living increases that 45 million retirees receive each year to offset inflation.

During his campaign last year, President Reagan had stated that Social Security would be part of the "safety net" containing programs that would not be affected by his economic recovery program.

The Budget Committee's proposal, would make two basic changes:

Starting July 1, cost-of-living increases would be based on average wage increases for the previous year if wages increased less than prices. Over the past year, wages rose slightly less than prices.

Starting in calendar year 1982, payment of increases would be delayed from July 1 to October 1.

Together these changes would save \$7.9 billion in fiscal year 1982 and comparable amounts for the future. They would affect 36 million Social Security recipients and 9 million civilian government, military and railroad retirees.

The House-approved budget proposes no such changes, although some influential members have said they might fight for them if the Administration was willing to lead the charge. The fight in the Senate to prevent the changes was led by Senator Donald W. Reigle, Jr.(D-MI).

Here is the list of the roll call vote which rejected an amendment to restore \$8 billion in proposed Social Security cuts:

REPUBLICANS FOR: Chafee(RI); Hawkins(FL); Heinz(PA); Kassebaum(KS); and Specter(PA).

DEMOCRATS FOR: Baucus(MT); Bentsen(TX); Biden(DL); Bradley(NJ); Bumpers(AR); Burdick(ND); Byrd(VA); Byrd(W.VA); Chiles(FL); Cranston(CA); DeConcini(AZ); Dixon(IL); Dodd(CN); Eagleton(MO); Ford(KY); Glenn(OH); Hart(CO); Heflin(AL); Inouye(HI); Jackson(WA); Kennedy(MA); Leahy(VT); Levin(MI); Melcher(MT); Metzenbaum(OH); Mitchell(ME); Moynihan(NY); Pell(RI); Proxmire(WI); Pryor(AR); Randolph(W.VA); Reigle(MI); Sarbanes(MD); Sasser(TN); Tsongas(MA); Williams(NJ); and Zorinsky(NE).

REPUBLICANS AGAINST: Abdnor(SD); Andrews(ND); Armstrong(CO); Baker(TN); Boschwitz(MN); Cochran(MS); Cohen(ME); D'Amato(NY); Danforth(MO); Denton(AL); Dole(KS); Domenici(NM); Durenberger(MN); East(NC); Garn(UT); Goldwater(AZ); Gorton(WA); Grassley(IA); Hatfield(OR); Hayakawa(CA); Helms(NC); Humphrey(NH); Jepsen(IA); Kasten(WI); Laxalt(NV); Lugar(IN); Mattingly(GA); McClure(ID); Murkowski(AK); Nickles(OK); Packwood(OR); Percy(IL); Quayle(IN); Roth(DL); Rudman(NH); Simpson(WY); Stafford(VT); Stevens(AK); Symms(ID); Thurmond(SC); Tower(TX); Wallop(WY); and Warner(VA).

DEMOCRATS AGAINST: Boren(OK); Hollings(NC); Huddleston(KY); Johnson(LA); Nunn(CA), and Stennis(MS).

ABSENT AND NOT VOTING: Cannon(D-NV); Exon(D-NE); Hatch(R-UT); Long(D-FL); Mathias(R-MD); Matsunaga(D-HI); Pressler(R-SD); Schmitt(R-NM); and Weicker(R-CN).



## FUNDING ANNOUNCEMENTS

By Melissa Hippler

The Health Services Administration, Department of Health and Human Services, has announced a request for proposals (RFP No. HSA 240-IHS-12(1)(GJG). The purpose of this proposed procurement is to develop a methodology to evaluate the effectiveness of the Indian Sanitation Facilities Construction Program in reducing the incidence of environmentally-related diseases and in improving the health and well-being of American Indians and Alaska Natives. The evaluation methodology should address a very comprehensive list of factors including specific diseases, housing, general health, alcoholism, suicide, school attendance, mental health, and other socio-economic factors. Deadline for submission of proposals is June 1, 1981. For copies of this solicitation write to:

Gail M. Hendley  
Health Services Administration  
Contract Operations Branch  
5600 Fishers Lane, Room 13A-19  
Rockville, MD 20857

Applications are invited for new projects under the following programs: Special Services for Disadvantaged Students, Talent Search, and Upward Bound. Special Services grants may be awarded for project periods of up to 3 years; Upward Bound for project periods of up to 2 years; and Talent Search for project periods of up to 1 year. Applications for new awards must be mailed or hand delivered by June 11, 1981. For more information, write or call:

Program Development Branch  
Division of Student Services  
U.S. Department of Education  
Room 3514, Regional Office Bldg. 3  
400 Maryland Ave. S. W.  
Washington, D.C. 20202  
Phone: 202/245-2511

The Administration on Aging announces that applications from public and non-profit groups are being accepted for grants and cooperative agreement under the Model Projects on Aging Program. Closing date for receipt of applications is July 10, 1981. Approximately \$2 million will be awarded for

15 to 25 mainly new grants. For more information, write:

Model Projects Division  
Administration on Aging  
Room 3280, HHS North Bldg.  
330 Independence Ave., S.W.  
Washington, D.C. 20201  
Phone: 202/472-7219

Continuation of the National Network of Resource Access Project, which serve to support the head start mainstreaming movement by identifying, matching, and coordinating delivery of services for handicapped children as well as providing training and technical assistance, promote and facilitate collaborative efforts and provide resource materials. RFP No. 105-81-P-023, Region VIII, Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. RFP due date is June 8, 1981. For more information, write:

Department of HHS Office of Human Development Services, Contracts Branch  
330 Independence Ave., S.W.  
Room 1271-North Bldg.  
Washington, D.C. 20201  
Attention: Lasandra Boone  
Contracting Specialist

Strategies for outreach services in bilingual vocational training programs. Develop, evaluate and disseminate a resource handbook that would delineate how to establish delivery service systems that provide ancillary instructions and services to persons of limited English speaking ability in need of bilingual vocational job training. Closing date for applications is June 22, 1981. For more information, please write:

U.S. Department of Education  
Office of Procurement & Assistance Management  
Operations Division  
7th and D Streets, S.W.  
General Services Administration Bldg.  
Room 5671  
Washington, D. C. 20202  
Attention: Carol Carter

The Administration for Native Americans (ANA) and the Environmental Protection Agency (EPA), in a joint initiative, announce that applications are being accepted for a (Funding Announcements continued on page 13)

## FUNDING ANNOUNCEMENTS (CONTINUED)

Tribal Environmental Protection Program. The Tribal Environmental Protection Program is to assist tribal governments to establish and maintain the ongoing capability to protect reservation environments. The primary objective of the program is to assist tribal governments to develop or enhance their institutional capability to undertake environmental protection projects and enforce environmental standards on reservation lands. Tribal environmental protection projects may address all or part of a wide range of environmental concerns, from the air pollution problems associated with large-scale energy development to problems more typical of rural America, such as the provision of safe drinking water, and adequate sewage and solid waste disposal. Applicants eligible for this program are governing bodies of federally-recognized Indian reservations, or consortia of such governing bodies. A total of \$250,000 is available in fiscal year 1981 for new projects under this program. It is anticipated that 5 to 7 grants will be awarded. Grantees must provide 20% of the approved cost of the project. For more information, write:

Ms. Carol Jones  
Department of Health and Human Services  
Administration for Native Americans  
Room 5300, North Building  
330 Independence Ave., S.W.  
Washington, D.C. 20201  
Phone: 202/245-7776

Closing date for receipt of applications is July 13, 1981.

## ANNOUNCEMENTS

- The Department of Housing and Urban Development has published, in the April 14 issue of the Federal Register, its Interim Rule for the Comprehensive Improvement Assistance Program. Section 14 of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1980, substitutes for the existing Public Housing Modernization Program a new Comprehensive Improvement Assistance Program (CIAP). This rule sets forth the requirements for the CIAP under which HUD is

authorized to provide financial assistance to Public Housing Agencies (PHAs), including Indian Housing Authorities (IHAs), to improve the physical condition and upgrade the management and operation of existing public housing projects to assure that such projects continue to be available to serve low-income families. EFFECTIVE DATE: July 13, 1981. COMMENT DUE DATE: June 15, 1981. Send comments to: The Rules Docket Clerk, Office of General Counsel, Room 5218, Department of HUD, 451 7th Street, S.W., Washington, D. C. 20410. For further information contact:

Ms. Pris Peake  
Office of Public Housing  
Department of HUD  
451 7th St., S.W.  
Washington, D.C. 20410  
Phone: 202/755-5808 (this is not a toll-free number).

- ANDREW W. MELLOW, FACULTY FELLOWSHIP IN THE HUMANITIES AT HARVARD UNIVERSITY. For non-tenured, experienced junior scholars who have completed, at the time of appointment, at least two years post-doctoral teaching as college or university faculty in the humanities--usually as assistant professors. Ph.D. required and received prior to June 30, 1980. One-year appointment, July 1982-June 1983, with limited teaching duties, departmental affiliation, opportunity to develop scholarly research. Annual salary \$18,000. Applications due November 2, 1981. Awards announced January 29, 1982. For particulars and application procedures write:

Dr. Richard M. Hunt, Program Director  
Harvard University Mellon Faculty  
Fellowships  
Lamont Library 202  
Cambridge, MS 02138

- An Equal Opportunity/Affirmative Action Employer
- The Seventh International Indian Treaty Conference will be held June 4-11, 1981, in White Earth, MN. The purpose of the meeting is "...to develop the great international-treaty of fellowship and cooperation for the survival of Indian peoples of the Western Hemisphere." There will be Commissions: International Treaties; Agreements & Rights; Indigenous Philosophy and Land; Transnationals; Nuclear (Announcements continued on page 15)

## CROW REACT TO SUPREME COURT DECISION

Since the Supreme Court Decision in the case of Montana v. United States that affirmed the State's ownership of the Big Horn riverbed (see article on Supreme Court in this issue), members of the Crow Tribe have been in Washington attempting to gain support for their Petition for Rehearing. On May 8, 1981, the Crow attorney filed such a petition and, at the request of the Department of Interior, the Solicitor General filed a Motion for Modification of the Opinion.

The Solicitor General has asked the Court to add a footnote to the text of its opinion, stating that this case does not rule on aboriginal Indian title. If the Court accepts this modification, a "fee simple" title to the riverbed will be affirmed to the State of Montana, with the Crow having "exclusive use" privileges under aboriginal title. According to the Crow attorneys, the Supreme Court is rarely requested by the Solicitor General to modify an opinion. Because it is unusual, there is a good chance that the Court will accept the modification.

Ted Hogan, a Crow representative, noted, "Ken Smith, (the recently confirmed Interior Assistant Secretary for Indian Affairs) was instrumental in getting Interior to take positive action on behalf of the Crow Tribe. The decision to file the motion had been taken by Secretary Watt prior to our meeting with him."

According to a spokesman for the law firm representing the Crow Tribe, if the motion for Modification is accepted by the Court, there will be no need for a re-hearing as the Opinion will rest as modified. This means, however, that the issue of Aboriginal Indian Title will be left wide open and the precedent this case could have set for other tribal land claims cases will be severely weakened.

## NATIONAL TRIBAL GOVERNMENTS CONFERENCE CULMINATES IN DEMAND FOR SECRETARY WATT'S RESIGNATION

By ATB

The National Tribal Governments Conference (NTGC), sponsored by the National Tribal Chairmen's Association (NTCA) Native American Rights Fund (NARF) and a host of other Washington-based Indian organizations,

was held in Washington on May 6-7, 1981. According to reports from the Conference Committee, 149 tribes were in attendance at the meeting to discuss the "unfair budget cuts." Over the course of the two-day meeting, however, the tribal leaders attention became increasingly focused on the problem of communications with the Reagan Administration.

In a letter sent to President Reagan, the NTGC pointed out that they had come to Washington "...for the purpose of contributing to this Administration's efforts to curb inflation and restore economic stability to the United States by engaging in a government-to-government dialogue with Federal officials in order to agree upon a fair and equitable structure through which Indian Nations and programs would absorb our fair share of the Federal budget reductions."

The letter also charged that no one in "a responsible position has provided an opportunity for a discussion through which (the President's) major objectives, which we support, and the objectives of Tribal governments can be addressed in a rational and constructive fashion."

Mr. Franklyn Nofziger, Assistant to the President for Political Affairs, briefly addressed the gathering. A participant in the meeting noted that "Lyn Nofziger could only offer suggestions if Indians wanted to be political candidates on the Republican ticket...it is an insult when officials don't have time to provide valid input, advice, or answers." Wendell Chino, President of NTCA, commented that "Nofziger had nothing to say. It was a courtesy call and we had the courtesy to listen."

Assistant Secretary designate Ken Smith, along with Acting Assistant Secretary Canan, made an appearance at the meeting but could provide no substantive information or advice because he had not officially taken office.

Tribal leaders expressed outrage that Secretary Watt did not deign to attend the meeting despite numerous invitations by letter and phone calls. Secretary Watt's office denied any knowledge of the invitations dated April 14, 20, and 21, 1981, but did extend an invitation to a delegation of ten or fifteen tribal chairmen on the second day of the Conference. The NTGC, however, refused to send a delegation, asserting that Watt had a statutorily mandated obligation to meet with Tribal leaders.

Elmer Savilla a NTGC Co-Chairman noted that under Public Law 93-638 the Secretary of (continued on page 15)

## ANNOUNCEMENTS (CONTINUED)

Disarmament; Hunting & Fishing Rights;  
Tribal Governments; Desecration.  
For further information contact:

IITC

777 U. N. Plaza  
New York, NY 10017  
(212)986-6000 or

White Earth Indian Nation  
P. O. Box 481  
White Earth, MN 56591  
(218)983-3285 or

Federation of Survival Schools  
1209 S. E. 4th  
Minneapolis, MN 55414  
(612)379-1550

- An International conference on indigenous People and the Land is scheduled for Mid-September, 1981, in Geneva, Switzerland. The conference, sponsored by the NGO Sub-Committee on Racism, Racial Discrimination, Apartheid and Decolonization, is planned as a follow-up to the 1977 International Conference on Discrimination Against Indigenous Population in the Americas, which was held at the United Nations building in Geneva. Entitled "International NGO Conference on Indigenous Peoples and the Land." The conference will be held September 14-17, 1981. The planning committee anticipates that approximately 150 to 200 indigenous delegates, NGO representatives and interested persons will be invited to attend. Attendance is by invitation only. The work of the conference will center around four commissions:

(1) Land rights of the indigenous people, international agreements and treaties, land reform and system of tenure.

(2) Indigenous philosophy and land.

(3) Transnational corporations and their effect on the resources and land of indigenous people.

(4) The impact of the nuclear arms building on the land and life of indigenous peoples.

The Sub-Committee will soon ask various NGO's and indigenous groups to prepare and submit papers on the subject areas of each commission. The results and documentation produced by the

conference will be transmitted to the appropriate commissions and organs of the United Nations by the NGO's sponsoring the conference.

A tentative schedule has been adopted as follows:

Day 1 - Opening Plenary Session

Day 2 - Meetings of Commissions

Day 3 - Meetings of Commissions, informal discussions and preparation of reports.

Day 4 - Closing Plenary Session.

The NGO Sub-Committee will soon issue invitations to the conference. The Sub-Committee cannot, however, pay for travel or accommodations. Indian governments and others interested in attending or participating in, or submitting materials for the conference may contact the Indian Law Resource Center. The Indian Law Resource Center will be taking part in the Planning and implementation of the conference as a member of the NGO Sub-Committee.

## NATIONAL TRIBAL GOVERNMENTS CONFERENCE CULMINATES IN DEMAND FOR SECRETARY WATT'S RESIGNATION (CONTINUED)

Interior must consult with tribal councils before changing any major policies affecting Indians and before submitting budget estimates to Congress. Watt's "callous disregard of his lawful function and responsibility" prompted the demand for his resignation.

Morton Blackwell, the White House Public Liaison for American Indians, surmised that the frustration experienced by Tribal leaders derived from the fact that Ken Smith had not yet taken office. "There is a reluctance to make definitive statements regarding the Administration's Indian policy before the man is on board who is going to be the Administration's principal person to deal with Indian people. Once he is in place, I think you will find communications wide open."

# THE NATIONAL CONGRESS OF AMERICAN INDIANS

202 E. St. NE, WASHINGTON, D.C. 20002



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## ANNUAL CONVENTION

In the fall of 1944, groups and individuals who were concerned about American Indian rights called for a national Convention to be held in Denver, Colorado. Some 80 Indian delegates representing 45 Tribes were present at this Convention, and they created the National Congress of American Indians.

Plans for this meeting had been discussed for more than a year. At the outset, there seemed to be some possibility of obtaining funds from interested individuals and organizations to pay the expenses of the delegates. When, in the final days of planning, these early promises failed to materialize, a difficult choice faced the group. Either the Convention had to be postponed to a more favorable time and thus break faith with the Indians who had been assured that they would be called together, or they would have to proceed without any assurances that Indians thought enough of the plan to dip into their own pockets in support of it. All of this should explain the elation they felt at the size of the gathering.

After declaring the founding of the National Congress of American Indians, the Convention delegates adopted many resolutions which they had reason to believe could be achieved in the near future. Among the more notable measures were the following:

1. the appointment of a legislative agent to represent NCAI in Washington, D.C. to speak for or against legislation as it affected Indian affairs;
2. the establishment of a news publication to keep Indians informed on issues relating to their interests;
3. the formation of an in-service training program within the federal Indian Service program, so that Indians could be trained for government career service;
4. the securing of funds for scholarships for post-graduate training; and
5. the establishment of a legal aid bureau.

In addition, NCAI defined its types of membership (as well as proposing how to apply), they outlined the general policy of the organization, and they chose their officers (with respect to geographic location to insure that every area of Indian country was represented).

Following the tradition set by the first Convention, NCAI has brought its membership and other concerned groups and individuals together each year to address the needs of American Indians. At our most recent Convention held in October, 1980 at Spokane, Washington, the Convention delegates approved reports developed by each of the 9 issue committees (alcoholism and drug abuse, economic development, education, health, housing, human resources, Indian preference, natural resources and trust responsibilities). These reports defined what were the present and upcoming issues for each of the respective committees, outlined the problem areas, and stipulated courses of action that needed to be taken. Each committee chairperson then presented the report to the Convention floor where the delegates added, modified, or deleted what they

deemed necessary and then voted.

The site for the Convention is voted by the delegates two years in advance, and it is chosen with the same reasoning that NCAI used in electing its first officers, i.e., by geographic location to insure that each area of Indian country has the opportunity to attend and be a part of this most crucial event.

Anchorage, Alaska, has been selected as the site for the 1981 annual convention to be held October 12-16.



TRIBAL  
SOVEREIGNTY



# NATIONAL CONGRESS OF AMERICAN -INDIANS-

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## TRIBAL SOVEREIGNTY

There is a consistent body of law with origins flowing from precolonial America to the present day. This body of law is neither well-known nor well-understood by the majority of the American people. Although the perimeters of many operative concepts in Indian law are not measurable with ultimate precision, they can be broadly identified. Knowledge of these perimeters is a basic prerequisite to an understanding of any Indian policy issues.

It is well-established by federal Indian law and judicial doctrine from the earliest days of the United States that Indian Tribes are "distinct, independent political communities, retaining their original natural rights" in matters of self-government. Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 559 (1832). But federal Indian law had its roots long before 1776. There were as many years of legal contacts with American Indians before the Declaration of Independence as there have been since. Getches, Rosenfelt, Wilkinson, Federal Indian Law, p. 30 (West, 1979). As early as 1532 the Emperor of Spain was advised on the nature of aboriginal title by Franciscus de Victoria, "who established the

the foundations of modern international law." Cohen, "Original Indian Title," 32 Minn.L.Rev. 28, 44 n.34 (1947). Victoria concluded that Indians were the "true owners" of the "New World". This principle continued to be recognized as treaties were negotiated with the Tribes on a nation-to-nation basis until 1871.

The Supreme Court has repeatedly held that the Tribes have surrendered only those powers of sovereignty which are inconsistent with their dependent status. All other of their governmental powers still remain. As a result, Indian Tribes and the United States exercise a direct government-to-government relationship with one another. Part of that relationship requires the federal government to act as a trustee of Tribal lands and resources-- currently through the Department of Interior. Indian people are in fact citizens of two nations: in addition to United States citizenship (since Congressional action in 1924), Indians are members of their respective Tribal Nations. The application of federal policy to Indian people must be understood within this government-to-government relationship. Tribes are not "racial" or "ethnic" minorities. Tribes occupy a unique legal and political status vis-a-vis the federal government. The doctrine of inherent sovereign powers of Tribes bars, in part, the operation of state laws within the boundaries of Tribal lands and provides a backdrop against which applicable treaties and statutes must be read.

The materials that follow can best be understood within this unique framework.

## TRIBAL SOVEREIGNTY-NCAI AGENDAS

Such issues as termination, protection of Tribal water resources, preservation of Tribal self government, the provision of health, education and welfare and self-determination have been, among many specific issues, prominent on NCAI's annual agendas and in special conferences between Tribal governments. While each individual Tribal government has maintained its own distinct set of priorities, Tribal leaders have time and time again discovered a common need to pursue joint Tribal actions on broad issues that affect the internal security and progress of each of the individual Tribes. The goals upon which member Tribal governments have consistently agreed include the following:

1. The full exercise of Tribal government legal and political jurisdiction within the geographical boundaries of each Tribal territory.
2. The full expression of Tribal control over natural resources including, but not limited to, water, minerals, timber, fish and wildlife.
3. The full expression of Tribal control over health, welfare and social services to insure that every member of a Tribe has full access to health and welfare services.
4. The fulfillment of the United States government's obligation to preserve and protect the rights and property of Indian Tribes in accordance with its historic trust responsibility.
5. The prevention of the U.S. government and state government encroachments on Tribal rights and property.
6. The reacquisition of Tribal boundaries and Tribal lands.
7. Promote the continued political existence of Indian Tribes as distinct cultural and political communities.



**NATIONAL  
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202 E STREET, N.E., WASHINGTON, D.C. 20002 (202) 546-1168

RESOLUTION NO. 80-16

NATIVE AMERICAN RELIGIOUS FREEDOM

**EXECUTIVE DIRECTOR**

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*Poarch Band of Creeks*

**WHEREAS,** Tribal religious beliefs and practices are the cornerstone of Indian culture and are fundamental rights protected by the First Amendment to the United States Constitution; and

**WHEREAS,** Historically and presently the inherent freedom of American Indians to practice their tribal religions has been infringed upon by the actions of various agencies of the Federal government; and

**WHEREAS,** The findings of Congress in 1978 confirmed the above deplorable state of affairs; and

**WHEREAS,** The American Indian Religious Freedom Act, Pub.Law No. 95-341, 42 U.S.C. 1996 (1978) acknowledged that American Indians were in specific need of additional First Amendment protection and enunciated a national policy of "the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonies and traditional rites;" and

**WHEREAS,** Section 2 of the Act required the President to submit a report to Congress outlining appropriate federal administrative changes and recommended proposals for legislative action " necessary to protect and preserve Native American religious cultural rights and practice;" and

**WHEREAS,** Said report was submitted to Congress in August of 1979, and contains a large number of important recommendations for necessary administrative changes and identified areas of needed legislation; and

**WHEREAS,** The majority of the necessary administrative changes outlined in the report were never made by the Administration; and

**WHEREAS,** None of the proposed recommendations for legislative proposals under review by the Administration have ever been presented to Congress; and

**WHEREAS,** The Administration's failure to carry through with its recommended and necessary administration changes and legislative proposals has rendered the American Indian Religious Freedom Act, supra, a nullity, which has left American Indian religious practitioners subject to the same infringements and abuses at the hands of federal agencies; and

**NOW, THEREFORE BE IT RESOLVED,** that NCAI, representing tribes, calls upon President Reagan to sign the pending Executive Order--which resulted from the mandated one-year study and consultation with traditional tribal religious leadership, and which the previous Administration failed to promulgate--directing that the recommended agency administrative changes to go into effect, in order to fulfill the United States policy as stated in P.L. 95-341; and

**BE IT FURTHER RESOLVED,** that NCAI calls on the Congress to rigorously exercise its oversight obligations by immediately convening hearings to review the proposals for necessary legislation identified in the President's 1979 Report, and to enact all needed measures to preserve and protect the Indian people in the pursuit of religious rights and practice of traditional religions.

**CERTIFICATION**

The NCAI Executive Council, duly convened at the Mid-year Conference in Spokane, Washington, May 27-29, 1981, voted to approve this resolution.

**NATIONAL CONGRESS OF AMERICAN INDIANS**

---

**Etta Mae Horse**  
**Recording Secretary**



**NATIONAL  
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RESOLUTION NO. 98

BUREAU OF INDIAN AFFAIRS FUNDING REDUCTION

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*Poarch Band of Creeks*

WHEREAS,

The Bureau of Indian Affairs has the lead responsibility in providing services to Tribal governments under the trust responsibility; and

WHEREAS,

President Reagan's administration will implement massive budgeting cuts in most federal agencies; and

WHEREAS,

This predicted cut will potentially eliminate some 25% of B.I.A. finding; and

WHEREAS,

The services currently received by the tribes from the B.I.A. are inadequate.

NOW, THEREFORE BE IT RESOLVED, that the National Congress of American Indians requires that any potential cuts from the Bureau budget come from the Bureau Administrative costs rather than from Bureau services.

CERTIFICATION

The NCAI Executive Council, duly convened at the Mid-year Conference in Spokane, Washington, May 27-29, 1981, voted to approve this resolution.

NATIONAL CONGRESS OF AMERICAN INDIANS

---

Ella Mae Horse  
Recording Secretary

TRIBAL  
PRIORITIES







# NATIONAL CONGRESS OF AMERICAN -INDIANS-

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## BLOCK GRANTS: IMPLICATIONS FOR TRIBES

This section examines major issues and concerns surrounding the BLOCK GRANT proposals that several Federal departments and agencies have included in their budget plans for FY 82. Federal Social Services (DHHS), Education Services (ED), Health Services (DHHS) and Emergency Assistance of various types are each to be involved in block granting if existing plans offered by the departments and agencies are enacted. In each instance, block granting calls for: (1) a consolidation of funds from several specific programs into one, more inclusive funding operation; (2) a single award of such consolidated funds from the federal department or agency to the state or local level; such that (3) the state and local level authorities have the freedom to decide how, within a general set of restrictions or guidelines, funds from each block grant are to be directed to meet locally determined needs and concerns.

All parties are NOT in agreement, however, as to the wisdom of such proposals. Supporters of block granting claim that block grants allow for more coor-

dinated and flexible use of federal funds than is currently allowed under existing program and project-specific options. Opponents fear that local flexibility may lead to abuses in the use of federal funds, especially given the lack of experience of many local authorities in planning and management tasks at this scale; the absence of guarantees of federal oversight over the use of federal funds once they have been block granted is also of concern to some.

The procedures that the participating departments or agencies will use to administer their block grant programs are likewise subject for consideration and concern. Not all of the departments or agencies have worked out all of the mechanical dimensions of their proposals. Changes in the legislation which enables each of the programs to be consolidated into each of the block grants will be required in almost every case. This may entail separate actions by each of the Congressional Committees having jurisdiction of each of these programs before a consolidation of funding for block grant purposes can be attempted.

The Department of the Interior's proposal to consolidate and block grant ten of the programs enabled by the Snyder Act (including both BIA education monies, Employment Assistance, Housing, and other programs) may be the one block grant proposal which can be implemented without legislative action. There are still many unanswered questions about the BIA's preparedness to shift into a block grant format for delivery of funds to Tribes. Tribes themselves have raised additional concerns over the prospect of BIA support for

Tribal services being delivered to Tribes through a block grant format. The sample of Tribal resolutions and position statements included in this section clarifies the nature of many of these concerns and sets minimal standards against which ANY block granting program designed to serve Tribal interests will undoubtedly need to be measured.

Also included in this section is a detailed legal analysis of the block grant issue and the alternatives open to Tribes when they participate in such a program. As the paper shows, the Judicial, Congressional and Executive branches of the Federal government have long recognized and upheld the inherent sovereignty of the Tribes and have, in most instances, used this principle of Tribal sovereignty as the basis for delivery of services to Tribes. Tribal sovereignty, in essence, calls for a government to government relationship which links each of the Tribes to the whole of the federal system, with the Bureau of Indian Affairs acting as a lead agency in maintaining that relationship. Both principles-- Tribal sovereignty and the government to government relationship are violated if, under any block granting system, Tribes are forced to seek funding for Education, Health, Human Services, Housing or other programs out of the federal funds already block granted for this purpose to a state government or a state-level agency. For block grants to go directly to Tribal governments, or failing that, to the Department of the Interior for redistribution to the Tribes, is much more appropriate under these circumstances.

Tribal opposition to any attempt to involve state governments in the delivery of federal services to Tribes-- such as would emerge

if Tribes were not eligible to receive block grants directly from the federal level -- is forcefully outlined in the resolution on this issue, passed unanimously by the Tribal delegates attending the NCAI Midyear Convention, May 27-29, 1981. A copy of that statement introduces the materials which follow in the remainder of this section.



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**INDIAN PARTICIPATION IN THE PROPOSED  
BLOCK GRANT PROGRAM**

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Tribes are accustomed to dealing with the federal government on a direct basis; reservation boundaries often cross state lines; and because of their status as federally regulated entities tribes do not fare well in competition with the political components of states for funds. Designation of Indian tribes as separate sovereignties, dealing with the federal government on a government-to-government basis is consistent with a very long line of statutory authority, judicial precedent, and Executive policy.

**II. Judicial Recognition of Tribal Sovereignty**

The special status of Indian tribes, as distinct sovereignties, is based on a line of judicial precedent which extends well back into the nineteenth

century. In 1886, in the Kagama case,<sup>1/</sup> the United States Supreme Court concluded that the federal government should assume jurisdiction over crimes committed by Indians on Indian reservations. The court reasoned that state sovereignty extends over organized bodies which are subordinates of the state, such as cities and counties, and that federal sovereignty controls such federally created subordinate governments as territories and Indian reservations.<sup>2/</sup> The Court noted that:

"[b]ecause of the local ill feeling, people of the States where they [Indians] are found are often their deadliest enemies."<sup>3/</sup>

The Court's terminology may be a bit outdated, but the general principle is still true. There is competition between the subordinate bodies of the state and the Indian tribes within states for available funds and the tribes need their traditional federal protection to compete.

Although there have been many changes in the relationship between Indians and the States, the Supreme Court continues to recognize Indian tribes as organizations which are not a part of any state

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1/ United States v. Kagama, 118 U.S. 375.

2/ Id. at 379.

3/ Id. at 384.

and not subject to state control. Kagama is cited today as basic law.<sup>4/</sup>

Not only has the Court continued to recognize Indian tribal governments as independent of state governments, the Court has held that in some respects, Indian tribes have inherent sovereignty, separate and apart from federal sovereignty, saying:

"Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status." United States v. Wheeler, 435 U.S. 313, 323 (1978).

Finding the right to punish members to be such an inherent right, the Court ruled that tribal and federal prosecutions are brought by separate sovereigns. They are not "for the same offense" because each is for violation of the respective sovereigns' separate laws. Id. at 329-30.

The Indian tribe as a separate sovereign is not an empty phrase. In addition to the right to punish its own members for infringement of its laws (and the right implied thereby, to enact laws for the

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<sup>4/</sup> In McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164, 173 (1973), the Court quotes the Kagama language dealing with Indian sovereignty as "still true as it was in the last century" despite the Indians' right to vote, use state courts and receive some state services. See also United States v. Mazurie, 419 U.S. 544, 557 (1975), quoted with approval, United States v. Wheeler, 435 U.S. 313, 323 (1978), "Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory . . . ."



government of its members), the United States Supreme Court has recognized other inherent rights of self-government. Some of these were noted by the Court in its March 24, 1981, decision in Montana v. United States, slip op. at 18-19:

"[I]n addition to the power to punish tribal offenders, the Indian tribes retain their inherent power to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members.

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"To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements . . . . A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."

Along with defining the separate sovereignty of the Indian tribes, the Court has emphasized congressional intent to strengthen tribal self-government. To that end, over the objection that nondiscrimination statutes applied, the Court approved the Bureau of Indian Affairs' Indian employment preference which the Court found

"reasonable and rationally designed to further Indian self-government."<sup>5/</sup> The decision, thus, besides encouraging legislation designed to further Indian self-government, authorizes special treatment for Indians to achieve that end.

The many cases that have reached the United States Supreme Court and the Courts of Appeals in the recent past resulting from litigation between Indian tribes and the states, within whose boundaries the tribes are located, are indicative of what will happen if Congress does not treat Indian tribes as separate governmental entities authorized to receive a share of funds distributed as block grants directly from the federal government. Only through extensive litigation have the tribes maintained their tax exemption,<sup>6/</sup> their right to tax,<sup>7/</sup> their right to hunt and fish,<sup>8/</sup> their right to govern their own people.<sup>9/</sup> Distribution of

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<sup>5/</sup> Morton v. Mancari, 417 U.S. 535, 555 (1974).

<sup>6/</sup> E.g., McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164 (1973); Mescalero Tribe v. Jones, 411 U.S. 145 (1973); Moe v. Confederated Tribes, 425 U.S. 463 (1976).

<sup>7/</sup> E.g., Buster v. Wright, 135 F. 947 (8th Cir. 1905), appeal dismissed, 203 U.S. 599 (1906).

<sup>8/</sup> E.g., Washington v. Fishing Vessel Ass'n, 443 U.S. 658 (1979).

<sup>9/</sup> E.g., United States v. Wheeler, 435 U.S. 313 (1978); Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).

the block grants by the states will involve a great deal of discretion on the part of state officials charged with the distribution. Indian tribes should not be put in the position of having to challenge such discretionary acts.

### III. Congressional Recognition of Tribal Governmental Authority

Historically, congressional ratification of Indian treaties demonstrates the fact that tribes were considered as independent sovereignties exercising governmental authority over their members and their territory. This notion has carried through to modern statutory law and Congress, as well as the judiciary, has consistently recognized tribes as units of government having responsibility for a broad spectrum of reservation affairs.

The Indian Reorganization Act of June 18, 1934, 48 Stat. 984, 25 U.S.C. §§ 461 et seq. ("IRA"), clarified and confirmed the status of Indian tribes and established a mechanism by which they could "assume a greater degree of self-government, both politically and economically." Morton v. Mancari, 417 U.S. 535, 542 (1974). Tribal constitutions adopted under the IRA and approved by the Secretary of the Interior typically provide that the tribal governing body shall have broad governmental

authority to promulgate and enforce ordinances regarding tribal property, wildlife, natural resources, health, safety, morals and general welfare.

The recognition of tribal responsibility for exercising basic governmental functions has been reaffirmed by Congress in numerous later statutes, which provide that tribes are eligible for direct federal block grants and revenue-sharing. These laws include the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450; the Indian Financing Act of 1974, 25 U.S.C. § 1461; the Indian Health Care Improvement Act, 25 U.S.C. § 1601; the Tribally Controlled Community College Assistance Act of 1978, 25 U.S.C. § 1801 (Supp. III 1979); and the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 (Supp. III 1979). In addition, a variety of general federal programs are implemented through local governments which are defined to include Indian tribes. For example, the Juvenile Delinquency Prevention and Control Act, 42 U.S.C. § 3891(2), provides that the term "public agency" means a duly elected political body, including an Indian tribe, while the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4841(2), provides for grants to "units of general local government" which are defined to embrace Indian tribes. Federal food stamp and food distribution programs