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Assessment of Corps/Tribal Intergovernmental Relations



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**ASSESSMENT OF CORPS/TRIBAL
INTERGOVERNMENTAL RELATIONS**

Interim Report

Prepared by

Native American Intergovernmental Relations Task Force

Prepared for

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The views and opinions expressed in this assessment are those of the Native American Intergovernmental Relations Task Force, and do not represent the official position of the U.S. Army Corps of Engineers.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	v
CHAPTER 1 - INTRODUCTION	1
PURPOSE	1
BACKGROUND AND AUTHORITY	1
ASSESSMENT OBJECTIVES	2
ASSESSMENT METHODOLOGY	2
SCOPE	3
STRUCTURE OF THE ASSESSMENT	3
CHAPTER 2 - A HISTORY OF TRIBAL SOVEREIGNTY AND THE GOVERNMENT- TO-GOVERNMENT RELATIONSHIP	7
ORIGINS OF THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP ...	7
ASSIMILATION	8
Self-Determination	8
Termination	8
SELF-DETERMINATION, 1960 TO PRESENT	9
CORPS-TRIBAL RELATIONS	10
CHAPTER 3 - SCOPE AND EXTENT OF CORPS-TRIBAL INTERACTION	11
PLANNING, ENGINEERING AND CONSTRUCTION	11
REGULATORY	12
OPERATION AND MAINTENANCE	12
EMERGENCY OPERATIONS	13
REAL ESTATE OUTGRANTS AND TRANSFERS	13
CHAPTER 4 - PATTERNS OF SUCCESS IN CORPS-TRIBAL INTERACTIONS	15
CHAPTER 5 - WORKSHOP ISSUES RAISED BY TRIBAL REPRESENTATIVES	19
WORKSHOP OVERVIEW	19
WORKSHOP AND ISSUES DESCRIPTION	19
NATIONAL REPETITIVE THEMES-OPERATIONAL CONCEPTS	20
Government-to-Government Relationship	20
Sovereignty	20
Trust Responsibility	21
Consultation	21
NATIONAL REPETITIVE THEMES- ACTIONS AND PROGRAMS	21
Engineering and Planning	21
Support Program Process Issues	22
Native American Graves Protection and Repatriation Act	22

Regulatory Permitting	22
Operation and Maintenance	23
OTHER ISSUES	23
CHAPTER 6 - INTERNAL AGENCY BARRIERS TO SUCCESS IN CORPS	
INTERACTIONS	25
LACK OF TRAINING	25
LACK OF KNOWLEDGE BASE	25
UNDERSTANDING COMMUNICATION BARRIERS	25
LEADERSHIP	26
ACCOUNTABILITY	26
CONSISTENCY	26
TEAMWORK	26
POLICY	26
CHAPTER 7 - TASK FORCE RECOMMENDATIONS	29
SUMMARY	36
GLOSSARY OF KEY TERMS	37
APPENDICES	41
APPENDIX A - CLINTON MEMORANDUM	43
APPENDIX B - ASA REQUEST FOR WORKSHOP	47
APPENDIX C - TASK FORCE MEMBERS	51
APPENDIX D - FEBRUARY 1995 FEDERAL REGISTER LISTING OF RECOGNIZED TRIBES	55
APPENDIX E - SUMMARY DATA CALL MATRICES AND POCs	65
APPENDIX F - ISSUE LIST MATRIX AND TRIBAL STATEMENTS	79

List of Tables

Table 1. Summary of Nationwide Tribal Workshops	4
VOLUME II APPENDICES (G&H)	IWR Report 96-R-6A

EXECUTIVE SUMMARY

PURPOSE

On April 29, 1994, President William Clinton issued a Memorandum for the Heads of Executive Departments and Agencies, titled "Government-to-Government Relations with Native American Tribal Governments." (copy contained in Appendix A). Dr. John Zirschky, the Acting Assistant Secretary of the Army for Civil Works, requested that Major General Stanley Genega, Director of Civil Works, conduct interest group workshops with Native Americans (copy contained in Appendix B). General Genega responded to Dr. Zirschky's request by forming the "Native American Intergovernmental Relations Task Force" (see Appendix C). Based on task force recommendations General Genega directed field offices to conduct a series of workshops and other data collection activities to assess the scope, extent, and quality of Corps-tribal interactions. The workshop results and the data obtained formed the basis of the Native American Intergovernmental Relations Task Force recommendations on opportunities to improve the Civil Works Directorate's government-to-government interactions with Federally Recognized Tribes.

METHOD

From February through June 1995, field offices met with government representatives of 186, or 57 percent, of the Federally Recognized Tribes in the lower 48 States and reported the results of these meetings in after-action reports. In addition to the meetings, Districts supplied the task force with program specific data documenting the scope and extent of recent field level interactions with tribal governments. Analysis of the data collected provided insights into interaction successes and opportunities for improved interactions. Many of the terms used to explain the findings and issues in this report have a specific definition when applied to tribes. In order to understand the report, particularly the issues raised by tribes, the reader should consult the glossary of key terms on page 35 following the main report.

RESULTS

Scope and Extent of Corps-Tribal Interactions

The Corps interacts with tribes on a fairly routine level in every major program.

- Operation and maintenance of 44 Corps projects can significantly affect the trust assets and well-being of 15 percent of the tribes in the lower 48 States.

Executive Summary

- Within the last 5 years (Fiscal Years (FY) 1989 through 1994), tribes have been our partners, either as direct sponsors or through subagreements, in 296 projects in various stages of planning, engineering, or construction.
- During FY93 and 94, Federally Recognized Tribes have applied for 431 permits and have commented on 93 permit applications.
- The Corps has transferred the use of over 9,300 acres of land to tribes through either outgrants or transfers during FY89-94.
- Thirty-three tribes have come to us on 50 occasions requesting Emergency Operations assistance. The level of activity in our programs indicates we are already interacting extensively with tribes. The purpose of the workshops and workshop process was to define the quality of these interactions and identify opportunities for improvement.

Successes in Tribal Interactions

The activities needed to plan and execute the regional workshops, as outlined in the workshop guidance, field tested several factors the task force felt were necessary for successful Corps-tribal interactions. An analysis of the after-action reports indicates that factors which contributed most to the success of the workshops, in particular, and interactions, in general, can be defined in three categories.

1. Interactions are generally more successful where District staff were aware of the following:
 - Existing Federal policy concerning trust responsibility and government-to-government relations.
 - Policies that apply to a particular program.
 - Organizational and cultural differences that cross-cultural communication requires.
2. Meaningful exchanges are most likely to happen when interaction with tribes:
 - Occurs early on in the Corps process.

- Provides information about Corps programs clearly and concisely in an informal atmosphere.
- Permits Corps staff to actively listen to tribal concerns and understand them in the tribal context.

3. Long-term positive relationships are built on:

- Clearly defined, continuous points of contact in the Corps.
- Regular visits to tribes.
- Follow-up actions completed in a timely manner.

Sufficiently widespread historical and legal knowledge, a willingness to understand and accommodate differences, and long-term commitment to development of the intergovernmental relationship are the three key factors in contributing to the success of interactions. If these factors are not present, are not sufficiently developed, or lack organizational commitment and accountability, then the probability of working successfully with tribes in both the short and long term is seriously compromised. The absence of these factors permeated the nonspecific issues and concerns that were raised at the workshops. They also reflect the significant barriers the task force members identified in working within field offices on intergovernmental dealings with tribes.

Problem Areas in Corps-Tribal Interactions

Often, a conflict exists between the Corps multistage execution of its water resource missions and its obligation, as a Federal agency, to honor the commitments made to Federally Recognized Tribes in treaties, statutes, administrative orders, and court cases. As an agency of the Federal Government, the Corps has an obligation to reconcile these conflicts as they arise.

Failure to recognize and reconcile these conflicts was a repetitive theme of the workshops. Workshop participants made 206 statements that communicated 566 concerns. For the most part, specific problems or requests for information were handled immediately by Districts at the workshops or were scheduled for District response in the workshop after-action plans.

Broader issues dealing with government-to-government relationship, sovereignty, and Federal trust responsibility were recurrent general themes around the country and lend themselves to an organizational solution that will insure consistent application nationwide. The repetitive themes included an operational understanding of the following concepts in all Corps programs:

Executive Summary

- Government-to-government relationship (42 concerns).
- Sovereignty (42 concerns).
- Trust responsibility (58 concerns).
- Consultation (41 concerns).

In addition to these concerns, tribes were distressed about unclear agency processes that overwhelm their governmental structures and resources (166 concerns). Actions and programs singled out for special comment were the following:

- Native American Graves Protection and Repatriation Act and Traditional Cultural Properties and Practices.
- Regulatory permitting.
- The operation and maintenance program.

Most requests for technical information on Corps Programs were answered by the Corps host either at the workshop or through follow up actions. Unanswered requests for technical process information included a need for better information on how to expand the tribes' economic opportunities through:

- Employment.
- Contracts.
- Acquisition of surplus property.

Nineteen concerns were in areas that would require the Corps to adopt a proactive definition of its trust responsibility. Examples of these concerns include the coordination of interagency programs to build a long-term integrated Federal program package for tribes, protecting tribal water and hunting and fishing rights, and the need for smaller cost share requirements.

The task force identified several internal factors that contribute to the problems the tribes identified. These factors include:

- Lack of an internal organization to provide consistent interprogram information evaluation, leadership, and accountability.
- Lack of knowledge about the policy and obligations owed to tribes.
- Lack of knowledge of the most effective ways to overcome communication and institutional barriers inherent in cross-cultural communication and in working with tribes.

RECOMMENDATIONS

The task force has concluded that, while the key to successful day-to-day interactions with tribal governments is at the District Commander level, internal organizational factors can either help or hinder Commanders in their execution of this responsibility. By adopting the following recommendations, the Corps can build upon the successes of field strategies and provide a clear, consistent, and achievable set of goals. The result will be focused communication which will enable the Corps to improve intergovernmental relations with Federally Recognized Tribes.

To provide a consistent knowledge base of obligations owed to the tribes, the Director of Civil Works should:

1. Include a presentation on government-to-government relations in the training for new Commanders and at Corps-wide meetings.
2. Insert a tribal communication module into existing regulatory, environmental compliance, planning principles, and management Prospect courses.
3. Develop a 1 1/2-2-day exportable training course on trust and consultation with Native Americans.
4. Establish and maintain a permanent project file which documents interrelationships between project operations and Native American interests.

To provide evidence of commitment and accountability, the Director of Civil Works should:

5. Establish a Headquarters Coordinating Council within Civil Works to provide for policy coordination of tribal matters.

Executive Summary

6. Establish a Civil Works policy on consultation with Indian Tribes; develop programmatic guidance.
7. Issue interim guidance on consultation requirements until a consultation policy is fully formulated.
8. As Engineering Regulations are reviewed and updated, include a specific review for compliance with current Federal policy and laws.
9. Develop a post-workshop “customer satisfaction survey” to evaluate progress in improved interactions.

To be proactive in facilitating communication, the Director of Civil Works should:

10. Develop an opportunity for tribal staff to attend Prospect courses and get cross-training through the Intergovernmental Personnel Act (IPA) Program.
11. Develop a strategy for including tribal members and tribal governments in the Corps hiring, purchasing, and property surplus process.
12. Recommend to BIA that, in cooperation with other appropriate Federal agencies, a “one-stop shopping” guide to Federal water programs be developed for use by tribes.

How these recommendations are implemented and coordinated with the tribes is at least as important as the recommendations themselves and will do a great deal to demonstrate the intent to improve the government-to-government relationship. Chapter 7, Task Force Recommendations, provides further discussion of the recommendations and, in some cases, specific processes needed for implementation.

CHAPTER 1 - INTRODUCTION

PURPOSE

This assessment presents findings and recommendations of the Native American Intergovernmental Relations Task Force for improving intergovernmental relations between the Civil Works program of the U.S. Army Corps of Engineers and Federally Recognized Native American tribal governments. The assessment represents the first agency-wide examination of Corps-tribal relations performed by the Corps of Engineers. Many of the terms used to explain the findings and issues in this report have a specific definition when applied to tribes. In order to understand the report, particularly the issues raised by tribes, the reader should consult the glossary of key terms which follows the main report.

BACKGROUND AND AUTHORITY

The U.S. Army Corps of Engineers is the Federal Government's largest water resources development and management agency. Through its Civil Works program, the Corps provides planning, design, construction, and operation and maintenance of water resources infrastructure projects for flood control, navigation, hydroelectric power, water supply for municipalities and industry, recreation and fish and wildlife management, and environmental restoration. In addition, the Civil Works program regulates development, particularly in wetlands; plays a major contracting role in emergencies for the Federal Emergency Management Agency (FEMA) and the Department of Defense; and assists State, local, and tribal governments through the Planning Assistance to States and Floodplain Management Services programs.

On 29 April 1994, President Clinton signed a memorandum for the heads of executive departments and agencies entitled "Government to Government Relations with Native American Tribal Governments" (see Appendix A). This document stressed the need for Federal agencies to build more effective day-to-day working relationships with tribal governments, reflecting respect for the rights of self-government due sovereign governments. In response to this memorandum, the Acting Assistant Secretary of the Army for Civil Works signed a memorandum on the same date for the Director of Civil Works establishing the concept of interest group workshops to examine and improve working relationships between tribal governments and the Corps (see Appendix B).

The Corps Institute for Water Resources (IWR) was given the responsibility to respond to this request. In June 1994, IWR convened an ad hoc task force composed primarily of tribal coordinators and facilitators from throughout the Corps to scope and address the request. The task force recommended a series of regional workshops be held sponsored by Corps of Engineers Major Subordinate Commands (MSC). The purpose of the regional workshops would be twofold:

Introduction

first and foremost, to establish a dialogue with tribes about intergovernmental relations issues at the field level; and secondarily, to obtain information from across the organization that could be used to make recommendations for long-term improvements in Corps-tribal relations.

The task force plan was approved by Corps Headquarters in July 1994, and the ad hoc task force was formalized as the "Native American Intergovernmental Relations Task Force" in September 1994. Appendix C lists the task force members. According to the approved plan, the task force was given the responsibility for planning and providing overall guidance and management for the regional workshops, for collecting other supplemental information, and for preparing the assessment report. A listing of the Federally Recognized Tribes is contained in Appendix D. It should be noted that this list is periodically updated as additional tribes become Federally recognized.

ASSESSMENT OBJECTIVES

The objectives established for the assessment in the approved plan include the following:

1. Document the scope and extent of Corps-tribal interactions across Corps Civil Works program areas.
2. Identify Corps-tribal interactions that are successfully meeting tribal and Corps expectations focusing on the underlying principles of successful interaction between the Corps and tribes.
3. Identify problem areas in Corps-tribal interactions, once again focusing on factors that underlie the various problems uncovered.
4. Present recommendations to the Director of Civil Works for improving Corps-tribal intergovernmental relations. These recommendations build on current successes and address problem areas identified in the assessment process.

ASSESSMENT METHODOLOGY

The task force met in June 1994, August 1994, December 1994, and July 1995 to plan the workshops, provide guidance to MSCs, monitor progress, and prepare the assessment report. The task force prepared a number of informational documents to help in the conduct of regional workshops. Chief among these was a handbook describing the Corps of Engineers Civil Works organization, authorities, and programs. This handbook was used as a resource document in

workshops to begin the process of dialogue about Corps-tribal interactions, as well as a way of informing tribes about Corps programs that potentially could be of use for addressing tribal water resources problems.

Information used in the assessment is derived principally from 15 regional workshops, conducted from February 27 to July 5 of 1995, in which representatives of 153 tribes participated (Table 1). Supplemental information on the extent of tribal involvement in Corps Civil Works program areas was obtained through a data call of Corps District and Division offices.

After-action reports documenting the exchange of information and views at each workshop were prepared by the Corps office hosting the workshop, and were coordinated with workshop attendees prior to their finalization. These after-action reports demonstrate that the workshops were successful in achieving their intended objective of establishing a dialogue. Besides providing the opportunity to discuss intergovernmental relations issues, the workshops provided the opportunity to meet with a number of tribes with whom the Corps had not previously interacted. In addition, they provided a forum to explain Corps program authorities and explore how they could be applied to address tribal water resources needs. After-action reports are included as Appendix H (see Volume II).

SCOPE

The assessment deals with Corps-tribal relationships only as they relate to Corps Civil Works activities. It does not address military construction or installation management activities that the Corps of Engineers may be involved in as they relate to tribal intergovernmental relations. In addition, the assessment deals with relationships between the Corps and Federally Recognized Tribes in the contiguous 48 States. Federally Recognized Tribes have a legal relationship to the United States through treaties, Acts of Congress, Executive Orders or other administrative actions. Finally, although national in scope, the assessment allows for regional variations reflecting the differing needs of tribes and the differing responsibilities of Corps Districts.

STRUCTURE OF THE ASSESSMENT

Chapter 1 of the assessment provides a general overview of the assessment's objectives and scope. A history of the origins of the government-to-government relationship is found in **Chapter 2**, together with a brief history of Federal policy and historic Corps of Engineers-tribal interaction. **Chapter 3** describes Corps of Engineers Civil Works program areas and identifies the scope and extent of tribal interactions with these programs. In **Chapter 4**, factors contributing to the success of Corps-tribal intergovernmental interactions and the general or specific principles that seem to underlie these interactions are highlighted. **Chapter 5** identifies

Introduction

Table 1. Summary of Nationwide Tribal Workshops						
Host Division	Host District	Workshop	# of Attendees	# of Districts	# of Tribes Invited	# of Tribes Attending
New England Division	New England	Mashantucket, CT	24	2	7	5
		Univ of Maine at Orono, ME	22	1	5	5
South Atlantic Division	Jacksonville	Orlando, FL	60	6	9	7
North Central Division	Buffalo	Buffalo, NY	10	1	6	2
	Rock Island	Tama, IA	14	1	1	1
	St. Paul / Detroit	Houghton Lake, MI	29	1	13	10
	St. Paul	Bloomington, MN	18	1	14	10
	St. Paul / Detroit	Wausau, WI	33	2	14	11
Southwestern Division	Albuquerque	Albuquerque, NM	16	1	25	5
	Tulsa	Tulsa, OK	112	2	44	28
	Tulsa	Oklahoma City, OK	53	1	24	17
	Tulsa	Lake Eufaula, OK	60	1	20	11
South Pacific Division	Sacramento	Redding, CA	21	2	108 ¹	24 ²
	Los Angeles / Sacramento	Navajo Reservation, AZ	80	3	1	1
	Los Angeles	Phoenix, AZ	15	1	21	4
North Pacific Division		Seattle, WA	94	3	41	26
Missouri River Division	Omaha	Omaha, NE	23	2	9	6
	Omaha	Bismarck, ND	19	1	9	6
	Omaha	Billings, MT	21	1	9	7

1. In addition to 108 Federally Recognized Tribes, 42 Non-Federally Recognized Tribes were invited.
2. For Redding Ca., some attendees were officially asked to attend the meeting by more than one Tribal Government.

the specific and thematic issues in interactions with tribes that arose from the workshops. **Chapter 6** identifies a number of internal Corps factors that contribute to the existence of problems in Corps-tribal interactions. Information from Chapters 4, 5, and 6 is used in **Chapter 7** to develop task force recommendations for improving Corps-tribal intergovernmental relations. Appendices A-F are included with this main report. Appendices G and H are contained in Volume II.

CHAPTER 2 - A HISTORY OF TRIBAL SOVEREIGNTY AND THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP

To put the relationship between the U.S. Army Corps of Engineers and Indian tribes into the appropriate context, it is important to recount a brief history of Federal-tribal relations (see Appendix G, Volume II for a more in-depth history). Tribal governments have a special and unique legal and political relationship with the United States Government, defined by history, treaties, statutes, court decisions, and the U.S. Constitution. The United States has entered into over 600 treaties and agreements with American Indian tribes. These treaties give the United States a variety of legal responsibilities toward tribes and provide the basis for a government-to-government relationship. Other responsibilities toward Indians were created by Congress through statutory enactments. Although the Department of the Interior, through the Bureau of Indian Affairs (BIA), has the statutory responsibility for upholding the Federal Government's obligations to Indians, this responsibility extends to all Federal agencies.

ORIGINS OF THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP

From the earliest days of contact, the British Government and the colonies recognized Indian tribes as sovereign governments, and the British Crown was responsible for the relationship with the tribes. The first treaty between a tribe (the Delaware) and the United States Government was signed in 1778. Thus, the United States affirmed the European tradition of dealing with tribes as political entities. All early U.S. policy followed the European path of recognizing tribes as governments with full internal sovereignty. This recognition of government-to-government relations continued after the American Revolution and was reflected in the provisions of the Constitution that recognize treaties made prior to 1789, provide Congress with power to regulate commerce between non-Indians and tribes, and give the President authority to make treaties with tribes, subject to Senate ratification. The Non-Intercourse Act of 1790 (1 Stat. 137, 138; 25 USC 177) established a fiduciary obligation of the United States to protect Indian property rights.

In the early 19th century, Chief Justice John Marshall authored three Supreme Court decisions that formally recognized this implied assumption of tribal sovereignty. He recognized tribes as "domestic sovereign nations." Chief Justice Marshall reasoned that tribes retained "internal sovereignty." The Federal Government, in turn, he noted, had an "explicit obligation to protect the tribes from states and their citizens." This obligation of the Federal Government to protect the tribes, now known as the trust doctrine, requires the executive branch to uphold the standards of a fiduciary relationship with tribes, subject to review by the courts. Tribal sovereignty means that Indian tribes possess inherent governmental power over all internal affairs,

A History of Tribal Sovereignty and the Government-to-government Relationship

that States are precluded from interfering with tribes in their self-government, and that Congress has plenary power to limit tribal sovereignty.

ASSIMILATION

The concept of tribal sovereignty suffered after 1870 as the Federal Government emphasized a policy of concentrating tribes on increasingly small reservations so that whites could settle the bulk of Indian land. A policy of assimilation dominated Indian affairs in the late 19th century. Whites believed the tribal unit kept the individual Indian from the benefits of civilization. They sought to absorb Indians into the dominant culture. The General Allotment Act (Dawes Act) of 1887 represented an extreme Federal attempt to assimilate Indians and weaken tribal governments. Under this law, the Government broke up reservation lands into parcels, which were allotted or assigned to individuals. By the early 20th century, most of the traditional political systems of the tribes had been dismantled. The unique relationship was on the brink of vanishing.

Self-Determination

The 1930s, however, proved to be a watershed in American Indian policy. The Indian New Deal of the 1930s reversed the dominant principle of assimilation and stressed self-determination and the restoration of Indian culture. The Indian Reorganization Act of 1934 prohibited further allotment of Indian land. The law authorized the Secretary of the Interior to acquire additional lands for reservations and restore remaining surplus lands to the tribes. As part of the overall goal of strengthening tribal government, the law granted any Indian tribe the right to organize for its common welfare and to adopt an appropriate constitution and by-laws.

Termination

After World War II, the emphasis shifted to the withdrawal or termination of Federal responsibility and Federal programs for Indian groups and individuals. The so-called termination policy reached its high point during the Eisenhower years. Congress formally endorsed the termination policy in House Concurrent Resolution 108 (1953) and enacted laws to withdraw Federal supervision from the Menominee tribe of Wisconsin; the Klamath tribe of Oregon; the Ottawa, Wyandot, and Peoria tribes of Oklahoma; the Paiute tribe and the Uintah and Ouray mixed bloods in Utah; and other Indian groups. Between 1954 and 1962, Congress stripped 61 tribes, groups, bands, communities, and rancherias of Federal services and protection.

SELF-DETERMINATION, 1960 TO PRESENT

Termination, for all the turmoil and fear it caused in Indian communities, proved to be only a temporary departure from the movement toward Indian self-determination that began in the 1930s. In the 1960s, the Kennedy and Johnson administrations shelved the policy of termination and emphasized instead the need for economic development and self-sufficiency. The Nixon administration successfully carried forward the movement for self-determination. The Indian Self-Determination and Education Assistance Act of January 4, 1975, was the culmination of President Nixon's intention that the tribes escape the domination of the BIA and take upon themselves the responsibility for the programs and services that the Federal Government provided.

Since 1970, various court cases (e.g. *U.S. v. Wheeler*, 22 March 1978) have reaffirmed tribal authority. Tribes can exercise the right of eminent domain, tax, and create corporations. They can set up their own form of government, determine their own members, administer justice for tribal members, and regulate domestic relations and their members' use of property. They can establish hunting and fishing regulations for their own members within their reservations, and they can zone and regulate land use. They can do many things that independent political entities can do, insofar as Federal law has not preempted their authority.

Legislation of the 1970s reflected the emphasis on tribal sovereignty and self-determination. The River and Harbor and Flood Control Act of 1970, the Water Resources Development Act (WRDA) of 1974, and the National Environmental Policy Act (NEPA) of 1969, and other legislation required Federal agencies to consult with federally recognized American Indian tribes on actions that might affect tribal properties or treaty rights. The Council on Environmental Quality's "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act of 1969" (40 CFR 1500-1508), 20 November 1978, required Federal agencies to consult with tribes early in the planning process for any project that might affect tribal interests. Actions requiring consultation included planning, engineering, construction and operations undertakings under applicable authorities; project deauthorization; real estate acquisition and disposal; other water resources planning; wildlife mitigation and other environmental management programs; protection and preservation of cultural resources; and regulatory functions. This mandate for consultation was based on the Government's fiduciary obligation to American Indians as trustee of their resources and on specific environmental laws. It extends from reservation lands held in trust under various treaties to reserved tribal resources, such as fishing and hunting grounds, burial grounds, and other sacred sites and areas.

On 24 January 1983, President Ronald Reagan issued a policy statement that reaffirmed the government-to-government relationship between tribes and the United States, further

A History of Tribal Sovereignty and the Government-to-government Relationship

developing President Nixon's policy of self-determination. President George Bush's 14 June 1991 policy statement supported the primary role of tribal governments in matters affecting Indian reservations. It defined the role of the Federal Government as fostering the principle of Indian self-government and self-determination and both recognized and reaffirmed the government-to-government relationship. In a 29 April 1994 memorandum, President William Clinton also emphasized the unique government-to-government relationship between the United States and Indian tribes.

CORPS-TRIBAL RELATIONS

For the most part, the history of the U.S. Army Corps of Engineers' involvement with Indian tribes has not been well documented. Yet that history has had significant impact. The Corps' contact with Indian tribes dates back to the early and mid 19th century when topographic engineers traveling through the West documented tribal languages, customs, living conditions, and locations. Over the years, the Corps has constructed flood control and other projects that have had great impact, both positive and negative, on tribal lands and economies. Corps projects and programs have inundated tribal land and threatened tribal fishing and cultural resources. These projects and programs have also affected tribal water rights and the development of water resources. Since 1980 the Corps has coordinated more closely with tribes in planning water development projects. In at least one instance, it played a significant role in arbitrating Indian water rights and helped disputants avoid prolonged, costly court proceedings. The Corps faces a continual challenge in balancing its water resource development mission and other missions with its trust responsibility.

CHAPTER 3 - SCOPE AND EXTENT OF CORPS-TRIBAL INTERACTION

This chapter describes the scope and extent of interactions between Corps of Engineers Civil Works programs and tribes. The data presented were obtained from two data calls -- an initial data call in May 1994 and a supplementary data call in June 1995. Districts were requested to identify their interactions with Federally Recognized Tribes during the period Fiscal Year 1989 through Fiscal Year 1994. Data on Corps programs were provided by each District and are presented in summary form in this chapter and in the matrices contained in Appendix E. While the numerical data presented may not be precise, the data call process was successful in identifying broad areas of interaction.

For the purposes of the data calls, Corps of Engineers programs/activities were divided into five areas:

- * **Planning, Engineering and Construction**
- * **Regulatory**
- * **Operations and Maintenance**
- * **Emergency Operations**
- * **Real Estate Outgrants and Transfers**

The data for each of these areas were developed by Districts and are represented in the summary data matrices (Appendix E). Since at the time of the data calls no national data base existed concerning Corps interactions with Federally Recognized Tribes, response to the data calls was a significant undertaking on the part of the participating Districts. The numbers presented should be taken as indicative of the relative scope and magnitude of interactions across Corps program areas, and by regional areas, and not as exact recordings of all interactions.

PLANNING, ENGINEERING AND CONSTRUCTION

Included in this area are Corps projects/studies involving the planning, design, and construction activities for water resources projects. For purposes of this data call, Districts provided information concerning the following project purposes: Flood Control, Navigation, Hydropower, Recreation, and Environmental Restoration/Enhancement. In addition, Districts provided information on the following programs: Continuing Authority Program, Floodplain Management Services and Planning Assistance to States and Tribes, and Support for Others. As shown in Summary Matrix Table 1 (Appendix E), Corps Districts report that they have been involved with 93 tribes as customers/sponsors for 296 projects/studies. In addition, 53 tribes have played a role in 71 Corps projects/studies as influential governments, commenting or making

Scope and Extent of Corps-Tribal Interaction

suggestions on those affecting tribes. Between Fiscal Years 1989 and 1994, 367 of these interactions occurred.

Tribes are sponsors in continuing authorities and specifically authorized studies and projects. Tribes are also influential in off-reservation studies and projects that affect trust lands or cultural sites. Tribes have also requested and received studies through the Floodplain Management Services and Planning Assistance to States and Tribes Programs.

REGULATORY

In the regulatory program, tribes either may be an applicant or may comment on the permit application of another party. The tribes also may be involved with Section 404 permit applications on tribal lands by having the authority to grant an Environmental Protection Agency (EPA) approved Section 401 water quality certification. Several tribes have approved Section 401 water quality certification programs, while several more have requested or are expected to request such approval. Tribes may also assume the Section 404 program on tribal lands. To date, no tribe has assumed the program. Only a few tribes have expressed interest, but several have received EPA grant money to study Section 404 assumption.

Between Fiscal Years 1992 and 1994, 174 tribes submitted applications for 431 Department of the Army permits (Summary Matrix Table 2 - Appendix E). As applicants, the tribes in North Pacific Division were most active, due in part to a large number of Alaskan Native applicants. Projects typically relate to road rehabilitation, bank stabilization, fill, dredging, dam or bridge construction, and wetland development. As commenters, the tribes are most active in bank stabilization and protection projects and in construction projects for structures such as marinas, bridges, dams, piers, and road crossings. As commenters, the tribes are also active because of concerns for treaty rights, threatened cultural resources, trust responsibility and concerns about receiving public notices, and tribal involvement in the permit program. Between Fiscal Years 1992 and 1994, 56 tribes commented on 93 applications.

OPERATION AND MAINTENANCE

Corps of Engineers operation and maintenance activities can have an impact on tribal resources held in trust, treaty rights, and tribal interests. Currently, 44 operation and maintenance projects affect the trust assets of 49 tribes (Summary Matrix Table 3 - Appendix E). While projects along the Columbia and Missouri Rivers are the most well known examples of impact, other Districts affect tribal interests as well. The North Pacific Division has the greatest potential impact, with 27 possible projects that could affect 28 tribes. Other Divisions have potential impacts also through dam operation and maintenance and construction. Other possible types of

impacts include flooding, erosion, and impacts upon cultural and burial sites, recreational interests (tourism industry), and rice and fishing industries.

EMERGENCY OPERATIONS

Emergency assistance may be provided to Federally Recognized Tribes through the Corps' Emergency Operations program. Of the Districts reporting interactions, 33 tribes have taken advantage of the Corps' Emergency Operations program on 50 occasions (Summary Matrix Table 4 - Appendix E). Public Law 84-99 Emergency Flood Control Work, Engineer Regulation 500-1-1, and Readiness Management Bulletin No. 93-2 allow the Chief of Engineers to authorize Emergency Operations on tribal lands. The North Pacific Division has handled the most Emergency Operations, assisting 16 tribes in 17 emergency situations. Types of emergency assistance provided include dredging harbors, floodfighting (such as sandbagging), bank protection, levee rehabilitation, technical review and assistance, emergency water supply, and snow removal during blizzard conditions.

REAL ESTATE OUTGRANTS AND TRANSFERS

The Corps has given real estate outgrants and transfers to 14 tribes and the Bureau of Indian Affairs (BIA) representing 9,553 acres (Summary Matrix Table 5 - Appendix E). As of 1994, 74 outgrants representing 3,275 acres were granted to 14 Federally Recognized Tribes and the BIA. Outgrants are given in the form of leases, licenses, easements, and permits. In addition to real estate outgranted, 6,277 acres of excess land has been transferred to the BIA.

As an important final caveat to the above data description, many Districts have miscellaneous tribal interactions that do not fit into the five specific Corps data call areas. For example, Baltimore District, which does not have any Federally Recognized Tribes within its boundaries, has tribal interactions nonetheless because of projects affecting tribal cultural resources, funerary objects, etc. As another example, many Districts work with tribes through the Native American Graves Protection and Repatriation Act or other Federal legislation.

CHAPTER 4 - PATTERNS OF SUCCESS IN CORPS-TRIBAL INTERACTIONS

This chapter discusses aspects of successful working relationships between the Corps and Federally Recognized Tribes. Some of the factors contributing to success existed prior to the workshops, and others have come about as a result of the District efforts to convene workshops.

For the purpose of this report, success is measured in terms of improved relationships as demonstrated by initiated or increased two-way communication (dialogue), increased mutual understanding, resolution of problems, and the clarification of misconceptions.

To identify the successes and weaknesses in interactions, information was collected through data calls and workshops. The data call itself was successful in raising Corps awareness of the extent and complexity of current tribal-government interactions. Districts were also able to learn from each other which programs and processes most effectively met tribal needs. The workshops gave the tribes the opportunity to tell the Corps how they view our relationships with them. This process also helped identify the Districts and Divisions that have established successful working relationships.

A rather extensive planning and learning process occurred prior to the workshops. The task force recognized that there is a wide variation within and among Corps Districts in the understanding of such issues as trust responsibilities and knowledge and understanding of tribal values and customs. Even in Districts with extensive interactions with Federally Recognized Tribes, only a few individuals have the knowledge that is needed to facilitate good relationships with the tribes. The pre-workshop planning period was used by many as a time to provide training to Corps staff who may have interactions with tribes. Such training included information on trust responsibilities, specific information on applicable treaties, and cultural and protocol issues. Because of the diversity of tribes, training on specific tribal issues had to be tailored to fit each location. Frequently, outside experts had to be used. Perhaps the most direct and effective measure was to ask each tribe about its expectations and recommendations. Generally, the more the tribes were involved in the workshop planning, the more successful the workshops were.

As a result of the data call and workshops, the task force members identified general factors that they believe will result in improved working relationships with Federally Recognized Tribes. These techniques and practices should be shared with all Divisions and Districts to improve tribal relationships.

1. Top management understands and supports the special relationship of Federally Recognized Tribes and communicates their commitment. In at least 12 of the workshops, the

Patterns of Success in Corps-Tribal Interactions

District and/or Division Commanders were participants. A variety of top level staff participated in the executive level planning meetings in most of the Districts and in the workshops.

2. Corps staff have an increased understanding of trust responsibilities and requirements of dealing "nation to nation." Training on history and legal background of dealing with Federally Recognized Tribes was provided to the staff in several of the Districts.

3. Corps staff involve tribal representatives as early as possible in issues of concern to tribes; they do not ask for comment after the fact. The workshops that had the highest levels of participation from the Federally Recognized Tribes in their area had direct participation in planning the workshops. In almost every workshop, the tribal assessment forms indicated that the tribes want even more up-front involvement in issues they are concerned about.

4. Corps staff listen to the tribal members. Some Districts have provided training on active listening techniques. This training also recognizes the cultural differences between non-Indian and Native American conversation and feedback patterns.

5. Clearly defined points of contact are established. One of the first actions the tribal relations task force recommended was to identify a Point of Contact (POC) in every District and Division for Federally Recognized Tribal issues. The list has been developed and has been made available to the tribes. Specific POC's for various subject matter were identified at each workshop. Some Districts and Divisions established a specific Tribal Coordinator to facilitate and coordinate tribal issues within their offices. Lists of POC's and Coordinators are to be kept up to date, with revisions sent to the tribes promptly.

6. Long-term, continuous relationships are fostered by regular contacts/visits with the tribes by the POC's. Several Districts have initiated programs with tribes based on the findings from the workshops. District staff have committed to regular visits and follow through with tribal representatives.

7. The difficulties of distance and cost to tribes are considered for face-to-face interaction. Whenever possible, locations are chosen close to reservation lands. For example, Missouri River Division, which covers the largest area, conducted workshops in three States. Several workshops took place on tribal lands to minimize costs to the tribes.

8. The Districts provide clear, concise information on their programs and opportunities to assist the tribes. All Divisions that held workshops identified the Corps Program notebook as a valuable tool. Several Districts modified the notebook to fit their

Patterns of Success in Corps-Tribal Interactions

particular District. Displays and fact sheets were also provided to inform the tribes about Corps programs that may provide them assistance.

9. Successful Corps staff are trained in cultural sensitivity issues. The task force identified and provided several resources, including printed material and videos, that were used to make Corps staff aware of different cultural values and perspectives prior to the conduct of the workshops. Local training was provided to help the local District staff understand the protocol, needs, and cultural issues of the tribes in their region.

10. Meetings maintain an informal structure to allow one-on-one meetings. Recording devices (tape/video/photography) are kept to an absolute minimum. Agreements to photograph or record meetings are clearly negotiated with the tribes in advance.

The adoption of these practices will not guarantee successful interactions on all subjects. There is no guarantee that all issues will be resolved simply by increased understanding or better communications. Adoption of these principles on a broader scale, however, will be responsive to many of the issues raised.

CHAPTER 5 - WORKSHOP ISSUES RAISED BY TRIBAL REPRESENTATIVES

WORKSHOP OVERVIEW

The issues the tribes raised at the workshops largely reflect the Corps-tribal interactions in that geographical area. In regions of the country where the opportunity for interaction has been limited, issues tended to be more general, with the tribes seeking basic Corps program information. In Districts with recurrent or more sophisticated interactions with tribes in the area, issues tended to be more specific and often referenced certain reservation lands or a particular project. District and Division After Action Plans generally reported individual plans of action with relation to these more specific, technical issues. The plans of action included continued communication, the dissemination of information, or the resolution of a specific program matter.

Despite programmatic variations among issues raised around the country, certain underlying concerns arose repeatedly in Corps-tribal interaction workshops nationwide. These repetitive themes include concerns over the government-to-government relationship between the Federal Government and tribes, tribal sovereignty, trust responsibility, and consultation. The pervasive nature of these themes indicates their fundamental importance to the dialogue between the Corps and Federally Recognized Tribes and the importance of addressing these issues, in the interests of consistency and compliance with our government-to-government directive. These recurrent themes are discussed in this chapter. The recurrence of these themes also reflects potential areas of improvement within agency internal structure and the communication processes. These internal agency barriers are discussed in Chapter 6. Recommendations for Corps response to these repetitive themes are outlined in Chapter 7.

Other issues arising in workshops include a nationwide call for interagency cooperation. These issues underpin a tribal concern that Federal agencies in general lack the structural processes and the flexibility to be responsive to tribal needs. Recommendations for Corps response to some of these issues are outlined in Chapter 7 as well.

WORKSHOP AND ISSUES DESCRIPTION

Thirty Corps Districts hosted 18 workshops attended by approximately 550 tribal representatives. The number of tribes represented at any given workshop ranged from 1 to 28. The average number of tribes attending was 10. The number of tribal representatives at workshops ranged from 10 to 100, with an average of 34. While the format of many workshops included presentation of information about Corps programs and missions, many tribes took the

Workshop Issues Raised by Tribal Representatives

opportunity to educate the Corps, not only on specific reservation problems, but also on the larger meaning of the government-to-government relationship.

A total of 206 statements were expressed by tribal representatives (see List of Tribal Statements in Appendix F). Most issue statements contained multiple concerns, overlapping specific problems or requests for information with the concepts of the government-to-government relationship, sovereignty, or the Federal trust responsibility. The Issues and Concerns matrix in Appendix F ties issue statements to Corps programs, organizational levels of reaction or resolution, and trust responsibility.

The largest number of concerns was related to the requests for technical assistance or information about technical programs. Many of the Districts and Divisions responded to these issues at the workshop themselves or identified a specific response time. Regardless of program, the process for addressing cultural resource protection and repatriation was frequently voiced as a significant issue. This was followed closely by concerns about the Corps regulatory program, particularly Section 404 permitting.

NATIONAL REPETITIVE THEMES-OPERATIONAL CONCEPTS

Government-to-Government Relationship

The need to continue the development of effective government-to-government relationships was a common and persistent theme. Reflecting President Clinton's 29 April 1994 memorandum, tribal representatives stressed the need for agencies to build more effective day-to-day working relationships based on recognition and respect for treaty rights, better cooperation and consultation, more flexibility in Corps programs and procedures, and commitment of resources at the local level. Government-to-government issues were stated or implied in 42 of the total 206 statements by tribal representatives.

Sovereignty

Many tribal participants commented on the lack of understanding, appreciation, and recognition for the sovereign status of tribes and the rights of self-government due sovereign governments. Tribal representatives also noted that each tribe or band is unique and sovereign. The Corps too often ignores the emphasis on tribal sovereignty as expressed in legislation and fails to consult with tribes on projects that may have an impact on tribal resources and interests. As a general comment, tribes noted that Federal agencies need to start with the concept of tribal sovereignty in order to understand the basis for their trust responsibility. Sovereignty issues were stated or implied in 42 of the total 206 statements by tribal representatives.

Trust Responsibility

As pointed out at one workshop, "Treaties with tribes are the Indian Peoples' 'Contract with America.'" Through treaties, statutes, executive orders, and case law, the Federal Government, including all Federal agencies, has a trust responsibility to protect Indian people, rights, and resources. In order to understand and fulfill its trust obligation, the Corps must read the case law from which that obligation is derived. Tribes often believe the Corps' definition of tribal trust resources is too narrow or, in many cases, is undefined. The tribes see little evidence that the Corps is doing anything at the national level to recognize and protect tribal trust resources that are affected by Corps programs and projects. Trust responsibility issues were stated or implied in 58 of the total 206 statements by tribal representatives.

Consultation

To fulfill agency government-to-government, sovereignty, and trust responsibilities, consultation must be an integral part of project development regardless of project stage or program - planning, engineering, design, operation and maintenance, regulatory permitting, and emergency management. Tribes identified a lack of consultation with regard to Corps projects, permitting others' projects, and reviewing other agencies' projects. Improved notification of proposed actions that affect tribes is needed. In recognition of a tribe's sovereign nation status, tribal representatives recommend that the Corps arrange on-reservation public meetings, rather than include tribes with the general public. Consultation issues were stated or implied in 41 of the total 206 statements by tribal representatives.

NATIONAL REPETITIVE THEMES-ACTIONS AND PROGRAMS

Engineering and Planning Expertise

Tribes were not initially aware of the variety of expertise and assistance available to them from the Corps. In particular, information provided to the tribes about Planning Assistance to States (PAS), Flood Plain Management Services (FPMS) and Continuing Authorities Program (CAP) garnered a great deal of interest. These programs were recognized as vehicles to plan, develop, or improve reservation infrastructure, including road rehabilitation, erosion control, clearing and snagging. Concern was expressed that the CAP program may not be retained as a result of congressional cutbacks. Districts and Divisions are well equipped to respond to these types of questions and most, while recorded for the assessment, were answered at the workshop or through post workshop follow up.

Workshop Issues Raised by Tribal Representatives

In addition to technical questions about our authorities multiple tribes expressed the need to better understand the various roles and responsibilities of the different Federal agencies with which they deal. The demands upon time and resources to coordinate with and respond to Federal agency requests was characterized as a serious obstacle and imposition. One Speaker advocated better coordination between agencies with similar programs, in lieu of increased coordination with tribes.

Interest was expressed in receiving technical training and assistance for tribal engineering and planning staffs; development of geographic information system (GIS) planning tools; and general planning, design, and implementation assistance.

Support Program Process Issues

Tribes were also interested in opportunities to improve their economic status and the status of their members. They expressed an interest in developing jobs on the reservation either through direct hire or through Corps contracts to tribal members or tribal companies. Also of interest to tribes was the process of acquiring surplus Federal property.

Technical program process issues account for 77 of the total 206 statements by tribal representatives.

Native American Graves Protection and Repatriation Act and Traditional Cultural Properties and Practices

Tribes in almost every region stated that cultural resources, sacred sites, and cemeteries are valued by Native American cultures. Several tribes expressed a need for clarification of requirements under the Native American Graves Protection and Repatriation Act (NAGPRA), requirements for long-term curation of cultural materials, and Corps responsibilities for traditional cultural properties under Corps jurisdiction. Cultural resources issues were stated or implied in 35 of the total 206 statements by tribal representatives.

Regulatory Permitting

Clarification of Corps regulatory requirements related to tribal rights, resources, and interests was stated or implied in 31 of the total 206 statements by tribal representatives. The need to resolve the role of sovereign status in approving or denying permits on trust, non-trust, and ceded lands surfaced numerous times. Issues included the quality of Section 404 guidelines regarding tribal interests; the applicability of guidelines; notification prior to approval of General Permits; the need for confidentiality in identifying the location of cultural resources, sacred sites,

and natural resources on permit applications; and time constraints applied to the review process. The development of guidelines for dealing with Federally Recognized Tribes was recommended.

Operation and Maintenance

Tribes indicated that, in its land management role, the Corps does not recognize tribal interests on agency owned or controlled lands. Tribes expressed the importance of preserving cultural and natural resources on Federal lands, as well as the importance of maintaining and allowing access by tribes to these properties. Several tribes expressed interest in acquiring Corps land for tribal development. Poor maintenance of Corps roads and fences and the need for mosquito control were also mentioned. Operation and maintenance issues were included within 23 of the total 206 statements by tribal representatives.

OTHER ISSUES

Nineteen issues were beyond Corps jurisdiction to resolve or would require the development of policy or operation beyond the field level. These issues appear in Appendix F, Issues and Concerns Matrix, and are labeled "Executive Decision or Beyond Corps Authority." Those that would require executive decision to answer include tribal requests for a single Corps tribal policy, a Washington level point of contact, and partnering at the highest level with other Federal agencies to build integrated programs or program requirements for tribes.

Examples of Federal issues that are beyond Corps authority to resolve include lack of Congressional funding for more programs specifically benefiting tribes; coordination of similar programs; lack of recognition that variability in the funding cycles of different agencies affects tribal budgets and planning; lack of Federal protection of tribal water rights; the need for smaller cost share requirements for tribes; lack of recognition in the Federal Acquisition Regulations of sovereign tribal status; and the need for a Congressionally mandated Corps program to aid tribes. An important issue was raised questioning the Corps' commitment to protect trust resources should the standards of the Clean Water Act be eroded by Congressional action. Other issues beyond Corps authority fall within the jurisdiction of States or other Federal programs: control of riverbeds and compensation for rock and gravel taken from riverbeds; neglect of lands adjacent to State owned lakes; disagreements over on-reservation fishing rights; tribal jurisdiction over hunting and fishing of non-tribal members; and assumption of the Section 404 permitting authority by tribes.

The Corps may not be able to resolve many of these problems. However, a proactive interpretation of the Federal trust responsibility would suggest that the Corps (and all Federal agencies) aid the tribes, to the fullest extent possible, by explaining overlapping missions of

similar Federal programs; aiding tribes in finding contacts in other agencies; working with other agencies at the highest levels to make resources available to tribes; recommending changes advantageous to tribes when draft regulations are furnished for public review; and reviewing and amending legislation to ensure that the language is clear to both the tribes and the agency about whether new programs include tribal participation and about the cost share requirements for tribes.

CHAPTER 6 - INTERNAL AGENCY BARRIERS TO SUCCESS IN CORPS INTERACTIONS

Tribal statements summarized in Chapter 5 highlighted the Corps' lack of knowledge and committed attention to building government-to-government relations, recognizing tribal sovereignty, and accepting the Federal trust responsibility. The following discussion identifies, from an agency perspective, internal barriers that affect not only the building of a true government-to-government relationship with Federally Recognized Tribes, but also the efficient handling of tribal issues when they arise.

LACK OF TRAINING

Except when required to consult with tribes by a few specific laws, few Corps personnel are aware that the Federal Government has a fiduciary responsibility to tribes that extends beyond the mission of the Bureau of Indian Affairs and the Indian Health Service. For sound legal reasons, the Corps approaches tribal issues on a case-by-case basis. However, this approach does not foster institutionalization of knowledge. The wealth of training the agency offers its employees does not presently provide an introduction to the concepts of sovereignty and trust responsibility within the context of Corps programs.

LACK OF KNOWLEDGE BASE

In most regions, tribal issues become known only after tribes express concern or disfavor with an agency action. The Corps presently does not proactively collect information that would assist managers in recognizing when a project or permit issue may affect tribal interests or trust resources.

UNDERSTANDING COMMUNICATION BARRIERS

Tribes are expected to meet Corps response deadlines without allowances made for the lack of access to legal, environmental, and engineering expertise from which other governmental entities routinely draw support. Many tribes require a meeting of the council or the entire membership to vote upon a response to an agency request for information, action, or comment. Agency terminology can slow the communication process when it is not understood. The lack of consideration for these real-world constraints can lead to a misunderstanding of non-responses.

*Internal Agency Barriers To
Success in Corps Interactions*

LEADERSHIP

The Corps' most successful instances of building strong government-to-government relations have occurred when a District or Division Engineer was willing to take a hands-on approach, visit reservations, take a personal interest in problem resolution, AND require that Division Chiefs accept responsibility for issue resolution.

ACCOUNTABILITY

The involvement of Division/District staffs is limited to a very few persons Corps-wide. The concept of a single point of contact per District was originally put into place to simplify communications with tribes. This approach has been successful, but it compartmentalizes rather than institutionalizes responsibility for communication, interpretation, and issue resolution. Further, the single point of contact seldom has sufficient authority to direct others' actions.

CONSISTENCY

Tribes vocalized their distrust and long experience with inconsistent application of Federal policies and commitments. Commitment to building stronger government-to-government relations will require a framework which is not solely dependent upon the strength of a single District or Division Engineer.

TEAMWORK

The data call discussed in Chapter 3 of this report demonstrates that all major functional elements are or have been involved in tribal coordination, and that tribal issues are not limited to a few regions. All programs would benefit from increased internal communication about tribal issues, lessons learned, problem solutions, and precedent-setting decisions.

POLICY

Policy has been used in the past to institutionalize mandated responsibilities and promote efficiency and consistency in resolving repetitive problems. All programs would benefit from a review of policy guidance to identify inconsistencies or policy statements written in an earlier era. At present, each District is on its own individual learning curve in dealing with these complex concepts, developing its own interpretations as they apply to local problems, and having to find answers to the same programmatic questions. Data call results suggest that this approach leads

to uneven interpretation of programs as they apply to tribes and uneven opportunities for tribes needing Corps assistance. Organizationally, this district-by-district approach is time consuming and counter to other organizational pressures demanding rapid, sure response.

CHAPTER 7 - TASK FORCE RECOMMENDATIONS

The recommendations in this report are based on field level feedback, not only from the workshops conducted by field offices but also from the observations and analyses of the task force members, many of whom serve either formally or informally as tribal facilitators for their respective offices, from the divisional program managers, and from the Headquarters managers of major programs that affect tribes. The task force has concluded that, while the key to successful day-to-day interactions with tribal governments is at the District Commander level, internal organizational factors can either help or hinder Commanders in their execution of this responsibility. By adopting the following recommendations, the Corps can build upon the successes of field strategies and provide a clear, consistent, and achievable set of goals. The result will be focused communication which will enable the Corps to improve intergovernmental relations with Federally Recognized Tribes.

The Director of Civil Works should:

Provide within the organization a consistent knowledge base of obligations owed to tribes.

1. Include a presentation on government-to-government relations in the training for new Commanders and at Corps-wide meetings.

Background: Many Commanders and senior leaders have had no previous training or job related experience with tribal governments. They are not likely to be in a position that requires any additional training which might have a tribal government or trust module. In the absence of policy or clear articulation of objectives of improved consultation, they are unlikely to focus organizational attention on improving their consultation practices.

Discussion: The most effective way to reach all senior leaders to provide them with a consistent knowledge base is to present information on Federal trust obligation, sovereignty, government-to-government relations, and consultation. A statement on these Civil Works recommendations and their implementation status, and the necessity for continuing to make progress, should be presented at both the new Commanders course and the other senior leaders meetings as soon as possible. Development of the government-to-government relationship requires a commitment at the District leadership level. Like any effort that requires short-term behavior or process modifications to achieve long-term successes, the sustained commitment by senior leaders will be essential to success. The attention and support of the Commanders and senior leaders have been identified as key factors in the success of past tribal interactions.

Task Force Recommendations

2. Insert a tribal communication module into existing regulatory, environmental compliance, planning principles, Commander's course, Operational Managers Course, and management Prospect courses.

Background: Consulting with tribes is frequently viewed as an optional activity by some staff at the field level. The concepts are not clear and are seen as separate from the activities that are necessary to accomplish our mission. Actions can occur in an inadvertent fog of ignorance because of no exposure to the topic. While in-depth training is needed by individuals dealing directly with tribes, staff at all operational levels should have a cursory understanding of Federal trust obligations and the consultation process.

Discussion: Develop a 1-hour module to introduce and define the unique relationship between Federally Recognized Tribes and the Federal Government. The introductory module need not be more complicated than a brief overview of current policy guidance (including the recommended consultation policy), Federal policy, statute guidance, and relevant court decisions. The program-specific portion of the module needs to include an explanation of the process used to execute trust responsibility, government-to-government relations, and consultation to the given mission.

3. Develop a 1 ½- 2 day exportable training course on trust and consultation with Native Americans.

Background: There is currently no Corps-wide training available on trust responsibility and consultation. Districts that feel the need to train their employees develop their own local courses. This requires an exhaustive search to identify qualified trainers and appropriate contents. The content and message of these courses may vary from location to location, resulting in inconsistent application of the trust principles and practices.

Discussion: Develop a training course on trust and consultation to familiarize District staff with the governing concepts and techniques that are effective in consulting with tribes. The target audience for the course would be individuals who have frequent contact with tribes and their first-line supervisors. Tribes at the workshops expressed great frustration at the Corps' lack of commitment to government-to-government communication as demonstrated by the lack of effective consultation procedures. The Corps was seen as being inflexible in its communications processes and ignorant of the meaning of trust responsibility. At the workshops, the tribes made explicit recommendations for better consultations; e.g., holding public meetings on reservations so that tribal members could openly express their concerns, particularly about culturally sensitive issues, in a supportive atmosphere; and establishing central points of contact within their respective organizations. A properly designed training course could address these critical issues. This

course could be derived from courses such as those given locally by NCS and NPD which can be given on-site to minimize costs, maximize attendance, and facilitate District consistency. Consideration could also be given to development as a Prospect course.

4. Establish and maintain a permanent project file which documents interrelationships between project operations and Native American interests.

Background: Some District and field operators are not aware of the Federal trust responsibility, tribal sovereignty, government-to-government relationship, and the consultation obligations it implies when making operating and land management decisions. Existing reference manuals routinely used by field personnel do not ordinarily contain information on any obligations owed the affected tribes. This lack of information could result in operators and managers making decisions without consulting affected tribal governments when appropriate. This could inadvertently result in adverse impacts to trust assets.

Discussion: An effective management tool in working with tribes is a clear and concise documentation of past negotiations and commitments. Operations and maintenance guidance (i.e., reservoir regulation manuals, project operations plans, mitigation plans, and master plans) should incorporate all commitments to tribes. An archive file should be established and maintained at the projects as a reference and support document when additional discussions are held with tribes. This file should document Corps-tribal interactions on the projects and the current organizational understanding of what the tribes' residual and current interest might be. This information needs to be readily available to field decision makers. Use of this information will add to consistency in consultation with the tribes and provide them an opportunity to enhance the productivity of their remaining trust assets as identified in their concern for cultural resources, technical assistance, and operation and maintenance activities. Forty-four projects have been identified that have the potential to affect the trust assets of 46 Federally Recognized Tribes. For each project, there are potential impacts of the project on trust resources that either were or could not be accommodated. In addition to the parameters set by legislation and case law, there are tribal interests that can be accommodated within the discretionary authorities of the Corps. An example of such accommodation would be the cooperative management of adjacent Corps-tribal lands to improve small game habitat.

Provide evidence of commitment and accountability.

5. Establish a Headquarters Coordinating Council within Civil Works to provide for policy coordination of tribal matters.

Task Force Recommendations

Background: At present, there is no central focal point for dealing with tribal actions and problems. Consequently, there is a lack of consistent responses to tribal problems. Many actions occur via “stovepipes” without the knowledge and involvement by other appropriate Headquarters staff. Consequently, there is no institutionalization of efficient problem recognition.

Discussion: The most potentially successful approach appears to be by establishing a central point of contact within Civil Works. A Headquarters Coordinating Council could be established consisting of representatives of programs within the Civil Works divisions and other supporting offices - Real Estate, Office of Counsel, Contracting. A rotating chair for the council could be elected or appointed to have the lead responsibility for a period of time. The purpose of the council would be to facilitate cross-stovepipe communication about issues, to review new and existing programmatic guidance for consistency with policy, and to address policy issues in a unified manner. This would demonstrate to the tribes a leadership commitment to building the government-to-government relationship and to addressing their concerns about consistency and teamwork. Because tribal expertise is so thinly distributed in the Corps, it is recommended that, for the first few meetings, a seasoned District facilitator be invited to participate or to act as staff for the council.

6. Establish a Civil Works policy on consultation with Indian Tribes; develop programmatic guidance.

Background: At present, we do not have a clearly stated Corps-wide policy for our Districts and Divisions to follow. The lack of understanding of the concept of consultation and its basis in government-to-government interaction, tribal sovereignty, and trust responsibility was seen by the tribes as a lack of commitment. This lack of commitment, as evidenced by the lack of policy, leads to inconsistencies in how tribes are treated. In many cases, the opportunity provided for tribal consultation is nonexistent or totally inadequate.

Discussion: The purpose of a consultation policy is twofold. The first is to disseminate the complex and unique concepts of the Government's legal relationship with respect to Federally Recognized Tribes (i.e., trust responsibility and the government-to-government relationship) and to describe those general obligations that form the basis of the consultation to a wider audience. The second is to focus the organization's attention on the nature and extent of the effort needed to consult effectively with tribes. This policy would respond to the repetitive themes the tribes articulated at the workshops and would also address internal organizational factors that contribute to the pervasiveness of these problems. The development of this policy could take approximately 2 years. To be viewed as legitimate by the tribes and to meet the intent of the Government-to-Government memorandum, the policy should be developed in consultation with

the tribes. Some agencies that chose to coordinate their policy development rather than consult have often had to repeat the policy process.

With guidance, the Civil Works program managers would then revise their specific program guidance to make the consultation concepts operational within the context of their program. Key programs the tribes have identified in the workshop process as candidates for clearer guidance are the Native American Graves Protection and Repatriation Act (NAGPRA), Section 404 permitting regulation process for both on- and off-reservation applications, and existing project operations and land management.

7. Issue interim guidance on consultation requirements until a consultation policy is fully formulated.

Background: Development of an adequate Civil Works policy on consultation, if done properly, would most likely take 2 years. Maintaining the status quo would continue the tribes' perception that the Corps is not committed to improvement in the relationship. This delay in policy development would be particularly grating, since many tribes committed scarce resources to attend the workshops, anticipating that the workshops would result in some change.

Discussion: Within the next 3 months, interim guidance on consultation should be issued. The guidance should address the objective of long-term consultation policy as outlined above. This interim guidance would be preliminary, in effect until it is replaced with a more explicit policy to be developed based on consultation with the tribes. By distributing the preliminary guidance to the tribes and inviting their participation in development of the Civil Works policy, the Director would gain the insight from their comments to frame the issues to be addressed by the long-term policy. *Program managers could also initiate preliminary revision to their respective program guidance at this time.*

8. As engineering regulations are reviewed and updated, include a specific review for compliance with current Federal policy and laws.

Background: While the task force did not systematically examine the existing regulations, there was consensus among the group that it was highly likely the regulations provided no direction or guidance as to how information gained in the consultation process would be used in programmatic decision-making. Much of our guidance was written in an era that did not recognize the formal government-to-government relationship or the recent changes in trust responsibility that come with the expanded description of trust assets that results from the adjudication of off-reservation rights. Regulations and guidance that were developed in the termination policy era may still reflect a Federal policy that has been repudiated by every President since President Lyndon Johnson.

Task Force Recommendations

Discussion: Whenever engineering regulations and other guidance are developed, reviewed or revised, the new or revised regulations and policies should be made consistent with current Federal Indian policy guidance and Corps consultation policy guidance. The Headquarters Coordinating Council (if formed) or another Headquarters element should be assigned this responsibility. Field experts on the task force who have dealt with various issues could be tapped for assistance. As this existing or outdated guidance is modified, it should be revised to reflect these changes to aid Districts and Divisions in interpretation of their responsibilities. Failure of the common Corps reference documents to identify tribal policy has contributed to the agency education process that the tribes find repetitive and burdensome. This leads to an agency credibility gap and commitment gap.

9. Develop a post-workshop “customer satisfaction survey” to evaluate progress in improved interactions.

Background: The recommendations presented here are intended to implement President Clinton's memorandum in an effective and efficient way. Yet the determination of what is effective is whether it achieves the result or outcome intended, improved government-to-government relations.

Discussion: The Corps is conducting ongoing “customer satisfaction surveys” for a full range of customers. While our interactions with tribes are much more expansive than those with the traditional customers, the goal of these surveys is to measure how effective we are at achieving the desired result. While it would look very different from the customer satisfaction surveys because surveys generally are not a good tool to collect information from tribes, a similar tool could be developed to see how effective the implemented actions are at achieving results. As with the customer satisfaction surveys, tribal “surveys” would pinpoint areas where more attention is needed for improvement in the time between survey periods.

Be proactive in facilitating communications.

10. Develop an opportunity for tribal staff to attend Prospect courses and get cross-training through the Intergovernmental Personnel Act (IPA) program.

Background: The language of the Corps is highly technical and the concepts and processes are relatively complex. Tribal staffs are limited; in some instances, tribes lack the resources to evaluate the information provided in the consultation process. Consultation and President Clinton's Government-to-Government memorandum require that the agency take steps to remove barriers to effect communications.

Discussion: Make a limited number of spaces available for representatives of Federally Recognized Tribes in appropriate training courses. Tribes have expressed a need for assistance with technical training. Offering such assistance is in the Corps' best interest because it promotes understanding of the programs, such as regulatory, that most affect tribal interests. Tribes vary in their ability to communicate with the Corps, a fact that was brought up at the workshops, both because of limited reservation staff to deal with issues and because of the complexity of the technical message the Corps is trying to convey. In order to communicate effectively, tribes need a rudimentary education in the principles of our programs. Offering this service to tribes would also demonstrate a good faith effort to comply with Executive Order 12898, Environmental Justice and the Government-to-Government memorandum.

11. Develop a strategy for including tribal members and tribal governments in the Corps' hiring, purchasing, and property surplusing process.

Background: At least 44 Corps projects are relatively close to Federally Recognized Tribes, particularly in the less populated part of the country. Tribes frequently have high unemployment and few ways of earning an income. In some regions, current outreach programs will be more effective if they are designed specifically to meet the needs of tribal communities.

Discussion: Individuals with recruitment responsibilities should identify tribal training and recruitment sources. They should be encouraged to work with tribal communities to jointly develop recruitment and retention strategies. Contract officers should contact tribal governments and organizations to identify contracting capability and ensure that the tribes have an opportunity to compete for provision of services or supplies. Surplus property officers should develop a contact network to maximize the awareness of the process for acquiring excess and surplus property and advertising when the property is available. Many tribes are still very interested in jobs and acquiring needed capital equipment. The remote locations of many tribes make the Corps both an attractive employer and a low cost supplier.

12. Recommend to BIA that, in cooperation with other appropriate Federal agencies, a "one-stop shopping" guide to Federal water programs be developed for use by Tribes.

Background: There is no single source of information that describes all available authorities to deal with specific water resource problems. Consequently, tribes are unable to sort through the maze of bureaucracies to identify the program that best fits their needs. This method can be very costly and is customer hostile.

Discussion: Recommend to BIA that they undertake the development of a multi-agency Federal water programs assistance manual (including our Civil Works missions) based on "frequently

Task Force Recommendations

asked questions” or typical community problems. All appropriate Federal agencies would be contacted to provide the data and information pertaining to their agency. Like many of our potential customers, tribes are now overwhelmed by the plethora of Federal programs that nominally address varying aspects of a problem. Their will and resources quickly become exhausted in the search for the right program to resolve a particular problem.

SUMMARY: The majority of these recommendations can be implemented incrementally through ongoing actions in various programs and project activities. A few will require the dedication of some resources for a short time. Many of the Native American Intergovernmental Relations Task Force members are either Corps managers or senior technicians who have not only tribal expertise, but technical and organizational expertise who could be available as a minimum on an internal consultant basis. Implementation of these recommendations will benefit the organization by:

- Complying with President Clinton's April 1994 Government-to-Government memorandum;
- Institutionalizing efficient problem recognition; and
- Establishing a consistent approach to addressing both routine and difficult issues.

GLOSSARY OF KEY TERMS

Please note that these are working definitions provided to facilitate understanding of this report. These definitions are subject to interpretation. There may be wide divergences between how different agencies define these terms and how individual tribes define them. Comments or suggestions regarding these definitions are welcome and encouraged. A list of Federally Recognized Tribes is published in the Federal Register.

Consultation: The formal and informal process by which agencies proactively participate in a give-and-take interchange with either the elected officials of a Federally Recognized Tribal Government or their official designee. This requires candidly and explicitly explaining the agency's proposed action in sufficient scope and detail. It is the agency's responsibility to ensure that the action is fully understood by the tribal governments so that they can actively participate in the scoping and decision process in a meaningful way. The consultation process and the results of how the tribal government's official views were incorporated into the decision on the action are explicitly recorded in the decision document to form a legal record. Consultation is required by the 29 April 1994 Presidential Memorandum on Government to Government Relations with Native American Tribal Governments and several other statutes.

Federally Recognized Tribe: Tribes that have a legal relationship to the United States Government through treaties, acts of Congress, executive orders, or other administrative actions are "recognized" by the Federal Government as Governmental entities.

Government-to-Government Relationship: Refers to the Federal Government's responsibility to work directly with Federally recognized Tribal governments in recognition of treaty rights, statutes, executive orders and regulations.

Indian Country: All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent; all dependent Indian communities within the United States borders, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Reservation: Land that a tribe reserved for itself when it relinquished its other land areas to the United States through treaties. More recently, congressional acts, executive orders, and administrative acts have created reservations.

Sovereignty: The supreme and absolute power by which any independent state is governed. Conquest rendered the tribe subject to the legislative powers of the United States and effectively terminated the external powers of sovereignty of the tribe. But conquest did not affect the internal

Glossary of Key Terms

sovereignty of the tribe — its power of self-government which has never been extinguished. Sovereignty generally has been limited to the control and regulations of a tribe's own members and governmental functions within Indian Country.

Treaty: A document signed by representatives of an Indian tribe and the Federal Government. An Indian treaty is not only a law but also a contract between the United States and an Indian Tribe and must, if possible, be so construed to give full force and effect to all its parts. The Constitution declares that “This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby any thing in the Constitution or Laws of any State to the contrary notwithstanding.” This means that treaties are superior to state laws and state constitutions and are equal to laws passed by Congress. Nearly every treaty contains at least two significant provisions: a) Indian tribes agreed to relinquish large areas of land to the United States; b) in exchange for land, the United States promised to establish a reservation for the preservation of Indian autonomy, and provide other such necessities such as; off reservation hunting, fishing, gathering, education, health, food, and agricultural supplies. Congress abandoned the treaty-making process in 1871.

Tribe: A tribe is both a legally documented governmental entity and an entity with a shared culture. The terms “nation”, “tribe”, and “band” have been used interchangeably in treaties and statutes and should be considered interchangeable. Various legal requirements specify that federal agencies interact with tribes as both political entities and cultural entities.

Trust Assets: “Assets” held in trust by the Federal Government for Indian tribes or individual Indians. Assets are anything owned that has monetary value (e.g., land, minerals, hunting and fishing rights). An Indian trust asset cannot be sold, leased, or otherwise alienated without United States Government approval.

Trust Responsibility: Refers to the fiduciary relationship between the Federal Government and tribes. The United States has responsibility for assets and resources held in trust for tribal governments and their members. The responsibility is an established legal obligation that requires the United States to protect and enhance Indian trust resources and tribal self-government, and to provide for the economic and social well-being of the Indian people. The specific trust obligation to an individual tribe must be determined on a case-by-case basis through a review of treaties, statutes, executive orders and case law. Only Congress has the power to terminate a trust responsibility, federal agencies do not.

Trust Resources: Trust resources are the expected flows of goods and services produced by trust assets.

APPENDICES

APPENDIX A - CLINTON MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 29, 1994

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Government-to-Government Relations with
Native American Tribal Governments

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

William G. Clinton

APPENDIX B - ASA REQUEST FOR WORKSHOP



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
106 ARMY PENTAGON
WASHINGTON DC 20310-0108



REPLY TO
ATTENTION OF

29 APR 1994

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Interest Group Workshops

I would appreciate your assistance in conducting workshops with interest groups that relate to Army Corps of Engineers programs. The workshops would be similar to those recently conducted by the Institute for Water Resources with members of the American Association of Port Authorities and the Army and Corps staff. Two workshops should be planned as soon as possible. One with Native American groups and one with national level environmental groups. In the longer term, I would also like a workshop with recreation interests.

The Institute for Water Resources should contact Dr. Morgan Rees of this office to begin developing these workshops. In addition, I would appreciate your views on workshops with other groups from whose views Corps programs may benefit.

John H. Zirschky
Acting Assistant Secretary of the Army
(Civil Works)

APPENDIX C - TASK FORCE MEMBERS

NATIVE AMERICAN INTERGOVERNMENT RELATIONS TASK FORCE

<u>NAME</u>	<u>OFFICE SYMBOL</u>	<u>TELEPHONE (FAX) NOS</u>
PROJECT MANAGER:		
Jody Rooney	CENCS-PE-P	612-290-5250 (5800)
DIVISION/DISTRICT REPRESENTATIVES:		
Dave Ballman	CENCS-CO-R	612-290-5280 (5330)
Debbie Chenoweth	CEORD-DL-E	513-684-6038 (2460)
Joe Dixon	CESPL-PD-WC	602-640-2003 (5383)
Beverley Getzen	CESPD-PD-R	415-705-1560 (1743)
John Hashtak	CESAJ-PD-PF	904-232-3594 (3442)
Robert Jobson	CWSWT-PL-CR	918-669-7193 (7546)
Patti Johnson	CESPK-ED-D	916-557-6611 (7846)
Carroll Kleinhans	CENCD-PE-PD	312-886-5469 (353-3138)
David Rice	CENPS-EN-PL	206-764-3630 (3796)
John Schelberg	CESWA-ED-PE	505-766-2657 (8733)
David Vader	CEMRO-DP-NA	402-221-3988 (3128)
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Paul Blakey	CECW-PW	202-761-1109 (1972)
Sam Collinson	CECW-OR	202-761-1782 (504-5096)
Darrell Lewis	CECW-ON	202-761-0247 (1671)
Lisa Ng	CERE-MC	202-761-1737 (1754)
Jerome Peterson	CECW-PF (HQ POC)	202-761-0169 (1972)
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Dave Hewitt	CEPA-I	202-761-0014 (1803)
Janet McDonnell	CEHO	703-355-3563 (1872)

**APPENDIX D - FEBRUARY 1995 FEDERAL REGISTER
LISTING OF RECOGNIZED TRIBES**

Thursday
February 16, 1995

Federal Register

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

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Assessment of Corps/Tribal Intergovernmental Relations

Thursday
February 16, 1995

Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs; List; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From The United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the current list of tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103-454; 108 Stat. 4791, 4792).

FOR FURTHER INFORMATION CONTACT: Patricia Simmons, Bureau of Indian Affairs, Division of Tribal Government Services, 1849 C Street N.W., Washington, DC 20240. Telephone number: (202) 208-7445.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below are lists of federally acknowledged tribes in the contiguous 48 states and in Alaska. The list is updated from the last such list published October 21, 1993 (58 FR 54364) to include tribes acknowledged through the Federal acknowledgment process and legislation. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of unusual and complex Native names.

In October 1993, the Department published its most recent list in an effort to bring the list up to date as required by 25 CFR Part 83 and in an effort to clarify the legal status of Alaska Native villages. As described in the preamble to the October 1993 list, the first list of acknowledged tribes was published in 1979. 44 FR 7235 (Feb. 6, 1979). The list used the term "entities" in the preamble and elsewhere to refer to and include all the various anthropological organizations, such as bands, pueblos and villages, acknowledged by the Federal Government to constitute tribes with a government-to-government relationship with the United States. A footnote defined "entities" to include "Indian tribes, bands, villages, groups and pueblos as well as Eskimos and Aleuts." 44 FR 7235 n.1. The 1979 list did not, however, contain the names of any Alaska Native entities. The

preamble stated that: "[t]he list of eligible Alaskan entities will be published at a later date." 44 FR 7235.

Under the Department's acknowledgement regulations, publication of the list serves at least two functions. First, it gives notice as to which entities the Department of the Interior deals with as "Indian tribes" pursuant to Congress's general delegation of authority to the Secretary of the Interior to manage all public business relating to Indians under 43 U.S.C. 1457. Second, it identifies those entities which are considered "Indian tribes" as a matter of law by virtue of past practices and which, therefore, need not petition the Secretary for a determination that they now exist as Indian tribes. See 25 CFR 83.3 (a), (b) and 83.6(a) (1993 ed.); 25 CFR 83.3(a), (b) (1994 ed.). Because the Department did not include any Alaska entities in its initial publication and characterized its publication in 1982 of the Alaska entities as a "preliminary list" (47 FR 53133), the intended functions of the publication of the list were not fully implemented for Alaska until October 1993.

The entities listed on the 1982 "preliminary list" parallel the kinds of entities included on the list for the contiguous 48 states. The regional, village and urban corporations organized under state law in accordance with the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 et seq.) were not listed although they had been designated as "tribes" for the purposes of some Federal laws, primarily the Indian Self-Determination and Education Assistance Act (ISDA), 25 U.S.C. 450b(b). In addition, between 1982 and 1986, a number of Alaska Native entities complained that they had been wrongly omitted from the lists that were published in those years. Some groups in the contiguous 48 states have also complained that they had been wrongly left off the lists and should not have to go through the burdensome process of petitioning. While the Department had conceded that its 1982 list for Alaska was "preliminary," it had made no such concession with regard to groups in the contiguous 48 states. Therefore, the Department required all groups from the contiguous 48 states to petition in order to be placed on the list.

In 1988, in an effort to resolve all pending questions as to the Native entities to be listed and the eligibility of entities described as "tribes" by Congress in post-ANCSA legislation but not otherwise thought of as "Indian tribes," i.e., the state-chartered ANCSA Native corporations, the Department

published a new list of Alaska entities. The preamble to the list stated that the revised list responded to a "demand by the Bureau and other Federal agencies . . . for a list of organizations which are eligible for their funding and services based on their inclusion in categories frequently mentioned in statutes concerning Federal programs for Indians." 53 FR 52832.

Unfortunately, the 1988 revisions of the Alaska Native entities list appeared to create more questions than it resolved. The omission from the 1988 preamble of all references acknowledging the tribal status of the listed villages, and the inclusion of ANCSA corporations (which are formally state-chartered corporations rather than tribes in the conventional legal or political sense) generated questions as to the status of all the listed entities. Numerous Native villages, regional tribes and other Native organizations objected to the 1988 list on the grounds that it failed to distinguish between Native corporations and Native tribes and failed to unequivocally recognize the tribal status of the listed villages and regional tribes. That the Department had considered Alaska Native villages to possess tribal status is evident from the Solicitor's 1993 historical review of this matter.

In January 1993 the Solicitor of the Department of the Interior issued a comprehensive opinion analyzing the status of Alaska Native villages as "Indian tribes," as that term is commonly used to refer to Indian entities in the contiguous 48 states. After a lengthy historical review and legal analysis, the Solicitor concluded that:

For the last half century, Congress and the Department have dealt with Alaska Natives as though there were tribes in Alaska. The fact that the Congress and the Department may not have dealt with all Alaska Natives as tribes at all times prior to the 1930's did not preclude it from dealing with them as tribes subsequently. Sol. Op. M-36975, at 46, 47-48 (Jan. 11, 1993).

Although the Solicitor found it unnecessary for the purposes of his opinion to identify specifically which villages were tribes, he observed that Congress' listing of specific villages in ANCSA and the repeated inclusion of such villages within the definition of "tribes" in post-ANCSA legislation arguably constituted a congressional determination that the villages found eligible for benefits under ANCSA, referred to as the "modified ANCSA list," were Indian tribes for purposes of Federal law. M-36975 at 58-59.

In response to the guidance in the Solicitor's Opinion, the Bureau of Indian Affairs reviewed the "modified ANCSA list" of villages and the list of those villages and regional tribes previously listed or dealt with by the Federal Government as governments. The result of that review was the list of tribal entities published on October 21, 1993. The October 1993 list represents a list only of those villages and regional tribes which the Department believes to have functioned as political entities, exercising governmental authority. The listed entities are, therefore, acknowledged to have "the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes." 25 CFR 83.2 (1994 ed.).

Inclusion on the list does not resolve the scope of powers of any particular tribe over land or non-members. It only establishes that the listed tribes have the same privileges, immunities, responsibilities and obligations as other Indian tribes under the same or similar circumstances including the right, subject to general principles of Federal Indian law, to exercise the same inherent and delegated authorities available to other tribes.¹

Subsequent to the publication of the October 1993 list, Congress enacted two significant pieces of legislation. First, in the Act of May 31, 1994 (P.L. 103-263; 108 Stat. 707), Congress confirmed that the Secretary can make no distinctions among tribes as a general matter of Federal law. Second, in the Act of November 2, 1994 (P.L. 103-454; 108 Stat. 4791), Congress confirmed the Secretary's authority and responsibility to establish a list of Indian tribes and mandated that he publish such a list annually. The following list is published in response to that mandate.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible to Receive Services From the Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
 Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California

¹ Sol. Op. M-36975 concluded, construing general principles of Federal Indian law and ANCSA, that "notwithstanding the potential that Indian country still exists in Alaska in certain limited cases, Congress has left little or no room for tribes in Alaska to exercise governmental authority over land or nonmembers." M-36975 at 108. That portion of the opinion is subject to review, but has not been withdrawn or modified.

Ak Chin Indian Community of Papago Indians of the Maricopa, Ak Chin Reservation, Arizona
 Alabama and Coushatta Tribes of Texas
 Alabama-Quassarte Tribal Town of the Creek Nation of Oklahoma
 Alturas Indian Rancheria of Pit River Indians of California
 Apache Tribe of Oklahoma
 Arapahoe Tribe of the Wind River Reservation, Wyoming
 Aroostook Band of Micmac Indians of Maine
 Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
 Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California
 Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
 Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mill Reservation, Michigan
 Bear River Band of the Rohnerville Rancheria of California
 Berry Creek Rancheria of Maidu Indians of California
 Big Lagoon Rancheria of Smith River Indians of California
 Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
 Big Sandy Rancheria of Mono Indians of California
 Big Valley Rancheria of Pomo & Pit River Indians of California
 Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
 Blue Lake Rancheria of California
 Bridgeport Paiute Indian Colony of California
 Buena Vista Rancheria of Me-Wuk Indians of California
 Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
 Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California
 Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
 Caddo Indian Tribe of Oklahoma
 Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
 Cahto Indian Tribe of the Laytonville Rancheria, California
 Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
 Capitan Grande Band of Diegueno Mission Indians of California:
 Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
 Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of

the Viejas Reservation, California
 Catawba Tribe of South Carolina
 Cayuga Nation of New York
 Cedarville Rancheria of Northern Paiute Indians of California
 Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
 Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
 Cherokee Nation of Oklahoma
 Cheyenne-Arapaho Tribes of Oklahoma
 Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
 Chickasaw Nation of Oklahoma
 Chicken Ranch Rancheria of Me-Wuk Indians of California
 Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
 Chitimacha Tribe of Louisiana
 Choctaw Nation of Oklahoma
 Citizen Band Potawatomi Indian Tribe of Oklahoma
 Cloverdale Rancheria of Pomo Indians of California
 Coast Indian Community of Yurok Indians of the Resighini Rancheria, California
 Cocopah Tribe of Arizona
 Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
 Cold Springs Rancheria of Mono Indians of California
 Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
 Comanche Indian Tribe of Oklahoma
 Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
 Confederated Tribes of the Chehalis Reservation, Washington
 Confederated Tribes of the Colville Reservation, Washington
 Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
 Confederated Tribes of the Goshute Reservation, Nevada and Utah
 Confederated Tribes of the Grand Ronde Community of Oregon
 Confederated Tribes of the Siletz Reservation, Oregon
 Confederated Tribes of the Umatilla Reservation, Oregon
 Confederated Tribes of the Warm Springs Reservation of Oregon
 Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation Washington
 Coquille Tribe of Oregon
 Cortina Indian Rancheria of Wintun Indians of California
 Coushatta Tribe of Louisiana
 Cow Creek Band of Umpqua Indians of Oregon
 Coyote Valley Band of Pomo Indians of California
 Crow Tribe of Montana

- Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
- Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California
- Death Valley Timbi-Sha Shoshone Band of California
- Delaware Tribe of Western Oklahoma
- Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota
- Dry Creek Rancheria of Pomo Indians of California
- Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
- Eastern Band of Cherokee Indians of North Carolina
- Eastern Shawnee Tribe of Oklahoma
- Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
- Elk Valley Rancheria of California
- Ely Shoshone Tribe of Nevada
- Enterprise Rancheria of Maidu Indians of California
- Flandreau Santee Sioux Tribe of South Dakota
- Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin
- Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
- Fort Bidwell Indian Community of Paiute Indians of the Fort Bidwell Reservation, California
- Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
- Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada
- Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, Arizona
- Fort Mojave Indian Tribe of Arizona
- Fort Sill Apache Tribe of Oklahoma
- Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation of Arizona
- Grand Traverse Band of Ottawa & Chippewa Indians of Michigan
- Greenville Rancheria of Maidu Indians of California
- Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
- Guidiville Rancheria of California
- Hannahville Indian Community of Wisconsin Potawatomi Indians of Michigan
- Havasupai Tribe of the Havasupai Reservation, Arizona
- Ho-Chunk Nation of Wisconsin (formerly known as the Wisconsin Winnebago Tribe)
- Hoh Indian Tribe of the Hoh Indian Reservation, Washington
- Hoopa Valley Tribe of the Hoopa Valley Reservation, California
- Hopi Tribe of Arizona
- Hopland Band of Pomo Indians of the Hopland Reservation, California
- Houlton Band of Maliseet Indians of Maine
- Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
- Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
- Ione Band of Miwok Indians of California
- Iowa Tribe of Kansas and Nebraska
- Iowa Tribe of Oklahoma
- Jackson Rancheria of Me-Wuk Indians of California
- Jamestown Klallam Tribe of Washington
- Jamul Indian Village of California
- Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico
- Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
- Kalispel Indian Community of the Kalispel Reservation, Washington
- Karuk Tribe of California
- Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
- Kaw Indian Tribe of Oklahoma
- Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan
- Kiallegee Tribal Town of the Creek Indian Nation of Oklahoma
- Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
- Kickapoo Tribe of Oklahoma
- Kickapoo Traditional Tribe of Texas
- Kiowa Indian Tribe of Oklahoma
- Klamath Indian Tribe of Oregon
- Kootenai Tribe of Idaho
- La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
- La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
- Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin
- Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
- Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan
- Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
- Little River Band of Ottawa Indians of Michigan
- Little Traverse Bay Bands of Odawa Indians of Michigan
- Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California
- Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
- Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
- Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
- Lower Sioux Indian Community of Minnesota
- Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota
- Lummi Tribe of the Lummi Reservation, Washington
- Lytton Rancheria of California
- Makah Indian Tribe of the Makah Indian Reservation, Washington
- Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
- Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
- Mashantucket Pequot Tribe of Connecticut
- Mechoopda Indian Tribe of Chico Rancheria, California
- Menominee Indian Tribe of Wisconsin
- Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
- Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
- Miami Tribe of Oklahoma
- Miccosukee Tribe of Indians of Florida
- Middletown Rancheria of Pomo Indians of California
- Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lac Band; White Earth Band)
- Mississippi Band of Choctaw Indians, Mississippi
- Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
- Modoc Tribe of Oklahoma
- Mohegan Indian Tribe of Connecticut
- Mooretown Rancheria of Maidu Indians of California
- Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California
- Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
- Muskogee (Creek) Nation of Oklahoma
- Narragansett Indian Tribe of Rhode Island
- Navajo Tribe of Arizona, New Mexico & Utah
- Nez Perce Tribe of Idaho
- Nisqually Indian Tribe of the Nisqually Reservation, Washington
- Nooksack Indian Tribe of Washington
- Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
- Northfork Rancheria of Mono Indians of California
- Northwestern Band of the Shoshoni Nation of Utah (Washakie)
- Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
- Omaha Tribe of Nebraska

- Oneida Nation of New York
 Oneida Tribe of Wisconsin
 Onondaga Nation of New York
 Osage Nation of Oklahoma
 Ottawa Tribe of Oklahoma
 Otoe-Missouria Tribes of Oklahoma
 Paiute Indian Tribe of Utah
 Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
 Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
 Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
 Pala Band of Luiseno Mission Indians of the Pala Reservation, California
 Pascua Yaqui Tribe of Arizona
 Paskenta Band of Nomlaki Indians of California
 Passamaquoddy Tribe of Maine
 Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
 Pawnee Indian Tribe of Oklahoma
 Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
 Penobscot Tribe of Maine
 Peoria Tribe of Oklahoma
 Picayune Rancheria of Chukchansi Indians of California
 Pinoleville Rancheria of Pomo Indians of California
 Pit River Tribe of California (includes Big Bend, Lookout, Montgomery Creek & Roaring Creek Rancheries & XL Ranch)
 Poarch Band of Creek Indians of Alabama
 Pokagon Band of Potawatomi Indians of Michigan
 Ponca Tribe of Indians of Oklahoma
 Ponca Tribe of Nebraska
 Port Gamble Indian Community of the Port Gamble Reservation, Washington
 Potter Valley Rancheria of Pomo Indians of California
 Prairie Band of Potawatomi Indians of Kansas
 Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota
 Pueblo of Acoma, New Mexico
 Pueblo of Cochiti, New Mexico
 Pueblo of Jemez, New Mexico
 Pueblo of Isleta, New Mexico
 Pueblo of Laguna, New Mexico
 Pueblo of Nambe, New Mexico
 Pueblo of Picuris, New Mexico
 Pueblo of Pojoaque, New Mexico
 Pueblo of San Felipe, New Mexico
 Pueblo of San Juan, New Mexico
 Pueblo of San Ildefonso, New Mexico
 Pueblo of Sandia, New Mexico
 Pueblo of Santa Ana, New Mexico
 Pueblo of Santa Clara, New Mexico
 Pueblo of Santo Domingo, New Mexico
 Pueblo of Taos, New Mexico
 Pueblo of Tesuque, New Mexico
 Pueblo of Zia, New Mexico
 Puyallup Tribe of the Puyallup Reservation, Washington
 Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Washington
 Quapaw Tribe of Oklahoma
 Quartz Valley Indian Community of the Quartz Valley Reservation of California
 Quechan Tribe of the Fort Yuma Indian Reservation, California
 Quileute Tribe of the Quileute Reservation, Washington
 Quinault Tribe of the Quinault Reservation, Washington
 Ramona Band or Village of Cahuilla Mission Indians of California
 Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
 Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota
 Redding Rancheria of California
 Redwood Valley Rancheria of Pomo Indians of California
 Reno-Sparks Indian Colony, Nevada
 Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
 Robinson Rancheria of Pomo Indians of California
 Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
 Round Valley Indian Tribes of the Round Valley Reservation, California (formerly known as the Covelo Indian Community)
 Rumsey Indian Rancheria of Wintun Indians of California
 Sac & Fox Tribe of the Mississippi in Iowa
 Sac & Fox Nation of Missouri in Kansas and Nebraska
 Sac & Fox Nation of Oklahoma
 Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation
 Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
 San Carlos Apache Tribe of the San Carlos Reservation, Arizona
 San Juan Southern Paiute Tribe of Arizona
 San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, California
 San Pasqual Band of Diegueno Mission Indians of California
 Santa Rosa Indian Community of the Santa Rosa Rancheria, California
 Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
 Santa Ynez Band of Chumash Mission Indians of the Santa Ysabel Reservation, California
 Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
 Santee Sioux Tribe of the Santee Reservation of Nebraska
 Sauk-Suiattle Indian Tribe of Washington
 Sault Ste. Marie Tribe of Chippewa Indians of Michigan
 Scotts Valley Band of Pomo Indians of California
 Seminole Nation of Oklahoma
 Seminole Tribe of Florida, Dania, Big Cypress & Brighton Reservations
 Seneca Nation of New York
 Seneca-Cayuga Tribe of Oklahoma
 Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake)
 Sheep Ranch Rancheria of Me-Wuk Indians of California
 Sherwood Valley Rancheria of Pomo Indians of California
 Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
 Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
 Shoshone Tribe of the Wind River Reservation, Wyoming
 Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
 Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
 Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
 Skokomish Indian Tribe of the Skokomish Reservation, Washington
 Skull Valley Band of Goshute Indians of Utah
 Smith River Rancheria of California
 Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California
 Sokoagon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin
 Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
 Spokane Tribe of the Spokane Reservation, Washington
 Squaxin Island Tribe of the Squaxin Island Reservation, Washington
 St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation
 St. Regis Band of Mohawk Indians of New York
 Standing Rock Sioux Tribe of North & South Dakota
 Stockbridge-Munsee Community of Mohican Indians of Wisconsin
 Stillaguamish Tribe of Washington
 Summit Lake Paiute Tribe of Nevada
 Suquamish Indian Tribe of the Port Madison Reservation, Washington
 Susanville Indian Rancheria of Paiute, Maidu, Pit River & Washoe Indians of California
 Swinomish Indians of the Swinomish Reservation, Washington
 Sycuan Band of Diegueno Mission Indians of California

Table Bluff Rancheria of Wiyot Indians of California	Yomba Shoshone Tribe of the Yomba Reservation, Nevada	Egegik Village
Table Mountain Rancheria of California	Ysleta Del Sur Pueblo of Texas	Eklutna Native Village
Te-Moak Tribes of Western Shoshone Indians of Nevada	Yurok Tribe of the Yurok Reservation, California	Native Village of Ekuk
Thlopthlocco Tribal Town of the Creek Nation of Oklahoma	Zuni Tribe of the Zuni Reservation, New Mexico	Ekwook Village
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota	Native Entities Within the State of Alaska Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs	Native Village of Elim
Tohono O'odham Nation of Arizona (formerly known as the Papago Tribe of the Sells, Gila Bend & San Xavier Reservation, Arizona)	Village of Afognak	Emmonak Village
Tonawanda Band of Seneca Indians of New York	Native Village of Akbiok	Evansville Village (aka Bettles Field)
Tonkawa Tribe of Indians of Oklahoma	Akiachak Native Community	Native Village of Eyak (Cordova)
Tonto Apache Tribe of Arizona	Akiak Native Community	Native Village of False Pass
Torres-Martinez Band of Cahuilla Mission Indians of California	Native Village of Akutan	Native Village of Fort Yukon
Tule River Indian Tribe of the Tule River Reservation, California	Village of Alakanuk	Native Village of Gakona
Tulalip Tribes of the Tulalip Reservation, Washington	Alatna Village	Galena Village (aka Louden Village)
Tunica-Biloxi Indian Tribe of Louisiana	Native Village of Aleknagik	Native Village of Gambell
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California	Algaaciq Native Village (St. Mary's)	Native Village of Georgetown
Turtle Mountain Band of Chippewa Indians of North Dakota	Allakaket Village	Native Village of Goodnews Bay
Tuscarora Nation of New York	Native Village of Ambler	Organized Village of Grayling (aka Holikachuk)
Twenty-Nine Palms Band of Luiseno Mission Indians of California	Village of Anaktuvuk Pass	Gulkana Village
United Auburn Indian Community of the Auburn Rancheria of California	Yupit of Andreafski	Native Village of Hamilton
United Keetoowah Band of Cherokee Indians of Oklahoma	Angoon Community Association	Healy Lake Village
Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California	Village of Aniak	Holy Cross Village
Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota	Anvik Village	Hoonah Indian Association
Upper Skagit Indian Tribe of Washington	Arctic Village (See Native Village of Venetie Tribal Government)	Native Village of Hooper Bay
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah	Native Village of Atka	Hughes Village
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah	Atqasuk Village (Atkasook)	Huslia Village
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California	Village of Atmautluak	Hydaburg Cooperative Association
Walker River Paiute Tribe of the Walker River Reservation, Nevada	Native Village of Barrow	Igiugig Village
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts	Beaver Village	Village of Iliamna
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville & Washoe Ranches)	Native Village of Belkofski	Inupiat Community of the Arctic Slope
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona	Village of Bill Moore's Slough	Ivanoff Bay Village
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tewakonie) of Oklahoma	Birch Creek Village	Kaguyak Village
Winnebago Tribe of Nebraska	Native Village of Brevig Mission	Organized Village of Kake
Winnemucca Indian Colony of Nevada	Native Village of Buckland	Kaktovik Village (aka Barter Island)
Wyandotte Tribe of Oklahoma	Native Village of Cantwell	Village of Kalskag
Yankton Sioux Tribe of South Dakota	Native Village of Chanega (aka Chenega)	Village of Kaltag
Yavapai Apache Nation of the Camp Verde Reservation, Arizona	Chalkyitsik Village	Native Village of Kanatak
Yavapai-Priscott Tribe of the Yavapai Reservation, Arizona	Village of Chefornak	Native Village of Karluk
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada	Chevak Native Village	Organized Village of Kasaaen
	Chickaloon Native Village	Native Village of Kasigluk
	Native Village of Chignik	Kenaitze Indian Tribe
	Native Village of Chignik Lagoon	Ketchikan Indian Corporation
	Chignik Lake Village	Native Village of Kiana
	Chilkat Indian Village (Kluckwan)	Agdaagux Tribe of King Cove
	Chilkoot Indian Association (Haines)	King Island Native Community
	Chinik Eskimo Community (Golovin)	Native Village of Kipnuk
	Native Village of Chistochuna	Native Village of Kivalina
	Native Village of Chitina	Klawock Cooperative Association
	Native Village of Chuathbaluk (Russian Mission, Kuskokwim)	Native Village of Kluti Kaah (aka Copper Center)
	Chuloonawick Native Village	Knik Tribe
	Circle Native Community	Native Village of Kobuk
	Village of Clarks' Point	Kokhanok Village
	Native Village of Council	Koliganek Village
	Craig Community Association	Native Village of Kongiganak
	Village of Crooked Creek	Village of Kotlik
	Native Village of Deering	Native Village of Kotzebue
	Native Village of Dillingham	Native Village of Koyuk
	Native Village of Diomedes (aka Inalik)	Koyukuk Native Village
	Village of Dot Lake	Organized Village of Kwethluk
	Douglas Indian Association	Native Village of Kwigillingok
	Native Village of Eagle	Native Village of Kwinhagak (aka Quinhagak)
	Native Village of Eek	Native Village of Larsen Bay
		Levelock Village
		Lesnoi Village (aka Woody Island)
		Lime Village
		Village of Lower Kalskag
		Manley Hot Springs Village
		Manokotnk Village

- Native Village of Marshall (aka Fortuna Ledge)
 Native Village of Mary's Igloo
 McGrath Native Village
 Native Village of Mekoryuk
 Mentasta Lake Village
 Metlakatla Indian Community, Annette Island Reserve
 Native Village of Minto
 Native Village of Mountain Village
 Naknek Native Village
 Native Village of Nanwalek (aka English Bay)
 Native Village of Napaimute
 Native Village of Napakiak
 Native Village of Napaskiak
 Native Village of Nelson Lagoon
 Nenana Native Association
 New Stuyahok Village
 Newhalen Village
 Newtown Village
 Native Village of Nightmute
 Nikolai Village
 Native Village of Nikolski
 Ninilchik Village
 Native Village of Noatak
 Nome Eskimo Community
 Nondalton Village
 Noorvik Native Community
 Northway Village
 Native Village of Nuiqsut (aka Nooiksut)
 Nulato Village
 Native Village of Nunapitchuk
 Village of Ohogamiut
 Village of Old Harbor
 Orutsararmuit Native Village (aka Bethel)
 Oscarville Traditional Village
 Native Village of Ouzinkie
 Native Village of Paimiut
 Pauloff Harbor Village
 Pedro Bay Village
 Native Village of Perryville
 Petersburg Indian Association
 Native Village of Pilot Point
 Pilot Station Traditional Village
 Native Village of Pitka's Point
 Platinum Traditional Village
 Native Village of Point Hope
 Native Village of Point Lay
 Native Village of Port Graham
 Native Village of Port Heiden
 Native Village of Port Lions
 Portage Creek Village (aka Ohgsenakale)
 Pribilof Islands Aleut Communities of St. Paul & St. George Islands
 Qagan Toyagungin Tribe of Sand Point Village
 Rampart Village
 Village of Red Devil
 Native Village of Ruby
 Native Village of Russian Mission (Yukon)
 Village of Salamatoff
 Organized Village of Saxman
 Native Village of Savoonga
 Saint George (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
 Native Village of Saint Michael
 Saint Paul (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
 Native Village of Scammon Bay
 Native Village of Selawik
 Seldovia Village Tribe
 Shageluk Native Village
 Native Village of Shaktoolik
 Native Village of Sheldon's Point
 Native Village of Shishmaref
 Native Village of Shungnak
 Sitka Tribe of Alaska
 Skagway Village
 Village of Sleetmute
 Village of Solomon
 South Naknek Village
 Stebbins Community Association
 Native Village of Stevens
 Village of Stony River
 Takotna Village
 Native Village of Tanacross
 Native Village of Tanana
 Native Village of Tatitlek
 Native Village of Tazlina
 Telida Village
 Native Village of Teller
 Native Village of Tetlin
 Central Council of the Tlingit & Haida Indian Tribes
 Traditional Village of Togiak
 Native Village of Toksook Bay
 Tulukak Native Community
 Native Village of Tuntutuliak
 Native Village of Tununak
 Twin Hills Village
 Native Village of Tyonek
 Ugashik Village
 Umkumiute Native Village
 Native Village of Unalakleet
 Qawalingin Tribe of Unalaska
 Native Village of Unga
 Village of Venetie (See Native Village of Venetie Tribal Government)
 Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
 Village of Wainwright
 Native Village of Wales
 Native Village of White Mountain
 Wrangell Cooperative Association
 Yakutat Tlingit Tribe
 Ada E. Deer,
 Assistant Secretary—Indian Affairs.
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 BILLING CODE 4310-02-P

**APPENDIX E - SUMMARY DATA CALL MATRICES AND
POINTS OF CONTACT**

Summary Matrix 1 Tribes as Primary Sponsor, Participating Partner, or Influential Government

Matrix 1 Planning and Engineering Programs FY 89 through FY 94

Division	PE Activities Tribe as Primary Sponsor	Number Tribes Acting as Primary Sponsor	PE Activities Tribe as Participating Partner	Number Tribes Acting as Participating Partner	PE Activities Tribe as Influential Government	Number Tribes Acting as Influential Government
Lower Mississippi Valley Division	0	0	0	0	1	1
Missouri River Division	11	7	8	3	29	13
New England Division	0	0	0	0	0	0
North Atlantic Division	0	0	0	0	9	9
North Central Division	21	14	4	2	8	5
North Pacific Division	17	12	26	15	17	19
Ohio River Division	0	0	0	0	1	1
Pacific Ocean Division **	0	0	0	0	0	0
South Atlantic Division	8	2	0	0	3	2
South Pacific Division	4	3	21	21	1	1
Southwestern Division	175	13	1	1	2	2
TOTALS	236	51	60	42	71	53
** No Federally Recognized Tribes within CEPOD						

Summary Matrix 3

Operations and Maintenance Affecting Tribes

Matrix 3 Operations and Maintenance	Division	Number of Operations and Maintenance Projects Affecting Tribes	Number of Tribes Affected by Operations and Maintenance
Lower Mississippi Valley Division		0	0
Missouri River Division		2	3
New England Division		3	3
North Atlantic Division		0	0
North Central Division		7	7
North Pacific Division		27	28
Ohio River Division		1	1
Pacific Ocean Division **		0	0
South Atlantic Division		1	2
South Pacific Division		0	0
Southwestern Division		3	5
TOTALS		44	49
** No Federally Recognized Tribes within CEPOD			

Emergency Operations - Assistance to Tribes		
Summary Matrix 4		
Matrix 4 Emergency Operations		
Division	Number of Assistance Requests From Tribes	Number of Tribes Requesting Emergency Assistance
Lower Mississippi Valley Division	0	0
Missouri River Division	19	6
New England Division	0	0
North Atlantic Division	0	0
North Central Division	4	2
North Pacific Division	17	16
Ohio River Division	0	0
Pacific Ocean Division **	0	0
South Atlantic Division	2	2
South Pacific Division	2	2
Southwestern Division	6	5
TOTALS	50	33
** No Federally Recognized Tribes within CEPOD		

Summary Matrix 5					Real Estate Outgrants and Transfers		
Matrix 5 Real Estate Actions in Effect for FY 94 and Transfers from FY 89 through FY94							
Division	Number Tribes Receiving Outgrants	Number Acres Outgranted to Tribes or BIA	Number of Outgrants Given to Tribes or BIA	Number of Acres Transferred to BIA			
Lower Mississippi Valley Division	0	0	0	0			
Missouri River Division	9	1851.56	63	6066.25			
New England Division	0	0	0	0			
North Atlantic Division	0	0	0	0			
North Central Division	2	1357.3	5	0			
North Pacific Division	2	24.79	5	186.83			
Ohio River Division	0	0	0	0			
Pacific Ocean Division **	0	0	0	0			
South Atlantic Division	0	0	0	0			
South Pacific Division	0	0	0	0			
Southwestern Division	1	42	1	24			
TOTALS	14	3275.65	74	6277.08			
** No Federally Recognized Tribes within CEPOD							

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APPENDIX F - ISSUE LIST MATRIX AND TRIBAL STATEMENTS

LIST OF TRIBAL STATEMENTS

(1) Mashantucket Pequot Reservation Workshop [NED/NAD]

- a. The availability of technical assistance to the tribes was raised by various representatives concerning different issues.
- b. Help is needed in identifying Federal agencies' responsibility for Tribal work.
- c. There is usually a conflict between regulators. Corps standards were used for the construction and design of project, however, a State regulatory agency decided that it was not acceptable (that the project was "overbuilt"). What can Corps do?
- d. Tribes (specifically Oneida Nation) are not clear on requirements of "consultation" under NAGPRA.
- e. Removal of navigation aids in small harbor.

(2) Orono, Maine Workshop [NED]

- a. Can flood control services be provided for unorganized townships or territory in Maine which are also tribal land?
- b. Several questions were raised dealing with the Corps' authority and responsibilities to remedy various local flood problems including the construction of a beaver dam which is impeding river passage, and authority over bridges built by the Corps or bridges which are flooded or fallen which impede access to tribal lands.
- c. A hydroelectric dam built by Bangor Hydroelectric was recently placed into operation adjacent to Penobscot trust lands. The lowering of the water level associated with the dam has damaged the spawning ground for salmon with future damages also expected. During the planning and consultation process, the Native tribes were not contacted for their views. Can the Corps help?
- d. What type of technical assistance can the Corps provide to the Tribes?

(3) Tampa Seminole Reservation Workshop [SAD]

- a. How can tribal lands be included in FIRM maps showing the 100-year floodplain delineation?
- b. How can tribes get access to H&H data and software?
- c. How can tribes get Water Resource training?
- d. What is the status of NAGPRA on each reservation?
- e. Tribes want to know if the Corps can help with GIS.
- f. How does Corps comply with state water quality standards?
- g. Can the Corps help when there may be problems getting information from SHPO?
- h. A Miccosukee representative said that he had heard that Tribes were exempt from cost sharing for the PAS Program.
- i. Tribes would like Corps to advise them as part of the flood warning communication system.

(4) Buffalo, New York Workshop [NCB]

- a. Respect for Indian sovereignty, rights and lands; understanding traditional Indian ways of life and political systems; traditional views of land ownership and treaties; making tribes aware of future Corps actions.
- b. Natural Resources Development - Tribes care for water, land, wildlife, vegetation resources, etc., for "seven generations" into the future, while the greater white society often exploits natural resources without considering consequences for future generations.

- c. Fishing Rights - Chief Henry mentioned past practice of fishing by spearing and shooting Northern Pike, etc., on the Tuscarora Reservation as an Indian right; consequent complaints from outside community.
- d. Indian Burial Grounds - Chief Henry mentioned the Akso Salt Mine cave-in area (on the Genesee River in Western New York) as an example of an Indian burial ground which wasn't considered in planning the remediation project; he also cited an instance where human remains were found just outside the Tuscarora Reservation during excavations by a utility company (remains were removed by the Tuscaroras and reburied on the Reservation).
- e. District Contracts - Chief Parker inquired about the Federal Contract Set-Aside Program as a possible source of employment and business opportunities for tribes.
- f. Development of Hydropower - Chief Parker raised the question of assistance in developing hydropower on the Tonawanda Reservation with the ultimate goal of becoming self-sustaining in this regard.

(5) Rock Island, Illinois Workshop [NCR]

- a. Flooding: original tribal grounds, cemetery and pow-wow grounds, have traditional/religious/historical significance, grounds prone to flooding due to Iowa River.
- b. Concerned with young tribal members leaving tribal lands and not having good jobs.
- c. Clean out drainage and sewage ditches, up grade, and provide alternative or back up systems. This deficiency may have affected water quality. The tribe is not connected with county municipal water supply and has well water which may be of questionable quality.
- d. Repair/rebuild railroad embankment which can be breached by the Iowa river.
- e. Acquisition of federal Surplus Property for tribal use.

(6) Houghton Lake, Michigan Workshop [NCE]

- a. The Tribal position is that Tribes have primary jurisdiction over all matters within the exterior boundaries of each reservation (on trust, non-trust and non-Native American owned lands within the external boundaries of each reservation), and that the federal trust responsibility applies throughout the reservation. The Tribes feel that absent tribal assumption of authority under the CWA, the federal government (and not states) should handle all permit matters. What is the Corps position?
- b. The existing "public interest" factors listed in 33 CFR 320.4 do not specifically include "tribal interest" factors, such as trust resources and treaty rights. Does the trust responsibility require that "tribal interest" be afforded separate and specific consideration, and perhaps priority over other "public interests" in the 404 permit process?
- c. Since the Native American Tribes are considered sovereign nations, and various treaty rights are recognized by the United States, should primacy or priority be given to tribal desires over other interests, regulations and laws pertaining to regulatory matters with regard to: trust land; non-trust land; external boundaries; and ceded boundaries?
- d. Given the Tribes recognized sovereignty, should Tribes be granted all permit requests unless clear evidence of environmental damage exists (in other words, 404b(1) guidelines and overall public interest balancing should be waived)?
- e. To facilitate the continuing development of a government-to- government relationship, adequate resourcing should be provided to the District.
- f. To facilitate the continuing development of a government-to- government relationship, delineation of the Corps view regarding its trust responsibility pertaining to regulatory matters must be provided.

- g. The Ziibiwing Cultural Society (ZCS), the Cultural Preservation Department of the Saginaw Chippewa Tribe would like to help facilitate government to tribes area responsibility of uncovered burial grounds.
- h. No funding for Tribes to improve technical staff and ability to run Corps programs (on/off reservation).

(7) Bloomington, Minnesota Workshop [NCS]

- a. Some trust resources, such as burial sites and medicinal plants, are best protected by concealing their locations. If the tribes must identify those resources during regulatory permitting process to prove an adverse impact, the Corps should assure that the location of these resources will not be revealed.
- b. Tribes are not notified prior to General Permits being issued the way they are for Individual Permits. The General conditions of Nationwide Permits are not applicable for activities which effect Tribal Rights, but there is no public review to identify those affects.
- c. Tribes are dependent upon clean water and air for subsistence. If tribes adopt more stringent standards than states, or if changes to the Clean Water Act erode the standards, will the Corps enforce the more stringent standards?
- d. Federal actions which effect tribes should consider Tribal members as a resource. For instance, if an action "only" effects 15 people, but those 15 represent half of the total tribal population, there could be a major impact on the tribe even though there is only a minor impact when considered against the entire state population.
- e. The Corps should consider the long-term impacts of projects, not just the short-term. The Corps normally considers project lives of 40, 50 or in extreme cases 100 years. Tribal policy is to consider effects on the next 7 generations. The costs of closing/dismantling/restoring a site to its natural condition after the project has completed must be considered and planned for when deciding on Federal actions. A mine which causes an economic boom for 20, 30 or 40 years should be weighed against the decades of restoration work required to restore the site, assuming that the damage to the environment is not irreparable.
- f. The District has requested that Tribes define their trust resources and identifying the adverse impact that a proposed action will have on those resources. The Tribes stated that this poses a burden on them, since they have limited manpower and expertise. The District feels that the Tribes are the only ones in a position to know what is considered a trust resource.
- g. There are many Federal agencies with programs that are useful to the tribes. The different Federal Agencies do very little coordination between themselves to assure that the program pieces fit together in an integrated package. It is left up to the tribes to coordinate the activities of all the agencies involved.
- h. Different programs within the various Federal Agencies have different funding cycles, deadlines for submitting applications, etc. In addition, the budgets for the various programs is dependent upon annual appropriations. This makes it difficult for Tribes to plan for the future.
- i. Is the Corps doing anything at the national level to protect Tribal Trust Resources that are effected by Corps programs? For instance, is the Corps doing any lobbying to oppose changes to dilute the Clean Water Act?
- j. There is a maximum of \$300,000 Planning Assistance funds for each state and each tribe. If a state or a Tribe has more studies than the limit, they must prioritize their requests. When the study requests reach the Washington level, they must be prioritized up to the available appropriations. It is unclear how the Tribal requests will be rated against one another or against State requests.
- k. Corps projects and studies take a long time to complete.

l. The Regulatory process has several Washington imposed restrictions which sometimes require Tribes to respond to Public Notices within a tight time frame. Because of limited staff, these deadlines sometimes present a problem.

m. The Tribes believe that the District's definition of Tribal Trust resources is too narrow. Council's opinion is that in order for there to be a trust responsibility, the resource must be specifically mentioned in a Federal legal document such as a treaty or Executive order. The tribes believe that a broader definition which includes all the resources deemed essential by the tribe would be more appropriate.

n. The Regulatory permit evaluation procedures do not include a category for protecting trust resources. There should be separate factor or factors for evaluating the impact to trust resources specifically required in the permit review process. Trust responsibility should be given more weight than the General Public Review.

o. The Regulatory program has provision for Public Hearing, but these are inadequate for issues with high tribal impact. In order to adequately gather information from tribal members, a separate tribal hearing should occur on the reservation. Some tribal members will be unwilling to express their views and beliefs at General Public hearings, especially if there is considerable controversy about the issue.

p. The Corps requests information concerning tribal resources in order to make decisions on permits, operating plans, etc. In order to respond, the tribes are forced to define the resources using Corps of Engineers, Euro-Asian terms. Many resources that the tribes value (spirituality, heritage, one-with-the-earth type concepts) are extremely hard or impossible to define, put in writing and/or quantify.

(8) Wausau, Wisconsin Workshop [NCS/NCE]

a. There is no consistent definition of Trust Responsibility and Trust Resources. The Corps is currently gathering information from various sources, including the National Assessment, in an attempt to better understand its Trust Responsibilities. In order to be a more accurate assessment, the National Assessment Team should include Tribal representatives.

b. The Corps has requested that Tribes define their trust resources and identifying the adverse impact that a proposed action will have on those resources. The Tribes stated that this poses a burden on them, since they have limited manpower and expertise. Sometimes the Tribes are pitted against big companies in permit application decisions, and they don't have nearly the capability or money to identify adverse impacts as the companies have to refute those impacts. It was described as "bows and arrows against big guns". The Corps feels that the Tribes are the only ones in a position to know what is considered a trust resource.

c. In opposing a proposed permit, the Tribes are at a disadvantage because the applicant does not have to disclose all information at the start of the permit process, and yet the clock is running. In the Crandon Mine case, the applicant has yet to disclose the detailed operating plan (where spoil will be stored, the chemical composition of the spoil, how the spoil will be treated) and yet the Tribe has been requested to detail their

Trust Resources and how they will be impacted.

d. There are many Federal agencies that have a trust responsibility to tribes and which have programs that are useful to tribes. The different Federal Agencies do very little coordination between themselves to assure that the program pieces fit together in an integrated package. It is left up to the tribes to coordinate the activities of all the agencies involved.

e. Tribes are concerned about protecting the ecosystem for the next generation. The basic resources are clean water and clean air, without which there would be no life. Other resources, such as wild rice,

religion, culture, are dependent upon these basic resources. The Tribes need help from the Corps to protect the resources that sustain life.

f. In order to understand and fulfil its trust obligations, the Corps must read the Treaties from which that obligation is derived. The Treaties have been in place for many years, they don't change. When interpreting treaty language, ambiguities should be decided in favor of the tribes.

g. The States have no trust responsibility to Tribes; the Federal Government does. When the Corps does work jointly with states, as is the case in the Crandon Mine EIS, the determination of Trust Responsibilities should not be transferred to the States. The Corps should make it clear that it is the one interpreting the Trust Responsibility and making the decision based upon that responsibility.

h. It is a real challenge to constantly educate non-Indians about the Tribes, their values, and their rights. The Corps requests information concerning tribal resources in order to make decisions on permits, operating plans, etc. In order to respond, the tribes are forced to define the resources using Corps of Engineers, Euro-Asian terms. Many resources that the tribes value (spirituality, heritage, one-with-the-earth type concepts) are extremely hard or impossible to define, put in writing and/or quantify.

(9) Choctaw Nation (Eastern) Workshop [SWT(e)]

a. Native American Grave Protection and Repatriation Act and Historic Preservation are important to the tribal governments.

b. Disturbance of the Spiritual Journey has occurred with the disturbance of graves. There needs to be a cultural partnership in the determination of repatriations. Native American input in area of identification of remains is essential. Corps/museums may not have expertise in determining the value.

c. Reburial must be hidden or grave robbers will be back to sell the remains.

d. A inter-tribal re-burial site on Corps Property may best serve the need of the tribes in terms of unclaimed and undocumented remains.

e. The protection of both historic and prehistoric grave sites on Lake Texoma project lands is a critical issue to the Caddo and Chickasaw Tribal Governments.

f. There are many cultural significant lands under what is now the lake or on project lands. (Kaw and Copan)

g. There needs to be recognition the artifacts have other cultural and spiritual importance.

h. Flooding is a concern of those tribal governments which have tribal lands along the Spring River (tributary of the Grand

River). The tribal governments (Wyndotte and Quapaw) are concerned that operation of Grand Lake make impact flooding along the Spring River.

i. Mining in northeastern Oklahoma has caused lead and zinc pollution of area waters. The Wyndotte and Quapaw tribes are concerned about the contamination of their tribal lands and adjacent waters.

j. Corps is arbitrary in enforcing (fines) grass mowing restrictions on Corps lands.

k. There is much confusion about the wetlands law, who enforces it and where is applicable.

l. The Tribal River Authority have an on going disagreement with the Federal government over the Arkansas River bed, along which the Corps has several projects and the McClellan-Kerr Navigation system. The issues are:

-control over the use of the River Bed

- compensation of the use of the River Bed
- compensation of the rock and gravel used to construct the navigation system
- mineral and hunting rights on project lands
- m. Corps of Engineers built Sardis Lake. State of Oklahoma owes the debt, but the tribes are now making claim to owning the water.
- n. The State of Oklahoma has not addressed the issue of water rights in Osage County. This is a principal concern of the Osage Nation in the future.
- o. The Choctaw Nation claims ownership of the water in Sardis Lake Oklahoma.
- p. Delaware Tribe has an interest in Copan lake. The tribe is interested in contract opportunities at the project.
- q. The various cutbacks in government funding will directly impact the Corps in terms of jobs, contract and career opportunities for Native Americans.
- r. Tribes are reluctant to deal with the government because there is a distrust of their motives.
- s. The overall relations between the Corps and Tribal governments can be improved.
- t. If possible, Corps data needs to be integrated into the Geographic Information System data base that is being developed by the Cherokee Tribe.
- u. The original land owners should have priority usage of Corps land especially tribal lands. This should include excessing property.
- v. There is considerable neglect of lands and properties adjacent to state owned lakes.
- w. How will the Corps deal with unidentified remains?
- x. Can the Corps provide environmental audits in support of tribal economic development?
- y. Is all the water storage in Oklahoma under the Corps jurisdiction?
- z. Why are all lakes in Oklahoma under the jurisdiction of one agency?
- aa. What is the Corps policy on the redistribution of dead eagles, hawks and other animals that have traditional importance to Native American tribes.
- ab. Is there a higher priority rating for Native American Tribal Governments doing contract work than for others?
- ac. Who is responsible for current, future and past hazardous waste studies in Ottawa County, Oklahoma?
- ad. Is there a problem with mercury contamination of bass at McGee Creek, Lake OK?

(10) Oklahoma City (Western) Workshop [SWT(w)]

- a. The Corps should develop a regional initiative to implement the NAGPRA, and not wait on regulations to be made.
- b. Cemeteries that have tribal members should be treated like cemeteries with non-Native American remains. Burial areas should be treated with equal respect.
- c. In the past, the Corps has not taken responsibilities for immediate action needed to protect cemeteries, burials and other cultural artifacts related to Native American tribes.
- d. The Corps has held tribal governments accountable for changes in the 404 permitting program. This is a problem especially when the process takes so long and changes occur as the permits are in progress.
- e. All 404 permits and cultural resources issues should be reviewed by affected tribal governments.
- f. Native Americans have trouble accessing waters from lands they once owned.
- g. How does the Corps have control over a resource if it does not own that resource? (Specifically water)
- h. The Federal government contracts with persons who claim to have Native American status. Yet, these contractors have minimal contacts with tribal members and still claim to be a minority contractor.

- i. Corps should participate in Native American Conferences to discuss contracting and employment opportunities. This would also be a forum to discuss the Corps mission and responsibilities.
- j. Native American firms have a difficult time competing with large firms for Corps contracts.
- k. The Corps should coordinate with BIA environmental staff regarding the Corps capabilities.
- l. Small tribes may need assistance in dealing with the Corps and other Federal agencies. They may have some of the same responsibilities as larger tribes but do not have the staff to accomplish the mission. Each tribe is unique, not only culturally but also in its government to government relation. Corps needs to be flexible to accommodate the unique political character of each tribe.
- m. Tribes need more time to consider issues and questions that come up. Tribal governments' staff are often small and can not respond in allotted time frames. In areas of repatriation, tribal governments need time for developing appropriate ceremonial items and ceremonies.
- n. There needs to be more cooperation between the Corps and tribal governments in solving problems.
- o. Why does the Corps continue with the Red River Chloride Control Project when the Corps has made an agreement to stop?
- p. More contact needs to be made with the tribes for meaningful conversation between the tribes and the Corps.
- q. There needs to be a cooperative spirit between the Corps and Tribes in terms of finding potential economic opportunities.
- r. Tribes should be contacted when Corps activities take place adjacent or near tribal lands.
- s. There should be no unilateral decisions in dealing with surplus lands that were once tribal lands. The same applies to water rights.
- t. Tribes place a high value on Land. Land and associated resources have cultural, religious and traditional significance to tribes that may not be shared by local, state, and Federal governments.
- u. How many minority contractors does the Corps have and how many are Native American?
- v. Do tribes have to go through the states for Planning Assistance to States program?
- w. When will the Native American Graves Protection and Repatriation Act inventory list be made available?
- x. Can the Corps provide technical assistance for National Historic Registry Projects?
- y. Are General Investigation studies for tribal governments 100 percent Federally funded? How much money is available?
- z. Tribes are forced to adhere to the State regulations when only Federal laws apply (Kaw). Do tribes have to meet state regulations when the tribes lease Corps lands?
- aa. Can tribes have access to surplus water quality instruments?
- ab. Can the Corps provide technical services to tribes such as the bank erosion on Black Bear Creek?
- ac. What are some of the funding sources for the Tribal governments water resource/environmental programs?
- ad. Can tribes be included in a market feasibility study under the Partners for Environmental Progress Program?
- ae. Is anyone working on the nitrate groundwater problems?
- af. Is the Corps concerned about future drought? How can the tribes be involved in drought contingency plans?
- ag. What is considered a navigable water? Is the Washita River a navigable river?
- ah. Does the Corps provide Technical Assistance for developing natural resources and environmental protection (such as landfills)?

- ai. Can there be more Department of Defense contracts that are directed toward providing tribal members more jobs?
- aj. Does the Corps contract out any of its 404 permitting work?

(11) Redding, California Workshop [SPK]

- a. Pomo Indians want to gather herbs near Lake Mendocino and want to acquire Pomo cultural center at Lake Mendocino.
- b. Notification of Base Realignment and Closure Act proposals.
- c. Better direct notification of proposed actions that might affect tribes. Also, Corps should make a presentation about a proposed project to the appropriate Tribal Councils.
- d. Concern about getting flows the tribes were promised when the Trinity River Dam was built.
- e. Potential well contamination due to stream flooding.
- f. Status of permit for gravel operations in northwestern California stream.
- g. Construction of bridge abutments that have eroded away. Bridge is on reservation.
- h. Concern whether Corps had issued any 404 permits for development on Mt. Shasta. Mt. Shasta is a sacred mountain to several tribes in northern California.
- i. Flood control assistance for Pinoleville Indian Reservation.

(12) Window Rock, Arizona Workshop [SPL]

- a. Regulatory program -- three Corps districts for the Navajo Nation. They would like there to only be one.
- b. Section 22, Planning Assistance to the Tribes and States program -- tribe felt that the dollar limit should be based on population. Smaller tribes get the same amount as large tribes even though their needs are not as great.
- c. Need for design work on the Navajo Nation landfills which need to be closed. Navajo indicate that landfills are required to be closed by fall of 1995.
- d. Grazing Committee was not able to attend this workshop and would like to hear this presentation. Their representative at the workshop felt that there were some Corps programs which might be useful to their organization.
- e. The Navajo asked about the Corps doing a water supply project.

(13) Phoenix, Arizona Workshop [SPL]

- a. James Hill of the White Mountain Apache indicated a desire to have the Tribe take over the 404 program. Also wanted to know if there was funding for it.
- b. James Hill of White Mountain Apache felt that there should be a single point-of-contact at the Washington level. Also, he felt that there should be an official policy regarding interaction with Native American Tribes.
- c. Suggestion by the tribes that the Corps meet with Intertribal Council of Arizona to present our program.
- d. WRDA --need to get language in upcoming act to provide more services to the tribes, specifically language to modify the cost-benefit computations to take into account the economic realities on the reservations.
- e. Mr. Arnold Taylor of the Hopi would like to have someone from the Corps come out to see what programs could be of benefit to them.

(14) North Pacific Division Workshop [NPD]

- a. Corps Indian consultation process is unsatisfactory. Suggests using experience from Corps tribal consultation (NPP) for Columbia River In-Lieu Fish site project as a model for defining proper future agency tribal consultation.
- b. Limited Corps contact with tribes in past has faulted agency efforts at tribal consultation. Appeal is made for improved communication on a Government-to-Government basis.
- c. Agencies fail to understand the Federal trust responsibility. Agencies need to start with concept of tribal sovereignty to understand the basis for trust responsibility.
- d. Impact of dams upon salmon in Columbia River system; concern is for preservation of salmon runs.
- e. Impact of dams on traditional tribal culture; concern is for cultural survival.
- f. Employment for tribal members at Chief Joseph Dam (which floods part of the Colville Reservation).
- g. Archeological studies on Indian lands and within tribal ceded territory. Consult with tribes on cultural resources agreements; contract with qualified tribes for services within ceded territories; seek tribal approval for studies before the fact.
- h. The Corps needs an Indian policy. Many effects on tribes due to dams and system operations. Not enough tribal consultation. Let's work cooperatively. Specifically, a "Salmon Policy" is needed with the tribes.
- i. The treaties with the tribes are the Indian people's "Contract with America." The Government has a trust responsibility to protect people, rights, and resources.
- j. Provide protection for cultural sites during reservoir drawdowns. Increased reservoir monitoring activity is needed and Archeological Resources Protection Act enforcement.
- k. Actively involve tribes in Corps fishery issues at the local level. Consider Inter-governmental Personnel Act (IPA) positions for tribal fisheries staff.
- l. Look for adequate tribal involvement in Columbia River System Operation Review Study being conducted by the Corps, BPA, and Bureau of Reclamation (Portland OR). Little emphasis on saving salmon. Much study, little action. Disregard for Indian culture and religion.
- m. Desecration and disturbance to graves on a Corps permitted dam on BLM land in Lake County, Oregon, due to lack of tribal consultation.
- n. Use of water in Upper Snake River needs to be considered within the scope of the Columbia River System Operation Review study by Corps, BPA, and USBR.
- o. Lack of faith in Government decision-making, sustained by lack of Corps representation from Washington, D.C. Where are decisions made in the Corps of Engineers?

(15) Omaha, Nebraska Workshop [MRO/MR]

- a. Cost Share requirements for Tribes under Planning Assistance programs are too high and prohibit Tribal participation.
- b. Lack of flood plain delineations on reservations.
- c. Availability of Corps lands to Tribes for recreation development.
- d. Poor infrastructure such as roads and recreation areas on reservation portions of the reservoirs.
- e. Tribal hunting and fishing jurisdiction on Corps land. Tribes do not have authority over non-tribal members on Corps land even within the boundaries of a reservation. Corps should give them jurisdiction by regulation (Change to Title 36).
- f. Confidentiality of cultural resources studies done on project lands or part of planning assistance. Concerned that pot hunters will get information and loot sites.

- g. Relative low priority of Glover's Point as a mitigation site as part of the Missouri River Mitigation construction. Tribe wants it a higher priority.
- h. Availability of Section 404 program for assumption of Tribes. Money and/or training available under program to Tribes.
- i. Flooding of cultural sites below Hungry Horse Dam in Montana caused by water releases from the dam. Flathead Nation is frustrated with lack of concern from Federal agencies involved including the USFS, COE, BOR and BPA.
- j. Lack of fencing along Corps lands.
- k. Federal Acquisition Regulations (FAR) don't recognize sovereign status of Tribes.

(16) Bismarck, North Dakota Workshop [MRO/BM]

- a. Availability of Corps lands to Tribes for recreation development.
- b. Tribal hunting and fishing jurisdiction on Corps land. Tribes do not have authority over non-tribal members on Corps land even within the boundaries of a reservation. Corps should give them jurisdiction by regulation (Change to Title 36).
- c. Confidentiality of cultural resources studies done on project lands or part of planning assistance. Concerned that pot hunters will get information and loot sites.
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- g. Lack of fencing along Corps lands.
- h. Poor infrastructure such as roads and recreation areas on reservation portions of the reservoirs.
- i. Federal Acquisition Regulations (FAR) don't recognize sovereign status of Tribes.
- j. Cost Share requirements for Tribes under Planning Assistance programs are too high and prohibit Tribal participation.
- k. Lack of flood plain delineations on reservations.

(17) Billings, Montana Workshop [MRO/BL]

- a. Cost Share requirements for Tribes under Planning Assistance programs are too high and prohibit Tribal participation.
- b. Lack of flood plain delineations on reservations.
- c. Availability of Corps lands to Tribes for recreation development.
- d. Tribal hunting and fishing jurisdiction on Corps land. Tribes do not have authority over non-tribal members on Corps land even within the boundaries of a reservation. Corps should give them jurisdiction by regulation (Change to Title 36).
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- h. Flooding of cultural sites below Hungry Horse Dam in Montana caused by water releases from the dam. Flathead Nation is frustrated with lack of concern from Federal agencies involved including the USFS, COE, BOR and BPA.
- i. Poor infrastructure such as roads and recreation areas on reservation portions of the reservoirs.
- j. Lack of fencing along Corps lands.
- k. Federal Acquisition Regulations (FAR) don't recognize sovereign status of Tribes.

(18) Albuquerque, New Mexico Workshop [SWA]

- a. Recreation development by the Santa Ana Pueblo at Jemez Dam.
- b. Structural integrity of an earthen dam (Santa Ana #2) on the east side of Santa Ana Pueblo.
- c. Several Tribes were interested in irrigation structures, such as acequias and associated diversion dams, stock ponds, etc.
- d. Bank stabilization along the Jemez River.
- e. Stagnant water/mosquitos/water impoundments around Jemez Dam.
- f. Several Tribes were interested in flood plain mapping/ determinations/management, etc.
- g. Invasion of the bosque by Russuan Olive and Tamarisk.
- h. What is the extent of COE's (Albuquerque District's) compliance with the Native American Graves Protection and Repatriation Act (NAGPRA).
- i. Erosion control. Most of the kinds of erosion control of interest to those in attendance (arroyos, thunderstorm runoff, etc.) is not within COE authorization.
- j. Do tribes compete against each other for Planning Assistance to States and Tribes (PAS) money? What kinds of projects? How large? Limitations? Relationships between PAS and Flood Plain Management Studies.
- k. A number of questions concerning additional details or clarifications about the 404 permit process. Also wanted to know how often, when, and at that elevation aerial surveillance was conducted. There was a concern that a ceremony could be interrupted. Wanted to know if a permit were required to stabilize a bank which would impact a shrine if it continued to erode.
- l. Several Tribes were interested in domestic water supply both at the Pueblo level and at the household level.

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13. ABSTRACT (Maximum 200 words) This assessment presents findings and recommendations of the Native American Intergovernmental Relations Task Force for improving intergovernmental relations between the Civil Works Program of the U.S. Army Corps of Engineers and Federally Recognized Native American tribal governments. The assessment represents the first agency-wide examination of Corps-tribal relations performed by the Corps of Engineers. Many of the terms used to explain the findings and issues in the report have a specific definition when applied to tribes. This report does not address military construction or installation management activities involving the Corps of Engineers as they relate to tribal intergovernmental relations. By adopting a number of recommendations of this assessment with respect to internal organizational factors, the Corps can build upon the successes of field strategies and provide a clear, consistent and achievable set of goals. The result will be focused communication that will enable the Corps to improve intergovernmental relations with Federally Recognized Tribes.				
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