





## APPENDIX A

### OVERVIEW OF TESTIMONY

#### A. Oral Testimony

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

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

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

attainable managerial and technical capabilities of a tribe, and its overall capacity to compete successfully in various industries with others who have more managerial and technical experience.

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

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

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

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

*As a result of our recent experiences, we would like to bring to your attention some of the issues that we feel the Council should consider incorporating into its recommendations to Congress regarding comparable opportunities for California Indians. These are, one, stronger enforcement of the federal trust responsibility for natural resources and rights protection. As you probably are aware, the history of the federal government policies in California have focused most*

*strongly on working against our sovereignty. For the Yuroks and the other tribes in this region, the issues...revolving around reserved water and fishing rights on the Trinity and Klamath Rivers have been developing into a significant test for the trust responsibility of the federal government....*

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

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

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

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

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

*We've been fighting against these--not only on Torres-Martinez--Cahuilla and Soboba. There is a proposed project coming onto Soboba, multi-waste solid waste facilities, that we are opposing because...our...reservation is not very large.*

*[There are] at the least 23 children in the vicinity.*

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

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

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

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

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

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

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

*...I've come to address the issues of the environmental disaster that is happening to the health and the welfare of the Indian people on the Cahuilla reservations because of the promotion of the toxic dumping and dumping on our reservation and many other reservations. And I'd like to give my testimony on how it has destroyed and desecrated the land on the Cahuilla Reservation. We*

*sit on the Santa Marguerita River watershed. We are on the top of the river, we sit on 40 percent of that river.*

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

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

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

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

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

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

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

*...Right now we have kids in Torres-Martinez that can't even get up and play*

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

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

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

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

## **B. Written Testimony**

The investigators reviewed approximately 300 pages of written material submitted at public hearings and sorted by the ACCIP as pertaining to the Economic Development Task Force. The written testimony is summarized below.



(1) A Personal Testimony of a Member Against Sludge from the Torres-Martinez Desert Cahuilla Reservation by Alec R. Dominguez, October 10, 1994 (8 pages).

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

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

According to Mr. Dominguez:

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

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

Mr. Dominguez reported that the Torres-Martinez Desert Cahuilla Indian Reservation is exercising its tribal sovereignty by "protesting the toxic, hazardous sludge waste facilities," setting human blockades to stop sludge trucks from entering the dumping facilities, and passing tribal resolutions to remove the sludge mountain and stop the sludge dumpers. In spite of all this and President Clinton's Executive Order on Environmental Justice dated February 11, 1994, the

Department of the Interior--BIA and EPA--"have not lifted a finger to enforce the June 20, 1994 Cease and Desist Order."

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

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

- Each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing...disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations in the United States and its territories and possessions.
- Creation of an Interagency Working Group on Environmental Justice to guide, coordinate and assist actions to achieve environmental justice.
- Inclusion of diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority and low-income populations.
- Collection, maintenance and analysis of information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence; and Federal communication to the public regarding the risks of those consumption patterns.
- Public participation in and access to information exchanges related to the incorporation of environmental justice principles into Federal agency programs or policies.
- Consultation and coordination with tribal leaders regarding steps to be taken pursuant to the Executive Order that address Federally-recognized Indian tribes.

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

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

contamination of drinking water in particular. Related issues pertain to the legality of lease negotiations without tribal or Bureau of Indian Affairs approval, and the Bureau's trust responsibility for the protection of land, water and other natural resources.

- (4) City of Pacifica Wastewater Facilities Plan: Draft Environmental Impact Report by Thomas Reid Associates, March 1994 (35 pages).

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

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

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

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

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

In his introduction of the Bill to the House of Representatives, Honorable Bill Richardson stated its intent was "to correct a long-standing inequity to Indian tribes. The legislation we are introducing would provide that funds under the Title XX Social Services Block Grants program be provided directly to tribal governments to administer their social services programs. Currently, Title XX funds are provided by formula to State governments and to territorial governments, but not to Indian Tribal governments." Representative Richardson also noted that the Title XX Social Services Block Grant is an entitlement program "meant to provide flexible social services moneys for locally designed and administered social services programs" and "much of the Title XX money is used for child welfare services....It is a great injustice that Indian tribes have not had access to annual Title XX moneys which could have helped them build stable social services programs to address the multitude of problems affecting Indian children and families....This Bill rights a great wrong--Indian tribes should have had these funds from the beginning. After all, the purpose of the title XX Social Services Block Grant program is to provide for the needs of all Americans."

- (6) Memorandum from the law firm of Dickstein & Merin to Table Mountain Rancheria, et al., enclosing a Draft Response to the U.S. Attorney General (3 pages).

Citing an agreement reached before the filing of Rumsey, et al. v. Wilson, in which the State of California "agreed to negotiate compacts including all games that the District Court found the State was obligated to include," the draft response states that California Governor Wilson "is acting unlawfully in refusing to negotiate with California tribes for electronic gaming devices and banking card games." It requests an opportunity for [Chairpersons] of the Rumsey Indian Rancheria, Table Mountain Rancheria, Jackson Indian Rancheria, Colusa Indian Rancheria and Redding Rancheria to meet with the U.S. Attorney General "on a government-to-government basis in a cooperative atmosphere so that we can reach an agreement...about the status of gaming activities in this district during the temporary period until the legislative, legal and political issues surrounding Indian gaming are resolved," noting that "as sovereign nations emerging from the Holocaust rained upon us in this state, we deserve and expect no less."

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

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

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

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

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

- Lack of coordination between federal agencies is a routine element of land acquisition projects....Coordination between HUD/IHS/BIA in land acquisition projects is slow, cumbersome and fraught with bureaucracy.
- Adoption of one uniform environmental review process should be mandated.

- NIMBY (Not In My Back Yard) attitudes of local, state government and surrounding land owners. Mr. Ulibarri cites as opponents to Indian land acquisition projects county boards of supervisors, homeowners' associations and White supremacists, indicating that NIMBY attitudes usually are the result of misinformation regarding impacts on county tax bases, local schools, fire protection services and public works.
- Land purchases are usually noncontiguous and therefore are classified as off-reservation acquisitions under the Indian Lands Consolidation Act. Therefore they require "coordination with the local jurisdictions," and their conveyance to trust status often takes more than three years, during which time tribes must pay property taxes on the land. This not only imposes an economic hardship on tribes, but also delays their HUD housing projects over extended periods during which "inflation erodes the available funding and tribes must either reduce the number of units to be constructed or reduce the floor plans."
- Increased funding for newly recognized tribes for land acquisition for housing projects is a necessary request. Mr. Ulibarri stated that "as non-federally recognized tribes reach their goal of recognition, the demands for land, housing and basic infrastructure will strain existing funding resources"; therefore, additional funding to HUD Region IX, the California Area Office of the Indian Health Service and the Sacramento Area Office of the Bureau of Indian Affairs is needed.

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

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

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

- (9) Letters to the Advisory Council on California Indian Policy from Denise Holt, Arcata, California, and Yvonne A. Bones, Trinidad, California, May 16, 1995  
(Two 1-page letters).

After individualized introductory paragraphs, both letters raise the following issues:

- It is hard to gather food and basket material because so much of our traditional gathering places are owned by timber companies and private landowners that do not want us gathering on their lands.
- Elders who still gather are afraid to go out by themselves because of the marijuana crops and drug labs that are out in our lands.
- Our food resources are being diminished also, the seaweed is harder and harder to find; the state says we have to have a license to gather our mussels, abalones, fish-- this should not be for California Indians.
- The non-reservation California Indians are [should be] entitled to but do not receive the vehicle tax exempt license; those of us who live and work off the reservation are penalized for making a living and trying to make a life for us.

- (10) Testimony of L. Robert Ulibarri Before the Advisory Council on California Indian Policy, May 20, 1995, Hoopa, CA (6 pages).

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

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

The series of untrue, false and defamatory articles which have been published in the newspapers and the door-to-door solicitation of anti-Indian petitions has developed an atmosphere of fear and hostility directed at the Indian community,

and it has a potential for developing into a volatile situation. A group of individuals called the Quartz Valley Citizens Committee who we think have ties to a local militia have gone door-to-door with misinformation persuading various individuals to sign petitions opposing our land purchase. They have intimidated the sellers of the land using threatening tactics. The so-called leader...has reported one Indian family to the building department because their housing is not up to county standards and has enlisted the County Sheriff in an attempt to force an Indian widow and her three children to move their small trailer off the land he has placed under dispute. The same Indian family is being harassed by a person or persons shouting 'get rid of those Indians' while brandishing a shotgun. Prowlers dressed in camouflage clothing are routinely seen walking in and around the Reservation. Indian families awaiting housing in the Quartz Valley have nowhere else to go. They await the chance to once again have their community back, but they wait not only in poverty, but in fear.

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

- (11) Summary Report for the George Washington University National Indian Policy Center, "California Consultation Meeting," Stanford University, Palo Alto, CA, May 5, 1991 (17 pages), submitted by California Indian Legal Services.

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

*While faced with the panoply of issues common to Indian Country...California is particularly complex and unique in many respects. California possesses a large and diverse Indian population. 25% of all Indians are located in California. There are 101 'recognized' tribes in diverse stages of development, and 40 or 50 tribes that are not recognized. There is a large population of urban Indians, some affiliated with tribes native to California and most with tribes from outside California. Much of the configuration and situation of Indian people, communities and tribes in California, is directly attributable to past federal policy. [Emphasis added.] It is imperative, therefore, that honorable federal policy developments take into account the historical realities of Indians in California....*

*Repeatedly and emphatically, Indian people and tribes in California emphasized the critical need to resolve issues involving aboriginal California Indians who are not affiliated with a tribe that the Bureau of Indian Affairs lists pursuant to 25 C.F. R. Part 83 as possessing a current government-to-government relationship with the United States.*

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

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

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

*Previous efforts to limit services in California centered around confining services to reservation areas. Litigation resulted in an 'on or near' designation for all of California. However, in this newest assault, California Indians find that they are suddenly and simply no longer Indian.*



*Under current policy as it is being implemented, only enrolled members of tribes listed by the BIA as possessing a current government-to-government relationship with the federal government (25 C.F.R. Part 83) are considered Indian. Numerous laws defining Indians, reference the term 'recognized' - by treaty or otherwise, or, as eligible for services because of status, etc. Many of these laws predate Part 83. However, in recent years, the BIA has interpreted any reference to the term 'recognized' as tied to a Part 83 listing. Recognized tribes are now only those listed in the federal register and Indians are only enrolled members of those tribes....*

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

*California Indian people find themselves devoting meager resources to pursuit of Part 83 recognition while, on a case by case, program by program basis, contesting*

*status issues and denial of services. Progress is painfully slow and limited. Frustration and anger is particularly evident with reference to ... Indian status and recognition issues in California.<sup>1</sup>*

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

### **C. Conclusions**

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

culturally significant sites, as well as the protection of traditional rights to gather food and basket materials.

Additional issues raised in the written testimony included:

- (1) inequities in the Title XX Social Services Block Grant program, which includes funding for child welfare programs,
- (2) refusal of the State of California to negotiate with California tribes regarding electronic gaming devices and banking card games,
- (3) the lack of a land base for many California tribes, the multitude of obstacles to tribal land acquisition and the growing backlash to tribal land acquisition efforts following federal recognition,
- (4) the need to resolve issues involving aboriginal California Indians who are not affiliated with a tribe that the Bureau of Indian Affairs lists pursuant to 25 C.F.R. Part 83 as possessing a current government-to-government relationship with the United States, and
- (5) myriad other obstacles to economic development, including limited and/or remote Indian land bases, limited natural resources and expertise, lack of access to capital and excessive regulatory constraints.

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

Although much of the testimony regarding cultural and environmental impacts of economic development activities undertaken in the past by tribal and non-tribal groups can be seen as relating directly to the maintenance of either health and safety or dignity, other testimony raised issues related to the fundamental need to honor agreements, whether contained in treaties,

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

1. National Indian Policy Center, The George Washington University, Washington, D.C., *Summary Report, California Consultation Meeting, Stanford University, Palo Alto, California, May 5, 1991*, pages 4-6.

2. *Ibid.*, p. 9.

