

NAVAJO DIVISION OF PUBLIC SAFETY
THE NAVAJO NATION
POSITION STATEMENT

PRESENTED AT THE BIA CONSULTATION
ON THE TRIBAL LAW AND ORDER ACT
ALBUQUERQUE, NEW MEXICO—OCTOBER 20, 2010

The Navajo Nation presents this Position Statement to the Bureau of Indian Affairs (“BIA”). The Position Statement is focused only on the topics that were identified by the BIA for the October 20, 2010 tribal consultation on the Tribal Law and Order Act (“TLOA”).

Special Law Enforcement Commissions (SLEC)

The current arrangement concerning SLECs is that the BIA requires all law enforcement agencies, including tribes providing law enforcement services under 638 contracts, to sign a document called “Model Deputation Agreement,” without changes, in order for law enforcement personnel to receive SLECs. The Agreement assumes that the BIA is currently providing law enforcement services on the tribe’s reservation, and that the tribe or other agency is entering into the agreement to provide assistance to the BIA. Further, the Model Deputation Agreement requires the tribe or other agency to acknowledge that it will only receive Federal Tort Claims Act (“FTCA”) coverage when enforcing federal law under an SLEC.

The Nation could not sign this Model Deputation Agreement, as is, because certain provisions of it directly contradicted specific provisions in the Nation’s P.L. 638 contracts for Law Enforcement (“LE”) and Criminal Investigation (“CI”). BIA refused to consider modifying the Model Deputation Agreement. The result was that the Nation’s law enforcement officers could not be issued SLECs for several years, despite the fact that BIA provided no direct law enforcement on the Navajo Nation. The Nation finally filed a lawsuit in October 2008 in order to enforce its position that, unless the Model Deputation Agreement was modified to be consistent with the Nation’s P.L. 638 LE and CI contracts, the Nation could not sign the Model Deputation Agreement. A settlement was reached in July 2010 whereby the Nation’s P.L. 638 LE and CI contracts were amended to incorporate a revised version of the Model Deputation Agreement, including a provision acknowledging FTCA coverage when the Nation enforces tribal law under its 638 contracts. The Nation is currently in the process of receiving SLECs for its personnel pursuant to the revised agreement.

Based on this costly experience, the Nation recommends to BIA that:

- A. BIA apply the Model Deputation Agreement to only those Indian tribes whose law enforcement services are currently provided by the BIA; and
- B. Instead of requiring Indian tribes who operate under P.L. 638 LE and CI contracts to sign the Model Deputation Agreement, incorporate, by negotiation, provisions of the Model Deputation Agreement into the tribes’ P.L. 638 LE and CI contracts, including explicit recognition that FTCA coverage is available to 638 contractors above and beyond the coverage provided under SLECs.

Detention Facilities in Indian Country

Due to the large size of the Nation in terms of population and geography, the Nation recommends that the BIA prioritize construction of one regional corrections/detention facility with treatment services on the Nation's Reservation, preferably in the central region of the Reservation. In the meantime, the Nation has begun construction of several justice centers with funding which the Nation independently obtained from several sources including the American Recovery and Reinvestment Act. In addition, BIA should provide funding that will also support rehabilitation services, particularly in light of tribes having an option to adopt longer sentencing.

Standards and Deadlines for Background Checks

Currently, the Nation obtains its own background checks on its Navajo Division of Public Safety personnel pursuant to its 638 contracts. The Nation utilizes the Utah Criminal Justice Information System ("CJIS") and the Arizona Department of Public Safety CJIS and receives information back in a much quicker time than the sixty days mandated by TLOA for the Office of Justice Services ("OJS") to respond to background check requests. As the Nation's 638 contracts acknowledge the Nation's responsibility to obtain background checks, the Nation believes it should continue to do so, and not be subject to a TLOA provision requiring OJS to obtain them. However, OJS should endeavor to report background checks to Indian tribes within the 60-day turn-around as mandated by TLOA.