



1977

NATIONAL CONGRESS OF AMERICAN INDIANS

PLAN OF OPERATIONS

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National Congress of American Indians

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## I. NCAI Activity Overview

### National Goals and Objectives

In 1944 representatives from fifty tribal governments organized the National Congress of American Indians to:

1. Preserve Indian cultural values;
2. Seek an equitable adjustment of Indian affairs;
3. Secure and preserve Indian rights under treaties with the United States;
4. Promote the common welfare of the American Indian; and
5. Promote a better understanding of Indians.

To fulfill these purposes NCAI has served as an inter-tribal forum through which Indian nations and tribes have collectively addressed the dominant issues affecting the survival of Indians as a people. It has served as the principle inter-tribal instrument which initiates and facilitates day-to-day contact with the United States Government. NCAI has functioned as an educational resource on which both the Federal and tribal governments have come to depend.

Since 1944 annual sessions of the NCAI have adopted over eight-hundred resolutions concerning issues like tribal land stabilization, legal jurisdiction, education, housing, the powers of tribal government and relations between Indian nations and the United States. During the ensuing years the NCAI has actively supported programs and policy aimed at strengthening tribal governments, Indian rights, and tribal cultures. With a tribal government membership of 123 and individual membership of more than 5,000 persons NCAI has become the most broadly based national level inter-tribal institution in existence.

Each year the annual session of NCAI sets the tone and direction of goals and objectives for inter-tribal action. These goals and objectives have been spelled out in resolutions and position papers and have usually focused on short term results. However, since the U. S. Congress has conducted a comprehensive review of U. S. policies toward Indian nations and tribes it is now necessary for tribal governments to conduct a review of their policies toward the United States. After this review, a plan of action will be developed to implement tribal policies. This plan will be on a national scale and will include both short and long range goals and objectives. This plan will facilitate the fulfillment of tribal policies and insure that the U. S. government can institute new Federal Indian policies in a

framework compatible with the interests of Indian nations and tribes.

The following is a summary of long-range goals adopted by NCAI over thirty-two sessions:

#### Legal

1. Full exercise of legal and legislative jurisdiction within the geographical boundaries of tribal territory.
2. Strengthened U. S. fulfillment of trust protection with minimal national government control over Indian lives and property.

#### Human Resource Development

1. Tribal control over Indian education.
2. Tribal control over Health and Welfare to insure that every tribal member has full access to health and welfare services.

#### Natural Resource Development

1. Re-acquisition of tribal boundaries and tribal land base.
2. Tribal control over natural resources including, but not limited to, water, minerals, timber, fish and wildlife.
3. Maximum tribal control over tribal economic development.

#### Tribal Government Development

1. Full fiscal assistance from the U. S. Government to tribal governments to insure the full exercise of tribal self-government.
2. Development of institutions and procedures to insure that Indian nations, tribes, and people shall have an integral part in the policy and decision making processes of the national government.
3. Normalization of relations between state governments and tribal governments to the end that mutual co-existence will prevail.
4. Development of institutions internationally to permit Indian nations and tribes an opportunity to establish cooperative relations with Indigenous peoples elsewhere in the world.

From these long-range goals some specific objectives have emerged which have been categorized and listed as follows:

#### Legal

1. Encourage the use of netotiation techniques among tribal governments as a method of conflict resolution to replace the use of the U. S. court system.

#### Legislative

1. Develop new national Indian legislation which:
  - a. Clarifies the U. S. trust responsibilities (legal issue).
  - b. Establishes a national tribal land re-acquisition plan that supplements provisions in the IRA and provides a substantial increase in appropriations for land purchases. (Natural resource issue).
  - c. Creates a tribal government subsidy program (i.e., Tribal Government Assistance Act) as a distinct program of financial support in lieu of tribal tax revenue sources. (Tribal Government issue).
2. Seek repeal or modification of restrictive and termination resolutions and statutes (i.e., PL 83-280, HSR 108). (Legal issue).

#### Carter Transition and BIA Reorganization

1. Develop a plan for the establishment of an Independent Indian Affairs Agency (separate from the Department of the Interior) including a description of a new "Indian Service System" to replace the Civil Service Commission as it affects Indian service employees. (Legal and legislative issue).

#### Human Resources Development

1. Facilitate a process which establishes full tribal control over all Indian Boarding School through existing school boards.
2. Seek to increase Indian controlled schools by 50%.

#### Natural Resource Development

1. Develop a plan for the establishment of inter-tribal economic compacts to facilitate trade arrangements between raw materials producing tribes and user tribes.

2. Encourage an increase in the number of tribal governments which have enacted land use and water regulation codes by 50%.

### Tribal Government Development

1. Seek to encourage and increase (by 50%) the number of tribal governments which have enacted law enforcement and judicial codes and complement tribal efforts to gain full financial support for this governmental activity.
2. Establish a National Indian Conference on Political Status to develop a preliminary analysis of tribal and national government political relations within two years from the date of beginning.
3. Establish a staff exchange program with three groups of indigenous peoples elsewhere in the world.

### Strategy Planning

The main focus of the NCAI staff will be on coordinating the activities of others.

Since NCAI has a natural tie-in with tribal leaders, this function will not impose an additional work load. In addition, such a horizontal organization is more culturally acceptable to Indians than the more structured vertical organization. Indians in general like to work independently rather than as part of a large organization. It is hoped that eventually all Indian activities are coordinated to the extent that the Indians want them to be. NCAI will be the focal point for some activities such as legislative lobbying, program manager in other areas such as the tribal government textbook, and a forum for spin-off organizations such as AIPA, AICA, etc. In all cases, through NCAI, the problem is identified and some activity is initiated to solve it. A special effort is needed to recognize this fact and to refine the approach. The thrust of the strategy will be to establish a communications network for Indian country that defines the problems, who is involved, and the status of the solutions. In this way NCAI can serve as a catalyst for arriving at quick and accurate solutions.

### Implementation

NCAI's role as a catalyst can best be realized if it performs activities associated with coordination and the provision of technical assistance. Coordination of inter-tribal and other special interest organization activities will be a prime emphasis of NCAI. This coordination function

will be fully achieved after formal linkages are established between all special interest Indian organizations and NCAI. The goal of NCAI Coordination Activities will be to systematically establish combinations of personnel and organizational resources to focus on specific issues. Talent from the numerous special interest Indian organizations can be concentrated to work solutions to major problems. Such coordination will be aimed at maximizing the technical assistance available to tribal governments.

Coordination and technical assistance will be aimed at creating appropriate forums through which inter-tribal decision making can occur.

# 1977 NCAI MASTER SCHEDULE

J F M A M J J A S O N D

## LEGAL ISSUES

Litigation Comm.                     X                     X                     X                     X

Major Policy Comm.                   X                     X

## LEGISLATIVE ISSUES

Status Reports                        X                     X                     X                     X                     X                     X                     X

Legislative Comm.                    X                     X

## EXEC. BRANCH ISSUES

Carter Transition                      New Commissioner

Human Res. Dev.                      See Separate Schedule

Natural Res. Dev.                     X Seminar

Tribal Gov't Dev.                     X

AIPRC FOLLOW-UP                      67-24725-4 4 30 18  
mail out Comments-Approval Report to Congress

## NCAI ADMINISTRATION

Exec Comm.                            X                     X                     X                     X                     X                     X                     X

Exec. Council                           X

1977 Convention                      X



HUMAN RESOURCE DEVELOPMENT MASTER SCHEDULE

<p>INDIAN HEALTH CARE IMPROVEMENT ACT P.L. 94-437</p>	<p>IHS Policy Council ---x Develop 94-437 regs. ---x Appropriations ---x National Meeting ---x ---x mtg. NCAI subc. on 94-437</p>	<p>Public Comment ---x recommendations to IHS Analysis of Public Comment ---x</p>	<p>---x Draft final regs.</p>	<p>---x Publish regs. in Federal register</p>		
<p>NATIONAL HEALTH INSURANCE</p>	<p>---x Incorporation of Indian Consensus Position - NHI legislation 95th Congress</p>	<p>mtg. of NCAI subc. of National Health Insurance</p>				
<p>TITLE XX AMENDMENTS</p>	<p>---x NCAI mtg. with SRS follow-up mtg. with SRS; mtg. of NCAI subc. of Title XX</p>	<p>---x Draft report to SRS consultation with Tribbs</p>		<p>SRS Title XX report to Congress - Recommendations for legislative change</p>		
<p>FOODSTAMPS &amp; COMMODITIES</p>	<p>---x Food &amp; Nutrition Service Workshop mtg. of NCAI subc. on Foodstamps</p>	<p>NCAI national meeting on foodstamps &amp; commodities</p>				
<p>HEALTH PLANNING &amp; RESOURCE DEVELOPMENT ACT 93-641</p>	<p>---x pursue funding for 641 study convene NCAI subc. on 93-641</p>				<p>legislative amendments in the 95th Congress</p>	
<p>CHILD WELFARE</p>	<p>S. 3777 re-introduced 95th Congress ---x convene NCAI Child Welfare Subc.</p>	<p>---x National Indian Child Welfare Conference Congressional Hearings - S. 3777</p>				
<p>ELDERLY CONCERNS</p>	<p>---x mtg. of N.I.C.O.A.</p>	<p>---x develop amendments for direct funding (Older Americans Act of 1965)</p>				

## II. NCAI Activity Description

### Legal Issues

To meet the goals and objectives set out by the NCAI membership, two NCAI committees were established:

1. A litigation committee;
2. A major policy committee.

These are standing committees and assigned the following responsibilities.

### Litigation Committee

The generation-old concept of a nationally-coordinated strategy in Indian litigative efforts was realized in its first organizational stage in a two-day meeting in Denver where tribal delegates and attorneys approved a plan for a National Indian Litigation Committee and members of that Committee were chosen. (See Committee Plan & Members List below)

The March 22-23 National Indian Litigation Conference was sponsored by NCAI and planned in cooperation with attorneys from the American Indian Law Center, American Indian Lawyer Training Program, DNA Legal Services and the Native American Rights Fund. The Conference grew out of an Indian Litigation Workshop held during the 1975 NCAI Convention and was called for by an NCAI resolution passed during the Portland meeting.

Recent attempts to actively organize such an effort began immediately after the Supreme Court ruling in the DeCoteau case that the boundaries of the Sisseton-Wahpeton Sioux Reservation were diminished by an 1891 Allotment Act. This case is listed in the 1975 Interior Solicitor's Annual Report as termination of the Lake Traverse Reservation.

Focusing on the DeCoteau case and ways by which the outcome might have been avoided. Attorneys Alan R. Parker (Chippewa-Cree) and Kaye Armstrong (Creek) called for a coordinating meeting of Indian lawyers and legal service agencies in their article, "Proposed Strategy for Indian Law Reform and Development" which appeared in the March 1975 issue of the Indian Law Reporter.

"Considering the rapid rise in the volume of litigation in the field, attempts at a comprehensive law reform and development strategy are already overdue. To allow cases to be filed and appeals pursued in such areas as taxation, natural resource protection and jurisdiction without serious attempts to organize a system of communication and coordination would seem to be self-defeating . . . it does not seem

necessary to create a new organization for the purpose of coordinating law reform . . . Instead what is most important is an interest and attitude of cooperation on the part of concerned agencies."

"Once the initial communication and coordination mechanisms are established the success of the effort would depend upon the continuing responsible commitment of these agencies in view of the critical need for this effort and its importance in ensuring the proper protection of Indian legal rights. This commitment by agencies surely ought to be immediately forthcoming."

Separately, tribal leaders were reacting in similar fashion to the DeCouteau case, and reaching the same conclusions. Cheyenne River Sioux Tribal Chairman Wayne Ducheneaux in a letter to NCAI called the decision "potentially disastrous for the other Sioux Tribes in South Dakota, as well as other Tribes throughout Indian country . . .

"Given the persistence of non-Indian interests in refusing to recognize our legal and historical rights in the areas of jurisdiction, water and other natural resources, and taxation, and the frequency with which we are forced to do battle with these people in the courts to protect our interests, I think it is imperative that some type of long-range legal strategy be established among the Indian Tribes. Since such an undertaking would require a national movement, I think it is incumbent upon NCAI, the oldest and in my opinion, most successful national Indian organization to initiate such a strategy."

The resulting NCAI Convention Litigation Workshop, conducted by Chairman Ducheneaux and AILC, AILTP and NARF attorneys had the participation of the full range of practitioners in the field of Indian law. The Workshop product NCAI Resolution 75-48, addressed the "explosion in legal issues affecting Indians and their tribes which, while nominally affecting one person or one tribe, actually involves the legal rights, exemptions, and immunities of many other tribes and Indians." The resolve mandated the establishment of a committee or association, with members appointed by the NCAI President, "to assist on the legal preparation, collaboration and cooperation between tribes in legal cases or possible cases that might have a general affect on tribes and Indians . . . to achieve the maximum intertribal cooperation and assistance on various Indian legal issues or cases so that they have the most favorable result possible (and to) establish an educational as well as a litigation approach for the benefit not only of lawyers but of the various tribes, their members and others who would provide better legal services to Indians."

The Indian Litigation Conference General Assembly approved a proposed Committee plan consistent with Resolution 75-48 which is summarized as follows:

I. Structure of Committee

- A. Eleven members, with six tribal leaders and five attorneys.
- B. Members appointed by the NCAI President based upon:
  - 1. willingness to serve on a voluntary basis until financial support is obtained for the Committee;
  - 2. geographic location and representation;
  - 3. divergent legal experiences and interests;
  - 4. knowledge of different issues.
- C. Suggestions, nominations and volunteers for appointment to the Committee will be received by the NCAI President.
- D. Committee members will serve terms of one year.

II. Purposes of the Committee

- A. To develop litigation strategies in all major areas of Indian law for the purpose of promoting the orderly development of Indian law and the enhancement of Indian tribal sovereignty. This shall include making determinations as to:
  - 1. whether a litigative approach, as opposed to a legislative or administrative strategy, is most appropriate;
  - 2. whether the prior preparation necessary before initiating litigation has been successfully completed;
  - 3. the ramifications and probably outcome of such litigation.
- B. To monitor pending litigation in order to:
  - 1. marshall financial support for crucial cases and insure that the parties have access to the most competent technical advice;

2. advise such parties whether, in the Committee's determination, a given case appears to be ill-advised or ill-prepared or otherwise inconsistent with the Committee's strategy, and to make appropriate recommendations to alleviate the situation.
- C. To maintain a complete, updated list of all Indian law practitioners and disseminate information on litigation strategies and pending cases to them.
- D. To call and conduct quarterly Indian litigation conferences at which the Committee reports on their activities and discusses relevant Indian law topics for the purposes of developing litigation strategy and educating conference participants.
- E. To work with NCAI in developing sufficient funding for operation of the Committee and, in the interim, to operate on a voluntary basis.
- F. To perform its purposes and activities with due respect for all existing attorney-client relationships.

NCAI President Mel Tonasket, following a review of suggestions, nominations and volunteers, made Committee appointments on the basis of willingness to serve voluntarily, geographic location and representation, divergent legal experiences and the Conference participants. Tonasket appointed one tribal leader from each of 11 NCAI regions, five tribal and legal service attorneys and three permanent members representing the leading Indian legal institutions as follows:

National Indian Litigation Committee Members

Tribal Leaders:

Wayne Ducheneaux, Cheyenne River Sioux Tribal Chairman,  
(Committee Chairman) 605-2311-4155

Anthony Drennan, Chairman, Colorado River Indian Tribes

Norbert Hill, Oneida Tribal Councilman

Newton Lamar, Chairman, Wichita Tribe of Oklahoma

Peter Masten, Chairman, Hoopa Valley Tribe

Allen Rowland, Chairman, Northern Cheyenne Tribal Council

Edwin Tanyan, Chief, Seminole Nation of Oklahoma

Frank Tennorio, San Filipe Pueblo, All Indian Pueblo  
Council Secretary

Howard Tommie, Seminole Tribe of Florida, Chairman

William Yallup, Vice Chairman, Yakima Nation

Attorneys:

John E. Echohawk, Attorney, Native American Rights Fund (Pawnee)

Dennis Hoptowit, Director, California Indian Legal Services (Yakima)

John Kennedy, Attorney, Boyden-Kennedy

Rodney B. Lewis, Attorney, Gila River Legal Services, (Pima-Maricopa)

Alan Parker, Attorney, American Indian Law Center/  
American Indian Lawyer Training Program (Chippewa-Cree)

William Roy Rhodes, Chief Judge, Gila River Tribal Court  
(Pima-Cheyenne-Pawnee)

Jerry Strauss, Attorney, Wilkinson, Cragen & Barker

Alvin Ziontz, Attorney, Ziontz, Pirtle, Morriset,  
Ernststoff, Chestnut

Timetable:

There will be a 2nd Annual Litigation Conference early in March in the Denver area. There will be at least three Committee meetings over the rest of the year. NCAI will seek funding to enable a full-time staff member to operate a clearinghouse of legal strategies and pending cases and coordinate other meetings as necessary over the remainder of the year.

Major policies have been established in Treaties and Trust Responsibilities, Tribal Government, Jurisdiction, Federal Administration and structures of Indian Affairs and Natural Resources. The Committee Chairman was John E. Echohawk, attorney for Native American Rights Fund. Suzan Shown Harjo was the NCAI Communication Director. Charles Hobbs, Attorney for Wilkinson, Cragun & Barker, served as counsel for the Committee.

I. Treaties and Trust Responsibilities

Committee members are:

Roger Buffalohead, Professor, Indian Studies Department, University of Minnesota

Reid Chambers, Attorney, Sanosky, Chambers and Sachise

Michael Cox, ALPRC Project, American Indian Law Center

Isaac Dog Eagle, Tribal Council Member, Standing Rock Sioux

Tonia Garcia, Law Student, University of New Mexico

Oren Lyons, observer, Council of Chiefs, Onondaga Nation

Alan Parker, Staff Attorney, American Indian Law Center

Lomnie Racehorse, Director, Idah Inter-Tribal Policy Board

The Committee resolved:

That the Trust Responsibility is a duly binding responsibility on all Federal agencies, and no agency may take any action which directly or indirectly interferes with any trust right except as clearly authorized in the express language of a statute enacted by Congress and consented to by Tribes;

That Indians and Indian Tribes shall have the right to enjoin Federal or State action which interferes with trust rights by seeking equitable remedies in Federal courts. Toward this end, 28 USC Section 1362 shall be amended to provide for a waiver of sovereign immunity of the United States in any action commenced under that section.

That the trust responsibility of the United States is not limited to protection of treaty rights, but extends equally to aboriginal rights and other rights secured by agreement, executive order or statute enacted by Congress and to such other lands as the United States may acquire for the benefit of the tribes or the tribes may acquire for themselves, specifically:

- a. Congress should provide that both treaty and non-treaty rights protected by the trust responsibility shall not be abrogated or in any way infringed upon unless there exists both consent of affected tribes and express language of a statute enacted by Congress.
- b. That aspect of the trust responsibility extending to the protection and enhancement of tribal resources and particularly natural resources as a paramount responsibility of the United States involves a duty of care and exclusive loyalty consistent with the highest standards of common law trust.

- c. The United States holds bare legal title to these resources solely as trustee for Indians, and full equitable title is in the Indians.
- d. In the event of conflict between an Indian trust right or reasonable claim and a conflicting Federal policy, claim or program, all Federal agencies shall subordinate those conflicting Federal policies, claims or programs to the protection of Indian trust rights or reasonable claims unless those rights have been abrogated as provided above.
- e. That the Department of Justice has a mandatory duty to represent Indian Tribes and individual Indians in all cases where there is a reasonable claim that is the subject of the trust responsibility unless the Department has a conflict of interest, in which case the United States shall provide funds to pay attorney's fees of private counsel selected by the tribe to represent its claim.
- f. In any case where the Department of Justice declines to represent Indians or Indian tribes on the ground that there is no reasonable legal support for the Indian claim, its decision to decline representation shall be subject to judicial review. The Department of Justice shall have the burden of showing that there is no reasonable legal support for the Indian claims, and, in the event of failure to carry its burden, the court allow reasonable attorneys' fees to the Indian litigant.
- g. In all cases where Indian tribes commence an action under this section of 28 USC Section 1362, they shall be entitled to all advantages that would inure to the United States as if it were a party to the case.

## II. Tribal Government

Committee Members are:

LaNada Boyer, Tribal Council Member, Shoshone-Bannock Tribes of Idaho

Judi Cornelius, Tribal Administrator, Oglala Sioux Tribe

Peggy Sue Horse, Assistant Tribal Administrator, Cheyenne and Arapaho Tribes of Oklahoma

Frank Lawrence, Executive Director, United Sioux Tribes of South Dakota

Vicky Santana, Attorney, National Indian Brotherhood of Canada

The Committee resolved:

The Federal Government has no right or authority to limit the manner in which Indian tribes organize their governments.

Federal law should ensure that the Federal trust responsibilities include primarily an obligation to protect the right of Indian tribes to continue to exist as sovereign independent self-governing bodies.

The Secretary of the Interior and the Bureau of Indian Affairs should have no authority over the actions of tribal governments except in the exercise of trust responsibility.



Those jurisdictional laws which limit, impede or impair tribal government powers, such as Public Law 83-280, Assimilative Crimes Act and others, must be repealed, amended or clarified.

Federal law be amended, repealed or clarified to ensure that the inherent right of Indian tribes to govern all lands and people within their jurisdiction include full authority to implement revenue-raising (tax) programs on the reservations, including but not limited to the taxation of the commercial activity and appropriate systems of regulating land use and natural resources.

Those Federal statutes, regulations and policies which do not recognize Indian tribes as independent units of governments for purposes of full participation in all Federal programs must be amended, repealed or clarified in order to achieve tribal participation in such programs completely independent of the states and as truly independent governments.

Federal funds must be given directly to Indian tribes for operating their governments, and such mechanisms for providing this funding as Public Law 93-638 grants must include minimum level of funding over five-to-ten years, and the level of funding shall be determined primarily on the basis of tribal needs.

All Federal economic development programs and aid to tribal governments should be designed to achieve financial independence without exploiting or exhausting limited natural resources of Indian tribes.

### III. Jurisdiction

Committee Members are:

Peter Cannon, Attorney, Leech Lake Chippewa Tribe

Dennis Hoptowit, Director, California Legal Service

Jones Mc Curdy, Attorney, Cheyenne River Sioux Tribe

Joseph Myers, Attorney, American Indian Lawyer Training Program

Dan Raas, Attorney, Lummi Tribe

William Roy Rhodes, Chief Judge, Gila River Indian Community

W. Richard West, Attorney, Washington, D.C.

Don Wheaton, Core Staff, AIPRC

Richard Wilkes, Attorney Salt River Indian Community

The Committee resolved:

Appropriate Congressional legislation must be enacted to provide for retrocession for those tribes affected by similar statutes at the option of the tribes.

Indian country must be excluded from the application of the Assimilative Crimes Act.

Appropriate Congressional legislation must be enacted to provide for tribal assumption by the enactment of appropriate ordinances providing for penalties commensurate with the offense committed, including any offenses enumerated under the Major Crimes Act.

Congress must appropriate adequate funds based upon tribal assessment of its needs to insure the development and continued existence of tribal law enforcement and court systems.

Congress must enact legislation requiring that before a Federal agency can take or continue major action affecting tribal jurisdiction the agency shall file with the affected tribes an Indian impact statement setting out all the effects of the action or proposed action on the affected Tribes' jurisdiction and relationship with other governments.

Congress must enact legislation and appropriate sufficient funds that tribal governments may enjoy independent counsel for the negotiation and litigation of jurisdiction issues where a conflict of interest exists within the Federal government and/or when state governmental entities are involved.

Congress must enact legislation precluding indirect state taxes on tribal and individual property, including but not limited to lease-hold interest tax, severance tax, extraction tax, etc.

Any additional Federal laws concerning jurisdiction in Indian country must serve to enhance tribal government consistent with historic and legal concepts of Indian sovereignty.

Congress must specifically include tribal governments within the Full Faith and Credit provisions of 28 USC Section 1738.

Because of many of the disputes between tribes and local non-Indian governments are the result of ignorance concerning tribal jurisdiction, Congress must require that those educational institutes receiving Federal funds institute comprehensive programs to educate Americans in the nature, scope and history of tribal governmental powers in the United States.

Congress must enact legislation providing for direct funding to tribes and for tribal control of tribal programs.

Congress must enact legislation specifically recognizing or restoring the established exterior boundaries of the American Indian tribes of Oklahoma consistent with the direction of the tribes affected.

Congress must enact legislation consistent with the jurisdiction integrity and perpetual existence of non-reservation and landless tribal governments.

IV. Federal Administration and Structure of Indian Affairs

Committee Members are:

- Tom Fredericks, Executive Director, Native American Rights Fund
- Bob Livingston, Ass't to the Secretary, North West Department of Interior
- Phil Lujan, Director, Scholarship Program, American Indian Law Center
- Dorna Rae Peterson, Land & Natural Resources Director, Cheyenne River Sioux Tribe
- Ralph Reeser, Legislative Affairs Officer, Bureau of Indian Affairs
- Pat Zell, AIPRC Project, American Indian Law Center

The Committee resolved:

That the National Congress of American Indians at their 1976 Annual Convention discussed the inherent conflict of interest of the Administration of Indian affairs and have concluded that the independent agency solution of the conflict of interest recommended by the American Indian Policy Review Commission Task Force on Federal Administration and Structure of Indian Affairs does not sufficiently delineate nor adequately explain the implications of an independent agency and therefore recommend that the executive staff of the NCAI cause a study to be made of four alternative solutions to the conflict of interest:

1. Improve the efficiency of the BIA within the Department of the Interior, but give it authority to present its views to the Congress, the courts, any Federal or state agency or anyone else as trustee, even in conflict with the views of the Secretary of the Interior or other Federal agencies.
2. Remove the BIA from the Department of the Interior to a separate independent agency providing all of the services currently being provided by the BIA.
3. Remove the BIA from the Department of the Interior to a separate independent agency to provide all the functional services of the Federal domestic assistance necessary and desired by Indians and Indian tribes.
4. To recommend the creation of a Secretary for Indian Affairs with Cabinet rank to be appointed by the Indian tribes.

That the findings of this study be presented to the Indian tribes and, upon full consultation, consideration and consent of the tribes, a recommendation be submitted to the American Indian Policy Review Commission or the Congress for their consideration.

That the study shall include considerations of the trust counsel authority concept and the new Indian agency be vested with the full authority to present its views to Congress, the courts, any Federal or state agency or anyone else.

That an Indian Affairs Unit be established within the Domestic Council to effectuate non-conflicting interagency and inter-governmental coordination in implementing Federal government policy to insure comprehensive response to the totality of tribal needs. This delivering or under Federal law mandated to deliver goods and services to Indian people shall advocate tribal interests in providing the following:

1. Policy initiatives of an intergovernmental nature, which shall be representative of the real, not perceived, needs of Indian people.
2. Program recommendations which shall be responsive to previously Indian needs and coordinated with both the Indian users and the Federal agencies to facilitate effectiveness.
3. The assignment to the reservation of at least one senior intergovernmental officer approved by the tribal government, selected from any agency, but assigned to the Indian affairs Unit of the Domestic Council to provide the following:
  - a. Matching of Federal initiatives to tribal needs and making program recommendations as to service gaps.
  - b. Coordination of Federal legal assistance for treaty, trust, jurisdiction, litigation and other Federally-obligated legal assistance to Indian people.
  - c. Monitoring Federal programs to insure Indian eligibility and assistance in the intergovernmental preparation of appropriate grant applications.
  - d. Assist in preparing for an conducting of Federal program reviews, audits, investigations, etc.
  - e. Arranging for competent technical assistance so as to promote generalized tribal planning and management capacity-building with the primary focus on tribal government enhancement.
  - f. Responsiveness to tribal governments in all interactions with the Federal government so as to operationally effectuate the spirit of the participation of government as expressed in Public Law 93-638 self-determination intent.

That all Federal domestic assistance program statutes, administrative regulations and eligibility requirements be amended to recognize tribal governments and tribally-chartered organizations in the same manner as states for direct access to Federal domestic assistance programs.

That the American Indian Policy Review Commission take appropriate action through the United States Congress and Executive branch to insure that the problems identified in the BIA Management Study are corrected in consultation with, and consideration and with the consent of tribal governments, and that the corrections be made with paramount consideration of the needs of tribal governments.

That the Temporary Select Committee to Study the Senate Committee System be informed that it is the wish of Indian people that a full Committee on Indian Affairs be established, having full Senate responsibility over all matters involving Indians and Indian country.

That the Executive Director and President of NCAI should immediately notify the Temporary Select Committee of the Indian desires for a full Committee on Indian Affairs, and if such Committee is not established by the Senate, the Executive Director and the President of NCAI request the Senate to defer any proposed changes in committee jurisdiction over Indian affairs until the Executive Council of NCAI shall have had the opportunity to meet and consider the proposed changes in committee jurisdiction and make appropriate recommendations to the Senate concerning such committee jurisdiction.

V. Jurisdiction

Committee Members are:

Russell Jim, Tribal Council Member, Yakima Indian Nation

William Byler, Executive Director, Association of American Indian Affairs

Greg Ducheneaux, Delegate CERT, Cheyenne River Sioux Tribe

Levi George, Tribal Council Member, Yakima Indian Nation

Forrest Gerard, Lobbyist, Gerard & Associates

Cecil Hoffman, Staff Assistant to Assistant Secretary, Department of Interior

Gene Joseph, Consultant, AIPRC

Tony Rogers, Attorney, Wilkinson, Cragun & Barker

Hillary Skanen, Executive Director, Affiliated Tribes of N.W. Indians

William Veeder, Attorney, Bureau of Indian Affairs

The Committee resolved:

That the National Congress of American Indians strongly supports all necessary affirmative policies and programs within the Federal government for the following general purposes:

1. Protection of natural resources owned by Indians, by fostering developing that Indians expressly desire and by prohibiting development that Indian oppose.
2. Adequate funding for inventories of natural resources owned by Indians, to the extent that the inventories are desired by Indians involved.

3. Full protection and nondisclosure by the Federal government of all information related to those lands, including amendment of the Federal Freedom of Information Act, if necessary.
4. Enactment of necessary law to require that before any Federal agency takes any action that will in any way affect Indians or their natural environmental resources the involved agency notify the BIA and the affected Indian tribes or Indians and obtain their consent.
5. Immediate appropriation of adequate funds for highly intensified management systems for Indian natural resources, which systems and experts shall be under the sole control of the Indian tribes.
6. Amendment of the National Environmental Policy Act to make the Act inapplicable to Federal approvals of actions taken by tribes or Indians on private Indian trust lands.
7. Adequate financial and full technical support of tribal governments in developing and enforcing tribal laws and regulations governing and raising revenue from the use and protection of Indian natural resources. (Example of such laws and regulations would be tribal codes for water, land use, environmental protection, mineral development, reclamation, forest practices and taxation of production.)
8. At a tribe's request, immediate cessation of plans for irrigation projects that benefit primarily non-Indians, and that use of water to which Indians have a claim under the Winters Doctrine.
9. Immediate implementation of adequately funded irrigation projects primarily to serve Indians.
10. Enact necessary legislation to exempt Indian water rights from adjudication or administration through state agencies or courts.
11. Immediate approval, if Federal or Tribal law requires approval, of Tribal water codes to regulate all surface and ground water arising upon, bordering, flowing through or otherwise occurring on or under Indian reservations, or within the concept of "Indian Country" as defined by or recognized under Federal statutes.
12. At a tribe's request, declaring a moratorium on all major agricultural, industrial or other projects using waters to which Indians have a claim under the Winters Doctrine, and cancellation of existing contracts relating to such projects until such time as the Indian water rights have been specifically and accurately measured by Indians and allocated to Indian users.
13. Immediate cessation of all projects developing Indian resources where the governing bodies of the Indian tribe affected have formally opposed further development, and where there is a violation of law.
14. Adequate funding for tribal land acquisition programs.
15. Return to tribal ownership all lands taken by the United States for various government projects that are now or will become excess to the needs of those projects.

Legislative Issues

Since many Indian activities eventually require some type of legislation a concentrated effort is needed to review proposed and pending legislation and to make status reports to the appropriate people. Such a report will be made periodically and updated as needed. Special analysis will also be needed in certain areas and these will be performed as required.

Legislative Committee

Purpose: To monitor and assess structural and legislative activities of the 95th Congress. The Committee will also attempt to develop a unified stance on bills affecting Indian matters, and communicate this to the tribes through NCAI.

Composition:

- Frank Ducheneaux - Counsel to House Indian Affairs Subcommittee
- R. D. Folsom - Counsel, Senate Interior and Insular Affairs Committee
- Theresa Burt - Legislative Assistant, Administrative Practice & Procedure Subcommittee, Senate Judiciary Committee
- Tony Strong - Senate Subcommittee on Indian Affairs
- Mike Jackson - Minority Counsel, House Indian Affairs Subcommittee
- Forrest Gerard - Former staff, Senate Interior & Insular Affairs
- Ella Mae Horse - Professional Staff Member, Senate Interior & Insular Affairs Committee
- Ralph Reeser - Legislative & Congressional Liaison Officer, BIA
- Tony Rogers - NCAI legal counsel
- Reid Chambers - Attorney, (Sonosky, Chambers & Gross)
- Ernie Stevens - Director, American Indian Policy Review Commission

Timetable:

The Committee will meet as often as necessary to fulfill their purpose. The actual times will reflect the activities of the 95th Congress.

Legislative Implementation

NCAI will organize and coordinate special task teams to assist in promoting legislation. Testimony will be given by appropriate members of the Indian community and organized in such a fashion as to be most beneficial to the desired legislation. Special technical experts will be called upon when required. NCAI staff will monitor the progress of the legislation.

Legislation will be required in the following areas identified either by NCAI member tribes or the AIPRC:

1. Congressional Policy Statement
  - a. Repeal 108
  - b. Amendment to Allotment Act
  - c. Eliminate Appropriations Act of 1871
2. Authority for a new Executive Agency Define the relation between tribes and U. S. government superagency.
3. Land Consolidation/Stabilization
  - a. Develop stabilization of land-use for Indian tribes.
4. Aid to Tribal government Bill
  - a. Elevate those governments of which the U. S. has trust responsibility.
  - b. Establish a commission or negotiation process on political status of tribes.
  - c. Set up debate-type workshops mostly among Indians to develop a collective position.

Executive Branch Issues

Carter Transition and BIA Reorganization: NCAI wholly endorses a policy of Indian Self Government which is the title of a paper written by Ernest L. Stevens, Director of the American Indian Policy Review Commission. In this paper the AIPRC points out that the United States of America, trustee for the Indian people, must do three things:



1. Immediately strengthen and implement the laws respecting the trust obligation of the National Government owing to the American Indians under the Constitution and assure the continuous fulfillment of those obligations.
2. Start now the transition process which will remove Indian affairs from the Department of the Interior and the Department of Justice by creating an independent federal agency outside of the Department of Interior with the objective of having Indian affairs administered by Indians and for Indians.
3. Immediately implement tough administrative policies which will relieve the pressures of BIA control and supervision and accomplish this with fundamental departures from existing methods of administering old-line bureaucracies.

NCAI will follow-up on the recommendations presented by the AIPRC in their BIA management study. The key recommendation is the creation of an implementation and oversight team (or Presidential Task Force) which will act independently of the Department of Interior, reporting directly to the White House. This team will develop and implement a plan for restructuring the BIA to be service-oriented rather than management-oriented. Salient features of this plan will be re-designating the Area Offices to be Technical Service Centers and completely removed from the budget approval cycle for Indian agencies. Another feature is the redesign and organization of a Management Information System which includes a national computerized network for providing budgets, land-use planning and legal information to all tribes. The following organization chart shows the proposed realignment of the BIA.

OFFICE OF THE  
ASSISTANT SECRETARY  
DIRECTOR

- Policy Development & Analysis
- Intergovernmental Relations
- Audit and Review
- Congressional & Legislative
- Public Affairs & Information

ASSISTANT SECRETARY  
FOR INDIAN AFFAIRS

- Rights Protection
- Trust Services
- Legal Advice

DEPUTY ASSISTANT  
Secretary  
OPERATIONS

- Human Resources
- Natural Resources
- Tribal Government Development

-Area Service Centers

LOCAL SERVICE  
CENTERS

- Tribal Government and/or
- Local Agency Superintendent

DEPUTY ASSISTANT  
Secretary  
ADMINISTRATION

- Planning and Budgeting
- Financial Management
- Personnel
- Contracts/Grants
- Support Services

PROPOSED ORGANIZATION CHART  
FOR BUREAU OF INDIAN AFFAIRS