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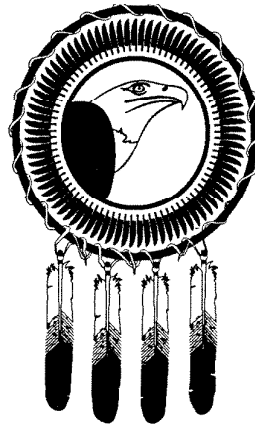
*Creating an Environment to Attract Investors  
and Develop New Enterprises on the Fort Mojave Indian Reservation*

by

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## EXECUTIVE SUMMARY

### Overview

The Fort Mojave Indian Tribe (FMIT) has begun to develop 4,000 acres of valuable reservation property adjacent to the Colorado River in Nevada as part of a plan to invigorate its depressed economy. This development project, a new community called Aha Macav, represents the 35-year-old dream of the Fort Mojave Indians to enhance their economy. The Tribe plans to convert the desert land into a major destination resort that can provide income to improve the quality of life for all tribal members. The success of Aha Macav and the plans to revive the Tribal economy are contingent upon the attraction of outside investors and the promotion and identification of new venture opportunities for tribal members.

**The purpose of this paper is to identify key components for successful private investment and business development on the Fort Mojave Indian Reservation. An integrated approach to development, which addresses both these components, should ultimately enable the Tribe to move towards economic self-determination and a sustainable economy.**

### Analysis

In order for the FMIT to create an environment attractive to private investors and to business development, it must address existing impediments associated with the following four factors:

1. Tribal Assets
2. Federal Government
3. Business-Tribal Government Policies
4. Contract Enforcement

While the problems associated with each area may not pose direct deterrents to investors and entrepreneurs, they hamper relationships built on trust and assurance -- two critical

components for business development. The impediments posed by each factor are identified below.

- **Inability to Capture Full Value of Tribal Assets.** Like many tribal communities, the FMIT has not been capturing the full value of its assets. It has the key ingredients with which to build a strong economy: an abundance of labor, land and water, low labor costs, successful tribal enterprises, an improving infrastructure, ambitious plans to develop 4,000 acres of reservation property, and a membership that is eager to achieve economic success. Yet, the full potential of these assets has not been developed. Additionally, business opportunities remain unrealized as there have been limited chances for tribal members to improve their skills and develop their entrepreneurial spirit.

- **Dependency on Federal Government.** The FMIT remains dependent on the Federal Government, and as a result, is unable to proceed with a self-determined, effective and efficient planning process. While the Federal Government has been responsible for funding many tribal enterprises, it has also curtailed the sphere of the Tribal Council's activities. This remains one of the greatest obstacles to tribal self-determination.

- **Lack of Distinction Between Goals of Tribal Government and Business.** The Tribal Council ultimately assumes all responsibility associated with managing tribal enterprises. This leaves the Council little time to focus on distinctly governmental activities that are necessary to lay a foundation on which a business culture can be built.

- **Limited Ability to Enforce Contracts.** The FMIT has had difficulty creating a strong judicial system with the ability to make fair and binding decisions. For years, the Tribal Court system has lacked adequate expertise. The inability to ensure investors and entrepreneurs that contracts will be enforced in an objective, fair and binding manner leads to skepticism and uncertainty.

## **Recommendations**

The Tribe can overcome these obstacles and create a community where businesses can develop, and the quality of life for each tribal member can improve. The four recommendations to overcome these obstacles are:

### **1) Incorporate Tribal Assets Into Business Strategy**

In order to harness its assets to realize their full potential, the Tribe should look to create a small business strategy, expand successful businesses, develop services for existing businesses, and establish a reinvestment policy.

### **2) Strengthen Tribal Government Through Self-Governance**

In order to promote tribally-determined goals and build a self-reliant economy, the Tribe must limit Federal interference. Fortunately, the Self-Governance Demonstration Project gives tribes an opportunity to assume more responsibility over 638 contracts. By assuming greater managerial and financial responsibility in Tribal Government programs, the FMIT can begin to rely less on the Federal Government and move toward self-sufficiency and self-determination.

### **3) Distinguish Between Goals of Business & Government**

If the Tribe's goal is to attract outside investment and compete with off-reservation businesses, it must distinguish between the objectives of business and government. This requires the expansion of its organizational capacity and the creation of objective human resource policies. These changes will enable businesses to operate without political interference and will enable the Tribal Council to address the increasing demands placed on it by a growing economy.

### **4) Create a Reliable System of Contract Enforcement & Dispute Resolution**

Stable and predictable environments are most conducive to investment and business development. To overcome obstacles associated with the Tribe's lack of a strong judicial system, it should look to other means to enforce contracts. The least risky and most inexpensive way to accomplish this is through an objective third-party arbitrator. Arbitration typically contains the essential elements of public or court adjudication: proofs and arguments are submitted to a neutral third party who has the power to issue a binding decision. By proactively designing a method to

enforce contracts, the Tribe will impress investors and entrepreneurs with the seriousness of its intentions.

While taking action in each of these four areas will not bring the Tribe overnight success, it will begin to lay a strong foundation where business development can take hold.

### **Short-Term Goals**

These recommendation, for the most part, address long-term objectives of the Tribe.

However, long-term objectives need to be prefaced by short-term strategies and accomplishments for several reasons:

- Long-term goals cannot be sustained if there is dissatisfaction or loss of interest in the short-term, and
- Short-term successes help to build a foundation on which long-term objectives can be realized.

There are several immediate steps the Tribe can take to promote its viability as a business partner, and advertise the opportunities it can offer its own and surrounding communities. These steps include an integrated campaign of both public relations and marketing, and a request to participate in the self-Governance Project. While both of these endeavors are time-consuming, they require minimal cost to initiate.

## I. INTRODUCTION

The Fort Mojave Indian Reservation is located on the Colorado River and occupies approximately 38,000 acres of desert land within Arizona, Nevada and California. Despite the economic potential of this vast area, business activity to date has been limited. Of the Tribe's 970 members, approximately 36% are unemployed, and 30% earn less than \$7,000 per year. The surrounding towns offer little opportunity for the Tribe, as they also suffer from severe economic depression and unemployment mainly due to declines in the railroad and farming industries.

In an effort to invigorate the depressed economy, the Tribe has begun to develop 4,000 acres of reservation property adjacent to the Colorado River in Nevada. This development project, a new community called Aha Macav, represents the 35-year-old dream of the Fort Mojave Indians to enhance their tribal economy, and is one of the most ambitious endeavors in Indian Country today. The Tribe plans to convert the desert land into a major destination resort that can provide income to improve the quality of life for all tribal members. In order to achieve this goal, the Fort Mojave Indian Tribe (FMIT) must attract outside investors to Aha Macav and encourage and identify new venture opportunities for tribal members.

Aha Macav is strategically located along the Laughlin Highway between Needles, California and Laughlin, Nevada. It is also relatively close to three major cities: Las Vegas, Phoenix, and Los Angeles. These strategic advantages can be maximized by overcoming the obstacles associated with tribal assets, government, business-government practices, and contract enforcement.

**This paper identifies the necessary components to lay the foundation for private investment, and business development on the Fort Mojave Indian Reservation. These components should ultimately enable the Tribe to move towards economic self-determination and a sustainable economy.**

Four key steps for creating an environment attractive to private investors and to business

development on the reservation are:

1. Develop Tribal Assets,
2. Limit Federal Interference and Strengthen Tribal Government,
3. Distinguish Between Business and Government Objectives, and
4. Design Mechanisms to Enforce Contracts.

The first section of this study identifies the problems associated with each of the four areas. In the succeeding four sections, the study identifies ways to overcome each of these obstacles. While these recommendations will not bring overnight success, they will begin to lay a strong foundation where business development can take hold. Finally, the study concludes with the immediate steps the FMIT can take to begin laying this foundation.

This paper was written with the assumption that the two goals of attracting investors and developing businesses are consistent with tribal culture, and it attempts to make suggestions that do not run counter to the culture of the Fort Mojave people. While the paper does not explicitly address the issue of cultural acceptance, its importance cannot be overemphasized. The actions of the FMIT indicate that the Tribe is accepting of outsiders as it has employed managers from off the reservation to run many of its tribal enterprises. In addition, the Tribe's plans for Aha Macav rely on investments from outsiders and business development.

## **II. IDENTIFYING OBSTACLES TO ATTRACTING INVESTORS AND CREATING NEW VENTURES**

**The FMIT has the capacity to improve it's economic condition, and must begin to address the obstacles that could hinder the development of Aha Macav and other business opportunities.**

### **A. Full Value of Assets Not Captured**

The FMIT has not been capturing the full value of its resources, a problem encountered by many tribes. For instance, it owns rights to the Colorado River; this is the most valuable asset in the region and should be a source of income for the Tribe. However, governments in Southern California have taken water to satisfy the needs of their communities and did not return the value of the river water to the Tribe.

In addition, on-reservation processing, finishing, manufacturing and marketing of goods are limited and most consumer goods are brought onto the reservation from outside communities. While the Tribe has an abundant work force, eager to participate in the development of the new town, very little income is currently being generated within the community in the areas mentioned above. Through the purchase of goods, money is leaving the reservation.

By using its resources to the full extent, the FMIT can develop a business community that will attract outside investors. The success of small businesses is an important first step to reviving the internal economy.

### **B. Federal Government Dependency**

To date, most of the reservation enterprises have been funded by the Federal Government. This funding is accompanied by bureaucratic delays to development that have compromised the Tribe's economic progress.

Most recently, the Federal Government has been responsible for the following delays on the Fort Mojave Reservation:

- A Tribal constitutional amendment to establish a corporate charter to promote development required Department of Interior (DOI) approval. Approval was initially denied, via a letter from the Superintendent of the Colorado River Agency of the BIA in October 1988, on the grounds that, "[t]he petition contains in excess of the required number of signatures." After 2.5 years, DOI still had not approved the charter.
- A grant request for a franchise restaurant was submitted by the Tribe to the Department of Housing and Urban Development (HUD). The application was denied, and the Tribe subsequently appealed the decision several times. After one year of appeals, HUD approved the project. The evaluation criteria were found to be arbitrary and capricious by the Tribe, and acceptance of the proposal was dependent on the Tribe's ability to challenge the decision. This challenge cost the tribe a significant amount of money through wasted time and consultants' fees.
- A Bureau of Indian Affairs (BIA) loan guarantee on the Tribe's first major capital project, a hotel/casino, took the BIA three years to evaluate -- significantly longer than a private-sector evaluation.

This kind of rote performance, delay, and seeming mismanagement is typical of the BIA and will likely continue. Even a senior official in the Phoenix Area BIA office admitted, "The main impediment to economic development on the Fort Mojave Reservation has been the Federal Government."

Federal impediments are common occurrences throughout Indian Country. For decades, the BIA has been accused of fraud, mismanagement, and deliberately impeding tribal economic development. While a central mission of the BIA is to promote Indian economic development, 45% of all Indians living on reservations live below the poverty line. In addition, almost half of all Indian adults are unemployed, and the majority of those who do work earn less than \$7,000 per year. Over 50 Congressional investigations have recommended federal reorganization or restructuring of Indian affairs. In one nine-year period alone, the BIA was reorganized ten times. While the structure of the BIA has changed, its processes remain sluggish and inefficient.

Two recent documents issued by the Federal Government admit to gross mismanagement of Indian affairs. The *1984 Report on the Presidential Commission on Indian Reservation Economies* revealed that:

"Bureau of Indian Affairs management of Indian trust resources creates numerous land, labor, and capital obstacles to Indian reservation economic development. In terms of land and resources, incompetent asset management undermines local initiative and raises costs to Indian tribes and businesses....Bureau personnel are either under-qualified to manage their present responsibilities, or unable to provide expert technical assistance for business development....A Byzantine system of over-regulation actually deters investment....Exacerbating the development climate is the fact that BIA consumes more than two-thirds of its budget on itself....The system...thrives on the failure of Indian tribes."

Similarly, the *1989 Report of the Special Committee on Investigations, Senate Select Committee on Indian Affairs* concluded that:

"The U.S. Government maintains a stifling bureaucratic presence in Indian country, and fails to deal with tribal governments as responsible partners....Paternalistic federal control over American Indians has created a federal bureaucracy ensnared in red tape and riddled with fraud, mismanagement and waste....Federal agencies knew that hundreds of millions spent on government's program to promote Indian economic development were largely drained by shell companies posing as legitimate Indian-owned firms....the Committee found a pattern of callously ignoring known problems, defending and promoting incompetent staff, and ostracizing the few capable employees who dared to speak out against the institutional incompetence that surrounded them."

Despite these problems, the economic successes the Tribe has enjoyed to date have been the result of Federal financing. The Tribe's most successful enterprise, the Fort Mojave Smoke Shop, was initially financed with Federal funds. In fiscal year 1994, a net income of \$550,000 from the shop is expected to account for approximately 25% of the Tribe's total annual budget revenues. Paradoxically, the Tribe remains dependent upon the Federal Government, despite the inefficiencies of its bureaucracy.

### **C. Lack of Distinction Between Goals of Business and Tribal Government**

The example of the Smoke Shop demonstrates that there have been economic successes on the reservation; others include the Kwa Ame Tribal Farm and various property leases. However, these successes do not represent the full economic potential of the Tribe.

Investors are deterred from engaging in joint ventures with the Tribe because of the Tribal Governments' lack of distinction between business and governmental activities.<sup>1</sup> A Fort Mojave brochure describes the purpose of the Tribal Government as, "wearing two hats, acting as both governing body and business enterprise. This dual role simplifies the process of business development. Tribal Council sets overall policy and passes legislation. The Council also approves leases and contracts. . . ." While the brochure does not explicitly state that the Council manages the businesses, this is implied.

**If the Tribe is interested in attracting investors and entrepreneurs, it must demonstrate that business decisions will not be mired in political processes.** The manner in which the Board of Directors for the first casino on the Aha Macav site was selected is cause for concern among potential investors. The main reason for this concern is that this organizational structure brings business decisions into the political process. Avi Casino is a corporation chartered by the Tribe, and the three corporate board members are all Council members: the Tribal Chair, Vice-Chair, and Secretary. The Tribal Council holds the authority to remove and appoint new members to the corporation. While establishing the corporation in this manner saved the Tribe time and money in Nevada State licensing fees, it may provide disincentives for outside investors and discourage other development opportunities on the reservation.

Additionally, this structure also affects the manner in which employee disputes are resolved. If an employee of a tribal enterprise has a complaint, it will ultimately be heard by a Tribal Council member. This involvement is time consuming and distracting, and prevents Council members from focusing on governmental matters.

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<sup>1</sup>In conversations with Tom Tureen of Tribal Assets Management and Don Wharton of the Native American Rights Fund, among others, they stressed that investors are reluctant to engage in ventures that will be exclusively or predominantly managed by Tribal Governments.

#### **D. Limited Ability to Enforce Contracts**

The issue of resolving disputes is extremely important not only from a personnel perspective, but as a means of creating business opportunities. Private investors and financial institutions are used to dealing with businesses that have formal mechanisms with which disputes are resolved -- federal, state, and local government judicial systems. Outside investors are often reluctant to engage in tribal ventures due to Indians' status of sovereignty and the ambiguity this brings to the enforcement of contracts. The FMIT lacks a strong judiciary and the necessary legal expertise on the reservation; as a result, it cannot provide certainty that contracts will be enforced. The inability to ensure investors and entrepreneurs that contracts will be enforced in an objective, fair and binding manner leads to skepticism, uncertainty and fear. Common problems associated with the lack of a strong tribal court system include fear of: broken contracts, violated regulations, denial or revocation of permits, disregard for regulations, and political favoritism.

**By designing an objective method of dealing with business disputes, the FMIT can allay fears that contracts will not be enforced or that small businesses can appeal to the political process.**

Figure 1 summarizes the current problems associated with each area.

**Figure 1: Fort Mojave Tribal Conditions and Impediments to Economic Growth**

| <b>Tribal Condition Needed for Economic Growth</b> | <b>Impediments Associated with Tribal Condition</b>                                 |
|--|---|
| 1. Well-Developed Assets                           | Tribe has not realized the full potential of its assets                             |
| 2. Strong Government                               | Tribe remains dependent on support from Bureau of Indian Affairs                    |
| 3. Business - Government Distinctions              | Organization not designed to distinguish between business and government activities |
| 4. Enforcement Capability                          | Limited precedent or ability to enforce contracts                                   |

(See Appendix A for current Fort Mojave Tribal Conditions and their suitability to outside investment and small business development.)

### III. INCORPORATING TRIBAL ASSETS INTO A BUSINESS STRATEGY

The Fort Mojave Reservation is rich in assets that can be a tremendous attraction to private investors and tribal entrepreneurs. These assets include:

- Available Labor Force
- Low Labor Costs
- Water Rights
- Strategic Location

Thirty-six percent of the Fort Mojave Tribal community is currently unemployed. This figure is about five times higher than the United States national average. This portion of the population represents valuable human potential that will ultimately be responsible for the success of the Tribe's economic development plan. The availability of labor, coupled with lower-than-average labor costs, is a key ingredient to business revitalization.

Another tribal strength is its possession of water rights to the Colorado River. In fact, it is this asset on which the Aha Macav development plans have been based. The rights to the water and the development of Aha Macav presents tremendous opportunities for joint ventures and the promotion of small businesses.

In addition to an available work force, low labor costs and rights to the Colorado River, efforts have been made to improve other reservation assets -- namely the off-reservation highway system and reservation infrastructure. The Tribe has begun to develop its infrastructure through Fort Mojave Tribal Utilities, Aha Macav Power Service, and Fort Mojave Telecommunications, Inc. These assets will prove valuable in the Tribe's business development efforts as they will improve the time and thus reduce the cost of construction, and improve the flow of information. Off the reservation, Arizona, Nevada and California have explored the possibility of creating a highway that would pass by the Tribe's new community. The potential for a highly-profitable toll road through privatization was established; however, the plans were defeated by local (Laughlin and vicinity) political opposition.

The skills of the labor force and the Tribe's capital reserves have not yet been developed due to limited opportunities. Although, through Aha Macav and the potential for other business creation on the reservation, these assets will be developed over time.

Four ways the FMIT can profit from and enhance its assets are through:

- The Development of a Small Business Strategy,
- The Expansion of Businesses,
- The Creation of New Businesses to Support Existing or Developing Businesses, and
- The Establishment of a Reinvestment Policy.

#### **A. Developing a Small Business Strategy**

Choosing the right small business strategy can increase the quality of life for many tribal members, especially since small businesses can help reduce some of the social problems associated with a depressed economy. Increased job opportunities will bring self-esteem to community members, a tax base to fund tribal government programs, and may reduce reliance on Federal Government support.

Most small businesses start with one to five employees and usually provide retail or service-oriented goods. Examples of services include child care, mechanical, and janitorial services; examples of goods include jewelry, produce, and catered products. Small businesses can lead to individual (or small group) self-sufficiency and provide necessary services that can limit the amount of money leaving the reservation and restore the wealth within the community.

Tribal government support is essential to the development of a small business strategy. The Fort Mojave Tribal Government can accomplish this goal by assisting in the creation or expansion of businesses by providing: 1) informational services about general issues affecting the industry, 2) specific information about a particular business or marketing opportunities, and 3) resources to secure debt or equity financing. A small business strategy comprises three essential elements; these include:

- Generating interest and informing tribal members that opportunities exist,
- Training members on planning, marketing, financing, and managing, and
- Providing on-going training and assistance.

To begin a Small Business Development Program, the FMIT can dedicate one staff person to act as the Small Business Liaison. The role of the liaison would be to generate interest, organize training seminars and provide resources for interested members. The liaison should not have the authority to grant business permits or approve contracts. Other tribes have experienced problems when one person has the authority to further the businesses of his or her colleagues. Additionally, potential entrepreneurs have been discouraged and corruption has been exposed when this liaison used subjective measures such as political patronage or favoritism to determine who was and was not granted permits. Instead, a formal and objective permitting and contracting process should be incorporated into the strategy.

The first role of the liaison is to generate interest among tribal members. This can be accomplished through a public relations campaign, announcing a training program on business planning, financing, marketing, and managing. The Small Business Administration (SBA) could assist in the implementation of the program. The program would start with a series of training seminars that focus on three specific types of entrepreneurs:<sup>2</sup>

1. Individuals with no Work Experience

This group would include unemployed members of the community currently receiving public assistance. The training for this group should address basic business management skills in addition to motivational counseling and encouragement.

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<sup>2</sup>These 3 categories were derived through 100 interviews conducted by Jacqueline Novogratz and appeared in her paper, *Hopeful Change - The Potential of Micro-enterprise Programs as a Community Revitalization Intervention.*

## 2. Individuals with Work Experience

This group includes recently unemployed members or dissatisfied employees.

Emphasis should be on business management and financial training, with specific focus on developing a business plan, record-keeping and marketing.

## 3. Entrepreneurs

This group includes individuals who have started their own business. Training should focus on more intensive financial skills, means of acquiring capital, and methods of expanding existing businesses.

Finally, if enough interest has been demonstrated through the training seminars, the liaison can introduce entrepreneurs to banks or even operate a small business revolving loan fund to provide initial financing to small businesses. Revolving loan funds are used by communities to help people share the responsibilities associated with starting small businesses. The concept of a revolving loan fund originated in Bangladesh, and has been successful on American Indian reservations. The fund is based on the following principles:

- Lend only to groups of people (usually 5 per group)
- Require borrowers to organize themselves (usually includes family and friends)
- Teach borrowers to use existing resources (i.e., cash flow)
- Keep lending simple and informal, and
- Encourage borrowers to help each other accomplish their goals.

This model was adopted by the Oglala Sioux Tribe on the Pine Ridge Reservation in South Dakota. It established a not-for-profit lending institution that remains one of the most successful revolving loan funds in Indian Country. The Fund was established as a 501(c)(3) organization (which is granted tax-exempt status under the Internal Revenue Code) in order to attract funding

from foundations. Many foundations are reluctant to fund governments (such as government-owned businesses) and require a separate 501(c)(3) institution in which to make contributions.

### **Box 1: The Lakota Fund**

The Oglala Sioux Tribe on the Pine Ridge Reservation in South Dakota established the Lakota Fund, a not-for-profit corporation, to finance micro-enterprises and small business of tribal members. The fund was financed initially through the assistance of the First Nations Financial Project, the Ford Foundation, the MacArthur Foundation, Needmor Fund and the Northwest Area Foundation.

The Fund operates two programs, the **Circle Banking Project** and the **Small Business Project**, and both remain independent of tribal government and do not accept Federal support. Both programs provide personal counseling, business planning and loan packaging assistance for borrowers who need additional money from local banks.

**The Circle Banking Project** lends to microenterprises in the range of \$400 - \$1000. Self-selected groups determine who will receive the first loan, and that loan is guaranteed by the entire group. After the initial loan is repaid, usually within a year, additional members of the group are eligible for loans. If a member defaults on a loan, the fund freezes the pool of credit and holds other members responsible for payment by making them legal co-debtors. This year, the Project is responsible for financing about 10 successful borrowing groups.

**The Small Business Loan Project** lends in the range of \$1,000 to \$25,000. These funds are usually provided to expand businesses. Borrowers include artists, farmers, craftsmen, mechanics, etc. The Fund requires participants to attend a series of training sessions, and to submit detailed business plans. In addition, the loans require borrowers to put up collateral.

In order to operate this type of Fund, the following capital is required: general capital to cover administrative costs, money for outreach activities, lending capital, loan loss reserve capital, and Board development and meeting expense funds. First Nations Development Institute in Falmouth, Virginia has assumed the lead for many tribes in raising this money. Funds have been awarded from corporations, foundations, private institutions, and the Federal Government. Federal funds are available from the Micro-loan Demonstration Program offered by the Small Business Administration.

## **B. Expanding Businesses**

The FMIT can examine its current businesses to determine the feasibility of adding services or production functions to existing activities. This is an extremely effective means of increasing employment as more than 70% of new jobs in the United States are the result of the expansion of small businesses. Some Indian tribes have developed new businesses on top of their primary raw materials extraction activities. Hardwood-product businesses have been created by tribes with timber reserves; tribes whose members are traditional harvesters of fish have created fish processing, smoking, and marketing operations. Other tribes have built upon their sand and gravel extraction activities, translating them into the mixing and distribution of cement, bricks, blocks, asphalt, clay products, pottery, and tile.

The FMIT has been very aggressive in its creation of new enterprises and can also look to existing enterprises, such as the tribal farm, in which to integrate new businesses or expand. The farm may provide opportunities to process and even manufacture its products (particularly cotton.) Expansions are easier to obtain financing for since they provide a track record of success. Assuming that demand for the product will support it, expansion provides sustainable employment and a reliable broadening of the tax base for the community.

## **C. Creating New Businesses to Support Existing or Developing Businesses**

In addition to integrating new businesses into existing businesses, the FMIT should look to create new ventures that can support existing businesses in the region. Aha Macav presents a tremendous opportunity for aspiring entrepreneurs. Small tribal businesses can provide necessary services for the primary developers in the new community. For instance, the hotels and shopping areas will require building and grounds maintenance services, security, painting, and landscaping. These kinds of services do not require significant overhead and could be provided by tribal members as external contractors. Each service could provide employment to several members, and may even provide a chance to expand and deliver to other, off-reservation businesses.

**The identification and creation of new businesses will create an environment that is attractive to outside investors.** A thriving small business environment sends a signal that the reservation can provide a stable and profitable environment for businesses. The small business program could assist members through training and identifying ways to access to capital.

#### **D. Establishing a Reinvestment Policy**

While the Tribal strategy to develop businesses may not result in immediate or major capital inflows to the reservation, attracting outside investors, particularly through the construction of casinos, could generate significant tribal revenues. This will require a strategy to plan for the future. Reinvestment strategies can be used to enhance tribal assets and can be crafted legislatively by the Tribal Council so they will not fluctuate with changes in the political environment. Net revenue from gaming and other tribal endeavors is a source of capital for tribal government that can be used to fund the type of expenditures that non-Indian governments finance through tax revenues. This revenue has been predominantly used by other tribes to finance higher education scholarships, enhanced health care, and employment. This strategy provides a solid foundation on which the tribal economy can grow. This is especially important, and more effective than per-capita dividends, as the future of gaming regulations in many states and the potential for market saturation remains uncertain.

While the Tribe can use gaming proceeds as it deems appropriate, case law in the past decade, particularly through disputes of the Flandreau Santee Sioux Tribe in South Dakota, has established that net revenues from tribal gaming cannot be used for purposes other than to:

- Fund tribal government operations or programs,
- Provide for the general welfare of the Indian tribe and its members,
- Promote tribal economic development,
- Donate to charitable organizations, and
- Help fund operations of local government agencies.

A thoughtful reinvestment strategy can be found on the Navajo Reservation. The Tribe has established a **Permanent Fund** in which 12% of all tribally-generated revenues are set aside to reinvest in tribal resources in future decades. The Fund concept was originally established to deposit revenues generated from non-renewable resources. (See Appendix B for Resolution of the Navajo Tribal Council)

**Box 2: Navajo Nation Permanent Fund**

The Navajo Nation passed a resolution to promote sustainable development and secure a significant amount of back-taxes paid to the Tribe by developers. They established the **Navajo Nation Permanent Fund** into which 12% of all revenues generated from non-renewable resources are to be deposited. This includes revenues received from taxes, mining, timber, land rentals, interest/dividends, gain on sale of securities and all other revenue-generating activities derived from non-renewables. Income from the fund cannot be expended for 20 years from the date of the first contribution to the Fund. After 20 years, the resolution allows for 95% of the Fund's income, that is, 95% of all earnings generated by the principal of the Fund, to be spent for at least a 5-year period on government activities. Thus, the Fund provides and enhances future assets from existing resources. The other 5% remains in the Fund.

The Resolution of the Council that authorized the Fund can only be amended if two-thirds of all eligible voters approve. This insulates the Fund from political exigencies and renders it impossible to change unless virtually all the tribal members agree that the Fund must be raided.

While the Navajo Nation's Fund was not the result of gaming revenues, many tribes have begun to establish reinvestment strategies, using gaming revenues to strengthen tribal communities. The 500-member Saginaw Chippewa Tribe has used monthly gaming revenues in the millions to fund tribal housing, a health clinic, a substance abuse center, a youth treatment center, and a senior citizen housing and social center. The Tribe has also established a trust fund similar to that of the Navajo Nation in which to invest judgment awards, hence securing its future.

Another creative, but perhaps limited, use of tribally-generated revenues have been demonstrated by the Menominee Indians of northeastern Wisconsin. Through gaming revenues, they have financed a community college that offers an associate of arts degree in casino gambling.

**Box 3: Menominee Nation Gaming College**

The College of the Menominee Nation in Wisconsin has been training tribal members to manage and operate casinos on their reservation. The curriculum includes gaming law, casino management, casino marketing, customer relations, casino security and personnel management.

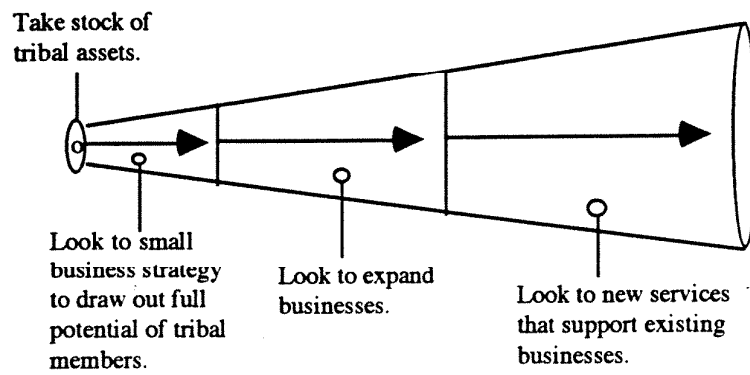
The program was adapted from the college's previous focus on early-childhood education, natural resource management and forestry. The Tribal College changed its curriculum last year as a result of a dramatic infusion of income from expanding its bingo hall into a casino. Last year's income was approximately \$8 million.

While a gaming college provides training in the Tribe's most profitable venture, the skills it provides are limited. Even though some of the skills needed to run a casino are transferable, most focus on a limited business arena and cannot help the Tribe develop a broad base of knowledge.

**As the gaming industry in many states faces an uncertain future, the FMIT should consider ways to invest money that will expand the skills of its tribal members.** For instance, reinvestment funds can serve education needs of the Tribe by financing training programs both on and off the reservation, vocational training programs in the local high school, and scholarship funds for college.

Figure 2 summarizes the method by which the FMIT can look to realize the full potential of its assets.

**Figure 2: Realizing Full Potential of Assets to Identify Business Opportunities**



#### **IV. STRENGTHENING TRIBAL GOVERNMENT THROUGH SELF GOVERNANCE**

In order to promote tribally-determined goals and build a self-reliant economy, the FMIT must limit federal interference. Fortunately, a federally-sponsored program, the Self-Governance Demonstration Project, has provided Tribes with an opportunity to do just that. The Program was designed to lead tribes toward self-sufficiency, reducing their reliance on the Federal Government.

The Indian Self-Determination and Education Assistance Act of 1988 (and following amendments to the Act) authorized a five-year demonstration project to transfer over \$100 million of Bureau funds to 30 tribes that demonstrated, through intensive and time-consuming planning, that they could assume control over their allocations. This proposal was based on recommendations made by the President's Commission on Reservation Economies in 1984, and did not relieve the US Government of its trust responsibilities to participating tribes. While the demonstration project is scheduled to end in Fiscal Year 1996, there is proposed legislation to make the program permanent.

##### **Key Components of the Self-Governance Demonstration Project**

- Allows the transfer of BIA financial resources to tribal management and control;
- Authorizes broad flexibility for tribal utilization of those resources;
- Permits tribes to consolidate and redesign programs; and
- Replaces multiple BIA "638 Contracts" with a single Annual Funding Agreement.

The Self-Governance Demonstration Project (P.L. 100-472) is adopted from the Self-Determination and Educational Assistance Act of 1975 which allowed government agencies to enter into contracts with tribes. These contracts (P.L. 93-638 or "638 contracts") allow tribes to assume responsibility for the administration of federal Indian programs. However, these contracts are often filled with red tape, perpetuate federal bureaucracies, lack adequate authority, and can promote condescending attitudes by federal authorities. In addition, 638 contract regulations have

narrowly-defined scopes of work, leaving little room for flexibility. For instance, the BIA forces the Tribe to determine budget allocations for its government services several years in advance. This contract-bound rigidity does not allow the FMIT to adjust its budget allocations to reflect changing conditions and priorities. (See Appendix C for comparison of the 638 and Self-Governance programs as they relate to budgeting, managing, and interacting with the Bureau).

Additionally, only 11% of funding spent on 638 contracts actually reaches the Tribe; roughly 88% is spent by the BIA on administration. One participating tribe, the Mille Lacs Band, estimated that the Self-Governance Project has enabled the Tribe to utilize 30¢ of each dollar on delivering services.<sup>3</sup> While administration still accounts for approximately 70¢ of each dollar, these figures represent dramatic improvements, and are expected to change further (for the better) as more experience is acquired.

In contrast to 638 contracts, the Self-Governance Project allows the Tribe greater flexibility to promote efficiencies and requires less day-to-day contact with the BIA. Project contracts are negotiated on an annual basis, and the Tribe is then free to implement programs as it considers appropriate.

Self-Governance funds can be designated for up to twenty 638 contracts per year; these would be identified and financed in one funding contract. All negotiations for share and increases in funding are negotiated through the BIA Area Office. The program is not explicitly designed to fund enterprise development; however, tribes can use the money to increase loan programs for small business development (this would result in budget reductions to other programs). According to the Washington, D.C. Self-Governance Office, even gaming could be funded through self-governance funds.

To be eligible to participate, the DOI requires tribes to demonstrate fiscal stability and sound financial management. Tribes must have had no significant and material audit exceptions in its 638 contracts for the past three years, tribal councils must demonstrate the same self-governing status as those exercised by American states, and tribes must have sufficient economic

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<sup>3</sup>*Shaping Our own Future: The Next Step Towards a True Government-to-Government Relationship.* Department of Interior: Office of Self-Governance, Washington, DC, 1991.

development potential to support self-governance. (See Section V of this paper for suggested organizational changes and Section VII for Self-Governance application process).

Once the Tribe has been approved to participate in the Project, it progresses in three phases:

- Phase I Planning
- Phase II Negotiating
- Phase III Implementing

#### **A. Phase I: Planning**

The planning phase lays the groundwork for the Tribe's participation in the Project. It involves painstaking and detailed preparation of the following:

- Council budget procedures for allocation of resources to tribal programs and services;
- Internal program monitoring procedures;
- Research and analysis of BIA budgets and programs;
- Education and communication with Tribal members and neighboring Tribes.

**Education of and communication with Tribal members is extremely important and merits a significant amount of the planning efforts.** The most successful Self-Governance Tribes have spent a great deal of energy garnering support from tribal members and addressing members' concerns. This support has enabled participating tribes to successfully plan and negotiate with the BIA.

#### **B. Phase II: Negotiating**

During the negotiation phase, the Tribe and BIA must reach agreement on the Self-Governance Compact and the Annual Funding Agreement. The Self-Governance Compact defines the government-to-government relationship between the Tribal and Federal Governments, outlining the roles and responsibilities of each government. The Annual Funding Agreement documents BIA programs, services, functions, and activities that will be transferred to the Tribe and the respective funding levels (based on Congressional allocations).

To prepare for the negotiation, the FMIT should establish a checklist of all issues and objectives that the Tribe wishes to be incorporated into the Compact and Annual Funding Agreement. The checklist should direct the Council to:

- List programs for which the FMIT intends to assume responsibility, and those, if any, it expects the BIA to assume,
- Identify current 638 contracts by program and amount,
- Analyze budget information from the Area/Agency Offices, identifying the Tribe's share of each BIA program in order to ensure that no reduction of funds, services or activities is passed on to non-participating tribes (Project administrators refer to this as the "Divisibility Issue"),
- Review the BIA Budget Justifications ("Greenbook") for significant changes in programs the Tribe intends to negotiate,
- Review and modify generic Compact of Self-Governance to address FMIT-specific needs (see Appendix D for Generic Compact), and
- Prepare a "wish list" for the Annual Funding Agreement, for FMIT eyes only (see Appendix E for Sample Agreement).

In addition, participating tribes have learned through experience that they should make sure the following items and individuals are present during the negotiating session:

- Draft Compact and Annual Funding Agreement placed on computer disc to facilitate modification during negotiations,
- Computer and printer,
- Tribal policy makers, technical budget staff, Tribal attorney, and
- Someone who will keep detailed records of negotiation proceedings.

Upon completion of the negotiation, the Tribe and Agency determine how the Tribe's share will be delivered. Two options exist: Funds may be reprogrammed or transferred from the BIA budget line item either at the Agency or Area Office, or all or a portion of the funds may be provided to the Tribe via shortfall funds, appropriated to provide the full tribal share without reducing funds, services or functions to non-participating tribes.<sup>4</sup>

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<sup>4</sup>Congress appropriated funds to be used to cover those negotiated amounts that cannot be transferred to a participating Tribe without adversely affecting another tribe. \$13m was appropriated for FY '91- FY '93. \$6.7m was requested for FY '94; this increase will accommodate the addition of several tribes to the Project.

### **C. Phase III: Implementing**

The implementation phase involves the disbursement of funds and reallocation of resources. Before funds are disbursed, they are adjusted to accommodate the actual congressional appropriation. Funds are then transferred from the various BIA budget line items to the Self-Governance line item and distributed to tribal accounts. This money is reallocated by the Tribal Council based on tribal priorities, with the exception that no more than 30% of funds for trust-related programs can be shifted without justification to the DOI.

**While involvement in this program seems like an ideal way to relieve the FMIT from Bureau interference, no promises are made about maintaining current funding levels -- yet tribes are expected to assume full responsibility for the delivery of "adequate" government services.** In addition, participating tribes have complained that the transfer of funds is slow, and the DOI has indicated they are working to resolve this problem. Clearly, becoming a Self-Governance Tribe is not a perfect solution, nor does it completely remove the Bureau from Fort Mojave Tribal activities. However, the Self-Governance Demonstration Project can begin to move the FMIT in a direction that gives the Tribal Council more control over public services and a greater ability to implement Tribal priorities and push forward the Tribe's self-determined agenda.

## V. DISTINGUISHING BETWEEN GOALS OF BUSINESS & TRIBAL GOVERNMENT

**If the Tribe's goal is to attract outside investment and compete with off-reservation businesses, it must distinguish between objectives of business and Tribal Government. This involves restructuring and institutionalizing the decision-making apparatus, and establishing policies to resolve human resource disputes.** Under a re-constituted decision-making structure, businesses can operate without political interference, and thus, have a better likelihood of success. Currently, the Fort Mojave Tribal Council makes all tribal business decisions. While this may have served them in the past, it cannot adequately meet the changing demands placed on the Council as the economy grows. With a growing economy and a diversified tax base, the Council will have the opportunity and need to enhance public services and infrastructure. However, the Council should not be expected to serve both the public and the private sectors of the economy.

The Tribal Council should play the primary role in economic development by defining a direction that is most likely to enhance the tribal economy. On the other hand, since businesses should focus on making money and employing people and resources as efficiently as possible, they should be run independently of the government. Successful business ventures can indirectly assist tribal government by providing government revenue, in the form of taxes, and increasing employment and the economic status of tribal members. Similarly, the Tribal Government can promote and enhance the assets necessary for businesses to thrive.

The Tribal Council should encourage business and economic development as it provides a means of financing public sector expenditures and generating profits that can be reinvested within the reservation economy for the benefit of all tribal members. The Council's method of promoting business development should be through the creation of an environment where businesses can take hold and profit. This foundation should include the following ingredients:

- Stable and effective business decision-making body,
- Physical infrastructure, and

- Community services and social programs.

These components create an attractive environment for investment and economic productivity.

On the other hand, business enterprises should not be primarily concerned with enhancing the tribal economy. Businesses are an integral means of making money for the Tribe and tribal entrepreneurs, and should be primarily concerned with operating efficiently and profitably. This requires quick decision-making and often market expertise -- different from the kind of decision-making required in the public sector. Just as the goals of government and business differ, so should their respective decision-making structures and policies.

#### **A. Focusing on Organizational Structure**

The Tribe can extend its current capabilities to gain from greater experience and skills. To date, most economic development activity on the reservation falls under the auspices of the Tribal Administration and Council. These responsibilities include planning, financing, signing contracts, hiring and managing consultants, attorneys and contractors, and resolving personnel disputes. The day-to-day managerial responsibilities over tribal enterprises prevent the Council and Administration officers from concentrating on developing needed organizational capacity, physical infrastructure, and community and social services. By adding a decision-making organization that makes only business decisions, the Tribe improves the business climate and the likelihood that small ventures will develop on the reservation.

Several years ago, the FMIT created two legal entities that have the potential to satisfy the capacity requirements of the growing economy. The Fort Mojave Development Corporation (FMDC) and Department of Planning were established with the best intentions -- that is, to demonstrate to the outside world that the Tribe was serious about development and had created a method to alleviate the growing demands on the Council. However, neither organization has played a role in alleviating the Council's and Administration's daily managerial responsibilities. The Department of Planning was established through a constitutional resolution but the office was never created and internal staff never hired. The Planning responsibilities have been well-managed

by consultants who have assisted in the planning and creation of several new tribal enterprises. The FMDC was instrumental in creating the Smoke Shop and Avi Casino, but its role diminished as plans for the enterprises progressed; now it acts merely as a legal entity through which funds flow to tribal enterprises. However, the FMDC should play an integral role in promoting and managing business development in order to allow the Council to focus on its main leadership objectives.

The FMDC can assume the day-to-day managerial responsibilities which currently occupy a great deal of Council time. This would free the Council to make the more important decisions of the Tribe: political decisions regarding the direction and scope of development, overall spending levels, and supportive governmental services as identified above. By separating the daily government and business operations, the Tribe can avoid common political and managerial pitfalls. For instance, government decision-making is not designed to be rapid; it requires public deliberation and consensus building. As stated previously, business decisions on the other hand, require quick decision-making in order to perform efficiently and in a profit-maximizing manner.

Adjusting the decision-making structure to create clear distinctions between business and government activities can be accomplished by utilizing the Development Corporation. FMDC decision-making could be guided by an Advisory Board, and each large enterprise could have its own Board of Directors. The Board membership should include business professionals from both on and off the reservation, and ideally should adhere to three criteria:

- No Council member should serve on the Board of Directors for non-government-related business, except perhaps in an ex officio or observer role.
- Board members for the development of Aha Macav and other Tribal enterprises should be made up of experienced business people (both Indians and non-Indians) and qualified tribal members. This would facilitate business relationships and general cooperation between the two communities.
- Board members for Tribal projects should not be employees of the enterprises or be living with employees of the enterprises.

These criteria can help to minimize tribal politics in the operation of businesses and provide enterprise Boards with a cross-section of both business and community background.

As emphasized above, by reassigning the task of business micro-management, the Council will have more time to focus on its most important role -- to provide the overall direction for development and to assist in the formulation of corporate mandates. In addition, the Council should participate in the development of the enterprises by appointing some of the Board members, approving annual budgets, and reviewing periodic reports on enterprise progress made by the FMDC. **The Council should play a critical role in guiding the FMDC and each tribal enterprise in a direction that satisfies overall tribal objectives. However, actual management should be left to profit-making businesses.**

The main efforts of the Tribal Council should be toward developing the infrastructure of the town instead of the profit-making ventures of the town. The government will depend on the revenues generated by profit-making ventures to provide tax revenue; however, if the Tribal Government tries to meet its agenda through the businesses, or the businesses attempt to meet the goals of the Tribal Government (i.e., job enhancement), both will be sidetracked from their primary objectives. Figure 3 identifies the number of independent and council-controlled enterprises that have been successful. The chart indicates that enterprises run by independent organizations are about three times more likely to realize economic success than those controlled by elected officials.

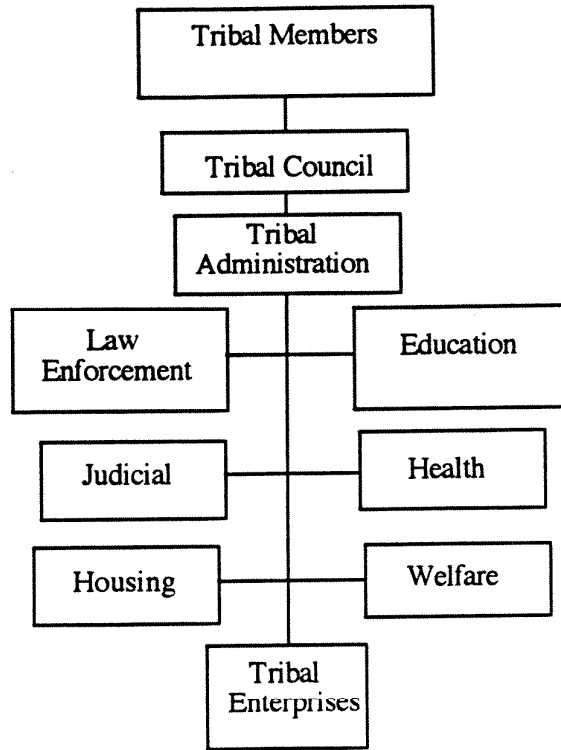
**Figure 3: Profitability of Tribal Enterprises  
Independent v. Council-Controlled Management**

|                              | Independent | Council-Controlled |
|------------------------------|-------------|--------------------|
| <b>Profitable</b>            | 59          | 35                 |
| <b>Not Profitable</b>        | 16          | 30                 |
| <b>Percent Profitable</b>    | 79%         | 54%                |
| <b>Odds of Profitability</b> | 3.7 to 1    | 1.2 to 1           |

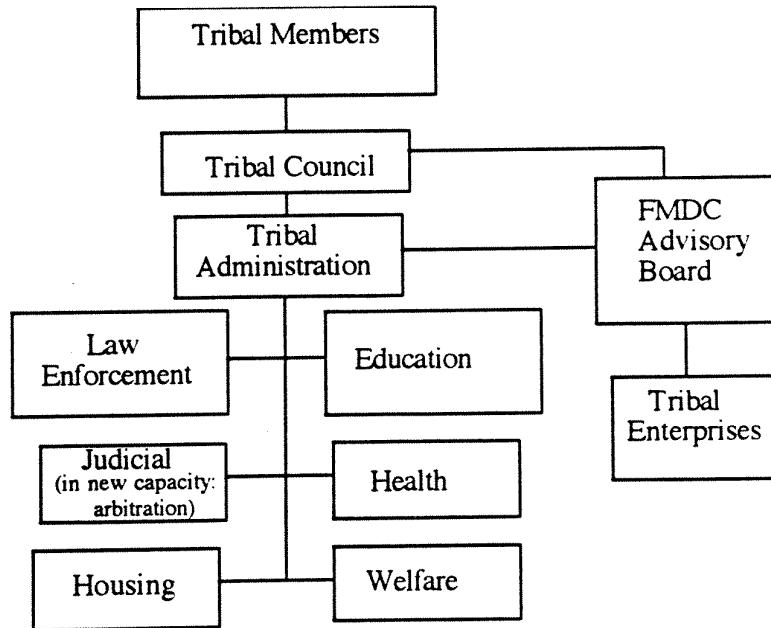
Source: Data collected by Professor Joseph Kalt, Harvard University for the National Executive Education Program for Native American Leaders, 1994.

In Figures 4 and 5, the current and suggested tribal decision-making structures are outlined graphically. In Figure 4, ideas are generated among tribal members and the Council; they, along with the Tribal Administration office, oversee and manage all tribal enterprises and government agencies. Figure 5 depicts a proposed structure in which tribal enterprises are managed and report to an organization (the FMDC) that is separated from the government decision-making apparatus. The FMDC Advisory Board, in turn, reports to the Council and Administrator on macro issues, but assumes all daily responsibilities for managing tribal enterprises.

**Figure 4: Current Fort Mojave Tribal Decision-Making Structure**



**Figure 5: Proposed Fort Mojave Tribal Decision-Making Structure**



## **B. Focusing on Human Resource Policies**

**The Tribe should adopt and adhere to labor-management policies that will translate into fair and appropriate practices for both employers and employees.** This involves creating clear expectations for both employees and employers, and would insulate the political body from personnel matters. Currently, the Tribal Chairperson hears many employee complaints, despite the existence of a formal mechanism that does not include her in the dispute-resolution process. While the establishment of grievance policies may be perceived as creating unnecessary bureaucracy -- a condition the Tribe has successfully evaded -- it will ultimately result in a more objective and fair way in which to address human resource matters, and again, allow the political branch of government to attend to its more critical role.

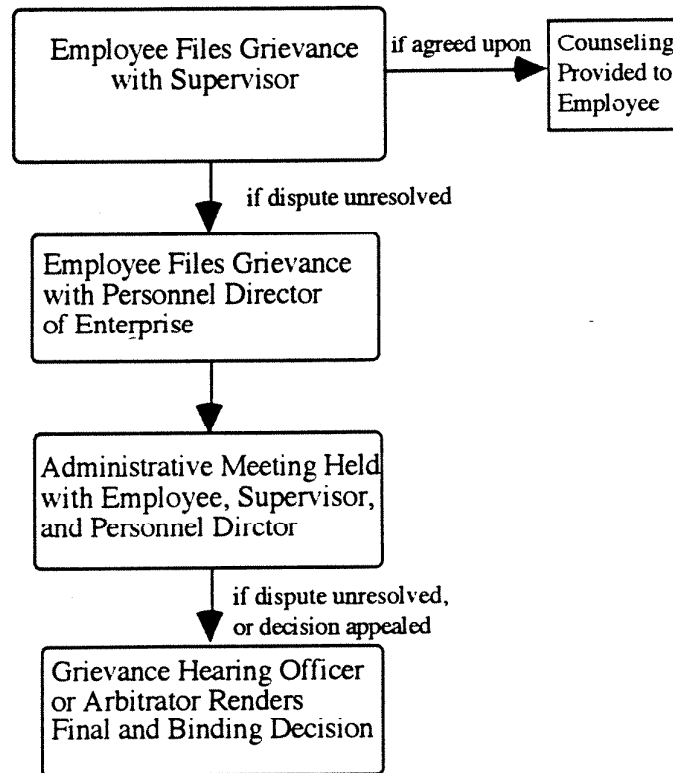
In order for the Tribe to create a human resource management system that is perceived favorably and fairly by tribal members, it must clearly define a grievance process that adheres to objective and consistent processes. Grievances occur in cases of dismissal, discrimination, favoritism, harassment, demotions, drug or alcohol abuse, or other incidents that upset the employee or employer. One method of resolving these disputes attempts first to resolve them within the tribal enterprise.

This process involves a formal system of resolution and has been successful on the Navajo Nation. An employee first files (in a meeting and/or in writing) a complaint with his or her immediate supervisor. If the problems are not resolved, the complaint is then filed with the Personnel Director. Next, a meeting is held with the employee, supervisor, and Personnel Director, at which time they attempt to resolve the issue. The Personnel Director then renders a decision that can be appealed by the employee. The appeal is heard by an objective third party, a Grievance Hearing Officer, who gives a final and non-appealable decision. This way, when necessary, the complaint is taken outside the enterprise itself, but to a non-political actor.

The FMIT could incorporate or adapt this model for tribal enterprises. Adaptations of the model might include provisions for providing counseling to employees suffering from alcohol or drug abuse and using an outside arbitrator to render the final and binding decision (see section VI),

instead of a Grievance Hearing Officer. If the process is clearly and consistently articulated and involves due process, employees and employers will begin to trust the system and will be less likely to appeal to the political process. This should keep the Council from becoming embroiled in enterprise disputes, and enable the Council to focus on governmental matters. Figure 6 depicts the recommended flow of an employee grievance procedure.

**Figure 6: Employee Grievance Procedure**



## VI. CREATING A RELIABLE SYSTEM OF CONTRACT ENFORCEMENT AND DISPUTE RESOLUTION

**Tribes interested in attracting outside investors and promoting business development on their reservations must have a reliable system of enforcing contracts.** Outside investors are often reluctant to engage in a tribal ventures due to the sovereign status of Native Americans and the ambiguity surrounding the enforcement of contracts. While sovereignty is a tremendous asset to the tribes, it also creates legal jurisdiction problems if the development plans go awry and result in litigation. Similarly, reservation entrepreneurs often experience problems associated with the lack of a powerful and objective enforcement mechanism. When the potential for political interference exists, investors and entrepreneurs become reluctant to invest because, as potential claimants, they cannot be certain their claims will be adjudicated fairly.

If the FMIT is interested in attracting investors to the reservation and promoting entrepreneurial activity, it must remove the uncertainty about the "rules of the game" and create an atmosphere of stability and predictability that is conducive to investment and business development. There are a number of methods the FMIT could use to ensure contract enforcement. Four of them are:

- 1) Strengthening the judicial system,
- 2) Sharing judges with other tribes,
- 3) Hiring an off-reservation judge, and
- 4) Relying on arbitration.

Arbitration is the least risky and least costly method for the FMIT to allay outsiders' and entrepreneurs' concerns. In the arbitration process, a neutral third party hears the evidence and arguments and has the power to hand down a binding decision. This private dispute resolution process is provided by trained and experienced arbitrators who serve the particular needs of the

involved parties, utilizing the essential elements of public or court adjudication.<sup>5</sup> Typically, arbitration systems provide the following:

- Joint selection and payment of the arbitrator,
- Objective standards on which the arbitrator's decision is to be based (typically the terms of an agreement between parties, the customs of the trade in which they conduct business, applicable laws, or some combination of all), and
- Procedural rules to be applied by the arbitrator.

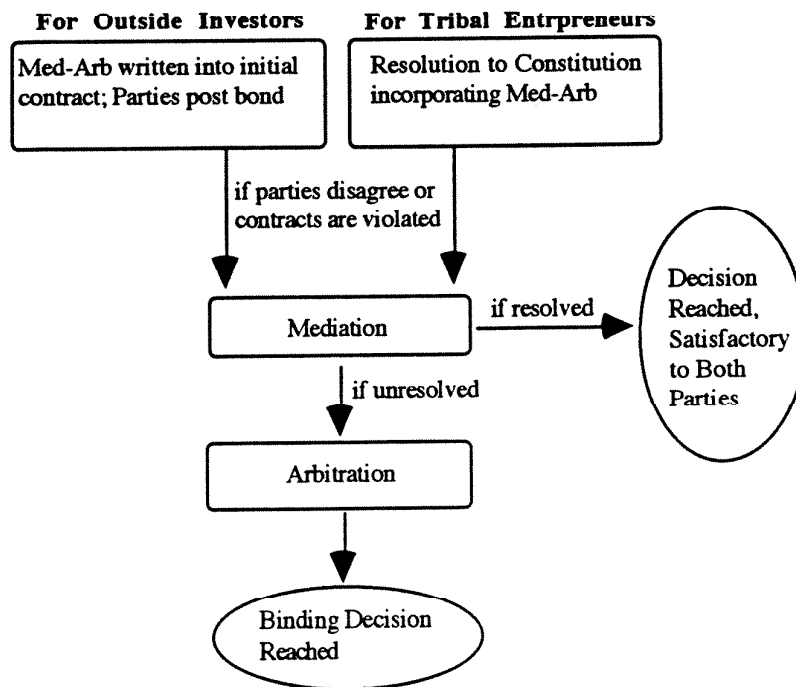
It should be noted, however, that while the FMIT should look to strengthen its judicial system in the future, it can use arbitration as an interim dispute resolution process until it develops adequate resources to enhance its judiciary.

One method of arbitration attempts first to resolve disputes through mediation; if this process is unsuccessful in meeting the objectives of all parties, they then move to arbitration. This method is referred to as "Med-Arb." The Mediation procedure also involves a third party, called a mediator. The purpose of the mediator is to find out the facts and isolate issues, help create alternatives, guide negotiation and decision-making, clarify and write an agreement or plan, provide for legal review and processing, and be available for follow-up, review, and revision. Decisions reached through this process involve more negotiation and attempt to resolve the disagreement in a manner that is agreeable to both parties. The mediator, if unsuccessful in resolving disputes through the agreement of the parties, becomes an arbitrator with the power to issue a binding decision. Figure 7 highlights the Med-Arb process.

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<sup>5</sup>One non-profit organization that provides neutral arbitration is the American Arbitration Association (AAA). They have an office located at: 4425 Spring Mountain Road, Suite 310, Las Vegas, NV 89102-8719. Telephone: (702) 364-8009. Contact: Kelvin Chin, Regional Vice President.

**Figure 7: Med-Arb Dispute Resolution Process**



Arbitration may involve waiving sovereignty in limited cases where awards are not paid. This requires careful consideration by the Tribe and its attorney.

For the purpose of providing adequate contract security for on-reservation entrepreneurs, the Tribe will have to address the issue of incorporating arbitration through a constitutional resolution. For the purpose of ensuring that contracts will be enforced with outside investors, the Tribe can negotiate an appropriate dispute resolution system, on a per-contract basis, that satisfies all parties.

When engaging in joint ventures, the Tribe can provide for arbitration of future disputes by pre-selecting a facilitator (mediator and arbitrator), and inserting clauses into contracts that are similar to the following:

**Standard Arbitration Clause:**

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**Standard Med-Arb Clause:**

If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its construction Industry Mediation Rules before resorting to arbitration, litigation, or some other dispute-resolution procedure.

Similarly, to ensure that tribal member-owned businesses can count on adequate enforcement of contracts, a constitutional resolution can be used. This resolution should be voted on by the general membership to avoid the lengthy approval process imposed by the BIA.

A similar model was endorsed by the National Association of Counties Task Force on Indian Affairs. The Task Force was part of the National Association of Counties, the representative organization for all county governments throughout the U.S., and recommended the creation of a County-Tribal Mediation Model. The Model was designed primarily to resolve disputes between tribal governments and state and local governments, and involved a more comprehensive Med-Arb process. Their process included mediation, negotiation, arbitration, private judging, neutral fact finding, and the use of a facilitator or liaison to help coordinate the process.<sup>6</sup>

The Federal Arbitration Act and the Uniform Arbitration Act, adopted in almost every state, make agreements to arbitrate specially enforceable. These acts vest courts with jurisdiction to confirm or refuse to confirm an arbitration award. Therefore, if one party fails to pay the award on the Fort Mojave Reservation, one of two things will occur:

- In the case of Tribal member disputes, the member will appeal to the tribal court system.

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<sup>6</sup>For more information on these processes, see S. Goldberg, F. Sander, and N. Rogers, Dispute Resolution: Negotiation, Mediation, and Other Processes, (1992).

- In the case of disputes between the FMIT and outside investors, the appeal will be adjudicated in the tribal court (which is unlikely to be accepted by the outside investor), or the FMIT will have to waive sovereignty if they want it to be adjudicated in a state court.

Neither one of these options may be reasonable or acceptable to the FMIT. Therefore, another way to limit liability resulting from the refusal to pay a judgment can be alleviated if both parties agree to post a bond at the time contracts are signed. These bonds are called mutual performance bonds, and are provided by insurance companies if both parties agree to the terms of the contract. The insurance company that issues the bond will require collateral; the Tribe may be able to provide this through a guarantee from the Federal Government. Again, this requires careful consideration, to weigh the costs and benefits, by the tribal attorney.

## **VII. MOVING FORWARD: A PLAN FOR THE SHORT-TERM**

The recommendations addressed in the last four sections identify long-term objectives of the FMIT. However, in any long-term plan, short-term progress is necessary to begin the process. There are several immediate steps that the Tribe can take to move towards a business environment; these include: educating the community about the short and long-term goals of the Tribe, and beginning the Self-Governance process.

### **A. Public Relations to Garner Support**

If the Tribe is to act on the recommendations made in this paper, it will need to promote its viability as a business partner and advertise the opportunities it can offer its own and surrounding communities. This requires an integrated campaign of both public relations and marketing. The tools of this campaign can include seminars, outreach programs, and brochures. The most effective outreach program to target business communities off the reservation is to use the press. A working relationship with the press can be an integral part in attracting outside investors. One way to accomplish this is to work with the local papers to run a series of articles on the business activities of the Tribe. The impressive development plans for Aha Macav and the construction of the new town's first capital project -- Avi Casino -- would make a great kick-off story for such a series.

The most effective means of targeting tribal members are through community meetings and direct mail. The Lummi Indian Nation of Bellingham, Washington was extremely successful in "selling" the concept of Self-Governance to its tribal members. It accomplished this through a series of seminars and the distribution of literature to tribal members. The literature focused on the common myths and benefits associated with Self-Governance. It also put the concept into a framework that incorporated the long-term objectives of the Tribe. See Appendix F for a sample brochure distributed by the Lummi Tribal Government.

## **B. First Steps Towards Self-Governance**

As demonstrated by the activities of the Lummi Nation, the planning phase of the Self-Governance Project is lengthy and all-encompassing. Not only does the Tribe have to plan for the financial allocation of contract money, but it must also sell the concept to tribal members. The program will have a greater likelihood of success if it is supported by the membership.

Before the Tribe can begin to "sell" the concept to its members, it must submit a letter of request to have the planning process sanctioned by the Self-Governance Office in Washington, D.C. While all 30 slots are currently filled for the Self-Governance Demonstration Project, legislation is pending that is likely to make this program permanent. Therefore, if the Tribe is interested in participating, it should begin the application process as soon as possible. It usually takes up to one year to complete the planning phase, so the FMIT should begin this phase even before the legislation has been passed. This would give the Tribe an advantage over other Tribes who are interested in participating, but do not plan to begin the process until the legislation has been passed. The Tribe should not use the Area BIA Office to file a request to participate. Instead, it should contact:

Vern Duus  
Compact Analyst  
Office of Self-Governance, DOI  
1849 C Street, NW, MS 2548  
Washington, DC 20240  
Phone: (202) 219-0240.

Once a letter of request is submitted and approved by the Self-Governance Office, the Tribe can begin the planning and "selling" phase of the project.

## METHODOLOGY

This research was conducted under the direction of the Harvard Project on American Indian Economic Development for Gary Goforth, Administration Manager of the Fort Mojave Indian Tribe.

The research design focused on background theoretical readings and interviews. The background readings addressed Indian economic development, business development, and dispute resolution methods; they provided frameworks in which to present arguments and formulate theories. In addition, research was conducted on the Federal Government's treatment of Native Americans.

Interviews were carried out with Native American economic development professionals, Fort Mojave Tribal members, attorneys, consultants, development experts, Federal Government officials, Local Government officials, and academics. They were conducted in person and over the phone.

Tribal Consultant Dorothy Hallock of Sterzer, Gross & Hallock provided additional tribal and government documentation that support the facts and conclusions presented in this paper.



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## LIST OF INTERVIEWS

Albert, Raymond  
Assistant Area Director  
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Barrackman, Llewellyn  
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Fort Mojave Indian Tribe

Begay, Lorenzo  
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Chase, Joanne  
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National Congress of American Indians

Chin, Kelvin  
Regional Vice President, Nevada  
American Arbitration Association

Cleeves, Clayton  
Pasamaquoddy Indian Tribe  
Pleasant Point Reservation

Cool, Michael  
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Clark County

Cornejo, Joe  
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Fort Mojave Tribal Utilities

Cox, Alan  
Attorney/Partner  
Cox & Cox

Dobson, Stephen  
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Fort Mojave Telecommunications, Inc.

Duus, Vern  
Office of Self-Government  
Department of Interior

Francis, Karl  
Director of Tribal Planning  
San Carlos Apache Tribe

Garcia, Nora  
Tribal Member  
Fort Mojave Indian Tribe

Garcia, Paul  
Manager  
Fort Mojave Smoke Shop

Goforth, Gary  
Administration Manager  
Fort Mojave Indian Tribe

Hallock, Dorothy  
Partner  
Sterzer, Gross & Hallock

Hammon, Gerald  
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Development  
HUD, Office of Indian Programs

Harrel, Mary  
Associate General Manager  
Aha Majav Power Service

Johnson, Sharlot  
Area Tribal Operations Officer  
Bureau of Indian Affairs

Madueno, Patsy  
Council Chair  
Fort Mojave Indian Tribe

O'Hara, Charlie  
Tribal Planner  
White Mountain Apache Tribe

Parry, Tom  
Director of Community Services  
City of Needles, CA

Robbins, Ken  
National Center for American  
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Roberts, Mike  
Director of Research  
First Nations

Thompson, Laurie  
Director of Field Operations  
First Nations

Trosper, Ron  
National Indian Policy Center

Tureen, Tom  
President  
Tribal Assets Management

Staudte, Janice  
Loan Specialist/Credit and Financing  
Bureau of Indian Affairs

Wharton, Don  
Attorney  
Native American Rights Fund

Zervis, Albert  
North American Native Affairs  
and Development

## APPENDICES



**APPENDIX A**

**Fort Mojave Tribal Conditions and Suitability for Business Development**

| <b><i>Tribal Conditions</i></b>   | <b><i>Attractiveness of Tribe to Potential Partners<br/>and Business Development</i></b> |                                |                     |
|---|--|--------------------------------|---------------------|
|   | <b>Very Attractive</b>   | <b>Somewhat<br/>Attractive</b> | <b>Unattractive</b> |
| <b><u>1. Assets</u></b><br>Available Labor Force  | ✓  |                                |                     |
| Low Labor Costs   | ✓  |                                |                     |
| Skilled Labor Force   |  | ✓                              |                     |
| Access to Rail & Air Transportation   |  | ✓                              |                     |
| Developed Infrastructure  |  | ✓                              |                     |
| Abundant Natural Resources  |  | ✓                              |                     |
| Abundant Capital Resources  |  |                                | ✓                   |
| Cultural Acceptance of non-Indian Investors and Entrepreneurs                                 | ✓  |                                |                     |
| <b><u>2. Tribal Government</u></b><br>Strong Tribal Government                                |  | ✓                              |                     |
| <b><u>3. Bus./Gov. Policies</u></b><br>Distinction Between Government and Business Activities |  | ✓                              |                     |
| <b><u>4. Enforce Contracts</u></b><br>Sound Tribal Judiciary                                  |  |                                | ✓                   |
| Dependency on Third-Party Dispute Resolution  |  |                                | ✓                   |

# APPENDIX B

CJY-53-85

Class "C" Resolution  
No BIA Action Required.

## RESOLUTION OF THE NAVAJO TRIBAL COUNCIL

### Creating and Authorizing a Permanent Fund for the Navajo Nation

#### WHEREAS:

1. The Navajo Tribal Council is the governing body of the Navajo people and is responsible for the future of the Navajo Nation; and
2. The Navajo Nation's General Fund Reserve has been declining over the past years to its present \$21 million from a previous high of \$63 million, as outlined in Exhibit "A" attached hereto; and
3. The majority of the Navajo Nation's revenues to date have been received from the exploitation of its oil and gas resources which is declining, as indicated in Exhibit "A"; and
4. Other sources for future revenue must be developed to replace the income which is now derived from depletable natural resources. Such a source is a permanent fund which will generate interest from yearly Tribal contributions to rebuild the Tribal reserve and provide funds at a future date, as projected in Exhibit "B"; and
5. The Navajo Bond Financing and Investment Committee has worked on the concept of a permanent fund in conjunction with its specific tasks to strengthen the financial position of the Navajo Nation, and recommends the adoption of the permanent fund legislation as set forth herein; and
6. It would be in the best interest of the Navajo Nation to build its current reserves for future generations by establishing a Navajo Nation permanent fund; and
7. The Advisory Committee of the Navajo Tribal Council by Resolution ACJY-140-85, considered and unanimously recommended the approval of the creation of a permanent fund for the Navajo Nation.

#### NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tribal Council hereby creates and authorizes a permanent fund for the Navajo Nation, as set forth below:

#### SECTION 1. Establishment of a Navajo Nation Permanent Fund.

There is hereby established the "Navajo Nation Permanent Fund" [hereinafter the "Fund"]. Each year the Navajo Tribal Council shall budget a sum equal to at least twelve percent (12%) of any and all projected revenue of the Navajo Tribe including, but not limited to, revenues received from taxes, oil and gas mining/minerals, timber, land rentals, interest/dividends, gain on sale of securities and other revenue producing activities for transfer to the Fund. Additional money may be added to the Fund at any time. Any money deposited into the Fund, plus accrued interest, shall thereafter be used only as provided in this Resolution. In the event actual revenue fails to meet projected revenue, or excess projected revenue, the amount appropriated and transferred shall be adjusted to equal twelve percent (12%) of actual revenue. Transfers may be made in one or more installments.

#### SECTION 2. Investment of the Fund.

All amounts deposited in the Fund shall be invested as soon as is reasonably practical in accordance with the following limitations:

- A. The funds shall be invested in accordance with the degree of care exercised by reasonable and prudent managers of large investments intended to produce maximum growth of the investments with a high degree of safety. In addition, the Fund may be invested in any other investments approved by the Budget and Finance Committee of the Navajo Tribal Council and the Navajo Tribal Council.
- B. Management of the investments may be delegated to third parties by written contract recommended by the Navajo Bond Financing and Investment Committee and approved by the Budget and Finance Committee of the Navajo Tribal Council.

#### SECTION 3. Definition of Principal and Income.

- A. Fund principal shall consist of all Navajo Tribal Council contributions made pursuant to the twelve percent (12%) yearly commitment of all revenues of the Navajo Tribe, including, but not limited to, revenues received from taxes, oil and gas mining/minerals, timber, land rentals, interest/dividends, gain on sale of securities and other revenue producing activities, plus any additional

B Fund income shall consist of all earnings generated by the principal of the fund.

**SECTION 4. Expenditures of Fund Principal.**

Fund principal shall not be expended except pursuant to a referendum adopted by a two-thirds majority of those voting in an election open to all registered Navajo voters or as set forth in Section 9. The Navajo Tribal Council may place such a referendum on the ballot of any general or special election by a two-thirds vote of the Council.

**SECTION 5. Expenditure of Fund Income.**

No fund income shall be expended, except as set forth in Sections 8 and 9 for a period of twenty (20) years from date of the first Tribal contribution to the Fund. Thereafter, ninety-five percent (95%) of the Fund income may be expended in accordance with a plan for its use covering at least a five-year period adopted by resolution of the Navajo Tribal Council provided that the expenditure of income in any fiscal year shall not exceed the income earned during that year. The remaining five percent (5%) of the Fund income be reinvested in the Permanent Fund.

**SECTION 6. Annual Audited Report.**

The Fund shall be audited annually by independent outside auditors. Within ninety (90) days of the end of each fiscal year, a report shall be distributed to the Navajo Tribal Council and its Chairman. The report shall be written in easily understandable language. The report must include financial statements audited by independent outside auditors, a statement of the amount of money received by the Navajo Nation Permanent Fund from each investment during the period, a statement of investments of the Fund including an appraisal at market value, a description of fund investment activity during the period covered by the report, a statement of the Fund performance and other information relevant to the management of the Fund.

**SECTION 7. Amendment of this Resolution.**

This Resolution may be amended by the majority vote of the Navajo Tribal Council except as follows:

- A. Sections 3 and 4 may only be amended by referendum adopted in the manner prescribed for the expenditure of Fund principal in Section 4.
- B. Section 5 may be amended only by ninety percent (90%) vote of all of the members of the Navajo Tribal Council.
- C. Section 7 may not be amended or repealed until after forty (40) years from the date of enactment of this Resolution.

**SECTION 8. Expenses.**

All expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Budget and Finance Committee of the Navajo Tribal Council and the Navajo Tribal Council. Such expenses shall include an investment advisor and management fees, pursuant to a duly approved contract, audit costs, and other related expenses.

**SECTION 9. Payment of Bond Obligation.**

In the event of an imminent default of any Navajo Nation bond obligation, the Fund income and principal in that order may be used as a source of payment by two-thirds vote of the Navajo Tribal Council.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 78 in favor and 1 opposed, this 25th day of July, 1985.

  
Chairman  
Navajo Tribal Council

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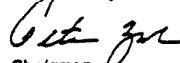
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Chairman  
Navajo Tribal Council



**APPENDIX C**

**Budgeting 638 Contracts v. Self-Governance**

| <b>638 Contracts</b>   | <b>Self-Governance Demonstration Project</b>   |
|--|--|
| <b><u>BUDGETING</u></b>  | <b><u>BUDGETING</u></b>  |
| <ul style="list-style-type: none"> <li>• Program budgets determined by BIA Agency through reporting requirements. Allocations determined by the IPS, Non-Banded, and Congressional appropriation process.</li> </ul>                                     | <ul style="list-style-type: none"> <li>• Program budgets determined by Tribal Council, and presented to BIA for approval.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Payments and reimbursements made by Cost-Reimbursement through BIA.</li> </ul>  | <ul style="list-style-type: none"> <li>• Payments and "reimbursements" pre-paid and negotiated on a quarterly basis or "to the best advantage of the Tribe as allowed by law."</li> </ul>  |
| <ul style="list-style-type: none"> <li>• No easy way to transfer funds between different 638 program accounts. Often results in BIA interference and poor cooperation, and Tribe required to solicit concurrence from other Tribes in Agency.</li> </ul> | <ul style="list-style-type: none"> <li>• Tribes allowed to transfer up to 30% of each negotiated budget (in trust category), without BIA approval; Congressional funding earmarks must be expended as appropriated; construction funds can only be spent on construction; Council determines other constraints.</li> </ul> |
| <ul style="list-style-type: none"> <li>• BIA, IPS and non-Banded established programs are designated for expenditures.</li> </ul>  | <ul style="list-style-type: none"> <li>• Council can create new programs, modify, consolidate, or abolish BIA programs.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• BIA competitive grants (e.g., economic development and Indian Child Welfare) awarded by application review process.</li> </ul>  | <ul style="list-style-type: none"> <li>• Self-Governance Tribes contend that these grants should be incorporated into the Compacts to include all activities desired by the Tribes.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• BIA program carryovers to new fiscal year remain within program-specific budgets.</li> </ul>  | <ul style="list-style-type: none"> <li>• Compact carryovers or savings can be expended as Council determines.</li> </ul>   |

**APPENDIX C**  
(continued)

**Managing 638 Contracts v. Self-Governance**

| <b>638 Contracts</b>  | <b>Self-Governance Demonstration Project</b>  |
|---|---|
| <b><u>MANAGING</u></b>  | <b><u>MANAGING</u></b>  |
| <ul style="list-style-type: none"> <li>• Tribal staff and program performance accountable to BIA.</li> </ul>  | <ul style="list-style-type: none"> <li>• Tribal staff and program performance accountable to Council and members.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• BIA programs managed according to established federal laws, rules and regulations.</li> </ul>  | <ul style="list-style-type: none"> <li>• Council may replace restrictive regulations with its own laws and management guidelines, subject to Secretarial approval.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• BIA programs involving Tribal management of trust resources require BIA concurrence in decision-making process.</li> </ul>   | <ul style="list-style-type: none"> <li>• BIA intervenes only if physical trust asset is in "imminent jeopardy"; BIA/Office of Self-Governance perform annual trust evaluation.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Tribal staff reports on program performance based on BIA regulations and timetables; tribally-designed program measures must be approved by BIA.</li> </ul>  | <ul style="list-style-type: none"> <li>• Tribal staff reports on program performance based on Council requirements; Council submits two reports to Congress on progress/problems according to negotiated baseline measures. DOI also submits reports to Congress.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Interior Department process involves:               <ul style="list-style-type: none"> <li>- Agency COR/Superintendent</li> <li>- Area Staff/Director</li> <li>- BIA Central Staff, Asst. Secrtry. &amp; Interior Secrtry</li> <li>- DOI Board of Indian Appeals</li> <li>- Federal Court</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Interior Department process involves:               <ul style="list-style-type: none"> <li>- BIA Designated Official</li> <li>- Office of Self-Governance Director</li> <li>- Interior Assistant Secretary</li> <li>- Self-Governance Policy Council</li> <li>- Interior Secretary</li> <li>- Federal Court, or mediation process</li> </ul> </li> </ul> |

(source: Tribal Self-Governance Demonstration Project Workshop)

**APPENDIX C**  
(continued)

**Managing 638 Contracts v. Self-Governance**

| <b>638 Contracts</b>  | <b>Self-Governance Demonstration Project</b>  |
|---|---|
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(source: Tribal Self-Governance Demonstration Project Workshop)



## APPENDIX D

### COMPACT OF SELF-GOVERNANCE BETWEEN THE XYZ INDIAN TRIBE AND THE UNITED STATES OF AMERICA

#### Article I - Authority and Purpose

Section I - Authority. This agreement, denoted a Compact of Self-Governance (herein after referred to as the "Compact"), is entered into by the Secretary of the Interior (hereinafter referred to as the "Secretary"), for and on behalf of the United States of America pursuant to the authority granted by Title III of P.L. 100-472, and by the XYZ Indian Tribal Council by the authority of [the particular authority of the Tribe to enter into such agreements should be cited here]

Section 2 - Purpose. This Compact shall be liberally construed to achieve its purposes:

(a) This Compact is to carry out an unprecedented Self-Governance Demonstration Project, authorized by Title III, P.L. 100-472, which is intended as an experiment in the areas of planning, funding and program operations within the Government-to-Government relationship between Indian Tribes and the United States. The Demonstration Project encourages experimentation in order to determine how to improve this Government-to-Government Relationship and promote the perpetuation of the Tribe. The outcome of the experiments can not be known in advance, and each experiment, as reflected in each specific Compact, binds no party beyond the terms of each specific Compact.

(b) This Compact is to enable the XYZ Tribe to redesign programs, activities, functions, and services of the Bureau of Indian Affairs; to reallocate funds for such programs, activities, functions, or services according to its tribal priorities; to provide such programs, activities, functions, and services, as determined by its tribal priorities; to enhance the effectiveness and long term financial stability of its tribal government; and to reduce the Federal-Indian service bureaucracy.

(c) This Compact is to enable the United States to maintain and improve its unique and continuing relationship with and responsibility to the XYZ Tribe through the establishment of a meaningful demonstration policy and project for tribal self-governance as proposed by the XYZ Tribe which will allow the Tribe to: take its rightful place in the family of governments in the federal constitutional system; remove federal obstacles to effective self-governance; reorganize tribal government programs and services; and provide a

documented example for the development of future Federal-Indian policy. This policy of tribal self-governance shall permit an orderly transition from federal domination of programs and services to allow Indian tribes meaningful authority to plan, conduct, and administer those programs and services to meet the needs of their people. To implement the Self-Governance Project, the Department of the Interior is also expected to reorganize to provide the same level of service to other tribal governments and demonstrate new policies and methods to provide improved service delivery to address tribal needs. In fulfilling its responsibilities under the Compact, the Secretary hereby pledges that the Department will conduct all relations with the Tribe on a government-to-government basis.

Section 3 - Tribal Law and Forums. The duly enacted laws of the Tribe shall be applied in the execution of this Compact and the powers and decisions of the Tribe's Court shall be respected, to the extent that federal law, construed in accordance with the applicable canons of construction and Title III of P.L. 100-472, is not inconsistent.

#### ARTICLE II-Terms, Provisions and Conditions

Section 1 - Term. The term of this Compact begins October 1, 1990 and shall extend thereafter throughout the time period authorized by Title III of P.L. 100-472, and any subsequent amendments thereto.

Section 2 - Effective Date. Once this compact is approved and signed by the Tribe and the Secretary, it shall be forthwith submitted by the Secretary or an authorized representative and the Tribe to the Select Committee on Indian Affairs of the United States Senate, the Committee on Interior and Insular Affairs of the United States House of Representatives and to the tribes served by the [insert name of agency], and shall be effective ninety days after such submission, unless otherwise provided by law. Successor Annual Agreements shall be likewise submitted.

Section 3 - Funding Amount. Subject only to the appropriation of funds by the Congress of the United States and to adjustments pursuant to Section 106(b) of P.L. 100-472, the Secretary or an authorized representative shall provide to the Tribe the total amount specified in the Annual Agreement incorporated by reference in Article VI, Section 2.

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Section 4 - Payment. Payments shall be made as expeditiously as possible in compliance with applicable Treasury Department regulations and shall include financial arrangements to cover funding during periods under continuing resolutions to the extent arrangements to cover funding during periods under continuing resolutions to the extent permitted by such resolutions. To the extent authorized by law, for each fiscal year covered by the Compact, the Secretary or an authorized representative will make available the funds specified for that fiscal year under the Annual Agreement by paying to the Tribe on a quarterly basis one-quarter of the total amount provided for in the Annual Agreement for that fiscal year, or by using an instrument such as a letter of credit, or other method authorized by law, or a combination thereof, as may be specified in the Annual Agreement. To the extent applicable, each quarterly payment shall be made on the first day of each quarter of the fiscal year except for the first quarter, for which the quarterly payment shall be made on or before ten calendar days of the date on which the Office of Management and Budget apportions the appropriations for that fiscal year for the programs, activities, functions and services subject to the Compact. [This section will be amended at a later date when the actual process for payment is finalized]

Section 5 - Reports to Congress. In order to implement Section 305 of Title III of P.L. 100-472, on each January 1 and July 1, throughout the period of the Compact, the United States shall make a written report to the Congress, which shall separately include the views of the Tribe, concerning the relative costs and benefits of carrying out this Compact, based on mutually determined baseline measurements jointly developed by the parties pursuant to Section 17 of this Article.

Section 6 - Audits.

(a) The Tribe shall provide to the Designated Official an annual single organization-wide audit as prescribed by the Single Audit Act of 1984, 31 U.S.C. § 7501, et seq., and shall adhere to generally accepted accounting principles and Circular A-128 of the Office of Management and Budget as follows:

(1) The costs of this compact consist of the direct and support costs, including indirect costs, actually incurred in the performance of this Compact, determined in accordance with the cost principles set forth in the OMB Circular A-87 in effect as of October 1, 1990; provided, however, that if the Office of Management and Budget revises any provisions of such Circular:

1. The revisions shall not apply to the Compact unless agreed to by the Tribe or until the Secretary determines their applicability as provided below.

2. The Secretary shall immediately review the revisions in consultation with the Tribe to determine if the revisions are detrimental to the self-governance project or inconsistent with the intent of the Act.
3. If it is determined that the revisions are neither detrimental nor inconsistent with the intent of the Act, the Secretary will amend this Compact to include those revisions.

(ii) The Secretary has received the concurrence of the Office of Management and Budget for the term of the Demonstration Project authorized by Title III of P.L. 100-472 that allowable costs shall include:

1. Depreciation and Use Allowances. The computation of allowances or depreciation shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation.
2. Publication and printing costs. Publication costs include the costs of printing or other reproduction through the information media (including processes of composition, plate making, press work, binding, and the end products produced thereby, including books, newspapers and newsletters, as well as radio, television and the production of video tapes) for any purpose in support of the compact program, including, but not limited to, providing program-related information to the Indian community, if such costs are charged directly to the Demonstration Project.
3. Automatic Data Processing Equipment (ADP). The costs of ADP equipment are allowable direct charges to the Demonstration Project whether or not owned by the Tribe subject to any statutory limitations and to the extent that they are reasonable in light of such factors as rental cost of comparable property; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.
4. Supplemental Funding. Costs incurred to supplemental funds are allowable as direct charges to the extent that funds generated are used to further the contract goals and objectives. Funds generated are treated as program income.

Costs of investment counsel and staff and similar costs incurred to enhance income from fund raising efforts are allowable.

5. Investment Management. Investment management costs associated with pension plans and self-insurance funds

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3. Automatic Data Processing Equipment (ADP). The costs of ADP equipment are allowable direct charges to the Demonstration Project whether or not owned by the Tribe subject to any statutory limitations and to the extent that they are reasonable in light of such factors as rental cost of comparable property; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.
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are considered to be an allowable cost under the cost principles and are normally handled as a part of the indirect cost or fringe benefit rates that are charged on a consistent basis to all funding sources.

6. Idle Facilities and Idle Capacity. These costs, exclusive of repairs and maintenance, are unallowable, except to the extent they are necessary to accommodate for fluctuation in workload, or they were necessary when acquired but are now idle because of changes in program requirements or other causes which could not have been reasonably foreseen.
7. Lobbying, Lobbying costs of contractors are unallowable to the extent prohibited by applicable statutory restrictions; and
8. Professional Service and Litigation Costs. Costs of legal, accounting, consulting and related costs in connection with the prosecution or defense of claims against the Federal Government in court are unallowable. The cost of such services in connection with contract disputes or other matters related to the performance of the contract until a final administrative decision is reached is allowable.

(iii) With the concurrence of the Office of Management and Budget, the Secretary will continue to seek approval of the following costs as allowable.

1. Rental/Lease Costs. The building, space, and related facility costs of space, land and personal property whether or not owned by an Indian Tribe are allowable subject to any statutory limitations and to the extent that they are reasonable in light of such factors as rental cost of comparable property; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.
2. Interest. Except for interest pertaining to charges incurred for new buildings, other interest remains unallowable. OMB is still studying whether or not interest expense should be allowable for major building reconstruction and remodeling or fabrication of capital equipment.

(b) No other audit or accounting standards, except as specified in Article IV, Section 2, shall be required by the Secretary or an authorized representative of the Tribe. To the extent that tribal law is not inconsistent, small and minority business audit firms shall be afforded maximum practical opportunity to participate in fulfilling the requirements herein. The preference requirements of the Indian Self-Determination and

Education Assistance Act, as amended, 25 U.S.C. § 450e(b), shall apply to such audits pursuant to Section 2 of Article V of this Compact.

Section 7 - Records. The following provisions will supplement tribal law on document disclosure and will govern record keeping associated with this Compact.

(a) Tribal records which the Secretary or an authorized representative demonstrates are clearly required to be maintained as part of the Department of the Interior's record keeping system, shall be deemed federal records, and shall be subject to the Privacy Act, 5 U.S.C. § 552 and Freedom of Information Act, 5 U.S.C. 552. All other tribal records shall not be subject to the Privacy Act, 5 U.S.C. 552a and the Freedom of Information Act, 5 U.S.C. 552.

(b) The Tribe shall maintain a record keeping system, and provide reasonable access to records to the Secretary or an authorized representative, which permits the Department of the Interior to meet its minimum legal record keeping program requirements under the Federal Records Act, 44 U.S.C. § 3101, et seq., and which will allow for retrocession of this Compact in whole or in part pursuant to Section 13 of this Article.

(c) The Tribe shall maintain in its record keeping system all documents necessary for the annual audit requirement in Section 6 of this Article, and shall provide reasonable access to records to the Secretary or an authorized representative.

Section 8 - Property.

(a) At the request of the Tribe, the Secretary or an authorized representative shall make available to the Tribe reasonably divisible real property, facilities, equipment, and personal property that the Department had previously utilized to provide the programs, activities, functions and services now consolidated by the Tribe pursuant to Article III of this Compact. A mutually agreed upon list specifying the property, facilities, and equipment to be utilized shall also be prepared and periodically revised so that such property can be properly recorded in the Bureau of Indian Affairs Property Inventory.

(b) Subject to the agreement of the General Services Administration, the Secretary hereby delegates to the Tribe the authority to acquire for donation such excess or surplus Government property as may be appropriate in the judgment of the Tribe to support the programs, activities, functions, and services designated under Article III of this Compact. The Secretary or an authorized representative agrees to make best efforts to assist the Tribe in obtaining such surplus or excess property as may become available to tribes or local governments. Upon the request of the

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Tribe, the Designated Official shall assist the Tribe in securing a Screener Identification Card (General Administration Form 2946).

(c) The Tribe shall determine what capital equipment, leases, rentals, property or services, it shall require to perform its obligations under Title III of this Compact, and shall acquire and maintain records of such capital equipment, property rentals, leases, property or services through tribal procurement procedures.

Section 9 - Savings. If it becomes apparent that funds allocated by the Tribe pursuant to its budget process, to any activity as defined in the Annual Agreement are in excess of that needed for such activity, the Tribe may reallocate that excess to any other activity under this Compact. Any funds not expended during the term of any of the Fiscal years of this Compact may be carried over to the succeeding Fiscal year, but such carry-over shall not diminish the amount of funds that Tribe is authorized to receive in that succeeding Fiscal year or in any subsequent Fiscal year.

Section 10 - Use of Motor Vehicles. Subject to the agreement of the General Services Administration, the Secretary hereby authorizes the Tribe to obtain Interagency Motor Pool vehicles and related services, if available, for performance of any activities under this Compact.

Section 11 - Regulatory Authority. The Secretary and the Tribe agree to utilize the following procedures governing the establishment and application of regulations under this Compact.

(a) Program Guidelines. The Tribe is not required to abide by federal program guidelines, manuals, policy directives, etc. except for those which it specifically agrees to or which have been published in the Federal Register.

(b) Federal Regulations. The Tribe agrees to abide by all existing federal regulations as published in the Federal Register. In order to put to good use the Secretary's waiver authority as authorized by Section 303(e) of P.L. 100-472, the Secretary will seek to expedite the waiver of any federal regulations which the Secretary or the Tribe determine presents an obstacle to the carrying out of the Compact, its purpose, and the programs, activities, functions, and services pursuant to the Compact, under the following procedures:

(i) prior to the effective date of the Compact, the Secretary or an authorized representative and the Tribe will seek to identify any federal regulations that either may wish to waive in order to more effectively carry out the Compact;

(ii) if at any time the Tribe determines that it

wishes to waive one or more specific federal regulations in order to more effectively carry out its obligations under the Compact, the Tribe may submit a written request for waiver to the Designated Official and the Secretary shall render a written decision to the tribe within sixty days of receipt of the request.

(iii) The Secretary shall act in the best interest of the affected Indians and shall grant the requested waiver unless he determines that the applicable statutes cannot reasonably be interpreted as permitting the requested waiver.

#### Section 12 - Disputes.

(a) Section 110 of the Indian Self-Determination and Education Assistance Act Amendments of 1988 (P.L. 100-472) shall apply to disputes under this Compact.

(b) In addition or as an alternative to remedies and procedures prescribed by section 110 of the Indian Self-Determination and Education Assistance Act Amendments of 1988, P.L. 100-472, the parties jointly may:

(i) Submit disputes under this Compact or third-party mediation, which for purposes of this Section means that the Secretary or an authorized representative and the Tribe nominate third parties who together choose a third party mediator ("third-party" means a person not employed by or significantly involved with either the Tribe or the Secretary or the Department of the Interior); or

(ii) Submit the dispute to the Tribe's Court; or

(iii) Submit the dispute to mediation processes provided for under the Tribe's law.

(c) The Secretary shall be expected to accept decisions reached by mediation processes or the tribal court, but shall not be bound by any decision which might be in conflict with the interests of the Indians or the United States.

Section 13 - Retrocession. The retrocession provision of Section 105(c) of P.L. 100-472, and any regulations thereunder, are herein adopted. [Mutual agreement on a period of time shorter than the timeframe of one year may be negotiated; for example, several of the tribes have a 45 day retrocession timeline in their compacts. This timeframe can, of course, be changed subject to mutual agreement when an actual retrocession might occur.]

Section 14 - Tribal Administrative Procedure. Tribal law and tribal forums shall provide administrative due process rights

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pursuant to the Indian Civil Rights Act of 1968, 25 U.S.C. § 1301, et seq., that persons, or groups of persons, may have with respect to services, activities, programs, and functions that are provided by the Tribe pursuant to this Compact.

Section 15 - Successor Annual Agreement. Negotiations for a successor Annual Agreement, as provided for in Article VI, Section 2, shall begin no later than 120 days in advance of the conclusion of the preceding Annual Agreement. Pursuant to Section 301 and Section 303(a) of P.L. 100-472, the Secretary shall make best efforts to continue and to promote this demonstration project in preparing budgets for subsequent years. The Tribe is hereby assured that future funding of successor Annual Agreements shall only be reduced pursuant to the provisions of Section 106(b) of the Indian Self-Determination and Education Assistance Act Amendments of 1988, P.L. 100-472. The Secretary or an authorized representative agrees to prepare and supply relevant information, and promptly to comply with the Tribe's requests for information reasonably needed to determine the funds that may be available for a successor Annual Agreement as provided for in Article VI, Section 2 of this Compact.

Section 16 - Secretariat Approval.

(a) Every contract entered into by the Tribe in connection with a program, activity, function, or service encompassed by this Compact, shall be in writing, identify the interested parties, their authorities and purposes, state the work to be performed, the basis for any claim, the payments to be made, and the term of the contract which shall be fixed. Contracts which comport with the requirements of this section but which might be void without Secretarial approval under 25 U.S.C. § 81, shall be expeditiously reviewed by the Secretary under the following procedure:

(i) if at any time the Tribe determines that contract may be subject to 25 U.S.C. § 81, the Tribe may submit a written request for approval to the Designated Official and the Secretary or an authorized representative shall render a written decision to the Tribe within thirty days of receipt of the request.

(ii) If the Secretary or an authorized representative determines that 25 U.S.C. § 81 does not apply, he shall proceed to review the contract and shall make a determination indicating that he would not wish his view of 25 U.S.C. § 81 to subject the contract to an assertion it is null and void and, not wishing to disrupt the Tribe's legitimate contracting activity, has accommodated the Tribe by reviewing and approving (or disapproving) the contract.

(iii) For the term of the compact, the provisions of section 2103 or the Revised Statutes of the United States (25 U.S.C. 81) and section 16 of the Act of June 18, 1934 (25 U.S.C. 476), shall not apply to attorney and other professional contracts of participating Indian tribal governments operating under the provisions of this title.

(b) If any power or act of the Tribe, including amendments to the Tribe's Constitution relevant to this Compact, is subject to the approval of the United States, under the tribe's Constitution and Bylaws, and a written request for such approval is neither granted nor denied within sixty days following the making of such request, such approval shall be deemed to have been granted.

Section 17 - Establishment of Baseline Measures. Baseline measures for programs, services, functions, and activities previously performed by the XYZ Tribe under the authority of P.L. 93-638 or other legal authority shall be established upon performance of the XYZ Tribe up to and including fiscal year 1990. Baseline measures for programs, services, functions, and activities previously performed or not performed by the Bureau of Indian Affairs shall be established upon performance of the Bureau of Indian Affairs up to and including fiscal year 1990. A task force shall be established within 45 days of the signing of this Compact by the Designated Officials (Article V, Section 1) to develop the mutually accepted baseline measures. The task force shall consist of academic representatives, and an equal number of representatives of the XYZ Tribe and the Secretary, unless otherwise mutually agreed. The inclusion of academic representatives shall be dependent upon the availability of financial resources. The task force recommendation for the establishment of baseline measures shall be completed by January 15, 1991, ratified by the Designated Officials by January 31, 1991, and shall become an attachment to this Compact. The task force shall also establish baseline measures for those programs, services, functions and activities for the XYZ Tribe retained by the Secretary or an authorized representative, and the Bureau of Indian Affairs shall report to the Secretary or an authorized representative and the XYZ Tribe. [This language is an example from the compacts of some of the first tier tribes. The timeframes would obviously not be appropriate for other tribes. The actual process agreed upon at negotiations should be stated here.]

### Article III - Obligation of the Tribe

Section 1 - Consolidation. With the exception of the specific responsibilities of the United States identified and retained in Article IV, Section 3, and the programs, activities,

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(b) If any power or act of the Tribe, including amendments to the Tribe's Constitution relevant to this Compact, is subject to the approval of the United States, under the tribe's Constitution and Bylaws, and a written request for such approval is neither granted nor denied within sixty days following the making of such request, such approval shall be deemed to have been granted.

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functions, and services pursuant to either P.L. 95-561, the Tribe will perform the programs, activities, functions and services as provided for in the Annual Agreement, as provided for in Article VI, Section 2 of this Compact. To the extent a program, activity, function, or service included within such Annual Agreement is included within a contract or grant entered into pursuant to P.L. 93-638, or is subject to any obligation arising from such contract or grant, that contract or grant is terminated and the parties' obligations shall be governed by this Compact.

Section 2 - Amount of Funds. The total amount of funds covered by the consolidation and redesign provided for in Section 1 of this Article that the Secretary or an authorized representative shall make available to the XYZ Indian Tribe shall be determined in an Annual Agreement between the Secretary and the Tribe, which shall be incorporated in its entirety to this Compact and attached hereto as provided for in Article VI, Section 2.

Section 3 - Tribal Programs. The Tribe agrees to provide such programs, activities, functions, and services that are identified in the Annual Agreement. The Tribe pledges to practice utmost good faith in upholding its responsibility to provide such programs, activities, functions and services.

Section 4 - Trust Services for Individual Indians. To the extent that the Annual Agreement endeavors to provide trust services to Individual Indians that were formerly provided by the Secretary or an authorized representative, the Tribe will maintain at least the same level of service as was previously provided by the Secretary or an authorized representative. The Tribe pledges to practice utmost good faith in upholding its responsibility to provide such service. Trust Services for individual Indians means only services that pertain to land or financial management connected to individually held allotments.

Section 5 - Reallocation. Reallocation of funds from one program, activity, function, or service to another within the General Budget Category, or from one General Budget Category to another shall be governed only by tribal law and procedure and shall not require Secretarial consent. In the event a reallocation involves 30% or more, on a cumulative annual basis, of funds for a physical resource trust or trust fund management function performed by the Tribe, the Tribe shall provide notice to the Secretary's Designated Official, together with an explanation of how the Tribe's responsibility will continue to be fulfilled.

## Article IV - Obligation of the United States

Section 1 - Trust Responsibility. The United States reaffirms its trust responsibility to XYZ Indian Tribe of the XYZ Indian Reservation to protect and conserve, the trust resources of the XYZ Indian Tribe and of individual Indians, of the XYZ Indian Reservation. Nothing in this Compact is intended to, nor should be interpreted, to terminate, waive, modify or reduce the Trust responsibility of the United States to the Tribe or individual Indians. The Secretary pledges to practice utmost good faith in upholding said trust responsibility.

Section 2 - Trust Evaluations. The United States shall require in accordance with this Compact an annual trust evaluation of any physical resource trust management function being performed by the Tribe pursuant to Article III and the Annual Agreement. Evaluations shall not be burdensome and shall be conducted on a cost effective basis. Without prejudicing the Secretary's statutory authorities, such Trust Evaluations are intended to enable the United States to exercise its necessary supervision or oversight relative to its trust obligations to the Tribe and individual Indians, provided that the Tribe may specially impose on itself additional requirements pursuant to the Annual Agreement.

(a) For purposes of this section a Trust Evaluation means a program outcome evaluation to determine whether the responsibility of the United States, as reflected in federal law or in Section 1 of this Article, is being met.

(b) Information and analysis obtained in the performance of such evaluations shall be immediately provided to the Tribe's designated representative. The Tribe agrees to cooperate in Trust evaluations.

(c) If the United States' Designated Officials determines from such evaluation, or from any other source, that trust resources are endangered by the Tribe's action or inaction, the United States' Designated Official shall immediately notify the Tribe of its specific concerns relative to the specific, identified, physical trust asset.

(d) Unless a physical trust asset is in imminent jeopardy, which for purposes of this Compact shall mean either significant devaluation or loss of an asset or significant loss or devaluation of the income from such asset caused by the Tribe's action or inaction, which would occur within 60 days, the United States shall not take back the responsibility for management of that endangered trust resource, but to the extent resources are available, shall provide sufficient and appropriate assistance to the Tribe to enable the protection, and conservation of Trust assets. If the physical trust asset is in imminent jeopardy, as defined in this subsection, the

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United States shall, upon two (2) days advance written notice to the Tribe, immediately take over the responsibility for the management of such endangered physical trust asset, and may use a reasonable portion of funds remaining available for such program for that purpose, notwithstanding any other provisions of this Compact.

Section 3 - Programs Retained. As specified in the Annual Agreement, the United States hereby retains the programs, services, functions, and activities with respect to the Tribe that are not specially assumed by the Tribe in the Annual Agreement. The Secretary agrees that a program Outcome Evaluation shall be performed by a Compact Evaluation Team, which shall consist of one representative of the Secretary, and one representative of the Tribe, annually as to each program, activity, function, or service which is retained by the United States pursuant to this Section. Evaluations shall not be burdensome and shall be conducted on a cost effective basis. The findings and recommendations of the Evaluation Team shall be reported to the Tribe and the Secretary or an authorized representative.

Section 4 - Financial and other Information. The Tribe shall be eligible for new programs, activities, services and functions on the same basis as other tribes and the Secretary or an authorized representative shall advise the Tribe of the funding available for such programs. To assist the Tribe in monitoring compliance with Section 303(a)(6) of P.L. 100-472, the United States shall provide:

(a) monthly copies of Bureau of Indian Affairs' Status of Obligations reports of the Central Office concerning Portland Area obligations;

(b) monthly status of Obligations reports by the Area Office concerning programs, activities, functions, and services performed in the Portland Area which are comparable to those performed by the Tribe under this Compact; and

(c) revisions in such program plans, guidelines or budgets as they are made.

Responses providing other information which may be requested by the Tribe shall be made within ten working days.

## ARTICLE V - Other Provisions

Section 1 - Designated Officials. On or before the effective date of this Compact, both the United States and the Tribe shall provide each other with a written designation of a senior official as its representative/liaison official for notices, proposed

amendments to the Compact and other purposes for this Compact.

Section 2 - Indian Preference in Employment, Contracting and Subcontracting. Tribal law shall govern the provision of Indian Preference in Employment, Contracting, and Subcontracting pursuant to this Compact, Section 104 of P.L. 100-472 shall apply to individuals who leave federal employment for tribal employment.

Section 3 - Insurance. The Tribe shall be fully covered by such liability insurance on equivalent coverage that the Secretary or an authorized representative provides or obtains pursuant to Section 102(c) of the Indian Self Determination and Education Assistance Act Amendments of 1988, P.L. 100-472. Additionally, the Tribe shall be fully covered by all liability coverage under the Federal Tort Claims Act that is made available by the Secretary to P.L. 93-638 contractors and their employees under federal law, as the same may be amended from time to time, and shall be responsible in the same manner as P.L. 93-638 contractors.

Section 4 - Compact Modifications or Amendments. To be effective any modifications of this Compact shall be in the form of a written amendment to the Compact, and shall require the written consent of the Tribe and the United States.

Section 5 - Construction. In the implementation of this Compact, the Secretary, to the extent feasible, shall interpret Federal laws and regulations in a manner that facilitates this Compact in accordance with Section 303(e) of P.L. 100-472.

Section 6 - Officials Not To Benefit. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of any contract executed pursuant to this Compact, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to any contract under this Compact if made with a corporation for its general benefit.

Section 7 - Covenant Against Contingent Fees. The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed pursuant to this Compact upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul any contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

amendments to the Compact and other purposes for this Compact.

Section 2 - Indian Preference in Employment, Contracting and Subcontracting. Tribal law shall govern the provision of Indian Preference in Employment, Contracting, and Subcontracting pursuant to this Compact, Section 104 of P.L. 100-472 shall apply to individuals who leave federal employment for tribal employment.

Section 3 - Insurance. The Tribe shall be fully covered by such liability insurance on equivalent coverage that the Secretary or an authorized representative provides or obtains pursuant to Section 102(c) of the Indian Self Determination and Education Assistance Act Amendments of 1988, P.L. 100-472. Additionally, the Tribe shall be fully covered by all liability coverage under the Federal Tort Claims Act that is made available by the Secretary to P.L. 93-638 contractors and their employees under federal law, as the same may be amended from time to time, and shall be responsible in the same manner as P.L. 93-638 contractors.

Section 4 - Compact Modifications or Amendments. To be effective any modifications of this Compact shall be in the form of a written amendment to the Compact, and shall require the written consent of the Tribe and the United States.

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Section 8 - Penalties. The parties agree that the criminal penalties set forth in 25 U.S.C. 450d apply to all activities conducted pursuant to this Compact.

Article VI - Attachments

Section 1 - Approval of Compact. The resolution of the XYZ Indian Tribe approving this Compact is attached hereto as Attachment I.

Section 2 - Annual Agreement. The negotiated and duly approved Annual Agreement with respect to XYZ Indian tribe identifying those programs, services, functions, and activities, to be performed, the General Budget Category assigned, and the funds to be provided, is hereby incorporated in its entirety in this Compact and attached hereto as attachment 2. This Compact shall be in effect only during the term of any such Annual Agreement.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 199 .

XYZ INDIAN TRIBE

BY \_\_\_\_\_  
Tribal Official

UNITED STATES OF AMERICA,  
DEPARTMENT OF THE INTERIOR

BY \_\_\_\_\_







**APPENDIX E**

**SAMPLE ANNUAL AGREEMENT**  
**BETWEEN THE**  
**XYZ INDIAN TRIBE**  
**AND THE**  
**UNITED STATES OF AMERICA**

**Section 1 -- Amount of Funds.** The total amount of funds associated with the consolidation and redesign of programs, activities, functions, and services provided in Fiscal Year 19\_\_, \_\_\_\_\_, 19\_\_ through \_\_\_\_\_, 19\_\_, pursuant to the Tribe's Compact of Self-Governance, and which the Secretary or an authorized representative shall make available this amount to the XYZ Indian Tribe as provided in the Compact, shall be determined as provided below.

**Section 2 -- Tribal Programs and Budget.** The Tribe agrees to provide the programs, activities, functions, and services as listed below and identified in the XYZ Indian Tribal Self-Governance Plan for Fiscal Year 19\_\_. For purposes of this Annual Agreement, the Tribe's General Budget Categories consolidate related programs, activities, functions, and services as follows:

1. GENERAL GOVERNMENT
2. ADMINISTRATION/TRIBAL OPERATIONS
3. SOCIAL SERVICES
4. NATURAL RESOURCES
5. ECONOMIC DEVELOPMENT<sup>1</sup>

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<sup>1</sup> This list would be based on specific tribal budget categories.

Section 3 -- Amounts Available in Fiscal Year 1991. The amounts available to the Tribe pursuant to the Compact and Title III of P.L. 100-472, are as follows:

| ACTIVITY<br>AMOUNT              | AGENCY<br>OFFICE | CENTRAL<br>AREA OFFICE | OFFICE | TOTAL |
|---------------------------------|------------------|------------------------|--------|-------|
| <b>EDUCATION</b>                |                  |                        |        |       |
| Adult Education Scholarships    | _____            | _____                  | _____  | _____ |
| <b>TRIBAL SERVICES</b>          |                  |                        |        |       |
| Adult Vocational Training       | _____            | _____                  | _____  | _____ |
| Aid to Tribal Government        | _____            | _____                  | _____  | _____ |
| Social Services                 | _____            | _____                  | _____  | _____ |
| <b>GENERAL ADMINISTRATION</b>   |                  |                        |        |       |
| Executive Direction             | _____            | _____                  | _____  | _____ |
| Administration                  | _____            | _____                  | _____  | _____ |
| <b>AREA - FIELD OPERATIONS</b>  |                  |                        |        |       |
| <b>TRIBE/AGENCY</b>             |                  |                        |        |       |
| Comm. Services - General        | _____            | _____                  | _____  | _____ |
| Tribal Courts                   | _____            | _____                  | _____  | _____ |
| Aid to Tribal Govt.             | _____            | _____                  | _____  | _____ |
| Social Services                 | _____            | _____                  | _____  | _____ |
| Adult Vocational Training       | _____            | _____                  | _____  | _____ |
| Fisheries                       | _____            | _____                  | _____  | _____ |
| Trust General                   | _____            | _____                  | _____  | _____ |
| Other Real. Est. Services       | _____            | _____                  | _____  | _____ |
| Admin./Ex. Director             | _____            | _____                  | _____  | _____ |
| <b>INDIAN SERVICES</b>          |                  |                        |        |       |
| Social Services                 | _____            | _____                  | _____  | _____ |
| <b>ECONOMIC DEVELOPMENT</b>     |                  |                        |        |       |
| Credit Technical Assistance     | _____            | _____                  | _____  | _____ |
| <b>NATURAL RES. MANAGEMENT</b>  |                  |                        |        |       |
| W&P Rights Protection           | _____            | _____                  | _____  | _____ |
| <b>HOUSING</b>                  |                  |                        |        |       |
| _____                           | _____            | _____                  | _____  | _____ |
| <b>EDUCATION</b>                |                  |                        |        |       |
| Administration                  | _____            | _____                  | _____  | _____ |
| <b>CENTRAL OFFICE FUNCTIONS</b> |                  |                        |        |       |
| _____                           | _____            | _____                  | _____  | _____ |
| <b>GRAND TOTAL:</b>             |                  |                        |        |       |
| _____                           | _____            | _____                  | _____  | _____ |

Payment shall be by means most advantageous to the Tribe as permitted by law which may include a letter of credit or its equivalent, pursuant to Article II Section 4 of the Compact.

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| ACTIVITY<br>AMOUNT              | AGENCY<br>OFFICE | CENTRAL<br>AREA OFFICE | OFFICE | TOTAL |
|---------------------------------|------------------|------------------------|--------|-------|
| <b>EDUCATION</b>                |                  |                        |        |       |
| Adult Education                 | _____            | _____                  | _____  | _____ |
| Scholarships                    | _____            | _____                  | _____  | _____ |
| <b>TRIBAL SERVICES</b>          |                  |                        |        |       |
| Adult Vocational Training       | _____            | _____                  | _____  | _____ |
| Aid to Tribal Government        | _____            | _____                  | _____  | _____ |
| Social Services                 | _____            | _____                  | _____  | _____ |
| <b>GENERAL ADMINISTRATION</b>   |                  |                        |        |       |
| Executive Direction             | _____            | _____                  | _____  | _____ |
| Administration                  | _____            | _____                  | _____  | _____ |
| <b>AREA - FIELD OPERATIONS</b>  |                  |                        |        |       |
| <b>TRIBE/AGENCY</b>             |                  |                        |        |       |
| Comm. Services - General        | _____            | _____                  | _____  | _____ |
| Tribal Courts                   | _____            | _____                  | _____  | _____ |
| Aid to Tribal Govt.             | _____            | _____                  | _____  | _____ |
| Social Services                 | _____            | _____                  | _____  | _____ |
| Adult Vocational Training       | _____            | _____                  | _____  | _____ |
| Fisheries                       | _____            | _____                  | _____  | _____ |
| Trust General                   | _____            | _____                  | _____  | _____ |
| Other Real. Est. Services       | _____            | _____                  | _____  | _____ |
| Admin./Ex. Director             | _____            | _____                  | _____  | _____ |
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| Social Services                 | _____            | _____                  | _____  | _____ |
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| Credit Technical Assistance     | _____            | _____                  | _____  | _____ |
| <b>NATURAL RES. MANAGEMENT</b>  |                  |                        |        |       |
| W&P Rights Protection           | _____            | _____                  | _____  | _____ |
| <b>HOUSING</b>                  | _____            | _____                  | _____  | _____ |
| <b>EDUCATION</b>                |                  |                        |        |       |
| Administration                  | _____            | _____                  | _____  | _____ |
| <b>CENTRAL OFFICE FUNCTIONS</b> | _____            | _____                  | _____  | _____ |
| <b>GRAND TOTAL:</b>             | _____            | _____                  | _____  | _____ |

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# WE CAN

# BUILD

# OUR OWN

# FUTURE

HOW THE LUMMI  
TRIBE CAN PLAN FOR  
GOVERNING ITSELF

## A BIG STEP IN A SURE AND PAINLESS

More than a year ago, Congress approved a very important project for the people of 10 Indian nations, including the Lummi Tribe.

This project gives us a way to regain many of our basic rights to make our own choices and to control more of our own future. Of course, these are rights our ancestors had for centuries past.

## TOWARD RESTORING OUR RIGHTS

Congress called its new plan the “**Tribal Self-Governance Demonstration Project.**” In this folder, we’ll refer to it as “the Project.”

The action Congress took to approve the Project gives 10 Indian tribes the chance to take over many of the jobs done for many years by the Bureau of Indian Affairs—the BIA.

South Dakota

▼ **Tlingit and Haida Central Council — Alaska**

The Project started in 1988 and will take five years. The first two years are for planning. Each tribe is studying its own situation. And each is developing a proposed plan to take over many of the BIA's programs, services and functions related to the tribe. In the case of the Lummi Tribe, this means such things as fisheries programs, land management, economic development and education.

The two years of planning will be over in March 1990. Then, if we want to continue into the three-year implementation phase, we will work out an agreement with the BIA. The same will be true for the other nine tribes, too, if they choose to proceed. These negotiations will set down what responsibilities and funds will be fully managed by the tribes and what will remain with the U.S. government, and the timetables for completing all this.

Then, each tribe taking part in the Project will follow through with its new responsibilities. These duties could range from conducting our own criminal investigations to regulating our own timber cutting.

**WHAT IS THE PROJECT SUPPOSED TO DO?**



Briefly, here are the goals of the Project:

- ▼ Move administrative jobs and funds from the BIA to the tribes. This should help our tribe and others to do more on our own.
- ▼ Make it clearer how the U.S. government and Indian tribes relate to each other.
- ▼ Let us set our own priorities.
- ▼ Help us do more for ourselves in terms of jobs, social conditions and building political strength.
- ▼ Give each tribe a better idea of how things are going because we have more local control.
- ▼ Reduce the BIA's size, inefficiency and paternal apron strings.

**THERE WAS A BETTER TIME**



We know that conditions were much different for centuries and centuries before the white man settled in North America. Indians had many strong and proud civilizations. Our cultures were

plan.

**WHAT WILL HAPPEN WHEN THE PROJECT ENDS?**



When the demonstration period is over in 1993, the Project will be reviewed. This will be done by Congress, by people in the President's administration and by the 10 tribes. They'll all be looking at this question: Should some or all of the BIA's programs, services, functions and dollars be transferred from the BIA to Indian tribes who want to negotiate an agreement with the U.S. government?

It's too early to predict what will happen beyond that point. But, even so, we should remember that the Project was started in the first place to enable us to regain control over our tribal governments and our lives. This control means we will be better able to deliver the services that our people need.

**THERE HASN'T BEEN MUCH BIA COOPERATION**



Our Tribe and the other nine taking part in the Project have tried to figure out what road-

rich. And we were self-sufficient. But much of that came to a quick end although we have tried to hold on to what we could.

**FEDERAL CONTROL TOOK OVER**



Since 1824, the BIA has gained massive power over America's Indians. (It's interesting to note that the BIA was started as part of the U.S. War Department and remained a part of it for 25 years.)

The almost total power of the BIA and other agencies has done much to destroy our creativity, dignity, language and culture. Additionally, the Lummi people and the people of other Indian nations have been under the thumb of a government agency that we didn't want and that hasn't reacted to our needs or, when it has reacted, it often hasn't done the job right.

This has given us a situation where our law enforcement, our jobs and businesses, and our social services are largely controlled by government people who don't have much experience in these areas that are so important to us and who don't know or particularly care about our communities.

that gives us a chance to prepare for possible problems.

So far, most of the obstacles we have had to do with the BIA — the agency that plays such a strong role in tribal services and funding. BIA cooperation is vital to the Project's success. However, BIA attitudes and ways of doing business have stood in the way of the Project. As a result, the BIA staff, with some exceptions, has been unable or unwilling to cooperate in many key areas, such as these:

- ▼ The BIA has held up money coming from Congress to the tribes causing almost all the tribes to stop progress on the Project for long periods of time.
- ▼ Needed information is not being supplied. (Each of the 10 participating tribes may propose in its plan to take over all of the BIA funds used to service the tribe. However, in many cases, the BIA cannot or will not provide complete records of how such funds are used now.)
- ▼ Much of the budget information is not clear. (The BIA spends more than two-thirds of its entire budget on overall administrative costs, and yet the BIA does not keep individual budgets for tribes that

**THERE'S BEEN A NEED FOR A LONG TIME**



For years, it hasn't been hard to see that the BIA system doesn't work well. Indians and non-Indians have said that. Expert analysts have said that. And individuals who have lived under the system have said that. The BIA way of management doesn't leave us much room for choice. In short, it's attempted to make a government agency a father-figure for us. There's been too much wasted spending and too many BIA people to deal with. And priorities for federal programs for Indians often have been way off target.

Most of all, the Lummi Tribe and all Indian nations have been living for 100 years or more without being able to exercise our historic right to govern ourselves. We haven't had the power to choose the kind of government we want. We haven't been able to set laws and regulations to manage our tribal activities and our justice systems. In short, we haven't been able to enjoy rights that were ours for centuries.

That's why leaders from the Lummi Tribe and other Washington state tribes pushed for action. It's why major federal

difficult for each tribe to figure out how much of that overall budget relates to the individual tribe. And, because of that, each tribe is faced with many unknowns when trying to figure how much it will cost to take over a service now provided by the BIA.

- ▼ Many BIA employees do not support the Project. (The Project will shift some funds from the BIA to individual tribes, and it will mean job changes for some employees.)

**AN OPPORTUNITY FOR ALL LUMMI PEOPLE**



We have been dominated by the BIA and dependent on it for 135 years. Now, for the first time, we have a chance to work toward taking control of our future as Lummi people. The Self-Governance Demonstration Project gives us that opportunity.

For more information, please contact:

- ▼ Raynette Finkbonner  
Lummi Demonstration  
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2616 Kwina Rd.  
Bellingham, WA 98226-9298  
(206) 734-8180

Fish design by Lummi artist Jewell James.

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**WHAT'S THE PROJECT ALL ABOUT?**



It might be a good idea to repeat the Project's complete name once more: the Self-Governance Demonstration Project. "Self-governance" is what we were just talking about, and the "Demonstration" part of the name deals with how the Project will test new ways of doing things.

Ten tribes are taking part, including the Lummi:

- ▼ Confederated Salish and Kootenai Tribes — Montana
- ▼ Hoopa Tribe — California
- ▼ Jamestown Band of Klamath Indians — Washington
- ▼ Lummi Indian Tribe — Washington
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