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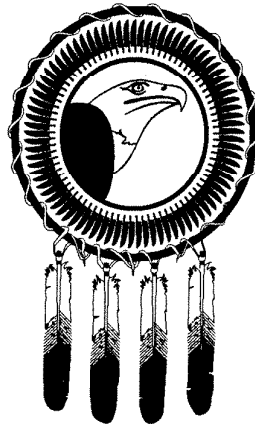
*Developmental Finance at Standing Rock Sioux Indian Reservation:  
Assessing a Proposal for Economic Rejuvenation*

by

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## I. Introduction

Enterprise finance is a major "modern history" approach to reservation economic development. While tribes have embraced various investment structures, one framework for enterprise finance which has received increased attention in Indian country is the development finance corporation (DFC). In general, a development corporation or bank is a "depository institution that uses its resources to foster grass-roots economic development."<sup>1</sup> In the reservation context, a DFC would be the primary vehicle of economic stimulation: Its loans would provide venture and start-up capital for reservation-oriented small and middle-sized businesses, and profits from these loans would be reinvested to directly and indirectly fuel further local economic growth.

In the late 1950s, the Standing Rock Sioux Tribe lost much of its natural economic base through the impoundment of land for the Oahe Reservoir. Given the current possibility of federal compensation for this illegal action, the Tribe has considered establishing a development finance corporation. The specific proposal, forwarded by tribal consultant Bob McLaughlin, grants a large fraction of the

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<sup>1</sup> Theodora Lurie, "Development Banking: Giving Credit Where Credit is Overdue", The Ford Foundation Letter, November 1989, page 5.

settlement monies to the DFC, with the hope that the Corporation can rebuild the Standing Rock Indians' economic base. The following discussion introduces the needs at Standing Rock, briefly considers by example the range of other development finance options, abstracts from these some general program components which seem necessary for success, and assesses the Standing Rock proposal in terms of those elements. While the final section does not attempt to answer the hardest question of all (Will it work?), it does provide some suggestions which should make the proposal more likely to succeed.

## II. The Environment at Standing Rock

No one can deny the need for economic progress on the Standing Rock Sioux Indian Reservation. Sprawling over 2.3 million acres in western North and South Dakota, this reservation is home to 5 - 6,000 American Indians<sup>2</sup>, who in 1980 boasted a per capita income of only \$2602.<sup>3</sup> At that time, the Bureau of Indian Affairs (BIA) estimated "official" unemployment (a statistic which excludes informal sector activity), at 34 percent.<sup>4</sup> Of those who held jobs,

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<sup>2</sup> "Defeat at Standing Rock", The Philadelphia Inquirer Magazine, 26 February 1989, page 25.

<sup>3</sup> U.S. Department of Commerce, Bureau of the Census, 1980 Census of the Population.

<sup>4</sup> U.S. Department of Interior, Bureau of Indian Affairs, Indian Service Population and Labor Force Estimates, 1989.

nearly 80 percent worked for the tribal, state or federal governments.<sup>5</sup> By 1988, the unemployment estimate was a staggering 87 percent and government remained the largest employer.<sup>6</sup> With such dismal employment prospects, many are left to survive in economic dependency: In 1980, 46 percent of the reservations' resident Indians received transfer payments.<sup>7</sup>

Some observers link this overriding structure of welfare dependency to the Missouri River Basin Development Program of the 1950s. Also known for the engineers who designed the system of 107 dams, the "Pick-Sloan" plan's purpose was to provide effective flood control for the lower Missouri River basin. (1943 and 1944 flood damages amounted to over \$100 million, largely in Nebraska, Kansas and Missouri.<sup>8</sup>) The unfortunate by-product of Pick-Sloan flood control, however, was the illegal seizure and subsequent destruction of the river bottomlands in the upper basin, an area where hundreds of Indians eked out a livelihood. The five main dams created huge reservoirs along the river; while beautiful, these lakes submerged the Indians' best

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<sup>5</sup> Bureau of the Census.

<sup>6</sup> Bureau of Indian Affairs.

<sup>7</sup> Bureau of the Census.

<sup>8</sup> Michael Lawson, Dammed Indians, University of Oklahoma Press (Norman: 1982), page 9.

homesites, pastures, croplands and hay meadows and destroyed the timber, wildlife and vegetation which made subsistence in the bottomlands possible.

In 1958 Marvin J. Sonosky, general counsel to some of the affected tribes, submitted a prepared statement to the Subcommittee on Indian Affairs in which he speculated about this permanent loss of resources. His words were a graphic foreshadowing of the future, an implicit prediction that life ahead would be difficult for the Indians of the area.

His statement reads,

The people will stay on the Reservation, but their timber and game lands cannot be duplicated. They will be forced to live on the treeless prairie. There are no lands on or even near the Reservation comparable to those within the taking line. No matter what Congress orders paid to these people, a substantial part of their way of life and environment will never be the same after this land is submerged.<sup>9</sup> A good part of their subsistence will be gone.

This "sizing up" of the future situation, when compared with the actual developments of the last three decades, has proven quite accurate. The employment and welfare figures cited above confirm that the subsistence ability of the Standing Rock Sioux is severely diminished.

Robert McLaughlin, author of the DFC proposal for Standing Rock and a tribe member himself, directly suggests

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<sup>9</sup> Marvin Sonosky, prepared statement presented to the Subcommittee on Indian Affairs, 24 March 1958. In Robert McLaughlin, "Report to the Standing Rock Sioux Tribe on the Standing Rock Development Finance Corporation", page 56.

that the Indians' present situation derives in large part from these specific events of the past. The Standing Rock Sioux lost 55,994 acres in the Oahe Dam impoundment (a take which affected 60 percent of all reservation ranches), and 170 families were forced to resettle.<sup>10</sup> McLaughlin interprets the losses and resettlement as having this effect:

The harm done to the human environment at Standing Rock is significant. The resulting removal and dislocation of a tribal group from the best and most valued property in their homeland has, unquestionably, resulted in severe social...damages suffered by individual members since the time of the taking... Dependency at Standing Rock and loss of lands from the Oahe taking are inextricably linked.<sup>11</sup>

Clearly, something must be done to ameliorate the situation at Standing Rock, to end the cycle of dependency that appears to have stemmed from the dam projects. As the statistics suggest, the major income producing measures of the past were government employment initiatives, where work was either offered directly in government offices (tribal or BIA headquarters) or in government-sponsored public service institutions (Indian Health Service hospitals, schools, alcohol rehabilitation programs). Severe budget cutbacks at all levels do not look to make this a vital sector for on-going employment expansion, nor should there be a desire for

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<sup>10</sup> Lawson, pages 51-52.

<sup>11</sup> McLaughlin, pages 65-66.

the public sector to fulfill that role. Too often, workers are hired by a nepotistic government structure which looks more to providing "a job" in the short run than to creating a job market in the long run.

The other logical source of employment expansion is the private sector, but as the concentration on public sector employment indicates, few private sector opportunities exist. Indians business activity and self-employment are nearly invisible; understandably, therefore, their overall contribution to the job market is limited. The 1988 special census at Standing Rock found only 179 wage and salary workers and 42 self-employed individuals on the reservation, and even these low estimates are considered "high".<sup>12</sup> In stark contrast to the Standing Rock situation, such employment opportunities are usually the heart of a thriving economy.

The point here is not that business investment has not occurred at Standing Rock in the past and now should. In fact, enterprise investment has occurred: In the last two decades, for example, the tribal government initiated nineteen separate projects. Eighteen have failed, and the remaining one is, as yet, just "hanging on".<sup>13</sup> Nor is the point that business investment should not take place because

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<sup>12</sup> McLaughlin, page 12.

<sup>13</sup> Bob McLaughlin, personal interview, 27 December 1989.

the reservation economy is too weak. The few Indian-owned small businesses and larger ranches which do exist attest to the local economy's ability to support sensible investment.

Instead, the point is that now, only appropriate and durable business investment should occur. Something caused the tribally-managed projects at Standing Rock to fail, and something caused the few other successful ventures to prevail. Indeed, those "somethings" stand as potential risk factors and helpful guidelines for any other reservation development initiative, to be taken into account when determining the "appropriateness" and "durability" of a new project. For example, many suspect that the thing most often hindering development is the tribal government itself. Its intrusion into the planning and/or management of a project seems to be a recipe for failure.<sup>14</sup> Thus, a warning for future projects at Standing Rock is this: Once short run, politically expedient tribal government objectives become the motivating force behind business operations, the business may not stay afloat.

Dramatic change is required at Standing Rock, and the DFC forwarded by McLaughlin could be key. Yet before the Tribe invests hard-won dollars in this plan, the DFC

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<sup>14</sup> McLaughlin, Report, pages 9-10. For a related discussion on the importance of appropriate tribal involvement, see also Michael Cameron, "Report to the Crow Tribe of Montana: A Prototypical Development Corporation for American Indian Tribes", Project Report Series, the Harvard Project on American Indian Economic Development, May 1988.

proposal should be closely scrutinized for its ability to "measure up". Only then will the money given as recompense for the economic destruction of the past have a chance to effectively rebuild the economy for the future.

### III. Options for Enterprise Finance

In searching for lessons in effective development investment, planners should look not only at the specific lessons of Standing Rock, but also to the experience of other tribes. There are a number of ways for new and expanding enterprises to be both selected for support and subsequently financed. In addition, there are a variety of ways that the finances can be held and supervised. Various tribes have embraced different options (different combinations of these choices), and a selection of these are discussed here.

#### A. Central Planning Committee with Tribal Government as Key Investor

The White Mountain Apache follow this arrangement. Their OEDP (Overall Economic Development Plan) Committee works in conjunction with the Tribal Planner to outline and prioritize development efforts. They then report to the Tribal Council, which both directs the use of tribal funds and organizes to garner external funding (largely federal -- BIA, HUD and EPA, for example -- but with an increasing

focus on private finance) for the projects chosen. In this case, there is no development finance fund per se, but rather, a group of administrators organized to arrange funding for each prospective project. In fact, the authors of the Overall Economic Development Program Report, FY 1985-86, hint that such a fund might even be undesirable; they state, "Careful analysis is being given [to] the full issue of alternative development financing with primary consideration to those modes not impinging on tribal sovereignty."<sup>15</sup> Of course, when it is managed with a focus on profits and the "bottom line", a development corporation or fund does have the potential to impinge on the sovereignty of the tribal government.

Because they have been seriously involved in development finance for a relatively "long" time, the evidence that this structure succeeds for the White Mountain Apache is plentiful. For instance, the FATCO project (a firewood and timber company) dates to the 1960s, and their other flagship enterprise, the Sunrise Ski Area, dates to the 1970s.<sup>16</sup> Both of these businesses have risen to national prominence: FATCO is one of the fifteen largest timber mills in the country, and Sunrise ranks as the

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<sup>15</sup> White Mountain Apache Tribe Overall Economic Development Program, OEDP Report and Program Projection, FY 1985-86, page 15.

<sup>16</sup> ibid., page 2.

leading ski resort in Arizona.<sup>17</sup> Significantly, the OEDP Committee describes them both as "stable industries", those "able to concentrate on solid growth and expansion, no longer only on survival".<sup>18</sup> The same committee reported that two other White Mountain Apache industries (the White Mountain Apache Motel/Restaurant and the White Mountain Apache Market) had gained "stable" status in 1984-85 as well.<sup>19</sup>

B. The Tribal Government & Outside Consultant as Investment Fund Managers

After receiving over \$81 million in a federal land claims settlement in 1980, the Passamaquoddy Tribe of Maine decided against parceling out the disbursement and instead chose to use the resources as a fund for major capital investment.<sup>20</sup> To that end, the Tribe enlisted the services of Tribal Assets Management, a firm which advises the governing body on investment options. More specifically, Tribal Assets Management complements the central investment process of the Tribe by assisting in project search, analyzing potential investments, helping to woo co-

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<sup>17</sup> *ibid.*, page 13.

<sup>18</sup> *ibid.*

<sup>19</sup> *ibid.*

<sup>20</sup> Daniel Cohen, "Tribal Enterprise", The Atlantic, October 1989, page 32.

investors, and finalizing the details of financial transactions. The fact that financing applies primarily to large scale business investments is noteworthy. A basic goal of the Passamaquoddy policy is for the Tribe to become a major player in the regional financial market.

Perhaps the most well-known investment project in all of Indian Country was a Passamaquoddy and Tribal Assets Management venture. In 1988, five years after acquiring New England's only cement plant in the first Indian-led leveraged buyout, the Tribe sold the plant at three times the purchase price, making a cool \$60 million profit.<sup>21</sup>

Of course, the Passamaquoddy have had their failures. Tom Tureen, Chairman of Tribal Assets Management, cited one of the Tribe's first investments as a true disappointment. They put money into plant and equipment, but the project never got off the ground. Yet the willingness of the group to learn by doing and the existence of further funds gave them both the desire and opportunity to try again. In subsequent ventures, the Tribe has been a bit more cautious and has found further success. Now, they are even looking at a way to use the "old disaster" as physical capital for a new project.<sup>22</sup>

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<sup>21</sup> *ibid.*

<sup>22</sup> Thomas Tureen, personal interview, 29 November 1989.

The "Passamaquoddy method" is actually fairly pervasive (a relative term since enterprise investment is limited in Indian Country anyway). The Choctaw of Mississippi, the Jicarilla Apache of New Mexico, the Salt-River Pima Maricopa of Arizona, and the Devils Lake Sioux of North Dakota have all built larger, well-managed tribal enterprises. (The latter two, at least, are Tribal Assets Management clients as well.<sup>23</sup>) Their pursuits have perhaps received less national publicity than those of the Passamaquoddy, but nonetheless, they, too, use the model of major capital investment undertaken according to the standards and practices of the fiercely competitive private capital market.

C. (Semi-)Independent Corporation as Investor of Private Monies or of Special Tribal Funds

Among others, a system of this sort has been proposed to the Crow Tribe of Montana and to the Rosebud Sioux of South Dakota<sup>24</sup>, and it also typifies the Standing Rock Sioux proposal. There are many variations in the specific structures and goals of such corporations, however, so the few that do exist in Indian country cannot be considered definitive examples. With that in mind, it is first helpful

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<sup>23</sup> *ibid.*

<sup>24</sup> See various writings by Michael Cameron in the Harvard Project on American Indian Economic Development Project Report Series.

to discuss the general concept and look second to an example.

Native American development finance corporations receive their inspiration from the much-hailed development finance banks of the Third World (e.g. the Grameen Bank).<sup>25</sup> The idea has caught on in other rural development efforts in the U.S. as well; for instance, the embryonic efforts of the Good Faith Fund in the American South (an arm of the Southern Development Bancorporation in Arkansas) follow this same method.<sup>26</sup> These funds concentrate on building financial self-sufficiency at a grassroots level, where "grassroots" implies a focus on small-scale enterprises and on the use of basic, existing resources to provide goods or services and employment. One general goal is to provide credit to worthy operations which, due to their lack of recognition in the formal credit market, would otherwise go unfunded. Indian reservations hope to replicate the success experienced by several Third World banks, where

...the provision of small amounts of capital to micro-enterprises in the informal sector economy of developing countries can significantly raise

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<sup>25</sup> A brief and interesting introduction to development banking efforts in the Third World is found in: U.S. House of Representatives, "Banking for the Poor: Alleviating Poverty through Credit Assistance to the Poorest Micro Entrepreneurs in Developing Countries", Report of the Select Committee on Hunger, May 1986. This report examines the progress made by the Grameen Bank of Bangladesh, the Rural Development Fund (RDF) of the Industrial Bank of Peru, the World Bank's Calcutta Urban Development Program II, and the Costa Rica Embrendamientos Urbanos con Garantia Solidoria (Aid to Businesses Through a Solidarity Guarantee Program).

<sup>26</sup> Lurie, pp. 4+.

the living standards of the poor, increase food security, and bring about sustainable improvement in local economies.<sup>27</sup>

The major divergence between the organizational arrangement of the development finance bank and the investment structures of the White Mountain Apache or the Passamaquoddy is the separation of the central tribal government from the actual forum for investment decisions. A development corporation might be chartered by the tribal government, would perhaps allow the tribal government to have some limited measure of control over appointments to a Board of Directors, and in more liberal structures, could provide for approval/disapproval of corporation activities on some regular basis. Most likely, the Board of Directors would consist of both Indian and non-Indians; all of them, however, would be development experts currently uninvolved with the tribal government. The Board would oversee the general operations of the corporation, set policy guidelines, and approve some of the work of the professional staff. On a day-to-day basis, the chief executive officer would make most of the "smaller" (however that is defined) decisions about investment and corporate operations. Monies for the general investment fund could be granted by the tribe or be received from private sources, as capital base donations or loans or as joint ventures on a one-off basis.

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<sup>27</sup> United States House of Representatives, "Banking for the Poor", page v.

One geographically relevant example of a tribe-specific project is the Lakota Fund, which serves residents of the Pine Ridge Indian Reservation in South Dakota. The Fund was established jointly in 1986 by the First Nations Financial Project and the Pine Ridge Oglala Sioux Tribe. As of October 1989, the Lakota Fund had disbursed sixty loans of less than \$1000 and six of more than \$1000.<sup>28</sup>

Two noteworthy elements of the Lakota Fund experience are its emphasis on technical assistance and the provision for group loans. First, Fund directors believe that their Technical Assistance Office is an indispensable part of the organization. It provides free advice to Tribe members involved in starting and/or operating businesses -- an essential outreach because of the "general lack of experience and training in small business planning and operation on the reservation."<sup>29</sup> Without this assistance, they believe that many more of the business ventures initiated by Lakota Fund loans would fold. Second, and like the provision of technical assistance, the Fund's policy of giving group loans helps insure the Lakota Fund from risk. Specifically, the borrowers are required to form groups, and loans are then given to one or two group members at a time. This practice is a direct parallel to the other, non-Indian

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<sup>28</sup> Cohen, page 42.

<sup>29</sup> First Nations Financial Project, Newsletter, 1986, page 3 of article.

DFC plans mentioned earlier, and was adopted because it can almost "psychically" replace collateral. The strategy benefits loan recipients by providing them with an instant support group and by honing their proposals through the input of others, and the arrangement promotes bank interests, too. It helps ensure loan repayment: group bonding, not to mention implicit and explicit pressure from other group members, makes for fewer defaults.

#### IV. Elements of a Successful DFC

In all three cases, for the White Mountain Apache, the Passamaquoddy and the Oglala Sioux, those who direct investment openly admit that everything is "learn as you do"; thus, there are no rules which could be used to develop a "formula" for successful development finance, let alone specify guidelines for a successful development finance corporation. Moreover, because each tribal group is different -- because each faces a different cultural, political, geographic and economic situation -- generalizing is quite difficult. The primary usefulness of the forgoing overview of various tribes' methods of organization for investment is that it provides planners with things to think about: What elements must be considered in planning a workable system? Several general suggestions are given below.

A. The role of the tribal government must be explicitly defined and consistently upheld.

The diversity of life situations across tribes, and especially the diversity of cultural demands, generally means that different settings require different combinations of tribal and "private" investment control.

For the White Mountain Apache, there is obviously a good deal of acceptance of the government's leadership, not only because the leadership is "doing a good job", but also because the Apache possess a cultural ethic which promotes tribal unity. For the Oglala Sioux, this is not so much the case. Perhaps they are a more fiercely individualistic people; certainly one should recall that small bands were the center of their historic social organization, with less orientation toward larger, "total tribe" units. This analysis agrees with the investment systems actually operating at both the White Mountain Apache and Pine Ridge Reservations; one finds, respectively, a centralized and a more individualized structure.

Regardless of its specific type though, once the tribe determines an appropriate structure, that structure must be clearly manifested, and further, consistently maintained. These efforts give the investment organization greater potential for success: Because the policy is predictable, investment participants (especially those from the "outside") perceive that there is a safe environment for

business operations. If the structure was unstable or were even perceived to be, capital growth would be much slower, or possibly, nonexistent. Put in even stronger terms, unless the corporation (in conjunction with the tribal government) can create an environment in which an investor feels safe, investment will not occur.

B. Bridges should be built between the reservation economy and the surrounding non-reservation economy.

Few tribes in the United States possess adequate resources to make autarky a reality; knowing this, it is unrealistic for tribes to further development efforts that do not somehow acknowledge the symbiosis which can develop between the reservation economy and the "outside" economy.

Thomas Tureen touched on this point in discussing the Passamaquoddy success; he emphasized that for the Passamaquoddy to prosper, they must be seen as a major player in economic events in the region. While he was referring more specifically to opportunities for major financial investment of the type that his firm has facilitated, the principle applies to smaller ventures as well. On the Navajo Reservation, for instance, the Seventh Generation Fund (an Indian DFC not attached to any particular tribe) financed a group of Navajo family farmers using Israeli drip irrigation. In 1988, the drip-irrigation project, once so small that it was consistently overlooked

by the tribal government as a potential investment initiative, "sold \$230,000 worth of produce on and off the reservation."<sup>30</sup> (emphasis added)

Building bridges with the external economy is not a veiled promotion of the system that often exists today, where funds which were originally allocated to Indians almost immediately "pass through" to non-Indians. Instead, economic bridges serve to link the economies in a productive way, by setting up mutually beneficial opportunities for buying, selling and investing, and for the sharing of experience and knowledge. These connections thus increase Native incomes even more. In most cases, ignoring such networks simply cuts Indian development off prematurely -- especially from human resources, which are scant on many reservations.

C. The development finance corporation must be adequately insulated from risk.

Usually this process must take place on two fronts -- insulation from unwise investments and insulation from the politicization of the finance sources (that is, the investment finances should not be open to self-interested political manipulation). In identifying the particular ways in which these risks come to bear and in protecting against

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<sup>30</sup> Cohen, page 42.

them, a very helpful guide is to recall that the DFC exists to make a profit and not to lose money or allow fund depreciation. Likely, the things which endanger profit-making are elements or policies of the corporation that are too risky to retain or continue.

In attempting to insulate the corporation against ill-advised investments, the development banker is in somewhat of a bind. Because the point of development banking is to give credit to people and projects which the mainstream capital market has dismissed as "too risky", plenty of unwise investments do exist. Here, the policies of similar domestic and international institutions are instructive. First, as mentioned earlier, the group loans policy which many of the institutions have adopted may also succeed in Indian Country. The non-Indian examples demonstrate that creating appropriate eligibility criteria is important as well; many programs require hopeful recipients to develop sound business plans and to attend training sessions before making final loan assessments. A third consideration is that adequate insulation from risk probably requires a versatile and able technical assistance staff. These individuals can jump in with the appropriate expertise, hand-hold when necessary, or if need be, even take over the venture in an attempt to save it.

Insulation from politicization can be most easily arranged with a strong corporate charter. By solidly

protecting the fund in theory, the charter can greatly influence the practice of corporation independence. The tenets of the charter should specify the corporation/government relationship and create rules for smooth operation within that specification. For example, the charter should specify eligibility criteria for corporate directors and the CEO, create decision rules (and where appropriate, specific voting rules), and establish guidelines for communication with shareholders and with the government. The point of a tightly drawn corporate charter is much the same as that of a political constitution: the document should create a structure which will survive the bad administrators (corporate and government) and yet effectively channel the decision-making ability of the good.

D. An appropriate and vigorous public relations network must be formed.

This element adds accountability to the system and "buys" support for the organization. From the start, smart public relations teams will assure tribal members that while fund monies will not be doled out, each person with a sound idea will receive a development loan. Essentially, this strategy advertises what the DFC does and does not do, warding off destructive false expectations.

Clearly, solid public relations encourage participants on both sides of the lending line. As stated, the team

which explains DFC policy should also be actively looking for potential loan recipients. A DFC should not always rely on people coming to it; an effective organization seeks participants out as well. (The Good Faith Fund has even hired two full-time staffers to drive through the towns of rural Arkansas to meet people, "chat" about the Fund, and solicit ideas!<sup>31</sup>) The other participants are co-financiers. As highlighted previously, individuals and firms will be looking for reassuring signs about the corporation before plunging in to share investment opportunities. Thus, besides simply exposing investors to the DFC, public relations are a critical part of the "reassurance process".

#### V. Comparison with the Standing Rock Proposal

Knowing that a successful development finance corporation must at least "measure up" to the necessary elements outlined in the last section, it is worthwhile to compare the McLaughlin proposal to those elements, to see what it does to provide for them. In making this analysis, specific references to the document "Report to the Standing Rock Sioux Tribe on the Standing Rock Development Finance Corporation" are necessary; page references are given in {}'s.

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<sup>31</sup> Lurie, page 4.

A. Role of tribal government explicitly defined and consistently upheld.

As touched upon previously, while many private and tribal control sets exist, the Standing Rock proposal is to establish a wholly independent DFC, to be held in common by all members of the Tribe. Thus, the question for evaluation is this: what does the proposal do to support this decision for tribal member ownership (no tribal government ownership) of a private and independent corporation?

1. The Corporation is defined as "wholly independent" {17}, and the over-arching policy guideline forbids investment "on the basis of political criteria or influence" {23, 24}.

While simply stating independence and providing a rule for investment decision-making does not make these policies fait accompli, making these statements in the chartering documents is worthwhile -- it leaves no ambiguity as to founding intent.

2. A Congressional mandate would create the Corporation as a "truly independent...operating entity" {18}.

The Congressional mandate would carry the force of law, making incursions on the independence of the corporation by the tribal government subject to trial in the federal courts.

This portion of the proposal is somewhat problematic, however. First, it may be easier for Congress to simply pass a conceptual bill, without specifics, leaving the form to be created by the tribal government. If that occurred, the tribe could easily change the specifications and legally by-pass the proposed structure from day one. Second, as one tribal councilman pointed out<sup>32</sup>, adequate enforcement depends on court backlog. If the wait for a hearing is long, irreversible damage could occur before any case was heard.

3. The Corporation would be privately held by the members of the Standing Rock Sioux Tribe.

Because individual Indians will hold shares and therefore directly profit from successful DFC investment, it can be argued that private shareholders will create an uproar if the tribal government ever attempts to overstep its bounds.

The problem with this argument, that shares may serve as a guarantee of independence, is that the shares may need to produce immediate dividends; from an economic perspective, there is no guarantee, nor even an expectation, of such immediate returns.

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<sup>32</sup> Meeting of the Economics Committee of the Standing Rock Sioux Tribal Council, 27 December 1989.

In particular, adequate enforcement occurs when Tribe members value the DFC as a private entity and do not simply view it as the "big new corporation" with "all that money" that "we don't get". Yet for the members to value private ownership and management, they may need to see a direct, tangible profit from their shares. In the greater financial community, share profit accrues through dividends and the sale of shares. Because the shares are non-tradeable during the thirty-year capitalization period, only dividends remain as a source of valuation. Thus, dividends it must be if the shareholders are to value the Corporation as chartered.

Without monetary gain, members may be forced to turn to a second source of valuation -- a non-economic sort, where Tribe members value shares because they believe in a particular kind of system. This would immediately politicize the shares, making them no different than votes: The two major reservation entities, the tribal government and the DFC, would be forced to slug it out in public, each attempting to convince the populace of their system's "rightness". In such a scenario, if the tribal government won, the shareholders could not be counted on for an enforcing outcry should the tribal government intervene in DFC affairs.

Certainly, the outlook is less pessimistic if the corporation survives the capitalization period. Then, the shares will become tradeable among tribe members and thus

take on economic value as well as political value. In that case, the market can control for politics. In sum, the idea is right, but it cannot be counted on for short run goal achievement.

4. The Corporation's start-up committee has only one tribal government representative, the Tribal Chairman {30}.

The start-up committee's major task is to select the first group of Board members. Since there is only one tribal representative, it is less likely that the Board will be heavily political.

5. The Corporation proposal includes a specific statement on the interplay of the tribal government with the DFC {32-33}.

Again, a clear definition bounds future interactions. The statements referred to here are particularly helpful because they emphasize the productive role that the tribal government must fulfill, and not just the "don'ts" {33}:

Issues such as trust protection, jurisdiction, tribal taxation, and the tribal judicial process will require the Tribe to continue to play a major role in the development process.

Tribal government...should...work to provide a business climate which contributes to growth in the reservation's economic base.

B. Bridges built between the reservation economy and tribal economy.

Because the Standing Rock Reservation is heavily peppered with fee lands under non-Indian occupancy, there is a large and accessible non-Indian economic sector literally in the Tribe's own backyard. If they are able to develop sorely needed local enterprises, this situation may finally be of advantage to the Standing Rock Sioux. Access to one non-Indian community and experience in breaking down the barriers of discrimination could help forge Indian access to larger regional economies.

Besides this given demographic factor, the proposal itself gives the Corporation numerous opportunities to create new economic relationships.

1. The Corporation is instructed to initiate contacts with other financial institutions {23,24}.

The proposal directs the DFC to establish several sorts of contact: the DFC must strive to increase the range of institutions purchasing Corporation-issued debt, must encourage potential loan recipients to seek other sources of capital and facilitate that search, and must prudently invest surplus corporate funds to maintain and enhance the value of the principle.

2. The Corporation will have consumer-level visibility off-reservation {23,33}.

By mandating only that the primary business activity of loan recipients be on the reservation, the proposal allows consumer access to the reservation economy through off-reservation outlets and distribution centers. Plus, Bismark, North Dakota, is a suggested office site; such a location would also serve to increase the DFC's visibility and provide it with an outpost in the non-reservation sector.

3. The Corporation will invite the participation of off-reservation personnel {24,30}.

While many Indians initially balk at the concept of inviting non-Indians to manage Indian funds, the DFC actually provides them with a means for beneficial participation. They will bring their expertise to the Corporation as members of the Board of Directors and as technical assistants, and their sole aim will be to earn a profit for the shareholders of the DFC -- the reservation Indians.

C. DFC adequately insulated from risk.

1. Insured against unwise investments.

There are many elements in the proposal for Standing Rock which promote this goal. They include:

-- the Corporation shall invest in small and medium-sized private enterprise... [on the basis of] financial, economic and technical criteria and not on the basis of political criteria or influence. {23}

-- the Corporation's equity position in any one enterprise should not reach over 30 percent for the first five years and 25 percent thereafter. {24}

-- the Corporation will have a Directorate for Investment Project Management. {33}

-- the Corporation will have a "hard loan" requirement. {35}

-- the Corporation will require every plan to go through a feasibility assessment and business plan stage. {35}

## 2. Insured against politicization of the Fund.

Not surprisingly, the means by which the proposal achieves this goal are the same as those by which it achieves goal "A": Clarifying and enforcing the role of tribal government in this DFC is the primary means of insurance against the politicization of the fund.

The problem, of course, is that this is not an adequate means. The proposal goes a long way toward outlining the functioning of the Corporation, but it stops short of actually drawing up a sample corporate charter.

### D. Form an appropriate public relations network.

There is really only one point at which the Standing Rock proposal concentrates on public relations. The Board of Directors is given the responsibility for communication

with shareholders, the service population and the surrounding regional community; the Board is to issue periodic reports and serve as a general information source.

While this bare-bones structure implicitly covers the essentials, specifying a more well-defined public relations role for members of the Corporation staff might be worthwhile. Leaving this important duty to the Board alone may skew the way in which it is performed. It is not difficult to imagine, for instance, that Board members will see themselves as more appropriately involved in inter-financial institution communication, and thus, refrain from adequate communication with the service population.

#### VI. Conclusions and Recommendations

While some minor concerns and glitches have been mentioned throughout the forgoing comparison, it nonetheless demonstrates that the McLaughlin proposal does a fairly good job of meeting the criteria cited in Section IV as important to the success of a DFC. As always seems to be the case with such complex but important ideas, however, this one is still not flawless. I believe some larger difficulties with the proposal for Standing Rock remain -- ones which relate both to the specifics of the proposal and to the context in which it is to be implemented. These are extensions of ideas discussed in the last two sections and, with reference to Section II, concerns which arise from an assessment of

the current economic and social environment at Standing Rock. They involve the delicacy of the Tribal Council's decision to support this policy, the questions surrounding non-Indian participation, some deficiencies in the proposed DFC's investment goals, and most important, the need for a specific sample corporate charter.

A. Recommendation: Proposal advocates, especially those at the Tribal Council and other leadership levels, should form a strong alliance in support of both the DFC and the integrity of this proposal.

Members of the Economics Committee of the Standing Rock Sioux Tribal Council willingly admit that their acceptance of this proposal is grudging.<sup>33</sup> In large part, the Committee, and hence the Council, feel that because the economic situation on the reservation is so bad, they have no options other than the McLaughlin proposal. While this default situation has lined up many leaders who were previously opposed to a development finance corporation behind the proposal<sup>34</sup>, it does not speak well of the proposal's likelihood to survive as is. Suppose the Tribe suddenly encountered slightly better economic times, the political situation changed, or new personal conflicts or

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<sup>33</sup> Meeting, 27 December 1989, and Bob McLaughlin, personal interview, 29 November 1989.

<sup>34</sup> Allen White Lightning, personal interview, 27 December 1989.

alliances arose; any of those things could reverse this acceptance-by-default and cause the proposal to be altered or rejected at the tribal level. Without more committed support, it seems that the McLaughlin plan has great potential to remain just that -- a plan. For the proposal to become viable, its advocates should form a stronger alliance in support of its passage and for the maintenance of its integrity.

B. Recommendation: The DFC should specify that at least a minimum number of Indians serve on the Board and should create policies which promote the employment of qualified Indians on the corporate staff.

As mentioned, many Indians are wary of non-Indian participation in their financial affairs. Despite this concern, the DFC as proposed has no rule for defining Indian participation in management and or as members of the corporate staff, and particularly, no rule for Indian supervision at the Board level. Without Indian Board members, how will this appear any different from any other "White Man's Burden" project in Indian Country? Indian people need at least partial Indian steersmanship for this Corporation; otherwise, why should they accept, respect and uphold it? The proposal definitely needs to set minimum guidelines for such participation.

C. Recommendation: The proposal should bring the DFC's goals and operations into consonance with the size of the fund.

Currently, given the prospective size of the fund, the Corporation's investment goals are incompletely specified. Structurally similar investment corporations have small capital funds (The Lakota Fund started the \$1.4 million<sup>35</sup>, the Good Faith Fund has a capital base of \$500,000<sup>36</sup>, and the Center For Community Self Help began its operations with \$57 raised at a bake sale<sup>37</sup>!) and focus on very small scale loans (recall the sixty Lakota Fund loans of less than \$1000). By contrast, this DFC plans to amass \$112.2 million in the thirty-year capitalization period -- \$2.5 million in the first year alone. These numbers will make larger investment projects both attractive and possible.

Yet, the proposal claims the DFC will focus on small and medium-sized projects, and the consensus of current leadership at Standing Rock seems to be that such projects are those with the greatest potential for success.<sup>38</sup> Thus, a disjunction exists between what the DFC should do and what it can do. Realistically, the proposal must find a way to

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<sup>35</sup> FNFP, Newsletter.

<sup>36</sup> Cohen, page 6.

<sup>37</sup> *ibid.*, page 5.

<sup>38</sup> Meeting, 27 December 1989.

draw these competing pressures into line, and it can do this by laying out more investment and fund management guidelines. Perhaps as the Southern Development Bancorporation has, it could develop separate funds for smaller and larger scale investment. Capital availability dictates that the Standing Rock proposal must certainly discuss the types of large investment which might be considered. Also, it should set very strict guidelines for surplus fund usage and for disbursement of the surplus' earnings. Without making these further specifications, the DFC could be consumed by its own largess; temptations to divert the capital and strong pressures to allow purely political usages of the seemingly endless supply of money may be the DFC's undoing. Too much money can sometimes cause as many hassles as too little.

D. Recommendation: The proposal must specify the Corporation's rules of operation more completely and more explicitly; it should include a proposed corporate charter.

At least, such a document must do the following:

1. Clarify the composition of the Board.

-- Currently, the Board consists of eight members and includes the Corporation President as a non-voting member. An even number does not yield a majority rule, so if that method of decision making is adopted (instead of consensus or rule by the chair), giving the CEO a vote or altering the Board size by one would be wise.

-- As stated previously, the plan should set a minimum on tribal members as Board members.

(The following two voting rules recommendations assume that majority rule will be chosen as the decision rule)

2. Establish a quorum rule.

-- Perhaps if the Board has nine voting members, the quorum could be seven, or if the Board has seven voting members, the quorum could be five.

3. Establish voting rules and specify cases for special rules.

-- The rules must specify which issues the Board shall vote on, when the tribal government must approve Corporation activities, and what issues are open to shareholder evaluation.

-- The rules should state when votes follow a simple majority and when the decision rule should be a super-majority. (With particular reference to the Board: on investments over \$500,000? for the removal of Board members?)

4. Specify reasons and guidelines for the removal of Board members and the Corporation's Chief Executive Officer.

-- These rules should be specified for pre- and post-shareholder selection of the Board members. If the shareholders select a Board member, they may be the only proper ones to remove a Board member.

5. Formalize and require adequate communication between the DFC and the tribal government, project co-financiers and DFC shareholders.

Establishing a development finance corporation is a monumental task -- one which requires intense planning, observation and comparison, and intimate knowledge of the people for whom the development is intended. This paper does not suppose my complete knowledge of any of these things, but the discussion should at least contribute to the profitable revision of the McLaughlin proposal for the Standing Rock Sioux, and increase its potential for success. More generally, the themes should aid all reservation groups in the process of appropriate investment program design.

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