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THE ACCIP ECONOMIC DEVELOPMENT REPORT:

ECONOMIC DEVELOPMENT ISSUES
OF CONCERN TO INDIANS OF CALIFORNIA

A Report by the
Advisory Council on California Indian Policy
September, 1997
ACCIP ECONOMIC DEVELOPMENT TASK FORCE

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# TABLE OF CONTENTS

Summary ........................................................................................................... 1

Recommendations ........................................................................................... 3

Preface ................................................................................................................ 8

I. Introduction .................................................................................................. 10

II. The Role of Tribal Sovereignty in Economic Development ....................... 10

III. Obstacles to Development of Viable Reservation Economies .................... 11
    A. Judicial Obstacles to Tribal Economic Development ............................. 12
        1. State Taxation of Non-Indian Lessees of Allotted Trust Lands ........... 12
        2. Application of Local Zoning Laws to Reservation Lands ................. 14
        3. State Taxation of Indian-Owned Fee Lands ..................................... 14
    B. Legislative Obstacles to Tribal Economic Development—Gaming ......... 15
    C. Attempts to Limit Tribal Economic Development Based on the “Undesirability” of the Proposed Development ................................................. 17

IV. Some Possible Models for Tribal Economic Development in California ....... 19

V. Surveys of California Indian Tribes .............................................................. 21
    A. Survey Methods ....................................................................................... 21
    B. Survey Results ........................................................................................ 22
    C. Conclusions .............................................................................................. 34

VI. Tribal Case Histories ................................................................................. 35
    A. Karuk Tribe of California ........................................................................ 35
    B. Redding Rancheria .................................................................................. 36
    C. Scotts Valley Band of Pomo Indians of the Sugar Bowl ...................... 37
    D. Sycuan Band of Mission Indians ............................................................ 37
    E. Tule River Indian Tribe ........................................................................... 37
    F. Conclusions .............................................................................................. 38

Endnotes ........................................................................................................... 41
SUMMARY

The prospect of economic development for most California tribes is grim. Although California Indian tribes consistently express their desire to develop economically in ways that are culturally appropriate and environmentally safe, very few opportunities exist to do so. One major obstacle is that most tribes in California have land bases that are too small to support business development, are usually isolated from business centers, and lack natural resources that can be put to commercial use.

The other major obstacle is that years of inequitable funding of tribal governments in California has left them without the administrative capability and infrastructure necessary for successful economic planning. The federal government's neglect has forced many California tribes to focus on basic issues of survival, rather than on the more practical issues associated with economic development. Thus, the majority of California tribal governing bodies are not experienced in management, preparation of business plans, organizational development, legal and physical infrastructure development, critical analysis of market opportunities and project feasibility, accessing capital for enterprise development, or labor force requirements.

This combination of obstacles has left the tribes with limited options. For those tribes located near large urban centers or recreation areas, gaming operations are an alternative because they require a relatively small capital investment compared to their profit and job-generation potential. But while gaming has provided the economic mechanism through which some California tribes have dramatically reduced poverty and unemployment on their reservations, California's hostility to Class III gaming operations and the resulting lack of tribal-state Class III gaming compacts, has jeopardized this area of federally-sanctioned tribal economic development. Also, some reservations with areas of open, unproductive land located near urban areas have become targets for private waste management companies seeking new locations for municipal and industrial waste disposal.

Both of these kinds of economic development are often perceived as "undesirable" either because of the nature of the economic activity or their potential to create adverse social and environmental effects. Even when those effects have been adequately addressed by the tribe or, in appropriate circumstances, an involved federal agency, opposition to tribal development initiatives often continues.

The report's review of selected tribal case histories reveals that some federal activities have contributed to the economic well-being of tribes. First, the presence of Indian Health Service-contracted clinics has contributed to the development of the administrative capacity of contracting tribes. Second, the Bureau of Indian Affairs' (BIA) Area Credit Office has, in some cases, been able to facilitate access to managerial and technical expertise, as well as access to equity and debt financing for tribal ventures. This assistance was very valuable to the tribes that received it. Unfortunately, allocations of federal dollars to the BIA's economic development programs have declined dramatically since 1993 and tribes have found it extremely difficult or
impossible to access loans for enterprise development, even when viable market opportunities have been identified, technical assistance has been available, and enterprise feasibility has been determined. Third, there was a tendency among California tribes—after years of struggling to develop alternative kinds of enterprise development and facing ever-increasing tribal unemployment and poverty rates—to turn to gaming, as sanctioned under the Indian Gaming Regulatory Act of 1988, as the most immediate source of relief. Yet, the viability of gaming as a primary means of achieving long-term tribal economic development is now in question because of the lack of any tribal-state compact for Class III gaming in California and the Supreme Court’s recent decision foreclosing any tribal remedy against the State when it refuses to make good faith efforts to negotiate such a compact.¹ Still, it appears that until the market for casinos becomes inundated, a significant number of California tribe’s will turn to the gaming industry as their only viable alternative to the growing levels of reservation poverty and unemployment, and the trend towards further reductions in federal funding for Indian programs.

The report identifies legal obstacles to tribal economic development and suggests ways in which Congress can clarify tribal taxing and regulatory authority to remove them, thereby enhancing the tribes’ ability to initiate and sustain economic development, and reap the full benefit from the use of reservation lands and resources. In addition, the report discusses various models for economic development, including the creation of tribal enterprise zones and a Tribal Homelands Private Investment Corporation, similar to the Overseas Private Investment Corporation, as a means of stimulating private investment in underdeveloped and developing tribal economies in California.
RECOMMENDATIONS

- General Policy Guidelines

1. Federal policy initiatives for Indian economic development in California must acknowledge and respond to the diverse and unique situations of Indians in California. Policy initiatives should not pit federally recognized tribes against unacknowledged tribes, unaffiliated Indians or the large urban Indian-population.

2. Federal policy initiatives for Indian economic development in California must address the potential conflict between sovereignty and trust responsibility by accommodating tribal self-determination on the one hand and assuring that the federal trust responsibility is properly discharged on the other.

- Base Level Funding—Development of Tribal Capacity

3. There must be an immediate response to the needs of California tribes through a special appropriation of multi-year, base level funding to provide tribes with sufficient and stable funding to address basic governmental and programmatic infrastructure issues. Base level federal funding is necessary to develop tribal governmental capacity to initiate economic development, and multi-year funding is critical to long-range tribal planning and attainment of economic development goals.

- Land Acquisition and Administration

4. The Secretary of the Interior should coordinate with Interior agencies and other cabinet level officers to develop a comprehensive approach for identification of public and other federal land that could be made available for disposal to California tribes for housing, economic development and cultural and natural resource protection purposes. The policy should allow land management agencies to enter into three-party land transactions involving agencies, tribes and private landowners as a means of facilitating tribal acquisition of private lands located on or near reservations. If development of such a policy is not within the existing authority of the Secretaries, Congress should enact legislation providing authority for such transactions.

5. The Secretary of the Interior should work with the California tribes to develop a comprehensive tribal land acquisition program, similar to but more expansive than past initiatives under the Indian Reorganization Act (IRA) and other statutes. Emphasis should shift from isolated, non-productive parcels to lands that may provide viable economic development potentials.

California tribes that were parties to the 18 treaties negotiated in 1851-52 would have retained 8.5 million acres of their aboriginal homelands had the treaties been honored by the
Senate. When the Senate refused to ratify the treaties and Congress extinguished the California tribes' land claims in the California Land Claims Act of August 3, 1851, the tribes lost claims to their entire aboriginal homeland, totaling more than 70,000,000 acres. Today, the tribal land base in California is just over 400,000 acres (about .6% of the aboriginal land base), with an additional 63,000 acres of land held in individual trust allotments. Given this history and the large number of impoverished, resource-poor tribes in California, even a modest program of land acquisition should have as its target a long-term goal of returning thousands of acres of public lands to tribal ownership.

6. Existing land acquisition programs, such as that administered by the Department of Housing and Urban Development (HUD), should be expanded and strengthened through interagency coordination and streamlining of the bureaucratic processes (e.g., by designating an agency official to coordinate BIA/IHS/HUD involvement). In addition, the existing formulas for determining grants should be revised so that they do not discriminate against small tribes.

7. The process for transfer of lands from fee-to-trust status needs to be facilitated in California by:
   a. legislative or regulatory reform to allow identification of "land consolidation areas" (perhaps corresponding to aboriginal territories or service areas) within which acquired lands may be treated as contiguous to reservations.
   b. a unitary, coordinated environmental review process.
   c. a comprehensive program to address land contamination issues, including environmental review requirements related to land acquisition and the procedures for assessing and resolving contaminant issues. The program should facilitate a process for transferring or donating to tribes private lands within Indian country that have undergone environmental cleanup.

● Off-Reservation Economic Opportunities

8. There is a need to explore tribal economic development opportunities that are not tied to a land base or restricted to Indian country. For example, a program should be developed to provide tax or other incentives for private businesses that promote Indian participation or commit to support tribal economic development by pursuing Indian training and employment goals. Given the inadequate and geographically dispersed land bases of California tribes, such programs should not be restricted to reservation lands, although reservation-based businesses might be given greater incentives.
• Expansion of Existing Programs/New Programs

9. Existing Indian economic development programs should be reauthorized and expanded. For example:

a. The BIA Loan Guaranty Program and the administering Sacramento Area Credit Office should be funded at increased levels.

b. The BIA should provide training and technical assistance in tribal governance and political infrastructure development, particularly to newly recognized and restored tribes.

c. The BIA should strengthen enforcement of its federal trust responsibility in order to ensure the protection of natural resources held in trust (tribal and allotted). A mechanism for such enforcement might be the creation of a joint review board comprised of BIA, other federal, and tribal officials who would review plans for economic development activities that are opposed by tribal members on the basis of threats to cultural, environmental or physical health.

10. Congress should enact legislation creating a California Tribal Homelands Private Investment Corporation, similar to the existing Overseas Private Investment Corporation (OPIC), as a means of encouraging American, including Native American, private investment in underdeveloped and developing tribal economies in California, through a program of direct loans and loan guarantees that provide medium- to long-term funding to ventures involving significant equity and/or management participation by American businesses.

• Technical Assistance—Building Tribal Capacity

11. Funding should be made available to support training of California tribes and individual tribal members in a broad range of technical areas, including but not limited to administrative capacity building, physical and social infrastructure development, strategic planning for business and economic development, marketing and business feasibility analysis, business plan development, business management, and federal and state laws relating to tribal economic development.

• Gaming

12. The Secretary of the Interior, pursuant to the federal trust responsibility, should promulgate regulations establishing a procedure to allow a tribe to engage in Class III gaming if a state fails or refuses to enter into good faith negotiations to conclude a tribal-state compact under the Indian Gaming Regulatory Act (IGRA).
Congress, in addition to or in the absence of Secretarial action to promulgate regulations providing a remedy to tribes under the IGRA when a state fails to negotiate in good faith, should amend the IGRA to establish a fixed time period, once a tribe initiates discussion with a state on a Class III gaming compact, in which to conclude the compact, but if a compact is not concluded despite the good faith efforts of the tribe within the statutory time period (e.g., 90 or 180 days), the tribe should be able to go directly to the Secretary of the Interior for approval of its Class III gaming operation.

California has a long and ugly history of opposition to any form of tribal sovereignty. From the initial decision of the State Legislature in 1852 to oppose Senate ratification of the 18 Indian treaties negotiated by federal commissioners, and the State's resulting genocidal policies of enslavement and "extermination" of the Indian population, to the modern-day opposition to the exercise of reserved Indian fishing rights and tribal regulatory and taxing authority, California has demonstrated its hostility to tribal sovereign authority and the continued efforts of the indigenous peoples of California to chart their own political and economic destiny. Thus, the good faith negotiations that Congress envisioned would occur between the tribes and the States under IGRA immediately encountered the institutional hostility of California to tribal sovereignty. IGRA anticipated this problem and provided a federal court remedy where a state refuses or fails to engage in good faith negotiations initiated by a tribe. This remedy, however, disappeared with the Supreme Court's decision in Seminole Tribe of Florida v. Florida, leaving the states free to flaunt the good faith provisions of IGRA without sanction. California has taken full advantage of its immunity by resisting good faith efforts by the gaming tribes of California to conclude tribal-state compacts on Class III gaming operations. In short, the Congressional compromise of tribal jurisdiction reflected in the IGRA has not worked in California.

What are the alternatives? One would be for Congress to specifically amend the IGRA to eliminate the States' participation, through the mechanism of compacting, in the Class III approval process. In other words, to return to the "bright line" rule that existed prior to the IGRA, modified only by a process of Secretarial review and approval similar to that which exists in the IGRA. Such an amendment would probably not succeed because the compacting process has worked in other states, and because the States would undoubtedly oppose any process that foreclosed their involvement in decisions on Class III gaming. A more realistic and acceptable alternative for both States and tribes would be to amend the IGRA to establish a fixed time period for a tribe and a state to conclude a compact on Class III gaming once the tribe has initiated the process. Then, if a compact is not concluded despite the good faith efforts of the tribe within the statutory time period (e.g., 90 or 180 days), the tribe should be able to go directly to the Secretary of the Interior for approval of its Class III gaming operation in accordance with applicable statutory or regulatory criteria. Certainly, such an alternative would reinstate the process with the elements of state accountability and fair dealing that Congress originally intended in passing the IGRA, but which Seminole undermined through its broad interpretation of the States' Eleventh Amendment immunity.
• Tribal Jurisdiction

1. Enact legislation recognizing that tribal governmental powers are coextensive with the boundaries of the tribe’s reservation, and that the tribe’s powers are exclusive on Indian lands within the reservation boundaries and concurrent on non-Indian lands. The legislation should expressly preempt the imposition of a state possessory interest tax on non-Indian lessees of Indian trust lands within reservation boundaries.

The Supreme Court’s decisions in *Brendale*7 and *Yakima*8 substantially undermined tribal taxing, planning and regulatory authority. Those decisions allow states to reach into the territories of sovereign tribes to implement potentially conflicting zoning and land use policies on non-Indian lands, and to derive tax revenues from Indian-owned fee lands. The approach recommended above emphasizes the “territorial” aspect of Indian sovereignty by focusing the determination of jurisdiction on the “Indian country” status of the area rather than the trust or fee status of individual parcels.
PREFACE

The following is an excerpt from the statement of Representative Bill Richardson, former Chairman of the House Subcommittee on Native American Affairs, made in response to proposed budget cuts during the summer of 1995.9

[W]e need to seriously examine and rethink our relationship with Indian country. In order to do so, we must:

- recognize that tribes are sovereign entities and not merely another set of minority or special interest groups.
- acknowledge our moral and legal responsibility to protect and aid Indian tribes.
- adhere to a set of principles that will enable us to deal fairly and honestly with Indian tribes.

From the founding of this Nation, Indian tribes have been recognized as "distinct, independent, political communities" exercising the powers of self-government, not by virtue of any delegation of powers from the Federal government, but rather by virtue of their own inherent sovereignty. The tribes' sovereignty pre-dates the Constitution and forms the backdrop against which the United States has entered into relations with the Indian tribes.

The United States also has a moral and legal trust responsibility to Indian tribes. Since the founding of the country, the U.S. has promised to uphold the rights of Indian tribes, and serve as the trustee of Indian lands and resources. The U.S. has vowed, through treaties such as the 1868 Navajo treaty, that Indians would be housed, educated, and afforded decent health care. We have failed on nearly every count.

Perhaps we need to look to the past in order for us to understand our proper relationship with Indian tribes. More than two centuries ago, Congress set forth what should be our guiding principles. In 1789, Congress passed the Northwest Ordinance, a set of seven articles intended to govern the addition of new states to the Union. These articles served as a compact between the people and the States, and were "to forever remain unalterable, unless by common consent." Article Three set forth the Nation's policy toward Indian tribes:

The utmost good faith shall always be observed toward the Indians; their land and property shall never be taken away from them without their consent...but laws founded in justice and humanity
shall from time to time be made, for preventing wrongs to them....

Each of us should memorize these words. Our forefathers carefully and wisely chose these principles to govern the conduct of Congress in its dealing with American Indian tribes. Over the years, but especially in this Congress, we have strayed from these principles—the principles of good faith, consent, justice and humanity. It is time for us to return to and remain faithful to these principles.

As mandated in 1992 by Public Law 102-416, Congress created the Advisory Council on California Indian Policy to conduct extensive investigations of special problems confronting Indians and tribes in California and submit policy recommendations to Congress, the Secretary of the Interior and the Secretary of Health and Human Services. The Advisory Council, each of its specialized committees and task forces, and a multitude of contracted researchers have acted to meet the legislative mandate. In reviewing the findings, conclusions and recommendations contained in this report, we implore all those in a position to facilitate needed changes to act expediently, and to return to and remain faithful to the principles of good faith, consent, justice and humanity.
I. Introduction

Because of the history of California Indian relations with the federal and state governments, California Indians are now at a severe disadvantage with regard to economic development. One major obstacle to economic development for California Indians is the lack of an adequate land base. The limited trust land base in California is a direct result of the Senate’s failure to ratify the treaties with California Indians made during the 1850s, and the federal government’s subsequent failure to acquire sufficient lands for these same Indians. Currently, 18 federally recognized tribes in California have no trust land base at all, and 35 more tribes have less than 200 acres of trust land. Most tribes in California do not have enough land to provide housing to all tribal members, let alone enough land to devote to business enterprises. Moreover, the land that California Indians do hold is mostly isolated from commercial centers or local economies that could support a business. The dearth of trust land also means that most California tribes have no natural resources that can be developed.

Another major obstacle to economic development for California tribes has been the historic and continuing under-funding of federal Indian programs in California. The inequitable treatment of California tribes by the BIA has left most of them scrambling to maintain even minimal administrative structures. Many do not have the infrastructure to support business development. Thus, California tribes have not had the resources, administrative capability or experience to develop business plans, market and feasibility analyses, or land use plans. Nor have they received technical assistance from the BIA to complete these necessary prerequisites to the pursuit of economic development opportunities.

The small size and isolation of most reservations and rancherias, and the absence of natural resources, capital and administrative capability, have left California Indians with almost no means to attain self-sufficiency. For most California tribes, the only businesses that can lure outside investment and have any potential for success are those that take advantage of the tribes’ sovereign status and the inapplicability of state regulatory laws to trust lands. (Even these opportunities are not available to California’s many unrecognized tribes because their sovereignty is not acknowledged by the federal government and they have no trust lands.) Unfortunately, these types of businesses—most notably gaming and industrial recycling—are very unpopular with neighboring non-Indian communities. The result is increased federal regulatory control over these activities, and constant challenges to tribal sovereignty by the State of California.

II. The Role of Tribal Sovereignty in Economic Development

Perhaps more than in any other area of Indian Country, the economic development of most tribes in California until recently has been subject to almost exclusive federal control. This situation still exists for the majority of California tribes.

Federal control is the default mode of tribal economic organization and is inevitably what happens in the absence of the exercise of sovereignty and the institutions that back it up. For
most of California's tribes, the better part of the last century and a half has been a struggle for survival. The mid-nineteenth century American migration to California, spurred by the discovery of gold in 1848, resulted in the mass confiscation of tribal homelands, the dismantling of tribal institutions of self-government and self-sufficiency, efforts to exterminate any Indian tribes that resisted, and widespread poverty within those Indian communities that survived. Reduced to a situation of almost total dependency, the California tribes were not in a position to exercise the types of inherent sovereign powers confirmed by early Supreme Court decisions. Even the passage of the Indian Reorganization Act (IRA) in 1934 did little to restore the institutions of tribal self-government in California because of the continuing influence of the BIA in virtually every aspect of tribal affairs.

The advent of the Self-Determination Era in the 1970s, embodied in the provisions of the Indian Self-Determination and Education Assistance Act provided the first real opening for the exercise of de facto tribal sovereignty in California. Yet, as demonstrated by the recent explosion of litigation around the Indian gaming issue, and further exemplified in the State of California’s long-standing hostility to tribal regulatory jurisdiction, the legal and de facto sovereignty of tribes in California, as elsewhere, has been subject to constant challenge. Still one hears the familiar refrain: if the tribes wish to be sovereign, they must first establish sound, independent economies. The evidence demonstrates just the reverse.

If tribal sovereignty is supported, it offers tribes the primary and most valuable tool for developing sound, non-federal dependent reservation economies. How? By placing those whose resources and well-being are at stake in charge and by offering distinct legal and economic market opportunities, such as reduced tax and regulatory burdens for industry. Indeed, a recent study documented the situation of a cross-section of Indian tribes that had experienced varying levels of economic success and concluded that “[o]ne of the quickest ways to bring development to a halt and prolong the impoverished conditions of reservations would be to undermine the sovereignty of Indian tribes.” The following discussion provides some examples of how judicial and legislative limitations on tribal sovereignty can inhibit tribal economic development.

III. Obstacles to Development of Viable Reservation Economies

The obstacles to the development of viable tribal economies in California include: (1) the limited land and resource base; (2) the difficulties in attracting private investment and capital to impoverished communities; (3) the limited availability of alternative sources of investment financing; (4) the largely unskilled labor force; (5) the lack or inadequacy of reservation physical infrastructure in the form of roads, water and sanitation systems; and (6) the lack of adequate governmental institutions and capacity to plan and implement economic development (reflected in inadequate or nonexistent development planning and policy direction, the lack of necessary codes and ordinances, the absence of courts or other dispute-resolving bodies, and the political instability of Indian communities still mired in a pattern of dependency and hopelessness not of their choosing). The situation is complex and there is no easy, single solution or model to address problems that have their roots in more than a century of neglect, dependency and broken
promises. A comprehensive analysis of these is beyond the scope of this report and will require in-depth, targeted research to devise multi-faceted, flexible economic strategies for dealing with the wide variations in natural resources, political institutions, physical and social infrastructures, and rates of unemployment and poverty, that exist within Indian country in California today.

The following discussion is more limited in scope. It focuses on some of the legal obstacles to tribal economic development and the lack of appropriate incentives and support for California tribes to fully utilize and translate their sovereignty into viable reservation economies.

A. Judicial Obstacles to Tribal Economic Development

This part provides examples of the obstacles to tribal economic development presented by judicial decisions which postulate a short-sighted and unduly limited view of tribal sovereign authority to tax and regulate property rights and activities within reservation boundaries. Each of these decisions is based, to some extent, on the unique history and peculiar nature of Indian land tenure under the Allotment Policy of the late nineteenth and early twentieth centuries. While that policy, grounded in the belief that tribalism must be dismantled in order for the Indian to enter the economic mainstream of American society, was rejected over sixty years ago, its perpetuation in these judicial decisions of a latter era have undermined full implementation of the extant federal policy of tribal self-determination and economic self-sufficiency.

1. State Taxation of Non-Indian Lessees of Allotted Trust Lands

In the 1970s, the Ninth Circuit Court of Appeals decided two cases, Fort Mojave Tribe v. County of San Bernardino and Agua Caliente Band of Mission Indians v. County of Riverside, which upheld the levy of a possessory interest tax by two California counties on the leasehold interests of non-Indian lessees of allotted reservation trust lands. Subsequent decisions of the Ninth Circuit and the United States Supreme Court have eroded these questionable precedents, but neither has been expressly overruled. In the meantime, California counties continue to derive tax revenues from non-Indian leases of Indian trust lands.

At the time Fort Mojave and Agua Caliente were decided, the Supreme Court case law on the preemptive effect of federal statutory schemes in Indian cases was relatively undeveloped. Since then, commencing in the early 1980s, the Supreme Court has rendered a series of decisions in which the comprehensive nature of various federal regulatory schemes involving on-reservation activities were found to preempt the application of state taxes. In addition, in 1987 the Ninth Circuit decided Segundo v. City of Rancho Mirage, which seemed to depart from its earlier holdings in Fort Mojave and Agua Caliente. In Segundo, the Court observed that the statute and regulations governing Indian leasing left “no room” for the application of the City of Rancho Mirage’s rent control ordinances to non-Indians residing on leased allotted lands. The court compared the statutory and regulatory scheme to those involved in three other cases where the Supreme Court had held state law to be pre-empted by federal law, and found the leasing scheme to be “substantially similar” to the federal schemes involved in the other cases. Similarly, in Gila
River Indian Community v. Waddell (Gila River I), decided in 1992, the Ninth Circuit reversed the district court’s dismissal of the Tribe’s suit to enjoin the imposition of a state tax on revenues derived from non-Indian businesses located on leased tribal trust lands. In reversing the district court and remanding for further proceedings, the Ninth Circuit comprehensively reviewed the Supreme Court’s decisions on federal preemption of state taxing authority in Indian cases and observed that “[t]he Tribe has thus alleged precisely the sort of federal involvement in the leasing of its . . . property that could support a claim for the preemption of the State’s taxing authority.”

However, on appeal after remand in Gila River I, the Ninth Circuit in Gila River Indian Community v Waddell (Gila River II) upheld the district court’s rejection of the Tribe’s claims on the merits, holding that neither the federal nor tribal interests involved were sufficient to render the state’s assertion of taxing authority over non-Indian lessees of trust lands unreasonable. In contrast to its decision in Gila River I, the Court in Gila River II downplayed the preemptive effect of the federal leasing scheme and focused on the fact that the state tax was imposed on “receipts from non-Indian, off-Reservation residents . . .,” and that the Tribe’s involvement in the reservation activities on the leased lands was “not sufficient to shift the balance in the preemption inquiry significantly.”

Taken as a whole, the Ninth Circuit decisions create uncertainty and confusion over whether the tribes, as opposed to the state or county governments, will realize the full economic benefit from non-Indian leases of Indian trust lands located within reservation boundaries. This uncertainty should be resolved by Congress in a way that ensures that the economic benefits from the leasing of such lands, whether it be revenues derived from rental income or from taxes, accrue exclusively to the Indians. The balancing test applied in Gila River II should be rejected because it minimizes the territorial aspects of tribal sovereignty in favor of an interest-based analysis which accords undue weight to state economic interests.

Moreover, although the weight of Supreme Court and Ninth Circuit authority would appear to support federal preemption of the state possessory interest tax in most cases, neither Fort Mojave nor Agua Caliente has been expressly overruled by the Ninth Circuit and now Gila River II appears to shift the burden to the tribes to demonstrate that their interests are sufficiently strong to oust state taxing authority over non-Indians. In the absence of a clear statement by the courts, counties that have enjoyed the economic benefits of taxing non-Indian lessees of Indian lands over the years will undoubtedly resist any attempt by the tribes to oust the counties’ possessory interest tax. The result will be protracted litigation based on a fact-intensive balancing test. Congress can short-cut this process by enacting legislation, pursuant to its comprehensive Indian Commerce Clause power, which expressly preempts the imposition of a state possessory interest tax on the non-Indian lessees of Indian trust lands within reservation boundaries.

Such a legislative resolution would have one or more of the following effects where individual Indian lands are being leased: (1) the lease amount realized by the individual Indian lessor should increase assuming that no tribal tax equivalent to the state tax is imposed; (2) if a tribal tax equivalent to the state’s tax is imposed, some or all of the economic benefit realized
from the immunity of the non-Indian lessee from the state tax will be passed on to the tribe; or (3) the economic benefit of the non-Indian immunity from the state tax could be shared under some agreed-to formula between the tribe and the individual Indian lessor. If the lands leased are tribal trust lands, the tribe would realize the full economic benefit of the non-Indian lessee's immunity from state tax in the form of either an increased lease amount or tax revenue (e.g., in a situation where a tribal tax simply replaces the possessory interest tax). In any of these scenarios or combination thereof, the economic benefit of the non-Indian's immunity from imposition of the state tax is passed on to the Indians (either the tribe or the individual Indian lessor, or both). This is where the economic benefit should go, not to the state or county coffers.

2. Application of Local Zoning Laws to Reservation Lands

The Supreme Court decision in *Brendale v. Confederated Tribes and Bands of the Yakima Reservation*,32 presents a major barrier to the effective and uniform assertion of tribal zoning authority over lands within reservation boundaries.

In *Brendale*, the Court upheld exclusive county jurisdiction to zone a parcel of land owned by a non-Indian in an area of the Yakima Indian Reservation, characterized by the lower courts as an "open" area because access to it was not restricted to the general public and almost half of the land was fee land.33 The effect of *Brendale* is to limit tribal planning and zoning authority, and to create the potential for "checkerboard" jurisdiction within reservations where there is a mix of trust and fee lands. This result invites conflict between tribes and local county governments in their respective planning and land use efforts and adds an element of uncertainty and instability that may discourage private investment in reservation economies or impede tribal efforts to protect the reservation environment.34

3. State Taxation of Indian-Owned Fee Lands

In *County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*,35 the Supreme Court upheld the imposition of a state *ad valorem* tax on Indian and tribal fee lands within the Yakima Indian Reservation. These lands were originally allotted in trust to individual Indian owners pursuant to the General Allotment Act of 1887.36 Subsequent to allotment, fee patents had been issued and some of the lands had been reacquired by the tribe.37 The Court interpreted the Act to require that, once a fee patent had issued, the lands became subject to state taxation regardless of the nature of the landowner (individual Indian or Indian tribe).38 The effect of *Yakima* is to subject to state *ad valorem* taxation Indian lands held under fee patent issued pursuant to the Allotment Act. Justice Blackmun, in dissent, pointed out the irony of justifying state taxation of Indian-owned lands within reservation boundaries based on the language, ambiguous at best, and policies of a system which had "pauperize[d] the Indian while impoverishing him, and sicken[ed] his soul while pauperizing him, and cast him in so ruined a condition into the final status of a nonward dependent upon the States and counties."39 Aside from the authority to impose its tax, under *Yakima* the state would have the authority to foreclose on lands for which taxes were past due.40

- 14 -
The combined effect of Brenda Ie and Yakima is to allow the state to reach into the territories of sovereign tribes to implement potentially conflicting zoning and land use policies on non-Indian lands and to derive tax revenues from Indian-owned fee lands. Both decisions undermine the jurisdiction and authority of tribal governments to initiate and carry out the planning, regulatory, and taxing functions essential to an integrated approach to economic development on reservations with mixed land ownership patterns as a result of allotment. Some of the larger Indian reservations in California, such as the Round Valley Indian Reservation, were allotted and have situations similar to that of the Yakima Indian Reservation.

There is a need for Congress to clarify these Supreme Court decisions by expressly recognizing all tribal governmental powers as extending to the full extent of the reservation, and that such powers are exclusive on Indian lands and concurrent on non-Indian lands. This approach would emphasize the "territorial" aspect of Indian sovereignty articulated in earlier Supreme Court cases by focusing the determination of jurisdiction on the "Indian country" status of the area rather than the trust or fee status of individual parcels.

B. Legislative Obstacles to Tribal Economic Development—Gaming

In addition to the barriers presented by judicial decisions, Congress has sometimes limited tribal economic development options by limiting the full range of the tribes' exercise of sovereignty. Congress' decision to legislate in the area of Indian gaming illustrates this point.

In California v. Cabazon Band of Mission Indians, the Supreme Court upheld the exclusive authority of Indian tribes to regulate bingo operations on tribal lands within reservation boundaries so long as the state does not prohibit such activities. While the decision involved bingo operations, its underlying rationale also precludes the States from regulating other types of gaming activities within reservation boundaries. Recognizing this, the States prevailed upon Congress to limit tribal sovereign authority by requiring that certain types of gaming activities, (such as those involving banking card games, electronic facsimiles of games of chance or slot machines) be subject to negotiated agreements between the tribes and the States. In response to the States' arguments, Congress enacted the Indian Gaming Regulatory Act of 1988 (IGRA), which established detailed procedures for the development and regulation of Indian gaming activities, including procedures for concluding tribal-state compacts as to those forms of gaming mentioned above and classified as "Class III" in the Act. In effect, Congress recognized the State's interests in Class III gaming by requiring state approval, pursuant to the compacting process, before tribes could engage in this type of gaming, thus divesting the tribes of their exclusive jurisdiction confirmed in Cabazon.

The tribes initially and understandably resisted this legislative limitation of their sovereignty and the clear line drawn between state and tribal regulatory jurisdiction in Cabazon. However, with the IGRA a fait accompli, the tribes resigned themselves to the compromise and procedures created by statute and began the process of compacting with respect to their proposed Class III gaming activities. In many cases, the tribes eventually received a favorable response
from state authorities who recognized the potential mutual benefits to be achieved by encouraging successful, well-regulated tribal gaming operations, including jobs creation for depressed or non-existent reservation economies, reduction of the states' burden of providing social welfare services to both on and near-reservation areas, revenue and/or tax sharing agreements between the tribes and states, and the development of a climate of cooperation between the tribes and states in other areas of mutual interest. However, the IGRA's compromise of the exclusive tribal jurisdiction affirmed in Cabazon has not fared well in California.

California has a long and consistent history of opposition to any form of tribal sovereignty. From the initial decision of the State Legislature in 1852 to oppose Senate ratification of the 18 treaties negotiated between federal commissioners, and its resulting genocidal policies of enslavement and "extermination" of the Indian population, to its modern-day opposition to the exercise of reserved Indian fishing rights and tribal regulatory and taxing authority in other areas, California has repeatedly demonstrated its hostility towards tribal sovereign authority and the continued efforts of the indigenous peoples of California to chart their own political and economic destiny. Thus, the good faith negotiation process that Congress envisioned would occur between the tribes and the States under the IGRA immediately encountered the institutional hostility of California to tribal sovereignty. The IGRA anticipated this problem and provided a federal court remedy where a state refused or failed to engage in good faith negotiations initiated by a tribe. This remedy, however, disappeared with the Supreme Court's decision in Seminole Tribe of Florida v. Florida, leaving the states free to flaunt the good faith provisions of IGRA without sanction. California has taken full advantage of its immunity from remedy by resisting good faith efforts by the tribes of California to conclude tribal-state compacts on Class III gaming operations. In short, the Congressional compromise of tribal jurisdiction reflected in the IGRA provisions has not worked in California.

What are the alternatives? One is for Congress to specifically amend the IGRA to eliminate the States' participation, through the mechanism of compacting, in the Class III approval process. In other words, to return to the "bright line" aspect of the Cabazon decision modified only by a process of Secretarial review and approval similar to that which exists in the IGRA. Such an amendment would go nowhere because the compacting process has worked in other states, and the States would undoubtedly oppose any process that retrenched from their involvement in decisions on Class III gaming. A more realistic and palatable alternative to the States, and one probably acceptable to most tribes, would be to seek an amendment which established a fixed time period during which a tribe would be required to initiate efforts to reach a compact with the state on Class III gaming, but if the state refused or failed to respond and a compact was not concluded despite the good faith efforts of the tribe within the statutory time period (e.g., 90 or 180 days), the tribe could go directly to the Secretary of the Interior for approval of its Class III gaming operation in accordance with clearly defined statutory or regulatory criteria.

Unfortunately, the controversy over Indian gaming has provoked some additional attempts to impose legislative limits on tribal sovereignty and thereby further impeding tribal economic
development initiatives. An example is the recent introduction of H.R. 325, a bill "to amend the Internal Revenue Code of 1986 to provide that the unrelated business income tax shall apply to the gaming activities of Indian tribes." Until now the unrelated business income tax (UBIT) applied only to certain business activities or religious organizations, charities and similar tax-exempt organizations, and not to any government—tribal, state or local. Indeed, under current law, Indian tribes themselves are not taxable entities for purposes of the Internal Revenue Code.45 While some tribes have realized substantial economic benefits from gaming, including a number of California tribes, this is no justification for withdrawing the tribes' federal tax immunity while preserving that of state and local governments. In effect, this kind of regressive tax initiative penalizes Indian tribes for using their most powerful and effective tool—tribal sovereignty—for reestablishing themselves as not only self-governing, but also self-sufficient entities.

Another recent bill, H.R. 1554, introduced on May 8, 1997, is even broader in application than H.R. 325. It would apply the UBIT to "any Indian tribal organization" defined as "any Indian tribe and any organization which is immune or exempt from tax ... solely by reason of being owned or controlled by an Indian tribe." In other words, H.R. 1554 would impose the UBIT on essentially any activity carried on by a tribal organization for the production of income from the sale of goods or the performance of services. As one author put it, "Indian tribes would be punished for even thinking about succeeding in the marketplace."46

Fortunately, H.R. 1554 never made it out of committee. The fate of H.R. 325 remains undetermined. Both bills reflect a fundamental misunderstanding of the key role of tribal sovereignty as the primary vehicle for raising Indian communities out of decades of poverty. By undermining tribal sovereignty, these short-sighted initiatives will force the tribes into increased federal dependency without other viable alternatives for development, especially at a time when everyone is looking for federal programs to cut.

Instead of attacking the exercise of tribal sovereignty, which has effected positive economic change in some reservation economies where exclusive federal control had largely failed, Congress should reaffirm and expand its support for tribal institutions and development initiatives.

C. Attempts to Limit Tribal Economic Development Based on the "Undesirability" of the Proposed Development

As the alternatives for generating revenues to support essential tribal governmental programs and services have become more limited, some tribes have begun to explore economic opportunities in commercial development that are considered "undesirable" or "unsavory" by those who have little familiarity with, or sympathy for, the grinding poverty of most reservation communities. Thus, in addition to the obstacles that the courts and Congress have placed in the path of tribes striving to create reservation economies and achieve some degree of economic equity vis-a-vis state and local governments, barriers are raised when the proposed development, regardless of its legality and true merit, is perceived as "undesirable." The situation of the Campo...
Band in southern California provides a striking illustration of this "undesirability factor" as a barrier to tribal economic development.

The Campo Band of Mission Indians is a small Southern California tribe with lands located in a semi-desert area at the California-Mexican border. In 1978, and again in the early 1980s, the Band began to investigate the possibility of developing a commercial waste facility as a means of generating both revenue and jobs for its impoverished community. At the time, however, the idea was rejected by tribal voters in favor of exploring other economic development alternatives. Later, in 1987, the Band's General Council reversed course and authorized the Executive Committee to pursue the idea of siting a municipal solid waste facility in an area of the Campo Reservation that was zoned for industrial development.

The Band created two principal entities to manage project development as envisioned by the General Council: (1) the tribally-owned Muht Rei Corporation to address the financial aspects of development; and (2) the Campo Environmental Protection Agency (CEPA) to provide regulatory oversight for the project. The Band implemented these measures, first and foremost, to protect the Indian people of the Campo Reservation, their lands and their legacy for future generations. The ultimate effect of the Band's considered approach to protecting the reservation environment, however, was much broader. It also provided protection for both the near and off-reservation environments and their non-Indian communities. Unfortunately, these communities did not see it that way.

When the Band began interviewing waste companies following its nationwide request for proposals, California State Assemblyman Steve Peace introduced a bill in the State Assembly to assert state jurisdiction on Indian lands as a means of stopping the Band's development initiative. Assemblyman Peace was assisted in this effort by an off-reservation organization, Backcountry Against the Dump (BAD). Motivations for opposition to the development were both varied and complex, but shared a common feature—a misperception of the role and integrity of the Band in the development and regulation of the project based on inaccurate stereotypes of Indian tribes, and poor people in general, as being helpless in the face of economic power asserted by third parties. Thus, the opposition was based on assumptions that the Campo Band was: (1) incapable of providing the necessary fiscal and regulatory control, (2) was the victim of "environmental racism," (3) would not be capable of regulating facilities from which it would derive economic benefit, and (4) that the selection of the appropriate waste management company would be determined in an inequitable manner.

With little in the way of resources, the Band resisted this assault on what it had determined was a viable project. It was eventually assisted in this effort by the management company it selected, Mid American Waste Systems (MAWS). In the end, the Band prevailed in the first test of its regulatory authority when then-Governor Deukmejian vetoed the state bill, citing its conflict with federal law. Undaunted, Assemblyman Peace made another attempt in 1991 to assert state jurisdiction over Indian lands, but this time the Band had more resources at its disposal and was supported by tribes throughout California, the National Congress of American Indians, and the
Native American Rights Fund. Senator Inouye of the Senate Committee on Indian Affairs also voiced his opposition to the bill. Faced with certain defeat, Assemblyman Peace decided to compromise and the bill was subsequently rewritten to authorize voluntary cooperative agreements between State regulatory agencies and tribes, or tribal regulatory agencies, for the purpose of regulating waste facilities. This bill passed the California Legislature and was signed into law by Governor Wilson.

Thereafter, the State Water Resources Control Board and the Integrated Waste Management Board reviewed the Campo Band's regulations and permits and found them to be equal or superior to State regulation. Following these findings, in 1992 the Band became the first tribal agency in California to sign a cooperative agreement with the California Environmental Protection Agency for the purpose of solid waste regulation.

In this instance, a small tribe with limited resources but extraordinary determination and strong personnel was able to overcome an uninformed and hostile public reaction to an unpopular, but environmentally and economically sound proposal. Few tribes in California, given the resources expended in the Campo Band's fight in the courts and Legislature, would be able to prevail in a similar situation. Even Campo would have been hard-pressed without the assistance of its contractor and tribal supporters.

There are disturbing elements in this example of tribal initiative to break the cycle of poverty. One is the view of tribal governments as either helpless in the face of the promise of economic gain, or willing to pursue their economic interests without regard to the effects of development on the reservation and surrounding environments. As a corollary to this, there is an implicit assumption that because tribal governments are generally poor, they lack the integrity and capacity to regulate on-reservation development. In short, it is the public perception of tribal governments, and not their actions or intentions, which most frequently drives opposition to tribal economic development initiatives. Furthermore, if the development or activity that a tribe intends to embark upon is perceived as something undesirable, such as "waste disposal", the prospects for conflict increase dramatically regardless of the merit of the proposal or the substantial economic benefits that would accrue to the tribal and surrounding communities.

IV. Some Possible Models for Tribal Economic Development in California

This part of the report discusses the different economic development models used by tribes in California and suggests some potential new models that might be employed to address limiting factors, such as the generally small size and widely dispersed nature of the Indian land base in California, and the difficulties that small, resource-poor tribes experience in attracting private investment capital.

As discussed earlier, the dominant model of reservation economic development in California has been and continues to be federal control, though this pattern is slowly changing as tribes realize that they have stronger incentives to make appropriate development decisions than
the BIA because they are the ones who more directly bear the costs and reap the benefits of those decisions. Passage of Pub. L. No. 93-638 and the Indian Self-Governance Law,49 coupled with the recent reorganization of the BIA,50 provide additional incentives for tribes to initiate and increase the exercise of tribal authority over reservation economic development.

In addition to federal control, economic development in Indian Country generally tends to follow one model or a combination of the following three: (1) tribal enterprise; (2) private business enterprise with tribal member ownership; and (3) private enterprise with non-tribal member control.51 The success of all of these models depends on the effectiveness of the institutions of tribal government, including mechanisms for dispute resolution; the consistency between these institutions and tribal cultural standards and traditions;52 formal decision rules, procedures, and record systems; and a clear separation of tribal policy and economic development strategy from day-to-day business decisions.

Tribes in California that have begun to break away from federal control of tribal initiatives tend to use the tribal enterprise model or the private enterprise model involving non-tribal member control. The latter model is usually implemented through a management agreement with outside investors, including provisions that insulate management decisions from political interference and are backed up by provisions for third-party arbitration and/or limited waivers of sovereign immunity. Because most California tribes have small land bases and limited resources, their primary sources of development capital are federal grant and loan programs and private investment capital. Private investors, attracted by the potential tax and regulatory advantages offered by doing business on the reservation, and the strategic proximity of some reservations and rancherias to major commercial centers, provide the largest source of development capital to California tribes. Some of the larger California tribes with significant marketable resources, such as timber or minerals, have used their own funds, or a combination of tribal and federal funds, to capitalize tribal enterprises without having to attract private investment.

A further variation on the tribal enterprise model is the tribal consortium. As an increasing number of California’s smaller tribes form both regional and statewide consortia53 in the areas of environmental and natural resource protection as a means of sharing and pooling expertise, it may also prove feasible for these tribes to use the consortium model as a mechanism for launching joint-tribal economic ventures. Since a number of tribes already share expertise in specific areas of resource development through these consortia, it would be logical to explore how these same cooperative arrangements might also be used to provide the capital and strategic direction to support shared interests and goals in achieving reservation economic development.

With respect to the use of the private enterprise model using non-tribal member control, the way in which the United States government subsidizes development assistance to friendly foreign countries is instructive. Some California tribes have suggested that the federal government should extend benefits, similar to those provided by the Overseas Private Investment Corporation (OPIC),54 to investors who are considering investing in developing tribal economies. The purpose of the OPIC is “[t]o mobilize and facilitate the participation of United States private
capital and skills in the economic and social development of less developed friendly countries and areas, thereby complementing the development assistance objectives of the United States. The OPIC supports, finances and insures projects that have a positive effect on U.S. employment, are financially sound, and promise significant benefits to the social and economic development of the host country. Thus, OPIC's mandate is to support projects that are responsive to the development needs of the host country, and foster private initiative and competition. These purposes and goals of the OPIC seem uniquely transferable to the situation of many of California's tribes.

Either the OPIC statute could be amended to extend its coverage to eligible Indian tribes, or Congress could create a separate California Tribal Homelands Private Investment Corporation using the basic structure of the OPIC, but shaping its mandate to state that the development assistance provided is consistent with the trust responsibility of the United States government to the California Indians.

V. Surveys of California Indian Tribes

Although one can observe over time the success or failure of tribal economic development initiatives—the barriers, the opportunities seized or lost, the latent or realized tribal potential—and from these observations reach some conclusions about why some succeeded and others failed, the inquiry would not be complete without hearing from the tribes themselves.

A. Survey Methods

During July and August of 1995, the Center for Indian Community Development (CICD) conducted two surveys of California Indian tribes:

(1) At the time these surveys were commenced, there were 101 federally recognized tribes in California. Since that time, three additional tribes have been recognized or restored: the Ione Band of Miwok Indians of California, the Paskenta Band of Nomlaki Indians and the United Auburn Indian Community of the Auburn Rancheria. Due to time constraints, however, these tribes could not be included in our surveys. In addition, the Alturas Indian Rancheria was inadvertently left out of the survey process. Thus, a total of 100 recognized tribes were included in the survey. Eighty-four tribes responded. Where known, data is included on the tribes that were not surveyed or did not respond (e.g., land base figures from the BIA.) An initial survey was conducted to update published information pertaining to each group included in the 1994 Field Directory of the California Indian Community, published by the Indian Assistance Program, Department of Housing and Community Development, State of California. Of particular interest was land base and population data. The CICD sent each tribal group a copy of the "Tribal Information and Directory" page from the 1994 Field Directory with a cover memorandum to the tribal administrator requesting confirmation if the copied...
information be correct, or a notification of appropriate changes. Only one survey was sent to the Pit River Tribe, which is the federally recognized government for seven different rancherias (Big Bend, Burney, Likely, Lookout, Montgomery, Roaring Creek, and XL Ranch.)

(2) An "Economic Development Issues Survey" was also sent to the tribal administrator of the surveyed tribes. This second survey included an explanatory cover memorandum and a questionnaire designed to identify economic development issues impacting Indian individuals and tribal communities in the state of California. Tribes were asked to complete and return the questionnaire by telefax or using a pre-addressed, postage-paid envelope, or to respond by telephone.

Specialized database programs were developed and used to compile the results of both surveys.

B. Survey Results

(1) Land Base and Population Data. Ninety (90%) of the surveyed tribes (representing 106 land bases) in California responded to the survey requesting updates to the directory information. These responses, however, often included land owned in fee by tribes and individual tribal members. Thus, instead of using the data from the survey responses, BIA data on the trust acreage of each federally recognized tribe located wholly within California was used in Table 1 below.56 The four tribes whose land base straddles the California-Arizona border—the Chemehuevi Indian Tribe, Colorado Indian Tribes, Fort Mojave Indian Tribe, and the Quechan Tribe (Fort Yuma Reservation)—are not included in the following tables because their land lies mostly in Arizona, and they are all under the jurisdiction of the Phoenix Area Office.
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March 3, 1851, 9 Stat. 631. The tribes were unaware of the existence and the implications of the Act, and were still under the belief that the treaties they had signed would be honored. Neither the State of California nor the federal government filed any land claims on behalf of the California Indians, and the notion eventually prevailed that the State's failure to appear before the special claims board on behalf of the tribes nullified their claims. See Flushman and Barbieri at 406-408. After the unratified treaties were made public in the early 1900s, Congress passed a series of appropriations acts to acquire land for California Indians. See § II of the ACCIP Termination Report for a discussion of the land acquisition program.

11. See Table 1, infra.

12. See § II of the ACCIP Trust and Natural Resources Report.


14. See id., § IX.


17. By de facto tribal sovereignty, we adopt the meaning attributed to that term by Cornell and Kalt, i.e. "genuine decision-making control over the running of tribal affairs and the use of tribal resources." Cornell and Kalt, supra note 15, at 14.


20. The Supreme Court in Yakima observed that "the objectives of allotment were simple and clear-cut: to extinguish tribal sovereignty, erase reservation boundaries, and force the assimilation of Indians into society at large." Id., 116 L.Ed. 2d at 695.


24. **Segundo v. City of Rancho Mirage**, 813 F.2d 1387 (9th Cir. 1987).

25. *Id.* at 1393.

26. *Id.*

27. **Gila River Indian Community v. Waddell**, 967 F.2d 1404 (9th Cir. 1992).

28. *Id.* at 1411.

29. **Gila River Indian Community v. Waddell**, 91 F.3d 1232 (9th Cir. 1996).

30. *Id.* at 1236.

31. *Id.* at 1238.


33. *Id.* at 415-416.


37. *Id.;* 116 L.Ed.2d at 696.

38. *Id.* at 687.
39. Id. at 709 (citing Hearings on HR 7902 (Readjustment of Indian Affairs (Index) before the House Committee on Indian Affairs, 73d Cong., 2d Sess., 18 (Memorandum of John Collier, Commissioner of Indian Affairs)).

40. Id. at 710 (Blackmun, dissenting).


42. 25 U.S.C. §§ 2701 et seq.


44. The Spokane Tribe in Washington State has made the argument that, even in the absence of congressional action, either a tribal remedy must be read into the IGRA or it must be declared unconstitutional. See United States of America v. Spokane Tribe of Indians, CS-94-0104-FVS (E.D. WA), Answer, Counterclaims And Third-Party Complaint For Declaratory Judgment, Injunctive and Declaratory Relief, at p. 7 (filed April 5, 1994), currently on appeal to the Ninth Circuit Court of Appeals. Specifically, the Spokane Tribe argued that: (1) if there is no remedy, IGRA is unconstitutional in its entirety; and (2), in the alternative, the Secretary of the Interior has a trust obligation to provide a remedy by promulgating regulations allowing Class III gaming when a state refuses to negotiate in good faith. Id.


46. See, Allogan Slagle, “Groundhog Day” column in News from Native California (Summer 1997), Vol. 10, No. 4, at 49.

47. Most of the following discussion on the Campo Band is excerpted from an article, entitled “1996 RARA Program Decision” by Michael L. Connolly, Director, Campo Environmental Protection Agency, which appears in the Winter 1997 issue of Tribal Vision, a publication of the National Tribal Environmental Council.

48. One can see this “undesirability factor” operating with respect to tribal activities that have involved tobacco, liquor, and gaming. In each of these areas, either the Supreme Court or Congress has taken steps to tightly circumscribe tribal jurisdiction. See State of Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134 (1980); Rice v. Rehner, 463 U.S. 713 (1983); Indian Gaming Regulatory Act of 1988, Pub. L. No. 100-497, 102 Stat. 2467, 25 U.S.C.§§ 2701 et seq. With few exceptions, whenever tribes move from the theoretical to the practical plane of tribal sovereignty by asserting their governmental authority in concrete economic contexts, they are faced with a windstorm of opposition from their “deadliest enemies,” the States and their non-Indian citizens. See United States v. Kagama, 118 U.S. 375 (1886)
("Because of the local ill feeling, the people of the States where they [the Indians] are found are often their deadliest enemies." Id. at 384.)


52. One author points out that Indian cultures share an attitude of respect (encompassing community, inter-connectedness, future generations, and humility) for the world around us and that this necessarily has implications for economic development activities. Ronald L. Trosper, "Traditional American Indian Economic Policy," Amer. Ind. Culture & Research Journal 19:1 (1995), 65-95. Trosper states that the implications of this attitude "suggest that traditional Indian economic policy should be very different from what historically has been called economic development, namely high rates of increase in per capita income, combined with population growth and structural transformation." Id. at 76.

53. See § III of the ACCIP Trust and Natural Resources Report.

54. 22 U.S.C. §§ 2191 et seq.


56. See Bureau of Indian Affairs, Sacramento Area Office, "Trust Acreage - Summary, CY Ending December 31, 1996." The document is attached as Exhibit 1 to the ACCIP Trust and Natural Resources Report.

57. Tribes are listed as they appear in 25 C.F.R. Part 83. If a tribe uses a different name to identify itself, that name appears in parenthesis.


APPENDIX A

OVERVIEW OF TESTIMONY

A. Oral Testimony

As is evident from the following list, the range of topics related to economic development covered by speakers at public hearings was very broad.

- Base funding for tribal administration, need for
- Bingo, tribal/political problems associated with
- Bureau of Indian Affairs, need for Agency-level approval
- Business capital, lack of
- Business expertise, lack of
- Business plans, need for assistance with
- Dumps, targeting of Indian lands for
- Education, limited opportunities and impacts on employability
- Federal budget reductions
- Gaming, need to assist involved tribes
- Gaming, need for assistance from involved tribes
- Health, problems caused by pollution and toxic waste
- Housing
- Income, adequacy
- Infrastructure development, need for
- Land use planning, need for
- Market and feasibility analyses, need for
- Natural resource monitoring, need for tribal control of
- Timber, need to protect
- Salmon, distribution and protection of
- Transportation, personal needs for
- Trust responsibility for protection of natural resources
- Water, control and protection of

Because cultural preservation and natural resource protection are high priorities among most California tribes, they typically take a very cautious approach to economic development, seeking to create employment opportunities by developing business enterprises that are culturally appropriate (or at least not culturally inappropriate) and environmentally safe, as well as economically viable. Ultimately California tribes must decide whether, when and how to pursue economic development given the precarious balances that must be maintained among competing tribal interests, including the traditional subsistence lifestyles of some tribal constituencies. The question of whether to proceed focuses on current information about cultural and environmental impacts, as well as the reasonably expected economic benefits, including job creation and income generation. The question of when to proceed takes into consideration current versus future market conditions, availability and cost of startup and operating capital, and reasonably expected returns on investment. The question of how to proceed emphasizes present and reasonably
attainable managerial and technical capabilities of a tribe, and its overall capacity to compete successfully in various industries with others who have more managerial and technical experience.

Over the past decade it has been increasingly within the decision-making domain of tribal governments whether, when and how to utilize land, fisheries, fossil fuels, forest resources, minerals and other natural resources for the development of economic enterprises. It also has been increasingly incumbent upon those tribal governments whose missions include cultural preservation to pursue economic development with cultural and environmental integrity. The inherent conflicts between economic survival and cultural survival are evident in the testimony of several speakers who addressed the ACCIP:

Many Native Americans are also out of jobs, but what we need is a major economic base owned and operated here in California by our Native American people who care about Mother Earth. Since the 1970s, Native Americans have publicly voiced concern about the exploitation and pollution of the Mother Earth. Now we can see the consequences of such behavior. Each county throughout California has an Indian tribe located nearby or within it. There is a reason for the survival of our people. Some Native Americans still seek their purpose, while others know it. Protection of these lands, harmony with nature, and the various lives which inhabit it, harmony among peoples and devotion to the Great Spirit are the lessons most Americans have yet to learn.

If anyone knows about survival, it is the California Native American Indians. We must establish safety measures for the future to endure these hard times. We are again requesting what was promised to us when treaties were signed but since then have been broken. When contracts are signed, the party which breaches [them] must yield their legal claim or make an effort to meet the terms of the contract. This has yet to be done, since we are not retaining our land, but losing it.

We must have legislation to install a foundation for our economic survival. We must have acknowledgment of our sovereignty and our jurisdiction to govern ourselves equitably with the city and county governments. If we are to remain under the Department of the Secretary of the Interior, Bureau of Indian Affairs, which has determined that we are a natural resource, then we must be placed on a list of endangered species; if we are not, then we are being targeted for genocide in this present system. --Romayne Shepherd Daniels-Yokayo, Public Hearing of July 22, 1994, Sacramento, California

As a result of our recent experiences, we would like to bring to your attention some of the issues that we feel the Council should consider incorporating into its recommendations to Congress regarding comparable opportunities for California Indians. These are, one, stronger enforcement of the federal trust responsibility for natural resources and rights protection. As you probably are aware, the history of the federal government policies in California have focused most
strongly on working against our sovereignty. For the Yuroks and the other tribes in this region, the issues...revolving around reserved water and fishing rights on the Trinity and Klamath Rivers have been developing into a significant test for the trust responsibility of the federal government....

We feel that the tribes in California have not benefitted from the same level of rights protection afforded...other tribes in other states. We ask this council to include recommendations on enhancing the efforts of our federal trustees to focus more economic, administrative and legal resources on this critical issue.

At the present time the Yurok Tribe...has joined with the Karuk Tribe and the Hoopa Tribe and the Klamath Tribe...of Oregon and formed a Klamath River Intertribal Fish and Water Commission to deal with the low flows that [are] causing the decline of our salmon and other fisheries resources of the Klamath River basin. Currently the Bureau of Reclamation is working with us, but [does] not have a clear understanding of our rights as reserved water rights users. They have been basically adhering to the desires of the agricultural (interests) and the eastern California and southern Oregon because those are the people that have been basically...driving the vehicle for quite a while. With tribes coming on board in this forum now, they are having to redraft some of their policies to meet the requirements that they [need] to meet. And those efforts we would appreciate your support on.

Secondly, our cultural resource protection...you are...almost in the heart of a very significant religious area for the Yurok people....It was a tremendous lawsuit that we faced in fighting for the protection of our High Country in that case known as the "G-O Road" case. This issue is of extreme importance to our people. Our burial and other cultural and religious sites have been severely impacted by the migration of non-Indians into our homelands.... --Susie Long, Chair, Yurok Tribe, Public Hearing of May 19, 1995, Eureka, California

The testimony also included several statements regarding the federal government's failure to honor its trust responsibility in allowing (or even allegedly promoting) unsafe economic development by means that exploit tribal sovereignty itself; that is, by means that would be illegal on lands not governed by sovereign tribal nations. The following are examples:

I reside on the Torres-Martinez Indian Reservation—firsthand, I can tell you that this...sewage dump on this reservation is a horrible, horrible sight....it's so putrid it makes you sick....I've only lived there seven months, but in those seven months, it's very horrible. I've gotten eye irritations, sties, almost twice a month since I've been down there.

We've been fighting against these—-not only on Torres-Martinez—Cahuilla and Soboba. There is a proposed project coming onto Soboba, multi-waste solid waste facilities, that we are opposing because...our...reservation is not very large.
[There are] at least 23 children in the vicinity.

And this is what I've been saying to the people on my reservation...I say I'm not against economic development of, for our people. But we can produce something more than a dump. We can...produce something that would be useful, and not desecrating the land or the water, or our people. That's my cry to the people.

And on Torres-Martinez, on Cahuilla, we've been crying out....We shouldn't have to do that. Our leaders in the positions should speak for us, but they have not. They have been, again, the Bureau of Indian Affairs, the E.P.A. We have gone to them...we have shown them documented proof. They have cease and desist orders on both these reservations, and they have not--they have every avenue to shut these things down. But they won't do it, and yet another proposal in Torres-Martinez for extension of this facility is just ridiculous. And I feel sorry for the man [whose] land it's going to be on, because he is not an intelligent man.

But yet the Bureau of Indian Affairs [has] allowed him to sign a contract that he will only get $1,300 a month and can get no more than $1,900 a month. Isn't this sinful, sickening? And these people are making millions, and possibly billions, of dollars--and they've allowed that.

Because of that, we're entrusted to them? And they have a trust responsibility to us? And more so, to that man? And they have not done it. And I am not faulting him for putting on this dump, but my God! What have they done? What is this? The BIA--they're supposed to be on our behalf? Where? And it makes me very angry that they do this to our people.

...Will they hear us in Washington? Will they really [hear] what we're saying, we the people?

....we will be heard. And these...dumps will be stopped! Because you know what? I know that for the right things for our people--we're always crying and saying "survive," and "keep our land, keep our traditions." And if we don't band together we won't have reservations.

There are some people here today [who] are, are here to make their pleas, so that they can be recognized. Are we going to be those types of people? We will be, we'll be annihilated. It's a modern-day massacre. --Lorina Duro, Soboba Indian Reservation, Public Hearing of September 16, 1994, San Diego, California

...I've come to address the issues of the environmental disaster that is happening to the health and the welfare of the Indian people on the Cahuilla reservations because of the promotion of the toxic dumping and dumping on our reservation and many other reservations. And I'd like to give my testimony on how it has destroyed and desecrated the land on the Cahuilla Reservation. We
sit on the Santa Marguerita River watershed. We are on the top of the river, we sit on 40 percent of that river.

The material that is being dumped has been stated that it is contaminated petroleum soil...we are injecting into the earth diesel and other chemicals...going straight into the ground, with no protection whatsoever.

...March 10, 1992 the Cahuilla Tribe of Indians went to court, to Federal Court in Los Angeles, and got these illegal dumpers on a trespass. Right now we're on a standoff...because the Bureau of Indian Affairs defies the Tribe into taking any kind of action of taking these dumpers off the reservation, taking any legal enforcement actions.

Of course, they say they can't, they have to go through their procedures....because of this, what they call economical business on a reservation, they have gone into our tribal business and helped a tribal member to seat herself as tribe chairperson, and took out the...person that the Tribe elected December 12, 1993.

My complaint is that we want...a group of Indians from different reservations--Torres-Martinez, Cahuilla Deserts, Warners Springs, the Cahuilla Indian Reservation--have gotten together and asked for an investigation on the Bureau of Indian Affairs and EPA for helping these illegal dumpers and Tribe, individual tribal members for having this on our reservation.

...The Bureau of Indian Affairs [and] EPA have completely ignored the Indian Tribes of Torres-Martinez and Cahuilla...saying that we do not want these on our reservation. Now they're trying to tell us to regulate it as a tribe. I guess to backtrack and to start over, and to go through the right procedures and make it as a tribal business, so we can be liable for what is the damage that is done on our reservation.

But it's...gone beyond the damage of the land. It's gone to the damage and the health of our children, that have to breathe this air, have runny noses--thinking it's runny noses, but it's bloody noses--having our clothes hanging outside, having holes in our clothes from the air from these toxic dumps that nobody knows what they're dumping in. Not even the EPA can say what's in there. Nobody monitors them....

...They talk about sovereignty. But where's the sovereignty when it comes to destroying the land of the reservations for us to live on, to live a normal life....I'm a mother of two sons. There's a lot of families that are on our reservation that...go to school sick.

...Right now we have kids in Torres-Martinez that can't even get up and play
outside. They can play for 15 minutes before they start feeling weak and can't breathe. Their white cells are taking over the red... This is a very disastrous thing, and I hope and I pray that today—the Bureau of Indian Affairs is here today—that they hear what is happening to our children, and not just the land, and be more concerned.

I think it's a shame that we have Indian people on these committees that are promoting this on our reservation, for the love of money.... And what good is that money going to do, when we have to pay for our health to the doctor's bill all the time, when we have to pay for our funerals for our children? —Nushune Heredia, Cahuilla Reservation, Public Hearing of September 16, 1994, San Diego, CA.

Of the 29 speakers who addressed the ACCIP in public hearings over the past year and a half, 9 (31%) sought greater control and protection of water resources, 7 (24%) were concerned about health in general and health problems caused by pollution and toxic waste in particular, and 5 (17%) were concerned about the targeting of Indian lands as dump sites and illegal dumping of toxic waste on Indian lands. Categorizing the 38 issues raised in oral testimony, it is apparent that 9 issues (24%) related to cultural preservation (protection of burial grounds, Indians as endangered species, sacred sites, tan oak and salmon fisheries, as well as the rights to gather basket materials and edibles, to hunt, to fish and to practice traditional medicine). Another 9 issues (24%) related to environmental, health and safety needs (targeting of Indian lands for dumps, alcohol and drugs, elders care, general health, health problems caused by pollution and toxic waste, housing, spraying of basket materials, spraying of forest edibles and illegal dumping of toxic wastes on Indian lands). Nine issues (24%) also related to natural resource management (land use planning, natural resource monitoring, spraying of basket materials, spraying of edibles, protection of tan oak, protection of timber, distribution and protection of salmon, trust responsibility for protection of natural resources and control of water resources). In the context of economic development strategies that are culturally appropriate and environmentally safe, all of these issues can be seen as integral to economic development.

Ten (26%) of the 38 issues raised in oral testimony may be categorized as administrative, financial and technical prerequisites for economic development: (1) base funding for tribal administration, (2) need for Agency-level approval authority within the Bureau of Indian Affairs, (3) business capital, (4) business expertise, (5) assistance with business plans, (6) need for collaboration among California tribes, (7) education, (8) infrastructure development, (9) land use planning and (10) market and feasibility analyses.

B. Written Testimony

The investigators reviewed approximately 300 pages of written material submitted at public hearings and sorted by the ACCIP as pertaining to the Economic Development Task Force. The written testimony is summarized below.
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<td>1,379.58</td>
</tr>
<tr>
<td>Santa Rosa Indian Community</td>
<td>Santa Rosa Rancheria</td>
<td>170.00</td>
<td>0.00</td>
<td>170.00</td>
</tr>
<tr>
<td>Santa Rosa Band of Cahuilla Mission Indians</td>
<td>Santa Rosa Reservation</td>
<td>11,092.60</td>
<td>0.00</td>
<td>11,092.60</td>
</tr>
<tr>
<td>Santa Ynez Band of Chumash Mission Indians</td>
<td>Santa Ynez Reservation</td>
<td>126.63</td>
<td>0.00</td>
<td>126.63</td>
</tr>
<tr>
<td>Santa Ysabel Band of Diegueno Mission Indians</td>
<td>Santa Ysabel Reservation</td>
<td>15,526.78</td>
<td>0.00</td>
<td>15,526.78</td>
</tr>
<tr>
<td>Scotts Valley Band of Pomo Indians (Scotts Valley Band of Pomo Indians of the Sugar Bowl)</td>
<td>Scotts Valley Rancheria</td>
<td>0.00</td>
<td>0.79</td>
<td>0.79</td>
</tr>
<tr>
<td>Sheep Ranch Rancheria of Me-Wuk Indians</td>
<td>Sheep Ranch Rancheria</td>
<td>0.92</td>
<td>0.00</td>
<td>0.92</td>
</tr>
<tr>
<td>Sherwood Valley Rancheria of Pomo Indians</td>
<td>Sherwood Valley Rancheria</td>
<td>349.97</td>
<td>0.00</td>
<td>349.97</td>
</tr>
<tr>
<td>Shingle Springs Band of Miwok Indians (Verona Tract)</td>
<td>Shingle Springs Rancheria</td>
<td>160.00</td>
<td>0.00</td>
<td>160.00</td>
</tr>
<tr>
<td>Smith River Rancheria</td>
<td>Smith River Rancheria</td>
<td>32.54</td>
<td>48.70</td>
<td>81.24</td>
</tr>
<tr>
<td>Soboba Band of Luiseno Mission Indians</td>
<td>Soboba Reservation</td>
<td>5,915.68</td>
<td>0.00</td>
<td>5,915.68</td>
</tr>
<tr>
<td>Susanville Indian Rancheria of Paiute, Maidu, Pit River &amp; Washoe Indians</td>
<td>Susanville Rancheria</td>
<td>150.53</td>
<td>0.00</td>
<td>150.53</td>
</tr>
<tr>
<td>Sycuan Band of Diegueno Mission Indians</td>
<td>Sycuan Reservation</td>
<td>379.54</td>
<td>260.46</td>
<td>640.00</td>
</tr>
<tr>
<td>Table Bluff Rancheria of Wiyot Indians</td>
<td>Table Bluff Rancheria</td>
<td>102.00</td>
<td>0.00</td>
<td>102.00</td>
</tr>
<tr>
<td>Table Mountain Rancheria</td>
<td>Table Mountain Rancheria</td>
<td>19.30</td>
<td>41.63</td>
<td>60.93</td>
</tr>
<tr>
<td>Tribe</td>
<td>Reservation(s)</td>
<td>Tribal Trust Land</td>
<td>Allotments</td>
<td>Total Acreage</td>
</tr>
<tr>
<td>-------</td>
<td>----------------</td>
<td>------------------</td>
<td>------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Torres-Martinez Band of Cahuilla Mission Indians (Torres-Martinez Desert Cahuilla Indians)</td>
<td>Torres-Martinez Reservation</td>
<td>18,223.16</td>
<td>5,699.85</td>
<td>23,923.01</td>
</tr>
<tr>
<td>Tule River Indian Tribe</td>
<td>Tule River Reservation</td>
<td>55,395.93</td>
<td>0.00</td>
<td>55,395.93</td>
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<tr>
<td>Tuolumne Band of Me-Wuk Indians</td>
<td>Tuolumne Rancheria</td>
<td>335.77</td>
<td>0.00</td>
<td>335.77</td>
</tr>
<tr>
<td>Twenty-Nine Palms Band of Luiseno Mission Indians</td>
<td>Twenty-Nine Palms Reservation</td>
<td>402.13</td>
<td>0.00</td>
<td>402.13</td>
</tr>
<tr>
<td>United Auburn Indian Community</td>
<td>Auburn Rancheria</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Upper Lake Band of Pomo Indians</td>
<td>Upper Lake Rancheria</td>
<td>0.00</td>
<td>19.48</td>
<td>19.48</td>
</tr>
<tr>
<td>Utu Utu Gwaitu Paiute Tribe</td>
<td>Benton Paiute Reservation</td>
<td>160.00</td>
<td>0.00</td>
<td>160.00</td>
</tr>
<tr>
<td>Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians</td>
<td>Viejas Reservation</td>
<td>1,609.00</td>
<td>0.00</td>
<td>1,609.00</td>
</tr>
<tr>
<td>Yurok Tribe</td>
<td>Yurok Reservation</td>
<td>1,141.28</td>
<td>4,268.22</td>
<td>5,409.50</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>405,132.98</strong></td>
<td><strong>62,851.66</strong></td>
<td><strong>468,052.46</strong></td>
</tr>
</tbody>
</table>

The land bases of the 100 tribal groups located wholly within California range from no acreage at all for 18 tribes, to 86,803.79 for the Hoopa Tribe. The population bases range from zero to 4,273. As illustrated in Tables 2 and 3 to follow:

- 18 California tribes (18%) have no land base;
- 34 California tribes (34%) have land bases of less than 50 acres;
- 41 California tribes (41%) have land bases of less than 100 acres;
- 67 California tribes (67%) have land bases of less than 500 acres;
- 74 California tribes (74%) have land bases of less than 1,000 acres; and
- 95 California tribes (95%) have land bases of less than 20,000 acres.
TABLE 2. CALIFORNIA TRIBAL POPULATIONS BY RANGE AND FREQUENCY

The following figures were obtained from the 96 tribes that responded to the survey.

<table>
<thead>
<tr>
<th>Reservation residential Population Range</th>
<th>Number of Tribal Groups</th>
<th>% of Tribal Groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 49</td>
<td>26</td>
<td>25%</td>
</tr>
<tr>
<td>50 - 99</td>
<td>12</td>
<td>11%</td>
</tr>
<tr>
<td>100 - 199</td>
<td>18</td>
<td>17%</td>
</tr>
<tr>
<td>200 - 299</td>
<td>18</td>
<td>17%</td>
</tr>
<tr>
<td>300 - 399</td>
<td>8</td>
<td>7%</td>
</tr>
<tr>
<td>400 - 499</td>
<td>7</td>
<td>7%</td>
</tr>
<tr>
<td>500 - 999</td>
<td>10</td>
<td>9%</td>
</tr>
<tr>
<td>1,000 - 1,499</td>
<td>2</td>
<td>2%</td>
</tr>
<tr>
<td>1,500 - 1,999</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>2,000 - 2,999</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>3,000 - 3,999</td>
<td>2</td>
<td>2%</td>
</tr>
<tr>
<td>4,000+</td>
<td>1</td>
<td>1%</td>
</tr>
</tbody>
</table>
TABLE 3. CALIFORNIA TRIBAL LAND BASES BY RANGE AND FREQUENCY

<table>
<thead>
<tr>
<th>Tribal/Trust Acreage Range</th>
<th>Number of Tribal Groups</th>
<th>% of Tribal Groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>18</td>
<td>18%</td>
</tr>
<tr>
<td>.1 - 49.9</td>
<td>16</td>
<td>16%</td>
</tr>
<tr>
<td>50 - 99</td>
<td>7</td>
<td>7%</td>
</tr>
<tr>
<td>100 - 199</td>
<td>12</td>
<td>12%</td>
</tr>
<tr>
<td>200 - 299</td>
<td>7</td>
<td>7%</td>
</tr>
<tr>
<td>300 - 399</td>
<td>6</td>
<td>6%</td>
</tr>
<tr>
<td>400 - 499</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>500 - 599</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>600 - 699</td>
<td>2</td>
<td>2%</td>
</tr>
<tr>
<td>800 - 899</td>
<td>2</td>
<td>2%</td>
</tr>
<tr>
<td>900 - 999</td>
<td>2</td>
<td>2%</td>
</tr>
<tr>
<td>1000 - 1999</td>
<td>3</td>
<td>3%</td>
</tr>
<tr>
<td>2000 - 2999</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>3000 - 3999</td>
<td>5</td>
<td>5%</td>
</tr>
<tr>
<td>4000 - 4999</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>5000 - 5999</td>
<td>3</td>
<td>3%</td>
</tr>
<tr>
<td>7000 - 7999</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>9000 - 9999</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>10,000 - 19,999</td>
<td>6</td>
<td>6%</td>
</tr>
<tr>
<td>20,000 - 29,999</td>
<td>2</td>
<td>2%</td>
</tr>
<tr>
<td>30,000 - 39,999</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>50,000+</td>
<td>2</td>
<td>2%</td>
</tr>
</tbody>
</table>

(2) Economic Development Issues. Eighty-four (84%) of the 100 surveyed tribes in California responded to the Economic Development Issues survey. The following are summary highlights:

- 45 out of 84 responding tribes (54%) do not own any businesses;
- 20 out of 84 responding tribes (24%) own one business;
- 8 out of 84 responding tribes (10%) own two businesses; and
- 11 out of 84 responding tribes (13%) own three or more businesses.
- 7 out of 84 responding tribes own agricultural businesses, 3 own construction businesses, 4 own manufacturing businesses, 10 own retail businesses, 1 owns a wholesale business, and 34 own other kinds of businesses.
22 out of 84 (26%) had started one business; 8 (10%) had started 2 businesses; and 7 (8%) had started three or more businesses.

6 out of 84 (7%) had purchased one business and 2 had purchased two businesses.

Among the 17 tribes reporting, gross annual sales from businesses, the range in sales was from $2,850 to $90 million. Of these, 8 reported sales of $50,000 or less, and 6 reported sales of $1 million or more.

Reporting on the total number of tribal members employed full-time in all business enterprises, 51 tribes had none and 33 tribes had a range from 1 employee to 400; 7 tribes had 5 or fewer; 8 tribes had 6 to 10; 9 tribes had 13 to 20; 6 tribes had 26 to 50; one had 52; one had 75; one had 125; and one 400.

Reporting on the total number of tribal members employed part-time in all business enterprises, 65 tribes had none and 19 tribes had a range from one to 100; 9 had 5 or fewer; 6 tribes had 6 to 20; one had 25; one had 60; one had 75; and one had 100.

Asked to characterize their experiences with tribal business enterprises, 18 tribes considered them a "boom", 19, a "mixed blessing", and 4, a "bust."

Among tribes that do not currently operate any business enterprises, 23 previously had either started or purchased a business.

Asked whether specific problems or obstacles had been encountered in starting or purchasing a business enterprise:

- 45 tribes cited lack of adequate funds;
- 39 tribes cited problems obtaining loans;
- 34 tribes cited lack of knowledge of basic marketing principles;
- 34 tribes cited lack of information about consumers;
- 32 tribes cited problems with analyzing market trends and/or forecasting sales;
- 33 tribes cited problems with analyzing economic/financial feasibility;
- 28 tribes cited problems with preparing business plans and financing proposals;
- 31 tribes cited difficulties with federal laws;
- 36 tribes cited difficulties with state laws;
- 14 tribes cited difficulties with tribal laws;
- 30 tribes cited lack of experience or instability of tribal governing body;
- 39 tribes cited lack of management experience;
- 32 tribes cited lack of adequately trained labor force;
- 35 tribes cited lack of adequate training facilities;
- 33 tribes cited lack of land for economic development;
- 39 tribes cited lack of adequate physical infrastructure;
- 33 tribes cited lack of adequate social infrastructure; and
- 24 tribes cited various other difficulties.

As asked to identify the three biggest obstacles to starting or purchasing a tribal business:

- lack of equity funds was cited as the biggest obstacle by 22 tribes, as the second biggest obstacle by 9 more tribes and as the third biggest obstacle by another 4 tribes; a total of 35 tribes placed lack of equity funds in the top three obstacles.

- problems obtaining loans was cited as the biggest obstacle by 3 tribes, as the second biggest obstacle by 6 more tribes and as the third biggest obstacle by another 2 tribes; a total of 11 tribes placed obtaining loans in the top three obstacles.

- 7 tribes placed a lack of knowledge of marketing in the top three obstacles.

- 11 tribes placed difficulties with federal laws in the top three obstacles.

- 10 tribes placed difficulties with state laws in the top three obstacles.

- 17 tribes placed lack of adequate land in the top three obstacles.

As asked to report tribal unemployment rates:
- the reported range was from 0% to 100%;
- 8 tribes reported 0%;
- 5 tribes reported 2% to 10%;
- 4 tribes reported 17% to 20%;
- 10 tribes reported 25% to 40%;
- 10 tribes reported 41% to 50%;
- 15 tribes reported 57% to 70%;
- 19 tribes reported 71% to 80%; and
- 6 tribes reported 85% to 100%.

It should be noted that according to reports published by the State of California, Employment Development Department, annualized unemployment rates for the state ranged from 7% to 9% between 1992 and 1994. The data indicate that 64 of 77 responding tribes (83%) had significantly higher unemployment rates of 17% to 100%.

The investigators also placed follow-up telephone calls to the 17 tribes reporting sales from tribal business enterprises, to determine the sources, or specific types of enterprises, that
were generating the sales. Some tribes made only partial answers to the survey and would not provide information on dollar amounts of sales. The findings follow in Table 4.

**TABLE 4. SOURCES OF TRIBAL SALES REVENUES**

<table>
<thead>
<tr>
<th>Tribe/Type(s) of Enterprise(s)</th>
<th>Acreage</th>
<th>$ Sales</th>
</tr>
</thead>
<tbody>
<tr>
<td>Big Pine Band of Owens Valley Paiute-Shoshone — Leases</td>
<td>300 acres</td>
<td>$ 50,000</td>
</tr>
<tr>
<td>Big Valley Rancheria of Pomo Indians — Gaming</td>
<td>53.04 acres</td>
<td>$ 700,000</td>
</tr>
<tr>
<td>Blue Lake Rancheria — Plant and Garden Nursery</td>
<td>14.31 acres</td>
<td>$ 32,000</td>
</tr>
<tr>
<td>Cabazon Band of Mission Indians — Industrial Recycling, Entertainment, Leases</td>
<td>1,382.28 acres</td>
<td>$90,000,000</td>
</tr>
<tr>
<td>Fort Independence Indian Community of Paiute Indians — R.V. Campground and Lease</td>
<td>352.24 acres</td>
<td>$ 15,000</td>
</tr>
<tr>
<td>Fort Yuma Reservation — Trailer/R.V. Parks (4) and People's Market</td>
<td>46,000 acres</td>
<td>$ 289,000</td>
</tr>
<tr>
<td>Hoopa Valley Tribe — Timber/Logging, Mini-mart, Motel, Shopping Center</td>
<td>89,572 acres</td>
<td>$13,200,000</td>
</tr>
<tr>
<td>Karuk Tribe of California — Forest Service Contracts</td>
<td>400 acres</td>
<td>$ 30,000</td>
</tr>
<tr>
<td>Los Coyotes Band of Mission Indians — Campground</td>
<td>25,049.63 acres</td>
<td>$ 12,000</td>
</tr>
<tr>
<td>Paiute-Shoshone Indians of the Bishop Community —</td>
<td>875 acres</td>
<td>$ 500,000</td>
</tr>
<tr>
<td>Pauma Band of Mission Indians — Avocado Grove</td>
<td>5,877.25 acres</td>
<td>$ 8,000</td>
</tr>
<tr>
<td>Pit River Tribe of California — Bingo/Gaming</td>
<td>9,567.18 acres</td>
<td>$ 3,000</td>
</tr>
<tr>
<td>Quartz Valley Indian Community —</td>
<td>156.02 acres</td>
<td>$ 2,850</td>
</tr>
<tr>
<td>Twenty-nine Palms Band of Mission Indians — Gaming</td>
<td>304 acres</td>
<td>$27,000,000</td>
</tr>
<tr>
<td>Viejas Tribe of Mission Indians — Gaming</td>
<td>1,609 acres</td>
<td>$80,000,000</td>
</tr>
</tbody>
</table>

**TOTAL TRIBAL SALES REVENUES:** $216,641,850

Based upon the data in Table 4 it is apparent that at least $107,703,000 (50%) of the total $216,641,850 in tribal Sales Revenues derives from gaming enterprises, and as much as another $90,000,000 (41%) derives from industrial recycling.
C. Conclusions

Based upon the results of the initial survey of federally recognized California tribes, it is apparent that most California tribes have extremely limited land and human resources at their disposal. That is, 89 (89%) of California's 100 tribal communities have populations of fewer than 500, and 99 (99%) have populations of fewer than 1,000. Moreover, 64 (64%) of California's 100 tribal groups have land bases of less than 500 acres. Data indicate that land acquisition, related physical infrastructure development and human resource development are critical to the economic development capacity-building of California tribes.

Based upon the results of the Economic Development Issues Survey, it is apparent that in spite of their disproportionately high unemployment rates, about half of California's tribes (45 of 84 responding tribes) are not in business. About half of those not currently in business (23 of 45) previously had either started or purchased a business. Of the 41 tribes that ever have been in business, only 18 (44%) considered the undertaking a "boom," and 23 (56%) considered it a "mixed blessing" or "bust."

Supporting the initial survey conclusions, the second survey revealed that in the experiences of 33 tribes, the lack of land was an obstacle to economic development; and 17 tribes placed the lack of land and the location of the land in the top three obstacles to starting or purchasing a business. In addition, 39 tribes had experienced the lack of adequate physical infrastructure as an impediment to economic development. Also supporting the initial survey conclusions, the second survey revealed the need for human resource development in the 84 responding tribes' identification of various other obstacles to enterprise ownership:

- 40% identified lack of knowledge of basic marketing principles;
- 40% identified lack of information about consumers;
- 38% identified problems with analyzing market trends and forecasting sales;
- 39% identified problems with analyzing economic/financial feasibility;
- 33% identified problems with preparing business plans and financing proposals;
- 36% identified lack of experience or instability of tribal governing body;
- 46% identified lack of management experience;
- 38% identified lack of adequately trained labor force;
- 42% identified lack of adequate training facilities; and
- 39% identified lack of adequate social infrastructure (e.g., health and social services, schools, colleges, law enforcement, and child care).

In addition to the foregoing conclusions, the data also indicate that for the majority of California tribes (45 of 84 or 54%), the lack of equity financing (i.e., business financing not derived from loans or other debts) has been a major obstacle to economic development. A total of 35 tribes placed the lack of equity financing in the top three obstacles to starting or purchasing a tribal business. Another 39 of 84 tribes (46%) have experienced difficulties obtaining loans for business development, and a total of 11 tribes placed difficulties obtaining loans in the top three
obstacles to starting or purchasing a tribal business. Hence, it can be concluded that, in addition to (or perhaps as a direct result of) inadequate land bases, infrastructure development and human resource development, the ability of California tribes to access equity and debt financing has been a major impediment to enterprise ownership.

Among the minority of California tribes (17 of 84 respondents or 20%) who reported sales from tribal enterprises, the vast majority of revenues ($197,703,000 of $216,641,850 or 91%) derive from businesses that rely upon tribal sovereignty as the legal means for their operation in the state of California (e.g., gaming and "industrial recycling"). It would appear from the survey data that very few alternatives exist for economically viable tribal business enterprises and therefore, cultural appropriateness and environmental safety are being redefined and/or sacrificed by some tribes. Largely without land or locations near significant population sites, without essential physical infrastructure development, without opportunities for human resource development, and without access to equity and debt financing, California tribes are extremely vulnerable to those who would exploit their sovereignty, particularly while promising millions of dollars in revenues from business enterprises whose principal competitive advantage is their illegality on non-reservation lands.

VI. Tribal Case Histories

A. Karuk Tribe of California

One of the largest and most geographically dispersed indigenous groups in the state, the Karuk Tribe of California estimates its total population, including enrolled and unenrolled members, at approximately 5,100. The Ancestral Territory of the Tribe includes all of Siskiyou County and the northeastern portion of Humboldt County—an area of approximately 4,000 square miles and 1.2 million acres. Landless at the time that federal recognition reaffirmed and revitalized the government-to-government relationship between the Karuk Tribe and the United States in 1979, the Tribe has reacquired 400 acres of land dispersed throughout aboriginal territory, parcel by parcel, for the development of tribal community centers, health clinics and housing projects. The Karuk Tribe maintains administrative offices in Happy Camp and Yreka, both located in Siskiyou County, and in Orleans, located in Humboldt County. All land is located within the aboriginal territory of the Karuk Tribe. Only about 2,100 (41%) of the tribal population presently live on and near reservation lands.

Over the past 10 years the Karuk Tribe has grown from a fledgling organization with four employees to a mature organization with more than 80 employees and an annual operating budget exceeding $4 million. In that same period, the Tribe has developed medical and dental clinics; Indian Child Welfare, child care, education and Headstart programs; an elders program; mental health and substance abuse counseling programs; Natural Resources, Planning and Social Services Departments; and a Tribal Housing Authority that has completed construction of 80 new units of housing. In 1994, 15 years after federal recognition, the Tribe chartered the Karuk Community Development Corporation "to develop among members of the Karuk Tribe of California the
managerial and technical capabilities to assume leadership roles in building diversified, sustainable economies by creating new business ownership and employment opportunities within the Ancestral Territory of the Karuk People." Current community development strategies include the development of profitable tribal enterprises, recruitment of culturally, ecologically and economically sustainable businesses to locate within the Karuk Ancestral Territory, and the establishment of a business enterprise development center. In FY 1995-96, the Karuk Tribe of California became a self-governance tribe.

Despite its sizeable population base, growing land base, and significant strides in administrative, physical and social infrastructure development, the Karuk Tribe of California reported an unemployment rate of 63% in 1993, largely due to the decline in the timber industry in Northern California. The Karuk Community Development Corporation, which began managing trail maintenance and watershed restoration contracts in 1994, secured one-year funding from the BIA and federal agencies participating in the Northwest Economic Adjustment (Option 9) Initiative to operate in FY 1995-96 and is seeking additional, multi-year funding in order to continue corporate operations until it can sustain itself with profitable tribal enterprises and fee-paid services. The Corporation is in the process of purchasing and expanding a hardware store in Happy Camp with 70% equity financing provided by grants from the BIA and the Rural Economic and Community Development (formerly Farmers Home Administration), and transfers of federal equipment from the General Services Administration. The 30% financing to be provided in the form of a Small Business Administration-guaranteed bank loan will be the SBA’s first loan to a tribe in the state of California. It has taken nearly three years for the tribe and Corporation to finance the acquisition and expansion of the hardware and building supplies business. Future plans include the development of a rustic decor and furniture manufacturing business, for which prototype products already have been developed.

B. Redding Rancheria

The Redding Rancheria is located on approximately 31 acres of land situated along the southern border of the City of Redding in Shasta County, California. The Rancheria originally was established in 1922 but was terminated in 1958 under the authority of the California Rancheria Act. Federal recognition was restored on December 15, 1983 as a result of a class action suit entitled Tillie Hardwick v. The United States. Members of the Rancheria adopted a Constitution and formally reinstated their tribal government in mid-1985. The Tribe’s total land base is approximately 31 acres including fee land, and its total population is estimated at 200 (30 living on reservation lands and 170 living adjacent to the reservation).

In 1991 the Redding Rancheria began operating an Indian Health Clinic under contract with the Indian Health Services (IHS). By 1993, the Clinic was providing comprehensive health care services to approximately 8,000 eligible American Indians residing in Trinity County and the western two-thirds of Shasta County. The indirect costs associated with the IHS contract facilitated the administrative capacity-building of the Rancheria, and the revenues generated by the Clinic sustained its growth and development. In the spring of 1994, after extensive planning
efforts and financial negotiations spanning 18 months, the Rancheria secured a BIA-guaranteed
bank loan and purchased the 14,000-square-foot Indian Health Clinic facility it previously had
leased in the city of Redding. Most recently, Redding Rancheria developed a 38,000-square-foot
gaming casino and bingo facility on the reservation. Now the 8th largest employer in Shasta
County, the Rancheria employs a total of 280 people, including employees of the Win-River
Casino Bingo, the tribal administrative offices and the Indian Health Clinic. In addition to
comprehensive health care services, the Rancheria provides child care, child welfare, community
and economic development, education, and housing services. The Rancheria’s unemployment
rate in 1995 was 0%.

C. Scotts Valley Band of Pomo Indians of the Sugar Bowl

Located in Lake County, California, the federally recognized Scotts Valley Band of Pomo
Indians has no tribal land base, a population estimated at 108, seven employees, and an
unemployment rate of 57%. The Tribal Administrator has identified the lack of adequate lands as
the biggest obstacle to economic development, followed by problems preparing business plans and
difficulties with state laws. Additional obstacles include lack of equity funds, problems obtaining
loans, the inexperience of the tribal governing body, lack of management experience, and lack of
physical infrastructure development.

D. Sycuan Band of Mission Indians

Located in El Cajon, San Diego County, California, the Sycuan Band of Mission Indians
has a total land base of 640 acres set aside by an Executive Order of December 27, 1875, and a
total population of 120. The Tribe owns and operates two business enterprises, one of which is a
gaming casino. Although business revenues were not reported on the Economic Development
Issues Survey, the Sycuan Band of Mission Indians indicated that its business enterprises have
“greatly helped the Tribe” and reported an unemployment rate of 0% and 52 full-time tribal
employees. The principal obstacles to business and economic development were identified as
difficulties with federal and state laws.

E. Tule River Indian Tribe

The Tule River Reservation was established by an Executive Order of October 3, 1973.
Located in a remote rural area approximately 20 miles from the city of Porterville in southeastern
Tulare County, California, the Tule River Reservation has a land base of 55,356 acres and an
estimated tribal population of 1,890 (690 living on reservation lands and 1,200 living adjacent to
the reservation). The Tribe’s annual operating budget is approximately $2.1 million, and its
principal sources of employment presently are an IHS clinic and tribal administrative offices.

In 1991, the Tule River Indian Tribe chartered the Tule River Economic Development
Corporation to relieve the tribal administration of the additional burden of economic development
projects and provide the autonomy essential to profit-making enterprise development. Funded for
the first three years by a continuing grant from the Administration for Native Americans (ANA), the Corporation's first major project was development of an industrial park site on a former airport property purchased from the city of Porterville in 1990. In 1993, with a Management and Technical Assistance Grant from the BIA, the Corporation developed a plan for construction of a 100,000-square-foot commercial/industrial building on 15 acres of the 40-acre industrial park property. The building was designed to be leased to a variety of assembly, manufacturing and warehousing businesses. The sources of funds secured for infrastructure and site development were the Tribe (equity injection of $150,000), the Economic Development Administration (grant of $600,000) and the Porterville Civic Development Foundation (zero-interest loan of $153,000). A $1.8 million federally-guaranteed bank loan was sought for construction of the commercial/industrial building.

In early 1995, the formerly timber-dependent Tule River Indian Tribe reported an unemployment rate of 58% and an estimated poverty rate of 80%. However, the Tribe also expected that the planned opening of a gaming casino on the Tule River Reservation would improve tribal employment and income data significantly—as many as 500 people could be employed by the casino. For the use of gaming revenues, the Tribe identified community infrastructure development, elders programs, housing development, scholarship funds, and youth development as priorities.58

The Tule River Indian Tribe has identified as its biggest obstacles to business and economic development (1) lack of knowledge of basic marketing principles, (2) lack of adequate funding, and (3) lack of an adequately trained labor force.

F. Conclusions

From the foregoing tribal case histories, it again is evident that there are no easy prescriptions for remedying the economic development problems facing California Indian tribes. The case histories include a tribe with a relatively large population (the Karuk Tribe with 5,100 members) and no land base, which nevertheless, over a period of 15 years has become a strong tribal government with significant administrative, physical and social infrastructure development, and a promising community development corporation created to address the Tribe's currently high unemployment rate. Another tribe with only 200 members and a land base of 31 acres (Redding Rancheria) has become a major employer in its home county, completely eliminating tribal unemployment through the development of a gaming casino. With an even smaller population of 120 and a land base of 640 acres, a third tribe (Sycuan Band of Mission Indians) also eliminated unemployment. A fourth tribe (Tule River) with both a significant population (1,890 members) and a relatively large land base (55,356 acres) is developing a gaming casino, hoping it will provide relief from high unemployment and poverty rates that could not be addressed satisfactorily using alternative economic development strategies.

Some common threads tie the case histories together. In the cases of the Karuk Tribe, Redding Rancheria and the Tule River Reservation, tribal administrative capacity-building was
facilitated and financially supported by the operation of Indian Health Service-contracted clinics. It is important to understand how tribal undertakings that do not purport to be of an economic development nature nevertheless have resulted in the acquisition of managerial skills and development of physical and social infrastructures that are prerequisites to business and economic development. The establishment of tribal housing authorities and multi-service organizations is another way in which California tribes have developed administrative capacity and community infrastructure. Thus, Congressional actions that eliminate or significantly reduce federal support of Indian education, health and housing programs ultimately stymie economic development efforts both directly and indirectly.

A second common thread in the tribal case histories is the participation of the BIA's Area Credit Office in the business and economic development activities of California tribes. The Karuk Tribe has utilized both the BIA's Management and Technical Assistance Grant Program and its Indian Business Development Grant Program. Redding Rancheria has used both the BIA's Management and Technical Assistant Grant Program and its Loan Guaranty Program. Tule River Reservation utilized the BIA's Management and Technical Assistance Grant Program. In terms of facilitating tribal access to (1) managerial and technical expertise and (2) equity and debt financing for tribal ventures, the BIA has been a major contributor in the state of California. In 1994, the BIA's Sacramento Area Credit Office provided 10 Technical Assistance Grants totaling $57,108, and co-sponsored a statewide Credit Symposium with a contribution of another $15,891 in Technical Assistance Grant funds. However, between 1993 and 1995, the allocations of federal dollars to the BIA's Sacramento Area Office for Technical Assistance Grants have declined from $90,000 to $59,445, the allocations for Business Enterprise Development Grants have declined from $433,781 to $241,658, and the allocations for Direct Loans for enterprise development have been eliminated entirely.59

A third common thread in the tribal case histories is the long and arduous journey undertaken by California Indian tribes to access capital needed for business and economic development. Even when viable market opportunities were identified, technical assistance was available and enterprise feasibility had been determined, it took the Karuk Tribe nearly three years to assemble the financing required for acquisition of a long-established business; it took the Redding Rancheria 18 months to secure a 90% guaranteed bank loan for the purchase of a well-managed health clinic; and after three years, the Tule River Indian Tribe still is seeking a loan for the development of a commercial/industrial building.

A fourth common thread in the tribal case histories is the tendency of California tribes—after years of struggling to overcome the odds against alternative kinds of enterprise development and facing ever-increasing rates of tribal unemployment and poverty—to turn to gaming casinos as the most immediate source of relief. At a Tribal Council meeting convened in September 1995, the Karuk Tribe of California approved a private developer's request for authorization to perform a feasibility study for a gaming casino that could be tribally owned and located in proximity to the Interstate 5 freeway; the Redding Rancheria developed a gaming casino in 1993 as an immediate means of providing tribal employment and income; the Sycuan
A Personal Testimony of a Member Against Sludge from the Torres-Martinez Desert Cahuilla Reservation by Alec R. Dominguez, October 10, 1994 (8 pages).

Mr. Dominguez began his testimony with a history of the Cahuilla Nation and an overview of early treaties and Executive Orders by which reservation lands were set aside for various tribal people who came to be known as the "Cahuilla" Indians. Some of the reacquired lands were lost when property taxes were imposed; 9,000 acres of the reacquired land is in the Salton Sea, which reportedly is too polluted to sustain fish. An Act of the 51st Congress of 1891 was cited as stating that:

in cases where the lands occupied by any band or village of Indians are wholly or in part within the limits of any confirmed private grant or grants, it shall be the duty of the Attorney General of the United States, upon request of the Secretary of the Interior, through special counsel or otherwise, to defend such Indians in the rights secured to them in the original grants from the Mexican government, and in an act for the government and protection of Indians passed by the State of California, April 22, 1850, or to bring any suit, in the name of the United States, in the Circuit Court of the United States for California, that may be found necessary to the full protection of the legal or equitable rights of any Indian or tribe of Indians in any of such lands.

According to Mr. Dominguez:

The government has only abused [tribal] sovereignty by allowing non-Indian sludge companies to move into our reservation to construct and operate sludge facilities. The sludge operating businessmen have corrupted and polluted the air, water, land and the life on our reservation. Many tribal members had to leave their reservation homes and move into the cities to protect themselves and their children from the toxic waste chemicals that have affected their health drastically.

The testimony indicated ground water samples collected from Ibanez Farms (Chino-Corona Sludge Composting Site) on February 28 and March 7, 1994 contained arsenic, cadmium, chromium, lead and total coliform. Mr. Dominguez stated that, in addition to polluting and corrupting his reservation, the sludge dumpers are "distorting the minds of some of our tribal members and manipulating them with dirty lucre money to split our reservation and overthrow our tribal government." He added that "the sludge dumpers are getting good support from the Bureau of Indian Affairs at the Area Office level and from Representative Al McCandless." The Environmental Protection Agency also allegedly has excused itself from any responsibility, claiming to have no jurisdiction on Indian land.

Mr. Dominguez reported that the Torres-Martinez Desert Cahuilla Indian Reservation is exercising its tribal sovereignty by "protesting the toxic, hazardous sludge waste facilities," setting human blockades to stop sludge trucks from entering the dumping facilities, and passing tribal resolutions to remove the sludge mountain and stop the sludge dumpers. In spite of all this and President Clinton's Executive Order on Environmental Justice dated February 11, 1994, the
Department of the Interior--BIA and EPA--"have not lifted a finger to enforce the June 20, 1994 Cease and Desist Order."

(2) **Executive Order: Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations, February 11, 1994** (5 pages).

Key provisions of the Executive Order signed by President William J. Clinton are as follows:

- Each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing...disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations in the United States and its territories and possessions.

- Creation of an Interagency Working Group on Environmental Justice to guide, coordinate and assist actions to achieve environmental justice.

- Inclusion of diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority and low-income populations.

- Collection, maintenance and analysis of information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence; and Federal communication to the public regarding the risks of those consumption patterns.

- Public participation in and access to information exchanges related to the incorporation of environmental justice principles into Federal agency programs or policies.

- Consultation and coordination with tribal leaders regarding steps to be taken pursuant to the Executive Order that address Federally-recognized Indian tribes.

(3) **Documents Pertaining to Sewage Sludge Composting on a Private Allotment of Land on the Torres-Martinez Desert Cahuilla Reservation** (230 pages).

This collection includes copies of agreements between disposal firms and private allottee, inter-governmental (tribal/federal) correspondence, records of community meetings, Solicitor's Opinions, tribal resolutions, newspaper articles, photographs and maps, laboratory test results, Cease and Desist Orders and other documents related to the establishment and operation of sewage sludge "farms" on the Torres-Martinez Desert Cahuilla Reservation, as well as to the tribe's efforts over a period of several years to stop sludge dumping. The documents raise a number of issues and questions concerning health and safety hazards in general and the
ENDNOTES


2. 9 Stat. 631 (1851).


4. Whether a tribe, in the absence of state consent to suit, can request that the Secretary prescribe procedures (see 25 U.S.C. §§ 2701(d)(7)(B)(vii)) under which the tribe may engage in Class III gaming activities, is still an unsettled issue. See, e.g., Seminole Tribe of Florida v. State of Florida, 11 F.3d 1016, 1029 (11th Cir. 1994).

5. Prior to the IGRA, state and county gambling laws that regulated rather than prohibited gambling were not applicable to Indian reservations, even if they were enforceable by criminal as well as civil means. California v. Cabazon Band of Mission Indians, 480 U.S. 202, 210-211 (1987).

6. The Spokane Tribe in Washington State has made the argument that, even in the absence of congressional action, either a tribal remedy must be read into the IGRA or it must be declared unconstitutional. See United States of America v. Spokane Tribe of Indians, CS-94-0104-FVS (E.D. WA), Answer, Counterclaims And Third-Party Complaint For Declaratory Judgment, Injunctive and Declaratory Relief, at p. 7 (filed April 5, 1994), currently on appeal to the Ninth Circuit Court of Appeals. Specifically, the Spokane Tribe argued that: (1) if there is no remedy, IGRA is unconstitutional in its entirety; and (2), in the alternative, the Secretary of the Interior has a trust obligation to provide a remedy by promulgating regulations allowing Class III gaming when a state refuses to negotiate in good faith. Id.


10. Eighteen treaties were negotiated with California tribes in 1851 and 1852. These treaties would have provided an Indian land base of over 8.5 million acres. Mining and business interests in California strongly opposed the treaties, and the California Senators were successful in preventing them from being ratified. See Bruce Flusman and Joe Barbieri, Aboriginal Title: The Special Case of California, 17 Pac. L.J. 390, 403-404 (1986). Because the Senate sealed the file on the treaties, the tribes were not aware of the rejection of the treaties until 1905. See H.R. Rep. No. 801, 103d Cong., 2d Sess. 2 (1994). In the meantime, the California Land Claims Act was enacted, requiring every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government to present their claims within two years. The Act of
Band of Mission Indians operates a gaming casino; and the Tule River Indian Tribe expects to open a gaming casino this year. Until the market for casinos becomes inundated, or California Indian tribes can identify viable alternative strategies for economic development, it would appear that a large number of California's Indian reservations are destined to be driven economically by the gaming industry. Whether this trend represents a willful exercise of tribal sovereignty or a desperate need for relief from phenomenally high unemployment and poverty rates can only be determined by offering viable alternatives.
Citing an agreement reached before the filing of *Rumsey et al. v. Wilson*, in which the State of California "agreed to negotiate compacts including all games that the District Court found the State was obligated to include," the draft response states that California Governor Wilson "is acting unlawfully in refusing to negotiate with California tribes for electronic gaming devices and banking card games." It requests an opportunity for [Chairpersons] of the Rumsey Indian Rancheria, Table Mountain Rancheria, Jackson Indian Rancheria, Colusa Indian Rancheria and Redding Rancheria to meet with the U.S. Attorney General "on a government-to-government basis in a cooperative atmosphere so that we can reach an agreement...about the status of gaming activities in this district during the temporary period until the legislative, legal and political issues surrounding Indian gaming are resolved," noting that "as sovereign nations emerging from the Holocaust rained upon us in this state, we deserve and expect no less."

Testimony of L. Robert Ulibarri Before the Advisory Council on California Indian Policy, August 19, 1994, Redding, CA (7 pages).

Chief Executive Officer of VISIONS Enterprises, an Indian-owned architectural and engineering firm, Mr. Ulibarri stated he was representing several tribes in California who wish to provide statements on the single most fundamental issue facing California Indians today--lack of a land base. He noted that 45 federally recognized tribes in California have little or no reservation land base, stating:

"Without land, a tribe's identity, culture, social life, sense of community and government are severely hampered. Without a land base, a tribe's ability to create and foster economic development and self-determination is severely handicapped. Without a reservation, a tribe is ineligible for many federal programs that could provide tangible benefits to a tribe and its members. Without land, a tribe cannot fully enjoy the benefits of its own sovereignty. Without a reservation, a tribe cannot provide adequate housing and community services to its members."

Mr. Ulibarri added that "as the...non-federally recognized tribes in California reach federal recognition, this issue and the problems confronting land acquisition projects will be compounded tenfold."

Based upon his professional experience, Mr. Ulibarri identified the following as "some major problems encountered when land is acquired by tribes":

- Lack of coordination between federal agencies is a routine element of land acquisition projects....Coordination between HUD/IHS/BIA in land acquisition projects is slow, cumbersome and fraught with bureaucracy.

- Adoption of one uniform environmental review process should be mandated.
contamination of drinking water in particular. Related issues pertain to the legality of lease negotiations without tribal or Bureau of Indian Affairs approval, and the Bureau's trust responsibility for the protection of land, water and other natural resources.


This EIR recommends as "the apparent best alternative" for upgrading or replacement of the city's sewage treatment plant and disposal facilities is a treatment plant at the North Quarry site with discharge to Calera Creek. According to the Report:

A significant pre-historic site, listed by the State of California, is in the general area of the proposed excavation for the relocation of Calera Creek. The disturbance of this site would be a significant impact. The impact can be avoided, however, by the way the grading limits are set for the excavation.

An accompanying archaeological survey report by Robert I. Orlins and Rae Schwaderer (February 10, 1994) cited a 1986 Caltrans survey by Mara Melandry as finding that portions of the project area are "a habitation site containing a shell midden, flaked stone, possible ground stone and reported burials."

(5) House Resolution 4162, A Bill to Grant Authority to Provide Social Services Block Grants Directly to Indian Tribes (5 pages).

The Bill provides for 3% of amounts specified for Social Services Block Grants to be made available to tribal organizations for planning and carrying out programs and activities. It also provides that within 180 days of enactment, "the Secretary [of Health and Human Services], with the full participation of Indian tribes and tribal organizations, shall establish and promulgate by regulation, a base funding formula similar to the formula established under section 6580 of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858M)."

In his introduction of the Bill to the House of Representatives, Honorable Bill Richardson stated its intent was "to correct a long-standing inequity to Indian tribes. The legislation we are introducing would provide that funds under the Title XX Social Services Block Grants program be provided directly to tribal governments to administer their social services programs. Currently, Title XX funds are provided by formula to State governments and to territorial governments, but not to Indian Tribal governments." Representative Richardson also noted that the Title XX Social Services Block Grant is an entitlement program "meant to provide flexible social services moneys for locally designed and administered social services programs" and "much of the Title XX money is used for child welfare services....It is a great injustice that Indian tribes have not had access to annual Title XX moneys which could have helped them build stable social services programs to address the multitude of problems affecting Indian children and families....This Bill rights a great wrong--Indian tribes should have had these funds from the beginning. After all, the purpose of the title XX Social Services Block Grant program is to provide for the needs of all Americans."
Repeatedly and emphatically, Indian people and tribes in California emphasized the critical need to resolve issues involving aboriginal California Indians who are not affiliated with a tribe that the Bureau of Indian Affairs lists pursuant to 25 C.F. R. Part 83 as possessing a current government-to-government relationship with the United States.

Considerable testimony advanced the proposition that aboriginal California Indians exist as Indians and are ‘recognized.’ Accordingly, an identification and service delivery system has been developed and operational in California for decades. However, for approximately the past five to ten years, largely in reliance upon well intentioned policy rhetoric emanating from Washington, the status of California Indians as Indian people has been undergoing a process of administrative termination. [Emphasis added.] These efforts are sometime public, via proposed regulatory amendments, but most often private, via unilateral agency action. The service delivery system, likewise, has been undergoing a process of dismantling.

...common statutory definitions of Indians such as ‘descendant of a member of a tribe that has been federally recognized by treaty or otherwise’, ‘eligible for services because of status as an Indian’, and similar definitions have routinely been applied to provide services to California Indians. This is because California Indians have been and ARE recognized by treaty or otherwise. [Emphasis added.] Starting with unratified treaties and carrying through the California Claims cases, the California Rancheria Act, and numerous other federal actions and programs, California Indians have been recognized and serviced as Indians.

Since the early 1900's, the Bureau of Indian Affairs has developed and maintained a service delivery system that identified (certified) California Indians and administered services for this population....until approximately five to ten years ago, albeit inadequately, California Indians certifiable by the BIA as a California Indian, received education, housing and health benefits and were deemed by the BIA to be subject to the terms and protections of the Indian Child Welfare Act. Enter the new federalism and a very strong push by various federal agencies to limit services to Indian people. In this time frame, the Bureau has ceased providing services to California Indians and began a dismantling of the service delivery system. Even in those limited cases where the BIA will acknowledge service eligibility for Indians not enrolled in Part 83 tribes, no funds are available as new allocation systems are developed that ignore this population.

Previous efforts to limit services in California centered around confining services to reservation areas. Litigation resulted in an ‘on or near’ designation for all of California. However, in this newest assault, California Indians find that they are suddenly and simply no longer Indian.
and it has a potential for developing into a volatile situation. A group of individuals called the Quartz Valley Citizens Committee who we think have ties to a local militia have gone door-to-door with misinformation persuading various individuals to sign petitions opposing our land purchase. They have intimidated the sellers of the land using threatening tactics. The so-called leader...has reported one Indian family to the building department because their housing is not up to county standards and has enlisted the County Sheriff in an attempt to force an Indian widow and her three children to move their small trailer off the land he has placed under dispute. The same Indian family is being harassed by a person or persons shouting 'get rid of those Indians' while brandishing a shotgun. Prowlers dressed in camouflage clothing are routinely seen walking in and around the Reservation. Indian families awaiting housing in the Quartz Valley have nowhere else to go. They await the chance to once again have their community back, but they wait not only in poverty, but in fear.

Mr. Ulibarri expects this kind of backlash to impact the estimated 45 federally recognized tribes in California that have not yet reacquired a reservation land base. Indicating that the level of backlash has worsened since his testimony of August 19, 1994 in Redding, California, Mr. Ulibarri stated, "We have letters from California Attorney General Lungren, the State Fire Marshall, the Director of the Resources Agency and others all opposing land acquisitions by California tribes." He formally requested the support of the ACCIP and all California Indian tribes in ongoing efforts to secure land.


This is a report about an earlier consultation meeting at which tribal presenters identified for national policy makers a number of issues and needs among Indians of California. General topics included housing, health care, substance abuse, the Indian Child Welfare Act, urban Indians, unmet legal needs, spiritual and cultural concerns, intra-tribal disputes and jurisdictional issues. The following “priority issues” were considered more particular to California Indians:

While faced with the panoply of issues common to Indian Country...California is particularly complex and unique in many respects. California possesses a large and diverse Indian population. 25% of all Indians are located in California. There are 101 ‘recognized’ tribes in diverse stages of development, and 40 or 50 tribes that are not recognized. There is a large population of urban Indians, some affiliated with tribes native to California and most with tribes from outside California. Much of the configuration and situation of Indian people, communities and tribes in California, is directly attributable to past federal policy. [Emphasis added.] It is imperative, therefore, that honorable federal policy developments take into account the historical realities of Indians in California....
NIMBY (Not In My Back Yard) attitudes of local, state government and surrounding land owners. Mr. Ulibarri cites as opponents to Indian land acquisition projects county boards of supervisors, homeowners' associations and White supremacists, indicating that NIMBY attitudes usually are the result of misinformation regarding impacts on county tax bases, local schools, fire protection services and public works.

Land purchases are usually noncontiguous and therefore are classified as off-reservation acquisitions under the Indian Lands Consolidation Act. Therefore they require "coordination with the local jurisdictions," and their conveyance to trust status often takes more than three years, during which time tribes must pay property taxes on the land. This not only imposes an economic hardship on tribes, but also delays their HUD housing projects over extended periods during which "inflation erodes the available funding and tribes must either reduce the number of units to be constructed or reduce the floor plans."

Increased funding for newly recognized tribes for land acquisition for housing projects is a necessary request. Mr. Ulibarri stated that "as non-federally recognized tribes reach their goal of recognition, the demands for land, housing and basic infrastructure will strain existing funding resources"; therefore, additional funding to HUD Region IX, the California Area Office of the Indian Health Service and the Sacramento Area Office of the Bureau of Indian Affairs is needed.

Mr. Ulibarri's recommendations included (1) a statewide education program in partnership with the California Indian Assistance Program to address NIMBY attitudes, (2) waivers of "off-reservation" designations for land purchases for California tribes, (3) a streamlined BIA system of conveying land to trust status; (4) HUD/IHS/BIA designation of an agency official to coordinate land acquisition projects; and (5) increased funding for land acquisition by newly recognized tribes.

Letter from Laurence Miranda and Elizabeth Dunlap of Temecula, California, enclosing a newspaper article entitled "Sewage spill perils Indian water supply in membership fight," by Paula Kriner of The Press-Enterprise (3 pages).

According to the newspaper article, Mr. Miranda was wrongly dropped in 1989 from the tribal rolls of the Temecula Band of Luiseno Mission Indians and that action resulted in his losing eligibility for a septic tank from the Indian Health Service. The Tribal Enrollment Committee's action was based on reports that Miranda's father was a stepchild of his tribally-enrolled grandmother. The Indian Health Service cannot install a septic tank without the tribe's sponsorship. Until the matter is resolved, Miranda and his great-niece, Elizabeth Dunlap, both of whom have health problems, are using a rented portable toilet outside their back door when they are able to get to it and at other times are using an inside toilet that dumps sewage into an adjacent field 80 feet away from their home.
After individualized introductory paragraphs, both letters raise the following issues:

- It is hard to gather food and basket material because so much of our traditional gathering places are owned by timber companies and private landowners that do not want us gathering on their lands.

- Elders who still gather are afraid to go out by themselves because of the marijuana crops and drug labs that are out in our lands.

- Our food resources are being diminished also, the seaweed is harder and harder to find; the state says we have to have a license to gather our mussels, abalones, fish--this should not be for California Indians.

- The non-reservation California Indians are [should be] entitled to but do not receive the vehicle tax exempt license; those of us who live and work off the reservation are penalized for making a living and trying to make a life for us.

Chief Executive Officer of VISIONS Enterprises, an Indian-owned architectural and engineering firm located on the Hoopa Valley Indian Reservation, Mr. Ulibarri stated he was representing the Quartz Valley Indian Reservation of Siskiyou County at the request of the Honorable Fred Case, Chairman. The Quartz Valley Indian Reservation was terminated on January 20, 1967 and restored to federal recognition under a class action lawsuit known as Tillie Hardwick v. the United States in March 1989. The Tribe is acquiring land for housing development through the Modoc-Lassen Indian Housing Authority and has a program reservation for construction of 20 HUD homes. This year the Tribe negotiated purchase options for 14 tracts of land constituting 118 acres; 8 of those tracts are located within the boundaries of the Reservation and the balance are contiguous to the Reservation boundaries.

Mr. Ulibarri presented a collection of letters and newspaper articles documenting a "backlash by surrounding neighbors, Siskiyou County officials and Congressman Wally Herger" to the Tribe's reestablishment and expansion of the Quartz Valley Indian Reservation. He added that although the Area Director of the Bureau of Indian Affairs has defended to Congressman Herger the legal right of the Tribe to acquire land, place it in trust status and develop housing on it, anti-Indian sentiment has grown among Quartz Valley citizens. According to Mr. Ulibarri:

The series of untrue, false and defamatory articles which have been published in the newspapers and the door-to-door solicitation of anti-Indian petitions has developed an atmosphere of fear and hostility directed at the Indian community,
Under current policy as it is being implemented, only enrolled members of tribes listed by the BIA as possessing a current government-to-government relationship with the federal government (25 C.F.R. Part 83) are considered Indian. Numerous laws defining Indians, reference the term 'recognized' - by treaty or otherwise, or, as eligible for services because of status, etc. Many of these laws predate Part 83. However, in recent years, the BIA has interpreted any reference to the term 'recognized' as tied to a Part 83 listing. Recognized tribes are now only those listed in the federal register and Indians are only enrolled members of those tribes....

In California, federal acknowledgment of tribes has focused on the presence or absence of trust assets. Tribes without a trust land base had little need to interact with the Bureau, its members directly receiving services from the Bureau as California Indians. This is no longer the case. Attempting to respond to policy shifts, 'unaffiliated' California Indians have made attempts to pursue formal tribal recognition, focusing on efforts to become a Part 83 tribe. Given the complexity of the situation, and the inadequacy of the acknowledgment process, these efforts have met with difficulty. Additionally, California contains tribal groups in litigation or otherwise struggling to recover from the impacts of the termination activities of the 1950's and 1960's.

California Indian people find themselves devoting meager resources to pursuit of Part 83 recognition while, on a case by case, program by program basis, contesting status issues and denial of services. Progress is painfully slow and limited. Frustration and anger is particularly evident with reference to ... Indian status and recognition issues in California.1

...The Indian land base in California is limited, with much of it being located in remote areas of the state. Tribes are in varying states of development, with limited natural resources and expertise. Adding to these obstacles, available financing programs are often cumbersome and slow, impeding or frustrating an ability to package and close a development endeavor. Tribes report state hostility to reservation enterprises, excessive regulatory constraints and fragmented resource management as barriers to successful economic development.2

C. Conclusions

Consistent with the primary focal points of the oral testimony, a vast majority (approximately 80% by volume) of the written testimony provided the ACCIP over the past year and a half has focused on the dumping of sewage sludge on Southern California Indian reservations. Related issues included the health and safety hazards resulting from sludge dumping, including the contamination of drinking water sources. Also consistent with the oral testimony, the written testimony included documents pertaining to the protection of burial and
culturally significant sites, as well as the protection of traditional rights to gather food and basket materials.

Additional issues raised in the written testimony included:

(1) inequities in the Title XX Social Services Block Grant program, which includes funding for child welfare programs,

(2) refusal of the State of California to negotiate with California tribes regarding electronic gaming devices and banking card games,

(3) the lack of a land base for many California tribes, the multitude of obstacles to tribal land acquisition and the growing backlash to tribal land acquisition efforts following federal recognition,

(4) the need to resolve issues involving aboriginal California Indians who are not affiliated with a tribe that the Bureau of Indian Affairs lists pursuant to 25 C.F.R. Part 83 as possessing a current government-to-government relationship with the United States, and

(5) myriad other obstacles to economic development, including limited and/or remote Indian land bases, limited natural resources and expertise, lack of access to capital and excessive regulatory constraints.

On Page 12 of this report it was asserted that California tribes typically take a very cautious approach to economic development, seeking to create employment opportunities by developing business enterprises that are (1) culturally appropriate, (2) environmentally safe and (3) economically viable. Each of the oral and written testimonies can be related to one or more of these three criteria for acceptability of various economic development activities. That is, no purported "economic development" activity should jeopardize culture (e.g., protection of burial grounds, tribal people themselves, sacred sites, traditionally gathered edibles and non-edibles, fish and wildlife). No economic development activity should damage the environment to the extent that it endangers the health and safety of human or non-human inhabitants of the "developed" area. Finally, no economic development activity--no matter how lucrative--should be undertaken if it either jeopardizes culture or causes such environmental degradation as to be life-threatening. To undertake such economic development activities without regard to cultural and environmental impacts based upon the sovereign rights of tribes is to exploit tribal sovereignty itself--and when the federal government defers to the jurisdiction of sovereign tribes in allowing the degradation of tribal culture, land and other natural resources, it fails to honor its trust responsibility.

Although much of the testimony regarding cultural and environmental impacts of economic development activities undertaken in the past by tribal and non-tribal groups can be seen as relating directly to the maintenance of either health and safety or dignity, other testimony raised issues related to the fundamental need to honor agreements, whether contained in treaties,
Executive Orders, federal and state laws, or administrative policies. Virtually every testimonial cited with regard to adverse impacts on cultural preservation, environmental protection and economic viability in tribal communities calls into question the federal government's willingness to honor its existing agreements with California Indian and other American Indian tribes. The primary and strong focus of California tribal representatives on issues most closely associated with basic survival--coupled with both explicit and implicit concerns about the effectiveness and enforceability of treaty agreements, Executive Orders, laws and policies designed to protect the rights of Indian people--has prevented the majority of Indians in California, either as individuals or tribes, from focusing on more secondary issues usually associated with economic development. Hence very little of the oral and written testimony focused on such issues as organizational development, legal and physical infrastructure development, critical analysis of market opportunities and overall project feasibility, access to capital for enterprise development, management capacity, labor force requirements, et cetera. This may also reflect the historical funding inequity and lack of allocation of federal resources to California - both of which would encourage a more educated and engaged approach by California Indians to economic development.


2. Ibid., p. 9.