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provide assistance to enable tribes to qualify as the relevant "state agency" responsible for administering reservation food programs for Indians and non-Indians. 7 U.S.C. §§ 2012(n)(2), p. 2013(b), 2020(d) (Supp. III 1979). Tribal authority is indicated in the relevant definition of "reservation" as "the geographically defined area or areas over which a tribal organization . . . exercises governmental jurisdiction." 7 U.S.C. § 2012(j) (Supp. III 1979). Tribes also receive federal revenue-sharing funds under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. § 1227(b)(4).

Congressional recognition of the role of Indian tribes as governing bodies extends beyond programs dealing with tribal members to general jurisdiction over many aspects of reservation life. Decisions regarding environmental protection are among the most important and basic functions of government, and federal environmental statutes have consistently recognized tribes as the governing bodies with responsibility for environmental decisions affecting reservations. For example, the Clean Air Act Amendments of 1977, 42 U.S.C. § 7470, 7474(c) (Supp. III 1979), provide that tribes determine how clean reservation air must be, and reservation lands "may be redesignated only by the appropriate Indian governing body." Congress also has recognized Indian

tribal authority over reservation ecology in a variety of other statutes, including the Federal Water Pollution Control Act, 33 U.S.C. § 1362(4), the Solid Waste Disposal Act, 42 U.S.C. § 6903(13), and the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1232(g)(2) (Supp. III 1979).

IV. Presidential Recognition of Tribes as Governments

Every recent President has expressed strong commitment to the sovereignty and self-determination of Indian tribal governments. President Nixon's landmark, July 8, 1970 Message to Congress, 116 Cong. Rec. 23258, 6 Pres. Doc. 894, outlined the severe problems faced by American Indians and proposed solutions focused around measures designed to strengthen the tribal governmental authority over basic services and the delivery of federal programs. Presidents Ford and Carter reaffirmed federal support for tribal self-determination.

More recently, President Reagan eloquently reaffirmed the traditional position of the Executive Branch, stating that:

"I support tribal sovereignty and self-determination for federally recognized American Indian tribal governments.

* * * *

"The traditional relationship between the United States and Indian governments is a 'government-to-government' relationship'.

History tells us that the only effective way for Indian reservations, and Indian communities, to develop is with local Indian leadership. Bearing in mind the legal and historical background, tribal governments must play the primary role in Indian affairs. State and non-Indian local governments can at best play only a secondary role."

V. Inclusion of Tribes in Proposed Reagan Administration Block Grant Program

There exists two alternatives concerning funding of tribes through the block grant process: (1) direct funding to Tribal Governments, or (2) utilization of the B.I.A. as a 51st jurisdiction.

States may regulate tribes only to the extent permitted by Congress,^{10/} and Congress has authorized relatively little state interference with tribal governments. Thus, tribes currently provide their members and others living in their communities with public services comparable to those provided by federal, state and municipal governments. Many tribal budgets total millions of dollars covering a broad range of governmental functions including police and fire protection, tribal court systems, public utilities, community services, including health care, education, housing, old age assistance, alcoholism and juvenile delinquency treatment programs, wildlife and natural resource management, and environmental programs. While not all tribes offer all

^{10/} As the Supreme Court held in McClanahan v. Arizona State Tax Comm'n, *supra*, 411 U.S. at 168, "'(t)he policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation's history.' Rice v. Olson, 324 U.S. 786, 789 (1945)."

of these services, tribal governments often provide the only available source of essential services such as fire protection, water, sewage and garbage disposal, for both Indians and non-Indians on reservations.

Despite the commitment of Indian tribes to the provision of adequate services, many lack the necessary resources, and it is still true, as President Nixon said in his 1970 message to Congress:

"The first Americans—the Indians—are the most deprived and most isolated minority group in our nation. On virtually every scale of measurement—employment, income, education, health—the condition of the Indian people ranks at the bottom."

Therefore, it is essential that the federal government fulfill its trust responsibility to American Indians by effectuating the national policy, enunciated by the Supreme Court, Congress and the Executive Branch, of supporting tribal governmental sovereignty through inclusion of Indian tribes in any proposed federal grant programs.

A recent study showed that tribal governments were eligible for direct access to nearly 70% of the 598 federal domestic assistance programs surveyed.^{11/}

^{11/} Final Report on Tribal Government of Task Force Two of the Congressionally established American Indian Policy Review Commission at 60-63, citing study of Statutory Barriers to Tribal Participation in Federal Domestic Assistance Programs, American Indian Law Center for Native American Technical Assistance Corporation.

It is important that any new block grant programs continue to provide federal funds directly to tribes, rather than force tribes to seek such funds through the states whose own political subdivisions will be competing with tribes for scarce resources.

The existing mechanism for distributing funds under the Highway Safety Act ^{12/} offers a useful example of how the federal government can provide funds directly to tribes rather than forcing tribes to request funds after they have been distributed to states. Basically, in allocating funds, the Bureau of Indian Affairs serves as a separate jurisdiction, with the relevant statute defining "State" and "Governor of a State" to include the Secretary of the Interior, and "political subdivision of a State" to include an Indian tribe.^{13/} The Bureau receives a fixed percentage of total funding for states, and then distributes the money pursuant to project agreements with tribes.

Treatment of the BIA as a distinct jurisdiction in allocating the Reagan Administration's block grant programs would enable more efficient and equitable

12/ 23 U.S.C. § 401.

13/ 23 U.S.C. § 402(i).

distribution of funds to tribes through existing administrative channels rather than compelling states to set up new bureaucracies to decide the amount and manner of delivering funds to Indian reservations, many of which cross state and county boundaries.

PUEBLO DE ACOMA

"THE SKY CITY"

P. O. Box 309

PUEBLO OF ACOMA, NEW MEXICO 87034

OFFICE OF THE GOVERNOR

TELEPHONE (505) 552-6606

RESOLUTION NO. TC-MAY-2-81

POSITION OF THE ACOMA TRIBAL COUNCIL ON THE BUDGETARY CUTBACKS AND THE PROPOSED FUNDING UNDER THE BLOCK GRANT CONCEPT.

At a duly called meeting of the Acoma Tribal Council which was convened and held on this 2nd day of May, 1981; the following Resolution was adopted:

WHEREAS:

- SECTION NO. 1 The Acoma Tribal Council is the sole governing body of the Pueblo of Acoma as recognized in the treaty of Guadalupe Hidalgo of 1848 (9 Stat. 922) and reapproved by the Indian Reorganization Act of 1934 (48 Stat. 984), and
- SECTION NO. 2 The Acoma Tribal Council is immensely concerned over the adverse impacts that the proposed cutbacks will have on the social and economic environment at the Pueblo of Acoma, and
- SECTION NO. 3 The ultimate goal of self-determination and economic self-sufficiency as conceived under the Indian Self-determination and Indian Education Assistance Act (PL93-638), is undermined by the administrative plan of the Reagan administration, and
- SECTION NO. 4 The Acoma Tribal Council is also concerned of the methodology proposed to be utilized in the allocation of funds to tribal governments known as funding under the block grant.

NOW THEREFORE BE IT RESOLVED:

- SECTION NO. 1 That because of the special government to government relationship that exists between the Pueblo of Acoma and the United States Government under the treaties and documents previously mentioned, the Acoma Tribal Council urges the various committees in the House of Representatives and the Senate to act favorably on behalf of Services to Indian people, the elderly, the handicap and American Veterans; and
- SECTION NO. 2 That through the submission of the attached documents, the Acoma Tribal Council takes the position to continue and increase appropriations to address various needs identified at the local level, and
- SECTION NO. 3 That consideration be given to the method of appropriating funds to the tribal government recognizing the unique status of tribal needs and culture.



ATTEST:

Jack S. Francisco
Secretary, Pueblo of Acoma

Francisco J. Castillo
Governor, Pueblo of Acoma

Robert D. ...
1st. Lt. Governor

Frank L. ...
2nd. Lt. Governor

Alfred J. ...
Head Councilman

Fred S. ...
Councilman

A. Seymour Jr.
Councilman

Fernando ...
Councilman

Alfred L. ...
Councilman

CERTIFICATION

I, the undersigned as Governor of the Pueblo of Acoma, "Sky City," hereby certify that the Acoma Tribal Council, at a duly called meeting which was convened and held on the 2nd day of May, 1981; at the Pueblo of Acoma, in the state of New Mexico, approved the foregoing Resolution, a quorum being present, and that 9 voted for, and 0 opposed.



[Signature]
Governor, Pueblo of Acoma

ATTEST:

[Signature]
Secretary Pueblo of Acoma

Acoma Pueblo is a federally recognized tribe with some 2,812 members living on or near some 94,169 acres of trust lands, in the state of New Mexico. Of the 2,812 members, 58% are 25 years of age and approximately 1,077 within this Labor Force, of this 32.31% are unemployed.

The Acoma Tribal Council has taken a firm position in the commitment of the principle of self-determination and has began gradually contracting of B.I.A. and I.H.S. programs. We have also taken steps in establishing a central services system to implement these programs on the reservation, which is inclusive of Financial accounting, purchasing and personnel department.

Our overall concern now is the effect that block grants in general and the proposed tribal government services consolidation will have on tribal self-determination.

The main concern dealing with the special trust relationship with federal government and the authorities granted to tribal governments by Congress under P.L. 93-638, the Indian Self-Determination and Educational Assistance Act or P.L. 95-561, the Educational Amendment Act of 1978, will have adverse effects by putting a deriment to our policy and procedures and systems which have been established. It is the policy of the United States in keeping with treaties (February 2, 1848, 9 STAT 929) understanding the long established customs to provide certain necessary services and facilities to Native Americans, so it is with this that we must continue to have the federal government recognize this special government to government relationship.

Other concerns that have been discussed in the Acoma Tribal Council are as follows:

1. Although it may be too late to amend the President's budget submission, we urge that the block grant proposal be carefully analyzed because our concern is funding distribution to tribal government. The question the Council has is; has there been a formula been developed for distribution of these funds and will the funding meet the needs of our multi-tribal agencies. Again we seem to be faced with the Zero Based Budget (ZBB) situation and yet as one of our tribal councilman put it so well "you start with a zero budget and end up with zero". The proposed block grant proposal for our small tribes basically will terminate our much needed services.
2. In the consolidation and budget reduction, the Department is proposing to reduce indirect costs in the like amount. It seems that the Bureau has never requested sufficient funds to cover contract support and it seems more tribes are now faced with a very small recovery of the indirect costs due them. We must therefore, emphasize that indirect costs set by each cognizant federal agency as the actual percentage amount that a tribe or organization must have to adequately administer its programs and that a reduction would again drastically affect our program operations.
3. The four educational programs that are included within the newly created Office of Indian Education as established by P.L. 95-561, which are

now included within the proposed consolidation. The Council feels that the administration of these programs, as well as the funding formulas, have already been established in the rules and regulations to guide the implementation of Title XI. These type of criterias apply uniquely to Indian education funds. This unique status will no longer be retained, if Indian education dollars are to consolidated and distributed along with monies from other segments of B.I.A..

Block grants to state governments for many of our programs now administered by the federal government is of great concern to the Tribal Council of Acoma. Again, the proposed consideration of education programs in the U.S. Department of Education has been drafted without any consideration of tribal sovereignty. The government to government relationship guaranteed in the treaties and trust agreements obligates the federal government to provide educational services directly to our tribe. State Education Authorities (SEA's) have no such trust responsibility in Indian education. Therefore, the federal government's obligation to the tribes must not be disregarded by any plan to consolidate D.O.E. programs and administer them through block grants.

Therefore, it is the strong feeling of the Acoma Tribal Council, that while we express willingness to accept our fair share of the budget cuts, we cannot continue to deprive our people, opportunities in meaningful training and employment; deprive them of adequate housing; deprive them of general assistance and deprive our children of a decent educational opportunity.

We ask that within your deliberation on these particular issues and concerns you and your colleagues not forget its long standing committment and responsibility to the Native American People of this nation.

Thank you.



THE PAPAGO TRIBE OF ARIZONA

P.O. Box 837

Telephone (602) 383-2221

Scottsdale, Arizona 85634

The Papago Tribe has become very concerned over the budget cuts and the Consolidated Tribal Governmental Programs as proposed by the Bureau of Indian Affairs. We are once again placed on the receiving end of the Bureau's total insensitivity to tribal needs and tribal self-determination. It has become very apparent to us that the Bureau's priorities are only those which will allow its own bureaucracy to grow while our local needs continue to be unmet and our funding of local programs continues to decrease.

On behalf of the Papago Tribal Council and all our people, I urge you to consider our attached resolutions and our tribal position paper regarding these proposed cuts. We are aware that federal spending and bureaucratic waste have made it necessary to take the appropriate steps to curb this waste and to bring the economy back into line. We feel we must be active participants in this process and that our recommendations will help to achieve this end.

We again thank you for your consideration of our recommendations and assure you that we are prepared to give our input. We would also like to extend an invitation to you and your staff to visit the Papago Reservation so that you may better understand our needs.

Respectfully,

*Max H. Norris, Chairman
The Papago Tribe of Arizona*

RESOLUTION OF THE PAPAGO TRIBAL COUNCIL
(Tribal Response to Reagan's Proposed Funding Cuts)

RES. NO. 29-31

1 WHEREAS, the Reagan Administration has proposed cuts in the federal budget
2 affecting social, educational, employment, housing and economic
3 development programs which would have disastrous effects upon
4 Indian reservations; and
5 WHEREAS, the Papago Council is deeply concerned about the effect of the
6 proposed cuts on the Papago Tribe and Reservation; and
7 WHEREAS, the Reagan Administration has further proposed to consolidate
8 federal funding for such programs into block grants to the
9 several States; and
10 WHEREAS, federal program funding through State agencies, such as Title XX,
11 Social Security funding, as either totally failed to reach the
12 Papago Tribe or has had such State criteria attached so as to
13 make the programs non-responsive to the needs of the Papago
14 Tribe; and
15 WHEREAS, the Papago Council objects to the use of block grants to fund
16 federal programs on Indian Reservations unless such grants are
17 made directly to Indian tribes or to the Bureau of Indian
18 Affairs for Indian tribal governments.
19 NOW, THEREFORE, BE IT RESOLVED by the Papago Council that it does hereby
20 direct the program directors and the officers of the Papago Tribe
21 to develop a plan and response of the Papago Tribe to the proposal
22 of the Reagan Administration to cut federal social, educational,
23 employment, housing and economic development programs, and in
24 response to the proposal of the Reagan Administration to consolidate
25 funding for such programs into block grants to the States rather
26 than directly to Indian tribes or the Bureau of Indian Affairs for
27 Indian tribal governments.
28 BE IT FURTHER RESOLVED that the Papago Council herewith calls upon the
29 President of the United States, the Honorable Dennis DeConcini,
30 the Honorable Barry Goldwater, the Honorable John J. Rhodes, the
31 Honorable Eldon Rudd, the Honorable Bob Stump, the Honorable Morris
32 K. Udall, and all other members of the United States Congress to

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consider the foregoing Papago Tribe's plan and response of the
Papago Tribe.

The foregoing Resolution was duly enacted by the Papago Council on the 5th day of March, 1981, at a meeting at which a quorum was present with a vote of for; against; not voting; and absent, pursuant to the authority vested in the Papago Council by Section 2 (a), (d) and (f) of Article V of the Constitution and By-Laws of the Papago Tribe of Arizona as amended, ratified by the Papago Tribe on December 12, 1936, and approved by the Secretary of the Interior on January 6, 1937, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984). Said Resolution is not subject to review by the Secretary of the Interior and is effective as of the date of its enactment by the Papago Council.

THE PAPAGO COUNCIL

Max H. Morris
Max H. Morris, Chairman

ATTEST:

Rose Johnson
Rose Johnson, Secretary

OMAHA TRIBE OF NEBRASKA

Omaha Tribal Council

P. O. Box 368
Macy, Nebraska 68039

Phone (402) 837-5391

EXECUTIVE OFFICERS

ELMER L. BLACKBIRD, CHAIRMAN
MARK A. MERRICK, VICE CHAIRMAN
LEMUEL A. HARLAN, SECRETARY
DENNIS P. TURNER, TREASURER



MEMBERS

HOLLIS D. STABLER JR.
DORAN L. MORRIS
EDWIN WALKER

April 20, 1981

Honorable Douglas Bereuter
U.S. House of Representatives
Washington, D. C.

Dear Congressman Bereuter:

The Omaha Tribe of Nebraska is submitting the attached Resolution No. 81-55 as our testimony, recommendations, and objections in reference to the Bureau of Indian Affairs FY-82 budget, Tribal Consolidated Block Grant Program, and State Block Grant Program.

We question the validity and legality of some testimony already submitted by the Department of Interior and Bureau of Indian Affairs to various Congressional Committees on the impact of the reductions and statements that legislation nor regulations need not be revised, etc.

We recommend that the attached resolution be reviewed and given serious consideration in your deliberations. The final decisions will have a profound impact upon the future of the Omaha Tribe, other Indian Nations, and Indian people nationwide.

If the Omaha Tribe of Nebraska can be of further assistance by providing additional information or testifying, please contact us.

Sincerely,

Elmer L. Blackbird
Chairman

OMAHA TRIBE OF NEBRASKA

Omaha Tribal Council

P. O. Box 368
Macy, Nebraska 68039

Phone (402) 837-5391

EXECUTIVE OFFICERS

ELMER L. BLACKBIRD, CHAIRMAN
MARK A. MERRICK, VICE CHAIRMAN
LEMUEL A. HARLAN, SECRETARY
DENNIS P. TURNER, TREASURER



MEMBERS

HOLLIS D. STABLER JR.
DORAN L. MORRIS
EDWIN WALKER

RESOLUTION

Resolution No. 81-55

WHEREAS: the Omaha Tribe of Nebraska is a Federal Corporation chartered under the Act of June 18, 1934 (Stat. 984) as amended and

WHEREAS: the Omaha Tribe objects to the proposed B.I.A. FY-82 budget cuts and other actions,

NOW THEREFORE BE IT RESOLVED THAT:

the Omaha Tribe of Nebraska respectfully submits the following testimony to the President and Congress of the United States of America.

The Omaha Tribe of Nebraska is one of three tribes which is served by the Winnebago Agency. We agree in the principal that the economy of the United States needs to be straightened out, however, we object to the manner in which the Omaha Tribe and other Indian tribes are being treated in this regard.

We want to point out several issues in reference to the Bureau of Indian Affairs FY-82 Budget and the Block Grant Program.

I. FY 82 BUDGET CUTS OF 10 TRIBAL PROGRAMS BY 25 PER CENT

Unknown to many people, the three tribes in Nebraska have been contributing to this nations Economic Recovery for the past few years as reflected by the following statistics:

The Winnebago Agency and tribal budgets were reduced 12% in FY-79 from the FY-78 budget base; the FY-79 base was cut another 5% for FY-80, the FY-81 base remained the same as the FY-80 base. Our base budget was reduced by 17% in this period while at the same time absorbing the high inflation rate. Now we are being asked to absorb another 25% reduction in our FY-82 tribal programs.

We have already absorbed a 17% reduction in programs, coupled with a minimum of 25% inflation for a minimum of 42% the past three years. We feel justified in asking for no cuts in FY-82 because we have already done our share of reducing program services for the past three years.

II. B.I.A. BUDGET VERSUS TRIBAL PROGRAMS

The Bureau of Indian Affairs administrative budget has increased 274 per cent the past five years. Under Secretary Hodell in his testimony before the House Interior and Insular Affairs Committee on March 31, 1981 stated that the Department of Interior budget was to be reduced by 18% but BIA budget was being reduced only 7%!! From this 7%, the BIA is imposing a 25% reduction on tribal programs. This is not acceptable! We recommend that:

The BIA Central Office staff be significantly reduced and the Area Offices eliminated entirely. We never see these people anyway and with these savings realized, tribal programs could be increased, Agency BIA personnel increased (this is where we need BIA staff for technical assistance) and a reduction in the BIA budget could still take place. The Omaha Tribe wholeheartedly supports a move that would result in more flexible dollars being available to the reservation level in the following manner: 1. tribal programs, 2. agency level programs, 3. direct line funding from Central Office to Tribe/Agency, 4. put contracting authority at agency level where it belongs.

III. CONSOLIDATED TRIBAL BLOCK GRANT PROGRAM:

The Omaha Tribe does not accept the Block Grant Program with the available data we have on hand. The concept we endorse, but we have to have additional information on how it is to be administered, the funding level, and its future impact. We need additional concrete data, time to study it, and evaluate it.

IV. BLOCK GRANTS TO STATES WHICH "INDIAN" MONIES ARE INCLUDED

The Omaha Tribe is strongly opposed to any system that will cause us to justify to States our needs for our reservation programs. This suggested procedure is in violation of the Federal Government's "trust" responsibility to Indian tribes. We recommend the BIA be made a 51st state and these funds be channeled directly to the tribes through the BIA.

V. GENERAL ISSUES OF CONCERN

1. The Block Grant proposal has not been in consultation and participation with Indian tribes as mandated by P.L. 93-638.
2. The programs placed in the Block Grant has not had the concurrence of tribes. These programs do not reflect individual tribal priorities, only national priorities. Who decided which programs should be included? Why not all B.I.A. programs?

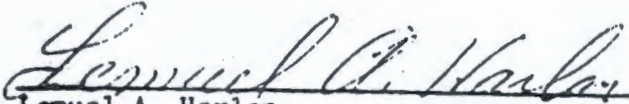
3. The very programs that are providing the greatest impetus for Indian movement toward self-sufficiency are the ones that are being totally eliminated or the most drastically reduced.
4. The time element for the implementation of the Block Grant program in our opinion is administratively impossible. The BIA Contracting Offices still can't administratively handle P.L. 93-638 contracts in an efficient manner after six years of experience.
5. Education should not be included in the Block Grant due to the mandates of Section 1126 of P.L. 95-561.
6. Johnson O'Malley should not be included in the Block Grant proposal due to the P.L. 93-638 formula funding requirements and the conflict of authority for JOM Programs which would exist between parent committees and tribal governing bodies.
7. The Block Grant concept with the proposed budget level will create a Warring Ground among individual tribal members.
8. The proposed 25% reduction in tribal programs will have a devastating effect upon the economy, welfare, and lives of Omaha tribal members. We have tempted to use Self-Determination to its fullest by establishing priorities through P.L. 93-638 and the ZBB process only to learn that the Federal Government is causing this system and Tribes to fail by imposing an unrealistic devastating budget reduction on the programs that have been proving beneficial results to Tribes and their members. Is this a move toward Tribal Termination in the 80's???

The Omaha Tribe is opposed to Indian tribes and Indian people being considered or classified as a "minority" group. It is true that Indian people do not have the numbers as other races, however, there are over 4,000 federal laws and numerous treaties that guarantee and spell out the U.S. Government's responsibilities to this country's first inhabitants. The President and Congress of the United States must realize that they do not have a responsibility to the Department of Interior nor the Bureau of Indian Affairs, but they do have a responsibility to Indian Nations and Indian People. This is clearly spelled out by the 93rd Congress in its Declaration of Policy-P.L. 93-638.

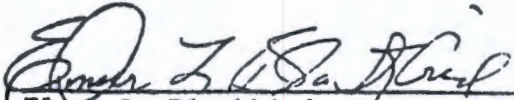
Tribal Self-Determination and Indian self sufficiency will only become a reality when tribes have true input into the budget process and high administrative governmental overhead and the governmental middle men are eliminated from the system. The FY-82 budget restriction being imposed upon us are not in the spirit of Indian Self-Determination.

CERTIFICATION

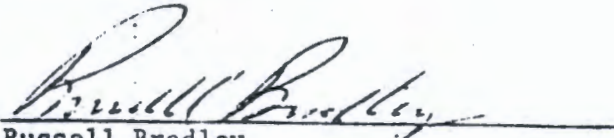
This is to certify that the foregoing resolution was considered at a meeting of the Omaha Tribal Council of the Omaha Tribe of Nebraska duly called and held on the 21 day of April, 1981, and was adopted by a vote of 5 for, 0 against, and 2 not voting or absent. A quorum of five were present.


Lemuel A. Harlan
Secretary - Omaha Tribe

Attest:


Elmer L. Blackbird
Chairman - Omaha Tribe

Received:


Russell Bradley
Superintendent - Winnebago Agency

COUNCIL OFFICERS

TRIBAL CHAIRMAN

Reuben A. Snake, Jr.

VICE - CHAIRMAN

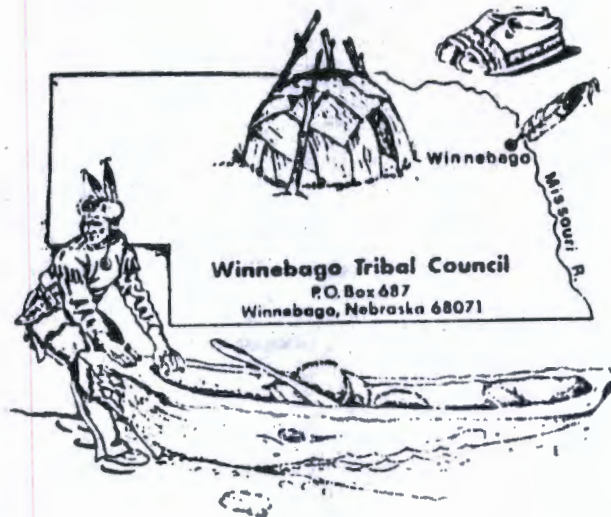
Sam Tebo, Sr.

SECRETARY

Jeanette Rice

TREASURER

John D. Decora



MEMBERS

Karl Baker

Dorothy Holstein

Alvin Kelsey

David L. Snow

Neola E. Walker

402 - 878-2272

April 22, 1981

National Congress of American Indians
202 E. Street, N. E.
Washington, D. C. 20002

Dear Mr. Andrade:

The Winnebago Tribe of Nebraska is submitting the attached Position Statement which serves as our comments on the Bureau of Indian Affairs FY-82 budget and the administration's Block Grant proposals.

We are energetically striving to become truly self-sufficient. We have an objective of 1990 to achieve that goal. Between now and then we need continued federal support in all areas of our endeavors.

Any further reductions in our funding will seriously jeopardize if not outright undermine and destroy our efforts towards true self-reliance.

We sincerely hope the U.S. Congress can see what the Executive cannot. That is, that drastic reductions and even total elimination of "poor peoples programs" are not the answer to our nations financial woes but, in fact, said reductions in program and dollar resources will only generate even more serious problems.

Sincerely yours,

Reuben A. Snake, Jr.
Chairman

COUNCIL OFFICERS

TRIBAL CHAIRMAN

Reuben A. Snake, Jr.

VICE - CHAIRMAN

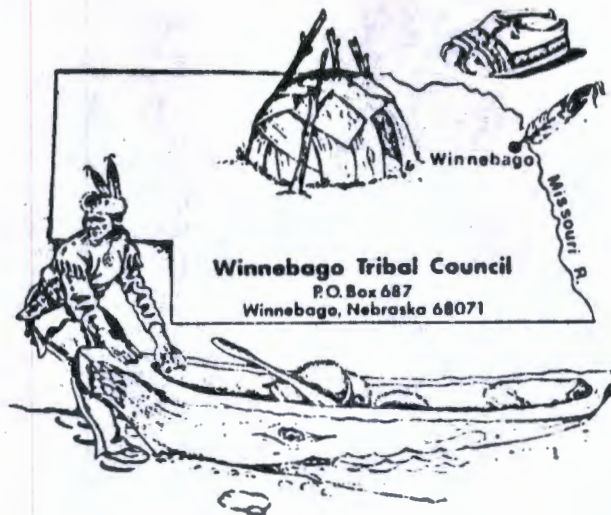
Sam Tebo, Sr.

SECRETARY

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MEMBERS

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Alvin Kelsey

David L. Snow

Neola E. Walker

402 - 878-2272

Position Statement

on

BUREAU OF INDIAN AFFAIRS FY-82 BUDGET

and

TRIBAL CONSOLIDATED BLOCK GRANT PROGRAM

Submitted By

Reuben A. Snake, Jr.

Chairman

Winnebago Tribe of Nebraska

April 21, 1981

The Winnebago Tribe of Nebraska is offering the following information to be utilized as testimony to all Congressional Committees and Sub-Committees that impact Indian programs; provide grass-root view points and concern about our future in FY-82; voice our objections and the reasons for our objections in reference to the catastrophic budget reductions being forced upon us; and provide our recommendations for consideration.

Equally as important, we are asking for assistance in getting someone who is in authority in the Department of Interior to answer the questions we will be asking in this Position Paper.

We are offering the following brief quote from P.L. 93-638 which we have placed our faith, but have not witnessed to any degree.

Public Law 93-638

93rd Congress, S. 1017

January 4, 1975 .

AN ACT

To provide maximum Indian participation in the Government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; and for other purposes.

Be it enacted by the Senate and House of Representatives
of the United States of America in Congress assembled,
That this Act may be cited as the Indian Self-Determination
and Education Assistance Act".

The real disturbing issue about maximum participation and consultation with Indian tribes is that it has never been!!! Tribes have always been put into a position of responding after the fact.

We would like the following questions answered:

1. Who determined what programs should be placed in the Tribal Block Grant Program and to what extent did tribes participate?
2. Who determined that these 10 Tribal Contract Programs should be reduced by 25% when the overall BIA budget is scheduled for only a 7% decrease and to what extent did tribes participate?
3. Who determined that three education programs be included in the Tribal Consolidated Block Grant Program when P.L. 95-561 mandates that BIA education programs be separate from other Bureau programs and to what extent did tribes participate?
4. Who determined that Johnson O'Malley be included in the Block Grant when 93-638 mandates J.O.M. to be distributed on a formula and to what extent did tribes participate?

5. Who determined that the authority for the operation of Johnson O'Malley programs should rest with tribal governing bodies and not the local Indian Education Committees as the present P.L. 93-638 Part 273 regulations mandate?
6. Why should tribal programs be reduced a greater extent than Bureau of Indian Affairs administration? Was there tribal participation?
7. If there was tribal participation in the preceding issues, how was this participation invited and how many tribes participated?
8. Has there been technical assistance provided and enough time allowed for tribes to evaluate the impact of the Tribal Block Grant concept and budget cuts?
9. How will the programs and budgets be administered if a tribe only wants to contract 5 of the 10 programs in relation to the ZBB process we have relied on to establish our local priorities?
10. What would the impact upon the Bureau of Indian Affairs be if all tribes refused the Block Grant and retroceeded all P.L. 93-638 back to the Bureau.

The Winnebago Tribe of Nebraska is opposed to any reduction in FY-82 funds for programs that benefit our tribe and people. We can prove that our local B.I.A. Agency and the three tribes in Nebraska have already absorbed a 17 per cent reduction (not counting inflation) in programs beginning in FY-79. We have and are willing to do our share to put this nation back on

the road to Economic Recovery, however, the amount of reductions and manner it is being forced down our throat is totally unacceptable. We have suffered enough, it is now time for the Federal Government to recognize and fulfill its responsibility to Indian people.

If any reductions are to be realized in FY-82, they should be reduced from the Central and Area Offices administration budgets. What is the break out for administration funds and number of employees in each department at the Central and each Area Office? The amount will be enormous!!!

What considerations have been given to small tribes and multi-tribal agencies if the FY-82 budget process? Large tribes will be hard pressed under the FY-82 budget, but small tribes could very possibly fold. Is the 80's the beginning of another termination era?

The Federal Government, not just the Bureau of Indian Affairs, has a trust responsibility to provide services to federally recognized tribes. The discontinuance or transfer to State Block Grants such federal programs as H.U.D., D.O.L., H.H.S., C.S.A., etc. violates that trust responsibility and will have a direct detrimental effect on the social and economic status of the Indian community.

The Winnebago Tribe is vigorously opposed to the use of State Block Grants to fund federal programs to federally recognized tribes. States have historically been non-responsive to the needs of the Winnebago Tribe and have not supported reservation priorities. Indian tribes have a special relationship with the Federal Government, not the States.

We recommend that all federal program grants be made directly to Indian tribes or through the Bureau of Indian Affairs. The B.I.A. is already considered the 51st State for the disbursement of E.S.E.A. Title I funds to B.I.A. schools. If someone says this cannot be done, we would like to know why?

The Winnebago Tribe cannot accept the Tribal Consolidated Block Grant concept based upon the FY-82 budget figures the B.I.A. has imposed upon us. With the amount of information available to us on the subject, it would be like jumping out of an airplane with no parachute.

We sincerely hope that the time, energy, and faith we have exerted in sharing our concerns and recommendations will not fall upon deaf ears and that our questions will be responded to.

Reuben A. Snake, Jr., Chairman
Winnebago Tribe of Nebraska

B



**NATIONAL
CONGRESS
OF
AMERICAN
-INDIANS-**

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

EXECUTIVE DIRECTOR

Ronald P. Andrade
Luiseno-Diegueno

PROPOSED REVISIONS IN REGULATIONS GOVERNING PL 93-638

EXECUTIVE COMMITTEE

THE INDIAN SELF-DETERMINATION AND EDUCATIONAL ASSISTANCE ACT OF 1975

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Joy Sundberg
Trinidad Rancheria

SOUTHEASTERN AREA

Eddie Tullis
Poarch Band of Creeks

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 is termed a "contract (i.e. procurement)mode" to 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 were mailed to tribal governments as of May 6, 1981.

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 all transitions will be completed before the FY 83 budget becomes official.

The proposed revisions to the 93-638 regulations will have great impact on tribal efforts to control the programs and services which directly impact on Tribes and Tribal memberships.

The proposed revisions in the 93-638 regulations will have great impact on current Tribal efforts to assume greater control over the programs and services which directly affect Tribes and Tribal communities. The NCAI Educational Concerns Committee attempted a review of the proposed revisions during the NCAI Midyear Conference May 27-29, 1981, so that some sense of these implications could be developed. The outcome of that review is summarized in the NCAI position statement unanimously adopted by the Tribal delegates and included as the opening item in the following section. We also include here a copy of a letter sent to the Office of the Assistant Secretary for Indian Affairs, where more detailed comments on the proposed revisions and the difficulties Tribes have with them are detailed.

ncai indian education

NCAI
202 E Street, NE
Washington, DC 20002

**NCAI MIDYEAR CONFERENCE
Education Concerns Committee
Position Statement 1**

Proposed 93-638 Revisions and PL 95-224

BACKGROUND: On May 6, 1981, Tribes were sent a copy of proposed revisions in the regulations governing 638 contracting. Because these proposed revisions threaten to impact on JOM programs, BIA contract schools, and other educational programs, the NCAI Education Concerns Committee took a close look at the proposed revisions during our meeting at the 1981 Midyear Conference. PL 95-224, with whose requirements the Department of Interior claims it must comply, was also scrutinized by the Committee.

Wayne Chatten, Executive Assistant to the Assistant Secretary for Indian Affairs, discussed these proposed revisions with the Committee. He assured the Committee that the deadline for receiving comments on the proposed revisions would be extended to June 20, 1981 to allow more time for Tribal input.

CONCLUSIONS: In one two-hour period, members of the Committee identified a number of major problems in the proposed revisions. A general Committee discussion identified even more problems. The Education Committee has determined that 95-224 espouses a concept which is contrary to the intent of Congress in PL 93-638 and PL 95-561 and is violative of the concept of self-determination without termination. Therefore the Education Committee opposes the efforts by the Bureau of Indian Affairs to amend regulations regarding the implementation and administration requirements of PL 93-638 by substitution of the provision of grants-in-aid for the contractual provisions required by that Act.

RECOMMENDATIONS:

1. That the Red Lake Band of Chippewa Indians' resolution on this issue (Resolution number 67-81) be provided to member Tribes for possible use as a model for Tribal consideration of this issue.
2. That it is imperative for the Tribes to take IMMEDIATE ACTION in response to this issue.
3. That copies of Tribal positions on this matter be sent to the NCAI National Office (marked attention: Education Committee) and that copies also be sent to Assistant Secretary Smith and to each Tribe's Congressional delegation.
4. That the NCAI Education Concerns Committee prepare a composite statement reflecting Tribal positions on this issue which will be passed forward to Assistant Secretary Smith before the June 20 deadline.

The statement was developed by the NCAI Education Concerns Committee at the NCAI Midyear Conference, May 27-29, 1981. The statement was presented to the Tribal delegates for their consideration on Friday morning, May 29, 1981. The statement was adopted unanimously by the delegates that morning.



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Trinidad Rancheria

SOUTHEASTERN AREA

Eddie Tullis
Poarch Band of Creeks

To: Ms. Jana McKeag, Office of the Assistant Secretary
For Indian Affairs

From: William Leap, Education Coordinator, NCAI

Date: June 19, 1981

Re: The proposed revisions in PL 93-638

You requested that NCAI review the proposed revision in the 638 regulations and make some comment on them before June 21.

I have already given you a copy of the resolution on this issue, developed by the NCAI Education Committee and endorsed, unanimously, by the tribal delegates attending the NCAI midyear convention last month. I am including a copy of that statement and a summary of the meeting out of which it came in this package.

We were given two documents at the conference, both of which speak directly to the 638 revisions: a resolution from the Red Lake Tribe of Chippewa Indians, outlining their evaluation of the proposal; and a letter from Rosita Ruiz, treasurer of the Papago Tribe, which gives her assessment of this proposal. You will want to note, in particular, Ms. Ruiz' comment that the proposed changes "...place further burdens on the Tribe ..."; this is, of course, exactly what the proposed revisions are designed to avoid.

Virginia Beavert Martin provided me with a two-page excerpt from the transcript of discussion of this issue at the Tribal conference on the FY 82 budget last March. The comments on the "meaning" of the term "grant", when used in connection with BIA services, requires your attention.

You will note from the minutes of the NCAI Education Committee meeting that the committee -- some 80 persons strong at the time -- devoted a considerable amount of time to the 638 revisions. Originally, committee members planned to outline a list of specific concerns which had arisen as a part of this discussion. But it was felt that such a list might imply that, if these concerns were addressed, the committee would then be in favor of the revisions as a whole. This -- as you see from the resolution, was not the position the committee wanted to communicate to the Assistant Secretary's office. And this is why the resolution emerged in the form you see here.

I think it is in point for you to see a list of these concerns. Please note the range of issues they address as well as the specific focus of each item. You can sense, from scope and breadth, the basis of the committee members concerns about the regulations. It is to be hoped that the form given to the revisions, when published for comment in the Federal Register, will already have begun to address these issues. I suspect that Tribes will want to see evidence of such changes, before they will be able fully to assess the impact these proposals will have on Tribal self-determination and sovereignty.

Points of concern raised by committee members in their review of the proposed revisions include:

1. Uncertainty about the differences between contract and grant, and what these differences will mean where 638 funding is concerned.

2. Conflicts between the proposed regulations and mandates of Title XI, PL 95-561.

Example: Area and agency office personnel will be expected to play much larger roles in the development and implementation of Indian education programs than is currently called for or allowed under Title XI.

3. Concern that, now that Tribes have shifted into a "contracts" mode for obtaining and administrating 638 monies, Tribes are now being forced to shift back to a "grants" mode for obtaining and administrating those funds. This is especially viewed as a problem for smaller Tribes or the geographically more isolated Tribes -- and especially for those Tribes which have never been able to develop management structures within their own membership.

4. Questions about the safeguards DOI will implement, to guarantee, for example, that Tribes which are forced to compete for (limited) services from their Agency offices will be adequately and effectively served under this proposal. This is viewed as a particular problem in those instances where a large number of Tribal entities are jointly to be served by the same agency office staff.

5. The proposed regulations do not address the critical question of contract support funds: Will they be made available to Tribes? At what level(s) ? How will they be distributed ?

6. And what about technical assistance to Tribes, during the development of the grant and during the implementation of the funds ? Concern was voiced in particular about the provision in the proposed regulations which will force Tribes to rely on Agency personnel for services; there may be instances where these persons have not shown themselves to be supportive of Tribal interests in self-determination or to be responsive to Tribal needs when defined in those terms.

The Committee did not examine the Johnson-O'Malley revisions with particular care. A thorough review of the services which need to be provided to Tribes in JOM-related areas was developed by the Education Committee at the annual convention. A copy of that assessment, including an itemization of the services which BIA and DOI have yet to make available but which they are required by PL 95-561, Title XI, to make available, was given to you at our meeting here on May 24. I am enclosing a copy of that statement in this packet. Your attention is called in specific to the recommendations in the following items:

- A.1. Publication of Title XI, PL 95-561 Regulations
- A.2. Publication of PL 95-561 Education standards
- B.1. Publication of School Board Task Force report
- B.2. School Boards Training
- B.3. DOI/OIEP support for School Board operations
- B.4. School Boards funding
- C.3. Johnson-O'Malley Basic Support
- C.4. Johnson-O'Malley Supplemental Support

They define a set of concerns against which ANY proposal to change, revise, or restructure Johnson-O'Malley funding will need to be evaluated. Again, I suspect it is fair to say that Tribes will be looking to see how these issues and assurances are addressed when the JOM regulations are published for comment in the Federal Register.

An additional point on the Johnson-O'Malley regulations: While I am certain that the wording is not deliberately misleading, the statement on 3 re: the involvement of BIA Task Force Two Committee implies that Maxine Edmo, Bennie Atencio and other Task Force members as listed contributed to the revisions contained in the regulations. They did not, as far as we can judge from conversations with them; the regulations they drafted are said to bear little resemblance to what is contained in the proposed form. I have been asked to bring this point to your attention.

Now I want to emphasize again: DOI's position seems to be that with adequate training, the revised JOM regulations can work effectively for Tribes. But the Education committee report finds specific weaknesses in the steps BIA has taken to meet its training commitments. It is not clear how any proposed revisions in regulations can make up for this omission. Assurances of services delivery must precede any proposal for innovation in the JOM program, to say nothing of any evaluation of that proposal by the Tribes.

I hope these comments are helpful and contribute to the success of your meeting next week in Portland. Meanwhile, our request for Tribal evaluations of the proposed regulations is beginning to yield responses. As they come in, I will transmit them to you. We are also required by conference mandate to synthesize the statements and transmit that synthesis to your office. So you may expect to receive another, more detailed analysis of issues here in the near future.

Finally, you will note that I have enclosed a copy of a letter from Ron Andrade to Ken Smith, requesting that he and his staff participate in an open forum on the 638 revisions at the NCAI Annual Convention this fall. NCAI feels it is especially critical that Tribes be extended every opportunity to review and comment on the proposed revisions and that DOI take advantage of every opportunity to listen and to respond to Tribal concerns and objections on these matters. NCAI offers a uniquely appropriate forum for such an effort. We urge you to support our request and speak on our behalf to Ken Smith on this matter.

TRIBAL COUNCIL

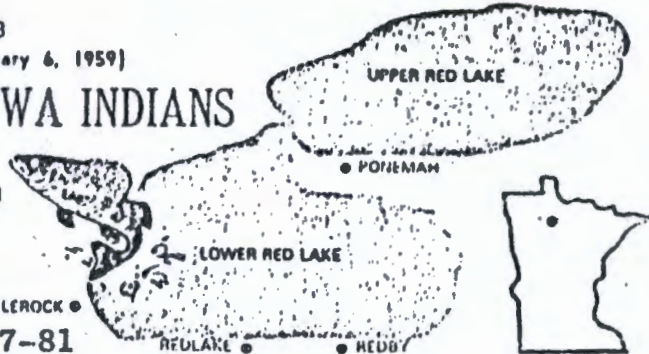
Organized April 18, 1918

(Revised Constitution and By-Laws, January 6, 1959)

RED LAKE BAND of CHIPPEWA INDIANS

Phone 218/679-3341

RED LAKE, MINNESOTA 56671



RESOLUTION NO. 67-81

OFFICERS
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ROYCE GRAVES SR., Secretary
MOLLIS LITTLECREEK, Act. & Treasurer

DISTRICT REPRESENTATIVES
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7 HEREDITARY CHIEFS

LEGAL COUNSEL
EDWARDS, EDWARDS, BODIN
DULUTH, MINNESOTA

A RESOLUTION OPPOSING EFFORTS BY THE BUREAU OF INDIAN AFFAIRS TO AMEND REGULATIONS REGARDING THE IMPLEMENTATION AND ADMINISTRATION REQUIREMENTS OF P.L. 93-638 BY SUBSTITUTING THE PROVISION OF GRANTS IN-AID FOR THE CONTRACTUAL PROVISIONS REQUIRED PURSUANT TO SAID ACT; ALLEGING ILLEGALITY AND QUESTIONING SUBSEQUENT HARM TO INDIAN TRIBES, INDIAN SCHOOL BOARDS AND OTHER INDIAN ENTITIES WERE SAID RECOMMENDATIONS TO BE SO AMENDED.

WHEREAS, it is a well settled fact as expressed by the Congress of the United States in Public Laws 93-638 and 95-561, that, to provide effective, quality education to Indians and Alaskan native children, the tribal governments and tribal and intertribal school boards and other Indian organizations and associations sanctioned by tribal governing bodies must enjoy full right to direct, control and operate such education programs together with related education facilities, personnel and budgets as specified in said statutes, and;

WHEREAS, pursuant to and under the provisions of P.L. 93-638, the BIA is required upon the request of any Indian tribe to enter into a contract or contracts with such Indian tribe or its organization for the provision of services or with the Indian tribe and/or intertribal school boards for the operation of BIA schools, such statutory requirements having been sought by Indian tribes and Alaska native entities, and;

WHEREAS, on May 8, 1981, the BIA announced its intention of abolishing the contracts program pursuant to the aforesaid statutory requirement and, instead, announced that pursuant to P.L. 95-224, the Federal Grant and Cooperative Agreement Act of 1977, it is obligated to replace said contracts program with the program of grants, for said Indian services and education programs, and;

WHEREAS, it is stated in P.L. 95-224 that grants are provided there under so as to "encourage competition where appropriate, in the award of grants..." and in cases where "no substantial involvement is anticipated between the (federal agency) and ... (grant) recipient during performance of contemplated activity", and;

WHEREAS, the aforesaid language within 95-224 is interpreted to espouse a concept which appears to be contrary to the language contained and set forth in P.L. 93-638 and P.L. 95-561 and is violative of the concept of self determination without termination, and, further, Indian Tribes and Alaska native entities have not requested the BIA to abandon or otherwise modify its contract programs pursuant to and

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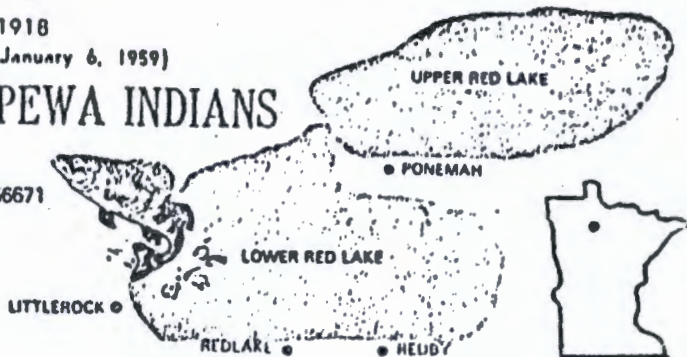
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LEGAL COUNSEL
EDWARDS, EDWARDS, BOBIN
DULUTH, MINNESOTA

RES. NO. 67-81

under the provisions of P.L. 93-638 nor has the BIA consulted with the Indian tribes and Alaskan native entities regarding its proposed amendments to the regulations which implement P.L. 93-638.

NOW, THEREFORE, BE IT RESOLVED, that the Red Lake Tribal Council, for the Red Lake Band of Chippewa Indians hereby express our opposition to any action by the Department of Interior which would alter, amend, or eliminate the contracting provisions set forth and specified in P.L. 93-638 in favor of the grant provision set forth in P.L. 95-224.

BE IT FURTHER RESOLVED, that the Red Lake Tribal Council hereby states our belief that any action by the Department of Interior to implement the provisions of P.L. 95-224 in regard to P.L. 93-638 may be unlawful on the basis of the rights conferred by P.L. 93-638 and 95-561, other statutes, concept of self determination without termination and, on its face, the intent contrary thereto as set forth in P.L. 95-224.

BE IT FURTHER RESOLVED, that the Red Lake Tribal Council hereby affirms our belief that any attempt by the DOI-BIA to implement the provisions of P.L. 95-224 in regard to P.L. 93-638 may be injurious and deleterious to the causes of Indian self-determination without termination, human services, and education.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to other Indian tribes; the Minnesota Congressional Delegation; Wm. Cohen, Chairman, Senate Select Committee on Indian Affairs; Carl Perkins, Chairman, Education and Labor Committee; D. Bereuter, Chairman, Task Force on Indian Affairs; M. Udall, Chairman, Interior and Insular Affairs, Great Lakes Intertribal Assembly; National Congress of American Indians; National Tribal Chairmen's Association; Minnesota Indian Affairs Intertribal Board, to request active and earnest support.

For: 9 Against: 0

We do hereby certify the the foregoing resolution was duly presented and enacted at the Special Meeting of the Tribal Council held on Friday, May 22, 1981, at the Red Lake Tribal Council Hall, Red Lake, Minnesota.

Roger A. Jourdain
Roger A. Jourdain, Chairman

Royce Graves, Sr.
Royce Graves, Sr., Secretary

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DR WILLIAM LEAP
SKERATON SPOKANE HOTEL
NORTH 322 SPOKANE FALLS CT
SPOKANE WA 99201

DEAR DR LEAP

THIS IS IN RESPONSE TO RAYMOND RAMIREZ'S PAPAGO EDUCATION DIRECTOR PHONE CALL IN WHICH HE HAD BEEN QUESTIONED ABOUT THE ROLE I PLAYED IN THE BUREAU OF INDIAN AFFAIRS BLOCK GRANT PROPOSAL I WISH TO SET THE RECORD STRAIGHT IN TERMS OF WHAT POSITION I TOOK AS IT RELATES TO THIS ISSUE

ON MARCH 16 AND 17 1981 I ATTENDED A PRELIMINARY MEETING IN WASHINGTON DC AT WHICH THE BLOCK PROPOSAL WAS DISCUSSED FIRST I DO NOT AGREE WITH THE BUREAU OF INDIAN AFFAIRS THAT HAVING ONE TRIBAL REPRESENTATIVE FROM THE PAPAGO TRIBE CAN BE CONSTRUED AS HAVING "TRIBAL INPUT". I WAS NOT AUTHORIZED BY THE PAPAGO TRIBE TO GIVE ANY APPROVAL TO WHAT WAS BEING DISCUSSED BY THE BUREAU NOR DO I FEEL QUALIFIED TO DO SO. MY ROLE WAS STRICTLY THAT OF LISTENING TO WHAT WAS BEING PROPOSED, STATING WHAT PROBLEMS I COULD SEE AND THAT FURTHER ANALYSIS HAS TO BE MADE AT THE TRIBAL LEVEL. AT NO TIME DID I FEEL THAT I REPRESENTED ANY REAL INPUT SINCE DECISIONS HAD ALREADY BEEN MADE. THE ONLY EFFECTIVE WAY I FEEL THAT THE PAPAGO TRIBE WOULD HAVE ANY INPUT IS TO TAKE THE INFORMATION BACK TO THE TRIBE AND TO COME UP WITH AN ANALYSIS OF THE IMPACT. THIS WAS DONE IN TERMS OF THE POSITION PAPER WHICH WAS PASSED BY THE PAPAGO TRIBAL COUNCIL.

SECOND I DO NOT AGREE WITH THE FACT THAT THE BUREAU OF INDIAN AFFAIRS HAD ALREADY MADE THE DETERMINATION AS TO WHAT PROGRAMS WOULD BE PLACED IN THE BLOCK GRANT. I STRESS THAT THE PAPAGO TRIBE HAD ALREADY DETERMINED PRIORITIES THROUGH THE ZERO BASED BUDGETING PROCESS AND THAT THE TRIBE IS THE MOST KNOWLEDGABLE IN TERMS OF WHAT CUTS, IF ANY, SHOULD BE MADE. AT NO TIME DID I AGREE, NOR DO I AGREE NOW, THAT THE BUREAU APPROACH IS ACCEPTABLE.

THIRD I VOICED MY DISPLEASURE THAT THE BUREAU IS CHANGING THE CSR AS AS IT RELATES TO CONTRACTING UNDER PL93-638 IN ORDER TO INCORPORATE THE FEDERAL CO-OPERATIVES AGREEMENT ACT. CHANGING THE RULES AND REGULATIONS DOES NOTHING IN TERMS OF IMPROVING THE INEFFECTIVENESS OF THE BUREAU PERSONNEL IN EXPEDILING CONTRACTS/GRANTS AND PLACES FURTHER BURDENS ON THE TRIBE IN TERMS OF COMPLIANCE TO THE RULES AND REGULATIONS.

I AM DISAPPOINTED IF THE BUREAU OF INDIAN AFFAIRS IS USING MY NAME



AND/OR THE NAME OF THE PAPAGO TRIBE TO PROMOTE THEIR BLOCK GRANT PROPOSAL. THIS CONCEPT IS STRICTLY THE BUREAU'S. THE PAPAGO TRIBE HAS ALREADY TAKEN A POSITION ON HOW THEY FEEL ABOUT THIS I AM CONCERNED THAT YOU OR ANY OTHER DELEGATE TO THE NCAI SHOULD BE GIVEN INFORMATION WHICH IS CONTRARY TO THE POSITION I HAVE TAKEN AND WHAT THE PAPAGO TRIBE HAS TAKEN ON THIS MATTER.

SINCERELY

ROSITA N RUIZ, TREASURER THE PAPAGO TRIBE

1805 EST

MGMCOMP MGM

Group session on the Impact on 638 transcriptions

March 25, 1981

Las Vegas, Nevada

IMPACT ON PUBLIC LAW 93-638

A man speaking; Go ahead and tell them to come on in, go ahead and get started now. And before Robert gets back here and we get back into the issues concerning taxation, I'd like to pre-empt a little of his time to address an issue which has just come up just recently which maybe some of you may be interested in. I'll wait until everybody gets in here, a couple more minutes, but we'll go ahead and start now. I'll comment on what I was going to pre-empt Bob's time for, Robert's time. You've all probably heard about Reagan's push for block grants for getting into the states and using that as a mechanism of getting the federal government out of programs which go to people that really located within the states. The new secretary of Interior, about a week and a half ago, issued a press release which responds to Reagan's philosophy or policy, dealing with block grants. BIA has submitted a budget to Congress, Carter's budget, of just a little over one billion dollars, one billion and fifty-three million dollars. Well, first of all, James Watt and Reagan cut that budget significantly and in certain selected areas that you need to be aware of. Overall, the BIA has had its budget cut, at least it is cut in its submitted form to Congress by 75.9 million bucks. 49 million dollars of that cut directly effect programs which you are involved in by either contract, under 638 or which are provided by BIA its self to you, that's what I wanted to comment on. There are ten programs which BIA in its original form with President Carter had submitted as a budget of 160 million dollars. These ten programs were cut 40 million to 120 million dollars. These ten programs are JO'M, Adult Education, Adult Vocational Training, Direct Employment, Fire Protection, as part of the Forestry Program, Housing, Indian Action, 638 Grants. In addition to being cut 40 million dollars, James Watt in his proposal to Congress has said that 'these ten programs are also going to be offered to the tribes using a concept called Block Grants'. Now, Watt's comment in this release was that there was already legislative authority under 638, there is in section 104 of Public Law 93-638, there is legislative authority to give you grants. But the reason I wanted to pre-empt Mr. Purtle's time, I wanted to point out some of the implications to you of Watt's statement and comment on what I consider to be bad consequences of his release. Okey, Mr. Watt stated that there was legislative authority. That legislative authority says that the Department of Interior basically 'May', and I put quotations around the 'May', grant to Indian Tribes. Now, the implication in

that word is that grants are discretionary and that the way they are treated in the entire rest of the government. Grants are discretionary. Now, 638 contracts are not discretionary, the BIA and IHS must give you a contract. Now I would be concerned if I were sitting in your shoes and Watt's proposal goes through, does this mean that BIA can turn around and tell you; "Hey, tribe, we don't want to give you a grant this time." I'd ask that question. Whomever you may address it to and right now it's going to have to be addressed to Congress. Okay, that is one issue of concern, will these grants be discretionary or must BIA give them to you?

Second issue of concern, at least to me, is the issue of carrying forward, carry over of monies. Right now your permitted to have carry-over authority, it's permitted under the legislation 638. This Carry-over authority or opportunity, I guess you could call it, is given only to contract monies. If you have a contract for social services, you don't use all the money in one year, you can carry it over into the next fiscal year. Are they going to permit carry-over if you go to block grants? I'd ask that question, Watt is not addressing these issues. Okay, the last issue that I consider of importance in this budget proposal of Mr. Watt's is, what are they going to do about indirect cost or what some of you might know as contract support? In that 160 million that was submitted by Carter, 6.2 million was set aside to cover indirect cost. Well that 6.2 million was inadequate, as most of you probably already know. Last year they only funded indirect cost to the tune of 90%. This year it looks like it's going to be a lot less. Okay, when they lumped it into that block grant, 120 million bucks, they cut out the indirect cost and in principle, grants do not provide additional contract support money as your aware. All the other funding agencies in the government do not give you indirect cost over and above your grants like BIA does. Does this mean, this is the question I would ask; 'Does this mean that when BIA goes to Block grants, that you are going to have to take your indirect cost money out of it or are you still going to get extra dollars?' These three questions haven't been answered by Watt, maybe his trying to hide the issue, I don't know, but I think you ought to consider them and since Congress is addressing the issue in the budget hearings, at least on the Senate side right now, maybe you can have some comment there and when it comes up to the Senate Appropriations in the House and Ways Committee for appropriation, you can again have an opportunity to comment, because right now the Reagan's Administration's already settled their mind. The only way your going to get any impact now is through lobbying efforts, so I wrote some of this stuff on the board, if you want you can copy it or you can, I'll answer any questions. But I'm going to turn it over to Mr. Purtle now. Thank you.

Absentee Shawnee
Cheyenne-Arapaho
Citizen Band Potawatomi
Comanche
Delaware
Iowa of Kansas
Iowa of Oklahoma
Kickapoo of Kansas
Kickapoo of Oklahoma

JUN 22 1981
KIAWA
KIAWA
Otoe-Missouria
Pawnee
Ponca
Prairie Band Potawatomi
Sec & Fox of Missouri
Sec & Fox of Oklahoma
Tonkawa
Wichita

**UNITED INDIAN TRIBES OF
WESTERN OKLAHOMA AND KANSAS**

P. O. BOX 1382

PHONE (405) 275-4910

SHAWNEE, OKLAHOMA 74801

June 16, 1981

Dear Sir:

Please find enclosed a resolution that was unanimously adopted by the United Indian Tribes regarding the Proposed Draft Regulations which will change P.L. 93-638 to provide strictly Grants to Tribal Governments. Apparently the Deputy Solicitor of the Interior Department concluded that the Bureau of Indian Affairs must change the P.L. 93-638 Regulations in compliance of P.L. 95-224.

We submit that P.L. 95-224 do not specifically include Indian Tribes and Sec. 10 (D) provides for the Director of the Office of Management and Budget to make exceptions for Programs within an Executive Agency. P.L. 95-224 will have major affects on the Indian Civil Rights Act and the preference clauses of P.L. 93-638 for Indian Contracts and or Contractors with over-all affects in delivery of service from other Federal Agencies with which Tribes have a current contracting relationships.

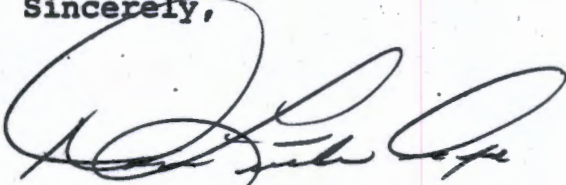
We do not oppose the Grant process. However, we totally oppose the method by which P.L. 95-224 is being used to include the trust responsibilities of the Federal Government to Indian Nations. Especially when the Act (P.L.95-224) do not specifically include Indian Nations. We must again point-out that Indian Nations are not local Governments such as; City Governments, County Governments, State Governments and the like, but to the contrary, Indian Nations are unique entities in America with Special Treaty relationship with the U.S. Government which establish specific responsibilities upon the Tribes and the United States.

In this regard, we would ask that you provide assistance to alleviate the effort by the Interior Department ot change a Congressional Act (P.L. 93-638) to force the Indian Nations to comply with on Act (P.L. 95-224) which is contrary to the Treaty Relationship of our Governments. We do not oppose the Grants concept but rather the Act from which we are forced to comply (95-224). Our suggestion

is that P.L. 93-638 (Indian Self-Determination Act) be amended to reflect the change from Contracts to Grants without deleting certain Indian preference clauses within the Act which provide for Indian Economic opportunities thru contracts. We of course would be available to assist in the amendment.

Your most able assistance is very much appreciated and should you require our assistance, please advise.

Sincerely,



Danny Little Axe
Executive Director

DLA/eb

Enclosure

UNITED INDIAN TRIBES OF WESTERN OKLAHOMA AND KANSAS, INC.

RESOLUTION No. #13-81

A RESOLUTION DULY ADOPTED BY THE UNITED INDIAN TRIBES OF WESTERN OKLAHOMA AND KANSAS OBJECTING TO THE PROPOSED CHANGES IN PUBLIC LAW 93-638 TO ALLOW FOR CHANGE FROM CONTRACTS TO GRANT AWARDS AS PROPOSED THRU DRAFT REGULATIONS BY THE BUREAU OF INDIAN AFFAIRS-OFFICE OF THE SECRETARY OF INTERIOR.

- WHEREAS, The Office of the Secretary, Department of Interior have proposed changing P.L. 93-638 awards from contracts to a Grants process by drafting changes to established P.L. 93-638 regulations, and
- WHEREAS, The Deputy Solicitor of the Interior Department issued an opinion concluding that the requirement for Grants or cooperative agreements under P.L. 95-224 must include contract changes in P.L. 93-638, and
- WHEREAS, Legislative History of P.L. 93-638 and the resulting use of contracting by Tribal Governments, indicate that Congress and the Tribal Governments preferred that contracts rather than Grants be used for the purposes of P.L. 93-638, and
- WHEREAS, P.L. 95-224, Sec. 10 (D) authorize the Director of the Office of Management and Budget to except individual Transactions or Programs of any Executive Agency from the Application of the provisions of P.L. 95-224, and
- WHEREAS, The Solicitor and the Interior Secretary's Office failed to address the issue of special relationships to Indian Tribal Governments and the obvious fact that P.L. 95-224 will directly violate the legal provisions of P.L. 93-638 therefore subjecting Tribal Governments to an act which do not recognize or address Indian Nations, and
- WHEREAS, This Organization Question;
- (1) The applicability of P.L. 95-224 to American Indian Nations
 - (2) The intepretation of the Interior Solicitor
 - (3) The authority of the Interior Department to change the full intent and purposes of a Congressional Act (P.L. 93-638) by an administrative process
 - (4) The failure of the Bureau of Indian Affairs Central Office, Secretary of Interior and the Solicitor to request that the Programs subject to P.L. 93-638 be excepted by the Director of the Office of Management and Budget as authorized by Sec. 10 (D) P.L. 95-224
 - (5) The lack of consultation with Tribal Governments by the Administration
 - (6) The time established for review and comments on the proposed changes of regulations which affect Indian Country
 - (7) The Administrative attempt to use P.L. 95-224 to change the intent and purposes of P.L. 93-638 - Indian Self-Determination Act, when P.L. 95-224 do not specifically include Indian Nations of America.

- (8) The failure of the Secretary's Office to intelligently consider the drastic affects of applying P.L. 95-224 when this process will completely destroy Indian preference contracting required by P.L. 93-638 and,
- (9) The possibility of violating the Indian Civil Rights Act.
- (10) The over-all affects that this change would have on established Tribal relationship with other Federal Agencies; i.e.; the Indian Preference Clause (Sec. 7 (B) of P.L. 93-638 - requires in H.U.D. Indian Housing Projects - Preference in contracts or Sub-Contracts be given to Indian Contractors (Individuals, Tribal, and or Inter-Tribal Contractors)

NOW THEREFORE BE IT RESOLVED, the (23) United Indian Tribes of Western Oklahoma and Kansas hereby submit that P.L. 95-224 is a mechanism by which the Government to Government relationship of the United States and Indian Nations of America will be destroyed and if implemented by the Bureau of Indian Affairs as proposed thru Draft Regulations, will Administratively changes the full intent and purposes of P.L. 93-638 as intended by Congress and the Tribal Governments, thus causing chaos throughout Indian Country, and Be It

FURTHER RESOLVED, that any changes in Legislation, Regulations, including Draft Regulation changes, be directly negotiated with Indian Nations in a manner warranted by Government to Government Relationships and further we request an immediate reply to the Questions raised by this Resolution and that we totally disagree with the Bureau Draft Regulation changes of P.L. 93-638 until such time that warranted consultation with Indian Nations have been implemented and exhausted.

- CERTIFICATION -

I, Newton Lamar, being the Duly elected President of the United Indian Tribes of Western Oklahoma and Kansas, do hereby Certify that this action was duly adopted by the member Tribes of this Organization June 10, 1981.

Signed


Newton Lamar, President

Attested;


Dan Little Axe, Executive Director

Date: June 16, 1981

NCAI EDUCATION CONCERNS COMMITTEE

POSITION STATEMENTS AND ACCOMPANYING DOCUMENTATION

37th Annual Convention
October 27 - 31, 1980

Five general areas of interest and concern in Indian education were discussed at the meetings of the Education Concerns Committee during the 37th Annual Convention of the National Congress of American Indians, Spokane, Washington, 1980:

- I. Public Law 95-561, Title XI and JOM
- II. Vocational, Adult, and Community Educational Services
- III. Indian Education Act, Title IV, P.L. 92-318
- IV. Bilingual and Bicultural Services and Resources
- V. Research and Information

More than 80 Indian educators participated throughout the three-day committee hearings. This packet contains statement of problem, conclusions, and recommendations for action which grew out of these discussions.

I. P.L. 95-561, 471 and DOI/OIEP Education Services

A. Title XI, P.L. 95-561 Regulations

1. Publication of Title XI, P.L. 95-561 Regulations

PROBLEM: American Indian Tribes and Indian parents have been effectively prohibited from active participation in the direct education of their members and children as mandated by Public Law 95-561, Title XI, Parts A & B, due to the prolonged delays in publication of regulations regarding: BIA School Boards; BIA Educational Standards; Section 2-B of P.L. 93-638, Student Rights; and BIA responsibilities for accomodating and funding the education of Indian children who withdraw from public schools.

CONCLUSION: The responsible Executive Branch officials, including the DOI, need to immediately finalize and publish all regulations under P.L. 95-561 which have not been finalized and published to date.

RECOMMENDATION: The National Congress of American Indians formally go on record as requesting an investigation as to why responsible Executive Branch officials and DOI/OIEP are not fulfilling its Congressional mandate.

2. Publication of P.L. 95-561 Education Standards

PROBLEM: The rules and regulations for BIA Education Standards have not been published in the Federal Register according to schedule. The Standards Task Force prepared comprehensive rules and regulations and revised them after extensive tribal consultation at field hearings. In-house revisions by Executive Branch officials have distorted the intent of the Standards Task Force product by making modifications not approved by the Task Force.

CONCLUSION: Executive Branch officials are unnecessarily delaying essential publication of the Education Standards rules and regulations and are wrongfully distorting the Self Determination of Indian Tribes in the education decision making process.

RECOMMENDATION: The DOI must immediately publish the Education Standards rules and regulations in the Federal Register without changes in substance, spirit and intent as developed by the Standards Task Force. The DOI must also insure the allocation of funds in order to meet the full requirements of the Education Standards. NCAI Education staff will investigate the reason why publication is not completed consistent with the mandate of Congress and assure that the Congressional Oversight Committees on P.L. 95-561 receive a report.

B. School Boards

1. Publication of School Board Task Force Report

PROBLEM: In order for school boards to realize their authority over BIA Education, Public School (874 Funds and JOM Funds), and Tribal Contract School Education implementation, school boards need to have published the Task Force report which will serve as their guideline to be effective functioning school boards with authority to establish school policies in keeping with 25CFR31a.3 (Education policies say that Tribes grant authority to school boards).

CONCLUSION: In order for school boards to realize their responsibility, policy authority and participation in all functions of Indian education for school year 80-81, the report should be immediately published for Tribal Government comment, recommendations, and final publication before the school year is completed. NCAI Education staff need to urge responsible Executive Branch officials and the OIEP to immediately act without any further delay to publish the school board report.

RECOMMENDATION: Mandate that responsible Executive Branch officials and the BIA immediately publish the "School Board Report of the Task Force" without any further delay from the Interior Department.

2. School Boards Training

PROBLEM: The implementation of P.L. 95-561 requires an intensive involvement of school boards in personnel and budgetary management on an on-going basis. The publication of school board regulations will necessitate review, comment by the Tribes. Experience has shown that school boards have not been sufficiently funded or trained to carry out the responsibilities inherent in the law. This is particularly a problem for the off-reservation board's schools. In order that all ORBS school boards obtain consistent interpretation and understanding of regulations, policies, procedures, regular meetings and training sessions is crucial for the continuity and success of ORBS operations.

CONCLUSION: To make for more effective operation of ORBS, issues described above (administration, school financial plan, funding for school board operations) a joint training session is necessary.

RECOMMENDATIONS:

- a. Funds should be provided to convene a training meeting for all ORBS school board members to review CFR 25 Part 31 d., school board regulations.
- b. Part of the agenda of this meeting must allow time

for ORBS school board members to address common concerns and make remedial recommendations regarding policy and procedures for more effective operation of ORBS education programs.

3. DOI/OIEP Support for school board operations

PROBLEM: Indian School Boards and Tribal Sovereign Governments are authorized and responsible to exercise their rights for tribal control in education. This right is mandated by Congressional enactment of 93-638 and P.L. 95-561.

CONCLUSION: Since the enactment of P.L. 95-561 authorizes the Indian Sovereign Governments and Indian school boards the right to formulate policy for Indian education, both need funding for the formulation, study, and implementation of policy for Indian education to insure that tribal concerns are expressed and addressed in BIA, public schools, and contract schools to meet the needs of all Tribal Governments in the educational systems.

RECOMMENDATION: The NCAI must urge the Department of Interior and Bureau of Indian Affairs, OIEP to request appropriations to assist Indian School Boards and Tribal Governments in their new policy role for Indian education in order to assure that schools are functioning in accordance to the requirements of P.L. 95-561 and P.L. 93-638 which express Tribal control of Indian education.

4. School Boards Funding

PROBLEM: The implementation of P.L. 95-561 mandates the active participation of school boards in meeting the overall and specific requirements of 25 CFR 31.g. - Personnel and 25 CFR 31.h. - 90 Sub G, the Indian School Equalization Program. The initial flat sum of \$5,000.00 per school board for training including the 25% per ORBS is insufficient to adequately carry out the complete required school board training functions.

CONCLUSION: Funding for school board operations needs to be increased for school boards to function effectively in their duties.

RECOMMENDATIONS:

- a. Tribal governing bodies and NCAI initiate a revision of 25 CFR 31.h. 10 Subpart B to include such factors for school board entitlements for operational and practical purposes including travel and per diem to attend all board sessions.
- b. That minimum funding levels should be established under 25 CFR 31.h. 90 for the support of each school board member or school board position beginning in FY 81 in addition to the funds allocated for each school's operation.

C. Budgetary Concerns

1. Title XI, P.L. 95-561 Budget Cuts

PROBLEM: Members of the Senate Appropriations Committee and the Office of Management and Budget apparently understand that the intent of Title XI, P.L. 95-561 was to save money and therefore reduce the appropriation for FY 81. The administration's request for a \$5M reduction in school operations from FY 80, \$3M of which was recommended for reinstatement by the House Appropriation Committee for FY 81, has not been accepted by the Senate Committee.

CONCLUSION: The Congressional intent of Title XI, P.L. 95-561 was not to cut each fiscal year appropriation to provide education services to Indian children. The purpose was to more equitably distribute education funding. The House recommendation for \$3M can be reinstated in conference in spite of the OMB recommendation.

RECOMMENDATION: That NCAI undertake an intense and immediate effort to urge the U.S. Senate Conferees and the U.S. House of Representatives in Conference Committee that \$3M is reinstated in order that P.L. 95-561 can be implemented as intended by the Congress.

2. Title XI, P.L. 95-561 Allotment Formula

PROBLEM: The enactment and implementation of P.L. 95-561 Title XI has created major education conflicts and funding problems for Indian education programs throughout the United States and Alaska.

The implementation and funding levels of P.L. 95-561 have been disastrous to Tribal Self Determination and control of education. The intent of P.L. 95-561 was to reform BIA education but benefits have impacted only a few BIA and contract schools. The transition from 638 to implementation of P.L. 95-561 has seriously jeopardized Tribal priorities in education throughout Indian Country. The state education system has historically been and continues to be non-responsive and counter-productive for Indian education needs. Tribal statistics are used to generate funds to the states yet subsequently, our Tribal needs are not effectively addressed. The only funds that are specifically generated to meet Tribal local education needs are those funds administered through the DOI-BIA system. P.L. 95-561 was enacted to be an all-inclusive law affecting several aspects of American education, but targeting Indian education. However, the time lines in the law and initial budget constraints have been detrimental and difficult to overcome. Specific examples of

problems created by the implementation of P.L. 95-561 include:

- a. The funding formula that was devised has resulted in a severely reduced quality of education for Indian students funded under the allotment formula.
- b. Reprogramming of elements 10-13-14 that are funds to implement the equalization formula has caused a phase-out of some 95-638 contracts which were unique, innovative and of a quality nature at the Tribal, Agency, and Area level.
- c. The lack of a fair formula to impact non-traditional and outside of school Tribal education programs that should have been included in the formula were developed by Task Force #9, policies that now have the full effect of the law.
- d. The direct line authority has created some management problems in the BIA Indian education delivery system.
- e. Standards was scheduled to be implemented one year after the allotment formula was phased in, after certain programs and staff were eliminated. Standards implementation has not occurred.
- f. Training for P.L. 95-561 and P.L. 95-471 implementation is another concern that requires a new learning procedure for Tribal Governments to implement education reform. The BIA has not yet provided technical assistance to Tribes in making a certain transition from P.L. 93-638 to P.L. 95-561 in school operation consistent with Indian Tribal and community needs and issues determined by Tribal Governments relative to all phases of Title XI and P.L. 95-471.
- g. Some off-reservation boarding schools have been closed or are scheduled to be closed by Congress and the Department of Interior. Such arbitrary decisions are in violation of both P.L. 93-638 and P.L. 95-561.
- h. Short term funding and verbal promises do not work and are "band-aid" measures that have not effectively met Tribal Indian education needs.
- i. Tribal impact and concerns have not been advocated by the OIEP to resolve Tribal Government education issues that have occurred in areas close to reservations in public schools.

CONCLUSIONS: A major comprehensive national study needs to be completed to gather impact information on both negative and/or positive effects each Tribe is experiencing as a result of P.L. 95-561 and P.L. 95-471.

Publication of all P.L. 95-561 rules and regulations must occur so that Tribal Governments can exercise authority over Indian education in its relationship to local education agencies. It is difficult for Tribal and other education committees to formulate constructive programs when final rules and regulations on various sections of the Act have not been published.

RECOMMENDATIONS:

- a. The OIEP-BIA must provide funding to the NCAI to conduct a survey of the Tribes on the impact of P.L. 95-561 in order to get Tribal consultation recommendations for amendments to the law.
- b. The NCAI affirms its support of the mission of the BIA-OIEP programs which reaffirms its responsibility "to provide quality education opportunities from early childhood through life in accordance with the Tribes' needs for cultural and economic well being in keeping with the wide diversity of Indian Tribes and Alaska Native Villages as distinct cultural and government entities. The BIA shall manifest consideration of the whole person, taking into account the spiritual; mental, physical and cultural aspects of the person within the family, Tribal and Alaska Native Village context."
- c. The OIEP-BIA should review all P.L. 95-561 rules and regulations to make sure they are consistent with the BIA Education Policies rules and regulations, especially standards and the allotment formula.
- d. The OIEP funds Tribal P.L. 93-638 education programs such as adult education programs, library, media and resource centers that are Tribal priorities and should be included in the allotment formula.
- e. The OIEP must fund the administrative contracts and programs and provide funds for Tribal administration of education programs in locations where Bureau direct education administration is not available. These were not included in the allotment formula.
- f. Training to Tribes, as mandated in Education Policies, should be included as a separate line item in the budget so that Tribes can be knowledgeable in all phases of Title XI and P.L. 95-471. Training could be conducted on a regional basis through Tribally controlled education organizations such as Advocates for Indian Education of the Affiliated Tribes of the Northwest and the United South Eastern Tribes.

- g. NCAI should request oversight hearings if the concerns expressed above are not met positively and in a timely manner by the OIEP-BIA.

3. Johnson-O'Malley Basic Support

PROBLEM: The BIA established a special Task Force to determine existing needs for Johnson-O'Malley Basic Support after the program was revised by P.L. 95-561. This Task Force concluded that many public schools located upon Indian lands had a definite need for such funds after comparing public school funding with the new Indian School Equalization formula. The Task Force strongly endorsed the continued funding of JOM Basic Support and developed other recommendations including an allocation formula.

CONCLUSION: The BIA has failed to fulfill its legal responsibilities as mandated by P.L. 95-561 in regard to JOM Basic Support and is thereby denying educational opportunities to thousands of Indian students enrolled in public schools.

RECOMMENDATION: The BIA should immediately release the Task Force report and reaffirm its official legal obligation in regard to JOM Basic Support and vigorously pursue additional funding. NCAI Education staff will check on this report and make known to Indian Tribes the BIA's progress.

4. Johnson-O'Malley Supplemental Support

PROBLEM: The BIA currently provides funding for the Johnson-O'Malley Supplemental Program for Indian students. At the present time, 176,053 eligible Indian students are being served both on and near Indian Reservations. Unfortunately, the funding level has not kept pace with the increase in eligible Indian students. The funding level per student has continued to decrease each year due to annual increases in eligible Indian students. The result has been a gradual decline in the quantity and quality of services.

CONCLUSION: The BIA has failed to advocate for increased appropriations for supplemental Johnson-O'Malley programs. In addition, the formula for distribution of Johnson-O'Malley Supplemental program funds did not provide for an equitable allocation of funds to Indian tribes. As a result certain geographic regions received more than other regions. The problem stems from the fact that the resource allocation formula is based on one vote per Tribe in the lower 48 states, whereas in Alaska, each village was granted one vote thereby distorting the manner in which funds were distributed.

RECOMMENDATION:

- a. The NCAI Indian Education Concerns Committee recommends that a task force of the Indian Education Concerns Committee be established to study this problem and to develop alternatives for future distribution of Johnson-O'Malley Supplemental program funds and related concerns.
- b. The Committee also recommends that the NCAI lobby for increased funding for the Johnson-O'Malley Supplemental program due to the yearly increase of eligible students.

5. Impact Aid - Title XI, Part A, P.L. 95-561

PROBLEM: Impact Aid (P.L. 81-874) funding for public schools educating students residing upon Indian lands was increased by Title XI, Part A, of P.L. 95-561. This part of the law includes requirements for Indian parent involvement, a grievance procedure and a method for Indian students to "opt-out" of the public school system.

The BIA and the U.S. Department of Education were directed to cooperatively develop regulations for this portion of the law. The BIA established Task Force #1 to develop these rules and regulations.

The Department of Education published proposed regulations in June, 1979, but has not published a final version. The BIA Task Force submitted a draft of proposed regulations in February, 1980; to date, these have not been published.

CONCLUSION: The Department of Education and the DOI/OIEP are blocking the implementation of Title XI, Part A, of P.L. 95-561 by not publishing regulations and are not effectively enforcing the intent of Congress regarding Indian parental involvement, the grievance process and the "opt-out" process.

RECOMMENDATION: The Department of Education and the Department of the Interior/OIEP should immediately publish final regulations or else inform Indian Tribes and parents why this cannot be immediately done and provide interim guidelines. These agencies should also carry out a formal campaign to inform Indian parents of their rights under this portion of the law.

6. Impact Aid and State Equalization Formulas

PROBLEM: Recognizing the special financial needs of public schools located upon Indian lands, Congress increased the funding available to such schools through the Impact Aid (P.L. 81-874) program under Title XI, Part A of P.L. 95-561.

The intent of Congress is being denied in states which have state equalization programs, such as Alaska, Arizona, Maine, New Mexico, and North Dakota. In such states, the additional funds appropriated by Congress do not reach the schools serving Indian students.

CONCLUSION: Unless Impact Aid funds for students residing on Indian lands are exempted from state equalization formulas, these students will receive no real benefits. Most state equalization formulas do not adequately address the unique needs of public schools serving Indian students, including high-cost categories such as transportation, staff housing, special education, bilingual education, and the low accessed valuations of such districts.

RECOMMENDATION: All special add-on funds under Impact Aid, including particular categories for Indian students should be exempt from any state equalization formula.

7. School Construction Funds

PROBLEM: Tribal contract schools, BIA schools and many public schools serving Indian students share a common problem of grossly inadequate facilities. Laws exist including P.L. 81-815 and P.L. 93-638 which authorize such construction programs, but none of these have ever been adequately funded.

CONCLUSION: Educational programs for Indian students will not achieve the benefits intended unless adequate facilities are provided.

RECOMMENDATION: Federal agencies, including the BIA and the U.S. Office of Education, should request adequate funding to meet the needs of Indian schools for improving facilities. School construction funds should be a budgetary priority.



**NATIONAL
CONGRESS
OF
AMERICAN
-INDIANS-**

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

June 19, 1981

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Poarch Band of Creeks

Mr. Kenneth Smith
Assistant Secretary
for Indian Affairs
Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240

Dear Mr. Smith:

We have been doing some thinking here about the proposed revisions in P.L. 93-638 which your office is currently preparing for publication in the Federal Register this summer.

The National Congress of American Indians is very concerned that Tribes be fully informed about the nature of these revisions and about the intent which lies behind them. The revisions promise to restructure many of the procedures which Tribes currently follow when seeking 638 "contracts." It is important that Tribes become fully familiar with the ways in which the revisions will benefit Tribal operations and strengthen Tribal self-determination. There may also be aspects of the proposal which will subvert Tribal self-determination or otherwise weaken Tribal capacities to manage their own affairs. If so, it is equally important that the Department of the Interior (DOI) become aware of these problem areas and that DOI take steps to correct these problems before the revised regulations are published in their interim form.

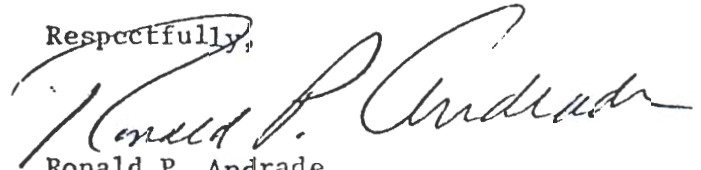
NCAI would therefore like to propose that DOI use our 38th Annual Convention, October 11 - 16, 1981, as an opportunity for resolving both of these problems.

NCAI is willing to set aside time during the Convention for a presentation of information on the 638 revisions and for a discussion with Tribal delegates who may have questions or comments they wish to raise on these proposals. We can schedule this "open forum" during the time that you are at the Convention, though we would also ask that members of the staff working on these revisions be present to assist in the presentation and with the discussions on these issues with individual Tribal delegates.

Letter to Mr. Kenneth Smith
June 18, 1981
Page Two

The dates of the Convention fall after the date originally intended for publication of the regulations in their interim form. NCAI recognizes that the publication date for the Interim Regulations will therefore need to be delayed until mid-November, to allow time for Tribal comments to become incorporated, as necessary, into the Interim form. We feel, however, that the amount of information which will be shared and the amount of clarity about the intent of these revisions which will emerge from this forum will more than offset any scheduling problems this proposal may otherwise create.

Respectfully,



Ronald P. Andrade
Executive Director

WL:ror

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NATIONAL CONGRESS OF AMERICAN INDIANS

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

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Poarch Band of Creeks

NATIONAL INDIAN WATER POLICY

The demand for water, an increasingly rare commodity, and the management of water resources in the critical decade ahead could prove particularly devastating to Indian Tribes unless existing Tribal rights and resources are preserved and protected by a comprehensive water policy.

Tribal governments must not fall into the same quagmire state and federal governments have experienced. Pollution, waste, and increased water demands have contributed to an emerging water crisis. Non-Indian open-ended water development and poor water management practices have compounded these water related problems. The crisis will not be just in terms of physical shortage, but can be attributed in part to fragmented jurisdictional considerations among water-oriented institutions and agencies. This patchwork of laws and jurisdictions has produced conflicting and competing programs the results of which often promote shortages in places where water should be plentiful.

The United States government has frequently been a negligent trustee of Tribal resources. The American

Indian Policy Review Commission stated the case well:

It was the policy of the U.S. Government to encourage settlement of its lands and to create family-sized farms with little or no regard to Indian rights to the use of water. With the encouragement, or at least the cooperation, of the Secretary of Interior, the principal agent of the trustee United States charged with protecting Indian rights and natural resources, many large irrigation projects were constructed on streams that flowed through or bordered Indian reservations. With few exceptions, these projects were planned and built by the Federal Government without any attempt to define, let alone protect, the prior and paramount rights of the Indians.

Task Force Four Report, pp. 165-66. (1977)

The complexities of federal Indian law have often not been fully argued by the federal government as representative of Tribal rights, at times even when reminded to do so by Tribal people. Such inattention to critical detail would be a clear breach of trust responsibility under traditional trust law.

The Supreme Court has failed to interpret all of the laws of the land. As recently as 1976, the Supreme Court failed to distinguish between federal water rights owned by and for the federal government and those owned by the federal government in trust for Indian Tribes. Akin v. U.S., 424 U.S. 800 (1976). As a result, the final arbiters of Tribal water rights in disputes that reach a litigative level often are State tribunal, which have historically been among the greatest enemies of Tribal control over Tribal resources.

Recognizing the historic danger of Tribal rights being lost on litigation battlefields where non-Indians, States, and the Federal Government have determined issues involving Tribal resources, the NCAI Mid-Year Conference called for the development of a National Indian Water Policy and Implementation Plan. This resolution follows.



**NATIONAL
CONGRESS
OF
AMERICAN
-INDIANS-**

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

RESOLUTION NO. 81-

**NATIONAL INDIAN POLICY ON TRIBAL WATER RIGHTS
AND NATURAL RESOURCES**

EXECUTIVE DIRECTOR

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BE IT RESOLVED, As a result of a special panel presentation on Water Rights, the National Congress of American Indians will prepare a National Indian Water Policy with the Indian tribes as beneficiaries. The National Indian Policy will be directed towards the development and administration of Indian water resources by the tribes without diminution of the tribes rights to use of water; and

BE IT FURTHER RESOLVED, That the National Congress of American Indians rejects the conduct of the Departments of Interior and Justice in the following matters:

1. Use of fraudulent investigations to diminish Indian rights to use of water.
2. To do or request investigations without approval or knowledge and consent of Indian tribes that would limit the tribes rights to the use of water.
3. Expenditure of large sums of money on wasteful investigation without consent of Indian tribes to the damages of the Indian tribes in instances where the tribes could use the money more beneficially for water resources administration and development.
4. The cooperation of the Department of Justice and the Solicitor's Office with states Water Rights administrators without the consent of the Indian tribes.
5. Proposed rules for the adoption of Tribal Water Codes.
6. Proposed rules for payment of attorney fees; and

BE IT FURTHER RESOLVED, There must be a national effort by tribal governments to establish a solid position on tribal rights throughout Indian country -- to exert tribal authority and putting this authority in action within a specified time period; and

BE IT FURTHER RESOLVED, That the National Congress of American Indians adopts this plan of action:

1. Require N.C.A.I. to coordinate this process.
2. Utilize N.C.A.I. to draft a National Tribal Policy on:
 - a. All Resources
 - b. Tribal Sovereignty

- c. Tribal Jurisdiction
 - d. National Recognition of tribal governments as nations
3. Utilize N.C.A.I. to draft National Codes for tribal governments regarding:
- a. All Tribal Resources; i.e.
 - 1. Timber
 - 2. Coal
 - 3. Water
 - 4. Fishing
 - 5. Hunting
 - 6. Oil
 - 7. Gas
 - 8. Include all Resources
 - b. Tribal Sovereignty
 - c. Tribal Jurisdiction
 - d. Tribes as unique nations within these United States
4. Demand Federal Recognition by Executive Order.
5. Allow the Federal Government thirty (30) days to take action on the Executive Order.
6. Plan to put into effect an immediate Economic Embargo throughout Indian country (all Indian nations must take part in this endeavor.)
7. Indian nations must be prepared to stop all Non-Indian economic activities throughout Indian country.
8. Involve all who are doing business with Indian nations to take an active part in this endeavor. We must stop the flow of dollars and resources in order to deliver the impact.
Businesses who deal with tribes through Indian country can provide the political impact necessary to establish the Executive Order which will recognize the rights of Indian nations.
9. The Key is Unity.

Resolution No.
Page 3.

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