

**Written Testimony
of the
Duck Valley Shoshone Paiute Tribes of Nevada & Idaho**

**Before the
United States Senate
Committee on Indian Affairs**

**Hearing on the
"Status of Tribal Fish and Wildlife Management Programs"**

**Submitted by
The Honorable Terry Gibson, Chairman**

June 4, 2003

INTRODUCTION & BACKGROUND

The Duck Valley Shoshone Paiute Tribes of Nevada & Idaho (Duck Valley) are federally recognized Tribes organized under the *Indian Reorganization Act of 1934*. The Duck Valley Indian Reservation (Reservation) straddles the Nevada and Idaho borders and has a total population of 1800 members. The Reservation consists of 280,000 acres and is geographically proximate to several non-federal, hydroelectric projects, that impact Duck Valley's natural, economic, cultural, and historic resources. The Reservation was established by executive orders dating from April 16, 1877, May 4, 1886, and July 1, 1910, within a region whose salmon supply was deemed to be inexhaustible for our people's benefit. On our Reservation, Duck Valley exercises certain rights of home rule and is responsible for the promotion of the economic and social welfare of its tribal membership. Duck Valley's interests are also based on the Bruneau and Boise Treaties (Treaties). Our ancestors signed these treaties with the United States. However, they were later left un-ratified.

The Treaties created a permanent homeland for Duck Valley with the condition that we are to continue our off Reservation activities, including established fishing patterns from the Reservation's Mary's Creek that flows to the Bruneau, Snake and Malad Rivers. Duck Valley has specific rights to utilize its off-reservation resources and we have an interest in the operation of the various hydroelectric projects surrounding our Reservation. These interests also arise under such statutes as the *National Historic Preservation Act*, the *Native American Graves Protection & Repatriation Act*, and the *American Indian Religious Freedom Act*.

IMPACT OF HYDROELECTRIC PROJECTS ON DUCK VALLEY

The central part of the Reservation is made up of wide, open valleys of Blue Creek and the Owyhee River(s). The Owyhee River, located in the Snake River corridor, traverses the Reservation flowing southeast to northwest and is the primary

drainage in Duck Valley. A small portion of the Reservation's northeast corner is drained by the Bruneau River. These rivers are critical to the livelihood of Duck Valley. Agriculture and ranching have been longstanding central components of the Reservation economy. We also operate three fishery reservoirs for public use along the Owyhee River, as well as miles of recreational fishing along the River. Most important, the Snake River-Owyhee River systems contain many sites that have religious, cultural, and archeological significance to us, that are impacted by the off Reservation hydroelectric projects. Specifically, the C. J. Strike, Malad, and Hells Canyon projects (Project Area) are of particular concern to us as they affect our resources both on and off the Reservation.

The Duck Valley people, historically, have used the Project Area before the establishment of American settlers. The Project Area served as a gathering and fishing location for the Duck Valley people, providing us with the opportunity to take fish and gather plants and animals in the area. The historical record indicates that large numbers of salmon which returned to the Project Area and which played such an important part in the lives of our people. Because of the abundance of the anadromous fish at the project area, this area became an important gathering place for our people and resulted in numerous camps in the area. In addition, the Project Area was important in the trade activities of the Duck Valley people with other Tribes and with the American settlers.

Idaho Power is currently in the process of applying to the Federal Energy Regulatory Commission's (FERC) for the relicensing of the C. J. Strike, Malad, and Hells Canyon and various smaller projects. As stated before, these projects impact Duck Valley's homeland and various interests as guaranteed under by Executive Orders and Treaties. Unfortunately, these impacts have not been fully recognized within the FERC licensing process. The current process does not fully and adequately address our concerns. Therefore, we believe that any "reform" of the relicensing process and, in particular, any proposed legislation which intends to shorten or expedite the licensing process must taken into account our interests.

S. 14, THE ENERGY POLICY ACT OF 2003

As noted above, there are substantial impacts by hydroelectric projects impacting our interests that have not been fully recognized within the FERC relicensing process. In particular, we have concerns with the hydroelectric relicensing reform provision in **S. 14, The Energy Policy Act of 2003**. We do not take issue with purpose of streamlining the relicensing process, making it less complex and lengthy, and thereby less costly. However, we believe that these goals must not outweigh our ability to protect our interests on being consulted and participating in the licensing process.

Current Law

The Federal Power Act, 16 U.S.C. § 797(e), authorizes FERC to issue or reissue a license to private parties, corporations, or any State or municipality for the operation of a hydroelectric project within any federal reservation after first determining that:

- the license will not interfere, or is not inconsistent with the purpose for which such reservation was created or acquired, and;
- the license contains conditions that the respective Secretary, under whose supervision such reservation falls, shall deem necessary for the *adequate protection and utilization of such reservation* (emphasis added).

The Federal Power Act defines a federal "reservation" to include tribal lands within Indian reservations. See 16 U.S.C. § 796(2). The Secretary of the Interior has the authority to establish the statutory baseline conditions for projects within an Indian reservation. For projects not within an Indian reservation but which affect tribal resources, operation of applicable federal law provides an avenue for Indian tribes to participate in the license approval process.

Recommendation

Because the hydroelectric provision in **S. 14** proposes changes federal law, Duck Valley is concerned that the new relicensing regime will result in unknown impacts on the Tribes' ability to meaningfully participate in relicensing and licensing proceedings. Alternatively, we support an approach that would statutorily require the affected federal agencies to consult with the Tribes in a manner that meaningfully addresses the Tribes' particular concerns. This inclusive and deliberate approach to this complex matter would provide a sound basis for Congress to change the law in a manner that accords proper respect for the unique legal and political relationship between Indian tribes and the United States.

CURRENT FERC REGULATORY REFORM EFFORTS

On February 20, 2003, FERC issued a Notice of Proposed Rulemaking (Proposed Regulations). To protect our rights and resources, we submitted comments to FERC and we continue to be actively involved with the on-going rulemaking process.

Under the current relicensing procedure, the interest and rights of Tribes are, at a minimum, protected. As we understand the initial motivation behind the Proposed Regulations was the desire by certain parties to expedite the handling of relicensing proceedings through the consolidation of certain portions of the existing procedure. While we believe that this is a positive goal and do not wish to obstruct progress in this regard, we note that this effort can only succeed if the rights of all parties – including Tribes – are protected in the regulatory process.

In our view, the Proposed Regulations do not streamline the current process, rather, they allow duplication of the process by not including all affected parties from the very beginning stages of the process. Moreover, the Proposed Regulations are also problematic in that they fail to adequately address important issues relating to the rights and interest of Tribes. We believe it is necessary for FERC to recognize these discrete tribal issues and resolve them before the Proposed Regulations can be successfully adopted. Thus far, this has not occurred, however, we will continue to be engaged in the process and work toward an acceptable resolution of these issues.

Listed below are the general comments and concerns we have submitted to FERC for consideration:

- The Regulations Must Recognize The United States' Trust Responsibilities to Indian Tribes, And Provide For Those Responsibilities To Be Properly Discharged In Licensing Proceedings.
- The Regulations Must Expressly Provide For Government-To-Government Consultation.
- The Regulations Must Expressly Provide For The Recognition Of Treaty Rights.
- The Tribe's Concerns Must Be Resolved In The Regulations (Not Referenced In The Preamble).
- The Tribe's Right To Provide Comments Relating To Studies Must Be Specifically Recognized In The Regulations.
- The Tribe Supports Establishment Of A Tribal Liaison.

For the Committee's review, we are also attaching to this testimony our full comments submitted to FERC. See Attachment A. We understand the Committee will be drafting legislation to address the issues raised in during this hearing. We strongly urge the Committee to consider incorporating these recommendations into the legislation as well as supporting our Tribe's comments.

FUNDING FOR TRIBAL PARTICIPATION IN FERC PROCEEDINGS

Clearly, hydroelectric projects have had a substantial impact upon our Reservation. In particular, they have dramatically impacted our subsistence, cultural resources, environment, and fisheries. Unfortunately, these impacts have not been recognized within the FERC licensing process. All too often (and with little notice) we are provided with limited periods to respond to massive filings and are given no resources by the applicant or FERC to do so.

As the Committee is aware, Federal agencies have a trust obligation to protect important tribal resources. Specifically, as noted in Executive Orders, Treaties, the Federal government assumed the obligation to protect on and off reservation resources for use by Duck Valley. This obligation was a material factor in Duck

Valley's willingness to locate onto the Reservation. Despite the importance of the resources within Project Areas to Duck Valley, and despite the Federal government's obligation to protect these tribal resources, no meaningful attempt was undertaken to consult with Duck Valley on a government-to-government basis prior to the initial licensing of these projects some 50 years ago nor for their relicensing. In particular, our trustee, the Bureau of Indian Affairs (BIA), represented our interests half a century ago and now provides no support for these critical relicensing issues.

With that said, the BIA has a line item in its budget for FERC activities on Indian reservations. However, this source of funding is very small and is limited to administrative costs of tracking FERC activity on reservations. No funding is provided directly to Tribes to participate in FERC proceedings. The cost burden of participating in FERC proceedings should not fall on the Tribes! We urge the Committee to address this issue so that we are equipped to adequately participate in FERC proceedings.

CONCLUSION

The Duck Valley Shoshone Paiute Tribes of Nevada and Idaho cannot stress enough the importance of protecting our natural and cultural resources. We urge Congress, FERC, the Department of the Interior and other federal departments and agencies to take our concerns seriously. We look forward to working with Congress and the Executive Branch in addressing our concerns. Thank you for the opportunity to present our written testimony regarding this important matter.

**Comments of the
Duck Valley Shoshone Paiute Tribes of Nevada & Idaho
Before the Federal Energy Regulatory Commission (FERC)
Concerning
Hydroelectric License Regulations under the Federal Power Act
April 21, 2003**

The Duck Valley Shoshone Paiute Tribes of Nevada & Idaho ("Tribe") provide the following comments regarding the proposed regulations identified in the Notice of Proposed Rulemaking issued February 20, 2003 ("Regulations" or "Proposed Regulations").

To place this matter in context, we wish to first make it clear that the Tribe is aware that the initial motivating force behind the Proposed Regulations is the desire by certain parties to expedite the handling of relicensing proceedings through the consolidation of certain portions of the existing procedure. While the Tribe believes that this is a positive goal, and does not wish to obstruct progress in this regard, we do note that this effort can only succeed if the rights of all parties (including Native American Tribes) are protected in the new process.

Unfortunately, in addition to the defects that this proceeding was originally instituted to cure, the current regulations are also defective in that they fail to adequately address important issues relating to Native American rights. Although remedying these defects may be perceived as inconvenient to those who are only attempting to streamline the hydroelectric licensing process, it will be necessary for the Commission to recognize these issues and resolve them before the Regulations can be successfully adopted. Thus far, this has not occurred.

The Tribe's Concerns Must Be Resolved In The Regulations (Not Just Referenced in the Preamble).

The Tribe appreciates the efforts of the FERC Staff in meeting with tribal representatives and the fact that many of the concerns that have been expressed by tribes in the workshops have been discussed in the Preamble to the Regulations. The Tribe further appreciates the appointment of a Tribal Liaison for this proceeding. However, just as we were disappointed that neither tribal organizations or individual tribes were consulted during the drafting of the initial version of the Regulations, we are equally disappointed that *none* of the concerns that were expressed by the tribes in the various workshops that occurred

throughout the country, found their way into the language of the actual Proposed Regulations.

This is particularly disconcerting in light of the fact that the Tribe (along with other tribes) spent a substantial amount of their limited resources to participate in these proceedings. Nevertheless, they see the comments of other stakeholders expressly incorporated in the Regulations, while theirs (and those of other tribes) are not. This is unacceptable. In order for their rights to be recognized and to have any chance of enforcement, the rights identified by the Native American participants in this proceeding must be specifically incorporated in the Regulations.

The Regulations Must Expressly Provide For Government-To-Government Consultation.

The Preamble expressly recognizes the need for government-to-government consultation between agencies and tribes. At paragraph 109 it states:

Through several Executive Orders and a Presidential Memorandum, departments and agencies of the Executive Branch have been directed to consult with Federally recognized Indian tribes in a manner that recognizes the government-to-government relationship between agencies and tribes. In essence, this means that consultation should involve direct contact between agencies and tribes, in a manner that recognizes the status of the tribes as governmental sovereigns.

One would think that this acknowledgement would indicate that the Proposed Regulations will therefore expressly include a reasonable attempt to incorporate a procedure for government-to-government consultation. This is not the case. Aside from the vague discussion contained in the Preamble, there is no attempt to include a provision providing for government-to-government consultation in the Regulations. The result is muddled ambiguity. The tribes are provided with nothing upon which they can rely to enforce their rights to consultation. This defect must be remedied.

The Tribe notes that, during the regional workshops, differing views were expressed as to what should actually constitute such government-to-government consultation. It is common for parties in rulemaking proceedings such as this to have some disagreements with regard to such important issues as this one. Nevertheless, such minor disagreements do not justify the FERC's failure to honor its responsibility to include a specific provision relating to government-to-government consultation in the actual Regulations. The Tribe suggests that such a provision could be drafted in a manner that would permit the parties to retain substantial flexibility, while also enabling them to comply with minimum (and

enforceable) standards. In this regard, the Tribe has drafted a proposed provision (see below) that it believes advances this goal.

Tribes have and will continue to participate in licensing proceedings. It should be noted that, even if FERC were not legally required to incorporate a provision relating to such consultation at this time (a position with which the Tribe disagrees), FERC's refusal to incorporate provisions expressly addressing (and providing guidance concerning) government-to-government consultation will leave a void that will only be filled with litigation over this issue. It would be much better to logically confront this challenge at this time, and deal with it.

It should be noted that other agencies have successfully confronted and dealt with this issue (rather than leaving the parties to cope with this unacceptable ambiguity).¹ It is time for FERC to do the same.

The Regulations Must Recognize The United States' Trust Responsibilities, And Provide For Those Responsibilities To Be Properly Discharged In Licensing Proceedings.

Through the issuance of hydroelectric licenses (for facilities both on and off reservations), the Commission, as well as other Federal agencies participating in these proceedings, exert substantial authority over tribal assets. As has been extensively discussed in the workshops conducted by the Commission, as part of the United States Government, the FERC (and these other Federal agencies) have fiduciary responsibilities to the tribes to assure that such authority is exercised in an appropriate manner. However, neither the current regulations nor the Proposed Regulations recognize the Commission's trust responsibility to tribes, or incorporate any procedures to assure that these responsibilities will be reviewed or honored. This must be remedied. The Proposed Regulations need to expressly incorporate a provision that will specifically address the potential impacts of the license on tribes and their assets, and assure that all trust obligations relating to these obligations have been complied with. Failure to do so will only assure continuous litigation and disputes over this area.

However, the Tribe recognizes that the nature and extent of these trust responsibilities may vary from case to case. Accordingly, the Regulations should provide sufficient flexibility to accommodate these variations. The modifications to the Proposed Regulations that the Tribe provides below would provide flexibility in this regard, while expressly recognizing that these responsibilities must be considered and dealt with in licensing proceedings.

¹ See, for example, Bureau of Indian Affairs Government-to-Government Consultation Policy, issued December 13, 2000 (attached).

The Regulations Must Expressly Provide For the Recognition of Treaty Rights.

Many of those commenting on the Proposed Regulations noted that substantial portions of the rights that must be considered in licensing proceedings (for example, those relating to fishing, hunting, and related pursuits) are often conferred by treaty. The Proposed Regulations must expressly provide for the recognition of these treaty rights and their incorporation in any studies, analysis, and in any licensing conditions. The modifications to the Proposed Regulations provided below would provide for the consideration of these treaty rights in the context of a Memorandum of Understanding to be executed between the FERC, other agencies and the Applicant, while providing the parties with sufficient flexibility to deal with these issues in the case of the particular project in which they are presented.

Expressly providing for the consideration of these issues in the Proposed Regulations will provide assurance to tribes that these matters will be expressly addressed, and will potentially limit litigation of these significant issues.

The Tribe's Right To Provide Comments Relating to Studies Must Be Specifically recognized in the Regulations.

The Tribe has consistently identified issues relating to the performance of studies. Tribes must have enforceable rights with regard to their input to such studies; particularly those relating to such items as fisheries, hunting rights, and related uses of areas and historic and cultural resources. This requirement needs to be incorporated in the Regulations. So far, this has not occurred.

The Tribe has also stated that such studies must permit accumulation of sufficient information to determine ongoing cumulative socio-cultural and economic impacts on the tribe. While noted in the Preamble to the Regulations, this suggestion was not incorporated in the Proposed Regulations. It should be so incorporated.

The Tribe has also noted that such studies should not be limited to archaeological sites or project boundaries, but shall consider total project impacts upon the tribe. Again, this observation was noted in the Preamble, but was not incorporated in the Proposed Regulations. This modification is also required.

The Tribe has also noted that tribal participants shall need additional funding to participate in the analysis and (where appropriate) the conduct of such studies. Tribes have finite resources, and often do not profit from such projects. A provision needs to be included in the Proposed Regulations expressly addressing this need for funding. Provisions should also be added to the Proposed Regulations providing for the procedures to be utilized for the contact of tribal members, and the involvement of the tribe in the determination of the methodology for such studies.

As previously stated by the Tribe, where possible, the applicant should be encouraged to retain tribal personnel for studies relating to tribal matters.

Finally, the Tribe has noted in its filed comments and during the Commission's workshops, that the Tribe has often not been consulted regarding the planning and work associated with historic and cultural studies. In some instances, these studies have proceeded without official notice to the Tribe. This has resulted in Applicant's providing studies that, while purporting to include tribal input, have not included the Tribe's official or considered comments regarding such matters. The Tribe has often identified deficiencies with such studies. These defects often relate to the studies' failure to consider oral histories, scholarly input from academics with whom the tribe has worked, and other data that may be readily available from tribal members. The tribes participation is necessary to assure that such input takes place. The Regulations must assure that such input occurs.

It should be noted that Applicants have an economic interest in confining these studies to limited analytic and geographic areas. However, simple common sense would dictate that such studies should be the best product that (through cooperation of the Applicant and the tribes) can be produced. The Proposed Regulations should require nothing less.

The Tribe's Proposed Modifications

Obviously, many opinions have been expressed as to how the suggestions offered by the tribes at the various workshops can be incorporated in the Proposed Regulations. However, the Tribe is not aware of any specific language that has been suggested in this regard by any of the other participants. In order to move this issue forward, the Tribe suggests that the following language be included in the Proposed Regulations, recognizing that the Commission has scheduled a drafting workshop for this purpose at the end of this month. The Tribe expects to participate in this workshop, and to offer further improvements and modifications to this language at that time.

The Tribe proposes that the following language be added to § 5.5 (2)(B) of the Proposed Regulations:

(ix) A meeting to be held between the FERC, other concerned agencies (including, but not limited to, those agencies possessing a trust obligation to the particular tribe), Applicant and each individual Indian tribe within 30 days of the notice. If necessary, additional meetings may be scheduled at the request of any participant.

This language provides for the setting of a date for the meeting between the impacted tribes, FERC and the Applicant.

In order to describe what shall occur at the tribal meeting, the Tribe proposes that the following language be added as a new § 5.5 (d) and (e) of the Proposed Regulations:

(d) *Meeting With Indian Tribes.* The purpose of the tribal meeting(s) will be to consider issues relating to studies concerning the tribe, compliance with legal obligations to the tribe, potential project impacts upon the tribe, and the addressing of such impacts and obligations during the application process, and in conditions to the license. Issues to be considered at the meeting shall include, but shall not be limited to:

Implementation of necessary Government-to-Government consultation procedures during this process. The tribal, FERC, and agency representatives shall agree upon procedures for ongoing Government-to-Government consultation during the licensing process. Such procedures shall provide the opportunity to the tribe to have input and provide recommendations on any action that may be taken that could impact the tribe's interest. Such procedures shall also provide that the tribe shall be advised of the rejection of tribal recommendations by the party making such rejection and the basis for such rejection. Unless otherwise agreed by the participants, such Government-to-Government consultation shall occur throughout the licensing process.

Discussion of trust responsibility obligations. At the meeting, (and any subsequent meetings required by any of the participants) the FERC representative, other agency representatives, and the tribal representatives shall identify potential trust obligations to the tribe, and shall agree upon how these obligations shall be investigated, considered and satisfied during the licensing process (and potentially in license conditions). The FERC shall direct the Applicant to undertake any of the studies and analysis, and conditions agreed to by the tribe, FERC or agency representatives.

Satisfaction of Treaty Rights and Other Legal. The participants shall agree upon the relevant tribal legal rights (including, but not limited to those arising under treaty, statute, Executive Order, judicial decision or common law) that must be considered during the proceeding and shall identify how these will be complied with during the licensing process and potentially in license conditions.

Conduct of Studies. The participants shall discuss and agree upon necessary studies relating to tribal matters. These studies shall include (but not be limited to) such items as fisheries, hunting rights, and related uses of areas and historic and cultural resources. Such studies shall permit accumulation of sufficient information to determine ongoing cumulative socio-cultural and economic impacts on the tribe. Such studies shall not be

limited to archaeological sites or project boundaries, but shall consider total project impacts upon the tribe. The participants shall agree upon adequate funding for the tribe to participate in such studies, as well as the procedures to be utilized for the contact of tribal members, and the involvement of the tribe in the determination of the methodology for such studies. Where possible, the applicant should be encouraged to retain tribal personnel for studies relating to tribal matters.

Cumulative Impact Assessment Methodology. The participants shall agree upon effective, meaningful research methods to assess past, present, and projected cultural and socioeconomic impacts on the tribe, so that ongoing cumulative impacts on tribes can be properly reassessed. The participants shall also agree upon necessary steps to protect, mitigate, and enhance natural resources relating to the tribe for the new license term.

Historic and Cultural Resources. The participants shall agree upon the appropriate steps required to comply with Section 106 of the NHPA and all other laws relating to preservation and protection of Native American historic and cultural resources. The participants shall also agree upon any steps necessary to maintain the confidentiality of such resources and to any procedures necessary to address the custody of artifacts, skeletal material and other cultural information (including that from prior archaeological and other research associated with the project).

(e) *Execution of Tribal MOU.* Within thirty (30) days of the conclusion of the tribal meeting or meetings provided for in § 5.5 (d), the participants shall execute a Memorandum of Understanding (“MOU”) for the purpose of documenting their agreement on the items specified in § 5.5 (d). To the extent necessary, FERC shall, in the MOU, direct the Applicant to comply with the terms of any agreement made with the tribe as the result of the government-to-government consultation or as the result of the government’s trust obligation to the tribe.

The Tribe further requests the inclusion of the following language as a new § 5.8(a) (4):

A description of all studies identified in the Tribal MOU executed pursuant to § 5.5 (e).

The Tribe further requests that § 5.13 be revised to read as follows:

Within 20 days of the Preliminary Determination, any Federal agency with authority to provide mandatory conditions on a license pursuant to FPA Section 4(e), 16 U.S.C. §797(e), or to prescribe fishways pursuant to FPA Section 18, 16 U.S.C. § 811, any state agency or Indian tribe with authority to issue a water quality certification for the project license under Section 401 of

the Clean Water Act, 42 U.S.C. § 1341, **any Indian tribe which is a party to an MOU which contains provisions relating to studies entered into pursuant to § 505 (e), or any Indian tribe for which studies have been considered during government-to-government consultations or for which such studies are relevant to treaty or trust obligations, or for which such studies are relevant to rights arising under statute, Executive Order, or judicial decision, may file a notice of study dispute with regard to the preliminary determination.**

The Tribe requests that the following language be added to §5.19(a)(2):

(2) Within 30 days of the date of any application for a license under this part, the Director of the Office of Energy Projects will notify the applicant if, in the Director's judgment, the application does not conform to the pre-filing consultation and filing requirements of this part, **and the MOU executed pursuant to § 505 (e)...**

This language should also be added after the words, "this part" in §§ 5.19 (a)(3), 5.19 (b)(1) and (2).

Tribal Liaison

The Tribe approves of the appointment of a Tribal Liaison to facilitate tribal participation in licensing proceedings. We believe that the implementation of this office will provide benefits to all parties, not just involved tribes. The Tribe looks forward to further defining the role of this individual (with other participants) at the drafting workshop at the end of month.

However, we do wish to note that, as expressed in our comments at the Portland meeting, we are concerned that the one liaison can function effectively in this role. With the large number of projects that the Commission handles, and the large number of tribes participating in such projects, the Commission should consider making this position a regional one, with at least four individuals identified for this purpose. We further note that the individual occupying this position should be provided with reasonable powers to facilitate contact and agreements between the parties. Otherwise, the position will have limited utility for all the parties.

Conclusion

We thank the Commission for this opportunity to provide these comments, and look forward to participating in the upcoming drafting workshops. However, we do wish to restate the seriousness that the Tribe ascribes to this proceeding, and to note that the Tribe does expect that provisions implementing remedies for the concerns of Native Americans will be expressly incorporated in the Proposed

Regulations. The Tribe will take all legal means necessary to assure that such incorporation occurs.