



NATIONAL  
CONGRESS  
OF AMERICAN  
INDIANS

## Indian Country Economic Recovery Plan

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Native American communities, whose infrastructure and economies are supported by Indian tribal governments, must be directly included in the upcoming economic recovery plan. Native American communities have the [highest unemployment rates](#) in the entire country and tribal governments have long had difficulty accessing and attracting capital to serve their citizen's needs. To resolve these barriers to economic prosperity, NCAI, in collaboration with tribal government and organization partners, developed the Indian Country Economic Recovery Plan that includes ready-to-fund infrastructure projects and eases tribal government access to capital.

Targeted ready-to-fund federal infrastructure spending, along with measures removing barriers to governmental access to credit and capital, would offer a viable opportunity for immediate job creation in Native American communities throughout the United States<sup>i</sup>. In order to capitalize on this opportunity, Congress needs to incorporate key Indian Country perspectives in addressing: **(1) Infrastructure Spending** and, **(2) Access to Credit & Capital** into any economic stimulus package.

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# Indian Country Economic Recovery Plan

## 1. INFRASTRUCTURE PROGRAMS

### A. RESERVATION ROADS AND TRANSPORTATION INFRASTRUCTURE

Request:       \$310 Million - Indian Reservation Roads Program – New Roads and Transportation Infrastructure Projects. (DOI/DOT)  
                  \$258 Million - BIA Road and Transportation Infrastructure Maintenance Projects (DOT)  
                  \$36 Million – Tribal Transit Grant Program

Jobs:           21,500 jobs created<sup>ii</sup>

Tribal governments and the Native American communities they support should be included as eligible recipients for transportation new construction and maintenance. Inclusion would create a large number of immediate jobs, contracting opportunities, and related procurement. Funding would also help to save lives by improving road safety among a population with the highest transportation accident rates.<sup>iii</sup>

According to BIA officials, tribal communities have an unmet immediate need of well over \$258 million in maintenance funding for roads and bridges and \$310 million in unmet new roads and bridges projects. These projects will immediately create over 21,500 jobs and will inject a much-needed stimulus into the Native American economy.

The Tribal Transit Grant Program has been highly successful in its early years. However, the funding awarded has not met the transit needs for tribal communities. Funding for transit projects not only creates immediate jobs and contracting opportunities, but will also improve citizen participation in the economic system. According to the Federal Transit Administration (FTA), applicants for FY2006 and FY2008 a total of \$66 million was requested with \$30 million funded. We are requesting the \$36 million in unfunded need for tribal transit.

Appendices:

1. [Ready List – Indian Reservation Roads Programs](#)
2. [Statement of BIA Transportation Maintenance Need](#)
3. [“Creating Jobs, Saving Lives and Money Through Emergency Funding for Transportation Infrastructure Maintenance in Indian Country”](#)
4. [“Creating Jobs, Injecting Money into the Economy, and Saving Lives Through Funding for Immediate Road Construction Projects](#) (November 2008)
5. [Creating Jobs and Improving Access to Jobs, Healthcare, Education and Necessary Services Through Funding for the Tribal Transit Grant Program](#)
6. [Transit Grants – 2006-2008 Completed Assessments List](#)
7. [Native American Transit: Current Practices, Needs and Barriers](#)

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## B. 21ST CENTURY GREEN SCHOOLS REHABILITATION AND CONSTRUCTION

Request: \$143 Million BIE School Renovation and Ready Construction  
\$62.4 Million Technology Upgrades

Jobs: 1,500 jobs created

The Bureau of Indian Education (BIE) oversees 4,995 education buildings. Half of these are more than 30 years old and more than 20 percent are older than 50 years<sup>iv</sup>. Although education construction has improved dramatically over the last few years, the deferred maintenance backlog is still estimated to be over \$500 million and increases annually by \$56.5 million. New schools on Indian reservations should be a model for energy efficiency including the use of alternative energy to meet their ongoing energy needs.

These dollars are desperately needed in Indian Country. As recently as May 2007 the Office of Inspector General<sup>v</sup> (OIG) found that the BIE schools required immediate action to protect the health and safety of children and faculty. According to the report, the BIE's construction priority list includes 69 of its schools – or 83%. These schools, according to the OIG, face critical health and safety violations, including schools with outdated electrical systems, inadequate fire detection, and improperly maintained furnaces. The report stated that if these conditions were not immediately addressed, there was the potential for serious injury or death to the students.

According to the BIE, the funding needed in 2009 to meet total education construction needs is \$143 million. Schools are also in need of technological upgrades to bring them into the 21<sup>st</sup> century learning environment. We are requesting an additional \$62.4 million for technology upgrades in 25% of the schools, those in most need.

Appendices:

1. U.S. Department of Interior, Office of Inspector General Flash Report. 2007. [Bureau of Indian Affairs, Bureau of Indian Education: Schools in Need of Immediate Action](#)
2. U.S. Government Accountability Office, 1997. [Reported Condition and Costs to Repair Schools Funded by the Bureau of Indian Affairs](#)

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## C. CLEAN WATER, WASTE TREATMENT, WATER PROJECT SYSTEMS AND IRRIGATION INFRASTRUCTURE

Request: \$700 Million in IHS/HHS Water and Waste Infrastructure Project Funding  
\$200 Million Bureau of Reclamation Water And Related Resources including Funding (Tribal Inclusion of at least \$58 Million) for Authorized Rural Water Systems Projects.  
\$130 Million Construction-Ready BIA Irrigation Projects  
\$7.7 Million Construction- Ready DOI/Bureau of Reclamation Irrigation Projects

Water and Waste Infrastructure Projects - Tribes have a tremendous need for funding under the Clean Water and Drinking Water State Revolving Funds, as over 13% of tribal homes lack access to safe drinking water and sanitation infrastructure, compared to less than 1% of homes nationwide. According to the Indian Health Service, over 36,000 tribal homes lack potable water.

Due to the evident need and comparative inequities, tribes have long advocated for a substantial increase in project funds through new SRF allocation formulas based on actual need. According to the Indian Health Service's (IHS) 2008 Sanitary Deficiency Service (SDS) Database for 2008, tribal water and sewer infrastructure needs a total of nearly \$2.4 billion with half of the need (\$1.2 billion) defined as economically feasible projects. Feasibility is based on the ability to provide piped in service. Projects at the top of the list are the most ready-to-go with those at the end of the list less so. We are requesting \$600 million to fund the most ready projects to reduce tribal lack of access by 50 percent, which is a stated national commitment.

An additional \$100 million is being requested to conduct feasibility studies for the remainder of the ready list as well as those considered economically infeasible which includes many tribes that have the highest water deficiency levels (4 and 5 - with 5 as the most deficient). NCAI also urges IHS to revisit the definition of homes, as some tribal homes, such as some pre-HUD homes, are not identified as such, and thus cannot be counted as homes lacking access under current criteria<sup>vi</sup>.

Bureau of Reclamation Tribal Rural Water Project System Infrastructure - Potable rural water projects authorized for evaluation, study and construction under the US Bureau of Reclamation (USBR) impact a substantial portion of Indian country in the west. There are five USBR rural water projects which will serve Indian tribes that have specific Congressional authorization and are under construction (and could use USBR funding under the economic stimulus immediately). There are additional tribal rural water systems listed below which have received funding in previous years for USBR feasibility studies and related activities, which would affect in total 28.3 million acres of Indian reservation and trust lands in six states intended to serve

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approximately 365,000 tribal citizens of 13 federally recognized Indian tribes. These water infrastructure projects will both create much-needed jobs and provide reliable, safe, and essential drinking water to the most remote, rural, and economically depressed areas of Indian Country.

The Reid/Byrd Economic Recovery Act of 2008 (S. 3689), introduced on November 18, included \$200 million for USBR management, development, and restoration of water and related natural resources and for related activities, including the operation, maintenance, rehabilitation, and modification of reclamation and other facilities. This includes improvements or modification to provide environmental benefit, participation in fulfilling related federal responsibilities to Native Americans, and related grants and cooperative and other agreements with state and local governments and federally-recognized Indian tribes. In addition, the bill included not less than \$50 million for Rural Water Supply Projects and focused on water treatment and intake facilities<sup>vii</sup>. The language also set forth criteria that the funds: may only be used for programs, projects, or activities previously funded; be used for elements of projects, programs, or activities that can be completed within these funding amounts; and may not create budgetary obligations in future fiscal years. There are currently five USBR Rural Water Supply Projects which will serve Indian tribes that have specific Congressional authorization,<sup>viii</sup> are under construction, and could use USBR funding under the economic stimulus immediately.

Indian Irrigation Project Construction - The federal government provides funding for the construction of Indian irrigation projects as part of the government's responsibility to foster agricultural opportunities and economic development in Indian country and surrounding areas. Both the Bureau of Indian Affairs (BIA) and the USBR oversee construction of Indian irrigation projects, with the majority of projects falling under the authority of the BIA.

The President's FY 2009 budget reports that BIA Indian irrigation projects produce over \$300 million in crop revenues annually. Several authorized Indian irrigation projects have fully designed and construction-ready components. According to information received from BIA officials, \$130 million is required to complete the construction-ready components of BIA Indian irrigation projects. According to information received from USBR and tribal water officials, at least \$7.7 million in funding is required to complete construction-ready components of BIA/USBR Indian irrigation projects. USBR oversees Indian irrigation projects that are the result of certain water settlements or other special authorizing legislation. The attached table provides a list of the BIA and USBR projects.<sup>ix</sup>

Appendices:

1. [IHS Water and Waste Funding Need](#)

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2. [“Strategies for Increasing Access to Safe Drinking Water and Wastewater Treatment to American Indian and Alaska Native Homes,”](#) Infrastructure Task Force Access Subgroup
3. [Table of Construction-Ready USBR Tribal Water Projects with Background and Jobs Creation](#) Served By Investing in Indian Country
4. [Tables of Construction Ready BIA and USBR Irrigation Projects](#)
5. [Excerpts from FY 2009 Interior’s Indian Affairs “Green Book” on Indian Irrigation Projects](#)
6. [GAO Report, “Indian Irrigation Projects”, February 2006](#)
7. Interagency MOU - [Meeting Water and Waste Needs in Native American Communities](#)

### D. ENERGY INDEPENDENCE DEVELOPMENT, EFFICIENCY AND RELIABILITY PROGRAM

Request: \$15 Million - Renewable Energy on Tribal Lands Program, DOE  
10% Set-Aside for Energy Efficiency Programs, DOE  
Waiver of Cost Share - Energy Efficiency Programs, DOE

Renewable Energy Development - The U.S Department of Energy (DOE) estimates that the wind resources of the Great Plains could meet about 75% of the electricity demand in the lower 48 states. Estimates of the wind resources within the boundaries of just 12 Indian reservations in North and South Dakota indicate a potential in excess of 250 gigawatts of power - a more than 100-fold increase over the existing power capacity now available from all of the hydropower dams on the main stem of the Missouri River.<sup>x</sup> Wind energy potential on tribal lands alone can meet at least 15-20% of the nation’s energy needs, and solar electric potential on tribal lands is 4.5 times greater than total U.S. electrical generation in 2004. As such, the federal government should dedicate much greater technical assistance and financing to bringing tribal wind, solar, and other green energy projects online.

Renewable energy projects generated on Indian reservations provide environmental, economic, energy, and public health benefits to tribal governments and peoples, surrounding communities, the nation, and the world. These projects are particularly valuable when some tribes in these areas provide few job opportunities and experience unemployment rates greater than 40%. In light of tribal circumstances and the clear multiple benefits, NCAI recommends that the federal program most responsible for bringing renewable energy projects to tribal lands - DOE’s Energy Efficiency and Renewable Energy’s Tribal Energy Program - receive a significant increase in funding, which would in turn be provided to tribes. The program promotes tribal energy sufficiency, economic development, and employment on tribal lands through feasibility studies and demonstration projects in renewable energy and energy efficiency technologies such as wind, solar, and biomass.

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The program has funded 91 tribal energy projects totaling \$14.1 million from 2002 to 2007. This year, 10 of 50 applicants were funded, and the program office has a list of the unfunded projects that are ready to go. NCAI recommends that the existing budget be multiplied five-fold, to approximately \$15 million per year. NCAI also recommends, consistent with Section 6 of E.O. 13175, that the program establish criteria permitting reductions or waivers of the tribal cost share.

Energy Efficiency - The Department of Energy has been providing 15 years of federal assistance to states and local governments to improve the energy efficiency provisions of buildings codes under the Energy Conservation and Production Act. The 2005 Act authorizes appropriation of \$25 million per year for this program, including \$500,000 for training state and local government officials. This pattern of federal assistance has overlooked the fact that tribal governments also have the authority to enact and implement building codes for buildings on lands within their jurisdiction. However, tribal governments have been left out of this federal assistance program.<sup>xi</sup> Tribes should be included as eligible recipients for funds under this Act, and in light of the historical omission, be provided a 10% set-aside to be reconsidered at the end of 5 years. This funding is critical for the development of tribal ordinances that result in energy efficiency.

### **E. HEALTH FACILITIES AND TREATMENT CENTER MODERNIZATION AND CONSTRUCTION**

Request: \$370 Million - Indian Health Service Facilities Ready Construction, HHS

For most Indian people, Indian Health Service (IHS) supported programs are the only source of healthcare. Unfortunately, these vital services are constrained by the limited capacity of existing IHS and tribal healthcare facilities. Many facilities are severely overcrowded, and IHS does not have sufficient resources to address the ongoing need for expansion as well as the daily operation and maintenance needs of its 700 facilities and 2,200 staff quarters.

According to IHS, the cost associated with the ready list for construction and maintenance of its facilities is \$370 million. The requested amount will allow IHS to replace its priority healthcare facilities with modern facilities and to significantly expand capacity at its most overcrowded sites.

Appendices:

1. [Indian Health Service, Indian Healthcare Facilities FY 2010 Planned Construction Budget](#)
2. [Ready List - Healthcare Facilities List](#)
3. [Healthcare Priority Methodology](#)

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## F. TELECOMMUNICATIONS ACCESS AND EMERGENCY MANAGEMENT INFRASTRUCTURE

Request: \$17.5 Million – Geographic Information Systems, DHS, FEMA  
\$195 million – Emergency Management Interoperable Connections, DHS  
\$ 7.77 Million – Public Communications  
Inclusion – Broadband Access

Communications infrastructure is an essential component of achieving safe, healthy, and economically viable communities. Eligibility and funding of broadband, telephony, and broadcast communications systems is the critical backbone to securing a strong economy in addition to enhancing quality of life. Tribal communities were identified several years ago as having severely limited telecommunications and information technology capacity. Broadband and emergency infrastructures are vital to our economic health and preparedness.

Emergency Management - Tribal emergency management and homeland security programs are vital for the safety of tribal and surrounding communities. Tribal government responders will be the first responders, and in many geographical instances the sole response organizations, to assist Native and non-Native populations in ordinary and catastrophic emergency situations. Tribes need to be included as proportionate recipients of broadband, wireless, and emergency management funding to address the telecommunications need.

Tribal Emergency Management & Homeland Security - State of the art communications systems in Indian country include hardware, software, and operational staff for computer-aided dispatch systems, integrated and interoperable communications systems, automated alert, notification and warning systems, Geographic Information Systems, and emergency management systems.

Geographic Information System (GIS) Enhancement - GIS can capture, store, analyze, manage, and present data regarding a specific location and is the most powerful visual communication tool available. As effective as GIS may be, it has not been utilized throughout Indian country due to funding and human resource constraints. We are requesting \$17.5 million set-aside funding for 100 tribes for geospatial technology planning grants through the Department of Homeland Security–Federal Emergency Management Agency’s Pre-disaster Mitigation Program.<sup>xii</sup>

Tribes need state-of-the-art radio communications systems that can be integrated with existing and future local and state communications networks. These systems must include trunking capabilities and be Project 25 compatible. Tribes need \$195 million of first-year funding set aside for 100 tribal governments.<sup>xiii</sup>

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Public Communications - Thirty-three public radio stations are currently licensed to tribal governments, tribal community colleges, and tribal foundations, with all but one located on tribal lands. Twenty-nine additional stations are in the process of coming online, and two will be operational in 2009. Hardware (towers and transmitters) is funded through the Department of Commerce National Telecommunication Information Administration. These vital links to Indian country are in need desperate of infrastructure repair and enhancement.

In emergency situations stations serve as tribal community lifelines by delivering emergency alerts and advisories. In emergency situations they can be faced with critical shortages, including backup generators, staffing and emergency funding of utilities to operate. Funding should be made available to the 35 stations to ensure emergency broadcasting to tribal communities. Tribes need \$7.77 million for 35 tribal community radio stations that will be operational in 2009.<sup>xiv</sup>

### G. PUBLIC SAFETY INFRASTRUCTURE

Request: \$1.68 Billion - Detention Center, Police and Courthouse Rehabilitation and Ready Construction, DOI, BIA, DOJ

There are currently 82 detention facilities in Indian country located on 57 reservations. Twenty-seven of those 82 facilities are used to detain juveniles. Sixty-two of the jails are operated by tribal governments, while 20 are operated by the BIA. Most of the facilities were constructed 30-40 years ago.<sup>xv</sup> The problems and challenges with tribal and BIA detention have been well-documented. A 2004 report by the Office of Inspector General at the Department of Interior concluded that jails run by the Bureau of Indian Affairs are “egregiously unsafe, unsanitary, and a hazard to both inmates and staff alike.”<sup>xvi</sup> The report went on to conclude that the “BIA’s detention program is riddled with problems . . . and is a national disgrace.”<sup>xvii</sup>

A Bureau of Indian Affairs report released in 2008 confirmed an \$8.4 billion backlog to bring tribal and federal detention centers in Indian Country up to current standards and to relieve overcrowding of as much as 150 percent at peak periods. The report concluded that over 90% of the detention facilities in Indian Country need to be replaced or extensively repaired and concluded that the lack of adequate facilities coupled with limited enforcement officers and prosecutions has led to a severe public safety risk on reservations. To begin addressing this public safety risk, we are requesting \$840 million in immediate funding for detention - 10% of the overall detention center need along with an additional 10% in funding to include dilapidated and unsafe police and court facilities.

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## Appendices:

1. [Tribal Justice Falls \\$8.4 Billion Short](#)
2. [Master Plan for Justice Services in Indian Country, Year 2007 to Year 2017](#), GSA

## H. HOUSING RELIEF REHABILITATION AND CONSTRUCTION PROGRAM

Request: \$966 Million - Native American Housing Rehabilitation and Ready Construction, HUD

Jobs: 4,180 jobs created

Native Americans face some of the worst housing and living conditions in the United States. Housing, related infrastructure, and reliable utilities are needed immediately in Indian country. Barriers to housing development in Indian communities include the lack of significant private investment opportunities, low functioning housing markets, and poverty.

According to the 2004 “Housing and Economic Development in Indian Country Challenges and Opportunity” report conducted by the Center for Urban Policy Research at Rutgers University, 23.3 % of Indian households pay 30% percent or more of household income for housing.<sup>xviii</sup> Indian homes also frequently lack utilities and infrastructure. According to the 2000 Census, approximately 14.2% of Indian homes have no electricity; 11.7% lack complete plumbing; 11% lack kitchen facilities; and 32.1% lack telephone service. Retrofitting homes is an activity that can take place immediately and be completed within 12 months. This activity would significantly extend the life of homes throughout Indian country.

We estimate that 60,000 homes are being maintained by Native American housing programs and are of an age where retrofitting might be needed. We estimate that 70 percent of these homes are in need of retrofitting (windows, insulation, efficient furnaces/air, elder/handicap conversion, etc.). Therefore, 42,000 homes are in need of retrofitting. With an estimated retrofitting cost of \$23,000 per unit, the total amount of funds that could be expended in 12 months is \$966 million. The most efficient means to distribute the funding is through the existing Native American Housing Assistance and Self-Determination Act (NAHASDA) allocation formula that is administered by HUD.

There are 380 NAHASDA recipients- tribal governments and tribally-designated housing authorities. We estimate that an average number of 11 jobs will be created per housing program, which results to 4,180 new jobs for Native American housing programs. An untold number of jobs will be created at other companies through the purchase of new windows, insulation, furnaces, lumber, and other building products.

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## I. INDIAN LAND CONSOLIDATION PROGRAM

Request: \$400 Million – Tribal Lands Consolidation for Economic Production, DOI

The Bureau of Indian Affairs has proposed very significant funding for the Indian Land Consolidation Program to stimulate reservation economies, and NCAI strongly agrees with this proposal. Although it is not a traditional infrastructure program, it is even more fundamental to stimulating reservation economies. Over 5 million acres of Indian owned land is locked up in unproductive status because the ownership of each tract is divided among dozens, hundreds, or thousands of owners. Economic activity on these lands has become impossible because of the inability to gain the consent of the owners. Consolidation of these tracts into tribal ownership results in immediate economic gains by putting the land into productive use – largely in timber and agricultural production, but also in creating new opportunities for commercial development and tribal government construction.

The Indian Land Consolidation Program has both short-term and long-term beneficial impacts on the economy, on the tribes, and on the federal government. First, the Program is able to purchase lands and disburse funds within a six week timeframe. The average payment to each Indian landowner is approximately \$3000, which, because of low income levels, quickly goes into circulation in reservation and surrounding economies. Second, the consolidated lands are immediately available for agriculture, timber sales, and other activities that produce jobs and income on the reservations. The importance of job creation on reservations cannot be overstated. Third, the Program is leveraged. The last four years of experience have shown surprisingly high rates of return on consolidated lands, and this income is under a lien and returned into the program for consolidation of more lands. Fourth, there is no program which will do more to solve the long-term trust management problems at the Department of Interior.

Land consolidation is critical for addressing trust management problems created by fractionation. Over 4 million ownership interests in 130,000 tracts of land have created a title, management, and accounting nightmare for the federal government and enormous difficulties for Indian land owners in putting land to economic use. Land consolidation improves federal administration and management, and saves substantial federal dollars that currently go to tracking tiny land interests. The investment in land consolidation will do more to save on future trust administration costs than any other item in the trust budget. Land ownership and land tenure is the fundamental infrastructure of reservation economies. The Bureau of Indian Affairs has estimated the consolidation program at \$700 billion. To begin addressing land consolidation, we are requesting \$400 million in immediate funding, 10% of the overall need.

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## 2. TRIBAL GOVERNMENT ACCESS TO CAPITAL

It is important to recognize in this economic crisis that access to capital for tribal governments has consistently been impeded by federal rules and regulations, as well as economic factors. Minor legislative adjustments would put tribal governments on par with state and local governments and free up access to capital markets for tribal communities.

### A. ACCESS TO THE PUBLIC DEBT MARKETS - TRIBAL TAX-EXEMPT BOND FIX

Fixing the federal tax-exempt bond rules applicable to tribal governments would leverage any infrastructure spending by the federal government, thereby increasing the reach of the Economic Stimulus package and reducing the burden to the taxpayer through complementary tribal financing. Like state and local governments, tribal governments need to issue tax-exempt bonds for a variety of purposes, including infrastructure and economic development activities. In fact, tribal governments that lack a tax base (as many do) have an even greater need to finance revenue-generating projects in order to fund and deliver much-needed government services to their citizens.

A consensus proposal to fix the federal tax-exempt bond rules can be found in legislation introduced by Senators Max Baucus and Gordon Smith in the Senate and by Congressmen Xavier Becerra and Devin Nunes in the House. The Tribal Government Tax-Exempt Bond Parity Act ([S. 1850](#)/[H.R. 3164](#)) would indirectly, but effectively address fundamental infrastructure and community development needs for tribes. Passage of the legislation would go a long way to allow tribal governments to build self-sufficient local economies, serve fundamental citizen needs, and create healthy and safe communities.

Yet due to federal tax and securities rules, tribal governments find it both difficult and more expensive to finance government functions and economic development projects. There is no reason why Indian tribal governments should be paying more to provide for their citizens than other governments do.

### B. TRIBAL USE OF PROJECT FUNDS FOR DEBT - ALLOWABLE COST FIX

Clarification for tribal use of appropriations for related interest expenses is needed. This would give tribes more flexibility for financing existing infrastructure projects in a similar manner as states. Section 450j-1(k) of Chapter 25 of the U.S. Code should be amended by adding the following language to the existing statute: "Interest payments, retirement of principal, costs of issuance, and costs of insurance or similar

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credit support for a debt financing instrument, the proceeds of which are used to support a contracted construction project.”

### **C. ACCESS TO TRIBAL FUNDING PARTNERS – SEC ACCREDITED INVESTOR FIX**

Successful tribes want to invest in the development of other tribes. However, the current definition in the Securities and Exchange Commission Regulation D does not treat tribal governments like other governments. State and local governments are specifically exempt from the registration process as “accredited” or “large accredited” investors. As a result of the SEC's failure to treat tribal governments like state or local governments, raising capital and investing in projects have become cumbersome and costly for tribal governments.

To achieve parity with other governmental entities, it is important that tribes be included in the definition of “government body” used in section §230.501 of SEC Regulation D. Congress should act immediately to define tribes as accredited or large accredited investors to free up this untapped source of capital.

[SEC Regulation D - NCAI Government Definition Fix Letter](#)

### **D. TRIBES AS DOMESTIC ENERGY PARTNERS – ALTERNATIVE ENERGY PRODUCTION TAX CREDIT TRANSFER**

Tribes with abundant natural resources need to be in a position to take advantage of energy investment incentives designed to increase existing domestic energy production derived from renewable energy projects. Many tribes are currently competing at a disadvantage when compared to those businesses given tax credits in the Renewable Energy Production Credit, which are available under 26 U.S.C. § 45, in addition to those energy credits available for energy property, coal, and gas under 26 U.S.C. §§48, 48A and 48B.

Tribes should have the ability to effectively compete and partner when developing their existing resources and creating renewable energy.

### Appendices

1. [Senator Johnson – S 2520 – Bill to Amend the IRC of 1986 to Allow Indian Tribal Governments to Transfer the Credit for Electricity Produced from Renewable Energy Resources](#)
2. [Congressman Grijalva – HR 1954 – Bill to Amend IRC of 1986 to Allow Indian Tribal Governments to Transfer the Credit for Electricity from Renewal Sources](#)

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## **E. ACCESS TO BANKING – RESERVATION BRANCH BANK RECOMMENDATIONS**

Request: Amend 12 U.S.C. §§ 36, 1828(d) to permit banks to branch onto federally-recognized Indian reservations.

Amend regulations § 1828 governing insured depository institutions.

Many Indian reservations currently are “under-banked,” which tends to limit economic development and opportunities for the families, businesses, and communities situated on these reservations. The purpose of the draft amendments is to allow in-state and out-of-state banks to branch into these communities and to provide vital banking services. A legislative “opt-in” from the tribal governments would be required for out-of-state banks to use the new authority, much like state legislatures currently are required to authorize out-of-state banks to enter their jurisdictions. Each new branch would require approval on a case-by-case basis from the appropriate federal bank regulator of the bank (the Office of the Comptroller of the Currency, FDIC, or Federal Reserve).

## **F. BIA GUARANTEED LOAN EXPANSION AND SURETY BONDING PROGRAM**

Request: \$9 Million – Fully Funded BIA Guaranteed Loan Program  
\$39 Million - Expanded BIA Loan Guarantee to Surety Bonding  
\$100 Million – Expanded BIA Loan Guarantee for Energy

One of the most successful programs undertaken by the Bureau of Indian Affairs is the Guaranteed Loan Program for businesses. It has been successful because it provides an attractive incentive for banks to expand and underwrite loans in Indian country. The default rate is enviable, administrative costs are shifted to the banks and demand far outweighs the allocated funding.

The loan guarantee program provides security for up to \$80 million in loans between private banks and Indian tribes and tribal enterprises in FY 2008. Despite this guarantee authority, an additional \$90 million in potential loans were not guaranteed because they exceeded the \$80 million ceiling. We are requesting that the Guaranteed Loan Program receive an additional \$90 million in leveraged loan backing through an additional \$9 million in leveraged (10:1) funds to meet existing demand for business development. This funding could also be used to meet the demand for tribes to grow their economic base to fund government programs by authorizing tribal bonds to be eligible for funding. Department of Interior already had a program developed for meeting this important need.

In addition, it is also important that Indian-owned companies participate in performing infrastructure construction. Tribally-owned construction companies

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have been denied access to surety bonding because of the perceived risk associated with sovereign immunity – even when waived for specific contracts.

We recommend the Guaranteed Loan Fund be utilized to guarantee the performance bonds to ease the expense or outright denial of coverage needed to compete for and secure contracting opportunities. An additional set aside of \$100 million should be guaranteed as part of the existing program for surety bonding. With a default rate around 39%, funds of \$39 million would be leveraged to support the total funding of \$100 million. <sup>xix</sup>

Expansion of the successful loan program to include larger energy funds would ensure tribal participation as energy partners. Without capital, tribes will continue to occupy the lower levels of the value chain and not receive full value for their limited resources. We are requesting \$100 million in leveraged (10:1) funds to provide a total of \$1 billion in guaranteed loans for energy projects. This important funding will give tribes the opportunity to create wind energy, provide aggregates for road construction and develop existing domestic fossil fuels.

### **G. USDA DIRECT BUSINESS AND INDUSTRIES LOAN PROGRAM**

Request: \$25 Million - USDA Loan Program for Tribal Governments

Like other governments, the current economic climate has made access to credit for tribal governments and tribal businesses much more difficult. Tribes that depend on income from traditional lines of business, such as forest products or agriculture, have been hit particularly hard as tightened credit markets have affected sales. Ultimately it has affected the ability of businesses to secure new or increased sources of capital.

USDA Rural Development administers the Business and Industry (B&I) Program, which is authorized to provide grants, loan guarantees, and below market direct loans for a variety of purposes, including construction, expansion, repair, or modernization costs. Although still authorized and governed by existing regulations and eligibility criteria, the direct loan component of the B&I program has not been funded for several years. Tribes and tribal enterprises are eligible borrowers under existing regulations.

The B&I Direct Loan program is already authorized and in place. New funding is all that is needed to provide Indian tribes and tribal enterprises with a new source of available capital. USDA Rural Development currently administers direct loans in connection with other programs and has personnel and procedures in place to make and service these direct loans.

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<sup>i</sup> Includes all eligible program recipients including American Indian tribes, Alaska Native Villages, and ANCs (Native organizations who have a unique relationship established by Congress, including those under the Alaska Native Claims Settlement Act of 1971 (ANCSA): ANCSA-designated ANCSA corporations functioning as the economic engine to stimulate designated Native economies).

<sup>ii</sup> Based on BIA estimates of 11,000 maintenance jobs and 10,500 for new construction and other jobs.

<sup>iii</sup> United States Department of Transportation - Federal Highway Administration, May 15, 2006.

<sup>iv</sup> U.S. Government Accountability Office. 1997. *Reported Condition and Costs to Repair Schools Funded by the Bureau of Indian Affairs*.

<sup>v</sup> U.S. Department of Interior, Office of Inspector General Flash Report. 2007. *Bureau of Indian Affairs, Bureau of Indian Education: Schools in Need of Immediate Action*.

<sup>vi</sup> Division of Sanitation Facilities Construction, Indian Health Service, Department of Health and Human Services. April 2006. *Marginal Cost Analysis Proposal Prepared for the Office of Management and Budget*.

<sup>vii</sup> For example, Cheyenne River Sioux received \$80 thousand in FY 1998 for a feasibility study to serve Cheyenne River Sioux Reservation and SD and fall under WRDA for project funding.

<sup>viii</sup> Garrison Diversion Unit (P.L. 89-108), Mni Wiconi (P.L. 100-516), Fort Peck Dry Prairie (P.L. 106-382); Rocky Boys North Central (P.L. 107-331); Jicarilla Apache Reservation Rural Water System Project (P.L. 107-331 Title VIII); Santee Sioux Rural Water System Project (P.L. 108-204) (authorized feasibility study); Navajo Gallup Water Pipeline Project ~ authorization pending in New Mexico Rural Water bill, funded most recently in FY 08 this project received \$246,000 to continue/finalize feasibility studies (Congress has been appropriating funding for assessment & studies since 1992); Cheyenne River Sioux -- \$80K in FY 1998 for a feasibility study to serve Cheyenne River Sioux Reservation and SD; White Mountain Apache Tribe Rural Water System Loan Authorization Act (P.L. 110-390) on October 10, the legislation (S. 3128 introduced by Sen. Kyl) was signed into law to direct the Secretary of the Interior to provide a loan to the White Mountain Apache Tribe for use in planning, engineering, and designing a certain water system project.

<sup>ix</sup> The information for irrigation projects was obtained from the GAO report and FY 2009 Budget, the Dakota Water Resources Act of 2000, and information provided directly by Tribal water officials, BIA officials, and BOR officials.

<sup>x</sup> Gough, Robert. "Restoring A Balance: Wind Power On the Great Plains." *Native Americas*, 18:2 (August 31, 2001).

<sup>xi</sup> Suagee, Dean. 2008. "Energy Efficiency and Green Buildings in Indian County: Some Observations on Harvesting Low-Hanging Fruit."

<sup>xii</sup> The Bureau of Indian Affairs has an MOU with Earth Systems Research Institute to provide HAZUS software at no cost to tribes. Training is available through the FEMA Emergency Management Institute to learn GIS functions and operations. Funding per tribe: \$25,000 GIS workstations, plotter, and sub meter GPS units, \$25,000 aerial photography, \$75,000 tribal technical staff, \$50,000 maintenance.

<sup>xiii</sup> Funding per tribe includes: \$15 million computer aided dispatch systems/integrated and interoperable and communications systems, \$350,000 maintenance, \$1 million automated alert, notification and warning systems/staffing, \$150,000 maintenance/staffing, \$2 million general emergency management development, planning, training, equipment, and exercise/staffing, and \$1 million maintenance and support.

<sup>xiv</sup> Includes: \$2.45 million for procure backup emergency generators for transmission and 10-day fuel supply, \$1.225 million – backup transmitter  
\$1.225 million – emergency Wi-Fi laptop, \$1.575 million emergency web equipment and backup IT servers and installation \$1.05 million emergency satellite phone, two-way radio and go kits \$245,000 auxiliary Site STL.

<sup>xv</sup> Testimony of W. Patrick Ragsdale, Director, Bureau of Indian Affairs, before the Senate Committee on Indian Affairs. May 17, 2007, available at [http://indian.senate.gov/public\\_files/Ragsdale051707.pdf](http://indian.senate.gov/public_files/Ragsdale051707.pdf).

<sup>xvi</sup> Office of Inspector General, Department of Interior, "Neither Safe Nor Secure: An Assessment of Indian Detention Facilities," September 2004, available at <http://www.doioig.gov/upload/IndianCountryDetentionFinal%20Report.pdf>.

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<sup>xvii</sup> *Ibid.*

<sup>xviii</sup> Center for Urban Policy Research, Edward J. Bloustein School of Planning and Public Policy, Rutgers University. 2004. *Housing and Economic Development in Indian Country: Challenge and Opportunity.*

<sup>xix</sup> Surety and Fidelity Association of America, based on 39% loss ratio (net losses on premiums) average over a ten-year period (1997 to 2007) of incurred losses over written premiums.