

INTER-TRIBAL STUDY GROUP ON TRIBAL/STATE RELATIONS

Tribal Positions and Policies In Washington State

Concept Paper

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INTRODUCTION

The intervening years between the 1930s to the present have brought the tribes in the United States increased conflict and diminished authority over their lives, especially in governmental matters. Being Indian in the U.S. and living on a reservation in one of the states has been, as one tribal leader expressed it, "...years of attempts to assimilate us."⁽¹⁾ This tribal chairman's observation reflects, however, more than dejection or indifference. Ron Lupe of the White Mountain Apache asserts that "It is our pledge as a tribal government that we last hundreds more."⁽²⁾ A pledge being taken solemnly by more and more tribal people as they take up the struggle to endure and survive. Another tribal leader, Councilman Russell Jim of the Yakima Nation, takes a similar stand when he remarked,

I think it is very essential we are fighting for existence. More now than ever in the past. Not with bows and arrows, and this grandiose thing you have seen in television and movies, but fighting with the law, courts. ⁽³⁾

Councilman Jim spoke before delegates to a Conference of Tribal Governments where members of tribes are talking and conferring about those conflicts between themselves and other governments. These conferences have been an important series of "pledges" being made by tribal leaders determined to fulfill Lupe's stand against further state and federal governmental invasions into their affairs. As Lupe concludes,

We must take the best of the white man's world and blend it with ours. We must develop our resources and become strong. Only then can we expect to retain our traditional ways. A strong man can make his own path.⁽⁴⁾

In this paper prepared for the Inter-Tribal Study Group on Tribal/State Relations we take up those issues of concern to tribal leaders engaged in conflict resolution activities with various state governmental agencies. We

have focused our attention on the positions these leaders have taken and expressed for the most part in the various resolutions adopted in a series of forums such as the Conference of Tribal Governments, National Congress of American Indians, and The American Indian Policy Review Commission.

Tribes living on reservations in the United States are the owners of wide varieties of natural resources. Their land holdings alone constitute a substantial set of complex issue areas; the issues cover areas of dispute in matters legal, economic, social, and political. There are also areas purely legal and governmental in nature. One issue widely discussed is tribal jurisdiction in relation to state jurisdiction, particularly in civil and criminal matters. Other issue areas are concerned primarily with human resources. Economic issues are interconnected with nearly all other issue areas and are of vital interest to tribal people.

Conflict between state and tribal governments is an old story. Not until the passage of the State Jurisdiction Over Tribes Act (so-called) or Public Law 83-280 did the conflicts over issues involving jurisdiction began to intensify. Up to that time, the tribes were under the jurisdiction of the federal government and in a life and death struggle over issues involving termination. The resulting confusion, damage, and litigation created by these legislative invasions into the affairs of the tribal governments played a larger than realized role in compelling both governments to seek a less negative posture in their relations with each other and begin to negotiate rather than litigate.

ISSUES IN TRIBAL/STATE RELATIONS

1. Natural Resources which include:

- water
- land
- air
- timber
- minerals
- clay
- gravel
- uranium
- fossil fuels
- wildlife
- fish*

* Indexed in American Indian Policy Review Commission Final Report Appendixes and Index, pg. 911

2. Land Use which includes:

recreation
industrial/residential
agricultural
hydro-power
energy transfer
range

3. Fishing which includes:

enhancement
treaty rights
steelhead fishery
non-tribal fishermen
U.S. v. Washington

4. Water Rights

5. Water Policy

6. Irrigation

7. Taxation

8. Inter-tribal Communications

9. Statute of Limitations which includes:

Public Law 89-5051 (28 USC 2415)
Indian Claims for Money Damages

10. Health Services

11. Tribal/State Jurisdiction which includes:

civil litigation
criminal law enforcement
Indian Child Welfare Act

12. Human Resources

13. Tribal Government

14. Tribal/State Relations

15. Nuclear Waste Disposal

16. Northern Tier Pipeline

17. Second Bacon Siphon Project

18. Governmental Services

19. Federal Governmental Services

20. Non-treaty Tribes

1. Tribal Positions On Natural Resources:

a. tribal rights to natural resources on their lands are private rights and cannot be taken over by states assumption of public

rights.

b. these rights are derived from inherent sovereignty of the tribe and are secured by aboriginal ownership.

c. and, these rights may extend beyond reservation boundaries into ceded areas or usual and accustomed places;

d. state obligated to pursue policies aimed at cooperating with tribes and their governments.

e. basic tribal rights to natural resources are further secured by a claim of aboriginal possession, treaty, act of Congress, executive action and purchase.

f. These basic rights in property value of resources predate European settlement.

g. Furthermore, the protection and development of these natural resources are directly vital to social well-being of tribal members and economic progress of tribal community,

h. and, state governmental efforts to tax and to regulate economic activity resulting from development of these resources are in violation of some state's constitutional disclaimers concerning jurisdiction over tribal resources, i.e. lands.

2. Tribal Positions on Land Use:

a. state governmental agencies cannot enforce zoning regulations or land use policies on tribal land

b. leasing of tribal land is province of tribal government and within its exclusive authority

c. tribal governments are sovereignties on their territories which is based on aboriginal title.

3. Tribal Positions On Fishing:

a. state leaders and citizens must come to realize the inherent rights of aboriginal people in Northwest and abide by laws.

b. state leaders should make an effort to inform non-tribal citizens that the tribes did not grant or give away any part of the fisheries reserved by treaty.

c. non-tribal citizens should be educated on the language of the treaties in an unbiased, intelligent way.

d. non-tribal citizens should be educated to understand that tribal fishing rights were not created by the Boldt decision in U.S, v. Washington, nor by treaty language interpreted by the court.

e. tribal fishing rights stem from the unfettered right to fish reserved by tribes when signing the treaties. Their right to fish is based on aboriginal right and pre-treaty title possessed by tribes.

f. state agencies only have the right to regulate fishing only off-reservation and only those who are non- tribal fishermen

g. the reserved right to fishing is important to the economic and cultural status of the tribes.

h. we agree that it is the responsibility of both the state and the tribes to affirm the Boldt decision concerning the treaty right to take 50% of the harvestable anadromous fish.

i. enhancement projects must be taken up by the tribes in full cooperation with state departments in charge of the fisheries

j. tribal and state fishing authorities and agencies should exchange resources and data for enhancement of the fishing resource

k. state has allowed the fishing habitat to become less productive which has resulted in the need for an intense enhancement effort.

4. Tribal Positions on Water Rights:

a. the Governor of Washington is urged to implement policy in recognition of tribal right to reserve water and all other natural resources

b. the state should not issue permits, rights, or certificates involving surface or ground water arising totally or partially on reservations.

c. the state should invalidate all water rights, permits, and certificates issued to non-tribal interests.

d. the state should not be party to any compact with any other state or U.S. and Canada regarding use, transfer, storage of water from streams and lakes within reservations.

ANALYSIS OF RESOURCES DEVELOPMENT ISSUES

Natural resources on tribal lands are important assets; vital holdings of the tribes' remaining claim to a unique status and basic to any economic activity designed to preserve tribal identity. As the various tribal spokespersons indicated, their inherent rights to these natural resources were secured for their social well-being. State governments along with local governments have consistently sought to "infringe" on reservations within the states' boundaries, arguing that their jurisdiction extends to non-tribal land within the reservation.

While this argument remains an issue before the federal courts tribal leaders continue to maintain that this kind of encroachment is detrimental to their claim to exclusive jurisdiction. Thus, they consistently argue the point that their right to the natural resources on their lands are "private" rights derived from their aboriginal ownership. In short, jurisdiction is the issue in dispute between the tribes and state governments.

In light of this area of conflict, i.e. jurisdictional encroachment by state government, tribal leaders continue to seek ways to gain a position of equality with their "neighbor" governments. Their various positions on issues related to resources development are consistently those positions that assert their willingness to "cooperate" with the state. Their experience with the fishing issue has shown that a favorable decision in federal court compels their opponents to push even harder for dominance.

This abandonment of the courts as a way to resolve the tribes' disputes over jurisdiction with the state highlights the need to develop positions on issues of concern to the state. Tribal leaders already are calling upon state officials to bring their views to the tribes' attention in a spirit of cooperation.

Tribal leaders in taking up the issue of tribal/state relations identify these positions:

- a. the office of the Governor should examine several staff arrangements to insure that the Governor and the Executive branch is fully informed about the limitations in state government authority and its relations with tribal government.
- b. the Governor or the state legislature should decide to establish an Indian advisory group within state government made up of Indian citizens.
- c. both the state and the tribes should seek agreement on the degree and

extent of government's responsibility for serving and protecting Indians.

d. tribal governments should formally create an intertribal forum separate from state and federal government in order to insure maximum coordination and communication among tribal governments to negotiate better relations with the state.

Footnotes:

1. Bill Hess (quoting), "Seeking the Best of Two Worlds," National Geographic, February, 1980, Vol. 157, No. 2, p. 275
 2. Ibid.
 3. Transcript of Proceedings, Session III, Conference of Tribal Governments, Day II (5/14/79)
 4. Hess, "Seeking the Best of Two Worlds," National Geographic, February, 1980, Vol. 157, No. 2, p. 275
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