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ABSTRACT

The demographic and socioeconomic development of the Navajo Tribe is presented. The demographic data is based on the 1970 Census report. The other 5 topics are: (1) a short history of the Navajos; (2) a description of tribal government structure and its legal status of partial sovereignty; (3) education, covering Bureau of Indian Affairs (BIA) and public schools and Federal aid programs; (4) employment, detailing the acute unemployment rate; and (5) economic development, such as land and water resources, industrial development, and barriers to economic development. For further clarification, 8 appendices are included--e.g., treaty between the U. S. and the Navajo Tribe, reservation manpower analysis, and Federal programs. (FF)

DEMOGRAPHIC AND SOCIO-ECONOMIC CHARACTERISTICS OF THE NAVAJO

Staff Report
Office of General Counsel
U. S. Commission on Civil Rights
October 1973

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DEMOGRAPHIC STATISTICS

In 1970, the Bureau of the Census reported a total Navajo population of 96,743.[1] The Bureau of Indian Affairs, using tribal rolls, estimates a much higher figure--136,685--with some 128,123 Navajos living on or adjacent to the reservation.[2]

The Navajo live primarily in the three States in which the reservation lies: Arizona, 73,657 (57.5%); New Mexico, 50,069 (39%); Utah, 4,398 (3.4%).[3]

Most of the tribe is young: about 76.9% of the Navajo are under 25. Females outnumber males by more than 1,300, according to the BIA--or by 2,600 in the Census report.[4] The median household size is 5.1.

There are no birthrate statistics available for the Navajo as a tribe; however, the figure given for all Indians in the six counties in which the Navajo live[5] is 41.8 live births per 1,000 population[6] --or 2.4 times the national average of 17.3.[7]

1/ Bureau of the Census, 1970 Census of Population: American Indians, Table 11 at 146 (1970) (hereinafter cited as Census).

2/ BIA, Office of Reservation Programs, 1971 (hereinafter cited as BIA). See n. at on Census-BIA discrepancies. Census figures are used in this report where others are less detailed and where overall conclusions are unaffected by gross figures.

3/ Id.

4/ Census, PC (2)-F.

5/ Apache, Coconino and Navajo Counties, Arizona; McKinley and San Juan Counties, New Mexico; and San Juan County, Utah.

6/ DHEW, Indian Health Service, unpublished data.

7/ Id. provisional figure for 1971.

Again, in general, rather than tribal terms, the Indian's life expectancy is 64, as opposed to 70 years for the general population.[8/]

8/ DHEW, Indian Health Service, Highlights of the Indian Health Program, 5 (1971).

THE RESERVATION

The Navajo Reservation is the largest in the United States. The Tribe also owns other lands, as described in the chart below.

LANDS OCCUPIED BY NAVAJO INDIANS

	On Reservation (acres)	Off Reservation
Trust Lands		
Tribal	12,448,993.33	765,887.46
Individual	83,543.82	606,404.21
U.S. Government	6.40	324,304.02
Total	12,532,543.55	1,696,595.69
Navajo Band Lands 9/		
Alamo Navajo		
Tribal		43,334.77
Individual		19,774.06
Government		-
Total		63,108.83
Canoncito Navajo		
Tribal		68,143.79
Individual		8,629.05
Government		40.00
Total		76,812.84
Ramah Navajo		
Tribal		85,960.62
Individual		47,632.78
Government		13,402.29
Total		146,995.69

SOURCE: Survey by BIA Office of Trust Services (June 30, 1973).

9/ Non-contiguous lands in New Mexico owned by Navajos who participate in the tribal government, but whose lands are considered distinct from the main body of tribal land.

HISTORY

According to Navajo mythology, the people, or Dineh, as the Navajo call themselves, came to this earth after having to escape from four underworlds. In the present world the Holy Ones created four mountains known today as Sierra Blanca Peak, Mount Taylor, San Francisco Mountain, and Mount Hesperus.[10] The land between these four mountains is the area the Navajo calls home.

Leighton and Kluckhohn say that the Navajo descended from bands of hunters and gatherers and intermarried with the Pueblo Indians, adopting much from their customs and cultures.[11]

Apparently, the Navajo's most important adoptions from the Pueblo were agriculture and the crafts of pottery and weaving.[12]

It was from the Spanish, who first came to the Navajo territory in the 1530's, that the Navajo learned the arts of horse riding and stock raising.[13] Spanish attempts to subdue and enslave the Navajo were singularly unsuccessful, in fact, the would be conquerors were

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10/ Martin A. Link, Navajo: A Century of Progress 1868-1968, Introduction (1968), (hereinafter cited as Link).

11/ D. Leighton & C. Kluckhohn, Children of the People, 234 (1969).

12/ John Upton Terrell, The Navajo, 15-16 (1970) (hereinafter cited as Terrell); Link, Introduction.

13/ Terrell at 17-51.

subject to raids by these Indians, who had learned to use the horse well for quick striking and mobility. So frequent and harsh were these attacks that the Spanish were forced to retreat from the Navajo area in 1680.[14/] Although the Spanish returned and enslaved many Navajo, neither they nor their Mexican successors were able to conquer them.[15/]

But "the people" were to fall victim to another culture. By virture of its victory over Mexico in 1848, the United States acquired the land where the Navajo lived.

In 1850, a treaty between the United States and the Navajo provided that the tribe was placed under "exclusive control of the U. S." and that the Navajo was to be subject to the same laws as all other Indian tribes under U.S. control.[16/]

This treaty, however, did not insure peace between the Indians and Anglos. Anglos treated the Navajo no better than the Spanish and Mexicans had. Navajos were enslaved, raped, and even scalped by the "new" white man.[17/] The period between the American takeover and the Civil War can be characterized as one of chaos and treachery,

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14/ Terrell.

15/ Id. at 49-77.

16/ Treaty between the United States of America and the Navajo Tribe of Indians 1850, 9 Stat. 974.

17/ Terrell at 80-82.

of broken promises, hostile actions, and atrocities by Anglo renegades, soldiers, and settlers on one hand, and of savage revenge by Navajo raiders on the other.[18]

Raiding of white settler's camps to steal livestock and other settlers' possessions had made some Navajos rich, and therefore the poorer in their tribe wanted to gain by the same method. In fact, raiding was a part of Navajo life, something they had practiced against other tribes long before the white man came.[19]

On the other hand, the government from the very start vowed to protect the settlers and towns people and their possessions.[20] The clash between the two cultures was irreconcilable.

The response to this clash by the American government was to attempt to rid the Navajo territory of the Navajos. A plan was conceived during the Civil War to round up these "savages" and relocate them to the east in a barren area called Bosque Rodondo, in what is now eastern New Mexico. But before this was accomplished the Navajo had to be literally starved into surrender. Under the leadership of Kit Carson thousands of U.S. troops roamed the Navajo county destroying everything the Navajo could use; every field, storehouse and hut was burned.[21]

18/ Terrell at 79-155.

19/ Id. at 80.

20/ Id. at 82.

21/ Id. at 157-165.

Terrell described the plight of the Navajo in the Winter of 1863-1864:

> No one understood better than the Navajos themselves how desperate their situation was. Carson's holocaust had destroyed the greater part of their stores. There would be no opportunity to plant crops in the coming spring. Starvation rode with the soldiers against them, and it was an enemy far more formidable than the guns. . . 22/

Although it took up to four years before the last Navajo holdouts were forced to surrender, by the fall of 1864 more than 8,000 Navajos had been detained at Bosque Redondo, having made the trip by foot, suffering from disease and starvation. Many died en route, some shot by the souldiers. Others fell victim to slavers with the full complicity of the U.S. officials. 23/

At the forty square mile reservation conditions were desparate:

> ...Navajos lived in holes in the ground sheltered only by pieces of discarded army tents, cowhides, and brush. Many were dying of malnutrition, many were almost naked, and most of them were barefoot. They were suffering from pneumonia, tuberculosis and venereal diseases. 24/

So awful is the memory of this forced march across 300 miles of rugged land that even today the Navajo bitterly refer to it as "The Long Walk." 25/

22/ Terrell at 165-68.

23/ Id. at 168-174.

24/ Id. at 174.

25/ Link, Introduction.

Numerous attempts were made to establish farming at the Bosque Redondo, but each failed due to the harsh conditions of the land, droughts and pests.[26]

The relocation effort was a catastrophy for the Navajo; 2,000 died there in four years. By 1868 even the U.S. government could see it was a failure, so they signed a new treaty with the Navajo allowing them to return to their homeland.

The treaty with the Navajo Indians of June 1, 1868 (see appendix) provided for a 3.5 million acre reservation, but this was only one-fifth of the land that the Navajo had previously needed to survive.[27]

Although the tribal leaders were glad to sign in order to return to their home, only part of their nome was theirs now, moreover, this was not the only or most ignominous section of the treaty.

Article III provided for a grant of land of up to 160 acres to any Indian family willing to farm it, but generous as this provision might seem, it was modeled after an eastern white concept of Homestead Law, and did not fit the communal tradition nor the economic realities of the arid southwest.[28]

26/ Id. at 1.

27/ Treaty between the United States of America and the Navajo Tribe of Indians, concluded June 1, 1868, 15 Stat. 667, Art. II; and Terrell at 197-198.

28/ 15 Stat. 667, Art. III; and Terrell at 198.

Still worse was the provision that every Navajo child between the ages of six and 16 must attend and reside at a school teaching "an English education." This provision would lead to many abuses in the future by the U.S. government (see section on Navajo Education below).[29/]

The other sections of the treaty provided for supplies to be given to the Navajo by the government, and for the punishment of those who violated the peace between the U.S. and the Navajo; but the treaty is most important now because it set the basis for the U.S. control of the Navajo's destiny and placed the tribe in a position of inferiority and dependency that continues today.

So restricted was the land to which the Navajo returned in 1868 that by 1878 the U.S. had to restore more land to the growing Indian farm and grazeland, and additional lands were given back in 1880, 1883 and 1884.[30/]

By 1883 the impoverished Navajo had regained some economic strength. The tribe numbered 19,000 and owned 35,000 horses, 200,000 goats, and over one million sheep.[31/]

But Navajo farmers and herders were seen as unwelcome "intruders" by greedy railroaders, prospectors, and settlers, and the Indian often

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29/ 15 Stat. 667, Art. VI; and Terrell at 199-200.

30/ Link at 11.

31/ Id.

suffered violence and loss of his land and livestock at the hands of lawless whites.[32/]

In the early 1900's, President Theodore Roosevelt granted up to 4,056,000 acres to the Navajo in an effort to put a buffer between white settlers and Indian farmers. But many portions of this land were lost in 1911 when President Howard Taft restored to Federal control parts of the Roosevelt grants east of the original reservation which were not already alloted to individual Navajos.[33/]

The U.S. granted the Navajo an additional 1,079,000 acres between 1918 and 1934. The Navajo purchased 250,000 additional acres with money earned from mineral royalties. Today, the Navajo reservation contains about 14 million acres,[34/] but about a fifth of this is useless for farming and grazing and another 48 percent is rated only poor to fair for such uses.[35/]

Today the Navajo tribe is governed by the BIA and their tribal council (see section on legal status of the Navajo below). Many of the problems that have beset the tribe since the onslaught of white settlers continue today. Although there are no more wars, the price of peace has often been a harsh one for the Navajo. About a fifth of the tribe, once

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32/ Link at 25; Terrell at 249-50.

33/ Terrell at 250-251.

34/ See Table 1.

35/ Terrell at 251-53.

independent economically, is unemployed, and the median annual income of working age Navajos in 1970 was less than $2,600 [36] (see section on the Navajo economy for more details).

The Navajo today recognizes the need for better education, especially higher education, to prosper in a world dominated by Anglos. [37]

But the single most unchangeable fact about Navajo life is that the Navajo is no longer independent but lives now in a world dominated by whites in which the Navajo is but a small minority. This has been a basic fact of life for the past 100 years, and because it has meant the loss of the Navajo's independence, which they had managed to keep, albeit with much difficulty, even through the era of Spanish and Mexican settlement, it has caused a basic change in the Navajo way of life. The Navajo must depend on assistance from the white man in order to survive.

36/ Census, Table 13 at 166 (figures for Navajos 16 years of age and older.

37/ Terrell at 288-289; Link at 55.

LEGAL STATUS OF THE NAVAJO TRIBE

First, it should be stated that the Navajo, like most reservation Indians in the United States, is a unique legal entity. While they are citizens of the United States, the Navajos are not generally subject to the jurisdiction of State governments.

This was made clear by the United States Supreme Court in Williams v. Lee which ruled that a non-Indian, who operated a store under federal license on the Navajo reservation, and sued a Navajo for debts, could not bring the action in a State court.[38/] The court based its decision on past cases which held that the States had no jurisdiction, even in criminal matters, over Indians living on reservations or non-Indians conducting business with federal permission on reservations.[39/] The court explained:

> Originally the Indian tribes were separate nations within what is now the United States. Through conquest and treaties they were induced to give up complete independence and the right to go to war in exchange for federal protection, aid, and grants of land. 40/

Without commenting on the inequities of that bargain for the Indian, the court built upon the above assumption the concept that only where Congress grants the States power over the Indians, may they exercise it, and that when Congress had wished the States to have such power, it had expressly granted it.[41/]

38/ Williams v. Lee, 358 U.S. 217 (1959).

39/ ID. at 218-220.

40/ Id. at 218; see also Kent Gilbreath, Red Capitalism: An Analysis of the Navajo Economy, 32 (1973).

41/ Williams v. Lee, supra at 220-21.

The court then stated that in the Treaty of 1868 the Navajo agreed to keep peace with the United States and in return for this promise the U. S. had set apart a reservation for the Navajo.

> Implicit in these treaty terms . . . was the understanding that the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal government existed. Since then, Congress and the Bureau of Indian Affairs have assisted in strengthening the Navajo tribal government and its courts . . . Today the Navajo Courts of Indian Offenses exercise broad criminal and civil jurisdiction which covers suits by outsiders against Indian defendants. No Federal act has given State courts jurisdiction over such controversies. 42/

Noting that Congress had given the States power to assume judicial jurisdiction over the Indian tribes within their boundaries by amending their State constitutions (67 Stat. 590), the court pointed out that absent such amendment, a State had no jurisdiction over Indians within its boundaries. 43/

The Supreme Court reaffirmed its position as to the legal status of the Navajo tribe six years later in the case of Warren Trading Post v. Tax Comm. 44/

Congress has repealed the act allowing States to assume jurisdiction over Indians by amending their constitutions, and replaced it with Title IV of the 1968 Civil Rights Act, 25 U.S.C. § 1321-1326, which allows States to assume civil and criminal jurisdiction over Indians only with the express consent of a majority of Indians voting in a special election.

42/ Id. at 221-222.

43/ Id. at 222-223 (Note 10).

44/ 380 U.S. 685 (1965).

The Supreme Court ruled that by virtue of this 1968 Act, State control of Indian judicial matters could only be assumed after approval by a majority vote of all Indians within the affected area, not by a vote of a tribal council.[45/]

Thus, the legal status of the Navajo tribe is one of partial sovereignty. The States can have judicial control over Navajos living on the reservation only if a majority of those living on that part of the reservation within the State which seeks judicial control, approve. But the Federal government, especially the Secretary of Interior and the BIA, retains control over the judicial affairs of the Navajo if the States lack consent to exercise it.[46/]

Furthermore, Federal law gives the Secretary of Interior and the Commissioner of Indian Affairs broad powers over "all Indian affairs and of all matters arising out of Indian relations."[47/] For instance, the Secretary and Commissioner must approve all tribal contracts.[48/] These laws have been upheld by the Federal courts.[49/]

Using these broad authorities, the Bureau of Indian Affairs (BIA) has promulgated extensive rules on how the Indian tribes may govern

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45/ Kennerly v. The District Court of Montana, 400 U.S. 423, 428-29 (1971).

46/ See 25 U.S.C. §2, and see Navajo Tribal Code (N.T.C.) § 1, 1969 as amended; incorporates 25 C.F.R. § 11 with approval by the Secretary of Interior as required by law.

47/ 25 U.S.C. § 2.

48/ 25 U.S.C. § 81.

49/ Udall v. Littell, 366 F.2d 668 (D.C. Cir. 1966); cert. denied 385 U.S. 1007, rehearing denied 386 U.S. 939.

themselves.[50] Following these guidelines the Navajo tribe has passed an extensive code outlining its electoral process and the powers and duties of its legislative, executive, judicial, and administrative branches of government. Most of these codes require the approval of the Secretary, Commissioner, or the BIA.[51]

Thus, while the Navajo tribe may be free from the cloak of State regulation, broad Federal laws and administrative codes keeps it under the watchful eye of Washington. However, due to the general deference of the Secretary and the BIA to decisions of the tribal council, some autonomy has been given to the Navajo in internal affairs.[52]

STRUCTURE OF THE NAVAJO GOVERNMENT:

Up to the time when the U. S. took over the Southwest there was no unified political structure with one leader among the Navajo. The only organization was of family or bands of people whose leaders, called naat' aanii ("speech makers"), were chosen by the decision of the group or clan and would be removed by the same process.[53]

In fact, it was not until 1923 that the Navajo had its first formal government, the tribal council, composed of six delegates, created in part so that oil companies would have some legitimate representatives of the Navajos through whom they could lease reservation lands on which oil had been discovered. This was necessary because the 1868 Treaty provided that

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50/ See 25 C.F.R. § 52.

51/ See generally N.T.C., esp. Titles 2, 7, 11, and 17.

52/ Terrell at 283.

53/ Terrell at 279.

no part of the Navajo reservation could be ceded without the consent of three-fourths of the tribe.[54/]

The council selected a chairman and vice chairman outside the council membership. Also formed from those not on the council were the Navajo community chapters, made up of people in local areas throughout the reservation who met to discuss common local problems. In 1970, over a hundred such chapters existed.[55/]

The American imposed democratic system was far from perfect, however. For one thing, the council had no real governing power over the local bands and families, and few Navajos understood what it was supposed to do since a centralized governing body was a concept alien to their tradition.[56/]

Reorganized in 1938, the Navajo government has expanded its representation and broadened its powers. The legislative powers still derive from the tribal council, (hereinafter referred to as "the council") but that council is now made up of 74 delegates instead of six. Every member of the council must be a member of the Navajo tribe and over 30.[57/] The delegates are forbidden to hold other employment which creates a conflict of interest, and are subject to removal by a two-thirds vote of the council or by petition of 50 percent of the

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54/ Id. at 279-80.

55/ Id. at 281.

56/ Terrell at 281-82.

57/ 2 N.T.C. §§ 101, 102.

voters in his or her precinct.[58] Each delegate is elected from his or her district and serves a four year term.[59]

The council meets four times a year, with its agenda set largely by the chairman of the council and the BIA area Director (again evidence of the Federal supervision of Indian affairs).[60]

The chief executive of the tribe is the chairman of the tribal council (hereinafter referred to as "the chairman") and is elected to a four year term. There is no limit on the number of terms he/she may serve. Second in power is the vice chairman of the Navajo tribe (hereinafter referred to as "the vice chairman").[61] The chairman and vice chairman must be 35 years old and a permanent resident on Navajo lands, a high school graduate, have previous tribal government experience, and not be a felon.[62]

The chairman may yield the chair to the vice chairman in order to take part in council meetings, but most importantly he/she has responsibility for "directing and supervising the personnel and executive business staff of the tribe" and over the various council committees.[63] The chairman selects from the council membership the members of various council committees except for the advisory committee which has important

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58/ 2 N.T.C. §§ 103, 105 and 11 N.T.C. §§ 211, 212.

59/ 2 N.T.C. § 104.

60/ 2 N.T.C. §§ 162-63.

61/ 2 N.T.C. §§ 281-82 and 11 N.T.C. § 3.

62/ 11 N.T.C. § 4a and 2 N.T.C. § 283.

63/ 2 N.T.C. §§ 284, 903.

duties of overseeing tribal business and financial affairs, but including legislative committees such as those on education, health, judiciary, law and order, trading, and welfare.[64/]

The chairman and vice chairman, along with the advisory committee which they chair, head up a sophisticated executive structure which includes the tribe's legal office, the executive secretary, the office of the comptroller, employment and personnel department, vital statistics department, community development department, health, education and welfare department, police department, probation and parole department, division of agricultural and livestock development, mining department, and others.[65/]

As mentioned above, the Navajo has its own court system under the guidelines of Title 25 of the Code of Federal Regulations, Chapter 11. The system consists of a tribal court and a Court of Appeals.[66/] The chairman appoints the seven judges who preside at the Tribal Court, with the approval of the council, for a two year probationary period, after which the chairman may nominate the probat ›nary judge to be a

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64/ 2 N.T.C. §§ 341, 802. The Advisory Committee is composed of 18 members selected by the Council by secret ballot from a list of Council members nominated by the Council members. The Chairman heads this committee which has many executive responsibilities including the power to approve contracts made by the Chairman and to lease tribal land for farming and authority to make rules and regulations concerning commerce and trade, agriculture, education, health and welfare, highways, mining, public parks and monuments, wildlife, and other areas. See 2 N.T.C. §§ 341-49; 3 N.T.C. § 1; 5 N.T.C. § 2; 10 N.T.C. § 3; 13 N.T.C. §§ 1, 4; 14 N.T.C. § 1; 18 N.T.C. § 1; 19 N.T.C. §§ 2, 3, 101; 22 N.T.C. § 1.

65/ 2 N.T.C. §§ 4, 903-1273.

66/ 7 N.T.C. § 101.

permanent judge, with "the advice and consent" of the council.[67] Permanent judges can serve until they are 70.[68]

The tribal courts have original jurisdiction over all violations of the Law and Order Code,[69] all civil actions in which the defendant is an Indian living in Navajo territory, domestic relations of Navajos, probate of Navajo's property, and all other matters that formerly were handled by the abolished Court of Indian Offenses.[70]

The Court of Appeals consists of a Chief Justice of the Navajo tribe (hereinafter referred to as "the Chief Justice") and two tribal court judges who are appointed to hear particular cases as requested by the Chief Justice. The Chief Justice also serves a two year probationary term before becoming permanent.[71] The Court of Appeals has jurisdiction over all tribal court final judgments except those criminal cases where the defendant is sentenced to 15 days imprisonment or labor and/or fined less than $26.00, in which case there is no appeal.[72] The courts have the authority to make their own rules of pleading, practice, and procedure.[73]

As mentioned in part above, the Navajo tribe has an extensive code covering not just the structure of government, but also matters of

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67/ 7 N.T.C. § 131a.

68/ 7 N.T.C. 132.

69/ 7 N.T.C. § 133a, also see 17 N.T.C. s 1 et seq.

70/ 7 N.T.C. § 133b-e.

71/ 7 N.T.C. § 171.

72/ 7 N.T.C. § 172.

73/ 7 N.T.C. § 301.

importance to the Indian's daily life such as agriculture, ceremonies, commerce and trade, estates, domestic relations, elections, education, labor law, law and order, water, etc.[74] Of all these Codes perhaps the most important to the Navajo's destiny is the one providing for the election of the tribal leadership by the tribal members.[75] The whole process of tribal elections is supervised by the Board of Elections Supervisors (hereinafter referred to as "the Board"), made up of a maximum of six members appointed by the chairman with the approval of the Tribal Council.[76]

The Board appoints registrars, election judges to sit at each polling place, and poll clerks.[77] However, the most important duty of the Board is to total and finalize the results of tribal elections based on the ballots and official counts submitted by the election judges from each polling area.[78]

All Navajos on the BIA agency census roll who are 21 years of age and older may vote.[79] They must register to vote at least 30 days prior to an election and are dropped from the rolls if they fail to vote in two consecutive elections. Any person not permitted to register can appeal to the Board whose decision is final.[80]

74/ See N.T.C. generally.

75/ 11 N.T.C. § 1 et seq.

76/ 11 N.T.C. §§ 51-58.

77/ 11 N.T.C. § 58a.

78/ 11 N.T.C. §§ 20 and 51.

79/ 11 N.T.C. § 6; Note: The passage of the 26th Amendment to the U.S. Constitution may affect this provision.

80/ 11 N.T.C. § 7, 8.

Candidates for chairman are nominated at a central nominating convention (hereinafter referred to as "the convention") attended by delegates elected by each of 74 election communities.[81/] These election communities also serve as the districts which each council member represents. At the nomination meetings, each election community selects a delegate to the convention and a nominee for chairman. Up to three candidates for council representative from that community are also nominated.[82/]

The two nominees for chairman who get the highest number of votes at the convention are the candidates for chairman. Each candidate then chooses a running mate for vice chairman; these two slates appear on the ballot.[83/]

Perhaps the most novel aspect of these Navajo tribal elections is that the picture of each candidate for chairman, vice chairman, and delegate to the council appears on the ballot alongside his name.[84/] This is done because many of the electorate cannot read. The time, place, and manner of voting is strictly governed by Navajo law, and criminal penalties are provided against bribery, intimidation, and other irregularities.[85/]

81/ 11 N.T.C. §§ 9-14.

82/ 11 N.T.C. § 9a.

83/ 11 N.T.C. §§ 12, 13.

84/ 11 N.T.C. § 15a.

85/ 11 N.T.C. §§ 15-18, 241-247.

The Code also provides for extensive rules governing special elections,[86] and Federal and State elections in New Mexico[87] and Arizona.[88]

In conclusion, perhaps the most important thing to note, however, is that the Navajo government structure is one based on the white man's experience, not that of the Navajo, and many, if not a majority of the tribe probably still look upon their government as somewhat alien to their way of life.

86/ 11 N.T.C. §§ 131-138.

87/ 11 N.T.C. §§ 601-869.

88/ 11 N.T.C. §§ 1001-1318.

EDUCATION

The history of the white man's program of education for the Navajo is not a pleasant one, especially for the alleged beneficiaries of this program, the Indian children.

To be sure, Navajo parents teach their children many things, such as household and farm skills, manners, sex education, morals, etc., as the Navajo undoubtedly has done for centuries, but this type of education is the informal kind, usually taught through the use of story telling, setting examples, use of ceremonies, and punishment of the wrongdoer. 89/

But the kind of formal schoolroom education with textbooks, structured courses and grades was virtually unknown to the Navajo before 1868. In that year the United States signed a treaty with the Navajo which provided in part:

> In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of such of them as may be settled on said agricultural parts of this reservation, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that, for every thirty children between said ages who can be induced to or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as teacher. 90/

89/ D. Leighton & C. Kluchohn, Children of the People, Chapter 2 (1969) (hereinafter cited as Leighton).

90/ Treaty with the Navajo Indians, June 1, 1868, 15 Stat. 667, Article VI.

This article became the blueprint for the American program for educating the Navajo.

But the program was not readily accepted by the Navajo. Teachers were sent and schoolhouses built by the government but the children were reluctant to attend, and when the government sent police literally to round up truant students, their parents often hid them. Those unfortunate enough to be caught and sent away to boarding schools were often beaten and even shackled when, homesick, they would attempt to run away, or when they failed to do assigned chores or otherwise violated school rules.

The U. S. Government saw nothing abhorrent in its policy of forced attendance; after all, the Treaty did say that one teacher would be sent for every thirty Navajo children who could be "induced or compelled to attend school." But to the Indian parents the idea of having their children taken and kept from them for weeks or months at a time was unthinkable, and they became even more resistant to the white man's education.[91/]

The situation improved somewhat with the establishment of day schools in the 1930's. Parent and child both preferred this system to the boarding schools because at least the child was home at night and the parents could keep track of his/her welfare and health on a day to day basis.[92/]

91/ For a good summary of early white schools for the Navajo, see Terrell at 231-39; see also Gilbreath at 107-08, and Leighton at 64.

92/ Terrell at 234-40.

The Navajo can accept this day school method of white man's education, but not the boarding school. Even with modern day improvements in facilities and more enlightened discipline,[93] the regimented dormitory life of boarding schools is alien to the Navajo idea of freedom, and keeps the child from learning the Navajo culture and religion.[94]

Yet, despite the Navajos' bad experience with the boarding school method, 49 out of the 60 institutions operated by the BIA are boarding schools. As for the few day schools that the BIA does operate, none has more than six grades, and most go to the fourth grade or below. Many boarding schools, by contrast, have eight regular grades plus kindergarten, and there are four boarding schools which offer only the high school grades, 9-12.[95]

BIA statistics show 22,094 Navajo students (including pre-kindergarten) enrolled in BIA schools in 1972. Only 3,284 of those students were in high school; the rest were below the ninth grade. Six hundred nine Navajos graduated from BIA high school this year; another 1,000 completed eighth grade.[96]

If these attendance and completion figures are unimpressive in the higher grades of BIA schools, the public schools have not done much better. Perhaps because there was never any forced attendance at public schools, many Navajo parents simply did not make their children go to school. A reason often given for this non-attendance was that formal

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93/ For a report which found modern day boarding schools little improved, see Center for Law and Education, Harvard University, No. 7, Inequality in Education, issue devoted to Indian Education.

94/ Id. and Leighton at 64-69.

95/ BIA, Statistics Concerning Indian Education, fiscal year 1972, Table 3 at 11 (hereinafter cited as BIA Statistics).

96/ Table 13.

education could give no satisfactory answer to the Navajos' question, "What good is it?" By the 1940's, however, many Navajos had learned that illiteracy was a bar to economic mobility, that to be in the running for economic opportunities it would be necessary "to become skilled in the language and ways of the lar.er society." 97/ And so the Navajo began to attend school in greater numbers.

Figures for total school enrollment on the reservation in 1972 show that 52,647 98/ of the 57,144 Navajo children between 5 and 18 years were in school. Students enrolled in public schools run by the States of Arizona, New Mexico and Utah numbered 28,535; 2,820 were enrolled in other schools; the rest attended BIA shools, as noted above. There were 854 Navajo students over 18 attending BIA schools and 869 in public schools. 99/ On a state by state breakdown, 31,811 Navajo students between 5 and 18 were enrolled in Federal, State and private schools in Arizona; 22,539 in New Mexico; 100/ and 2,794 in Utah. 101/

Census figures reflecting educational levels attained by the Navajo population as a whole are as follows. Of the 5,734 male Navajos 25 to 34 years old, only 1,466 had completed high school and only 606 had attended any colllege. Among 6,230 Navajo women of this same age group only 1,380 had completed high school and 467 had done at least some college work. 102/

97/ Gilbreath at 108, 109.

98/ Contrast the figure with the 1970 Census figure for Navajo tribe total school enrollment (ages 3-34) of 37,266. Table 16. The disparity remains unexplained.

99/ Table 18.

100/ Navajos under jurisdiction of Zuni Agency included with Navajos of New Mexico.

101/ Table 18.

102/ Table 17.

This disparity in numbers of students entering school, and those finishing even the eighth grade is obvious. The drop-off in attendance after elementary school is dramatic and emphasizes the waste from an education system which has not done its job.

> The percentage of Indians who drop out of schools is twice that for all other children. Among the Indian population, fully two-thirds of the adults have not gone beyond elementary school, and one-quarter of Indian adults are functionally illiterate--they can't read street signs or newspapers. The educational system has failed Indians. The Federal Government's obligation to support Indian education has not been fulfilled. 103/

From these figures, it can be seen that today's program for education of the Navajos involves substantial numbers of children. Thus, the methods which the Federal Government utilizes to fulfill its obligation to educate these children will surely affect the future of the tribe.

Federal Aid Programs

The public schools which 28,535 Navajo students attend are entitled to receive aid from the Federal Government under a variety of laws intended to give the Indian child an equal opportunity to learn.

Impact Aid (Public Law 874) was the earliest program to provide operational funds to assist local schools overburdened with children of Federal employees, or with children residing on tax free federal land within the school district. 104/

Although Indian reservations have always been considered federal land, the Impact Aid legislation originally passed in 1950 was not

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103/ NAACP Legal Defense and Education Fund, Inc., An Even Chance at 2 (1971) (hereinafter cited as An Even Chance).

104/ 20 U.S.C. §§236-241 (1950).

extended to cover school districts which included the Navajo and other Indian reservations until 1958.[105/]

The funding for such programs is based on the amount the district spends per child from local revenue, (called the "local contribution rate") multiplied by the average number of eligible children in daily attendance.[106/] School districts receive 100 percent of the local contribution rate for each child whose parents both live and work on Federal property located within that district. Since most Navajo pupils' parents both live and work on the reservation, which is Federal property, school districts with Navajo children quality for full compensation for the expense of each child from the reservation. And if the parents only live on reservation property within the school district, but do not work there, the district is still entitled to one half the local contribution rate for those parents' children. For any school district to receive funding under the Impact Aid program, (the lesser of) 400 students, or 3 percent of the average daily attendance, must be eligible.[107/]

Furthermore, the Commissioner of Education may increase the funding for a school district making a reasonable effort to get adequate funding through tax revenue and other sources, if he/she determines that (1) the amount for which the district is eligible under the above formula would

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105/ P.L. 85-620 (1958) amending 20 U.S.C. § 238 (1950). M. Yudof, "Federal Funds for Public Schools," in Inequality in Education at 20.

106/ 20 U.S.C. §238.

107/ Id.

be insufficient to provide the quality of education that a comparable district is able to provide and (2) at least 50 percent of the district's children live on Federal property.

As an adjunct to Impact Aid funds for educational programming, schools which Indians attend are also supposed to receive aid in the form of construction money to help local districts build the facilities required to handle increases in their enrollment of children living on tax-exempt Federal property (including Indians).[108] But in recent years there has been a freeze on such funds.[109]

There are practically no restrictions on how Impact Aid dollars (874 funds) are spent. The Commissioner of Education has no power to demand that the money granted be spent on special programs or curriculum changes to benefit the Indians, and the State agencies are bypassed because the money goes directly to the school districts.[110]

With the individual districts in control of how the money is spent, there can be a vast difference in how the Impact Aid funds are disbursed. As mentioned above; there is no requirement that the district report how it spends the money; nor is the district required to show that Indians have received a fair share of the aid (or, conversely, that the Indian has not been cheated in the allocation of State and local resources).[111] What makes this situation so inequitable is that the Indian child often brings in more Impact money than do children of non-Indian Federal employees

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108/ Public Law 815, 20 U.S.C. § 631, 640, et al (1950).

109/ An Even Chance at 6.

110/ Inequality in Education at 21.

111/ An Even Chance at 6-7.

and much more aid on a per pupil basis than other children in the school district who receive only State and local monies. In the Gallup-McKinley County School District, Indian children, mostly Navajo, qualify the district for $306.70 per student in Impact money whereas the children of BIA and Public Health Service employees who work on the reservation but do not live there bring in half that amount, $153.35. And local taxes for non-federally connected children only bring in $127.00 per child.[112/] But the same Indian child who qualifies its school for Impact Aid may benefit the least from it.

The NAACP Legal Defense and Education Fund found that in 1970 the Gallup-McKinley District received about $1.3 million in Impact Aid, plus over $500,000 in both Title I and Johnson-O'Malley funds. In all, 40 percent of the district's budget came from Federal sources.[113/]

Yet, in that district the schools with the greatest concentration of Indian students had the worst facilities and were the most overcrowded. A small town (Thoreau) high school had 3 times its capacity enrollment, buildings so dilapidated that snow seeped in, and not even enough space for a decent laboratory or library. This school with over 66 percent Indian enrollment contrasted sharply with Indian Hills Elementary School, located in the city of Gallup, which had less than 33 percent Indian students as well as less than full capacity enrollment. Indian Hills had a split level, carpeted music room, a carpeted library, and well equipped, uncrowded facilities, including closed circuit TV.[114/]

112/ Id. at 8.

113/ Id.

114/ New Mexico State Department of Education, Response to an Even Chance at 3-4 and 9-12 (February 1971) (hereinafter referred to as Response).

The New Mexico State Department of Education's response to these charges claimed only that the average class sizes are "approximately equal" but gave no numbers and did not mention the overcrowding at Thoreau. Nor did the Department refute the charges of inequality in facilities or physical structures.[115] From its silence it might be inferred that the Department found nothing in its investigation to contradict the findings of overcrowding and inferior facilities at Thoreau.

Another Federal program which aids Indian children attending State schools is the Title I program for economically and educationally deprived students.[116] This aid is allocated to State agencies which in turn fund programs proposed by local school districts for poor children.[117]

Eligibility for payments under Title I for each district is based on the number of children whose family income is below the poverty level ($4,000 per year for fiscal year 1973).[118] To determine the amount of Title I Aid the number of eligible children is multiplied by half the (greater of the) State, or national, per-pupil expenditure. Special grants are also available for urban and rural schools serving areas with the highest concentrations of children from low income families.[119]

Since the mean family income for the Navajo tribe was only $4,608 in 1970 and 60 percent of the tribe (56,426 people)[120] had incomes below

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115/ 20 U.S.C. 241a (1965) amending 20 U.S.C. 241 (1950).

116/ An Even Chance at 29, and 20 U.S.C. § 241g.

117/ 20 U.S.C. § 241c(c) (1970).

118/ 20 U.S.C. § 241c(a)(2). Note: Aid to Dependent Children payments are not counted as income.

119/ 20 U.S.C. § 241d-11, 241d-12 (1970).

120/ Note: Census statistics give total Navajo population as 96,743; the Navajo tribe gives a figure of 120,000.

the poverty level, any public school with Navajos attending, especially those with a high concentration of Navajos would qualify for Title I assistance.[121/]

The Federal Government does not mandate or structure the programs funded by Title I; that is the responsibility of the local schools. But the Office of Education of the Department of Health, Education, and Welfare does set guidelines. Participating schools must submit a program description and budget; the number of eligible children and those actually participating, by school and grade; identification of the eligible students' needs, and provisions made to evaluate the effectiveness of the programs.[122/]

121/ Census, Table 14 at 176.

122/ An Even Chance at 28.

Before a local district can receive Title I aid it must have its application approved by the State Department of Education or an equivalent. That approval is not to be given until the State determines: that the payments will be used only for programs to benefit eligible children; that the Federal money will be used only as an addition to regular State funded programs (not as a substitute for the latter); and that the funded schools will make annual reports to the State on the conditions and results of the programs.[123/]

In turn, the State must assure the Commissioner of Education that the local programs are being run according to the guidelines stated above and that proper fiscal and accounting controls over the funds are in use. The State must also advise the Commissioner on the effectiveness of the programs.[124/]

Despite these controls the NAACP Legal Defense Fund found that Title I money was being misspent. In Grants, New Mexico, southeast of the Navajo reservation, the school district officials said that they were spending Title I funds on health and physical education programs designed to meet the needs of the entire student body "because of limited funds in the general program.[125/] This is in

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123/ 20 U.S.C. § 241e.

124/ 20 U.S.C. § 241f.

125/ An Even Chance at 31.

direct contradiction of Title I's purpose--not to benefit the entire school population, but to meet "the special educational needs of educationally deprived children."[126/]

By its public announcement discontinuing the use of Title I funds for physical education programs in Grants, the New Mexico State Department of Education tacitly admitted the misuse of such funds.[127/] But the facts speak for themselves. That district in New Mexico had over 1,000 Indian students, nearly one quarter of its total students (4,711) in 1972;[128/] it received $190,495.00 in Title I funds.[129/] This could have provided $190 per Indian student. Since the funds were used to pay for school-wide programs, as noted above, it is more likely that Title I money provided $38 worth of physical education programming for each student in the Grants district. The Indian students, by any measurement, got less than their share. Misuse of any part of the Title I money is a violation of Federal law.[130/]

126/ 20 U.S.C. § 241a.

127/ New Mexico State Department of Education, Response to An Even Chance, Supplement 1 at 2 (August 1971) (hereinafter referred to as Supplement).

128/ New Mexico State Department of Education, Annual Report on Public School Contracts, JOM at 20 (1971-72) (hereinafter referred to as New Mexico JOM).

129/ New Mexico State Department of Education, Fiscal Year 1972 Funds at 2 (1973) (hereinafter referred to as New Mexico Fiscal Funds).

130/ 20 U.S.C. § 241.

The Gallup-McKinley School District in New Mexico equipped its audiovisual center, available to all schools on a free loan basis, out of Title I funds.[131] The New Mexico Department of Education designated that center "to provide vicarious experiences" for Spanish and Indian students on the justification that some of the Title I money was given under the Migrant Education Program. The Department also stated that all but a few of the film distributions went either to Title I eligible schools or migrant children (even though these children were not in eligible schools). At the same time the Department admits that the films are available to all schools in the district.[132]

Another violation of Title I guidelines found by the Fund was the use of such money to finance programs already provided for by State funds. This is forbidden by the authorizing statute.[133] In the Grants District, Title I funds paid for counseling services in eligible schools, while State funds financed the same services in schools ineligible for Title I funds, and in the Kirtland District physical education programs in eligible schools were paid for with Title I money while State funds paid for the same program in

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131/ An Even Chance at 33.

132/ Response at 32.

133/ 20 U.S.C. § 241e (a)(3).

ineligible schools.[134] New Mexico has recommended that these practices be discontinued as violations of Title I guidelines.[135]

Since a total of $1,979,595 was allocated and spent under the Title I program in fiscal 1972 by New Mexico School districts in and around the Navajo reservation,[136] any misuse of funds involves large amounts of money--money which can and should be expended to improve the instruction given to Navajo children.

In addition to Impact Aid and Title I money, public school districts can also receive aid for Indian students through the BIA under the Johnson-O'Malley Act of 1934 (hereinafter referred to as JOM).[137] In 12 lines of text this Act authorizes the Secretary of Interior to contract with any State or its political subdivision or agency for the "education, medical attention, agricultural assistance, and social welfare, including relief of distress of Indians."[138]

The BIA regulations specify that to be eligible the contracting State (or school district) must submit a distribution plan and budget and must agree that it will continue to provide education

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134/ An Even Chance at 35-36.

135/ Supplement at 32, 36-37.

136/ New Mexico Fiscal Funds, at 1, 2.

137/ 25 U.S.C. § 452.

138/ Id.

and financial aid from all sources on the same basis as that for all other schools. Indians must be provided with "adequate standards of educational service."[139] JOM is not based on the needs of the individual Indian student but on the need of the contracting State for funds to provide an adequate education for Indians. This figure is arrived at after consideration of all other available aid and after there is evidence of a reasonable tax effort on the part of the school district.[140] The funds are distributed "without reflection on the status of Indian children."[141]

According to the Federal regulations, the BIA administers the program to accommodate unmet financial needs of school districts related to the presence of large blocks of nontaxable Indian-owned property in the district and relatively large numbers of Indian children...which local funds are inadequate to meet."[142] Thus, the purpose of the BIA regulations is similar to that of the Impact Aid program. The Federal aid is used to pay States to educate Indian children whose presence in public schools would otherwise create a financial burden, because those students reside in areas outside the reach of State and local tax revenues.

139/ 25 C.F.R. § 33.5(e).

140/ 25 C.F.R. § 33.4(b) and An Even Chance at 13.

141/ 25 C.F.R. § 33.4(b).

142/ Id. (Emphasis added).

In fact, prior to 1958 when Impact Aid became available for Indian children, JOM was the basic source of Federal aid to districts serving Indian children. In 1968 Congress declared Impact Aid to be "in lieu of taxes" for operating expenses so that JOM could be freed to support special programs for Indian children. JOM is to be used for general operating expenses only when a district's need is so extraordinary that Impact Aid and other funding sources are inadequate, i.e., when a district is in such financial straits that schools will be forced to close unless JOM dollars are made available. Basing their justification on the "extraordinary need" rationale, many districts continue to use JOM for operating expenses, to the detriment of special Indian needs.[143/]

In practice the funds appropriated under the Johnson-O'Malley Act has been used to help States educate federally recognized Indian children living on or near a reservation. The money is generally split between "extraordinary" support funds and special programs to benefit Indian students.[144/] But the funds are not evenly split. In fact, many districts receive no aid earmarked for special programs. For instance, in fiscal 1972 in the three Arizona counties over which the Navajo reservation extends, Apache, Coconino, and Navajo, no money was appropriated for special programs. (See Appendix I below).

143/ An Even Chance at 13.

144/ Id. at 15.

But all three counties received money for their teacher retirement funds.[145] New Mexico, on the other hand, did receive considerable JOM money for special programs and has proposed that two additional language programs be financed with these funds.[146]

In a recent case the Federal district court for New Mexico praised the funding of "English as a second language" programs as "the kind of program for which Title I and Johnson-O'Malley money should be used."[147] However in the same case the court found many violations of the Title I and JOM laws and regulations, as charged by the plaintiffs who were mainly parents of Navajo school children. The court found that the Gallup-McKinley County School District was spending a disproportionate amount of local bond money for physical improvements in Gallup schools which are predominantly non-Indian, while not spending enough on outlying schools in McKinley County which are predominantly Indian.[148] The district had also misused the JOM and Title I funds in other areas: the school nurse program; student counselors; administrative aid personnel; and the audio-

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145/ Arizona Department of Education, Division of Indian Education, Annual Report to the Bureau of Indian Affairs at 5 (1972) (hereinafter referred to as Arizona Annual Report).

146/ New Mexico State Department of Education, Annual Report to the Bureau of Indian Affairs (1972) (hereinafter referred to as New Mexico Annual Report).

147/ Natonabah v. Board of Education of the Gallup-McKinley County School District in the U.S. District Court for the District of New Mexico (unreported Civil No. 8925) at 28 (1973) (hereinafter referred to as Natonabah.)

148/ Natonabah at 5-14.

visual programs.[149] The court ordered the district to submit to the court a plan for correction of these violations.[150]

Perhaps some of the abuses in the use of Indian education funds found by the court will be avoided in the administration of the newest federal program to aid Indian students, the Indian Education Act of 1972 (Title IV of the Education Amendments of 1972, known in its drafting stages as the Kennedy-Mondale bill).[151] Title IV provides Federal aid directly to local school districts and to tribal educational institutions for the purpose of meeting the "special educational needs" of Indian children and adults, and for the training of teachers to aid in Indian education.[152] But unlike the programs discussed above, this act makes specific provisions for Indian community participation in the planning, operation, and evaluation of Title IV funded programs. It also sets up a separate division within the Office of Education to supervise this and other Indian education programs with the aid of an advisory council made up of Indians from across the nation.[153]

The Commissioner of Education is authorized by Title IV to determine the amount of money to which an applicant school district

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149/ Id. at 14-31.

150/ Id. at 19.

151/ P.L. 92-318, 20 U.S.C. §§ 241aa-ff, 887c, 880b-3a, 1119a, 1121a, and 1221f-h (1972).

152/ Id.

153/ 20 U.S.C. §§ 1221f,g.

is entitled, based on the number of Indian children attending schools in that district. That number is multiplied by the average per pupil expenditure (the sum of all expenditures by local schools in the State, plus any State aid payments to those local schools) to determine the amount of Title IV aid for any district.[154/]

In order to qualify for aid, a local district is required to have at least 10 Indian students or half its student body composed of Indians; since the minimum requirement does not apply to Alaska, California, or Oklahoma or to districts on or near Indian reservations, most of the schools which Indians attend can probably qualify.[155/] By special provision, Title IV funds are also available for "schools on or near reservations which are not local education agencies".[156/]

Money for improving the education of Indian children is supposed to be spent on two types of projects: one for planning and developing new educational programs to meet Indian students' special needs, and the other for establishing and maintaining permanent programs for Indian education including the acquisition of equipment and facilities.[157/]

154/ 20 U.S.C. § 241bb.

155/ 20 U.S.C. § 241bb(a)(2)(B).

156/ 20 U.S.C. § 241bb(b) Note: "Local educational agency" is defined to include schools run by non-profit tribal organizations at 20 U.S.C. § 880b-3a(a).

157/ 20 U.S.C. § 241cc.

An application for Title IV funds must: assure the Commissioner that the applicant will supervise its programs; outline the program content; and if for use in planning, must show the funds are needed because of the innovative nature of the project or because of the lack of local planning funds.[158/] The local district must also evaluate its programs annually, set up controls to ensure that Title IV grants are not used to supplant available local and State funds, and provide for accounting and fiscal controls over expenditures.[159/]

These controls are similar to those written into the Title I, Impact Aid, and JOM statues and regulations. Fiscal and accounting controls, however, are new. But the most significant difference between Title IV and other Indian education legislation is that Title IV requires that local programs be developed in open consultation with the parents and teachers of the children eligible for Title IV assistance. A committee selected by the community, of which half must be parents of participating students, has absolute authority to approve or disapprove the local program. In theory, then the program is subject to considerable local control. Perhaps if this

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158/ 20 U.S.C. § 241dd(a)(1)-(3).

159/ 20 U.S.C. § 241dd(a)(4)-(6).

provision is vigorously enforced by the Commissioner the Indian communities, which are supposed to benefit from Title IV aid, will be able to avoid some of the misuse of funds that was found in the Natonabah decision.

Another provision of the act aims directly at avoiding the substitution of Federal funds for State aid. No payment may be made to districts whose State aid has been decreased in the past two fiscal years, nor to districts whose eligibility for State aid was determined after adding in that district's Title IV allocation,[160/] (the latter technique would increase Federal aid to the district and have the effect of decreasing the need for aid from the State).

Part B of the Indian Education Act provides for the establishment of pilot programs to improve education for Indian school children, including projects to train teachers in the skills needed to meet the special needs of these students.[161/] As with the other sections of the act, the Commissioner may not approve any money Under Part B unless he is satisfied that the parents, teachers, and other representatives of the community have had final approval of the program and will have adequate opportunity to participate in its operation and evaluation.[162/]

160/ 20 U.S.C. § 241ee.

161/ 20 U.S.C. § 887c.

162/ 20 U.S.C. § 877c(f).

The Census data cited above indicated that the Navajo adult has a low educational achievement level, as measured by the number of grades completed. Of those 25 years or older less than 19 percent had completed high school in 1970.[163/] Yet prior to 1972 not one of the Federal aid to Indian education programs specifically included funds for adult education.

Fortunately, Part C of the Indian Education Act recognizes the need. It provides funds for testing the viability of literacy programs and high school equivalency teaching methods presently in use.[164/] Part C also provides money to assess the extent of adult illiteracy and the lack of high school education in the Indian community.[165/] Again the act provides that no money may be spent under this section unless the Commissioner is satisfied that adequate community participation did and will take place in the operation of these adult education programs.[166/]

Besides requiring Indian participation in the projects at the local level, Title IV is innovative in providing for Indian participation at the top level within the Office of Education. An

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163/ Census Table II at 146.

164/ 20 U.S.C. § 1211a.

165/ 20 U.S.C. § 1211a(a)(4).

166/ 20 U.S.C. § 1211a(c).

Office of Indian Education is established to administer the act. This office will be headed by a Deputy Commissioner of Education, selected from a list of names submitted by the National Advisory Council of Indian Education,[167] and appointed by the Commissioner of Education.

The Council, created by this legislation, consists of 15 Presidential appointees who must be Indian or Alaskan natives, and representative of the entire Native American community.[168] The Council has responsibility for advising the Commissioner on the administration of Title IV programs, including the establishment of regulations; review of funding; evaluation of all Indian Education projects; and submission of annual reports to Congress.[169]

Whether the Commissioner lives up to his/her responsibility to assure that the Indian community has a genuine role in formulating, supervising, and evaluating Title IV programs at the local levels; whether the President appoints members to the Council on Indian Education who are genuinely concerned with the educational needs of their people--the answers to these two questions will, to a great extent, determine whether the community control provisions of this act will prevent abuses that have occurred in the Title I, JOM, and Impact Aid programs. No funds were appropriated for Title IV

167/ 20 U.S.C. § 1221f.

168/ 20 U.S.C. § 1221g.

169/ Id.

in FY 73. 17.5 million was appropriated for FY 74 but it will be at least a year before any useful assessment can be made of Title IV's effectiveness.

The Gallup-McKinley school district's budget request for Title IV Assistance this fiscal year reflects some of the improvements the Indian Education Act was designed to bring about.[170] The budget requests $5,000 for an Indian Parent Committee, but does not specify the duties and powers of the committee, or how members are chosen. Although this request is less specific than might be desired to give full effect to Title IV, nevertheless the underlying intent has been observed--the committee does exist, and it does possess, by statute, an absolute authority to approve whatever program is finally submitted by its district.[171]

The Gallup-McKinley proposal contains some proposals which reflect the purpose of Title IV: bilingual-bicultural programming; American Indian studies; and home/school liaison counseling. Other items may reflect the old problem of use of Federal funds for projects which benefit the population generally, rather than the Indian students specifically, such as the requests for bus stop shelters and library material centers. Although there may be no intent to violate

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170/ See Appendix 5.

171/ 20 U.S.C. § 241dd(b)(2)(B).

the purpose of the Act by spending Title IV funds on Non-Indian students, the budget should be examined carefully by the Office of Education to ensure that all this money is, in fact, spent only for the Indian students of Gallup-McKinley School District.

While the district court found that many of the Gallup-McKinley violations of Title I, JOM, and Impact Aid may not have been intentional, they nevertheless were found to be significant enough to warrant court action. This decision may signal a new step forward in Federal judicial supervision of programs paid for by Federal taxpayers and designed to benefit Indian school children, but which heretofore have avoided public scrutiny.

Perhaps this judicial interest will encourage vigilance on the part of the BIA, the Office of Education, and other Federal agencies charged with supervising the welfare of Indian school children. A quarter of a century later, it is well documented that Federal funds for Indian Education have been disastrously misused; only if these funds are properly spent can there be any hope that the dismal failure of Federal and local schools to educate Indian children will be remedied.

EMPLOYMENT

A substantial number of laws have been passed at the Federal and State levels, dealing with the economic and social problems of the Navajo population. A direct result of these laws has been the implementation of programs developed to serve and improve the economic, social, and political status of the Navajo Indian, as well as members of other tribal groups. Despite these attempts, the Indian still maintains the poorest economic position in relation to all other minorities. The unemployment rate, in particular, compared with national averages, reveals an acute problem.

The national economy has recently faced many serious problems, and the results have adversely affected most Americans. The national unemployment rate, for the year 1972, was 5.6%.[172/] But bleak as the national situation may seem, the Navajo population has far less chance of being employed than other Americans. Department of Interior (BIA) Indian employment statistics for the 1973 show the following contrast.[173/] 35% of the Navajos are unemployed. This percentage, translates to 16,567 unemployed out of a total labor force (16 and over) of 47,317. An additional 9,845 members were only temporarily employed. The combined figures equal a staggering 56% representing those Navajos who work either part-time or not at all.[174/]

172/ Bureau of Labor Statistics

173/ See Table

174/ Id. Table

BIA officials at Window Rock offer another interpretation of these figures. They agree that 16,567 are unemployed but they clarify this figure by indicating that of those 30,750 Navajos classified as employed, only 20,905 are permanently employed--9,845 work only on a part-time basis and most of these Indians work at traditional crafts (rugweaving, silversmithing) because they are unable to find permanent employment.

While sources may vary in their statistics on the problem, the conclusions are undisputed. In every survey, the Navajos' share of available employment is far less than an equal or proportionate one.[175/]

A comprehensive employment survey of the Navajos was done in 1969.[176/] This Navajo Manpower Survey conducted by various State and Federal agencies, in cooperation with the Navajo Tribe estimated

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175/ Census Bureau figures vary greatly from those of the BIA and the Navajo Tribe. The Census report on American Indians, 1970 (Table 13 at 166) estimates the Navajo civilian work force at 18,361, with an unemployment rate of 11.3%. This figure is still considerably greater than the general unemployment rates resported by the three States in which the reservation lies: Arizona (preliminary figures, June 1973) 4.2% (based on applications for employment at the State employment agency); New Mexico 7.4%; Utah 6.0% (SOURCE: U.S. Department of Labor). One of the major reasons for differences between Census and BIA figures is that census data are based on self-identification, whereas statistics from other sources are frequently based on tribal enrollment. Persons whose names appear on tribal rolls may classify themselves as some race other than Indian, such as white or Negro, in the Census. Another major reason is that in the Census, about 20% of the Indian population did not report any tribal affiliation.

176/ Navajo Manpower Survey. (Navajo Tribe, Indian Health Service, Bureau of Indian Affairs, Arizona State Employment Service, Office of Navajo Economic Opportunity, 1969.)

that in 1969 32,350 persons were employed, (15,750 men and 16,000 women) of whom 23% were engaged in traditional pursuits such as sheepherding, rugweaving, and silversmithing. The study further indicated that of this total, some 24% were classified as essentially unskilled, 8.8% were classified as skilled, and 3.7 as semiskilled. These figures account for 60% of the employed Navajos.[177]

At the time of the survey, 37.3% of the total Labor Force was employed, while 62.7% were non-employed.[178] The definition of "employed" used in this study is identical to the national definition, making valid any further comparisons of the Navajo with national statistics. In 1969, 37.5% of the employed Navajos were working for the Federal Government.[179] Government employment on the reservation is mainly provided by the Bureau of Indian Affairs and the Indian Health Service. For example, combined BIA salaried and hourly employees totaled 5,172 persons, as of June 1972, of these 3,470 were Indian -- 1,600 male and 1,870 females.[180] An additional 28.3% in 1969 were engaged in the services sector, comprised to a great extent of administrative employment for the

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177/ 30% were engaged in professional, clerical, service, and farming occupations. The remaining 10% were not reported.

178/ Id. at 20.

179/ Navajo Manpower Survey at 35.

180/ See Table

tribe. Some states and local governmental units also maintain reservation operations, but the numbers employed are very small.

These figures indicate that in combination 65.8% of those Navajos employed on the reservation work for Government. Therefore, the area's economy is heavily dependent upon Federal funding to sustain that employment.

Agricultural employment plays a large role in the Navajo economy. Most of the farm labor performed by Navajos is migratory. Considering the employment situation on the reservation, it is perhaps not surprising that many Navajos leave the reservation each summer and fall to find work. Because of the seasonal nature of the work these men and women are unemployed a good part of the year and even when they are employed the living conditions they face are especially severe.[181] Not by any standard can the migrant laborer be considered remuneratively employed.

Another factor that contributes substantially to the unemployment rate, is the conduct of industry in the private sector. The great majority of private employment on the Navajo reservation is through companies which contract with the Navajo tribe to perform a variety of services for the development of the reservation. These contracts cover a wide range of activities from generating power to building railroads.[182]

181/ Navajo Times. May 17, 1973. B1

182/ Department of Interior, Office of Equal Opportunity, Special Investigation Report: Navajo Project, Page, Arizona, Jan. 10-21, 1972.

The Navajo Preference Clause, which is included in the enabling agreements before the Navajos enter into a contract with private industry, requires all unskilled labor to be drawn from "local Navajos" available, conditioned only on their ability to meet the general employment qualifications of the contractors.[183/] Also, Navajos are to be employed in all craft and other skilled jobs for which they can qualify on a "local" and then on a "non-local" basis.[184/]

Traditional union hiring hall requirements, and the consequent severe underutilization of qualified Navajo manpower add to the problem in the private sector.[185/] A problem with unions involves referral policies which give preference to present or former union members, the vast majority of whom are male Caucasions. This policy has caused Indians to be the last to be referred.[186/] Few attempts, if any, had been made to circumvent these practices in order to reach the unemployed Navajos, many of whom are qualified to fill all unskilled and some skilled jobs.

183/ Id. at 4

184/ Id.

185/ Id. 3-5

186/ Id. 4

The Navajo reservation is remote from non-reservation population centers; reservation residents, therefore, have little meaningful interaction with the majority population. Most BIA surveys show, as one might expect, that due to cultural biases and anticipated discrimination, a majority of Navajos indicate resistance to relocation off-reservation for employment.[186a/] Thus, a program directed to encouraging and aiding the out-migration of trainable Navajos to areas within the United States where employment opportunities do exist would have limited applicability. Also from a practical standpoint - the concept of a reservation would have little meaning, if its inhabitants had to leave in order to obtain employment.

A number of reasons can be cited for the Navajos' massive unemployment problems. In contrast to the U.S. as a whole, the Navajo area is essentially an underdeveloped area. It is isolated from the growth and prosperity of the "mainstream" U.S. The social and economic isolation experienced by large segments of other minority and ethnic groups is compounded for the Navajo by the geographic isolation of his reservation. The problems of the Navajo have been compounded by the traditional neglect of Indian problems by State and Federal agencies empowered to aid Indians, the lack of heavy industry or other large employers in the region, and the societal and cultural pressures emanating from within as well as from outside the confines of the reservation.

186a/ National Manpower Survey.

The solution to the underutilization of the Navajo manpower must then lie in the development of a local economy strong enough to absorb those willing and able to work. This is a massive task but it is not an impossible one.

ECONOMIC DEVELOPMENT

The bleak employment picture described in the preceeding section, is reflected in the economic condition of individual Navajos. While there have been some gains in other areas, the economic gap between the Navajos and the rest of the U.S. population is growing.[187] From a difference of $2,710 in 1970, the gap between U.S. and Navajo per capita income stretched to $3,021 in 1972. Per capita income of the Navajo still remains at less than $1,000.[188]

Referring to this problem as a "developing crisis,"[189] the tribe adopted a Ten Year Plan to move its economy forward at a remedial pace. The tribe faces many physical, fiscal and policy problems in undertaking this development.

Land and Water

More than half (55%) of the 25,000 square miles of Navajo land area is classified as desert which supports scattered herds of livestock.[190] Nearly two-fifths (37%) is steppe, a semi-arid land also used for grazing, and about 8% is forest and mountain

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187/ The Navajo Ten Year Plan

188/ Id. at 8. See Table

189/ Id.

190/ Id. at 9.

country, used for lumber production and with attractive potential for outdoor recreation.[191]

The tribe's development plans call for restoration and conservation of rangelands badly eroded by overuse in the support of livestock. Priority is also given to perfecting Navajo water rights. The Navajo are legally entitled to the water they can use beneficially from the streams which flow through or border the reservation.[192] Because of a lack of dams, canals and irrigation systems, the tribe has never been able to make full use of these waters.[193]

In 1962, Congress authorized the Navajo Irrigation Project, but funding has been grossly inadequate.[194] To complete the project by 1986, the Ten Year Plan estimates the need for $150 million in funding through 1982.[195] Its completion would bring 110,000 acres into irrigated agricultural production.

191/ Id.

192/ Id. (See appendix for a discussion of legal problems involved in the water rights issue.)

193/ Id. at 24.

194/ Id. at 25.

195/ Id. at 34.

Nearly one-third of all Navajo families spend some time in stock raising and small farms, but with only a few exceptions, these agricultural incomes provide only bare subsistence.[196] The Ten Year Plan recognizes that the planned water diversion system will not be adequate in itself for developing the tribe's agricultural economy. To realize the Irrigation Project's potential, capital investment will also be needed in farm structures, equipment, livestock, other capital goods and in working capital reasonably equivalent to general requirements in the U.S.[197] Since the Navajo have little or no savings to invest in agricultural enterprise, new credit forms and a substantial amount of "seed money" public investment will be needed in equipment, facilities and agricultural technology.[198]

Industrial Development

1. Energy resources:

Navajo energy resources -- oil, natural gas, coal and uranium -- are the major sources of Navajo Tribal income. Oil leases and royalty revenues have made it possible for the Navajo Tribe to meet expenses ranging from government to clothes for school children.

196/ Id.

197/ Id.

198/ Id.

These funds, however, have not been sufficient for capital development. To the extent that revenues from non replaceable resources must be utilized to meet welfare needs, they are, in effect, being depleted without generating present or future income. Oil and gas reserves, are being depleted; and coal, the other major Navajo energy resource, cannot replace oil and gas revenues. Coal reserves are nevertheless extensive, and are being utilized.[199/]

Plans are nearing completion for seven coal gasification plants, each costing $400 million, to be located on the eastern edge of the reservation.[200/] El Paso Natural Gas Company has proposed three of the plants.[201/] Texas Eastern Transmission Corporation and Pacific Lighting Service Company of Los Angeles want to build and operate the other four.[202/]

The gasification plants will if approved, create jobs for 21,000 persons during a three-year construction period and will produce a permanent total payroll of $10 to $12 million for 750

199/ Id. at 9.

200/ Business Week, May 18, 1973 at 104

201/ Id.

202/ Id.

employees.[203] In addition, the tribe will receive a share of the gas for leasing the sites.[204]

There has been some opposition inside and outside the tribe to the strip mining operations which would supply the gasification plants. Critics say the land will never be reclaimable for any other use and therefore the tribe is not receiving adequate compensation for that or for the coal mined and the water used.[205] Replying to charges, the Peabody Coal Company says the royalty rate paid to the tribe is "very high," amounting "to nearly 10 percent of the price of the coal."[206]

2. Timber

The 472,716 acres of commercial timber located on the reservation are another profitable asset.[207] The tribe operates one of the largest saw mills in the U.S., employing some 500 Navajos, with a payroll of nearly $2 million.[208] Members of the tribe are stockholders by virtue of their tribal membership.[209]

203/ Prior experience in energy development has not always meant that Navajos would get a substantial portion of the jobs created. For example, only approximately 8% of the construction crews which built the Four Corners Facility were Navajo.

204/ Business Week, May 18, 1973 at 104.

205/ See Redhouse, Navajo Coal Royalties Too Low? The Navajo Times, January 4, 1973, at A-4; Id. March 10, 1973; and Id. April 12, 1972.

206/ The Navajo Times, February 22, 1973, at A-5.

207/ Navajo Forest Products Industries, Navajo Pine Progress, May, 1970 (hereinafter cited as NFPI Report).

208/ Id.

209/ Id.

Quoting a total sales value of $7,770,468 an increase of $2,134,641 over the previous year, the May 1970 Report of the Navajo Forest Products Industries shows a net profit (for the combined enterprises) of $1,913,419 with capital assets figured at $16,999,882.[210] In operation since November 1958, the various facilities produce such products as Navajo Pine lumber (the primary end product), pulp chips for paper, mulch and landscaping bark and a variety of related products.[211]

3. Large Scale Industry

The Quarterly Report of the Navajo Office of Program Development describes the first quarter of 1973 as seeing "the most concerted and productive effort on behalf of the Navajo Tribe to contact and attract industry" of any time in the tribe's history.[212] So far, however, only minor successes have been achieved in attracting large scale industry.

210/ Id.

211/ Id.

212/ Quarterly Report - January, February, March 1973, at 1 (hereinafter cited as Quarterly Report).

Fairchild Semiconductor, manufacturer of electronic devices, transistors and integrated circuits, is the first tenant to occupy one of the 13 sites in the 50-acre Shiprock Industrial Park, one of three such parks on tribal lands.[213] Fairchild employs 760 Navajos out of 950 employees in a 33,600 square foot facility leased to the company by the tribe.[214]

Three enterprises -- Window Rock, Grace-Davidson Chemical Division, the Navajo Block Company, and the Eastern Navajo Prefab Homes Company -- are presently located in the 50-acre Church Rock Industrial Park site just northeast of Gallup.[215]

213/ New Business and Industrial Opportunity in Navajoland (the Navajo Tribe, Window Rock).

214/ Id.

215/ Id.

4. Small Businesses.

The most common type of business on the Reservation is the general merchandise store, know as a trading post. It is also considered the "lifeblood" of the Navajo business community because of the credit system it supports.[216] Approximately 80 percent of this key sector of the Navajo economy is controlled by non-Navajos,[217] and a recent Federal Trade Commission investigation showed it to be rife with abuses.[218] Some traders, according to the FTC report, intercepted welfare and social security checks, forcing the recipients to sign the checks over to pay for debts:

> Often the customer is not even shown the amount of the check... If the Navajo insists on obtaining his check, he may be confronted with threats of withdrawn credit.[219]

Gasoline service stations are the second most common retail businesses and have the greatest absolute number of Navajo entrepreneurs.[220] One of the main reasons for this is the low amount of starting capital necessary. There is also a tribal regulation which limits ownership of gas stations to Navajos.[221]

In all, only 33 percent of retail establishments on the Reservation are Navajo-owned.[222] Many problems stem from the basic scarcity of retail establishments in proportion to the Reservation population. While there are 171 retail establishments on the Reservation, the surrounding

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216/ K. Gilbreath , Red Capitalism, An Analysis of the Navajo Economy, 11 (1973) (hereinafter cited as Red Capitalism).
217/ Id. at 14.
218/ See Federal Trade Commission Los Angeles Regional Report, The Trading Post System on the Navajo Reservation (June 1973).
219/ Id. at 36.
220/ Red Capitalism at 14.
221/ Id.
222/ Id. at 15.

counties of McKinley, San Juan, Coconino and Navajo have two to three times as many retail establishments -- although the Reservation has two and one-half times as many people as the largest county (Coconino).[223] There are obvious disadvantages and even hardships in this situation -- not the least of which are high prices due to a lack of competition among retailers.

There is only one wholesale business on the Reservation -- a Navajo-owned lumber and construction materials business.[224]

In the area of service establishments, the Navajo entrepreneur is proportionately more common than in the retail sector. Fifty percent of the Reservations service establishments are owned by Navajos.[225]

One relatively new type of business on the Reservation is the trailer court and the facility for camper trailers. Of the six establishments of this type, five are owned by Navajos.[226]

While there is an obvious potential for further development of the Reservations small business sector, it is also certain that even in Navajo hands, this sector alone could not substantially change the economic realities that presently face the tribe as it strives toward economic self-determination.

Slightly larger businesses, owned by the tribe, constitute an intermediary step between the small business sector and industry.

223/ Id. at 20.
224/ Id. at 15.
225/ Id.
226/ Id.

One such recent development is Navajo Optics, which produces 200 pairs of glasses a day at its Window Rock plant. Another, United Electric Co., with 75 employees, has an order for 10,000 electric heating panels from the Navajo Tribal Housing Authority.[227/]

5. Traditional Crafts

The Arts and Crafts Guides have experienced a modest degree of success but have never been able to set up the sort of reservation-wide crafts development program which could begin to return to the Navajo people the economic benefits the industry is capable of producing.[228/] A major need is to by-pass middlemen such as traders who offer only a pittance for items sold to tourists at much higher prices.

Recently non-Indians have begun to mass-produce Navajo-type rugs and silver crafted jewelry. The practice poses a threat to the market value of Indian crafts as consumers begin to doubt the authenticity of arts and crafts.[229/]

6. Tourism

Much of the Navajo reservation, even the arid and rocky area, is spectacularly beautiful and tourism and outdoor recreation could

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227/ Business Week, May 19, 1973 at 104.

228/ Annual Report of the Navajo Nation, January 1973 at 3 (hereinafter cited as Navajo Annual Report).

229/ Id. at 2.

have considerable economic potential. Lake Powell, which fronts on a stretch of the northern border of Navajo country, is viewed by the tribe as a major potential tourist attraction.[230] At present, however, there is no highway and very few roads on the Navajo side of Lake Powell.[231] All roads which have been built so far (and built with public money) lead to non-Indian retail markets, lodges, marinas and camping sites.[232]

A final engineering report has been prepared for the $18 million Padre Point development on Lake Powell.[233] The tribe also has tentative plans for more than a dozen other major recreation projects.[234] Initial investments would require 20 percent of tribal and 80 percent of public funding, if past funding ratios for this type of tribal enterprise continue to hold true.[235] Therefore, while there is an abundance of planning in this area,[236] development of the Reservation's tourism potential is overwhelmingly dependent on public funding.

230/ Ten Year Plan at 9.

231/ Id.

232/ Id.

233/ Business Week, May 19, 1973 at 104.

234/ Ten Year Plan at 23.

235/ Id. at 33.

236/ See Ten Year Plan, at 22-23, 32-33.

7. Navajo Tribal Utility Authority.

Under the general management of a Navajo, the NTUA provides a broad range of services to the Reservation. At present, however, approximately 61 percent of Navajo homes are without electricity, and 80 percent are without water and sewer service.[237] In off-reservation areas of the U.S., 99 percent of the homes have electric service available and more than 90 percent have running water and sewer facilities.[238]

Barriers to Economic Development

1. Capital/Credit

The availability of investment capital is as vital to economic development in Navajoland as it is in any developing nation. According to tribal figures, accumulated capital reserves derived from oil revenues now total about $50 million.[239] Few of these funds are available for investment in economic development, but must be carefully guarded against the time when oil depletion reduces tribal income below the amount necessary to maintain essential services.[240]

237/ Ten Year Plan at 21.

238/ Id.

239/ Ten Year Plan at 11.

240/ Id.

The difficulty which Indians have in obtaining credit for businesses has been noted in practically every study on Indian economic development. 241/ Special institutions do exist--SBA, EDA and the Tribal Revolving Loan Funds, for example--but these institutions have only a fraction of the loan capital needed to meet current requests and are not structured to render the required services. 242/

The development of franchise businesses on the reservation could help Navajos obtain financial capital and important managerial training.

2. The Process

Starting a business on the Navajo reservation involves endurance; the process is time-consuming and seems designed to confuse, if not discourage the prospective entrepreneur.

All business activity on the reservation involves a contract between the owner and the Navajo tribe. All such contracts, involving either Indian lands or tribal funds, must be approved by the Secretary of the Interior. 243/ In the early 1950's by delegation from the Secretary, 244/ authority to approve such contracts was given to BIA Area Directors who now sign off on virtually all business leases.

241/ Id. at 31.

242/ Id.

243/ 25 U.S.C. § 81 (1958), as amended.

244/ Pursuant to 1950 Reog. Plan No. 3 § 1,2 (May 24, 1950) See note under 5 U.S.C. § 481.

Those new businesses which do not require the use of reservation land but involve the use of tribal monies, need BIA apporval; however, the process is not nearly so complicated as that required for businesses which need tribal land on which to operate.

Land on the Navajo reservation is not individually owned, nor does the tribe actually own it. Navajo land is held in trust by the Federal Government for the tribe which exercises control over use-rights to the land but cannot sell it under this arrangement. Reservation land can only be leased from the tribe[245/] with the approval of the BIA. The process is arduous. An individual or company must present his/her site request to the appropriate BIA Area agency (there are 5 agencies on the Navajo reservation) and at the same time get approval for the use of that site from the local chapter in which his site is located.[246/] This is because most land is already held through inherited use-right by Navajo families[247/] and it is up to that local family with the approval of the chapter to allow transfer of the use-right to land. The request is next submitted to the Tribal Council for approval, and finally to the BIA Real Property Management branch where the lease is drawn on terms deemed fair to the tribe. All of

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245/ Red Capitalism at 40, 41.

246/ Id. at 43.

247/ Id. at 40.

this may take up to 5 years or more to complete, with a request often being sent back and forth for further information.[248/]

Acquisition of the lease is not the end of the process for the eager entrepreneur. He/She must also get a trader's license from the tribe and file a performance bond guaranteeing payment of rent on the lease.[249/]

There are, in addition, a number of other arrangements to be made in connection with starting a business, many of which will also require tribal approval, either by the Tribal Council or its Advisory Council. The Chairman of the Navajo Tribal Council has recently made a statement[250/] describing the relationship, as he understands it, between resolutions passed by the Council and BIA's decision as to which of these resolutions require BIA approval. The relationship is by no means clear. Copies of all resolutions are sent to the BIA office where they are separated into 3 categories and stamped "A", "B", or "C". "A" resolutions require Washington approval' "B" resolutions require approval from the Area Director' "C" indicates that no BIA approval is necessary. The standards for this categorization

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248/ Id. at 49.

249/ Id. at 45.

250/ Hearings Before the Subcomm. on Indian Affairs of the Senate Comm. on Interior and Insular Affairs, August 30, 1973, statement by Navajo Tribal Council Chairman Peter McDonald.

are not published nor do they seem to be communicated in any other way.

By any standard the steps prerequisite to starting a business on the Navajo reservation are designed to frustrate, and it is hardly surprising that few have the patience to wait an undertermined period of time for an unpredictable result.

3. Services

Although natural resources and manpower, two prime components of development exist, many secondary factors affect the development attractiveness to outside companies and capital. A manufacturer's access to markets is an important consideration in plant location. Transportation facilities on the reservation are severely limited. Roads generally have been built only to link the various government facilities--schools, hospitals and government offices.[251/] Only 1,370 miles of roads are paved; this is little more than one-third of the ratio of paved roads to square miles in the rural areas of the States surrounding the Navajo reservation. Other modes of transportation are even more limited. No major rail facility has shipping depots on the reservation. Air transportation is limited to small charter services.

251/ Ten Year Plan at 21.

Companies also often require physical facilities; sewers, paved streets, etc. These do not exist in any substantial quanity.

Another serious factor for the outside private sector development is the social isolation of the reservation. Companies which would have to relocate predominantly Anglo staff to man the facility--at least until Navajo managerial staff was developed--tend to be unwilling to come to the reservation with its harsh climate, scarce supply of housing, and absence of traditional urban social and cultural facilities.

4. Economic Development: Summary

In many respects, the problems faced by the Navajo tribe in the field of economic development parallel those problems which many developing nations must overcome.

Having traditionally relied on an unscrupulous class of traders who expropriated profits without aiding significantly in the development of an independent economy, the tribe is now attempting new means of retail merchandising.

In terms of development on a larger scale, the Navajos are hampered by their lack of capital for developing the rich natural resources of their lands; hence, the apparent necessity for outside developers. But the primary interests of such outsiders lie in profits alone and they generally are not concerned with the genuine development that is necessary to significantly raise the standard of living on the reservation, except as a byproduct of "progress".

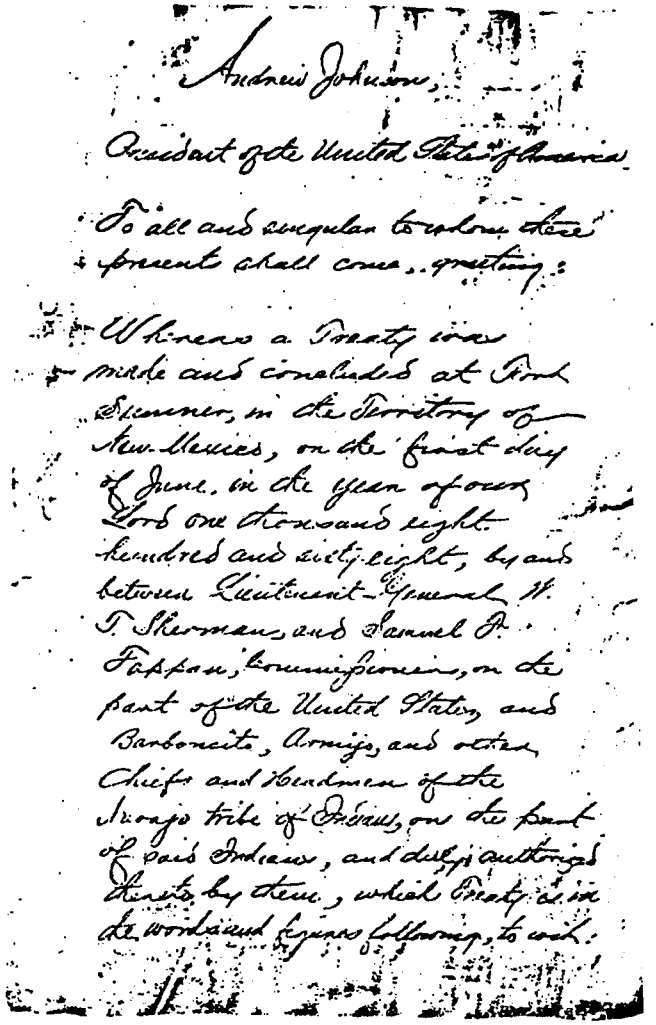
The tribe has some political control, but only a degree of economic independence. Despite such bright spots as the Navajo Forest Products industries, the large developments are essentially controlled by those who control the larger economy. Although these companies pay royalties for the lease agreements, it has been alleged in recent times that considering the damage

done to the environment, and perhaps the Navajo lifestyle, the price paid by industry is not compensatory.

The Navajo tribe has maintained a tradition and culture that is distinct from that of the larger society. This culture has an impact on what specific types of development tribal members may deem desirable or undesirable. For example, traditional Navajos do not believe that natural resources -- particularly the land, because it is sacred -- should be disrupted or changed in the process of development. Another consideration will be the potential impact of any type of industrialization on the livestyle of a basically rural people.

Nevertheless, the tribe has continued cautiously with an ambitious ten year development plan which portends better things. Hopefully, when concerned Navajos with sufficient expertise continue the present trend towards control of those programs which determine the destiny of the people, some success will result. But until the Federal Government becomes more concerned with the plight of the tribe, caused in no small part by past Federal action and inaction, the full development of tribal resources, on terms defined by the Navajo people, will remain a very distant goal.

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE NAVAJO TRIBE OF INDIANS


Andrew Johnson,
President of the United States of America
To all and singular to whom these
presents shall come, greeting:
Whereas a Treaty was
made and concluded at Fort
Sumner, in the Territory of
New Mexico, on the first day
of June, in the year of our
Lord one thousand eight
hundred and sixty-eight, by and
between Lieutenant-General W.
T. Sherman, and Samuel F.
Tappan, Commissioners, on the
part of the United States, and
Barboncito, Armijo, and other
Chiefs and Headmen of the
Navajo tribe of Indians, on the part
of said Indians, and duly authorized
thereto by them, which Treaty is in
the words and figures following, to wit:

Articles of a Treaty and Agreement made and entered into at Fort Sumner, New Mexico, on the first day of June, 1868, by and between the United States, represented by its Commissioners, Lieutenant General W. T. Sherman and Colonel Samuel F. Tappan, of the one part, and the Navajo nation or tribe of Indians, represented by their Chiefs and Headmen, duly authorized and empowered to act for the whole people of said nation or tribe, (the names of said Chiefs and Headmen being hereto subscribed,) of the other part, witness:

Article I.

From this day forward all war between the parties to this agreement shall for ever cease. The government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they now pledge their honor to keep it.

If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington city, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also to reimburse the injured persons for the loss sustained.

If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States and at peace therewith, the Navajo tribe agree that they will, on proof made to their agent, and on notice by him, deliver up the wrongdoer to the United States, to be tried and punished according to its laws; and in case they wilfully refuse so to do, the person injured shall be reimbursed for his loss from the annuities or other moneys due or to become due them under this treaty, or any others that may be made with the United States. And the President may prescribe such rules and regulations for ascertaining damages under this article as in his judgment may be proper; but no such damage shall be adjusted and paid until examined and passed upon by the Commissioner of Indian Affairs, and no one sustaining loss whilst violating, or because of his violating, the provisions of this treaty or the laws of the United States, shall be reimbursed therefor.

Article II.

The United States agrees that the following district of country, to wit: bounded on the north by the 37th degree of north latitude, south by an east and west line passing through the site of old Fort Defiance, in Canon Bonito, east by the parallel of longitude which, if prolonged south, would pass through old Fort Lyon, or the Ojo-de-oso, Bear Spring and west by a parallel of longitude 109° 30' west of Greenwich, provided it embraces the outlet of the Canon-de-Chilly, which canon is to be all included in this reservation, shall be, and the same is hereby, set apart for the use and occupation of the Navajo tribe of Indians, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit among them; and the United States agrees that no persons except those herein so authorized to do, and except such officers, soldiers, agents, and employes of the government, or of the Indians, as may be authorized to enter upon Indian reservations in discharge of duties imposed by law, or the orders of the President, shall ever be permitted to pass over, settle upon, or reside in, the territory described in this article.

Article III.

The United States agrees to cause to be built at some point within said reservation, where timber and water may be convenient, the following buildings: a warehouse, to cost not exceeding twenty-five hundred dollars; an agency building for the residence of the agent, not to cost exceeding three thousand dollars; a carpenter shop and blacksmith shop, not to cost exceeding one thousand dollars each; and a school-house and chapel, so soon as a sufficient number of children can be induced to attend school, which shall not cost to exceed five thousand dollars.

Article IV.

The United States agrees that the agent for the

Navajos shall make his home at the agency building; that he shall reside among them and shall keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint by or against the Indians as may be presented for investigation, as also for the faithful discharge of other duties enjoined by law. In all cases of depredation on person or property he shall cause the evidence to be taken in writing and forwarded, together with his finding, to the Commissioner of Indian Affairs, whose decision shall be binding on the parties to this treaty.

Article V.

If any individual belonging to said tribe, or legally incorporated with it, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent then in charge, a tract of land within said reservation, not exceeding one hundred and sixty acres in extent, which tract, when so selected, certified, and recorded in the "land book" as herein described, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it.

Any person over eighteen years of age, not being the head of the family, may in like manner select, and cause to be certified to him or her for purposes of cultivation, a quantity of land, not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed.

For each tract of land so selected a certificate containing a description thereof, and the name of the person selecting it, with a certificate endorsed thereon that the same has been recorded, shall be delivered to the party entitled to it by the agent, after the same shall have been recorded by him in a book to be kept in his office, subject to inspection which said book shall be known as the "Navajo Land Book."

The President may at any time order a survey of the reservation, and, when so surveyed, Congress shall provide for protecting the rights of said settlers in their improvements, and may fix the character of the title held by each. The United States may pass such laws on the subject of alienation and descent of property between the Indians and their descendants as may be thought proper.

Article VI.

In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of such of them as may be settled on said agricultural parts of this reservation, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that, for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher.

The provisions of this article to continue for not less than ten years.

Article VII

When the head of a family shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seeds and agricultural implements for the first year, not exceeding in value one hundred dollars, and for each succeeding year he shall be entitled to receive seeds and implements to the value of twenty-five dollars.

Article VIII.

In lieu of all sums of money or other annuities provided to be paid to the Indians herein named under any treaty or treaties heretofore made, the United States agrees to deliver at the agency house on the reservation herein named, on the first day of September of each year for ten years, the following articles, to wit:

Such articles of clothing, goods, or raw materials in lieu thereof, as the agent may make his estimate for, not exceeding in value five dollars per Indian—each Indian being encouraged to manufacture their own clothing, blankets, &c.; to be furnished with no article which they can manufacture themselves. And, in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent each year to forward to him a full and exact census of the Indians, on which the estimate from year to year can be based.

And in addition to the articles herein named, the sum of ten dollars for each person entitled to the beneficial effects of this treaty shall be annually appropriated for a period of ten years, for each person who engages in farming or mechanical pursuits, to be used by the Commissioner of Indian Affairs in the purchase of such articles as from time to time the condition and necessities of the Indians may indicate to be proper; and if within the ten years at any time it shall appear that the amount of money needed for clothing, under the article, can be appropriated to better uses for the Indians named herein, the Commissioner of Indian Affairs may change the appropriation to other purposes, but in no event shall the amount of this appropriation be withdrawn or discontinued for the period named, provided they remain at peace. And the President shall annually detail an officer of the army to be present and attest the delivery of all the goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery.

Article IX.

In consideration of the advantages and benefits conferred by this treaty, and the many pledges of friendship by the United States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy any territory outside their reservation, as herein defined, but retain the right to hunt on any unoccupied lands contiguous to their reservation, so long as the large game may range thereon in such numbers as to justify the chase; and they, the said Indians, further expressly agree:

1st. That they will make no opposition to the construction of railroads now being built or hereafter to be built, across the continent.

2nd. That they will not interfere with the peaceful construction of any railroad not passing over their reservation as herein defined.

3rd. That they will not attack any persons at home or travelling, nor molest or disturb any wagon trains, coaches, mules or cattle belonging to the people of the United States, or to persons friendly therewith.

4th. That they will never capture or carry off from the settlements women or children.

5th. They will never kill or scalp white men, nor attempt to do them harm.

6th. They will not in future oppose the construction of railroads, wagon roads, mail stations, or other works of utility or necessity which may be ordered or permitted by the laws of the United States; but should such roads or other works be constructed on the lands of their

reservation, the government will pay the tribe whatever amount of damage may be assessed by three disinterested commissioners to be appointed by the President for that purpose, one of said commissioners to be a chief or head man of the tribe.

7th. They will make no opposition to the military posts or roads now established, or that may be established, not in violation of treaties heretofore made or hereafter to be made with any of the Indian tribes.

Article X.

No future treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force against said Indians unless agreed to and executed by at least three-fourths of all the adult male Indians occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him as provided in article 5 of this treaty.

Article XI.

The Navajos also hereby agree that at any time after the signing of these presents they will proceed in such manner as may be required of them by the agent, or by the officer charged with their removal, to the reservation herein provided for, the United States paying for their subsistence en route, and providing a reasonable amount of transportation for the sick and feeble.

Article XII.

It is further agreed by and between the parties to this agreement that the sum of one hundred and fifty thousand dollars appropriated or to be appropriated shall be disbursed as follows, subject to any conditions provided in the law, to wit:

1st. The actual cost of the removal of the tribe from the Bosque Redondo reservation to the reservation, say fifty thousand dollars.

2nd. The purchase of fifteen thousand sheep and goats, at a cost not to exceed thirty thousand dollars.

3rd. The purchase of five hundred beef cattle and a million pounds of corn, to be collected and held at the military post nearest the reservation, subject to the orders of the agent, for the relief of the needy during the coming winter.

4th. The balance, if any, of the appropriation to be invested for the maintenance of the Indians pending their removal, in such manner as the agent who is with them may determine.

5th. The removal of this tribe to be made under the supreme control and direction of the military commander of the Territory of New Mexico, and when completed, the management of the tribe to revert to the proper agent.

Article XIII.

The tribe herein named, by their representatives, parties to this treaty, agree to make the reservation herein described their permanent home, and they will not as a tribe make any permanent settlement elsewhere, reserving the right to hunt on the lands adjoining the said reservation formerly called theirs, subject to the modifications named in this treaty and the orders of the commander of the department in which said reservation may be for the time being; and it is further agreed and understood by the parties to this treaty, that if any Navajo Indian or Indians shall leave the reservation herein described to settle elsewhere, he or they shall forfeit all rights, privileges, and annuities conferred by the terms this treaty; and it is further agreed by the parties to this treaty, that they will do all they can to induce Indians now away from reservations set apart for the exclusive use and occupation of the Indians, leading a nomadic life, or engaged in war against the people of the United States, to abandon such life and settle permanently in one of the territorial reservations set apart for the exclusive use and occupation of the Indians.

In testimony of all which the said parties have hereto, on this the first day of June, eighteen hundred and sixty-eight, at Fort Sumner, in the Territory of New Mexico, set their hands and seals.

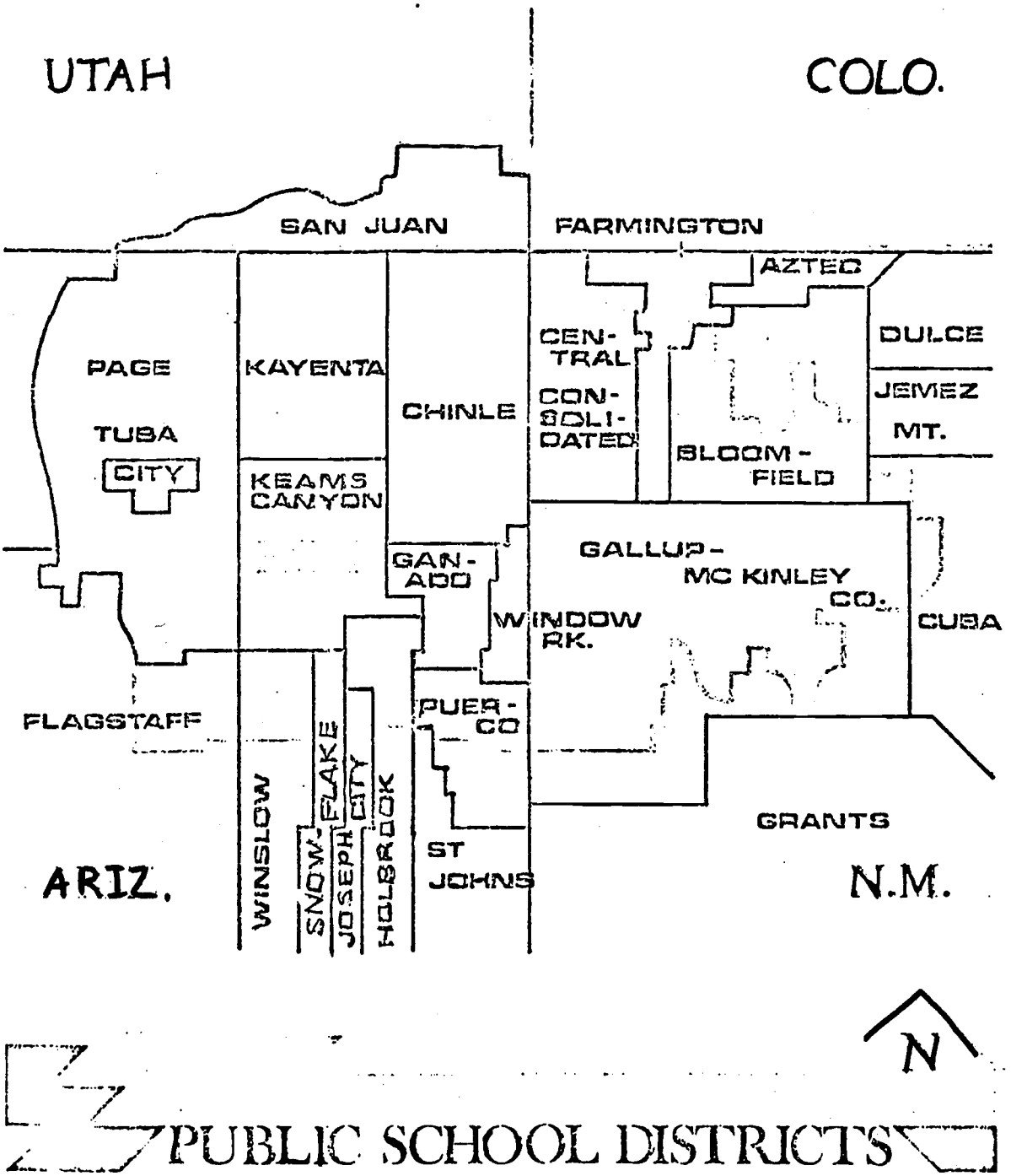
W. T. SHERMAN
Lt. Gen'l, Indian Peace Commissioner.
S. F. TAPPAN,
Indian Peace Commissioner.

BARBONCITO, Chief.	his x mark.
ARMIJO.	his x mark.
DELGADO.	
MANUELITO.	his x mark.
LARGO.	his x mark.
HERRERO.	his x mark.
CHIQUETO.	his x mark.
MUERTO DE HOMBRE.	his x mark.
HOMBRO.	his x mark.
NARBONO.	his x mark.
NARBONO SEGUNDO.	his x mark.
GANADO MUCHO.	his x mark.
Council.	
RIQUO.	his x mark.
JUAN MARTIN.	his x mark.
SERGINTO.	his x mark.
GRANDE.	his x mark.
INOETENITO	his x mark.
MUCHACHOS MUCHO.	his x mark.
CHIQUETO SEGUNDO.	his x mark.
CABELLO AMARILLO	his x mark.
FRANCISCO.	his x mark.
TORIVIO.	his x mark.
DESDENDADO.	his x mark.
JUAN.	his x mark.
GUERO.	his x mark.
GUGADORE.	his x mark.
CABASON.	his x mark.
BARBON SEGUNDO.	his x mark.
CABARES COLORADOS	his x mark.

Attest:
Geo. W. G. Getty,
Col. 37th Inf'y, Bt. Maj. Gen'l U. S. A.
B. S. Roberts,
Bt. Brg. Gen'l U. S. A., Lt. Col. 3d Cav'y.
J. Cooper Mckee,
Bt. Lt. Col. Surgeon U. S. A.
Theo. H. Dodd,
U. S. Indian Ag't for Navajos.
Chas. McClure,
Bt. Maj. and C. S. U. S. A.
James F. Weeds,
Bt. Maj. and Asst. Surg. U. S. A.
J. C. Sutherland,
Interpreter
William Vaux,
Chaplain U. S. A.

And whereas, the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the twenty-fifth day of July, one thousand eight hundred and sixty-eight, advise and consent to the ratification of the same, by a resolution in the words and figures following, to wit:

APPENDIX 2


UTAH
COLO.
SAN JUAN
FARMINGTON
AZTEC
DULCE
JEMEZ MT.
PAGE
TUBA CITY
KAYENTA
KEAMS CANYON
CHINLE
CEN-TRAL CON-SOLI-DATED
BLOOM-FIELD
GAN-ADO
GALLUP-MC KINLEY CO.
CUBA
WINDOW RK.
FLAGSTAFF
PUER-CO
WINSLOW
SNOW-FLAKE
JOSEPH CITY
HOLBROOK
ST JOHNS
GRANTS
ARIZ.
N.M.
N
PUBLIC SCHOOL DISTRICTS

APPENDIX 3

RESERVATION MANPOWER ANALYSIS

1. The Navajo Reservation

A. Availability of Programs and Services:

1. Manpower Program Inventory -

The Navajo Reservation located in the Southwestern state of Arizona, New Mexico, and Utah has by far the largest complement of Manpower Programs. Of the reservations sampled the Navajo receives the most funds and program slots. A program inventory has shown that the Navajo Reservation has the availiability of the following Manpower Programs: (1) CEP; (2) NYC; (3) MDTA (OJT and Institutional); (4) NAB/JOBS; (5) Public Service Careers; (6) Operation Mainstream; (7) E.E.A. (PEP); and (8) WIN. In addition to these programs the Employment Security Commission of Arizona provides some services as does the Bureau of Indian Affairs through their Social Services and Employment Assistance departments.

While adhering to the basic concept and structure mandated by the Department of Labor the Navajo apply their Manpower Programs to meet their most pressing needs. These needs were found to primarily exist with the youth and the older worker who lack primary vocational skills and basic education. The following is a narrative discussion of the specific stresses and services undertaken by each program on the Navajo Reservation.

a. Concentrated Employment Program (CEP):

The Navajo CEP is a comprehensive approach to solving the educational and unemployment problems on the Navajo Reservation. This CEP's primary purpose is to find meaningful employment opportunities for its enrollees on the Navajo Reservation utilizing primary vocational skills. To fulfill this purpose Navajo CEP stresses two of its program functions, vocational

training and work experience.

Vocational training within Navajo CEP is a complete and thorough approach to meeting the needs of the reservation and its residents. The training sub-contractor to Navajo CEP, the Arizona Department of Vocational Education, offers training courses for clerical skills, sales clerk skills, welding, auto mechanics, building construction skills, janitorial skills, cullinary skills, teacher's aides, cartographic engraving (a process of topographical map production) and refractionary lense manufacturing. The length of these training programs varies from eight (8) weeks to a maximum of twenty-six (26) weeks. The type and structure of these programs allows both men and women to participate equally among them.

While the skill areas represented are quite extensive and vary with respect to sophistication, beginning wage, and length of training each skill training class is tied directly to a pre-committed job. This approach prevents training without consideration of the job market, as the training areas are tied directly to employment opportunities. Vocational training for Navajo CEP has resulted in one-third (1/3) of all placements flowing directly from this component, with the average starting wage being approximatel $2.20 per hour.

The other primary component of Navajo CEP is Work Experience. This component takes the form of two (2) programs internally labeled "operation mainstream" and "On-the-Job." The basic approach utilized by this component is to place an enrollee with an employer for a certain period of time during which the employer trains the enrollee in the skill area desired. During this training phase Navajo CEP subsidizes the enrollee/trainee's salary. Upon completion of the Work Experience component the enrollee becomes a fulltime employee and is no longer subsidized by Navajo CEP.

The training areas which are serviced by the Work Experience component are as numerous as the skill training areas. A partial list of the skill areas would include health, forestry, building construction, consumer services, clerical, sales and the skill crafts. Again, this component is structured so that both male and female enrollees participate equally. The success of this component has been exceptional in that over 50% of all placements have resulted from this component.

Aside from the above services it can be seen that Navajo CEP offers a full line of program services. These services include outreach and intake, assessment and orientation, counseling, basic education (this includes a special GED program), supportive services, job development and placement, and follow-up. The program is relatively new to the Navajo Reservation and it offers a comprehensive approach to reducing unemployment; an approach heretofore not experienced on the Navajo Reservation.

This CEP's experiences throughout its first three (3) contracts have been very meaningful. Job placements have reached the 600 mark and are expected to increase. However, in spite of increasing performance Navajo CEP has been realizing yearly decreases in funding, a fact that greatly distresses those working with CEP. However, irrespective of numbers of placements and trends in funding levels Navajo CEP represents a well received and utilized manpower program on the Navajo Reservation.

b. Neighborhood Youth Corp (NYC):

The NYC program found on the Navajo Reservation is the most popular manpower program and the most widely known program of all manpower programs. As with all NYC's the target population is young people, ages sixteen through twenty-one. The popularity and notoriety of this program stem from

the fact that approximately 30% of the reservation population is between the ages of nineteen through twenty-four and approximately 15% of the reservation population is between the ages of sixteen through twenty-one. This population figure represents over 8,000 reservation youth who are potentially eligible for NYC participation. Of this group approximately 75% are unemployed. Therefore, it is readily apparent why NYC is a favored program, as NYC is directed at a specific group of individuals who want and need a job. NYC meets this need.

Again, NYC falls within the specific guidelines and objectives mandated by the Department of Labor. These guidelines and objectives generally allow for valuable work experience situations for the youth, both on-going students and school dropouts. The Navajo NYC places its enrollees primarily in governmental agencies, generally the Navajo Tribe, whose work tasks cover all employment areas from clerical to warehousemen. The National Parks Service annually provides approximately 350 training slots outside the reservation while also acting as a major employer, employing some of the NYC enrollees at a wage of $2.00 to $2.50 per hour.

The Navajo NYC annually serves a vast number of Navajo Youth. Last year the Navajo NYC served approximately 2,000 people within its three (3) programs: in-school, out-of-school and summer. For this year this manpower program is projecting a service level of approximately 1,300 high school aged Navajos. A number of these enrollees will return to school fulfilling another objective of NYC. Also, a number of enrollees will convert from their NYC subsidized work experience positions to full-time permanent employees with those employers who have been providing the NYC slots. Aside from the National Parks and Ranger Services, the Navajo Tribe and the Bureau of Indian Affairs absorb enrollees into various positions such as dormitory

aides, secretaries, file clerks, warehousemen, laborers and into other occupational areas. This approach works well as the employer has trained his prospective employee in his desired method and skills and he therefore, knows the quality of employee he is employing. This approach also allows for greater upward mobility within this employer's firm and appears to have resulted in a permanent employment situation for the new employee. With all these elements considered it is easy to justify NYC's success and popularity.

c. Manpower Development and Training Act Programs (MDTA):

Throughout the last few years there have been numerous MDTA funded training programs, both institutional and OJT. The number, type, size, and structure of these programs seems to very with the availability of MDTA funds on the State and Federal levels and with the desires of the Navajo Tribe as to the need for specific programs.

At the time of this field evaluation on the Navajo Reservation there were three (3) MDTA funded programs. These programs are: (1) Pre-apprenticeship training program located at Page, Arizona; (2) Ironworkers Program located at Window Rock, Arizona; and (3) Clerical Up-grade program located at Fort Defiance, Arizona. The first two programs are primarily intended to train and refer Navajo Indians: in apprenticable skills and to apprenticeship programs with various construction contractors on and around the Navajo Reservations. It was found that while a great number of Navajos had completed the pre-apprenticeship training programs not all of them were presently employed as apprentices with available contractors. At Page, Arizona; whose practices have had a direct result on the employment of Navajo enrollees completing the Page MDTA program. The Ironworker's pro-

gram has also experienced less than 100% placement which has been attributed to the low level of construction projects utilizing these skills on or around the Navajo Reservation.

The Clerical Up-grade program, through a small program, is providing a needed and well received service. Basically, this program allows working clerical personnel to attend, twice a week, a program designed to teach, upgrade or re-introduce basic secretarial skills such as typing, stenography, or use of office machines. The material imported thus allows these people to perform better on their present job, and assures them greater vertical mobility within their employing agency due to their new or improved skills. This type of program has been utilized numerous times in the past and it has continually been successful.

As stated above there have been numerous MDTA funded programs on the Navajo Reservation. A partial listing of these programs would include: (1) forestry aide training for the Navajo Forest Products Industry; (2) Small and large appliance repair for the Navajo Tribal Utility Authority (NTUA); (3) Electrical Hot Lineman again for NTUA; (4) Electronic Assembly for General Dynamics; and (5) for a contract period, all Navajo CEP Vocational Training was MDTA funded. Again, this is only a partical listing of programs which were available at one time. The purpose of these programs was to provide an employer with a skilled labor pool but secondly, it also resulted in creating employment opportunities for someone who was unemployed and lacked a primary vocational skill.

It was also learned that two new projects had been submitted for MDTA funding. These projects are aimed at Navajo Tribal Enterprise to provide skills in two (2) skill areas not yet developed. The first project is for water and sewer technicians for the Navajo Tribal Utility Authority and

the second project is to train optical technicians for a future enterprise. No Navajo Indian, as of yet, possesses skills in either area and the need for these skilled people was expressed for all. So while MDTA funds will allow these people to receive these skills they will also create new industries and employment opportunities. It was found that MDTA funded projects meet an immediate and pressing skill need and while meeting this need create more employment opportunities.

d. Job Corps:

At one time there existed three (3) Job Corps Centers on or near the Navajo Reservation. However, it was found that very Indians participated in these centers. The exact reason for this occurence is not known; however, one proposed theory is that the Navajo Indians did not want to participate in the programs at these centers due to the prominence of other ethnic minorities. Another plausible reason given is that the skill training given could not be utilized on the Navajo Reservation; thereby requiring the person to move to a metropolitan area to utilize this skill. Whatever the reason, very few Navajo Indians have participated in the Job Corps program at these three (3) centers or any of the other centers.

Presently, there is a Job Corps center in Montana funded and operated solely for American Indians. The concept utilized by the Kicking Horse Job Corp Center is to provide vocational skills to all American Indians who wish to avail themselves of the opportunity. Therefore, any Indian who meets the Department of Labor intake criteria is eligible to utilize this center, irrespective of his place of residence. However, it was found that on the Navajo Reservation that recruitment for this Indian program was almost non-existant. Very few people even indicated any knowledge of the existence of

this specific program and that its purpose and stress is for American Indians. Therefore, while the referral potential exists the affect of this program on the Navajo Reservation is minimal, due to the lack of knowledge of its presence.

e. NAB/JOBS:

At the time of the field study on the Navajo Reservation only two NAB/JOBS contractors were found. These organizations were the Morrison-Knudsen Company and Fairchild Camera Company. In addition to the above contractors another firm, Neilson Construction Company, is utilizing its NAB/JOBS contract on the Navajo Reservation, even though the contract was issued primarily for its Colorado operations.

The employment areas encomposed by these contracts are construction skills and metal mechinist skills. Morrison-Knudsen is presently constructing a coal fired electrical generating plant and a localized railroad to transport the required raw materials in the Page, Arizona area. The specific jobs given by Morrison-Knudsen include welders, ironworkers, boilermakers, carpenters, and other skilled construction crafts required in heavy industrial construction. Neilsons is presently involved in road and related types of construction. Fairchild Camera Company located at Shiprock, New Mexico is primarily engaged in the assembly of electronic components. They are also establishing a complete machine shop for which they have received a NAB/JOBS contract to provide their skilled labor.

NAB/JOBS contractors have come and gone in the same manner as MDTA programs. A listing of previous NAB/JOBS programs or contracts was not obtainable but it was confirmed that other contracts have existed. It was also found that the only planned NAB/JOBS program specificially for a tribal

concern is a forestry project to be run by the Navajo Forest Products Industry, an enterprise of the Navajo Tribe, located at Navajo, New Mexico.

The NAB/JOBS program has provided a realistic and practical avenue by which Navajo Indians could enter a high skill occupation by receiving meaningful training in that particular skill area. It was found that without the NAB/JOBS program many Indians would not have been able to receive training and the subsequent employment opportunities. However, in total, the NAB/JOBS program has had minimal effect due to the cost of the program, the lack of interested industries willing to undertake this type of program, the general lack of industry and due to the large number of unemployed Indians. What has been provided has worked well; to the advantage of the employer and the Indian trainee/employee.

f. Public Service Careers (PSC):

On the Navajo Reservation only one operational PSC program was found. This program operated by the local CAP-Headstart Program, is intended to up-grade teachers' aides and thus allow them to eventually become qualified teachers, and to up-grade present teachers to allow them to offer better instructional services. The CAP-Headstart program has structured its salary scale so that every PSC participant will receive salary increments in accordance with their rate of advancement in the program. The incentive of salary increases coupled with increased responsibilities, duties, and prestige has resulted in a favorable image of PSC within the CAP. The actual training and formalized education is done under contract by Utah State University. Presently, thirty (30) Headstart staff are participating in this PSC.

Two principle employers, the Bureau of Indian Affairs and the U.S. Public Health Service, have existing PSC program which are not being utilized

on the Navajo Reservation. It was found that these PSC programs had been created within the top level of these agencies at their respective Washington, D.C. offices and then disseminated to the various field offices. One reason given for the lack of a PSC among these Federal agencies on the Navajo Reservation is the recent "freeze", prohibiting the employment of new people for Federal positions. A program with entry level and up-grade features would be impossible because of this freeze. However, that was the only reason given by both agencies for the absence of PSC on the local level.

PSC on the Navajo Reservation has been, for all practical purposes, non-existant. While there is one program available it serves only thirty (30) existing staff and, as of yet, has not resulted in creating new entry level positions by up-grading present employers.

g. Operation Mainstream (OM):

The Navajo Reservation operates a small Operation Mainstream program administered by the local Neighborhood Youth Corps Office. This program is funded every six (6) months for approximately fifteen (15) slots. With such very few people to handle, the NYC is very selective when determining who the participating training agent shall be. In general though, NYC's approach has been to utilize cluster placements with two (2) or three (3) agencies. To date, this program has been well received and is very successful in that the majority of the participants have been placed on permanent jobs upon the completion of the training program. The training agents have also been very cooperative. This is due partly to the fact that OM fully subsidizes the enrollees wages while undergoing training, thereby, not resulting in minimal training cost to the employer/trainer, and due to the fact

that the employer/trainer will have a fully trained and knowledgeable employee upon completion on the program. For public agencies, the absence of any costs during training is important as these public agencies rarely have existing vacancies and because they budget for operational funds far in advance of the actual receipt of fund . Therefore, they can budget immediately for an additional position and upon completion of the training program the funds should be available for the employment of that person. O.M. has also been instrumental in assisting two (2) non-profit organizations in securing trained personnel with minimal costs to them. O.M. therefore, has been beneficial in assisting unemployed people and in assisting employers in acquiring fully trained personnel.

h. Emergency Employment Act-Public Employment Program (EEA):

The Navajo Tribe operates the largest Indian EEA or PEP program in the United States. Of the eight million dollars alloted for American Indians the Navajo Reservation received $3,003,200.00 for 489 slots, which has subsequently been increased to 643 slots.

The EEA program on the Navajo Reservation has been utilized to the best extent possible while meeting some of the most pressing problems of the Navajos. A primary problem of the Navajo Tribe has been securing adequate manpower to fulfill its social commitments to the Navajos especially in light of decreasing revenues and increasing costs. EEA is meeting that need.

The employment opportunities created by EEA are numerous. They can be basically classified as unskilled, skilled, or professional. In filling its program slots the Navajo tribe has only had problems in finding eligible professional candidates for those specialized program slots. With an unem-

ployment rate of 62.7%, or 20,250 Navajos of a labor force of 32,350 it is readily apparent why the Navajo Tribe has had very few problems filling the unskilled and skilled positions. The salary range extends from a low of $1.60 per hour to the allowable maximum of $12,000 per annum.

The specific employment areas, as stated above, are very numerous. One tribal department with the greatest need for additional manpower was the police department. Before EEA it was a normal occurence for a police officer to work a 12-hour shift; and due to the Tribe's financial situation not receive over-time pay. However, with the addition of fifty (50) EEA funded policemen and nineteen (19) clerks this problem has been partically solved. This has also been the case with other Tribal and Tribally created departments or organizations. Such is the case with the local alcoholism program. With the assistance of EEA, a detoxification center was created and is meeting another social need.

E.E.A. therefore, has been very instrumental in employing over 600 heretofore unemployed Navajos and in turn allowing the tribe through its increased manpower to meet its social obligations to the Navajo people.

i. Work Incentive Program (WIN):

As vast as the Navajo Reservation is, there exists only one small WIN program for Navajos. This WIN program, adminstered and operated by the Utah Employment Service, extends services only to those Navajos who reside in the Utah portion of the Navajo Reservation. This program though, is not specifically aimed at the Navajo people as the sole participant. While no specific number of program slots are set aside for the Navajos they do constitute the principal recipients class. The previous program year realized 90% of 300 persons served as being Navajo Indians. At the time of this field study

75% of a 256 caseload were Navajo Indians. It is assumed that a similar experience will be realized during the up-coming program year.

While the general structure conforms to mandated guidelines controlling WIN programs the local control has resulted in a program structured to meet local training needs. The Navajo WIN program encourages male and female welfare recipients to undergo vocational training by providing every participating recipient $30.00 per month in addition to his basic welfare payment. The concept supporting this approach is that the welfare receipeint upon completion of this training will secure permanent employment; thereby, removing him from the welfare rolls and making him a productive member of the local economy. However, this resultant employment aspect is not being realized. It was learned that less 10% of WIN participants secure permanent employment after training.

While placement figures are very low the program is providing training for welfare recipients in a variety of employment areas. Currently, training is being offered in General Business (clerical), agriculture, and general home construction or building trades. With regards to the few placements that have resulted from these training areas it was found that those who do secure jobs do so as secretaries (salary range - $2.00/hr.); construction workers and heavy equipment operators (salary range - $5.00/hr.); or custodial workers (salary range - $2.00/hr.). During the approaching program year vocational training will be given in general business (twenty slots); business pre-technical training (thirty slots); public service areas (twenty slots); building trades (sixty slots); agriculture (thrity slots); and other training areas (twenty slots). In addition to the above training areas forty-five (45) slots have been commited to this WIN program by a MDTA sponsored pre-apprenticeship training program.

The training agent utilized by this WIN program is Brigham Young University who also provides "Adult Basic Education" to WIN participants. Total program slots allocated for the next program year will be 225 slots, a reduction from previous years' levels.

The state county (San Juan) served by this program is greatly in need of WIN and other manpower services. The WIN coordinator interviewed stated that 41% of the county population is on welfare and there exists no immediate solution to this problem, as there is a definite lack of industrial development of any type in the area. This also causes the poor placement record of this program as the participants could secure a job if they were available or if they were willing to relocate to another area of the reservation, which they do not wish to do. Therefore, this problem will probably continue as no solution appears in sight.

j. State Employment Service:

The Navajo Reservation due to its unique geographical location has Employment Service (ES) office throughout the reservation representing three (3) State Employment Security Commissions: Arizona; Utah; and New Mexico. However, their services are minimal, as they basically provide only intake and referral services.

The State E.S. personnel that are operating solely as a component or sub-contractor to a manpower program, such as the Arizona and New Mexico E.S. sub-contractors to the CEP, extend greater and more numerous services to the Navajo people. However, this is solely a result of their contractual commitment to that manpower program and those contractual services are limited to the participants of that program. The services rendered by the E.S. participating with a manpower program are more extensive in

that they encompass most all manpower services.

Normal state E.S. services are restricted to: (1) assessment; (2) placement (including job developme -); (3) vocational guidance; and (4) referral to training. These services constitute the maximum level of servi:es provided, but even they are not all performed in every E.S. Office. The primary factors limiting E.S. services are the lack of trained and qualified staff and the limited budget levels which prevent more staff from being hired.

The Arizona portion of the Navajo Reservation is served by a total of ten (10) E.S. employees, including clerks and secretaries. This portion of the Navajo Reservation covers 15,000 square miles and constitutes over 50% of the Navajo population. Every staff member contacted expressed a need for more funds for increased staff and travel.

The state E.S.'s are aware of the need to utilize Navajo people as E.S. employees. All states have hired a relatively large number of Navajos to staff their field offices where they can serve their own people. However, it was found that the Navajo field office managers had very little control over the operations of that particular office as a "district" office located off the reservation and staffed primarily by non-Navajos controlled the field offices on the reservation. The Navajo E.S. field managers felt that more effective services could be offered if the control office was on the Reservation and staffed by Navajos. However, the state officials have yet to accede to this request.

A listing of services not provided by the E.S.'s includes counseling, training (both skill and education), orientation, outreach and recruitment, work experience and on-the-job training opportunities (aside from referral), and supportive services. Of these services it was found that counseling

services are the most demanded and sought after element. The Navajo Tribe, as of the date of this report, is seeking an "Operation Hitch-hike" program under which counseling serves are an integral component. The expressions stated by various tribal representatives indicated that a large number of Navajos, to become gainfully and permanently employed, required, in addition to skill training, a great deal of professional counseling in areas of employment, personal finances, use of alcohol and other related areas. Therefore, since this service is not available they are taking direct action to secure this service.

A similar situation exists for job development and placement activities. Basically, tribal officials felt that the state E.S.'s were not providing the degree of service required and have undertaken the task of providing their own job development and placement activities. These activities exist under the Tribal Job Development Program and an EEA (PEP) job development program. In addition to job development and placement these agencies also undertake outreach and recruitment tasks which are also not provided by the E.S.'s.

The three (3) state E.S.'s due to budget limitations and policy procedures, therefore, provide minimal services. While these services are negligible in scope they are meeting a need of the Navajo Reservation. Where the E.S.'s have fallen short in providing services the Navajo Tribe through other means is attempting to make these services available.

k. Bureau of Indian Affairs - Employment Assistance (BIA):

The Bureau of Indian Affairs Employment Assistance program is not a Department of Labor associated manpower program. However, the services BIA offers are identical to many services provided by DOL programs.

This section therefore, recognizes the nature of these services and is simply an illustration of another "manpower" agency.

BIA has annually served many Navajo people in a variety of ways. The basic operational approaches utilized by BIA are: (1) vocational training; (2) direct employment and; (3) on-the-job training. During fiscal year 1971 BIA served approximately 6,413 family units in the following areas: (1) Adult vocational training - 1,302; (2) direct employment - 3,355; and (3) on-the-job training - 656. The effects of BIA are far reaching when considering the number of people served. The local economy also prospers as evidenced by the FY 1972 funding level of $1,567,000.00.

The goal of BIA is to provide a means by which Navajo Indians might become employed through education and training. This approach coincides with the underlying philosophy of most Department of Labor manpower programs. However, the means of implementation and actual operation are distinctly different.

DOL programs are primarily localized programs; whereby, very few program participants are forced to move from their reservation to receive training or employment. Also, DOL programs are structured so that ideally, training is related to the local labor market and sufficient funding is provided so that the actual training may be given locally. DOL programs also provide job development activities enabling local employment opportunities to be tapped, once the participants completes training. However, this approach is not utilized by BIA.

Of the three (3) major components of BIA, on-the-job training is the only one utilized primarily on or around the Navajo Reservation. Local employers enter agreements with BIA to provide OJT slots which are then funded by BIA. This approach is well utilized by BIA and serves well

to meet the needs of both the labor pool and the labor market. As the employers make a contractual commitment to retain the trainee as a full time employee upon completion this approach generally realizes a relatively high success in employment placements. This program is also well received by the employer as he gains an employee who is trained by the employer and at very little or no cost to the employer. This approach is mutually beneficial as all parties prosper.

However, this is not necessarily the result realized with the direct employment and vocational training components of BIA. It is conceded that a portion of the direct employment opportunities do exist on the reservation and that a portion of the vocational training opportunities will impart skills that comform to the demands of the labor market. But, it is also recognized that a portion of the employment and training opportunities require the Navajo to premanently relocate to some distant location. The relocation effort of BIA may or may not be effective. However, there are now Navajos who possess a salable skill and are now permanently employed in these distant locations who might otherwise be unemployed and not possess a salable skill if they had not relocated.

BIA, irrespective of its local or relocation effort, does provide a service which meets the needs of the Navajo Indians. They are receiving training and as a result of job development efforts are receiving gainful employment. With the altering of BIA policy from relocation services to localized internal services, a greater stress to conform to the local labor market will have to be realized as the relocation effort will not afford BIA an external outlet for their participants. However, due to the lack of local training resources relocation for training purposes will probably continue. BIA therefore, will never be able to remove itself

from relocation as long as local resources are void. Also, the economically depressed reservations might force BIA to continue to seek external outlets for trained Navajos as long as training is not related to the reservation labor market demands and the reservations remain in their depressed states.

BIA's services are attempting to meet the Navajos' needs. These services are necessary and they cannot be eliminated nor reduced.

1. Bureau of Indian Affairs - Welfare Services:

The BIA Welfare Services does not directly provide any manpower or manpower related services. BIA's primary goal is to provide the necessary social and financial services required to assist Navajo Indians. For informational sake, a listing of these services includes general assistance payments, child welfare, aging services, child day care services and family counseling. While the problems, results and effects of these services are important they are not a direct responsibility of this report. The section relating to special group needs (VI - C), addresses itself to manpower efforts undertaken for welfare clients.

BIA welfare services, however, does fund a tribal program that resembles certain manpower program approaches and has direct results on the labor pool. This program, the Tribal Work Experience Program (TWEP), is a Tribally adminstered and controlled program which receives its funding solely from BIA. The approach utilized by TWEP is basically short-term work experience (OJT) slots for welfare recipients. Each participants receives $30.00 per month in addition to his basic welfare payment. The total project funding is for $17.5 million per year.

The work experience slots are quite numerous and are involved in social projects such as home improvement, community improvement, hay and grain dis-

tribution and water hauling. All these projects are for the betterment of the reservation as a whole and assist the Tribe in fulfilling its social commitment to the Navajos. In addition to the Work Experience slots, TWEP also provides on-the-job training slots and adult basic education.

The approach utilized by TWEP is similar to a WIN program. However, one distinguishing factor is the lack of formalized vocational skill training. The TWEP participants must possess a basic skill or participate in a program (OJT) which might give that skill. The primary employment areas within which TWEP participants are "employed" are low skill areas. Even though this program receives $17.5 million per year, no funds are set aside for skill training as the bulk of these funds are for direct welfare payments.

It was expressed by the BIA Welfare people that TWEP was not successful as it did not meet its goal of placing participants in permanent jobs. The reasons given for this failure were that the objective of the program was not known and that the economically depressed nature of the reservation did not present sufficient employment opportunities to absorb TWEP participants.

TWEP's effect on the reservation is to place two (2) to three (3) thousand Navajos on jobs presenting them the opportunity to secure permanent employment and to place them into work situations; whereby, the results are beneficial improvements to the Navajo Reservation, as a whole. TWEP is definitely meeting, at least in part, a manpower need of the Navajos by providing training and employment opportunities.

m. Summary:

As can be seen from the above text the Navajo Reservation has access to many and varied programs. These programs serve the youth as well as the older person. Program slots are as numerous as the opportunities they present. Total funds expended for manpower programs approximates $14,230,000. However, the unemployment problem still persists. It is assumed that without this yearly influx of Federal manpower monies the problem that would result is inconcievable. At least in part the Federal Manpower funds expended on the Navajo Reservation are reducing unemployment, or at least stabilizing it.

Funding levels for all programs referenced above and their available slots can be seen on the following chart.

SOURCE ..Navajo Briefing Information, National Indian Training and Research Center, August, 1973.

APPENDIX 4

HIGHLIGHTS

OF NAVAJO EMPLOYER DEMAND SURVEY 1969*

Twelve thousand six hundred and thirty-one persons were reported employed in nonagricultural industries on the reservation in November of 1969; 42.6% of these persons were female. Sixty-six and six-tenths percent of the nonagricultural employed (8,412) were Navajo.

Most of the reported nonagricultural employment on the reservation was heavily concentrated in three major industrial categories: services (37.5%), government (35.0%), and manufacturing (16.3%).

There were a total of 381 current job openings reported by nonagricultural employers on the reservation in November of 1969. About 60% of these openings were reported by one agency, the Bureau of Indian Affairs.

If the number of current job openings in November of 1969 (381) is compared with the number of Navajo who were found to be without work and wanting jobs in February of 1967 (14,900) -- assuming there has been little change in unemployment since 1967 -- it can be estimated that a nonagricultural job was available for only about one in every 40 Navajo jobseekers during the survey period.

Approximately 1,060 job openings, other than current job openings, were anticipated by reservation employers in the next year for which workers would be actively sought. Forty-three and four-tenths percent of all anticipated openings were in the manufacturing industry (electronics assembly), 24.5% were in government, 15.9% were in services, and 10.0% were in the transportation, communication and electric services industry.

The professional, technical, and managerial occupational category was by far the largest occupational group present on the Navajo Reservation. About 41.8% of all nonagricultural employed persons were reported to be in this occupational category. Half of those employed in this occupational category were Navajo (50.2%), and almost half were women (48.2%). There was a smaller percentage of Navajo in this occupational category than in any other.

(continued)

The largest concentration of current job openings was found in the professional, technical, and managerial occupational category; 171 of the 381 current job openings (44.9%) were in this occupational group. The great majority of job openings within this group, 69.6%, were occupations in education. In fact, 119 or almost one-third (31.2%) of all current job openings were in education.

The second largest number of current job openings were found in the clerical and sales occupational category. The 63 openings reported in this category represented 16.5% of all job openings. The bench work occupational category had the third largest number of openings (45), all but one of which were in the assembly and/or repair of electrical equipment.

Four hundred and forty-six job openings, 41.6% of all openings, other than current openings, anticipated in the next 12 months, were occupations in the assembly and repair of electrical equipment; 154 anticipated openings were reported in education; 75 in food and beverage preparation and service; 48 in stenography, typing, filing, and related occupations; 25 in transportation (service station attendants); and 25 in administrative specializations occupations.

Hiring methods used by Navajo area firms and agencies in order of frequency used were: direct company application (85.6%), friends and relatives (82.7%), State Employment Service (61.2%), advertising and want ads (47.4%), and employment assistance (BIA - 44.4%).

Mixed feelings prevailed among Navajo employers about training programs offered on the reservation. Three-quarters of the firms reporting thought vocational training programs would be of help to them in obtaining qualified employees. A majority of those firms responding, however, felt that the training programs which had been provided to on-reservation Navajo had been inadequate. The most common type of complaint listed was that training programs did not supply the types of trainees or training really required by firms.

*Arizona State Employment Service, June 1970.

APPENDIX 5

FEDERAL PROGRAMS

The Federal government, in its trustee function, is primarily responsible for providing social services for Indian reservations. The Government provides programs in the area of housing, employment, medical care and welfare assistance. In addition, Indian reservations, as separate political and legal entities, receive revenue sharing funds.

The number and quality of programs for Indian reservations has increased considerably over the last two decades. The President's proposed Indian Self-Determination legislation would also increase programs for Indian reservations.

NAVAJO REVENUE SHARING

According to an Office of Revenue Sharing official a total of $2,309,439 was paid to the Navajo Tribal Council. $1,773,574 was paid for the first two periods and a sum of $535,865 for the third and fourth periods.

To date, there is no data as to what is being done with the money received by the Navajo Tribal Council. The Office of Revenue Sharing is hopeful of receiving two reports in the near future concerning the use of this money.

HEALTH PROGRAMS (BACKGROUND)

By treaty and by law, reservation Indians of one-fourth or more Indian blood are entitled to free comprehensive medical care. A Federal health program was first made available for Indians in 1832, at which time Congress appropriated a meager $12,000 for a health program. Four years later the Federal health program was extended to provide limited health services to the Ottawa and Chippewa Indians under treaty provisions.[1] By 1880 the Bureau of Indian Affairs had four Indian hospitals and a total physician staff of 77 doctors. From that time until 1955, Indian health facilities continued to expand slowly, but Congressional appropriations were minimal. The results were that Indian health programs were deplorably inadequate, and Indian disease and death rates were many times greater than for other Americans.

In 1955, Indian health care was transferred to the Public Health Service, Department of Health, Education and Welfare. In that year, the Federal budget for Indian health was $24.5 million; by 1958, this figure had more than doubled to over $50 million, and in fiscal year 1972 it was more than $153 million.[2] At the present time, the Indian Health Service (IHS) operates 51 hospitals, 77 large clinic facilities and several hundred field health stations.[3]

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1 / 25 U.S.C. §13. See Also, Sorkin, p. 51.

2 / Sorkin, p. 51.

3 / Information furnished by the Indian Health Service.

The Office of Economic Opportunity has also contributed some funds for improved health services for Indians, but in 1968, funds for local and national health programs through OEO programs was less than $1.5 million.[4/]

Despite these increased funds and greatly improved facilities and staffing, Indian health is still about 20 to 25 years behind that of the general population.[5/]

4/ Indian Health Programs, 1955-72, HEW, Publication No. 72,502, 1972.

5/ Sorkin, p. 167.

SUBJECT: INDIAN HEALTH SERVICE (General Information)

- a component of HEW (Health Services and Mental Health Administrati of the Public Health Service)

Objectives: In this effort, the Indian Health Service has three major objectives:

- To assist Indian tribes in developing their capacity to man and manage their health programs through activities such as health management training, technical assistance, and human resource development and provide every opportunity for tribes to assume administrative authority through contracts and delegation.
- To act as the Indians' and Alaska Natives' advocate in the health field to generate other interests and resources which can be utilized.
- To deliver the best possible comprehensive health services, including hospital and ambulatory medical care, preventive and rehabilitative services, and to develop or improve community and individual water and sanitation facilities and other environmental factors affecting good health.

Organization of the Service

- Headquarters is maintained for overall operations and to provide guidance and advice to field offices.
- Field Administration is divided into eight area offices and four program operations.
- Areas are divided into service units. The Navajo Reservation has eight service units.
- The Office of Research and Development is located in Tucson,

SOURCE: HEW. Public Health Service. Health Services and Mental Health Administration. 1972

Health and Medical Care --

There exists on the Navajo Reservation six (6) U.S. Public Health Service (PHS) hospitals of varying size. In addition to these services PHS also provides numerous clinics, mobile clinics, and field health personnel to meet the local health needs. These services are fairly extensive and exist in most every community that has a relatively large population base. The cost to the individual Navajo is nothing with the only exceptions being for specialized eye glasses and specialized dental work. In addition to the on-reservation services there are two hospitals located in towns bordering the Navajo Reservation. Even though the Navajo population still experiences certain classes of medical problems the present services are well received by all. Of all respondents interviewed 71% felt this service was good to excellent and 97% felt that the service was fair to excellent.

In addition to this Federally provided service there are seven (7) private hospitals and numerous private physicians near the reservation providing health or medical services to those who wish to utilize them at their own cost.

SOURCE: American Indian Consultants, Inc. The Evaluation of Manpower Services and Supportive Services to American Indians on Reservations under Programs for which the Department of Labor and the Department of Health, Education and Welfare are responsible. (Prepared for Dept. of Labor Manpower Administration). July, 1972.

SUBJECT: INDIAN HEALTH SERVICE - NAVAJO AREA WORKLOAD STATISTICS
APRIL 1973

Inpatient Services

There were 1,467 admissions in April, 6% less than in March reflecting the usual seasonal decrease. April admissions were, however 2% greater than the average of the 3 preceding years, although 1% less than last year. Chart I shows that admissions are on the increase although the monthly data show wide fluctuations.

In the 10 month period July-April there have been 15,322 admission, 2% more than last year. Shiprock hospital has reported 19,496 admissions, 14% more than last year, Tuba City has reported 16,880, 7% more than last year. There has been an 8% decrease at Crownpoint, 7% decrease at Winslow. Both Gallup and Fort Defiance reported little change.

ADPL continues to decrease. The seasonal trend is more obvious in ADPL than admissions and we note the sharp (11%) April decline from March. ADPL for the July-April period is 3% less than last year and stood at 384.5.

Ambulatory Patient Care Services

There were 40,011 ambulatory patient care services (individual encounters) in April, 21% more than last year. In the 10 month period July-April, there have been 394,361 services (individual encounters), 7% more than last year. Chart II shows the seasonal changes in APC services and the long term increasing trend.

The principal providers of ambulatory patient care services in the July-April period were:

Facility	July-April 1972	July-April 1972	%Change
Gallup Indian Medical Center	66,215	66,249	0
Shiprock Hospital	51,611	47,539	8.6
Ft. Defiance Hospital	54,978	47,761	15.1
Tuba City Hospital	40,358	32,630	23.7
Chinle Health Center	33,588	33,774	- 0.6
Crownpoint Hospital	23,905	24,835	- 3.7
Kayenta Health Center	19,605	12,867	52.4
Winslow Hospital	16,621	18,001	- 7.7

Public Assistance Programs in Arizona

Public Assistance in Arizona is financed by the State and Federal Governments jointly. All programs are administered by the State Department of Public Welfare through a County Welfare Office located in the county seat of each of the 14 counties of the state.

The programs are administered in conformity with the State Civil Rights Act and the Federal Civil Rights Act of 1964. The latter act states in part, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, or denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Old Age Assistance

Old Age Assistance is a program which provides money payments to needy people 65 years of age or older who can no longer support themselves and who have no relatives who will do so. It also provides for required visiting nurse or home health aide services through a vendor payment procedure.

Assistance to the Needy Blind

Assistance to the Needy Blind is a program to assist needy blind persons who cannot earn their own living, have not enough money to live on, and no relatives who will support them.

Aid to Dependent Children

Aid to Dependent Children is a program to assist parents or relatives to provide economic security and proper care for minor children when it is impossible for the family to do so by its own efforts because of unemployment, death, sickness, desertion, etc. When there is a possibility of overcoming the problems causing need, assistance will be considered a temporary means of support until the family can become self-supporting.

Aid to the Permanently and Totally Disabled

Aid to the Permanently and Totally Disabled is a program to help needy persons who are unable to support themselves by working, or from other resources, because they are severely disabled and their health cannot be restored through medical help.

General Assistance

General Assistance is a program to help needy persons who are unable to support themselves by working or from other resources because they are temporarily disabled or their disability is not severe enough to qualify them as being permanently and totally disabled under the definition of disability for that program.

Emergency Relief

This program provides assistance on a short time basis to persons or families who, because of an emergency, are in dire and immediate need and eligibility for any other form of assistance has not yet been established or cannot be established.

Tuberculosis Control Program

The Tuberculosis Control Program of 1955 provides medical care to persons with tuberculosis, financial assistance to persons receiving home care, and assistance to the dependents of the patient. Funds appropriated to the Department of Public Welfare are used for assistance to those eligible for home care treatment or those dependent on the person who has contagious and communicable tuberculosis.

Surplus Commodities

The State Department of Public Welfare is responsible for distributing Federally donated foods. These foods are made available by the U. S. Department of Agriculture to eligible persons in all counties. (The Navajo Tribe assumes responsibility for distribution on their Reservation.)

Welfare Problems

There are presently three (3) welfare systems in operation on the Navajo Reservation. The Navajo Tribal Welfare Office: This Office is funded by the Navajo Tribe to provide Navajos with emergency assistance. This program gives financial assistance on a one-time basis to Navajo individuals or families. It provides for funeral expenses, financial crises, homes that have been fire-damaged and aids in obtaining building material for home construction or renovation. It also provides for

SOURCE: (Bulletin) Public Assistance in Arizona. Department of Public Welfare, Phoenix, Arizona

health items such as hearing aids, eyeglasses and wheelchairs. The major problem existing in the Navajo Tribal Welfare program is a lack of funds to adequately handle all the applicants. There are not enough funds or programs to handle the emergency needs of Navajos.

The B.I.A. Welfare Department: This program provides a General Assistance fund to Navajos in need of welfare but do not qualify for Arizona or New Mexico state welfare. It also works in conjunction with the Navajo Tribe's Tribal Work Experience Program which provides work (some training) for those Navajos on welfare. It is solely a volunteer program and provides $30 per month for employment costs and does NOT provide salaries or stipends.

Arizona State Welfare: There are two major problems existing in State welfare procedures. First, Navajos are having a difficult time qualifying for state aid. They, in many cases, cannot substaniate that their children are deprived of parental support. This prolongs their applications. Second, paper work is lengthy and the network is complicated which leaves the Navajo sometimes having to wait many weeks before he receives his welfare check.

HOUSING

Substandard housing is more often the case than not on Indian reservations. In 1966 BIA estimated that of 76,000 houses on Indian reservations and Alaskan villiages, 76 percent or 57,000 were substandard, and overcrowded. In addition, over two-thirds of these (42,000) were considered too run down to even merit improvements.[6/] Between 1965 and 1968 fewer than 5,000 new units were built.

Since conventional credit is exceedingly difficult for individual reservation Indians to obtain, several Federal programs have specifically concentrated on alleviating the critical housing problem.

The BIA funds a housing improvement program. From 1964 to 1968 some 2,600 units were constructed or improved. New homes are built at an average cost of $11,000 each. OEO also funds a home improvement program which by 1968 was funded at $413 million. However, since so many Indian homes are too dilapidated for improvements to be of much help,[7/] this program has had minimal impact on improving reservation housing.

As with other low income persons, reservation Indians are eligible for low rent housing and other public housing programs. The Housing Assistance Administration (HAA) of the Department of Housing and Urban

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6/ Presentation made to the Phoenix Indian Health Board, February 1972.

7/ Alan Sarkin, American Indians and Federal Aid, Brookings Institution, Washington, D.C., 1971, p. 172-176.

Development (HUD) funded construction between 1964 and 1968 for over 2,000 units on reservations.

In addition to conventional low rent housing aid, the HAA has sponsored "mutual help" programs; Indians contribute labor and land and the government provides materials and technical assistance. A possible advantage of mutual help over other public housing is that ownership may eventually go to the Indian family who helped build the home. However, many heads of household have other jobs, if only part time, which limit the time they can expend on construction.[8] Since many are unskilled in construction, to begin with, the potential for training in this area (as envisioned by the legislation) is dependent on the time actually on the job.[9] Between 1965 and 1969, nearly 2,000 mutual help units were built, but actual construction has been much slower than anticipated.[10]

Finally, both BIA and OEO have provided assistance to Indians seeking loans for housing improvement and housing construction from conventional and other governmental sources. From 1960 to 1965 about 3,300 families received some assistance in financing for new homes and about 7,500 families received loans for home improvement.[11]

8/ Id.

9/ Id.

10/ Id.

11/ "Indian and The Federal Government," Bureau of Indian Affairs, Department of the Interior, October 1966, Mimeo.

In addition to individual housing programs, HUD and the EDA have funded programs for construction of community centers, parks, playgrounds and other community facilities. About $2 million was budgeted by EDA from 1963 to 1965 for this kind of activity. HUD funded several neighborhood centers and urban planning grants and is reviewing additional projects.[12/]

12/ Id.

HOUSING PROBLEMS ON THE NAVAJO RESERVATION

The paramount problem with housing is the lack of financial support for housing projects due to a moratorium on housing imposed by George Romney, Secretary of HUD in January 1973. This has affected housing programs in FHA, Public Housing and the Farmers Home Program. Until the moratorium is lifted, there will continue to be a shortage of funds for these much needed housing programs.

Presently, there exists a great shortage of housing for employees in the Window Rock-Ft. Defiance area, Chinle, Tuba City, Crownpoint and Shiprock areas. Existing housing is substandard for many Navajos especially the elder of whom many still live in hogans.

The Navajo Tribal Utility Authority has brought electricity to most homes (including hogans). This adds some comfort to the dwellings. Water is still transported from Navajo Tribal constructed wells. Limitation is a major problem for the older dwellings. Sewer often backs up during heavy rainstorms.

Present unsubsidized housing projects represent two problems. (1) Many are overdesigned which makes the homes costly, and contract needs are, in effect, too high for allocated funds. (2) Unsubsidized housing projects are a financial burden to the Navajo whose average annual income is $1,500 a year.

SOURCE: The Navajo Times. The Navajo Housing Authority.

APPENDIX 6

NAVAJO TRIBAL ECONOMIC DEVELOPMENT POLICY

CONCERNING PRIVATE CAPITAL INVESTMENT IN NAVAJOLAND

Adopted March 3, 1964

The Navajo Tribe invites and encourages investment by private capital to develop the extensive natural and human resources of the Navajo reservation. The Navajo Tribe is convinced that mutual benefits will result and that job opportunities and technical training, leading to a better living standard for the Navajo people, will be generated. The Navajo Tribe will participate in the economic development of the reservation preferably by using its land instead of its money.

In this respect, the following Tribal policies on economic development prevail:

I. Investment and leasing:

A. Tribal Participation.

1. The Tribe favors private financial investment wholly, except where it is of advantage to the Tribe to participate in order to provide employment for Navajo individuals in substantial numbers.

B. Land Leasing.

1. Commercial and recreational business site leases.

a. The Tribe may negotiate a cash rental on leases for select business and commercial sites, or the Tribe may require an interest in the enterprise which may be determined by the prevailing percentages for each type of business reflected throughout the intermountain region and further tempered by the local situation.

2. Industrial site leases.

a. The Tribe will negotiate leases of Tribal lands to industry interested in locating on the Reservation subject to local approval.

b. The Tribe may construct or cause to be constructed industrial buildings which may be rented to industry wishing to locate on the Reservation. The size and specifications of the buildings will be negotiated by the Tribe and industry. The terms of lease and rental will be negotiated for each individual proposal.

c. Equipment and machinery will be the responsibility of the firm establishing the industry.

d. Working capital required by industry will not be provided by the Tribe

C. Assurance and Protection.

1. The Tribe favors and will legislate to the effect that all investment in the form of equipment and permanent structures will be protected through formal legal procedures.

II. Utilities:

A. Water.

1. Water is available in some locations through the Navajo Tribal Utility Authority for which special industrial and commercial rates will be charged.

2. Where water is not available, the investor may develop his own water supply for which no charge will be made. However, the Tribe may require that a domestic watering point be made

available to local Navajos.

3. Where the water required by industry is insufficient, the Tribe will consider the development of the water source and its delivery to industrial sites.

B. Electricity.

1. Electric power is available in some locations through the Navajo Tribal Utility Authority and special industrial and commercial rates will be charged.
2. Where electric power is not available, the investor may develop his own power source.
3. Where the power load required by industry is sufficient, the Tribe will consider the construction of power lines to the industrial site.

C. Fuels.

1. Natural gas is available in some locations through the Navajo Tribal Utility Authority and special industrial and commercial rates will apply.
2. Where natural gas is not available, the investor may develop or provide his own fuel source.
3. Fuel oil, propane gas and coal are also available.
4. In the case where coal is available, certain existing mining and royalty regulations will apply.
5. Where the natural gas required by industry is sufficient, the Tribe will consider the construction of gas lines to the industrial site.

D. Waste Disposal.

1. Sewer systems on the Reservation are generally limited. An industry may be required to develop adequate lagoon or sewage treatment facilities which can be placed on tribal land without charge. Land leases for industrial purposes will provide for sewer facility areas.
2. Where the establishment of sewer systems is mutually beneficial to industry and the Navajo Tribe, the Tribe may share the cost of the systems for joint use.
3. All industrial waste will be subject to control.

III. Mineral Resources:

A. There are many undeveloped minerals deposits on the Reservation that may be utilized by industry. The Tribe may negotiate with industry for the industrial use of minerals.

IV. Housing and Community Facilities:

A. The Tribe will assist and participate in the establishment of housing development for public use and particularly to satisfy the needs of industry. The Tribe will encourage and support comprehensive development of communities and public facilities.

V. Manpower and Training.

A. Labor Force.

a. A large adaptable labor force is available on the Reservation to meet all industrial labor requirements. Navajos have a marked aptitude for jobs requiring patience and manual dexterity. They are easily trained as skilled craftsmen and artisans.

B. Training.

a. Entry and on-the-job training programs are available to qualified industries from Federal agencies subject to appropriations.

APPENDIX 7

Water Rights

> Those rights are the catalyst for all economic development. Without them the reservations are virtually uninhabitable, the soil remains untilled, the minerals remain in place, and poverty is pervasive. 13/

One of the primary problems facing the Navajo nation in terms of economic development is control of the water resources. For as long as the Navajos have lived on the reservation (1868), 14/ the Federal government has ostensibly been of the opinion that the Indian has pre-emptive rights to the waters, primarily the Colorado River, which traverse the reservation. 15/ While there is some dispute as to whether the rights vested from the time of settlement or from the time of the establishment of the reservation, it is clear that the Navajos are entitled to enough of the flow of the big Colorado River to "irrigate all irrigable land capable of being used for agricultural pursuits." 16/

It should be noted in this respect that in the largely arid Southwest, access to an adequate water supply is necessary to any large scale development of any area. For example, the Imperial Valley area in California was developed largely through massive irrigation

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13/ E. Swenson, "Ripping Off Navajo Water Rights: A Case Study in the Exercise of Political Power," 2, for Subcommittee on Administrative Practice and Procedure, Senate Committee on the Judiciary, 92nd Cong., 1st Sess. (1971) (hereinafter cited as Swenson).

14/ Treaty of 1868.

15/ Swenson at 5.

16/ Id.

projects which allowed the region to support an extensive agricultural expansion. But the necessity for water is not limited to the agricultural sector of the economy. In order for any type of development, water must be present in order to supply, if nothing else, the basic health and sanitation needs of the people. But in the Indian context, the need appears to be even greater. In terms of development, water is a nearly indispensible source of electric power. In fact, the Navajo reservation at present supplies much of the power requirements for large parts of the central Arizona region.[17/]

Further, if large scale economic development is to be anticipated, even greater demands upon the water supply are necessary. For example, the Burnham Coal Gasification Plant, which will seek to transform subbituminous coal into usable high Btu gas for home and industry consumption will require a large volume of water to be extracted from the San Juan River.[18/] Similar industrial and extractive concerns will greatly increase the demands that the Navajo people are to put on the water supply. Therefore, if the Navajo expects to develop industry sufficient to alter current reservation economics, an adequate water supply is an absolute necessity.

But it is in the area of traditional ways of life and their maintenance that water rights are perhaps paramount. "The game they hunt, the heards they graze, and the crops they raise on their reservations are all dependent on water. Take away or seriously lessen the Indian's access to abundant water and you have taken away his ability

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17/ Id. at 34.

18/ Gas from Coal, El Paso Natural Gas Co., Burnham Gasification Company Pamphlet (hereinafter cited as Gas from Coal).

to remain Indian; hence, the Indian's insistence of protecting his water rights."[19/] Therefore, it is necessary to examine the major sources of Navajo water rights, the degree of protection that the Federal government has extended to the tribes under the government's trust responsibility, current and future uses, and the nature of the Navajo's claim to such waters in order to properly assess the development potential of the Navajo community.

The Source: The Colorado River

The Navajo Nation is located in the heart of the Colorado River Basin, and stretches across three States: Arizona, New Mexico and Utah. Portions of the mainstream of the Colorado River and one of its tributaries, the San Juan River, form the Northern and Western boundaries of the reservation. Another tributary, the Little Colorado River, drains into the Colorado by flowing through the Southwestern part of the reservation. The mainstream of the Colorado River rises in the Rocky Mountains of Colorado and flows for 1,300 miles through the States of Colorado, Utah, Arizona, and along the Arizona-Nevada and Arizona-California boundaries, finally reaching Mexico where it empties into the Gulf of California. The basin is an immense area draining over 242,000 square miles, receiving water from tributaries in Wyoming, Colorado, Utah, Nevada, New Mexico, and Arizona. The basin is subdivided into two parts. The upper basin includes the mainstream above Lee's Ferry, Arizona, as well as the tributaries

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19/ U.S. Commission on Civil Rights, Southwest Indian Report 128 (May 1973).

of the Green River, the Gunnison River, and the San Juan River. The lower basin includes the mainstream of the Colorado below Lee's Ferry, as well as the tributaries of the Gila and Little Colorado Rivers. The mainstream Colorado is gigantic: the annual flow at Lee's Ferry usually varies from 13 to 17 million acre feet. The non-Indian economy of the upper basin reflect the scarcity of water, and is primarily concerned with ranching, mining, and some agriculture.[20/]

The National Water Commission, in its Final Report to the President and the Congress entitled Water Policies For the Future, issued in June, 1973, took the following propositions as settled in the area of determining the rights of Indian tribes to waters appurtenant to the reservation:

1. The cases of Winters v. United States and Arizona v. California, established beyond dispute that water rights may attach to Indian reservations upon creation of the reservations by any lawful means (treaties, acts of Congress, executive orders, etc.).

2. The priority and quantity of these Indian water rights present questions of law which involve, at least in part, an interpretation of the documents creating each reservation and may involve for some reservations the question of aboriginal rights.

3. Indian water rights are different from Federal reserved rights for such lands as national parks and national forests, in that the United States is not the owner of the Indian rights but is a trustee

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20/ Swenson at 3.

for the benefit of the Indians. While the United States may sell, lease, quit claim, or otherwise convey its own Federal reserved water rights, its powers and duties regarding Indian water rights are constrained by its fiduciary duty to the Indian tribes who are beneficiaries of the trust.

4. The volume of water to which Indians have rights may be large, for it may be measured by irrigable acreage within a reservation (i.e., land which is practicably susceptible to irrigation) and not by Indian population, present use, or projected future use. It may also be measured by other standards such as flows necessary to sustain a valuable species of fish relied upon by the tribe for sustenance.

5. Development of supplies subject to Indian water rights was not illegal. Ordinarily, therefore, neither Indian tribes nor the United States as the trustee of their property can enjoin the use of water by others outside the reservation prior to the time the Indians themselves need the water.

6. The future utilization of early Indian rights on fully appropriated streams will divest prior uses initiated under both State and Federal law (and often financed with Federal funds) and will impose economic hardship, conceivably amounting in some cases to disaster for users with large investments made over long periods of time. The existence of unquantified Indian claims on streams not yet fully appropriated makes determination of legally available supply difficult and thus prevents satisfactory future planning and development.

7. The monetary value of unused Indian water rights is difficult but not impossible to determine. It should be possible on a case-by-case basis to establish a fair market value for unused Indian water rights. The problem of valuation is no more difficult than with other species of property that are not the subject of everyday commerce.[21/] Therefore, in terms of the Navajos' rights to the waters of the Colorado, it appears that, pursuant to the Winters doctrine, the tribe has federally protected rights which are prior and superior to all rights of the States which were created after the reservation land was reserved for Indian use. Further, these rights are not based on diversion of the waters as would be the case of others claiming rights, but is vested, if not from the time of Navajo settlement, then from the time of creation of the reservation in 1868.[22/]

However, it should be noted that both the Federal government and the various States have been less than diligent in their efforts to secure for the tribe its entitlement to waters from the lower basin. Instead, while the Federal government assumed a benign role in the various controversies between the various lower basin States, notably California and Arizona, over an equitable distribution of the flow of the Colorado, these States agressively pursued such massive federally

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21/ National Water Commission, Final Report to the President and the Congress, Water Policies for the Future (June, 1973).

22/ Swenson at 1.

assisted plans as the Boulder Canyon Project and the Central Arizona Project (CAP) which sought to utilize the waters for the burgeoning urban and agricultural populations that were developing after World War II. For example, the CAP was an effort to provide water for the agricultural interests in Arizona which consume more than 90 percent of the available water, and the cities of the central State area.[23] The dispute between California and Arizona culminated in Arizona v. California,[24] in which the Supreme Court decided to allocate California 4.4 million acre-feet of consumptive use plus half of any surplus in the lower basin area of the Colorado, 3,000,000 acre-feet plus 4 per cent of the surplus to Nevada, and 2.8 million acre-feet plus half of the surplus, less Nevada's allocation if Nevada chose to contract with the Secretary of Interior for its share.[25]

In terms of Federal and Indian allocations, the Court awarded one million acre-feet, primarily for the use of the various tribes, including the Navajo.[26] Ostensibly, this allocation conformed to the formula for the irrigation of all lands for the five lower basin tribes for all lands that could be used for agricultural purposes, conservatively estimated[27] to be 12 million acre-feet. In this

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23/ Swenson at 32.

24/ United States v. Arizona, 295 U.S. 194 (1935).

25/ Swenson at 14.

26/ Id. at 15.

27/ Id. at 25.

connection, it is interesting to note that the Government intervened not to protect the tribe's superior and prior rights to the waters, but only their rights to use the waters.[28/] Therefore, it would appear that the Government, who, through its trust responsibility should have asserted the affirmative rights which the tribe had through settlement and treaty, instead left the exact extent of the rights less clearly defined than they could have been. As a result, the allocations granted to the other States limited the extent of the tribe's rights to the water. Had the Government been more aggressive in asserting these rights, the tribe probably would have a more equitable share of this precious resource than it presently receives.

Further, with respect to the waters of the upper basin, the tribe agreed to limit its claim to the 50,000 acre-feet which Arizona was awarded, also agreeing to allocate 34,100 feet for the use of the Navajo Generating Plant, which would supply the area of Central Arizona with its needs, leaving the tribe with some 16,000 acre-feet, thus precluding massive economic development for the tribe.[29/] It is within this context that present and future attempts at economic development of the Navajo reservation must be viewed.

28/ Id. at 16.

29/ Id. at 34.

APPENDIX 8

TABLE 1

SOCIAL CHARACTERISTICS OF THE NAVAJO TRIBE: 1970

RELATIONSHIP TO HEAD OF HOUSEHOLD	
Total population	96,743
Under 18 years old	51,401
Living with both parents	37,092
Percent of all under 18 years	72.2
Head of Household	18,908
Head of family	16,779
Female head	3,238
Primary individual	2,129
Female primary individual	1,069
Wife of head	12,630
Other relative of head	59,855
Nonrelative of head	2,719
In group quarters	2,631
Inmate of institution	931
Other	1,700
FAMILIES BY PRESENCE OF CHILDREN	
Total families	16,779
With own children under 18 years	13,057
With own children under 6 years	8,711
Husband-wife families	12,782
With own children under 18 years	10,241
With own children under 6 years	7,105
Families with female head	3,238
With own children under 18 years	2,295
CHILDREN EVER BORN	
Women ever married, 15 to 24 years old	2,801
Children per 1,000 women ever married	1,555
Women ever married, 25 to 34 years old	5,352
Children per 1,000 women ever married	3,700
Women ever married, 35 to 44 years old	4,079
Children per 1,000 women ever married	6,008
PLACE OF BIRTH	
Total population	96,495
Foreign born	
Native	96,447
Born in State of residence	75,356
Born in different State	15,732
Northeast	40
North Central	251
South	455
West	14,986
Born abroad, at sea, etc.	554

SOURCE: Census, Table 11 at 146.

TABLE 2

OCCUPATIONS OF NAVAJO POPULATION
AND URBAN AND RURAL RESIDENCE

MAJOR OCCUPATION GROUP	TRIBE	ON RESERVATION
Male employed, 16 years old and over	10,019	4,911
Professional, technical, and kindred workers	1,039	490
Managers and administrators, except farm	348	266
Sales workers	168	91
Clerical and kindred workers	582	371
Craftsmen, foremen, and kindred workers	2,190	1,069
Operatives, including transport	2,344	1,018
Laborers, except farm	1,510	663
Farmers and farm managers	96	94
Farm laborers and foremen	549	141
Service workers, except private household	1,183	708
Private household workers	10	-
Female employed, 16 years old and over	6,269	3,428
Professional, technical, and kindred workers	517	319
Managers and administrators, except farm	66	65
Sales workers	188	82
Clerical and kindred workers	1,635	1,039
Craftsmen, foremen, and kindred workers	111	44
Operatives, including transport	1,192	647
Laborers, except farm	54	30
Farmers and farm managers	64	53
Farm laborers and foremen	63	21
Service workers, except private household	1,960	940
Private household workers	419	188
URBAN AND RURAL RESIDENCE		
Total population	96,743	56,949
Urban	16,276	-
Rural nonfarm	70,223	48,127
Rural farm	10,244	8,822

SOURCE: Census, Table 14 at 172,176.

TABLE 3

FAMILY INCOME AND POVERTY STATUS OF NAVAJO POPULATION: 1970

INCOMES OF FAMILIES	TRIBE	ON RESERVATION
All families	16,779	9,733
Less than $1,000	3,761	2,412
$1,000 to $1,999	2,151	1,325
$2,000 to $2,999	1,882	1,063
$3,000 to $3,999	1,372	793
$4,000 to $4,999	1,298	753
$5,000 to $5,999	1,099	624
$6,000 to $6,999	1,114	668
$7,000 to $7,999	838	466
$8,000 to $8,999	682	344
$9,000 to $9,999	659	315
$10,000 to $11,999	789	381
$12,000 to $14,999	717	383
$15,000 to $24,999	358	178
$25,000 and over	59	28
Median income	$3,434	$3,084
Mean income	$4,608	$4,285
All unrelated individuals 14 years old and over	5,425	1,493
Mean income	$1,505	$1,319
Per capita income of persons	$ 886	$ 776
INCOME LESS THAN POVERTY LEVEL		
Persons	56,426	36,538
Percent of all persons	60.2	64.5
Percent 65 years old and over	5.0	5.5
Families	9,765	6,040
Percent of all families	58.2	62.1
Mean size of family	5.77	5.90
Mean income deficit	$2,751	$2,844
With related children under 18 years	8,304	5,090
Families with female head	2,364	1,395
Unrelated individuals 14 years old and over	3,255	1,042
Percent of all unrelated individuals 14 years and over	72.1	77.1
Mean income deficit	1,389	1,312
Percent 65 years old and over	17.9	35.2

SOURCE: Census, Table 14 at 172,176.

TABLE 4

INCOME OF NAVAJOS 16 YEARS AND OLDER IN 1969

	TRIBE	ON RESERVATION
Male, 16 years old and over	24,447	13,556
Without income	6,292	4,002
With income	18,155	9,554
$1 to $999 or loss	5,734	3,254
$1,000 to $1,999	2,820	1,547
$2,000 to $2,999	1,944	991
$3,000 to $3,999	1,490	716
$4,000 to $4,999	1,530	814
$5,000 to $5,999	1,323	637
$6,000 to $6,999	1,198	708
$7,000 to $7,999	829	372
$8,000 to $8,999	537	266
$9,000 to $9,999	284	71
$10,000 to $14,999	395	138
$15,000 or more	71	40
Median income	$2,269	$1,984
Mean income	$3,156	$2,955
Female, 16 years old and over	25,932	15,214
Without income	12,137	7,452
With income	13,795	7,762
$1 to $999 or loss	6,192	3,572
$1,000 to $1,999	2,499	1,358
$2,000 to $2,999	1,531	701
$3,000 to $3,999	1,262	672
$4,000 to $4,999	840	484
$5,000 to $5,999	637	412
$6,000 to $6,999	453	330
$7,000 to $7,999	167	115
$8,000 to $8,999	52	41
$9,000 to $9,999	68	25
$10,000 to $14,999	59	44
$15,000 or more	35	8
Median income	$1,282	$1,228
Mean income	$2,034	$2,032

SOURCE: Census, Table 13 at 162, 166.

TABLE 5

POPULATION ESTIMATE

NAVAJO AREA

MEDIAN AND MEAN AGE
IN YEARS BY SEX

JANUARY 1, 1972

	Median	Mean
Both Sexes	18.4	24.2
Single	12.3	14.9
Married	40.1	43.8
Widowed	63.6	63.8
Divorced	43.5	46.6
Head of Household	42.4	46.6
Males	18.0	24.0
Single	12.3	14.9
Married	41.9	45.8
Widowed	67.3	68.1
Divorced	43.4	46.5
Head of Household	42.3	46.3
Females	18.8	24.3
Single	12.3	15.0
Married	38.5	42.0
Widowed	62.7	62.8
Divorced	43.6	46.6
Head of Household	42.9	47.5

TABLE 6

NAVAJO POPULATION BY SEX, AGE AND WHETHER LIVING ON RESERVATION: 1970

POPULATION	
Number	96,743
Percent	12.7
SEX	
Male	47,065
Female	49,678
AGE (years)	
Under 6	17,689
6 to 15	28,675
16 to 24	17,397
25 to 44	20,363
45 to 64	9,041
65 and over	3,578
LIVING ON RESERVATION 1/	
Number	59,850
Percent	61.9

SOURCE: Census, Table 16 at 188.

1/ Includes Navajos in Joint Use Area (Navajo-Hopi).

TABLE 7

NAVAJO INDIANS BY AGE (YEARS)

AGE	TOTAL TRIBE	ON RESERVATION 1/
Male, all ages	47,065	27,317
Under 5 years	7,166	4,036
5 to 9 years	7,703	4,869
10 to 14 years	6,533	4,081
15 to 19 years	5,397	3,047
20 to 24 years	4,177	2,025
25 to 29 years	3,058	1,446
30 to 34 years	2,676	1,494
35 to 39 years	2,235	1,162
40 to 44 years	1,818	1,056
45 to 49 years	1,507	954
50 to 54 years	1,131	691
55 to 59 years	1,037	688
60 to 64 years	819	550
65 to 69 years	621	435
70 to 74 years	459	284
75 years and over	728	499
Female, all ages	49,678	29,632
Under 5 years	7,287	4,383
5 to 9 years	7,811	4,936
10 to 14 years	7,208	4,207
15 to 19 years	6,264	3,744
20 to 24 years	4,215	1,978
25 to 29 years	3,296	1,682
30 to 34 years	2,934	1,677
35 to 39 years	2,541	1,479
40 to 44 years	1,805	1,172
45 to 49 years	1,499	1,025
50 to 54 years	1,087	734
55 to 59 years	1,034	708
60 to 64 years	927	636
65 to 69 years	741	473
70 to 74 years	325	258
75 years and over	704	540

SOURCE: Census, Table 12 at 152, 156.

1/ These figures do not include Navajos living in the Joint Use Area (Navajo-Hopi) in Arizona. That area has a total Indian population of 7,726.

TABLE 8

NAVAJO RESERVATION POPULATION ACCORDING TO STATE, AGE, SEX: 1970 1/

	POPULATION		SEX		AGE (years)					
	Number	Percent	Male	Female	Under 6	6-15	16-24	25-44	45-64	65 and over
Total	56,949	26.6	27,317	29,632	10,419	17,760	9,127	11,168	5,986	2,489
In Arizona	36,999	17.3	18,013	18,986	6,773	11,495	5,989	7,303	3,796	1,643
In New Mexico	17,700	8.3	8,240	9,460	3,212	5,509	2,784	3,424	1,990	781
In Utah	2,250	1.1	1,064	1,186	434	756	354	441	200	65

SOURCE: Census, Table 17 at 190.

2/ Figures do not include Navajo living in Joint Use Area (Navajo-Hopi) or on trust lands outside reservations.

TABLE 9

NAVAJO HOUSEHOLDS WITH AUTOMOBILES AVAILABLE: 1970

	TRIBE	ON RESERVATION
TOTAL HOUSEHOLDS	18,731	10,531
AUTOMOBILES PER HOUSEHOLD		
1	8,248	4,896
2	1,783	1,092
3 or more	285	146
None	8,433	4,452

SOURCE: Census, Table 15 at 182, 186.

TABLE 10

HOUSING CHARACTERISTICS OF NAVAJO HOUSEHOLDS: 1970

	TRIBE	ON RESERVATION
Total households	18,731	10,531
In owner occupied units	9,998	6,474
Percent	53.4	61.5
In renter occupied units	8,733	4,057
ROOMS		
1 room	6,917	4,239
2 rooms	3,698	2,107
3 rooms	3,081	1,545
4 rooms	2,516	1,269
5 rooms	1,881	1,141
6 rooms	407	166
7 rooms or more	231	64
Median	2.2	2.0
PERSONS		
1 person	1,749	925
2 persons	2,512	1,265
3 persons	2,217	1,136
4 persons	2,285	1,218
5 persons	2,120	1,170
6 persons or more	7,848	4,817
Median, all occupied units	4.8	5.1
Median, owner occupied units	5.1	5.3
Median, renter occupied units	4.5	4.9
Units with roomers, boarders, or lodgers	337	108
PERSONS PER ROOM		
1.00 or less	5,389	2,547
1.01 to 1.50	2,261	1,172
1.51 or more	11,081	6,812
Units with all plumbing facilities--		
1.01 or more	3,481	1,713
UNITS IN STRUCTURE		
1 (includes mobile home or trailer)	16,324	9,951
2	558	160
3 and 4	381	112
5 to 49	1,363	308
50 or more	104	-
YEAR STRUCTURE BUILT		
1969 to March 1970	1,215	799
1965 to 1968	3,435	2,351
1960 to 1964	3,642	2,324
1950 to 1959	4,609	2,559
1940 to 1949	1,939	853
1939 or earlier	3,891	1,645

TABLE 10

HOUSING CHARACTERISTICS OF NAVAJO HOUSEHOLDS: 1970 (con't.)

	TRIBE	ON RESERVATION
SELECTED EQUIPMENT		
With complete bathroom	6,710	2,891
With more than 1 bathroom	576	137
With piped water in the building	8,194	3,845
With public water supply	8,382	4,351
With public sewer	6,427	2,922
With air conditioning	1,206	496
VALUE 1/		
Specified owner occupied units	5,701	3,660
Less than $5,000	3,919	2,988
$5,000 to $7,499	720	273
$7,500 to $9,999	198	116
$10,000 to $14,999	491	191
$15,000 to $19,999	193	68
$20,000 to $24,999	107	14
$25,000 to $34,999	55	6
$35,000 to $49,999	18	4
$50,000 or more	-	-
Median	$3,600	$3,100
CONTRACT RENT 2/		
Specified renter occupied units	7,312	2,935
Less than $30	486	327
$30 to $39	505	340
$40 to $59	1,772	1,228
$60 to $79	955	155
$80 to $99	631	33
$100 to $149	636	12
$150 to $199	161	38
$200 to $249	5	-
$250 or more	23	-
No cash rent	2,138	802
Median	$58	$47

1/ Limited to one-family homes on less than 10 acres and no business on property.

2/ Excludes one-family homes on 10 acres or more.

SOURCE: Census, Table 15 at 182, 186.

TABLE 11: Boarding Schools Operated by the Bureau of Indian Affairs

Fiscal Year 1972

	Post Office	Enrollment Total	Boarding	Day	Grade
NAVAJO		20,802	18,494	2,308	
Arizona		12,251	10,506	1,745	
Chinle	Chinle	790	790	--	B-7
Crystal	Navajo, N. Mex.	133	107	26	K-5
Dennehotso	Kayenta	274	238	36	K-5
Dilcon	Winslow	742	441	301	K-8
Greasewood	Ganado	618	452	166	K-8
Hunter's Point	St. Michaels	180	180	--	B-5
Kaibeto, Lower	Tonalea	175	113	62	K-1
Kaibeto, Upper	Tonalea	484	470	14	2-8
Kayenta	Kayenta	555	555	--	B-8
Kinlichee	Ganado	256	234	22	K-7
Leupp	Winslow	556	520	36	K-8
Low Mountain	Chinle	208	65	143	K-3
Lukachukai	Lukachukai	575	234	341	K-6
Many Farms Elem.	Chinle	731	731	--	K-8
Many Farms High	Chinle	1,009	1,009	--	9-12
Nazlini	Ganado	149	121	28	K-4
Pine Springs	Houck	74	53	21	K-2
Pinon	Pinon	306	197	109	K-3
Rock Point	Chinle	358	190	168	K-6
Rocky Ridge	Tuba City	143	69	74	K-2
Seba Dalkai	Winslow	145	119	26	K-3
Shonto	Shonto	1,022	960	62	K-8
Teecnospos	Teecnospos	701	657	44	K-6-S
Toyei	Ganado	759	738	21	K-8-S
*Tuba City	Tuba City	1,099	1,099	--	B-8-S
Wide Ruins	Chambers	209	164	45	K-5

Table continued on next page.

*Boarding high school at Tuba City opened after the publication of these statistics.

Continuation from previous page.

TABLE 11: Boarding Schools Operated by the Bureau of Indian Affairs

Fiscal Year 1972

	Post Office	Enrollment Total	Boarding	Day	Grade
NAVAJO					
New Mexico		6,768	6,206	562	
Baca	Prewitt	40	40	--	B-1
Canoncito	Laguna	134	70	64	K-4
Chichiltah	Gallup	108	74	34	K-2
Chuska	Tohatchi	627	627	--	B-8-S
Crownpoint	Crownpoint	849	849	--	B-8
Dlo'ay Azhi	Thoreau	111	111	--	B-3
Dzilth-Na-O-Dilth-Hle	Bloomfield	387	268	119	B-8-S
Lake Valley	Crownpoint	115	88	27	K-5
Marino Lake	Gallup	126	74	52	K-3
Nenahnezad	Fruitland	327	306	21	K-6
Pueblo Pintado	Cuba	233	188	45	K-4
Sanostee	Shiprock	535	392	143	K-6
Shiprock	Shiprock	624	624	--	1-8
Standing Rock	Crownpoint	50	50	--	B-2
Toadlena	Toadlena	297	281	16	K-6
Tohatchi	Tohatchi	349	349	--	B-8
Torreon	Cuba	51	51	--	B-2
Whitehorse Lake	Cuba	45	38	7	B-1
Wingate Elem.	Ft. Wingate	737	737	--	S
Wingate High	Ft. Wingate	1,023	989	34	9-12
Utah		1,783	1,782	1	
Aneth	Aneth	343	343	--	B-6-S
Intermountain	Brigham City	1,416	1,416	--	9-12-S
Navajo Mountain	Tuba City, Ariz.	24	23	1	B-1

Source: BIA, Statistics Concerning Indian Education, Fiscal Year 1972 Table 4 at 12 (hereinafter cited as BIA Statistics).

TABLE 12: Day Schools Operated by the Bureau of Indian Affairs

Fiscal Year 1972

	Post Office	(All Ages) Enrollment	Grades
NAVAJO		1,292	
Regular Day Schools		1,209	
Arizona		705	
New Cottonwood	Chinle	428	K-6
Red Lake	Tonalea	174	B-5
Chilchinbeto	Keyenta	103	K-4
New Mexico		504	
Alamo	Magdalena	31	K
Beclabito	Shiprock	60	B-4
Borrego Pass	Crownpoint	52	K-3
Bread Springs	Gallup	60	K-3
Cove	Shiprock	114	K-5
Jones Ranch	Gallup	71	K-4
Red Rock	Shiprock	116	K-2
Trailer School			
Ojo Encino	Cuba, N. Mex.	83	K-3

Source: BIA Statistics, Table 5 at 20.

TABLE 13: Enrollment by Grade in Schools Operated by the BIA

Fiscal Year 1972

	NAVAJO
Grand Total	22,094
Kindergarten	943
Beginners	2,041
First	2,586
Second	2,357
Third	2,141
Fourth	1,927
Fifth	1,878
Sixth	1,466
Seventh	1,274
Eighth	974
Ungrad. Elem.	1,223
Subtotal Elem.	118,810
Ninth	965
Tenth	819
Eleventh	781
Twelfth	719
Ungrad. Sec.	--
Subtotal Sec.	3,284
Subtotal Elem. & Sec.	22,094

Source: BIA Statistics Table 8 at 24.

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TABLE 14: Completions and Number of Graduates of Schools Operated by BIA

Fiscal Year 1972

Area	High School Graduates	8th Grade Completions	Post Graduate Completions
Navajo	609	1,015	--

Source: BIA Statistics Table 9 at 25.

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TABLE 15: Bureau of Indian Affairs Higher Education Program: FY 1972*

Area or Agency	Total No. Students	No. Under-Graduate Students	No. Graduate Students	Under Students Earning Degrees	Graduate Students Earning Degrees
Navajo	1,732	1,732	--	100	--

*This table indicates the number of undergraduate and graduate students who received scholarship grants during fiscal year 1972, also the number of students earning degrees.

Source: BIA Statistics Table 15 at 34.

TABLE 16

School Enrollment (3-34 Years Old) On the Navajo Reservation

Total enrolled, 3 to 34 years old	37,266
Nursery School	593
Kindergarten	2,638
Elementary (gardes 1-8)	23,995
High School (grades 9-12)	8,649
College	1,391

Source: Census, Table 11 at 146.

TABLE 17

Years Completed in Any School By Navajos

23 - 25 Years Old

	TRIBE	ON RESERVATION
Male, 25 to 34 years old	5,734	2,940
Elementary: Less than 5 years old	1,209	631
5 to 7 years	911	425
8 years	564	299
High School: 1 to 3 years	978	542
4 years	1,466	764
College: 1 to 3 years	501	230
4 years or more	105	49
Female, 25 to 34 years old	6,230	3,359
Elementary: Less than 5 years	1,705	971
5 to 7 years	1,035	517
8 years	571	324
High School: 1 to 3 years	1,072	581
4 years	1,380	751
College: 1 to 3 years	406	173
4 years or more	61	42

Source: Census, Table 12 at 152, 156.

TABLE 18: ANNUAL SCHOOL CENSUS REPORT OF INDIAN CHILDREN
Fiscal Year 1972

	Total Ages 5-18	Total In School								Not in School 5-18 Only
		Federal Schools		Public Schools		Other Schools		Total		
		5-18	Over 18	5-18	Over 18	5-18	Over 18	5-18	Over 18	
NAVAJO	57,144	21,292	854	28,535	869	2,820	1,476	52,647	3,199	4,061
Arizona	31,811	13,658	486	13,939	459	1,727	975	29,324	1,920	2,297
New Mexico	22,539	6,933	338	12,784	339	967	462	20,684	1,139	1,623
Utah	2,794	701	30	1,812	71	126	39	2,639	140	141

Unknown 5-18 Only	
436	Navajo
190	Arizona
232	New Mexico
14	Utah

SOURCE: BIA Statistics Table 1 at 8.

TABLE 19

ESEA
TITLE I FUNDS
School Districts in or bordering Navajo Reservation
Fiscal Year 1972

	ALLOCATION	EXPENDITURE
Aztec	45,102.00	45,102.00
Bloomfield	146,723.00	146,420.65
Central	467,219.00	464,381.88
Cuba	164,730.00	160,091.93
Dulce	18,245.00	18,238.46
Farmington	136,195.00	136,074.29
Gallup	744,456.00	727,000.63
Grants	190,495.00	189,997.37
Jemez Mountain	66,430.00	62,600.34
TOTAL	1,979,595.00	1,949,907.55

SOURCE: New Mexico State Department of Education: Fiscal Year 1972 Funds at 1-2.

TABLE 20

POPULATION ON & ADVANCE TO RESERVATION	LABOR FORCE (16 YEARS & OVER)	UNEMPLOYMENT	RATE OF UNEMPLOY-MENT	TEMPORARY EMPLOYMENT	RATE OF UNEMPLOY-MENT & UNDER-EMPLOYMENT
136,686	47,317	16,567	35%	9,845	56%

SOURCE: Department of the Interior, Bureau of Indian Affairs, Estimates of Resident Indian Population and Labor Force Status; by State and Reservation: March 1973 at 15.

TABLE 21

NAVAJO TOTAL EMPLOYMENT
BY EMPLOYMENT SECTOR

Employment Sector of the Economy	Percentage of the Navajo Economy (by 1967 Employment)	Total Number of Navajos Employed	
Government		7287	29.3%
Rangeland		8464	34.1%
Service Trades		3011	12.1%
Manufacturing and Processing		928	3.7%
Commercial Trades (including Tourism)		786	3.2%
Mineral Resources		485	1.9%
Forest		400	1.6%
Utilities		194	0.8%
Other		3273	13.2%
Total for All Sectors		24828	100.0%

(Source: Evaluation of Population Support Capacity of the Navajo Reservation, Bureau of Indian Affairs, Navajo Area Office.)

TABLE 22

NAVAJO WORKERS IN 1969 BY WEEKS WORKED

	Tribe	On Reservation
Male, 16 years old and over	14,956	7,392
50 to 52 weeks	6,806	3,185
27 to 49 weeks	3,012	1,546
26 weeks or less	5,138	2,661
FEMALE, 16 YEARS OLD AND OVER	9,326	4,910
50 to 52 weeks	3,628	2,052
27 to 49 weeks	1,815	934
26 weeks or less	3,883	1,924

SOURCE: Census, Table 14 at 172, 176.

TABLE 23

PERCENT OF NAVAJOS 14 YEARS AND OLDER IN LABOR FORCE

		TRIBE	ON RESERVATION
Male:	14 and 15 years	2.2	2.6
	16 to 19 years	14.7	11.5
	20 to 24 years	51.9	42.0
	25 to 34 years	71.0	63.7
	35 to 44 years	66.9	60.6
	45 to 64 years	48.9	44.5
	65 years and over	10.1	10.7
Female:	14 and 15 years	2.8	3.5
	16 to 19 years	10.9	7.0
	20 to 24 years	41.4	40.1
	25 to 34 years	42.5	45.3
	35 to 44 years	28.3	28.9
	45 to 64 years	16.3	15.1
	65 years and over	2.3	1.5

SOURCE: Census, Table 13 at 162, 166.

TABLE 24

EMPLOYMENT STATUS OF NAVAJOS 16 YEARS OLD AND OVER AND CLASS OF WORKERS

	TRIBE	ON RESERVATION
EMPLOYMENT STATUS		
Male, 16 years old and over	24,447	13,556
Labor Force	11,946	5,743
Percent of total	48.9	42.4
Civilian labor force	11,477	5,724
Employed	10,019	4,911
Unemployed	1,458	813
Percent of civilian labor force	12.7	14.2
Not in labor force	12,501	7,813
Female, 16 years old and over	25,932	15,214
Labor Force	6,935	3,768
Percent of total	26.7	24.8
Civilian labor force	6,884	3,754
Employed	6,269	3,428
Unemployed	615	326
Percent of civilian labor force	8.9	8.7
Not in labor force	18,997	11,446
Male, 16 to 21 years old	6,003	3,144
Not enrolled in school	2,310	1,193
Not high school graduate	1,321	724
Unemployed or not in labor force	980	609
CLASS OF WORKER		
Total employed, 16 years old and over	16,288	8,339
Private wage and salary workers	9,501	3,518
Government workers	6,442	4,636
Local government workers	2,232	1,763
Self-employed workers	306	167
Unpaid family workers	39	18

SOURCE: Census, Table 13 at 162, 166.

TABLE 25

Wage Board Distribution of Indians and Non-Indians by Area Office: As of June 1972

Wage Level	PHOENIX				NAVAJO				ALBUQUERQUE			
	INDIAN		NON-INDIAN		INDIAN		NON-INDIAN		INDIAN		NON-INDIAN	
	M	F	M	F	M	F	M	F	M	F	M	F
Up thru $5,499	1	1	0	0	19	1	0	0	9	0	0	0
$5,500 - $6,999	21	31	1	0	269	101	2	2	29	14	0	0
$7,000 - $7,999	45	12	6	1	81	67	7	6	29	20	3	0
$8,000 - $8,999	59	7	9	0	193	18	16	0	17	4	3	1
$9,000 - $9,999	51	14	27	1	185	92	74	4	27	2	5	0
$10,000-$13,999	91	1	78	0	117	27	73	3	17	1	7	0
$14,000- $17,999	12	0	3	0	3	0	11	0	1	0	0	0
$18,000- and over	4	0	1	0	4	0	1	0	0	0	0	0
Total Wage System	284	48	125	2	871	306	184	15	129	41	18	1

SOURCE: Grade level distribution by minority and sex-Bureau of Indian Affairs - Albuquerque, Phoenix and Navajo Areas 6/30/72

[1] Non-Indian includes Negro, Spanish Surnamed, Oriental and White.

M-Male

F-Female

Table 26

Grade Level distribution of GS Employees Navajo Area Office: As of June 1972

Grade	Total[1]	Indians			Non-Indians[2]		
		Number	Male	Female	Number	Male	Female
1	95	95	31	64	0	—	—
2	38	38	13	25	0	—	
3	573	557	130	427	16	6	10
4	1091	999	240	759	92	23	69
5	301	205	91	114	96	43	53
6	95	77	37	40	18	8	10
7	166	77	48	29	89	38	51
8	0	0	—	—	0	—	—
9	1006	145	59	86	861	427	434
10	10	0	—	—	10	8	2
11	254	60	42	18	194	146	48
12	112	28	27	1	84	76	8
13	39	8	7	1	31	28	3
14	22	3	3	—	19	18	1
15	1	1	1	—	0	—	—
16	0	0	—	—	0	—	—
TOTAL	3796	2293	729	1564	1503	817	686

SOURCE: Grade Level Distribution by Minority and Sex, Bureau of Indian Affairs, Albuquerque, New Mexico Area - As of 6/30/72

[1] Includes total area office employment (both Indian and non-Indian).

[2] Non-Indian category includes Negro, Spanish-Surnamed, Oriental and White.