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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

MIKE TOYUKAK, et al.,	)	CASE NO. 3:13-CV-137-SLG
	)	
Plaintiffs,	)	<b><u>STATEMENT OF INTEREST</u></b>
	)	<b><u>OF THE UNITED STATES</u></b>
v.	)	<b><u>OF AMERICA</u></b>
	)	
MEAD TREADWELL, et al.,	)	
	)	
Defendants.	)	
_____	)	

Toyukak, et al. v. Treadwell, et al.

Case No. 3:13-CV-137-SLG

The United States respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517, which authorizes the Attorney General to attend to the interests of the United States in any pending suit. This case implicates the interpretation and application of the language minority requirements of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a (Section 203). Congress gave the Attorney General authority to enforce the Voting Rights Act, including Section 203, on behalf of the United States. *See* 42 U.S.C. §§ 1973j, 1973aa-2. Accordingly, the United States has a substantial interest in ensuring that Section 203 is properly interpreted and that it is vigorously and uniformly enforced.

## **I. BACKGROUND**

In the instant action, the Plaintiffs allege, among other things, that the Defendants have violated Section 203 by failing to translate all of the election materials and information provided in English into the covered native languages and appropriate dialects in the Dillingham Census Area (DCA), Wade Hampton Census Area (WHCA), and the Yukon-Koyukuk Census Area (YKCA). *See* ECF No. 21 at 12-15 and 17-18. Both the Plaintiffs and the Defendants have filed dispositive motions pursuant to Rule 56 of the Federal Rules of Civil Procedure, along with voluminous exhibits and supporting information. *See* ECF Nos. 47, 69, 82, 86, 96 (Defendants' motions and memoranda); and ECF Nos. 056, 74, 87, 97 (Plaintiffs' motions and memoranda).

In their motion for summary judgment, the Plaintiffs argue that there is no dispute of material fact regarding the failure of Defendants to translate all election materials and information provided in English into the covered native languages and dialects in the DCA, WHCA, and YKCA. *See* ECF No. 56 at 4-5; and ECF No. 55-59.

In their motions for summary judgment, the Defendants do not dispute that they are not translating all election-related materials and information. Instead, they argue that it is undisputed

that they are providing election materials and information in the covered languages to some degree. *See* ECF Nos. 47, 69, 82, 86, and 96. They then argue that the Plaintiffs have the burden of proof to show that the language programs at issue are not effective, or that there are additional reasonable steps that the Defendants must take to comply with Section 203. *See* ECF Nos. 47 and 69. During a hearing on May 30, 2014, Defendants further argued that the statutory proviso for historically unwritten Native languages,<sup>1</sup> in conjunction with the flexibility in the Department of Justice’s guidance for implementing Section 203,<sup>2</sup> enables the State to decide *whether* and *to what extent* information needs to be provided. *See* Transcript of Oral Argument on Motion for Summary Judgment at 41-42, *Toyukak v. Treadwell*, No. 3:13-CV-137-SLG (D. Alaska May 30, 2014) (hereinafter, “Transcript at \_\_\_”) (agreeing with the Court’s characterization of its position as being that the State “can figure out just what really is important for them to get and not provide all of the same information that might that people are otherwise entitled to if they have a written language”); *see generally id.* at 36-37.

The limited purpose of this Statement of Interest is to set out the Attorney General’s position that, contrary to Defendants’ argument, Section 203 requires providing *all* the election information in the covered minority languages. The statutory proviso for historically unwritten languages addresses only the question of *how* the required translation is to be accomplished, not *whether* it must be done. Moreover, this Court should draw no inference about the propriety of the State’s conduct from the fact that the Attorney General has not brought suit. Beyond

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<sup>1</sup> “*Provided*, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan Natives and American Indians, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.” 42 U.S.C. § 1973aa-1a(c) (emphasis in original).

<sup>2</sup> 28 C.F.R. Part 55

addressing those issues, this Statement takes no position as to whether summary judgment in favor of either party is appropriate.

**II. SECTION 203 REQUIRES THAT ALL ELECTION MATERIALS AND INFORMATION ALASKA PROVIDES IN ENGLISH ALSO BE PROVIDED IN THE LANGUAGE OF THE APPLICABLE MINORITY GROUP IN THE COVERED JURISDICTIONS**

Section 203 requires that “whenever any [covered jurisdiction] provides *any* registration or voting notices, forms, instructions, assistance or other materials or information relating to the electoral process, including ballots, *it shall provide them in the language of the applicable minority group* as well as in the English language.” 42 U.S.C. § 1973aa-1a(c) (emphasis added). The statutory language of Section 203 is clear and broad – any information related to the electoral process, including ballots, that is provided to voters in English also must be provided in the covered language, whether the method of providing the information is in written or oral form. Reported decisions are consistent with the plain language. *See U.S. v. Sandoval Cnty*, 797 F. Supp.2d 1249, 1251 (D. N.M. 2011) (characterizing as a violation of Section 203 the county’s “fail[ure] to furnish to covered voters all oral instructions, assistance, and other information related to voting in the [covered] languages”); *U.S. v. Metro. Dade Cnty*, 815 F. Supp. 1475, 1478 (S.D. Fla. 1993) (requiring the translation of a pamphlet concerning electoral information). The Director of the Census determines which jurisdictions must comply with Section 203 and that decision is not reviewable. 42 U.S.C. § 1973aa-1a(b). There is no question that Defendants are required to comply with Section 203 with respect to Alaska Native languages for the DCA, WHCA, and YKCAs, and have been covered continuously since 1975. *See* 40 Fed. Reg. 41, 827 (Sept. 3, 1975); 49 Fed. Reg. 25, 887 (June 25, 1984); 57 Fed. Reg. 43, 213 (Sept. 18, 1992); 67 Fed. Reg. 48, 871 (July 26, 2002); and 76 Fed. Reg. 63, 602 (Oct. 13, 2011).



The objective of Section 203 is to “enable members of applicable language minority groups to *participate effectively* in the electoral process.” 28 C.F.R. § 55.2(b) (emphasis added). In order to achieve that goal, two basic standards must be met: “(1) that materials and assistance should be *provided in a way* designed to allow members of applicable language minority groups to be *effectively informed of and participate effectively* in voting-connected activities; and (2) [t]hat an affected jurisdiction should take all reasonable steps to achieve that goal.” See 28 C.F.R. § 55.2(b) (emphasis added). With respect to the first criterion, the Attorney General has consistently taken the position that effective participation requires providing *all* election-related or voting-connected materials in the covered languages.

The second criterion involves the means by which those materials are provided including pre-Election Day outreach to the minority community, poll official training, bilingual oral assistance, and translated written materials. Contrary to Defendants’ position, the guidance to “take all reasonable steps” does not exempt a covered jurisdiction from its statutory obligation. Rather, it articulates the requirement that the jurisdiction take the necessary steps to provide the information contained in *all* election materials to covered groups in a form that enables protected voters to participate effectively.

The history of Section 203 enforcement confirms this point. The Attorney General has entered into court-ordered consent decrees and agreements to resolve Section 203 violations that consistently have required comprehensive translation of election-related materials; what differs from one setting to another is how jurisdictions have tailored those comprehensive programs to meet the unique needs of their language minority groups. See <http://www.justice.gov/crt/about/vot/litigation/caselist.php>. In particular, the consent decrees and agreements with jurisdictions in Indian Country require implementation of election information programs that are as

comprehensive in scope as those involving other language minorities; they differ only in that they obligate those jurisdictions to provide all election information and materials that are provided to voters in English orally in the native language (where the Native language is only oral or historically unwritten), rather than in written form.<sup>3</sup> Filed herewith as Exhibit 1 are consent decrees and agreements obtained by the United States in jurisdictions with covered languages that are historically unwritten.<sup>4</sup>

All of the consent decrees and agreements entered into by the United States, regardless of whether they relate to written or historically unwritten languages, provide for the translation and dissemination of *all* pre-election and election-day materials and information to voters in the covered languages. The dissemination of pre-election materials and information in the covered

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<sup>3</sup> Because of the statutory proviso for historically unwritten native languages, the Attorney General has not required *written* translations of election materials and information for *oral or unwritten* native languages in its consent decrees and agreements. However, where a written form of the relevant native languages exists, jurisdictions are free to translate information and materials in that written form to supplement its oral translation program where it can assist in outreach and training, and to help ensure consistent and accurate translations. The Attorney General agrees that in some circumstances providing written translations of election materials and information either for the voters or for the training of poll officials can help to ensure that LEP voters are able to effectively understand and participate in the electoral process. The provision of written translations, however, is not a substitute for trained bilingual voting coordinators and outreach workers developing and deploying the language program prior to election day, and bilingual poll officials assisting voters in the polls on election day. *See* the consent decrees and agreements cited *infra*.

<sup>4</sup> Exhibit 1\_A is a memorandum of agreement with Shannon County, SD (2010) for the Lakota language; Exhibit 1\_B is a consent decree with Bernalillo County, NM (1998) for the Navajo language; Exhibit 1\_C is a consent decree with Socorro County, NM (1994) for the Navajo language; Exhibit 1\_D is an order modifying and extending a 1993 consent decree with Cibola County, NM (2004) for the Keresan and Navajo languages; Exhibit 1\_E is a consent decree with the State of Arizona (1989) for the Navajo language; Exhibit 1\_F is an order extending and modifying past consent decrees with Sandoval County, NM (2007) for the Keresan, Navajo and Towa languages; Exhibit 1\_G is a consent decree with McKinley County, NM (1986) for the Navajo language; and Exhibit 1\_H is an agreed settlement and order with San Juan County, UT (1984) for the Navajo language.

languages is accomplished by airing the translations of election information on the radio, producing written or oral advertisements and notices, and deploying designated bilingual voting coordinators or outreach workers. The dissemination of materials and information in the covered languages on election day is accomplished by the written translation of information and materials at the polling place, including ballots, *and* the oral translation of those materials and information by bilingual poll officials. In its recent agreement with Shannon County, South Dakota, for example, the United States required that the County provide the electronic voting machine audio ballot in the Lakota language, as well as assistance through bilingual poll officials.

In short, jurisdictions have flexibility to use targeting and choose reasonable methods to enable effective participation by covered populations. Targeting allows a covered jurisdiction to expend its resources within the jurisdiction in a way that will reasonably reach the individuals the statute is intended to serve, not to give the jurisdiction a basis to completely disregard the coverage determinations made by the Director of the Census. *See* 28 C.F.R. 55.17.

For example, a village with a single polling site and a small number of limited-English proficient (LEP) individuals might need only one trained bilingual poll official present on election day to provide effective assistance, as opposed to having all poll officials working at that site be bilingual. Provision of that single bilingual poll official might be a sufficiently “reasonable ste[p]” that additional efforts would be unnecessary. In contrast, at a large polling site with a high number of LEP individuals, one bilingual poll official might not be sufficient and more than one bilingual poll official might be necessary for the jurisdiction to satisfy the “reasonableness” criterion. Similarly, a large city with a concentrated LEP population in a limited set of voting precincts might act reasonably in targeting its use of bilingual poll officials to the voting precincts with the greatest need, rather than hiring bilingual poll officials for each

of the city's precincts.

At the same time, the steps a covered jurisdiction takes towards compliance cannot be viewed as “reasonable” if the jurisdiction fails to provide effective assistance to voters regarding the content of the ballots. Hiring purportedly “bilingual” poll officials without ensuring their fluency level or training them to competently perform their job is not reasonable and does not reach the standard required by the Attorney General for Section 203 compliance. Reasonable steps for the jurisdiction to take in that situation would be to ensure fluency, competence and adequate training for the bilingual poll officials, so that they *are* able to provide effective assistance.

In light of the plain language of the statute and the longstanding position of the United States in enforcing the language minority requirements of the Voting Rights Act, Defendants are incorrect when they argue that they do not have to provide all information that is provided in English, in the covered Alaska Native languages, in the covered jurisdictions. *See* ECF Nos. 47, 69, 82, and 96; *See also* Transcript at 36-67. Section 203 requires that *any* election materials and information provided in English *must* be provided in the covered language, in order to achieve effective participation in the electoral process. The Defendants admit that they are not doing so. *Id.* Defendants cannot merely assert that they are making a reasonable effort and expect that effort to go unchallenged or unreviewed. The Alaska Native voters deserve more, and the law requires more.

**III. THE PROVISIO IN SECTION 203 REGARDING HISTORICALLY UNWRITTEN LANGUAGES ADDRESSES THE MEANS OF PROVIDING SUBSTANTIVE INFORMATION TO NATIVE VOTERS, AND PROVIDES NO EXEMPTION FOR PROVIDING THAT INFORMATION**

The Defendants argued during the hearing on summary judgment that the proviso in

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Section 203 for historically unwritten languages, coupled with the flexibility in the Department's guidelines for implementation of Section 203 by a jurisdiction, allows the Defendants to determine *whether* materials need to or should be provided and to *what extent* those materials have to be provided. *See* Transcript at 40-44, 49-50, 56-61. The Defendants further argued that, despite the coverage determination issued by the Director of the Census, they have discretion to decide whether there is a need for information in a particular area, and what information needs to be provided in the native language. *Id.* Defendants are wrong. Section 203 of the Voting Rights Act is clear any election information or materials provided in the English language must also be provided in the covered minority language. To be sure, Congress recognized that many of the Alaska Native or American Indian languages are historically unwritten. But it did not therefore exempt jurisdictions from providing all materials and information in those Native languages. Rather, it provided that, to comply with Section 203, those jurisdictions covered for unwritten languages are required to provide the translated information and assistance only in oral form.

Defendants' purported exemption finds no support in the text of Section 203 or in three decades of case law involving Indian country. For the last thirty years, the Attorney General has required and courts have approved the same compliance obligations for jurisdictions covered with respect to historically unwritten languages as for those covered with respect to written languages. The only difference lies in the recognition that a purely unwritten language cannot be required to be translated into written form. For covered jurisdictions in Indian Country, the Attorney General has treated the following types of practices as evidence that a jurisdiction has taken "reasonable steps": hiring a bilingual voting coordinator and/or tribal liaison; training bilingual poll officials who can explain the voting process in the Native language and orally translate the ballot into the Native language during the voting process; creating an advisory

group made up of members of the community; and translating, recording, and disseminating pre-election and election day information and materials in the Native language.<sup>5</sup> *See supra*, at 6 n.4.

To read the oral translation proviso as enabling the Defendants to provide less information to Alaska Native voters, or enabling Defendants to decide to not provide any information at all would establish two classes of voters based on the language they speak—one entitled to a complete set of election information and the other receiving only a subset. That result contradicts the plain language of the Voting Rights Act and years of precedent. Surely it is not what Congress intended when it added the Section 203 protections in 1975. Jurisdictions covered for Native languages, even though historically unwritten, must provide all election information and materials to their Native voters.

#### **IV. THIS COURT SHOULD DRAW NO INFERENCE THAT THE ATTORNEY GENERAL BELIEVES THAT ALASKA IS IN COMPLIANCE WITH SECTION 203**

In their materials filed in opposition to the Plaintiffs' motion for summary judgment, the Defendants assert that they must be in compliance with Section 203, because they have never been sued by the Attorney General. *See* ECF No. 69 at 4. They are mistaken. First, the fact that the Department has not brought suit should not be construed as an indication that the Attorney

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<sup>5</sup> The legislative history reinforces the Attorney General's view on the appropriate compliance standards. During the Senate hearings prior to passage of Section 203, Congress discussed the need to provide the same information and assistance orally for unwritten languages: "affected jurisdictions [would need] to provide in the language of the protected group any registration and election materials that are used by the public... [and] [i]f the language of the protected group is not a written language (as used by members of the group), then the requirement of printed materials in that language would not apply but oral assistance would be required." *Extension of the Voting Rights Act of 1965: Hearings on S. 407, S. 903, S. 1409, and S. 1443 Before the Subcomm. on Constitutional Rights of the S. Comm. of the Judiciary*, 94<sup>th</sup> Cong. 1016 (1975) (statement of Sen. John V. Tunney, Chairman, Subcomm. on Constitutional Rights).

General has approval of or disapproval of the Defendants' language program. Second, for many years, the Department has had significant interactions with the Defendants related to numerous voting matters that further confirm that the federal government has made no determination that Defendants are in compliance with Section 203.

The Civil Rights Division of the Department of Justice to whom the Attorney General has delegated responsibility for enforcing Section 203 has significant nationwide enforcement responsibilities under numerous federal statutes, including many requirements of the Voting Rights Act; the Uniformed and Overseas Citizens Absentee Voting Act; the National Voter Registration Act; the Help America Vote Act; and the Civil Rights Act, among others. The Department's resources are not unlimited. Thus, no inference can be drawn from the fact that it has not brought suit against a particular jurisdiction for a particular practice.

Indeed, that is precisely why many of the voting rights statutes the Department of Justice enforces, including the Voting Rights Act, provide for a private right of action. *See, e.g., Allen v. Board of Elections*, 393 U.S. 544, 557 (1969) ("The achievement of the [Voting Rights] Act's laudable goal could be severely hampered, however, if each citizen were required to depend solely on litigation instituted at the discretion of the Attorney General. ... The Attorney General has a limited staff and often might be unable to uncover quickly new regulations and enactments passed at the varying levels of state government. It is consistent with the broad purpose of the Act to allow the individual citizen standing to insure that his city or county government complies ..."); *Cf. Perkins v. Matthews*, 400 U.S. 379, 392 n.10 (1971) (noting "the acknowledged and anticipated inability of the Justice Department given limited resources to investigate independently all changes with respect to voting enacted by States and subdivisions covered by the [Voting Rights] Act."). Likewise, this was why Congress established a "dual enforcement



mechanism” for enforcing voting rights. S. Rep. No. 94-295, at 40 (1975). Congress has “on the one hand, given enforcement responsibility to a governmental agency, and on the other, has also provided remedies to private persons acting as a class or on their own behalf.” *Id.*

The Attorney General has engaged with Defendants regarding Section 203 compliance on several occasions. Defendants acknowledge that in 2011 the Attorney General informed the Defendants of their new and continuing obligations under Section 203, including which Census Areas, Boroughs and villages were covered for which language. *See* ECF No. 47-9, Exhibit I. That letter also described best practices for effective language programs. *Id.*

More pointedly, the Attorney General has expressed concern with the Defendants’ failure to provide translations in covered jurisdictions both with respect to election-related public service announcements (PSAs) and with respect to providing an audio ballot in the covered Native languages on the touch-screen voting machines. *See* ECF Nos. 87-2, Exhibit 330, 90-2, Exhibit 336, and 90-3, Exhibit 337.

The Attorney General’s concerns with Defendants’ compliance with Section 203 are further reflected by his certification of the Bethel Census Area in Alaska for federal election observers in 2009, since that certification rested on his finding that the “appointment of federal observers is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States.” *See* 74 Fed. Reg. 51, 320 (Oct. 6, 2009).

Therefore, the fact that the Attorney General has not brought a lawsuit against the Defendants under Section 203, to date, should not be taken as tacit approval of the Defendants’ language minority program.

## **V. CONCLUSION**

As set forth above, the statutory language of Section 203 of the Voting Rights Act is



clear: for covered jurisdictions like the ones involved in this lawsuit, any election information and materials provided to voters in English must be provided in the language of the applicable minority group as well. The State of Alaska must comply with Section 203 for the DCA, the WHCA, and the YKCA for the Alaska Native and American Indian languages.

Whether the Defendants have taken all reasonable and effective steps to meet their Section 203 obligations is a question of fact for the court to decide. But Defendants cannot claim a wholesale exemption from the obligation to provide all election-related materials in the Native languages. Defendants' obligations and challenges are no different than those required of other jurisdictions in Indian Country. What is reasonable and effective, what has worked for many jurisdictions, and what is required by other jurisdictions in Indian Country is set out in the consent decrees and agreements entered into by the Attorney General and approved by the courts. Those obligations attach by operation of Section 203; they are not contingent on Defendants having been sued by the United States.

Date: June 3, 2014

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2014, a true and correct copy of the foregoing STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA was served electronically on the following parties of record pursuant to the Court's CM/ECF system, which automatically sends notice of filing to all attorneys of record:

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Statement of Interest of the United States of America

Exhibit 1

(Exhibit 1\_A - Page 1)

## **MEMORANDUM OF AGREEMENT**

### **Between the United States of America and Shannon County, South Dakota**

This Memorandum of Agreement ("Agreement"), effective on the date signed below, is entered into by and between the United States of America ("United States") and the Shannon County, South Dakota, Board of County Commissioners and the Shannon County Auditor ("the County"), in their official capacities.

By letter dated September 28, 2009, the United States informed the County that it had authority to file suit against the County, alleging violations of Section 4(f)(4) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973b ("Section 4(f)(4)"), Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973aa-1a ("Section 203"), and Sections 301 and 302(a) and (b) of the Help America Vote Act ("HAVA"), 42 U.S.C. §§ 15481 and 15482(a) and (b), arising from the County's election practices and procedures as they affect American Indian residents of the county, including those American Indian residents who rely in whole or in part on the Lakota language.

The County, its agents, employees, contractors, successors, and all other persons representing the interests of the County (hereinafter, "the County and/or its agents") denies the United States' allegations and nothing in this agreement shall be a finding or an admission that the County or its agents has violated either the Voting Rights Act or HAVA.

The County and its agents have been required to provide election information and assistance in Lakota, pursuant to Sections 4(f)(4) and 203 for Lakota-speaking American Indians since 1976. This coverage has existed continuously since 1976 for Section 4(f)(4), and under Section 203 from 1975 through 1992, and from 2002 to the present. 42 U.S.C. §§ 1973b and 1973aa-1a(b)(2); 40 Fed. Reg. 43,044 (Sept. 18, 1975); 41 Fed. Reg. 783 (Jan. 5, 1976)

(corrected at 41 Fed. Reg. 1503 (Jan. 8, 1976)); 49 Fed. Reg. 25,887 (June 25, 1984); 57 Fed. Reg. 43,213 (Sept. 18, 1992); 67 Fed. Reg. 48,871 (July 26, 2002); 28 C.F.R. §§ 55.1, 55.5(a), and 55.6(a) and Part 55 Appendix. A declaratory judgment has not been issued by the United States District Court for the District of Columbia relieving Shannon County of its obligations under Section 4(f)(4). *See* 42 U.S.C. § 1973b(a).

“Limited-English proficient” is defined in Section 203 as “unable to speak or understand English adequately enough to participate in the electoral process.” 42 U.S.C. § 1973aa-1a(b)(3)(B); 28 C.F.R. § 55.6(b). The American Indian Sioux voting age citizens who speak English less than very well (hereinafter, “limited-English proficient”) are not sufficiently proficient in English to participate effectively in the electoral process when conducted solely in the English language. *See* 42 U.S.C. §§ 1973b(f)(1) and 1973aa-1a(a); 28 C.F.R. 55.2(b).

Sections 4(f)(4) and 203 require that all information about voter “registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots,” provided by the County and its agents in English must also be provided orally in the Lakota language to the extent necessary to allow language minority group members to be informed of and participate effectively in the electoral process and all voting-related activities. 42 U.S.C. §§ 1973b(f)(4) and 1973aa-1a(c). The requirements of Sections 4(f)(4) and 203 apply to all stages of the electoral process, “including, for example, the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process.” 28 C.F.R. § 55.15. Because the Lakota language is a historically unwritten language, the County and its agents are required to

furnish oral instructions, assistance, and other information relating to registration and voting in the Lakota language to limited-English proficient Lakota-speaking voters. 42 U.S.C. §§ 1973b(f)(4) and 1973aa-1a(c); 28 C.F.R. § 55.12(c).

The County has been subject to the requirements of Section 301 of HAVA since January 1, 2006, and Sections 302(a) and (b) of HAVA since January 1, 2004. 42 U.S.C. §§ 15481(d) and 15482(d). Under Section 301(a)(3) of HAVA, the County and its agents are required to provide in each polling place a voting system that is accessible for individuals with disabilities and provides the same opportunity for access and participation, including privacy and independence, as for other voters during elections for federal office. 42 U.S.C. § 15481(a)(3). The voting system must also provide alternative language accessibility pursuant to the requirements of Section 203. 42 U.S.C. § 15481(a)(4). Under Section 302(a) of HAVA, the County and its agents are required to offer provisional ballots and provide provisional voters with written information informing them of a free system available to ascertain whether their vote was counted during elections for federal office. 42 U.S.C. § 15482(a). Under Section 302(b) of HAVA, the County and its agents are required to post certain election-related information at each polling site during elections for federal office. 42 U.S.C. § 15482(b).

According to the 2000 Census, the County has a total population of 12,465, of whom 11,090 (89%) are American Indian (Sioux). The County has a total voting age population ("VAP") of 6,855, of whom 5,900 (86%) are American Indian Sioux. Of the American Indian Sioux voting age citizens in the County, 400 (6.8%) are limited-English proficient and speak the Lakota language.

The United States alleges and the County and its agents deny that the County and its agents have not complied with Sections 4(f)(4) and 203 in conducting public elections within the County by, among other things, failing to provide all election information and materials orally in the Lakota language and by failing to adequately recruit and train bilingual election officials to provide this information and assist limited-English proficient Lakota-speaking American Indian voters with absentee and early voting and at the polls on election day, in a manner necessary for effective participation in the electoral process.

The United States further alleges, and the County and its agents deny, that the County and its agents have not complied with Sections 301 and 302 of HAVA by, among other things, failing to provide in each polling place a voting system that provides the same opportunity for access and participation by voters with disabilities, including privacy and independence, as for other voters during elections for federal office, by failing to make operational the alternative language accessibility on voting systems, by failing to offer provisional ballots to voters when they meet specified criteria, by failing to provide provisional voters with written information notifying them of a free system available to ascertain whether their vote was counted, and by failing to publicly post certain required election-related information at each polling site during elections for federal office.

To avoid protracted and costly litigation, the parties, through counsel, have agreed that this matter should be resolved through the terms of this Agreement. Whenever the County or its agents enter into an election services contract with any other entity, political subdivision, or political party to conduct an election on behalf of the County or its agents, the County and its agents shall require such entity to agree to abide by the terms of this Agreement as if such entity



were a party to this Agreement with the United States.

Accordingly, it is hereby agreed by the parties that:

1. The County and its agents are committed to comply fully with all of the requirements of Sections 4(f)(4) and 203 of the Voting Rights Act and Sections 301 and 302(a) and (b) of HAVA in future elections. Therefore, the County and its agents stipulate and agree to:

(a) orally provide in the Lakota language “any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots,” that they provide in English, as required by Sections 4(f)(4) and 203, and to ensure that poll officials receive the necessary training to provide the same;

(b) ensure that poll officials receive adequate training regarding the use and functions of the accessible voting system, the need to ensure that the voter is able to vote privately and independently, and the availability of the Lakota audio ballot on the voting system and how to operate it, as required by Section 301 of HAVA;

(c) ensure that poll officials receive adequate training regarding the circumstances under which provisional ballots should be offered, and the need to provide written information to the voter that informs them of a free system available to them to ascertain whether their provisional ballot was counted, as required by Section 302(a) of HAVA; and,

(d) ensure that poll officials receive adequate training regarding the need to post all HAVA-required information, as required by Section 302(b) of HAVA.

Lakota Election Information Program Coordinator

2. The County and its agents shall designate and employ a part-time individual to coordinate (“Coordinator”) the County’s Lakota Election Information Program (“Program”) that

will incorporate the duties and responsibilities contained within this Agreement and focus on providing voter education, and election information and materials in the Lakota language for all elections administered by the County, and ensure proper implementation of procedures unique to HAVA for all elections for federal office administered by the County. The Coordinator shall understand and speak Lakota and English fluently and perform those responsibilities specified in this Agreement and closely related election activities, as may be provided in a separate written agreement of the parties.

3. The Coordinator shall be hired by the County after seeking recommendations from the President of the Oglala Sioux Tribe (hereinafter, "tribal president" or "OST") or his or her designee, and in compliance with the County's normal job selection process. The County recognizes that the ability of the Coordinator to work closely and cooperatively with the OST is an essential job-related requirement for the position.

4. The Coordinator shall be hired on a part-time basis and duties carried out according to the schedule attached hereto as Attachment A.

5. The Coordinator shall be fully briefed and trained by the contracting election official and the Secretary of State's Office, as appropriate, concerning the duties and responsibilities under this Program and all aspects of the federal, state and local election process, and shall attend all election seminars conducted by those offices.

6. The Coordinator shall oversee the County's Program generally and attend County Commissioner meetings on a regular basis, make him or herself available for presentation and comment at each tribal council meeting, and seek to attend and present election information at other public meetings and gatherings within the county, including but not limited to monthly

tribal district elderly meetings and elderly lunch program gatherings, as outlined in Attachment A.

7. In July of 2010 and February and July of 2012, the Coordinator shall work with the tribal president or his/her designee to identify other opportunities to disseminate election information to elderly American Indians within the county. During that time, the Coordinator shall compile a list of such possible meetings, functions or groups before whom presentations might be made, and determine a schedule for attendance. Soon thereafter, the Coordinator shall notify the tribal president or his/her designee and the United States, in writing, of the meetings and groups before which the Coordinator will appear.

8. The Coordinator shall work primarily out of a Satellite Elections Office established within the County. *See* paragraphs 11-13, *infra*. The parties recognize that the Coordinator may need to be present in the office of the contracting election official at times, but understand that during the month prior to any election, the Coordinator should be present in the County to provide services to elderly American Indian voters.

9. The Coordinator shall be available on election day in Shannon County to assist in whatever capacity upon direction from the contracting election official, such as obtaining a replacement for any last-minute bilingual poll official vacancy, transmitting supplies, calling in election related questions or issues, fixing voting machines, etc.

10. The County shall provide the Coordinator with support sufficient to meet the goals of the program, such as establishing a travel, equipment, and supply budget.

**Satellite Elections Office**

11. The County shall establish a Satellite Elections Office within the County at a

location convenient to the Lakota-speaking population, and with the cooperation and consent of the tribal president or his/her designee. The United States is available for consultation and suggestions regarding locations that have proven successful in other jurisdictions.

12. The Satellite Elections Office shall serve as the principal place of business for the Coordinator, as a library of written and recorded election information, as a distribution point for the dissemination of election information, and as a site for the performance of other election-related functions. The Satellite Elections Office shall contain a locked room or space to store materials such as registration forms, absentee ballot applications, and other supplies.

13. A supply of all forms, copies and materials collected or produced as a result of or necessary to complete the duties and functions of this Agreement, shall be maintained at each Satellite Elections Office.

#### **Intergovernmental Coordination**

14. The County shall request and accept all training, materials, and services available from the State of South Dakota in furtherance of the implementation of this program, and shall encourage the production of such materials by the State. The Coordinator shall remain in regular contact with the contracting election official for advice and assistance associated with the Program. The County shall encourage the assistance of such state personnel, and shall at all times welcome their presence to assist in implementation of this Program or in any phase of the election process.

15. The County is encouraged to work with other counties in South Dakota and the Secretary of State's Office, including the development of standard terminology for the translation of election materials into Lakota, and to obtain cost savings in the implementation of effective

American Indian language programs for elderly American Indian voters.

16. The County shall invite the tribal president or his/her designee to assist in all phases of the Program. To assist in uniformity and accuracy in the translation of election materials prior to dissemination of any translation, the County shall make such translations available to the tribal president or his/her designee and shall provide reasonable opportunity for review and comment.

17. The parties recognize the separate powers and authority of the tribal government, and nothing in this Agreement limits or infringes on tribal powers or authority. Accordingly, where this Agreement provides for the County to perform acts in consultation and cooperation with the government of the Oglala Sioux Tribe, the County is obligated to undertake all good faith and reasonable efforts to perform such consultation and obtain such cooperation. In the event consultation or cooperation is not possible, the County shall notify counsel for the United States promptly and prior to the date for the performance of the act or event. To avoid misunderstanding, the Shannon County Board of County Commissioners and the contracting election official agree to seek, within ten (10) days of the date of this Agreement and at least annually thereafter, meetings with the tribal president or his/her designee to discuss their respective governmental structures, schedules and decision-making processes, and the implementation of this Agreement.

**Translations and Dissemination of Election-Related Information**

18. All election-related materials, information, and announcements that the County plans to disseminate to voters, shall be orally translated into the Lakota language by the Coordinator or outside sources and recorded on audio tapes, video tapes or compact discs, as

appropriate, within ten (10) days of its availability to the County. These audio translations shall be disseminated to media outlets within the county and made available to elderly American Indian voters through the Coordinator.

19. Separate audio recordings shall be provided for each election-related subject matter so as to avoid lengthy recordings, and enable easy access to particular topics, and the County shall make every effort to ensure that recordings do not exceed five minutes in length. A library of currently applicable audio recordings, together with English transcripts or text, shall be maintained by the Coordinator at the Satellite Elections Office. Copies of all materials prepared pursuant to this Agreement shall be provided to the tribal president or his/her designee and the United States.

20. The County shall ensure the creation of accurate translations of election information, either by the Coordinator or by entering into written contracts with qualified persons. The County may use audio recordings provided by the State of South Dakota, and may coordinate the production of recordings with other counties within the State, but the County shall be responsible for addressing promptly and, if necessary, correcting or clarifying any translation upon an adverse report from the Coordinator, the tribal president or his/her designee, or the Lakota translator utilized by the State. The County shall seek the assistance of the State in identifying and retaining translators or subject matter experts to assist in translation of technical or complicated election-related materials. In the event the State fails to provide such translators or subject matter experts, or in the event a dispute as to translation arises, the County shall contact counsel for the United States.

21. The County, through the Coordinator, shall make a formal request and engage in all reasonable efforts to make oral presentations and ensure that the relevant subject matter recording(s) is played in at least one tribal council meeting, at least one monthly elderly meeting, and at least one elderly lunch gathering per month, as outlined in Attachment A and in accordance with paragraph 24, *infra*. At those meetings, the Coordinator shall be available to answer any questions concerning the subject matter of the tape or other election information or procedures discussed.

22. Election information shall be distributed in the Lakota language through the radio. Dissemination of these minority language announcements shall be in the form, frequency, and media best calculated to achieve notice and understanding equal to that provided to the English-speaking population and to provide substantially the same information. Each dissemination shall refer the audience to the Coordinator for detailed information.

23. The County's obligation to make such media announcements in the Lakota language shall be satisfied by "notice" announcements providing a brief general description of the subject matter and a reminder that detailed information is available with the Coordinator. The County shall not be required to broadcast in the Lakota language the full text of constitutional amendments, election proclamations, or other lengthy election-related announcements. The County shall distribute audio recordings for broadcast on KILI Radio in Porcupine.

24. The County shall disseminate the following election information in the Lakota language through taped radio broadcasts (and presentations discussed in paragraph 21, *supra*). The Coordinator shall transmit the oral translations of notices and information to KILI Radio

starting on the same date as required by state law for written notices or as listed below if not required by state law, with specific directives to air those notices as Public Service Announcements ("PSAs") at least once a day for the information contained in paragraphs (a) through (b) and twice a week for the information contained within paragraph (c):

(a) Voter Registration (One week prior to registration deadline for the June 8, 2010 election and 30 days prior to registration deadline for all other elections): Voter registration procedures; voter registration cutoff dates, voter registration locations; the availability of voter registration opportunities at monthly elderly meetings; and the name of the Coordinator who can assist the elderly in registering to vote.

(b) Absentee Voting (during absentee period for June 8, 2010 election and 10 days prior to and during absentee period for all other elections): Absentee voting procedures; the absentee ballot application and ballot; the deadlines of same; the availability of the Coordinator to assist elderly voters in completing their ballot application and their ballot; and the times and locations for doing so.

(c) Prior to Election Day (During the thirty (30) days leading up to the June 8, 2010 election and during the sixty (60) days prior to Election Day for all other elections) -Information regarding the following: the date of the election; polling place hours; locations of polling places; the offices on the ballot, and the names and party affiliation of each candidate; a brief summary of each ballot proposition; polling place procedures; the identification requirement and affidavit option; how to cast a vote; provisional ballots, including what they are, when they are used, and how to cast one; the availability of written information that informs provisional voters of a free system through which they can ascertain whether their vote was counted; the availability of a



voting machine that is accessible to persons with disabilities and allows them to vote with privacy and independence and provides the audio ballot in Lakota; the availability of trained bilingual Lakota-speaking poll officials at the polls to provide Lakota language assistance; the need for bilingual Lakota-speaking individuals to serve as poll officials and provide Lakota language assistance to elderly American Indian voters; and the information contained in the 2"x3" poster created by the Secretary of State required to be posted in the polls on election day (i.e. general information on voting rights, who to contact if these rights have been violated, information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation).

(d) Any other election information provided or published in English, according to the same deadlines or publication dates as required for English.

25. The Coordinator shall coordinate publicity efforts with tribal president or his/her designee and utilize same for the training of poll officials and conducting voter education to elderly Lakota-speaking American Indian voters in the County.

**Lakota Language Assistance**

26. Lakota language assistance shall be available at all polling places through trained bilingual personnel who are able to understand and speak Lakota and English fluently. The County shall consult with the tribal president or his/her designee to identify bilingual individuals qualified to work at the polls.

27. Consistent with *S.D. Codified Laws* § 12-15-1 and 12-15-2, at least thirty (30) days prior to the election, the County Auditor and Coordinator, shall recruit, hire, and assign bilingual poll officials, including individuals to serve as a backup in the case of a cancellation, to

provide effective language assistance to limited-English proficient, elderly American Indian Lakota-speaking voters in each precinct on election day. The parties recognize that the County may need to make adjustments to precinct boards by hiring and assigning additional poll officials, within thirty (30) days prior to the election, consistent with *S.D. Codified Laws* § 12-15-1 and 12-15-2. The Coordinator shall conduct oral testing of the bilingual poll officials' language ability, in Lakota, to ensure the effectiveness and confidence of those individuals.

28. The bilingual, Lakota-speaking poll officials shall be prepared to offer to every elderly Lakota-speaking American Indian voter, orally in Lakota and without being asked to do so by the voter, election information contained in the English signage located inside and outside the polling sites, the contents of the ballot, and the availability of the AutoMark electronic voting system. Each polling place on election day shall have a bilingual poll official trained to operate the AutoMark electronic voting system.

**Poll Official Training and Election Day Procedure**

29. At least seven (7) days prior to the election, at a location within the County and in the Lakota language, in addition to any required State training, the County shall train all poll officials and other election personnel present at the polls regarding the following:

- (a) Election day procedures including the identification requirement, the contents and issues appearing on the ballot, and the necessary signage to be posted;
- (b) The requirements of Sections 4(f)(4) and 203, including the legal obligation and implementation of that obligation to provide language assistance and election information to elderly American Indian voters in Lakota, and the requirement that poll officials

be respectful and courteous to all voters regardless of race, ethnicity, color, or language abilities and to avoid inappropriate comments;

(c) The provisions of federal and state law regarding assistance to voters, including who can assist voters, when and how.

(d) The provisions of Section 301 of HAVA, including the requirement to ensure an electronic voting system, such as the AutoMark, is operational in each polling place and is accessible to persons with disabilities in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters; and includes a working Lakota audio ballot;

(e) The provisions of Section 302(a) of HAVA, including having provisional ballots available at each polling place, the circumstances in which voting by provisional ballot is appropriate, the procedures for completing a provisional ballot, the need to give provisional voters written information that informs them of a free system by which they can ascertain whether their vote was counted and, if not, why not; and,

(f) The provisions of Section 302(b) of HAVA, including posting all HAVA-required signs so that all voters can easily view such signs in each polling location.

In addition to the general training for poll officials, the County shall train all bilingual poll officials on Lakota language election terminology, including translation of the entire ballot, voting instructions, information on signs to be posted in the polls, and other election-related issues. Further, the County shall train all bilingual poll officials on Lakota language terminology on voting machine operation, including the operation of electronic voting systems that are accessible for voters with disabilities. Such training shall include the use of audio, video or

compact disc recordings of the entire ballot in the Lakota language. A copy of all such recordings shall be provided to each poll official at the training, along with an English language sample ballot, and the County shall ensure that the poll officials have access to appropriate equipment for playing the recordings during the period prior to the election. The County shall maintain a written record of each training session, including the date, time, location, training personnel involved, and the names of all poll officials attended.

30. The Coordinator and poll officials shall monitor the polls during the course of each election to identify and record each instance in which unreasonable delays occur either in voting or in translation of the ballot. Where such delays occur, the County shall take whatever steps are necessary to ensure that such delays do not recur in future elections.

31. Poll officials in each precinct shall maintain a record of all persons who come to the polls but are not allowed to vote in that precinct. This record shall include each voter's name, race, address, the reason the person thought he or she was eligible to vote at that site, the reason for not permitting the person to vote, and whether the voter was offered a provisional ballot.

32. A list of the persons not permitted to vote and the reasons given shall be provided to the Coordinator. The Coordinator shall contact each such person who is otherwise eligible to vote and provide an opportunity for that person to register to vote at the earliest possible time, and create a record containing the date of contact and registration, and any additional training, publicity, or other steps that the coordinator believes would be useful to prevent a similar incident in the future.

#### **Voter Registration**

33. The County shall provide the Coordinator with necessary voter registration lists, forms, maps and materials, and these materials shall be maintained by the Coordinator in the Satellite Elections Office.

34. The contracting election official shall be available to offer assistance, expertise, and training regarding voter registration to those employees at the voter registration agencies designated pursuant to Section 7 of the National Voter Registration Act of 1993, ("NVRA"), 42 U.S.C. § 1973gg-5.

**Absentee and Early Voting**

35. The County is committed to maximizing absentee voting opportunities for elderly Lakota voters who are limited-English proficient. The Coordinator shall have an adequate supply of absentee ballot applications and be authorized to deliver those applications to elderly American Indian voters and provide language assistance for their completion. The Coordinator shall be authorized to provide language assistance to elderly American Indian voters in completing their absentee ballots and assist in the delivery of those ballots to the U.S. Mail.

36. The contracting election official shall immediately notify the Coordinator when absentee ballot applications have been rejected and the Coordinator shall assist those persons in correctly completing a new application.

37. If the County conducts early voting, the County shall hire at least one trained bilingual poll official to be present on site and provide an operational voting machine on site during the early voting. Notice regarding the early voting dates, times, locations, and the presence of bilingual poll official(s) and voting machine(s) with an audio ballot in Lakota, shall

be published in the Lakota language in the manner and frequency set forth in paragraphs 18-23, 24(b) and 25, *supra*.

#### **Program of List Maintenance**

38. Whenever a voter in the County is scheduled to be removed from the voter rolls on the basis of a change of address, the name of the voter shall be given to the Coordinator. In the event the contracting election official determines that the voter is eligible to vote, the Coordinator shall contact that individual and offer assistance in updating that individual's registration.

#### **Election Monitoring**

39. To ensure effectiveness of this Agreement, the County understands that the United States may deploy personnel to monitor the elections conducted in the County during the life of the Agreement. The County recognizes the authority of the election monitors to observe all aspects of voting conducted in the polls on election day, including the authority to view County personnel providing assistance to voters during voting, except where the voter objects. Any monitors deployed by the United States shall immediately introduce themselves to poll officials upon entering the polling place, and to any other County personnel as they come to the attention of the monitors, and provide credentials upon request.

#### **Evaluation of the Program**

40. The parties recognize that regular and ongoing reassessment may be necessary to provide the most effective and efficient Election Information Program and to ensure compliance with the Voting Rights Act and the Help America Vote Act. The County shall evaluate the Program after each election to determine which areas are functioning well, those that need

improvement, and how to implement needed improvements. The United States shall provide similar input to the County after each election, and be available to confer regarding adjustment and changes to the Program. The Program may be adjusted at any time upon joint written agreement of the parties, and subject to the preclearance requirements of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c.

**Record Keeping and Reporting Requirements**

41. Throughout the duration of this Agreement, the County shall maintain at the office of the contracting election official and the Satellite Elections Office, written records of all actions taken pursuant to this Agreement, all written and audio materials produced, and statistical records, including but not limited to:

(a) Voter Registration – The total numbers of registered voters and new registrations by precinct on a monthly basis, including where and by whom they were registered, including voter registration agencies;

(b) Voters Removed from Voter Rolls - During each list maintenance period, by precinct: the total number of voters removed from voter rolls for failure to vote and date of removal; the total number of voters reinstated by returning post cards and dates of reinstatement; and the total number of voters validated by other means;

(c) Absentee Voting - For each election, per precinct: The total number of mail requests for absentee ballots and number of absentee votes cast pursuant to mail requests; the total number of absentee or early voting ballots cast in person at the office of the contracting election official; and

(d) Publicity - For each election, the date, time, place and substance of each: radio; written publication and posting; presentation by the Coordinator, including the occasion for the presentation and the approximate number of persons in attendance; instance in which an election-related recording was played, including the occasion for same and the approximate number of persons in attendance.

42. The County shall also maintain and produce copies, if requested by the United States, of these records, recordings and papers, along with all other records related to voter registration and acts requisite to voting, as otherwise required by federal law.

43. Throughout the duration of this Agreement, at least 30 days before each County-administered election, the County, shall provide to counsel for the United States:

- (a) the name, address, and precinct designation of each polling place;
- (b) the name and title of each poll official appointed and assigned to serve at each precinct;
- (c) a designation of which poll officials are fluent in English and Lakota;
- (d) copies of all signs and written information provided at polling places; and,
- (e) copies of all recorded audio translations of notices, ballots or other election-related information to be used by the County or any other entity, and a schedule of the expected dates and times for broadcasting or dissemination of the information contained therein.

The County shall promptly supplement this information as any changes develop or new information is received. Within twenty-one (21) days after each such election, the County shall provide to counsel for the United States any updated report regarding changes in these items as



well as information about all complaints the County received at the election regarding language or assistance issues, by electronic mail to counsel of record, facsimile, or express mail to the following address:

[Counsel of Record]  
Voting Section, Civil Rights Division  
United States Department of Justice  
1800 G Street, N.W., Room NWB-7254  
Washington, D.C. 20006  
Facsimile: (202) 307-3961

The United States is willing to supply its billing number for express mail to the County for transmittal of information in this manner. Any other notice to the United States shall be conducted in this same manner.

Notice or other transmittal of information to the County by the United States shall be sent by electronic mail to counsel of record, facsimile, or express mail to the following address:

[Counsel of Record]  
Fall River County State's Attorney  
906 N. River St.  
Hot Springs, SD 57747  
Facsimile: (605) 745-3855

The parties shall notice each other of any change in the above addresses within ten (10) days of said change.

44. For the life of the Agreement, the County shall compile a Quarterly Report of the efforts taken pursuant to this agreement during the preceding three months, an assessment of the effectiveness of each phase of the Program, and a recommendation of the steps to be taken, if any, to improve the participation of elderly, limited-English proficient voters. Copies of the report shall be provided to the United States and the tribal president or his/her designee.

### **Other Provisions**

45. Nothing in this Agreement changes, limits, or absolves the responsibilities and obligations of the County under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c, to obtain preclearance of all changes affecting voting before implementation, or under any other federal law. The County shall promptly submit all proposed changes affecting voting for review under Section 5 of the Voting Rights Act.

46. Defendants shall, within twenty (20) days after entry of this Agreement, submit to the Attorney General for administrative review under Section 5 of the Voting Rights Act, the voting changes occasioned by this Agreement.

47. This Agreement is final and binding between the parties and their successors in office. It shall remain in effect through February 28, 2013.

48. This agreement is made with the understanding that this is the beginning of a positive working relationship between the parties which shall continue in the future to ensure that each successive election is better than the last. The United States agrees to provide written feedback regarding any concerns it has with the County's implementation of the terms of this Agreement. The parties shall then confer in an attempt to resolve those concerns. The County shall be given a reasonable opportunity to cure those concerns. Both parties to the agreement are committed to making this relationship successful.

49. If the United States concludes that the County or its agents are in substantial and material breach of this agreement, upon notice by the United States, the County shall have thirty (30) days to cure the alleged breach. Prior to filing any action in federal court to enforce the terms of the agreement herein, the County's designee(s) and the United States' designee(s) shall

meet face-to-face to resolve any disagreements and/or disputes concerning such breach. In the event the alleged breach is not cured, the United States reserves the right to file an enforcement action in federal court.

50. Nothing in this agreement shall be construed so as to place personal liability upon any Shannon County official, Fall River County official, poll official, contracted agent, contracted election official, and or any election official in their personal capacity.

51. The parties recognize that the program outlined herein will receive funding through HAVA reimbursement from the South Dakota Secretary of State's Office as described in Attachment B.

Agreed to this 23 day of April, 2010

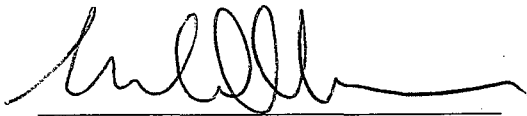
AGREED AND CONSENTED TO:

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Attorney General

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division


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**MEMORANDUM OF AGREEMENT**  
**Between the United States of America and Shannon County, South Dakota**

**ATTACHMENT A**

**Shannon County, South Dakota, Election Information Program**  
**Voting Rights Coordinator (VRC) Duties/Timetable for Elections:**

**June 8, 2010 and November 2, 2010**

**June 5, 2012 and November 6, 2012**

**Primary Election June 2010:**

**April**

**Third week in April:**

- County Commissioners and/or County Auditor will interview applicants and hire a VRC no later than April 23, 2010.

**Last week in April:**

- Attend training session in Hot Springs with County Auditor related to election procedures generally, duties of the VRC, and the requirements of the Memorandum of Agreement.
- Contact the Secretary of State to obtain their Lakota translations of the ballot, and the voter registration notice. Upon receipt of that information, begin duplicating those translations on tapes or other appropriate media for use by KILI radio and outreach efforts, as set out in paragraphs 18-25 of the Agreement.
- Begin translations of procedures and information set out in paragraphs 24(a) and (b) of the Agreement in the manner set out in paragraphs 18-25 of the Agreement.
- Begin preparing the dissemination directions and packets for KILI radio to eventually accompany the translations.
- Send letter to the Tribal President or her designee requesting a list of names of potential bilingual Lakota-speaking poll officials for election day.
- Request KILI radio to publicize the County's hiring of the Coordinator, including his or her name and duties related to elderly, Lakota-speaking voters, and to advertise for bilingual Lakota-speaking poll officials.

**May**

**First week in May:**

- Create and/or update translations and record them on tapes, along with those received from the Secretary of State. Translations should include that information contained in paragraph 24 of the Agreement, and in the manner described in paragraphs 18-25 of the Agreement.
- Schedule elderly meetings to attend the second and third weeks in May.
- Finalize and send dissemination directions/packets/applicable translations to be sent to

KILI radio of all translated information, including advertisements about the Coordinator's presence at elderly meetings during the second and third weeks in May to present election information and assist with absentee voting, and the need for bilingual poll officials.

- Begin recruiting bilingual poll officials including meeting with Tribal President or designee, coordinating with Shannon County commissioners, and advertising on KILI radio.
- Assist elderly Lakota-speaking voters in filling out registration applications, absentee ballot applications and absentee ballots.

#### Second week in May

- Conduct one (1) elderly-focused meeting per tribal district (6 total meetings) to present election information in Lakota, including: absentee ballot procedures; assistance in completing absentee ballot applications; assistance in filling out absentee ballots; dates of primary election; offices on ballot; the identification requirement; the presence of bilingual poll officials at the polls to provide Lakota language assistance; the availability of Lakota audio on voting machine; and provisional ballot information, etc.
- Confirm that publication packets have been received by KILI Radio and that publications are on track according to the Agreement, particularly regarding absentee voting, the upcoming elderly meetings to be attended by the Coordinator, the date of the election, and the presence of bilingual poll officials at the polls.
- Finalize bilingual poll official recruitment and hiring, including a list of backup bilingual poll officials.
- Prepare for bilingual poll official translation training.

#### Third Week of May:

- Conduct one (1) elderly-focused meeting per tribal district (6 total meetings) to present election information in Lakota, including: absentee ballot procedures; assistance in completing absentee ballot applications; assistance in filling out absentee ballots; dates of primary election; offices on ballot; the identification requirement; the presence of bilingual poll officials at the polls to provide Lakota language assistance; the availability of Lakota audio on voting machine; and provisional ballot information, etc.
- Continue to finalize bilingual poll officials and prepare for bilingual poll official translation training.
- Ensure that KILI Radio is broadcasting according to the agreement, with particular emphasis on the contents of the ballot, absentee voting and the presence of bilingual poll officials at the polls.

#### Last full week of May:

- Continue outreach to elderly Lakota-speaking voters regarding polling places, hours the polls are open, the presence of bilingual poll officials at the polls on election day to provide Lakota language assistance and the names of those officials, and the contents of the ballot.
- Train bilingual poll officials on the Lakota translation of the entire ballot content and

election procedures, how to provide effective Lakota language assistance at the polls, and how to assist elderly Lakota-speakers in using the voting machines.

- Ensure that KILI Radio is broadcasting the absentee voting and other election information according to the Agreement.

Anytime during the Month:

- Maintain regular office hours in satellite elections office when not making field visits to provide elderly Lakota-speaking voters with election information, and absentee voting assistance.
- Keep reports up to date.

June

Full Week Prior to Election Day:

- Maintain regular office hours in satellite elections office when not making field visits to provide elderly Lakota-speaking voters education, information, and absentee voting assistance.
- Assist elderly Lakota-speaking voters in filling out absentee ballots.
- Ensure that KILI Radio is broadcasting the absentee voting and other election information according to the Agreement.

Election Day:

- Visit polling places to ensure that bilingual poll officials are present and engaged with voters providing election information in Lakota, and that other procedures are in place, including voting machines are operational, provisional ballots and verification information is available and being used, and signage is properly posted.

Week After the Election:

- Compile Post-Election Report.

**General Elections November 2010 and 2012:**

July

- Attend training sessions in Hot Springs with County Auditor (training on: election procedures generally; duties of the Coordinator; and requirements of Memorandum of Agreement.
- Meet with Tribal President or designee to identify opportunities to disseminate election information to elderly Lakota-speaking county residents.

August

Anytime during the Month:

- Attend 2 elderly-focused meetings per tribal district (12 total meetings) to present

election information in Lakota, including: registration procedures; registration deadlines; assist in filling out registration applications; dates of primary election; and the presence of bilingual poll officials at the polls. Inquire as to suggestions for bilingual poll officials.

- Keep reports up to date.

First Two Weeks In August:

- Create/Update translations and record them on tapes. Translations should include that information contained in paragraph 24 of the Agreement, and in the manner described in paragraphs 18-25 of the Agreement.

- Start recruitment of bilingual poll officials including meeting with Tribal President or designee and coordinating with Shannon County commissioners.

Last Two Weeks in August:

- Prepare dissemination directions/packets/applicable translations to be sent to KILI radio; these should include registration and absentee voting procedures and deadlines, along with other information defined in the Agreement.

September

Anytime during the Month:

- Attend 2 elderly-focused meetings per tribal district (12 total meetings) to present election information in Lakota, including: registration procedures; registration deadlines; assistance in filling out registration applications; absentee ballot procedures; assistance with completing absentee ballot applications; dates of primary election; offices and propositions on the ballot; the availability of bilingual poll officials at the polls; and the availability of a Lakota audio ballot on the voting machine.

- Continue recruitment of bilingual poll officials.

- Keep reports up to date.

- Ensure KILI Radio is broadcasting information as set forth in the Agreement throughout the month.

First Week of September:

- Obtain translations from Secretary of State and put translations on tapes.

- Confirm that publication packets have been received by KILI Radio and that all is on track for publication according to the Agreement.

October

Anytime during the Month:

- 2 elderly-focused meetings per tribal district per month (12 total meetings) to present election information in Lakota, including: absentee ballot procedures; assistance in completing absentee ballot applications; assistance in filling out absentee ballots; dates of primary election; offices and propositions on ballot; the identification requirement;



presence of bilingual poll officials at the polls; the availability of Lakota audio on voting machine; and provisional ballot information, etc.

- Assist elderly Lakota-speaking voters in filling out absentee ballot applications and absentee ballots.
- Maintain regular office hours in satellite elections office when not making field visits to provide elderly Lakota-speaking voters with election information, and absentee voting assistance.
- Keep reports up to date.
- Ensure KILI Radio is broadcasting information as set forth in the Agreement throughout the month.

First Week of October (2010, 2012):

- Finalize bilingual poll official recruitment and hiring, including a list of backup bilingual poll officials.

Second Week in October (2010); Second and Third Weeks of October (2012):

- Prepare for bilingual poll official translation training.

Third Week of October (2010); Fourth Week of October (2012):

- Outreach to elderly Lakota-speaking voters regarding polling places, hours the polls are open, the presence of bilingual poll officials at the polls on election day to provide Lakota language assistance and the names of those officials, the contents of the ballot.
- Train bilingual poll officials on translation of the entire ballot content including offices, parties, and propositions; training Lakota language assistance on procedural issues; and training on how to assist elderly Lakota-speakers in using the voting machines.
- Ensure that KILI Radio is broadcasting the absentee voting and other election information according to the Agreement.

November

Full Week Prior to Election Day:

- Maintain regular office hours in satellite elections office when not making field visits to provide elderly Lakota-speaking voters education, information, and absentee voting assistance.
- Assist elderly Lakota-speaking voters in filling out absentee ballots.
- Ensure that KILI Radio is broadcasting the absentee voting and other election information according to the Agreement.

Election Day:

- Visit polling places to ensure that bilingual poll officials are present and engaged with voters providing election information in Lakota, and that other procedures are in place, including voting machines are operational, provisional ballots and verification information is available and being used, and signage is properly posted.

Week After the Election:

- Compile Post-Election Report.

**Primary Election June 2012:**

February

- Attend three training sessions in Hot Springs with County Auditor (training on: election procedures generally; duties of the Coordinator; and requirements of Memorandum of Agreement).
- Meet with Tribal President or designee to identify other opportunities to disseminate election information to elderly Lakota-speaking county residents.

March

Anytime during the Month:

- Attend 2 elderly-focused meetings per tribal district (12 total meetings) to present election information in Lakota, including: registration procedures; registration deadlines; assist in filling out registration applications; dates of primary election; the presence of bilingual poll officials at the polls. Inquire as to suggestions for bilingual poll officials.
- Keep reports up to date.

First Two Weeks In March:

- Create translations and record them on tapes. Translations should include that information contained in paragraph 24 of the Agreement, and in the manner described in paragraphs 18-25 of the Agreement.
- Start recruitment of bilingual poll officials including meeting with Tribal President or designee and coordinating with Shannon County commissioners.

Last Two Weeks in March:

- Prepare dissemination directions/packets/applicable translations to be sent to KILI radio; these should include registration and absentee voting procedures and deadlines, along with other information defined in the Agreement.

April

Anytime during the Month:

- Attend 2 elderly-focused meetings per tribal district (12 total meetings) to present election information in Lakota, including: registration procedures; registration deadlines; assistance in filling out registration applications; absentee ballot procedures; assistance with completing absentee ballot applications; dates of primary election; offices on ballot; the availability of bilingual poll officials at the polls; and the availability of a Lakota audio ballot on the voting machine.

- Continue recruitment of bilingual poll officials.
- Keep reports up to date.
- Ensure KILI Radio is broadcasting information as set forth in the Agreement throughout the month.

First Week of April:

- Obtain translations from Secretary of State and put translations on tapes.
- Confirm that publication packets have been received by KILI Radio and that all is on track for publication according to the Agreement.

May

Anytime during the Month:

- 2 elderly-focused meetings per tribal district per month (12 total meetings) to present election information in Lakota, including: absentee ballot procedures; assistance in completing absentee ballot applications; assistance in filling out absentee ballots; dates of primary election; offices on ballot; the identification requirement; presence of bilingual poll officials at the polls; the availability of Lakota audio on voting machine; and provisional ballot information, etc.
- Assist elderly Lakota-speaking voters in filling out absentee ballot applications and absentee ballots.
- Maintain regular office hours in satellite elections office when not making field visits to provide elderly Lakota-speaking voters with election information, and absentee voting assistance.
- Keep reports up to date.
- Ensure KILI Radio is broadcasting information as set forth in the Agreement throughout the month.

First Week of May:

- Finalize bilingual poll official recruitment and hiring, including a list of backup bilingual poll officials.

Second and Third Weeks of May:

- Prepare for bilingual poll official translation training.

Last full week of May:

- Outreach to elderly Lakota-speaking voters regarding polling places, hours the polls are open, the presence of bilingual poll officials at the polls on election day to provide Lakota language assistance and the names of those officials, the contents of the ballot.
- Train bilingual poll officials on the Lakota translation of the entire ballot content and election procedures, providing Lakota language assistance at the polls, and how to assist elderly Lakota-speakers in using the voting machines.
- Ensure that KILI Radio is broadcasting the absentee voting and other election information according to the Agreement.

June

Full Week Prior to Election Day:

- Maintain regular office hours in satellite elections office when not making field visits to provide elderly Lakota-speaking voters education, information, and absentee voting assistance.
- Assist elderly Lakota-speaking voters in filling out absentee ballots.
- Ensure that KILI Radio is broadcasting the absentee voting and other election information according to the Agreement.

Election Day:


- Visit polling places to ensure that bilingual poll officials are present and engaged with voters providing election information in Lakota, and that other procedures are in place, including voting machines are operational, provisional ballots and verification information is available and being used, and signage is properly posted.

Week After the Election:

- Compile Post-Election Report.

MEMORANDUM OF AGREEMENT  
Between the United States of America and Shannon County, South Dakota

ATTACHMENT B

 This message was sent with high importance.

**Ganje, Sue**

**From:** Headlee, Jennifer **Sent:** Fri 2/26/2010 3:08 PM  
**To:** vicki.wilson@state.sd.us; adele.enright@state.sd.us; cindy.longbrake@state.sd.us; dawn.sattler@state.sd.us;  
jerry.schwartz@state.sd.us; kathleen.flakus@state.sd.us; mcauditor@sbtc.net; sandra.raap@state.sd.us;  
sue.ganje@state.sd.us; susan.williams@state.sd.us  
**Cc:** Nelson, Chris (SOS); Bray, Teresa; Warne, Kea; Trapp, Debbie  
**Subject:** Lakota Language Assistance Reimbursement  
**Attachments:**

Dear Auditors:

Secretary of State Chris Nelson has authorized reimbursement from a county's Title II HAVA state held account for the following expenses related to Lakota language assistance:

1. Translation of election materials in audio format (SDCL 12-3-9).
2. AutoMARK Lakota expenses (no change from current practice).
3. Broadcasting election notices and information in Lakota.
4. Training interpreters in election procedures.
5. Providing interpreters at polling places.
6. Providing oversight of interpreters and use of AutoMarks containing Lakota audio.
7. Providing interpreters for absentee voting.
8. A coordinator for Lakota language assistance. A coordinator would provide oversight to ensure compliance with Lakota language requirements.

Each county will determine how to best meet the Lakota language requirements of the Voting Rights Act. Your county may not have expenditures in all eight categories. Individual counties will also determine whether to request Title II reimbursement for allowable Lakota expenditures or pay for the expenses with county general funds.

Reimbursement requests would be placed on line 17 as SOS approved project 17-12 (Lakota Language Assistance) on the HAVA Title II Reimbursement Form.

If you have any questions please let me know.

Thank you

Jennifer Headlee  
Help America Vote Act Coordinator  
Office of South Dakota Secretary of State  
500 East Capitol Ave, Ste 204  
Pierre, SD 57501  
Phone: (605) 773-5003 Fax: (605) 773-6580  
Webpage: <http://www.sdsos.gov>

Toyukak v. Treadwell; Case No. 3:13-00137-SLG

Statement of Interest of the United States of America

Exhibit 1

(Exhibit 1\_B)

Toyukak, et al. v. Treadwell, et al.

Case No. 3:13-CV-137-SLG

(Exhibit 1\_B Page 1)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

BERNALILLO COUNTY, NEW MEXICO; JUDY  
WOODWARD, Bernalillo County Clerk;  
and the BERNALILLO COUNTY BOARD OF  
COUNTY COMMISSIONERS; TOM RUTHERFORD,  
Chairperson of the Bernalillo County  
Board of Commissioners; STEVE GALLEGOS,  
LES HOUSTON, BARBARA J. SEWARD, KEN  
SANCHEZ, Members of the Bernalillo  
County Board of Commissioners,

Defendants.

CIVIL ACTION NO.

CY-98-156 BB/LCS

FILED

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

APR 27 1998

*R. H. Thomas*  
CLERK

CONSENT DECREE

The United States initiated this action pursuant to Sections 2, 12(d), and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973, 42 U.S.C. §1973j(d), 42 U.S.C. §1973aa-1a, and 28 U.S.C. 2201, alleging violations of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the Constitution arising from Bernalillo County's election practices and procedures as they affected Native American citizens of the county, including those Native American citizens who rely in whole or in part on the Navajo language.

The claim under Section 203 of the Voting Rights Act ("Section 203") must be heard and determined by a court of three judges in accordance with the provisions of 42 U.S.C. §1973aa-2 and 28 U.S.C. §2284.

Toyukak, et al. v. Treadwell, et al.

Exhibit 1\_B

Case No. 3:13-CV-137-SLG

(Exhibit 1\_B Page 2)



Plaintiff alleged in its complaint that various election practices and procedures of defendants unlawfully deny or abridge the Voting Rights of Native American citizens residing in Bernalillo County. The challenged practices concern the failure of defendants in particular areas to implement effective bilingual election procedures, as required by the Voting Rights Act, in the following areas: dissemination of election information, voter registration, voter registration cancellation procedures, absentee voting, language assistance at the polls, and training of polling officials.

Defendants do not contest that more than five percent of voting age Navajos, within the Cañoncito Navajo Reservation, speak Navajo and are limited-English proficient, and further agree that the illiteracy rate of such persons as a group is higher than the national illiteracy rate. 57 Fed. Reg. 43213 (September 18, 1992). Such determinations subject Bernalillo County to the requirements of Section 203(c) of the Voting Rights Act. 42 U.S.C. §1973 aa-1a(c), and thus the defendants must furnish oral instructions, assistance and other information relating to voter registration and voting, in the Navajo language.

Defendants do not contest that in past elections the county has failed in particular areas to make the election process as accessible to Native American citizens as it was to non-Native American citizens as is required by Section 203, Section 2, and the Fourteenth and Fifteenth Amendments. Bernalillo County



agrees in the future to comply with Section 203, Section 2, and the Fourteenth and Fifteenth Amendments.

This Court has jurisdiction over the parties and the subject matter of this litigation. This agreement is final and binding between the parties and their successors in office regarding the facts, claims, and issues raised in the Complaint and in this document.

Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. Defendants, their agents and successors in office, and all other persons acting in concert or participation with them, are hereby permanently enjoined from failing to comply with the requirements of Sections 2 and 203 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the Constitution.

2. It is the intent of Bernalillo County to make all phases of the election process as accessible to the Navajo population of Bernalillo County as they are to the remainder of the county's population. Therefore, Bernalillo County shall provide information, publicity, and assistance in the Navajo language in voter registration, voter registration cancellation, absentee voting, early voting, procedures at the polls including translation of the ballot, and training of polling officials/translators. Bernalillo County, in consultation with the United States and the Cañoncito Chapter, has developed a manual of procedures for incorporating the Navajo language in elections that address the type of information, publicity and assistance to be provided and the manner in which they will be provided (copy

Toyukak, et al. v. Treadwell, et al.

Case No. 3:13-CV-137-SLG

attached as Exhibit I).

3. ~~To ensure the dissemination of election-related~~  
information to the Navajo speaking population of Bernalillo County, and to make the election process equally accessible to Native American citizens, Bernalillo County, by March 16, 1998, shall hire a Native Language Coordinator (hereinafter "NLC"). The NLC shall be bilingual in Navajo and English. The primary responsibility of the NLC, a full-time employee of Bernalillo County, shall be to carry out the county's Navajo language election procedures, publicity and assistance, including assisting the county to carry out the procedures in the manual referenced in paragraph two. The NLC shall also carry out other duties included in his or her job description as assigned.

4. Bernalillo County shall establish a travel, supply, and telephone call budget for the NLC which shall be sufficient to cover expenses incurred in carrying out the NLC's duties, obligations, and responsibilities.

5. Poll officials selected to work the majority Native American election precinct in Bernalillo County shall be, if at all possible, persons who are bilingual in the Native American language and in English. The County shall use its best efforts to secure said personnel. In any precinct where registered Native American voters comprise at least five percent of the voters in the precinct, there shall be a number of such bilingual poll officials or translators sufficient to accommodate the voters who need to use the Native American language to

Toyukak, et al. v. Treadwell, et al.

Case No. 3:13-CV-137-SLG

4

(Exhibit 1\_B Page 5)

effectively cast their ballots. The county shall assess the need for language assistance in these precincts after each election and, in accordance with Paragraph 11, adjust the number of bilingual assistors up or down as is efficient to provide effective language assistance. Tapes of Native American language translations of all the information on the ballot shall be made available to the poll officials prior to the election.

6. At locations on the Cañoncito Reservation, the NLC shall conduct the training of poll officials and any other election related personnel who will be working at the Cañoncito precinct.

7. Thirty (30) days prior to an election, the County will establish a satellite election office for two days each week on the Cañoncito reservation. The NLC shall consult with the tribal representative for space to set up the temporary office.

8. This satellite office shall have the necessary materials and personnel available during regular office hours to allow an individual to cast an absentee ballot. A person may apply for, receive, and cast an absentee ballot all on the same day during a single visit to the satellite election office.

9. Nothing in this Decree shall preclude Bernalillo County from contracting with other governmental agencies to carry out the terms and conditions specified herein. However, should Defendants exercise this option, Defendants herein shall nevertheless maintain prime responsibility for compliance with the terms and conditions hereof.



10. To assist in the effectiveness of this Agreement and to ~~protect the Fifteenth Amendment rights of citizens of Bernalillo~~ County, the appointment of federal examiners for elections in the county is authorized pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. §1973(a), for the period of this Agreement.

11. Bernalillo County is designated pursuant to Section 3(c) of the Voting Rights Act, 42 U.S.C. §1973(c) for the period of this Agreement regarding changes that may affect the county's compliance with the Voting Rights Act as set forth in paragraphs two through nine.

12. The parties to this Agreement and the NLC will be in contact semi-annually for the duration of this order to discuss the effectiveness and efficiency of the county's actions in complying with the Voting Rights Act. Bernalillo County has the authority to eliminate or modify any aspect of its program if it is unproductive or inefficient in furthering the goals of this decree, subject to the requirements listed in paragraph 11 above.

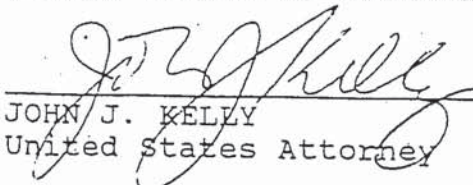
13. This Agreement shall remain in effect through June 30, 2003, unless plaintiff moves the court for good cause shown to extend this Agreement.

The Court shall retain jurisdiction of this case through June 30, 2003 to enter further relief or such other orders as may be necessary for the effectuation of the terms of this Agreement and to ensure compliance with Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. §§1973, 1973aa-1a, and the Fourteenth and Fifteenth Amendments of the Constitution unless the parties petition the Court to end the decree sooner.

Entered this 22 day of April, 1998.

For Plaintiff:

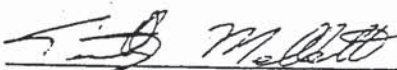
UNITED STATES OF AMERICA

  
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United States Attorney

BILL LANN LEE

Acting Assistant Attorney  
General

  
ELIZABETH JOHNSON

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Attorneys, Voting Section

Civil Rights Division

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P.O. Box 66128

Washington, D.C. 20035-6128

For Defendants:

BERNALILLO COUNTY

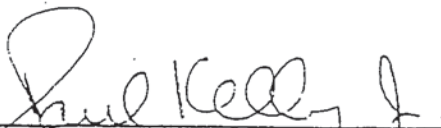
  
TITO D. CHAVEZ


Bernalillo County Attorney


One Civic Plaza NW, 10th Floor

Albuquerque, New Mexico 87102

Entered this 22<sup>d</sup> day of April, 1998.

  
THE HONORABLE PAUL J. KELLY, JR.  
United States Circuit Judge  
for the Tenth Circuit  
United States Court of Appeals

  
THE HONORABLE JOHN E. CONWAY  
United States District Judge  
United States District Court for the  
District of New Mexico

  
THE HONORABLE BRUCE D. BLACK  
United States District Judge  
United States District Court for the  
District of New Mexico

BERNALILLO COUNTY  
BUREAU OF ELECTIONS

NATIVE AMERICAN ELECTION INFORMATION PROGRAM

OPERATIONS MANUAL

I. OVERVIEW

Bernalillo County, New Mexico contains a portion of four Indian Reservations or Pueblos: The Sandia Pueblo to the north, Isleta Pueblo to the south, and the Canoncito Navajo chapter and Laguna Reservation on the western boundary of the county. Maps are attached to more exactly define and identify Indian lands.

1. Sandia Pueblo: This pueblo extends across the northern portion of Bernalillo County. It contains all or portions of three voting precincts: 6, 86 and 567. There are no pueblo residents or households in precinct 567. There are approximately 60 households in precincts 6 and 86.
2. Isleta Pueblo. This pueblo extends across the southern portion of Bernalillo County. Within its boundaries, lie precinct 93 and a portion of precinct 552. However, there are no residents living in the precinct 552 portion of the pueblo. For the 1996 general election, there were 672 registered voters in precinct 93.
3. Canoncito: A chapter of the Navajo Nation, located on the western edge of Bernalillo County. It is identified as voting precinct 31. For the 1996 general election, there were 317 registered voters in precinct 31.
4. Laguna: This reservation is actually two parcels, divided by Canoncito Chapter. We do not believe there are any households within the Laguna Reservation that are in Bernalillo County. However, should this not be the case, those residents will be afforded the same services as described herein.

The City of Albuquerque also contains a significant number of Native American voters.

Bernalillo County is subject to Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a. The act requires that information which is provided in English about voter registration, including voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, be provided in the minority language to the extent that it is needed allow minority members to be effectively informed of and participate in the electoral process. Where the language of the applicable minority group is oral or unwritten, oral information and instruction in the appropriate native language is required.



## II. INTRODUCTION

This manual establishes a comprehensive Native American Election Information Program (NAEIP) to disseminate election related information and services to the Native American population of Bernalillo County. It details the procedures for voter registration, voter registration cancellations, absentee and early voting, training of election day poll officials, language assistance at the polls, and for the dissemination of information about elections. The program is administered by the Native Language Coordinator (NLC), a full-time Bernalillo County employee. This manual also describes coordination between the NLC, tribal representatives, and the Native American Voting Rights Office under the New Mexico Secretary of State.

1. The NLC will work under the supervision of a designated deputy Clerk of Bernalillo County.
2. The NLC will be trained by the county clerk in all aspects of the Election process.
3. The NLC will maintain currency with state and federal statutes relating to election process.
4. The NLC must be fluent in English and the Native Language.
5. The NLC's work will be funded by county resources and the county will provide for transportation and supplies needed in carrying out the NLC's duties and responsibilities in implementing the NAEIP.

## III. PROCEDURES

The NLC is responsible for the administration of the Bernalillo County NAEIP.

1. COORDINATION WITH STATE AND OTHER COUNTIES:
  - a. The NLC will maintain direct contact with the State NAEIP representatives to assure coordinated services and avoid duplication of effort.
  - b. The NLC will work, as far as practicable, with counterparts in Valencia and Sandoval Counties, to coordinate election activities and Tewa translation for the Sandia and Isleta Pueblos.
  - c. The NLC will work, as far as practicable, with the counterparts in Socorro, McKinley, and San Juan Counties, to coordinate election translation for the Canoncito chapter.
  - d. The NLC will work, as far as practicable, with the Navajo



2. TRIBAL REPRESENTATIVES:

It is the desire of the county to have an individual in the tribe that the county may contact about election-related issues. In addition, the county would like to have a tribal member to be available on a permanent basis who can explain the voting procedures in case the NLC is not available at the moment.

- a. The deputy county clerk, or other designated representative, will request the Canoncito chapter president to identify and/or appoint one individual to serve as tribal representative for communications between the county and the chapter about voting and elections. The vice president of the Navajo chapter will serve as the representative in the event that a separate tribal representative is not chosen or is vacated. The tribal representative must be proficient in both English and Navajo.
- b. The deputy county clerk, or other designated representative will request each pueblo governor whose lands are wholly or in part in Bernalillo County, to identify and/or appoint one individual to serve as tribal representative for communications between the county and each pueblo about voting and elections. The tribal representative must be proficient in both English and the native language of the tribe.
- c. The NLC will familiarize tribal representatives with the election process, including absentee and early voting, voter registration and purge process, statutory qualifications to hold elective office; election related deadlines, election day activities, and poll official duties.
- d. The NLC will serve as the county's point of contact with the pueblo or chapter for election related matters. Telephone inquiries from tribal representatives are encouraged and treated as official government business.

3. TRANSLATIONS:

- a. The following election-related material and announcements, if made available in English, shall be translated into Tewa and Navajo, made available on audio or video tape, and provided to the appropriate tribal representative:
  - (1) Election calendar for the year (by January 15 of each year);
  - (2) State, county, and where applicable, school district election proclamations (10 days after receipt);

- (3) Constitutional amendments and other issues on the ballot, along with a brief description of each (within 30 days of the date the English text is determined). Care must be used in wording the brief description so as to avoid even the hint or suggestion as to how the listener/viewer should vote on the issue;
  - (4) Statutory qualifications and requirements (age, residency, etc.) for candidates to be on the ballot (60 days prior to statutory filing deadlines);
  - (5) Instructions for filling out absentee ballot applications, and explaining the absentee voting process and deadlines (30 days before absentee balloting begins);
  - (6) Details on early voting and voting satellite locations in Bernalillo County (30 days before early voting begins);
  - (7) The date voter registration closes for each election (30 days before registration closes);
  - (8) The candidates for each office and their political parties for each election (within 10 days after the ballot is printed); and
  - (9) Explanation of voting procedures, to include the operation of voting machines and how to cast a write-in ballot (30 days before the election).
- b. All election related translations might be made by a state or county employee fluent in the appropriate language, or by a tribal representative.
- (1) It is important that translations be accurate. The county will provide an opportunity for the tribal representative to review and comment on any material translated.
  - (2) If a dispute as to the accuracy of a given translation cannot be promptly resolved by mutual agreement between county officials and Native American leaders, the Office of the New Mexico Secretary of State and the United States Department of Justice will be consulted about the dispute.
- c. The county shall provide separate recordings for each election-related subject matter and should not exceed ten (10) minutes in length.
- d. The NLC should have the tapes played during at least one chapter or pueblo meeting. The NLC should also encourage the pueblo or chapter house to maintain a library of current applicable tapes.

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(1) The NLC, and if possible, the tribal representative should be present when tapes are played at pueblo or chapter meetings and answer questions which may be raised.

(2) The NLC should make available county-owned tape-playing equipment to the site in case equipment is not available at the site.

e. Upon request, the county shall make tapes and material available to governmental entities, which have an interest in the Bernalillo County NAEIP.

f. The county shall keep translations archived for five years.

4. DISSEMINATION OF ELECTION RELATED MATERIAL:

a. The County shall coordinate publicity efforts with the state NAEIP office and the tribal representatives.

b. The NLC will work with Bernalillo County Public Affairs to offer public service announcements in Navajo and/or Tewa to local radio/TV stations. Potential broadcasting material includes any of the tapes made pursuant to Section III. The NLC will request that announcements be made at a time calculated to reach the largest possible chapter and/or pueblo audience.

c. The NLC will work with Bernalillo County Public Affairs to identify and provide public service notices to publications, which are tailored to the pueblos and Canoncito chapter. Notices may be printed therein in the language traditionally used by the publications. The frequency of paid announcements shall be subject to available financial resources.

d. During the sixty (60) days preceding an election, the NLC will plan and publicize meetings at sites convenient to voters of the chapter and pueblos. At the meetings, the NLC, tribal representatives, and other trained personnel will make oral presentations using Navajo or Tewa, as appropriate, with the concurrence of tribal officials. Presentations should incorporate audio and visual aids as appropriate, and should include:

(1) Statutory qualifications for candidates to hold office, (e.g., age, residency requirements, etc.). If anyone expresses an interest in running for an elected office, explain procedures for getting on the ballot, (e.g., petition signatures, filing fee, etc.);

(2) Voter registration procedures, to include voter registration cut-off dates. Voter registration forms should be available;



- (3) Sample ballots, when they are available. Go over offices to be filled, to include names and party affiliation of each candidate. Review each ballot issue, and the speaker should be careful to avoid suggesting how the voter should vote;
  - (4) Detail the absentee voting process, to include procedures on how a voter may obtain an absentee ballot, how to make a write-in vote, and how the ballot should be returned;
  - (5) Detail the early voting process, to include the location of satellite polling locations; and
  - (6) An actual voting machine, or enlarged photograph of a voting machine should be used to instruct how the voter is to cast a ballot.
- e. On the weekend preceding an election in which the pueblo or chapter is voting, the NLC and/or tribal representatives shall travel through the reservation and let the residents of the chapters and pueblos know the day and date of the election, where the polling location is situated and hours of operation.
  - f. Election related announcements, materials, tapes and other election information should be made available to the high schools attended by Native American students in the county to familiarize students with all phases of the election process.

## 5. VOTER REGISTRATION

- a. The NLC shall conduct an active voter registration program in coordination with each Pueblo governor, Navajo chapter president, or other tribal officials.
  - (1) Work with community leaders, to identify chapter or pueblo residents to receive training on voter registration and who will serve as a point of contact for members who may wish to register to vote. The chapter house or pueblo community center must be kept supplied with voter registration forms.
  - (2) At least annually, conduct a special voter registration drive. This requires coordination with tribal leaders for adequate space and publicity for the drive.
  - (3) Assure that an adequate supply of voter registration forms are available in community facilities. This may include schools, post office, chapter house, pueblo government buildings, etc.

- b. The NLC shall provide each tribal representative with current voter registration lists for the appropriate Bernalillo County precinct (s) within the tribal boundary, and shall encourage each tribal representative to establish regular hours for registration at set locations on the reservations. Tribal leaders shall be encouraged to post the time (s) and location (s) at each chapter house or pueblo community center and to announce this information at each tribal meeting.
- c. The NLC shall assess, on an on-going basis, the effectiveness of the voter registration program.

6. ABSENTEE AND EARLY VOTING:

- a. The NLC will ensure that "Requests for Absentee Ballot" forms are supplied to the tribal representatives, pueblo governors, Navajo chapter presidents and other tribal officials who may have frequent contact with residents.
- b. The opportunity to cast an absentee or early ballot will be publicized by announcements, with the concurrence of tribal officials, during chapter or pueblo meetings attended by the NLC and by posting notices at conspicuous places such as the pueblo community center, Navajo chapter house, post office on reservation, etc.
- c. The county shall provide an opportunity for Native American citizens who are registered to vote to cast absentee or early ballots by ensuring that the NLC attends the last tribal meeting prior to the deadline for returning the ballots for each election so that the eligible persons may obtain, and if they desire, cast absentee ballots in person at that time.
- d. The NLC shall be authorized to deliver absentee ballots, to witness absentee ballots, and to accept completed absentee ballots from eligible voters for delivery to the county clerk.

7. POLLING PLACE OFFICIALS AND INTERPRETERS

- a. The county shall determine the number of bilingual assistants necessary in the precinct to provide effective language information and assistance to Native American voters. This determination will focus on the election precincts where registered Native American voters of the precinct. The county will make up a list of all election precincts where Native American voters comprise at least five percent of the registered voters of the precinct. This list will be changed whenever new census data or other, equally reliable data become available.
- b. After each election the need for language assistance in each precinct where Native American voters comprise at least five percent of the



registered voters will be assessed. This assessment will include discussions with the poll officials and/or translators at those sites, the NLC, and any other interested persons to determine the frequency with which a Native American language was used during the election, and how the voting experience could be made more effective for voters who need to use the Native American language.

- c. The county shall ensure that fully trained poll officials and translators are present on election day for each election precinct where Native American voters comprise at least five percent of the registered voters of the precinct. The NLC shall consult with tribal representatives and other appropriate tribal officials to identify qualified individuals to work at the polls.
- d. The NLC will schedule a special training session with poll workers and interpreters selected to work the polls on election day. The Tribal representative, the poll officials and interpreter shall be notified of the training session scheduled at the pueblo or Navajo chapter at least one week before the scheduled training. Topics and procedures to include in the training sessions include:
  - (1) Setting up the polls;
  - (2) Opening the voting machine and preparing it for voting;
  - (3) Ensuring that the person requesting to vote is listed on the voter registration list. This will include instructions on how to resolve problems if the person requesting to vote does not appear on the voter registration list;
  - (4) Updating voter registrations lists with name changes, address changes, etc.;
  - (5) Conducting the election;
  - (6) Providing instruction on how to translate offices, candidates, and referenda;
  - (7) Providing the Native American language translation for each office, candidate, and referenda;
  - (8) Closing the polls;
  - (9) Getting voting machine tallies;
  - (10) Reporting precinct results;
  - (11) Securing the voting machine; and

(12) Providing rules applicable to poll watchers and challengers.

- b. The NLC will provide polling officials with a telephone number should problems arise on election day.
- c. Polling officials selected to work the pueblo/chapter precincts on election day must be fluent in English and Tewa or Navajo, as appropriate.
- d. Polling officials will be instructed on procedures for giving assistance to voters. Poll officials should be instructed to ask individuals whether they need ballot translation or other assistance in their native language.

8. ELECTION DAY PROCEDURES

- a. The NLC will be assigned a county vehicle and a radio or mobile telephone for election day. Problems reported to the county from the voting precincts at the pueblo and Canoncito chapter will be relayed to the NLC for appropriate action. Additionally, the NLC will visit each precinct on tribal land at least once on election day to ensure that voters are obtaining information and assistance in the Native American language when it is needed.
- b. Polling officials shall keep a record of all persons who requested to vote, but were not allowed to vote. This record should include each voter's name, address, the reason the person thought he or she was eligible to vote at that site, and the reason for not permitting the person to vote.
- c. A list of persons not permitted to vote will be provided to appropriate tribal officials. Registration forms will be provided at the polls, and these persons will be added to the voter registration list as soon as practical.

9. THE VOTER REGISTRATION ROSTER PURGE PROCESS:

- a. State law in accordance with federal law under the National Voter Registration Act controls the voter registration purge process. When a purge is authorized and implemented, the following additional procedures shall apply for precincts located on Indian lands;
  - (1) The NLC will inform tribal leaders of the pending purge and ask that validation or re-registration procedures be explained at tribal meetings. The NLC may make the presentations with the concurrence of tribal officials.
  - (2) Tewa and Navajo language audio tapes describing the

purge process and validation or re-registration procedures shall be made available to each pueblo community center or Navajo chapter house.

- (3) The NLC shall provide to the tribal representative a list of voters in the precinct that have been identified to be purged. The tribal representative will be requested to contact persons on the list and notify them of the fact of the pending purge and procedures for validating their registration or re-registration.
- (4) At the close of the purge period, the NLC will meet with Tribal officials to review the list of purged voters and as certain what further action, if any, should be taken to validate or re-register voters.

12. RECORDS:

- a. In addition to copies of audio/video tapes the NLC shall keep track of records that include:
  - (1) On a monthly basis, the number of registered voters in each precinct where Native American voters comprise at least five percent of the registered voters, and the number of newly registered voters in each precinct.
  - (2) Time and media of each broadcast, if available, or publication.
  - (3) Following a purge, the total number of voters purged, by precinct.
  - (4) Following each election, the total number of ballots casts absentee and the number of those voting at an early voting satellite office.
- b. By July 1, 1999, and July 1<sup>st</sup> of each succeeding odd Numbered year thereafter, the NLC will compile a report of efforts taken during the proceeding twelve-month period in furtherance of the county NAEIP. Conclusions may be drawn concerning the effectiveness of the various aspects of the program.
- c. The NLC will attempt to determine the cost of conducting the county NAEIP.

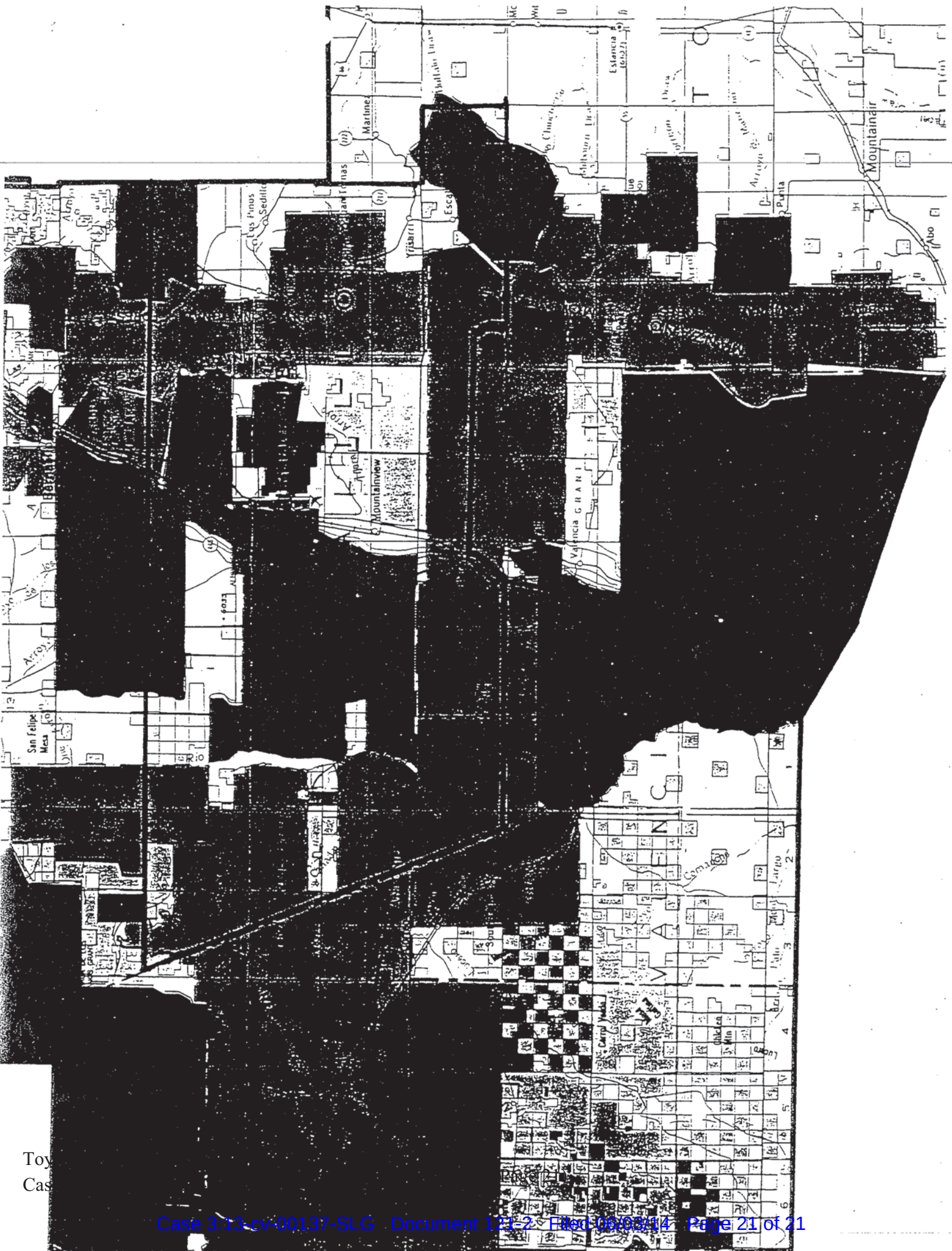
13. ADJUSTMENTS TO PROGRAM:

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- a. It is the goal of Bernalillo County to make the entire election process fully and effectively accessible to our Native American citizens according to federal law. Regular and on going reassessment of the county NAEIP is necessary by responsible participants. Meetings with tribal officials shall occur at least once each year to discuss the NAEIP.
- b. The county, in consultation with the NLC, state NAEIP Officials, tribal officials, and federal officials, shall evaluate the county NAEIP on an on going basis. When adjustments to the program are suggested, they will be made only after full discussion among the interested parties, and where necessary to ensure that Native American voters are able to enjoy equal access to all phases of the political process.
- c. The Deputy County Clerk will submit, prior to their implementation, any agreed upon changes in this manual to the United States Department of Justice for preclearance as provided in the consent decree, United States v. Bernalillo County.



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Statement of Interest of the United States of America

Exhibit 1

(Exhibit 1\_C Page 1)

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

SOCORRO COUNTY, NEW MEXICO;  
SOCORRO COUNTY BOARD OF COUNTY  
COMMISSIONERS; DANIEL ROMERO,  
Chairperson of the Socorro County  
Board of County Commissioners;  
DICK GALLEGOS, TOBY JARAMILLO,  
JUAN GUTIERREZ, and MIKE MORA,  
Members of the Socorro County Board of  
County Commissioners; and CARMEN D.  
GALLEGOS, Socorro County Clerk,

Defendants.

CIVIL ACTION NO.  
NO. 93-1244-JP

CONSENT AGREEMENT

The United States initiated this action pursuant to Sections 2, 12(d) and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, and 28 U.S.C. 2201, alleging violations of the Voting Rights Act and the Fourteenth and Fifteenth Amendments arising from Socorro County's election practices and procedures as they affected Native American citizens of the county, including those Native American citizens who rely in whole or in part on the Navajo language.

The claim under Section 203 of the Voting Rights Act ("Section 203") must be heard and determined by a court of three judges in accordance with the provisions of 42 U.S.C. 1973aa-2 and 28 U.S.C. 2284.

The plaintiff alleged in its complaint that various election standards, practices and procedures of the defendants

Exhibit 1\_C

(Exhibit 1\_C Page 2)

unlawfully deny or abridge the voting rights of Native American citizens residing in Socorro County. The challenged practices touch on voter registration, absentee voting, voter registration cancellation procedures, and the failure of the defendants to implement, as required by Section 203, effective bilingual election procedures, including the effective dissemination of election information in the Navajo language. The challenged practices also concern the failure of defendants to provide for a sufficient number of adequately trained bilingual persons to serve as translators for Navajo voters needing assistance at the polls on election day.

The defendants do not contest that in past elections the county has failed to make the election process in Socorro County equally available to Native American and non-Native American citizens as required by Section 2 and the Fourteenth and Fifteenth Amendments, nor do defendants contest that in past elections the county has failed to comply fully with the minority language requirements of Section 203.

Socorro County agrees in the future to comply with the requirements of Sections 2 and 203 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments.

This Court has jurisdiction over the parties and the subject matter of this litigation. This Agreement is final and binding between the parties and their successors in office regarding the facts, claims, and issues raised in the Complaint and resolved herein.

In settlement of this matter, the parties stipulate as to the following facts:

1. Socorro County has been subject to Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, since 1984 with respect to the Navajo language. In 1992, pursuant to the Voting Rights Language Assistance Act of 1992, the county's coverage under Section 203 was extended based upon the determinations by the Director of the Bureau of the Census pursuant to the Act. The Director determined that Socorro County is a political subdivision that contains all or part of an Indian reservation, wherein more than 5 percent of the American Indian citizens of voting age within the reservation are members of the Navajo language minority group who do not speak or understand English adequately enough to participate in the electoral process, and further that the illiteracy rate of such persons as a group is higher than the national illiteracy rate. Based on this determination, Socorro County is subject to Section 203 of the Voting Rights Act with respect to the Navajo language, which is an oral language. This determination was published in the Federal Register on September 18, 1992, and became effective upon publication.

2. Section 203 requires that all information that is provided by Socorro County in English about voter "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," must be provided in the Navajo language to the extent that it is needed to allow language minority group members to be



informed of and participate effectively in the electoral process and all voting-connected activities. 42 U.S.C. 1973aa-1a(c). The provisions of Section 203 apply to all stages of the electoral process, "including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process." Attorney General's Procedures for the Implementation of the Provisions of the Voting Rights Act for Minority Language Groups, 28 C.F.R. 55.15. Because the Navajo language is historically an unwritten language, defendants are required to furnish oral instructions, assistance and other information relating to registration and voting in the Navajo language. 42 U.S.C. 1973aa-1a(c); see also 28 C.F.R. 55.12(c).

3. Section 2 of the Voting Rights Act requires that citizens be allowed to participate equally in all phases of the election process without regard to race, color or membership in a language minority group.

4. According to the 1990 Census, Socorro County has a population of 14,764 persons, of whom 1,491 (10.1%) are Native Americans, principally members of the Alamo Chapter of the Navajo Nation.

5. According to the 1990 Census, 66.3 percent of the Navajo voting age population in Socorro County does not speak English well enough to participate effectively in English language

elections. Thus, a significant majority of Navajos in Socorro County cannot function in the electoral process except in the Navajo language.

6. The Navajo population of Socorro County lives in circumstances of significant physical and social isolation from the non-Native American population of the county. Socorro County is unusually large in physical terms, and covers a geographic area substantially larger than the States of Connecticut and Rhode Island, combined. While over two-thirds of the non-Native American voting age population of the county lives within four miles of Socorro, the county seat, over 90 percent of the Native American population lives in the Alamo Chapter of the Navajo Nation, approximately 57 miles from the county courthouse. The physical and social isolation of the Navajo population of Socorro County burdens their access to the franchise.

7. The problems associated with the geographical isolation of this area are exacerbated by the depressed socioeconomic conditions of Native Americans in Socorro County. According to the 1990 Census, the per capita income of Native Americans in Socorro County was only \$3,177, or less than one third of the per capita income of non-Native Americans (\$10,505). While 23.9 percent of non-Native American families live below the poverty line, 52.8 percent of Native American families are impoverished. Native American households are more than three times as likely not to have a car or truck as non-Native American households. The lack of vehicles places a special burden on travel to the county



courthouse. The 1990 Census shows similar disparities for access to telephones. Within Socorro County, 64.9 percent of households within the Alamo Chapter lack telephones, compared to 19.7 percent of off-reservation households.

8. Native American citizens in Socorro County suffer from a history of discrimination touching their right to register, to vote, and otherwise to participate in the political process, arising from their unique status. See e.g., Trujillo v. Garvey, C.A. No. 1350 (D.N.M., August 11, 1948); Sanchez v. King, C.A. No. 82-0067-M (D.N.M., August 8, 1984).

9. The level of political participation by Native American citizens of Socorro County is depressed. Over the past decade, voter registration rates in the predominantly Native American precinct (Alamo) have been approximately 60 percent of the rate in non-Native American precincts, and Native Americans are affected disproportionately by voter purge procedures. Although Native Americans comprise over 10 percent of the county population, only one percent of all absentee ballots were from the Alamo precinct in the 1992 general election, and there were no absentee ballots cast from the Alamo precinct in the 1990 general election. As a result of the lack of publicity concerning constitutional and other referenda, the rate of participation by Native Americans on such issues has been far below the participation rate among non-Native Americans, and has ranged from a high of 16 percent to a low of less than three percent since 1986. Native Americans who are able to go to the polls in many cases have had to wait in line an

extraordinary period of time in order to vote, and have been unable to cast effective ballots because of an absence of a sufficient number of fully trained translators.

To bring about compliance with the Voting Rights Act and the Fourteenth and Fifteenth Amendments, the parties have agreed upon the following remedial provisions and have agreed to the entry of this order. Entry of this Agreement shall be final and binding on all of the parties and their successors as to all issues raised in the complaint and resolved herein. Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. The defendants, their agents and successors in office, and all other persons acting in concert or participation with them, are hereby permanently enjoined from failing to comply with the requirements of Sections 2 and 203 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments.

2. It is the intent of Socorro County to provide to Native American voters full and complete information as to all election-related matters including, but not limited to, registration, election dates, polling place locations, candidate information, referendum information, absentee voting information, and voter purge procedure information. It is the further intent of Socorro County, recognizing the particular circumstances of the Native American population of the county, to make all phases of the election process as accessible to the Navajo population of Socorro County as they are to the remainder of the county's population.

3. To assist in the effectiveness of this Agreement and to protect the Fifteenth Amendment rights of citizens of Socorro County, the appointment of federal examiners for elections in Socorro County is authorized pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a), for at least the period of this Agreement.

4. Socorro County is designated pursuant to Section 3(c) of the Voting Rights Act, 42 U.S.C. 1973a(c) for the period of this Agreement, so that during that period no alteration of any voting qualification or prerequisite to voting or any standard, practice, or procedure with respect to voting may be implemented by Socorro County without prior clearance from this Court or from the Attorney General of the United States. Such changes include but are not limited to amendments to the Native American Election Information Program and changes in polling places within Socorro County, and include all practices and procedures of Socorro County to implement and administer state-mandated changes affecting voting.

5. In light of the complexity of the issues involved and the evolving nature of the Program, this Agreement shall remain in effect through December 31, 2003, unless plaintiff moves the Court for good cause shown to extend this Agreement.

6. Socorro County has adopted the following Native American Language Election Information Program which the Court hereby approves as part of this Agreement, as set forth below. The purpose of the Native American Language Election Information

Program is to ensure the dissemination of election-related information to the Navajo speaking population of Socorro County, and to make the election process equally accessible to Native American citizens. This program is intended to remedy the deficiencies of existing procedures for providing election-related information to the Navajo population of Socorro County, and to provide a procedure by which this program may be improved and modified in the future.

THE NATIVE AMERICAN ELECTION INFORMATION PROGRAM

A. Intergovernmental Coordination

1. Socorro County and the Voting Rights Coordinator shall request and accept all training, materials and services available from the State of New Mexico in furtherance of the implementation of this program, and shall encourage the production of such materials by the state. The Voting Rights Coordinator shall stay in regular contact with state personnel, including personnel of the Office of the Secretary of State, Bureau of Elections, Office of Indian Rights and the New Mexico Office of Indian Affairs, in order to coordinate state and county activities and efforts, and for advice and assistance associated with the Native American Election Information Program. Socorro County shall encourage the assistance of such state personnel, and shall at all times welcome their presence in the county to assist in implementation of this Program or to assist Native Americans in any phase of the election process.

2. Socorro County is encouraged to work with other counties in New Mexico and neighboring states which have programs for Native American language minorities to coordinate election activities, including the development of standard terminology for the translation of election materials into Navajo, and to obtain cost savings in the implementation of effective Native American language programs.

3. The county shall invite representatives of the Navajo Elections Administration (NEA) and officials of the Alamo Navajo Chapter to assist in all phases of the Native American Election Information Program. To assist in uniformity and accuracy in the translation of election materials, prior to dissemination of any translation, the county shall make available such translations to tribal officials within Socorro County and to representatives of the NEA, and shall provide them with a reasonable opportunity to review and comment concerning any matter translated. The county shall keep a written record of such comments and the county's response to the comments.

B. Satellite Election Office

1. Socorro County shall establish a permanent Satellite Election Office at a location within the Alamo Navajo Chapter convenient to the population of the Alamo Chapter. The establishment of the Satellite Election Office shall be with the consent of the appropriate tribal officials.

2. The Satellite Election Office shall serve as the principal place for office hours for the Voting Rights Coordinator

provided for in part C of the Program below, as a library of written and recorded election information, as a distribution point for the dissemination of election information, and as a site for the performance of all functions related to the election process that can be performed at the county courthouse, including but not limited to registering to vote or updating voter registration information; filing as a candidate for office; and casting an absentee ballot. The Satellite Election Office may be used for other governmental purposes as agreed upon in writing by the parties.

3. Delivery of a voter registration application or performance of any other election-related task at a Satellite Election Office shall be effective in terms of all time deadlines and requirements as if the application had been delivered to, or the task performed at, the county courthouse.

4. A supply of all forms and materials necessary to complete these functions shall be maintained at the Satellite Election Office. Copies of all materials, information and audio-visual tapes required to be disseminated pursuant to this Agreement, including all election-related materials prepared by the state, likewise shall be available in the office, together with appropriate audio-visual equipment.

5. A county employee, Tribal Election Liaison, or other personnel comparably trained in election procedures and appointed as a deputy registrar, shall be available at the Satellite Election Office during regular office hours on work days.

C. Voting Rights Coordinator

1. Socorro County shall employ at least one Voting Rights Coordinator who will coordinate the Native American Election Information Program in Socorro County. The Voting Rights Coordinator shall be bilingual in Navajo and English, and shall serve primarily the area of the Alamo Chapter of the Navajo Nation.

2. The Voting Rights Coordinator shall be hired by Socorro County after consultation with the officials of the Alamo Navajo Chapter and counsel for the United States. Socorro County shall invite such officials to present the names of at least four qualified persons fluent in English and in Navajo, and shall select the Voting Rights Coordinator from among the names submitted, provided that the individuals otherwise satisfy legitimate requirements for county employment. In the event that fewer than four names of qualified persons are submitted, Socorro County shall consult with the appropriate tribal officials and the United States.

3. Socorro County shall develop a job description for the Voting Rights Coordinator in consultation with the officials of the Alamo Navajo Chapter and counsel for the United States. The duties of the Voting Rights Coordinator shall be limited to those specified in the Native American Election Information Program, and closely related election activities, except as may be provided in a separate written agreement of the parties.

4. The Voting Rights Coordinator shall be trained in all aspects of the election process, shall attend all election

seminars conducted by the Secretary of State and the Socorro County Clerk, and shall be appointed a county deputy registration officer. The Voting Rights Coordinator shall be fully briefed by the county clerk and the state Director of the Bureau of Elections (or the Director's designee), as appropriate, concerning the Coordinator's duties and responsibilities under this Program. Representatives of the Alamo Navajo Chapter and the NEA shall be invited to attend these briefings by written notice 10 days in advance of each training session, and representatives of the United States shall be permitted to attend these briefings to assist state and local election officials in explaining the requirements of this Program. The Voting Rights Coordinator shall be hired and the briefings completed by March 28, 1994.

5. The Voting Rights Coordinator shall oversee the county's Native American Election Information Program generally and attend on a regular basis meetings of the Navajo communities within the county. The Coordinator shall attend each Alamo Chapter meeting and chapter officers' meeting. The Voting Rights Coordinator shall seek to attend and make a presentation of election information at all other public meetings (such as parent-teacher organization and senior citizen group meetings) and gatherings (such as for commodity distribution) within the Alamo Chapter or serving a significant number of Navajo citizens, consistent with the schedule set forth within.

6. The county shall establish booths or displays at all tribal fairs or functions where their presence is permitted by the



tribal officers, and at shopping areas and other locations identified by the Voting Rights Coordinator in consultation with tribal officials. The county shall staff such booths or displays with the Voting Rights Coordinator, Tribal Election Liaison, or deputy registration officers.

7. The Voting Rights Coordinator shall identify other opportunities to disseminate election information to Native Americans. The Coordinator shall contact each officer of the Alamo Chapter in January and June of each year of this Agreement to identify all groups or meetings before which presentations might be made or displays and booths established. The Coordinator shall provide lists of such groups or meetings to the county clerk and the NEA by the close of the relevant month. Within 30 days thereafter, the Voting Rights Coordinator shall notify the Chapter officers, the NEA and the United States, in writing, of the meetings and groups before which the Coordinator will appear.

8. The Voting Rights Coordinator shall conduct voter education programs concerning each election within Socorro County which involves any portion of the Alamo Chapter, and any other areas of Navajo population within the county. Such voter education programs shall include instruction and dissemination of information on at least the following topics: voter registration; absentee voting procedures; voter purge; candidate qualification; voting procedures and operation of voting machines; the contents of the ballot; and all time deadlines and requirements. The Voting Rights Coordinator shall work primarily out of the Satellite Election

Office, and shall not be required to be present in the county courthouse for more than one working day in any week.

9. The Voting Rights Coordinator, or other county officials, shall maintain a written record of the date and purpose of each visit made for election-related purposes to each meeting held at the Alamo chapter house or other site within the Alamo Navajo Chapter. Within 30 days after each primary, general, school, and special election, the Voting Rights Coordinator shall prepare a written report detailing the Coordinator's election-related activities in implementing the goals and provisions of the Native American Election Information Program.

10. The Voting Rights Coordinator shall conduct the training of all deputy registration officers, poll officials and other election-related personnel who will participate in the Native American Election Information Program. The Alamo Chapter President shall be notified, at least two weeks before the scheduled training, of each training session and be invited to send a representative. Training sessions shall be open to the public and shall be held at convenient locations within the Alamo Chapter, as permitted by tribal officials. Training shall be conducted at least in part in the Navajo language, so that the election-related personnel shall be familiar with Navajo terminology for all aspects of their election duties.

11. Socorro County shall establish a travel and supply budget for the Voting Rights Coordinator which shall be sufficient to cover travel and supply expenses incurred in carrying out the

Coordinator's duties, obligations and responsibilities to effectively implement this Native American Election Information Program. The parties anticipate that, since the Coordinator will be based in the Alamo Chapter, the need for travel other than for state-sponsored training will involve primarily short trips to sites within the Chapter or to the town of Magdalena, with trips as necessary and appropriate to the county courthouse.

D. Tribal Election Liaison

1. Socorro County shall request the Alamo Navajo Chapter President to identify and appoint one individual to serve as a Tribal Election Liaison between the county and the Alamo Chapter.

2. The Tribal Election Liaison shall be qualified as a deputy registration officer and county election officials shall train the Liaison in all aspects of the election process, including the schedule of elections, election-related deadlines, absentee voting, the voter registration and purge processes, candidate qualification requirements and procedures, election day activities, and the text and significance of proposed constitutional amendments and other referenda. In the event of a vacancy in the office of Voting Rights Coordinator, the Tribal Election Liaison shall succeed temporarily to that position, and shall receive all responsibilities, pay and benefits of the position until a new Coordinator takes office.

3. Telephone inquiries from the Voting Rights Coordinator, the Tribal Election Liaison, deputy registration

officers on the reservations, and tribal officials involved in election activities, to the county clerk's office and the secretary of state's office respecting election-related matters, are encouraged and shall be considered official government business, and telephone charges associated with any such calls shall be paid by the county.

E. Translations

1. The following election-related materials and announcements shall be translated into the Navajo language, made available on audio tapes, and provided to the Voting Rights Coordinator at the Satellite Election Office by the dates specified:

a.) Detailed election calendar for each year (by January 1 of each year);

b.) State, county and school district election proclamations (by the statutory date of proclamation);

c.) Constitutional amendments and other referenda issues on the ballot (within 30 days of the date the English text is determined, and no later than the date of proclamation);

d.) A brief description of each constitutional amendment and other referendum issue on the ballot (by the date of each election proclamation);

e.) Candidate qualification requirements and deadlines (60 days prior to the respective qualification deadlines for primary elections for state and federal offices, primary elections

for other offices, independent candidates, and write-in candidates);

f.) The duties, functions and compensation for each office filled by election involving any part of Socorro County (by January 1 of each year);

g.) Voter registration deadlines (by January 1 of each year, with separate tapes containing deadlines for each type of election);

h.) Instructions relating to voting by absentee ballot (by April 20, 1994), and an explanation of the voter purge process as provided by this Agreement (by April 20, 1994);

i.) The candidates for office and their political parties for each election (by the date on which the ballot is printed); and

j.) Explanations of voting procedures including the operation of voting machines and how to cast a write-in ballot (by May 1, 1994).

2. The county may substitute and/or supplement video tapes for audio tapes covering at least the subjects listed above. All tapes will be edited or new tapes shall be made within 10 days of enactment of any change in election requirements or procedures, so as to reflect and incorporate the new information. Copies of all tapes and other materials prepared pursuant to this Agreement shall be provided to the Alamo Navajo Chapter, the NEA and the United States.

3. Separate recordings shall be provided for each election-related subject matter so as to avoid lengthy tape recording, and the county shall make every effort to ensure that tape recordings do not exceed five minutes in length. Separate tapes shall be made, for example, for each separate constitutional amendment or bond issue to be voted on at a given election. A library of currently applicable tapes, together with English transcripts or text, shall be maintained at the Satellite Election Office.

4. The county, through the Voting Rights Coordinator and Tribal Election Liaison, shall engage in all reasonable efforts to see to it that each tape is played in at least two Alamo Navajo Chapter meetings, as well as at other public meetings and gatherings during the appropriate publicity period. The Voting Rights Coordinator, Tribal Election Liaison or other trained bilingual person shall be present to answer any questions concerning the subject matter of the tape, and the Voting Rights Coordinator shall make a formal request to the appropriate tribal official or officials regarding such presentation in a timely manner. If appropriate tape-playing equipment is not available on the site visited, the county shall provide such equipment to the Voting Rights Coordinator for this purpose.

5. Native American language audio and/or video tapes described in this Agreement shall be available generally to individuals and organizations at the Satellite Election Office and the Alamo Navajo chapter house.

6. The county shall enter into written contracts with qualified persons so that accurate translations are made. The county may use tapes provided by the state, and may coordinate with other counties of the State of New Mexico in the production of tapes; but Socorro County shall be responsible for addressing promptly and, if necessary, correcting or clarifying any translation upon report from any Voting Rights Coordinator, official of the Alamo Navajo Chapter, or any other Navajo speaker. Disputes as to the accuracy of a given translation which are not promptly resolved by mutual agreement between county officials and Native American leaders will be resolved by a mutually agreed upon third party, and the United States shall be notified of each such dispute. The county shall seek the assistance of the state in identifying and retaining any necessary translators or subject matter experts to assist in translation of technical or complicated election-related materials. In the event that the state fails to provide such translators or subject matter experts, the county shall request the assistance of the NEA.

7. The translation shall begin as soon as the English text for an item is known, and translation and review of any election-related material shall be completed promptly. The county's responsibility to ensure prompt and accurate translation of election materials and information, and dissemination thereof, shall extend to materials and information relating to statewide issues, including those published in each Election Proclamation,



and to elections of subdivisions of Socorro County, including but not limited to the Magdalena School District.

8. The Voting Rights Coordinator shall, in consultation with the Tribal Election Liaison and other tribal officials, develop a series of posters suitable for public display to accompany translated and written notices respecting election matters.

9. Upon request, Socorro County shall make available all translations and election materials prepared pursuant to this Program to all governmental entities within Socorro County and other counties which endeavor to provide election information to Native American citizens.

F. Dissemination of Election-Related Information

1. The county shall plan and publicize meetings at the Alamo chapter house, schools, and other sites convenient to voters of Alamo, at which the Voting Rights Coordinator and other trained personnel will make oral presentations in the Navajo language with appropriate audio and visual aids, as provided in part E above, according to the following schedule:

a.) During the 45 days prior to each separate deadline for candidate qualification for any federal, state, county, or school office: the qualifications, duties and compensation of each office, and the procedures for qualifying as a candidate.

b.) During the 45 days prior to each separate deadline for registering to vote in any primary, general, school, or special election: the voter registration procedures, including the names of

local deputy registrars, voter registration cutoff dates, and voter registration locations.

c.) During the 60 days prior to each separate election: the offices to be filled including the duties of each office; the names and party affiliation of each candidate; each ballot proposition, including a brief summary of each proposition and an explanation that detailed information on the ballot proposition is available at the Satellite Election Office and other locations.

d.) During the absentee voting period for each election: the absentee balloting process, including explanation of what persons are eligible to vote absentee and absentee voting locations; polling place procedures, including the operation of voting machines; procedures for casting a write-in ballot (if and only if there is a write-in candidate); the availability of detailed election information at the Satellite Election Office; and the availability of trained translators at the polls.

2. The county shall coordinate publicity efforts with Navajo tribal officials and with the NEA. The NEA will be requested to disseminate all such information through public service announcements on radio and television stations. All publicity shall be made available to any areas containing Navajo population concentrations outside the Alamo Chapter identified in consultation with the NEA.

3. Election-related announcements, materials, tapes, and other election information shall be made available to all high

schools serving residents of the Alamo Navajo Chapter to familiarize students with all phases of the election process.

4. Facsimiles of voting machines or devices shall be made available to the Voting Rights Coordinator for use in training election-related officers and conducting voter education programs on their respective reservations.

5. The New Mexico Legislative Council Service publication of Constitutional Amendments Proposed by the Legislature and Arguments For and Against shall be provided to the Voting Rights Coordinator, Tribal Election Liaison, and deputy registration officers of Socorro County by September 1 of each even-numbered year of this Agreement. Socorro County shall be under no obligation to translate the publication.

6. Radio and/or Television: The obligation of Socorro County to make radio and television announcements in the Navajo language shall be satisfied by "notice" announcements providing a brief general description of the subject matter and an identification of all sites where detailed information is available, including the Satellite Election Office. Socorro County shall not be required to broadcast in the Navajo language the full text of constitutional amendments, election proclamations or other lengthy election-related announcements. Socorro County shall distribute tapes for broadcast to KABR in Alamo and to other available stations or programs for broadcast in the Navajo language regarding:

a.) Deadlines for voter registration for participation in all primary, general, school, and special elections involving portions of the Alamo Navajo Chapter, including identification of regularly available voter registration sites in the Alamo Chapter. These announcements, which shall be spot announcements, shall be made at least twenty times each week for the four weeks preceding the deadlines for both state and federal election registration for each primary and general election. The announcements shall include a description of the offices to be filled in the election to which the registration deadline applies.

b.) Candidate qualification. Spot announcements detailing procedures and deadlines for becoming a candidate shall be made daily during the two weeks preceding each candidate filing date, including school board elections.

c.) Dates of special, primary, general, and school board elections, a list of the offices to be elected, and the availability of trained translators at the polls and the right of each voter who requires assistance in casting a ballot to be assisted by a person of her or his choice in accordance with federal law. Announcements shall be made twice a week during at least the three weeks prior to each of the foregoing elections.

d.) An explanation of the ballot identifying each office to be filled, each candidate with the candidate's political affiliation, and the nature and significance of each referendum, proposed constitutional amendment, or ballot proposition to be decided. Announcements shall be made twice a week for at least the

three weeks prior to each special, primary, general, and school board election. ~~Separate announcements shall be made for (1)~~ federal, statewide and multi-county offices (2) county and local offices, and (3) constitutional amendments and other referenda. Socorro County may coordinate announcements respecting federal, statewide and multi-county offices and constitutional amendments and other referenda with other New Mexico counties.

e.) The county shall request that the broadcasters make the above identified announcements at times calculated to reach the largest possible Navajo audience. Each announcement shall refer the audience to the Satellite Election Office for detailed information.

7. Print Media: Socorro County shall not be required to publish in the Navajo language the text of election announcements which are published in English in local newspapers. Announcements detailed in paragraph F.6 shall be published on a weekly basis in the Navajo Times, and twice weekly in the Gallup Independent and a Socorro County newspaper of record, for the publicity periods noted in that paragraph. Socorro County may coordinate such publication with other New Mexico counties.

G. Voter Registration

1. The county shall: request the Alamo Chapter President and other chapter officials to recommend at least six persons qualified to serve as deputy registration officers in Socorro County; request assistance from the NEA in identifying potential deputy registration officers; seek to coordinate state

voter registration with Navajo tribal voter registration through reciprocal deputization of deputy registration officers for state and tribal elections; invite school personnel, including each high school principal and parent-teacher organization officer, to become deputy registration officers; and encourage organized political parties to recommend additional deputy registration officers for election precincts on the reservations. Socorro County shall deputize and train all qualified persons who desire to serve as deputy registrars.

2. Training for deputy registration officers for the Alamo precinct and any other majority Navajo election precinct in the county shall be conducted within the Alamo Chapter by the Voting Rights Coordinator in both English and in Navajo. In addition to training as to registration standards, regulations, and forms, deputy registration officers shall be trained fully regarding the voter purge and absentee voting processes, standards, and regulations. Navajo language tapes and English transcripts shall be used in the training process, and copies of such materials shall be maintained as provided generally in this Agreement.

3. Socorro County shall appoint and train a minimum of six deputy registration officers fluent in English and in Navajo in each county precinct which includes any part of the Alamo Navajo Chapter by May 1, 1994.

4. The names of all deputy registration officers residing or working within the Alamo Chapter shall be prominently posted at the Alamo Navajo chapter house, as permitted by chapter



officials, and at each trading post and/or post office serving the Alamo community. Such lists shall be updated within one week of any change in deputy registration officers. Copies of all lists, and updates thereof, shall be provided to the NEA and the United States within 10 days of posting.

5. The Voting Rights Coordinator, as part of the outreach efforts, shall conduct special voter registration drives in the Alamo Chapter. The NEA, Alamo chapter officers, and the Tribal Election Liaison, shall be consulted as to the best time and place for each registration drive, and notified prior to the scheduled registration.

6. The county shall monitor, on an ongoing basis, the performance of deputy registration officers. The Voting Rights Coordinator shall maintain a record of the number of persons, by race, registered for each month by each deputy registration officer. The Voting Rights Coordinator shall encourage inactive or unproductive deputy registration officers, and the Voting Rights Coordinator shall promptly appoint and train a replacement for any deputy registration officer who fails to respond to such encouragement. The county will adopt recognition programs for deputy registrars to encourage registration activity.

7. The county shall provide the Voting Rights Coordinator and Tribal Election Liaison with current voter registration lists and forms, lists of voters to be purged from the voter registration lists, and detailed election precinct maps for his or her precinct. Copies of the maps and registration lists

shall be maintained and available to the public in the Satellite Election Office.

H. Absentee and Early Voting

1. The county shall supply applications for absentee/early ballots to all deputy registration officers serving the Alamo Chapter, Voting Rights Coordinator, Tribal Election Liaison, and Navajo chapter officers.

2. The Satellite Election Office shall have all materials and personnel available during regular business hours so that an absentee or early ballot can be cast in person on the same basis as at the county courthouse. The Voting Rights Coordinator shall attend the last two Navajo Chapter meetings prior to the deadline for voting absentee in each primary, general, special, or school board election, so that eligible persons may obtain and, if they desire, cast absentee/early ballots in person at that time. At such meetings, the Voting Rights Coordinator shall explain that all persons are eligible to cast absentee/early ballots.

3. The Voting Rights Coordinator shall post information concerning the availability of absentee and early balloting prominently at the Alamo chapter house and at trading posts or post offices which serve the reservation, and at other sites identified by the Tribal Election Liaison.

4. The Voting Rights Coordinator shall be authorized to deliver absentee ballots to voters whose absentee ballot applications have been accepted by the county clerk and to accept

completed absentee ballots from eligible voters for delivery to the county clerk.

I. Election Day Procedures

1. Socorro County shall cooperate with the NEA in the establishment of polling places so that the same buildings can be used for Navajo tribal and state elections in separate areas of the same buildings. At least one voting machine shall be provided for such precinct for every 200 registered voters, or fraction thereof.

2. Poll officials assigned to each majority Navajo election precinct in Socorro County shall be persons who are bilingual in Navajo and in English. The county shall consult with the Tribal Election Liaison, the NEA and Navajo tribal officials of Socorro County, to identify bilingual individuals qualified to work at the polls. Alternate translators shall be designated as required by state law.

3. Poll officials and the Voting Rights Coordinator shall monitor the polls during the course of each election to identify and record each instance in which unreasonable delays occur either in voting or in translation of the ballot occur. Where such delays occur, the county shall take whatever steps are necessary, such as providing additional translators and voting machines, to ensure that such delays do not recur in future elections.

4. Poll officials and translators shall be fully trained, at locations in the Alamo Chapter in the Navajo language concerning election day procedures at the polling places, the

contents and issues appearing on the ballot, and voter purge procedures. Training shall include translation of the entire ballot and related information in the Navajo language. Such training shall include the use of audio and/or video tapes of the entire ballot. A copy of each such tape or set of tapes shall be provided to each poll official along with an English language sample ballot at least 30 days prior to the election, and the county shall ensure that the poll officials have access to appropriate equipment for playing the tapes during this period. Training sessions shall be followed by oral testing in Navajo to ensure their effectiveness.

5. For each voting machine at each polling place serving the Alamo Chapter on election day, the county shall appoint at least one trained translator.

6. Poll officials shall specifically advise each voter who is eligible under state or federal law to receive assistance in casting a ballot that the voter may choose any person to provide that assistance, with the exceptions provided in Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6. After the voter has indicated to a poll official a need for assistance in voting or in reading the ballot in English, the voter's request for assistance shall be noted in the signature roster and it shall be unnecessary for the voter to execute an affidavit of assistance.

7. Poll officials or other designated county officials shall maintain a record of all persons who come to the polls but are not allowed to vote in each precinct of Socorro County. This

record shall include each voter's name, race, address, the reason the person thought she or he was eligible to vote at that site, and the reason for not permitting the person to vote.

8. A list of the persons not permitted to vote shall be provided to the appropriate tribal officials, the Voting Rights Coordinator, Tribal Election Liaison, and deputy registration officers of each precinct involving a portion of the Alamo Chapter. The county shall contact each such person and provide an opportunity for that person to register to vote at the earliest possible time. The Voting Rights Coordinator shall make a report of the list of persons not permitted to vote, the dates on which they were contacted and registered to vote, and identify such additional training, publicity, or other steps that the Coordinator believes would be useful to prevent similar ineligibility among the Native American population in the future.

J. Purge Process

1. Socorro County shall implement the standards and procedures of the National Voter Registration Act of 1993 as the standards and procedures for the removal of voters from the voter registration lists of Socorro County, and no voter shall be removed from the list of eligible voters or denied the right to vote for the failure to vote in any election in Socorro County subsequent to June 1, 1992, except through those standards and procedures.

2. The Satellite Election Office shall be deemed a "central location" under the terms of Section 8(e)(2) of the National Voter Registration Act of 1993.

3. At least 60 days prior to the mailing of any notice of removal from the voter registration lists in accordance with Section 8(d)(2) of the National Voter Registration Act of 1993, the county shall provide to the Voting Rights Coordinator, Tribal Election Liaison, tribal officials, and deputy registrars copies of a list of all persons identified for purging from the voting list for failure to vote in each precinct which involves any part of the Alamo Chapter. Copies of the list shall be sent to the Alamo chapter house in Socorro County with a request that it be posted. The Voting Rights Coordinator, Tribal Election Liaison, tribal officials, and deputy registrars shall be urged to screen said lists to identify persons still eligible to vote in Socorro County but for any failure to vote in any election(s). The name of each such person shall be removed from the list of voters to be purged, and it shall be the responsibility of the Voting Rights Coordinator to correct any errors on the voters list as to address, precinct assignment, or other matter, and to notify the voter of such change. Socorro County shall be under no obligation to mail to any such person any notice pursuant to Section 8(d) of the National Voter Registration Act of 1993.

K. Records

1. Copies of all tapes and other materials or records mentioned in this Agreement shall be maintained by the defendants. Socorro County also shall maintain statistical records including but not limited to:



a. Voter Registration

--Voter registration, by precinct, on a monthly basis.

--Number of voters, by precinct, who are registered at the Satellite Election Office, by each deputy registrar, and at each voter registration drive conducted pursuant to this Agreement.

b. Voter Purge

--Total number of voters purged, by precinct, for failure to vote.

--Total number of voters retained on the voter registration rolls based on certification of eligibility by the Voting Rights Coordinator.

--Total number of voters, by precinct, reinstated by returning post cards.

--Total number of voters validated by other means during the purge period by precinct.

c. Absentee Voting

--Total number of mail requests for absentee ballots and number of absentee votes cast per precinct pursuant to mail requests.

--Total number of absentee ballots cast, per precinct, in person at the county courthouse.

--Total number of absentee ballots cast in person at the Satellite Election Office.

--Total number of absentee ballots cast, per precinct, in person before a deputy clerk and/or Voting Rights Coordinator on the reservation.

d. Publicity

--Time and medium of each broadcast (where records are available) or publication pursuant to this Agreement.

--Time, place and occasion of presentation by the Voting Rights Coordinator, the subject matter(s) addresses, and the approximate number of persons in attendance.

--Time, place and occasion of each instance in which each election-related video and audio tape was played, and the approximate number of persons in attendance.

The county shall update these records on an ongoing basis and these data shall be maintained for all precincts of Socorro County at the county clerk's office and at the Satellite Election Office. All tapes, materials, and records prepared or maintained pursuant to this Program shall be available for public inspection and copying upon request.

2. Beginning on July 1, 1994, and quarterly during each year for the life of this Agreement, the county shall compile a Quarterly Report of the efforts taken pursuant to this Agreement during the preceding three months. The report shall include the status of Native American voter participation as shown by statistics in each area addressed in this Agreement, together with an assessment of the effectiveness of each phase of the Program and

a recommendation of the steps to be taken, if any, to improve Native American voter participation. Copies of the report shall be provided to the United States, the President of the Alamo Navajo Chapter and the NEA.

L. Adjustments to Program

1. It is the goal of Socorro County to provide that the entire election process is fully and effectively accessible to Native American citizens, and the procedures set forth above are designed to achieve that goal. Socorro County shall evaluate its programs on an ongoing basis through consultation with the Tribal Election Liaison the NEA and Navajo tribal officials of Socorro County, and counsel for the United States.

2. The parties shall confer in good faith if any party believes that a particular aspect of the Program has proven ineffective. The parties shall confer at least annually in a good faith effort to improve any aspect of the program which has proven ineffective, in accordance with this Agreement. In the event of changes in Native American population patterns in Socorro County, including the development of any new Native American population concentration within the county, the parties promptly shall confer and develop a program for meeting fully the Native American language needs of such population.

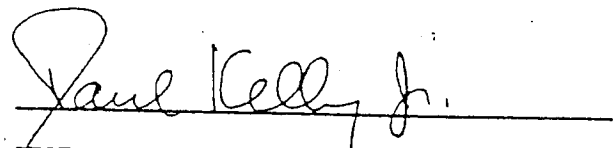
III. CONCLUSION

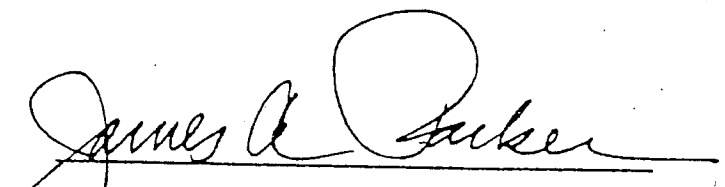
This Agreement represents the commitment of the parties to provide equal voting rights to all citizens of Socorro County, and the county intends fully and faithfully to implement this

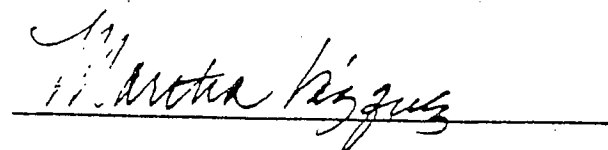
Native American Election Information Program. The parties recognize that regular and ongoing reassessment of the above outlined Program by the responsible officials will be necessary in order to ensure that Native American voters are able, and will continue to be able, to enjoy equal access to all phases of the political process in Socorro County. The parties further agree to confer and cooperate in addressing any jurisdictional issues that may arise in connection with the implementation of this Agreement.

The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this Agreement and to ensure compliance with Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973, 1973aa-1a, and the Fourteenth and Fifteenth Amendments.

Entered this 11 day of April, 1994.

  
UNITED STATES CIRCUIT JUDGE

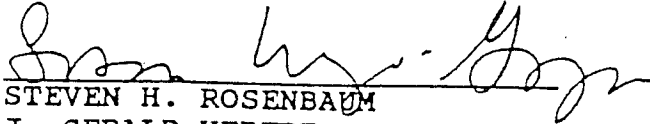
  
UNITED STATES DISTRICT JUDGE

  
UNITED STATES DISTRICT JUDGE

Approved as to form and content:

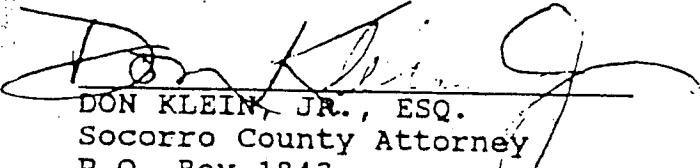
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SOCORRO COUNTY, ET AL.



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Toyukak v. Treadwell; Case No. 3:13-00137-SLG

Statement of Interest of the United States of America

Exhibit 1

(Exhibit 1\_D)

Toyukak, et al. v. Treadwell, et al.

Case No. 3:13-CV-137-SLG

(Exhibit 1\_D Page 1)



**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

MAY - 3 2004

Norman H. Meyer, Jr., CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIBOLA COUNTY, NEW MEXICO;  
CIBOLA COUNTY BOARD OF  
COMMISSIONERS; FREDDIE JOHN SCOTT,  
ISAAC F. PADILLA, W. FRANK EMERSON,  
ARTURO CANDELARIA and BENNIE COHOE,  
Members of the Cibola County Board  
of Commissioners; and EILEEN  
MARTINEZ, Cibola County Clerk,

Defendants.

NO. CIV 93 1134 LH/LFG

ORDER EXTENDING AND MODIFYING STIPULATION AND ORDER

The United States initiated this action on September 27, 1993, pursuant to Sections 2, 12(d), and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, and 28 U.S.C. 2201, alleging violations of the Voting Rights Act arising from Cibola County's election practices and procedures as they affect Native American citizens of the County, including those Native American citizens who rely in whole or in part on the Navajo and Keresan languages. The County did not contest these allegations and agreed to remedy them by entering into a Stipulation and Order. On April 21, 1994, the three-judge court in this case entered the Stipulation and Order

Toyukak, et al. v. Treadwell, et al.  
Case No. 3:13-CV-137-SLG

Exhibit 1\_D  
(Exhibit 1\_D Page 2)

("Order") which, by its terms, is otherwise set to expire on March 15, 2004.

In the Stipulation filed with this Court, defendants concede that they violated the terms of the Order by failing to furnish all instructions, assistance and other information relating to voting orally in the Navajo and Keresan language. See 42 U.S.C. 1973aa-1a(c); see also 28 C.F.R. 55.12. The parties agree that this constitutes good cause to extend portions of the Order. The parties have agreed to certain modifications of the Native American Election Information Program as provided in the parties' Stipulation.

After consideration of the Stipulation and Joint Motion for Modification and Extension of Stipulation and Order, and good cause appearing, the Court finds the terms of the Stipulation fair and reasonable, and it is hereby ORDERED that this Court's April 21, 1994 Order, as modified, is hereby extended until December 31, 2006, and the Native American Election Information Program is modified as provided in the parties' Stipulation.

The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973, 1973aa-1a, and the Fourteenth and Fifteenth Amendments to the Constitution.

- 2 -

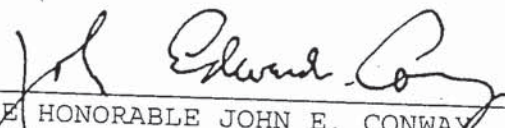
Entered this 22<sup>nd</sup> day of April, 2004.



THE HONORABLE BOBBY R. BALDOCK  
United States Circuit Judge  
United States Court of Appeals  
for the Tenth Circuit



*Sonora* THE HONORABLE C. LEROY HANSEN  
Chief United States District Judge  
United States District Court for  
the District of New Mexico



THE HONORABLE JOHN E. CONWAY  
United States District Judge  
United States District Court for  
the District of New Mexico

SUBMITTED BY:

DAVID C. IGLESIAS  
United States Attorney  
R. ALEXANDER ACOSTA  
Assistant Attorney General

/s/ (electronically submitted 03-15-04)

JOSEPH D. RICH  
JOHN K. TANNER  
RICHARD DELLHEIM  
SADA MANICKAM  
For Plaintiff

Toyukak, et al. v. Treadwell, et al.  
Case No. 3:13-CV-137-SLG

- 3 -

(Exhibit 1\_D Page 4)

CIBOLA COUNTY, et al.

Approved by e-mail 03-15-04

JOSEPH DIAZ

Modrall, Sperling, Roehl, Harris  
& Sisk, P.A.

*For Defendants*

Toyukak, et al. v. Treadwell, et al.  
Case No. 3:13-CV-137-SLG

- 4 -

(Exhibit 1\_D Page 5)



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIBOLA COUNTY, NEW MEXICO;  
CIBOLA COUNTY BOARD OF  
COMMISSIONERS; FREDDIE JOHN SCOTT,  
ISAAC F. PADILLA, W. FRANK EMERSON,  
ARTURO CANDELARIA and BENNIE COHOE,  
Members of the Cibola County Board  
of Commissioners; and EILEEN  
MARTINEZ, Cibola County Clerk,

Defendants.

NO. CIV 93 1134 LH/LFG

JOINT STIPULATION

The United States, Cibola County ("County"), and remaining defendants, agree through their undersigned counsel to the following Joint Stipulation.

Cibola County has been subject to Section 203 of the Voting Rights Act ("Act"), 42 U.S.C. 1973aa-1a, since 1984 for the Keresan language. In 1992, the County's coverage under Section 203 was extended to the Navajo language. In 2002, the Director of the Bureau of the Census determined that coverage under Section 203 of the Voting Rights Act should be continued for both languages.

Section 203 requires that all information that is provided by Cibola County in English about voter "registration or voting notices, forms, instructions, assistance, or other materials or

information relating to the electoral process, including ballots," must be provided in the Keresan and Navajo languages to the extent that they are needed to allow language minority group members to be informed of and participate effectively in the electoral process and all voting-related activities. 42 U.S.C. 1973aa-1a(c). The provisions of Section 203 apply to all stages of the electoral process, "including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process." *Attorney General's Procedures for the Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups*, 28 C.F.R. 55.15. Because the Keresan and Navajo languages are historically unwritten, defendants are required to furnish oral instructions, assistance and other information relating to registration and voting in the Keresan and Navajo languages. 42 U.S.C. 1973aa-1a(c); see also 28 C.F.R. 55.12(c).

The United States initiated this action on September 27, 1993, pursuant to Sections 2, 12(d), and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, and 28 U.S.C. 2201, alleging violations of the Voting Rights Act arising from Cibola County's election practices and procedures as they affected Native American citizens of the

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County, including those Native American citizens who rely in whole or in part on the Keresan and/or Navajo language.

Defendants do not contest that prior to 1994, the County failed to make the election process in Cibola County equally available to Native American and non-Native American citizens as required by Section 2 and the Fourteenth and Fifteenth Amendments, nor do defendants contest that in past elections the County had failed to comply fully with the minority language requirements of Section 203. On April 21, 1994, this Court entered a Stipulation and Order ("Order") between the parties instituting the Native American Election Information Program ("Program") in Cibola County to remedy past non-compliance with the above-mentioned provisions of federal law. The Order, by its current terms, remains in effect until March 15, 2004.

Pursuant to the Order, the United States has assigned federal observers to monitor Cibola County elections, and the United States has conducted extensive investigations of the actions of Cibola County in complying with the Order and Section 203 of the Voting Rights Act from 1994 through 2003. During this period, Cibola County has made some progress in making the election process accessible to the Native American population of the County. Reports of federal observers who monitored elections have demonstrated, however, that Cibola County has failed to furnish all instructions, assistance and other information

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relating to voting orally in the Keresan and Navajo languages, in violation of the Order. Cibola County neither admits nor denies the information set forth in the federal observer reports. The parties agree, however, that this constitutes good cause under paragraph 5, page 9, of the Order to permit the extension of the Order. The parties further agree that modifications in the Program are necessary to ensure full compliance with the relevant provisions of federal law in the future.

Accordingly, the parties stipulate to the following:

1. Defendants shall make all phases of the election process as accessible to the Native American populations at the Acoma, Laguna and Ramah reservations within Cibola County as they are to the remainder of the County's population. Accordingly, Cibola County shall continue to provide information, publicity, and assistance in the Keresan and Navajo languages in voter registration, voter registration cancellation, absentee voting, early voting, procedures at the polls including translation of the ballot, and training of polling officials and translators as outlined in the attached Program.

2. To assist in the effectiveness of this Stipulation and to ensure the continued enforcement of the voting guarantees of the Act and the Fourteenth and Fifteenth Amendments of the Constitution, Cibola County should remain designated for federal examiners pursuant to Section 3(a) of the Voting Rights Act, 42



U.S.C. 1973(a), which enables the appointment of federal observers. Cibola County recognizes the authority of federal observers to observe all aspects of the voting process conducted in the polls on election day, including assistance to voters in the voting booth provided that the voter does not object to being observed.

3. The parties agree that it shall not be necessary to extend the time that the County is required to seek preclearance of voting changes pursuant to Section 3(c) of the Voting Rights Act, 42 U.S.C. 1973a(c).

4. The parties stipulate to changes in Cibola County's Program to simplify its provisions, decrease its burdens, and increase its efficacy. The revised version of the Program is attached to this Joint Stipulation.

5. Defendants acknowledge that permanent procedures need to be instituted in order to ensure ongoing compliance with Sections 2 and 203 of the Voting Rights Act, and the Fourteenth and Fifteenth Amendments to the Constitution. During 2004, defendant county commissioners shall enact into local law the revised Program for use in future elections in Cibola County.

6. This Stipulation shall remain in effect through December 31, 2006.

7. The Court shall retain jurisdiction to enter further relief or such other orders as may be necessary for the

effectuation of the terms of this Joint Stipulation and to ensure compliance with Sections 2 and 203 of the Voting Rights Act, and the Fourteenth and Fifteenth Amendments to the Constitution.

8. The amended Program attached to this Joint Stipulation supercedes the prior Program ordered by this Court.

Agreed and stipulated to on this 15th day of March, 2004.

For Plaintiff:  
UNITED STATES OF AMERICA

DAVID C. IGLESIAS  
United States Attorney

R. ALEXANDER ACOSTA  
Assistant Attorney General

/s/ (filed electronically  
03-15-04)

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THE NATIVE AMERICAN ELECTION INFORMATION PROGRAM

I. Native American Voting Rights Coordinators

A. Cibola County shall employ three Native American Voting Rights Coordinators ("Coordinator(s)") who will coordinate the Native American Election Information Program ("Program") in Cibola County. One of the Coordinators shall be bilingual in Navajo and English, and shall serve primarily the area of the Ramah Chapter of the Navajo Nation. Two of the Coordinators shall be bilingual in Keresan and English, and one shall serve primarily the area of the Acoma Pueblo, while the other shall serve primarily the area of the Laguna Pueblo.

B. In the event of a vacancy in a Coordinator position, the County shall invite officials of the appropriate Pueblo and/or Chapter to recommend at least four qualified applicants. The County may also solicit applicants through its normal job selection process and shall select the most qualified candidate, who otherwise satisfies any County employment requirements, from all available applicants.

C. The County shall train the Coordinators in all aspects of the election process. The Coordinators shall attend all election seminars held by the New Mexico Secretary of State and the Cibola County clerk. The Coordinators shall be fully briefed by County officials regarding the Coordinators' role in ensuring the County's compliance with Section 203 of the Voting Rights Act and the provisions of this Program.



D. The Coordinators shall oversee the Program generally and regularly attend meetings of their respective communities. The Coordinator for the Ramah Navajo Chapter shall attend Ramah Chapter and Chapter officials meetings. The Coordinator for the Acoma Pueblo shall attend tribal council and tribal officers meetings. The Coordinator for the Laguna Pueblo shall attend tribal council and village meetings. Each Coordinator shall attend all other such public meetings, gatherings, tribal fairs, and public functions held at their respective communities as his or her schedule shall permit. During these events, each Coordinator shall, as appropriate, (1) announce the date of the next scheduled election, the offices, if any, open for election, and any non-candidate provisions which shall appear on the ballot; (2) announce the availability of voter registration and the deadlines for registration; (3) provide an opportunity to register to vote by making voter registration applications available and offering language assistance in filling out the applications; (4) announce any scheduled training for election translators and invite the public to attend; and (5) conduct at least one voter registration drive prior to each election.

E. The Coordinator for the Ramah Navajo Chapter shall post the election schedule and all other election-related information at the Chapter House; the Coordinators for the Acoma Pueblo and the Laguna Pueblo shall post the election schedule and all other

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election-related information at the relevant tribal office building. The Coordinators shall ensure that voter registration applications are available in plain view to interested individuals at each location.

F. Beginning sixty days before any election and continuing through election day, the Coordinators shall ensure that at least three announcements a day are made on the radio station KTDB, in the Navajo language, and radio station KUNM, in the Keresan language. These announcements shall contain information on (1) the date of the next election; (2) the offices and/or propositions on the ballot; (3) opportunities to register to vote and the deadline for registering before the election; (4) the availability of absentee balloting; (5) the availability of trained translators at the polls on election day; (6) the right of each voter to oral assistance in their native language from either the County's translators or a person of the voter's choice provided that person is not the voter's employer, an agent of that employer, or officer or agent of the voter's union (42 U.S.C. 1973aa-6); and 7) the name(s) and telephone number of the Coordinator(s) who can be contacted to receive more detailed information about the election. In addition, the Coordinators shall ensure that at least once a day during this period taped translations of the ballot made by either the New Mexico Office of the Secretary of State or the Coordinator are broadcast on

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radio station KTDB, for the Navajo language, and radio station KUNM, for the Keresan language.

G. Before any election, the Coordinator for the Ramah Chapter shall organize and conduct translation training for all election workers who may provide Navajo language assistance at the Ramah Chapter polling place on election day ("translators"). The Coordinators for the Acoma and Laguna Pueblos shall similarly organize and conduct translation training for all election workers who may provide Keresan language assistance at the Acoma or Laguna Pueblo polling places on election day. The training shall include: 1) how to translate the entire ballot into the appropriate language, 2) practicing the translation of the ballot with each translator, and 3) correcting any errors in translation. The translation of the ballot by each translator shall be made according to the taped translations made by the Office of the New Mexico Secretary of State, if such tapes are available. If standardized translations by the Office of the Secretary of the State are not available prior to the training session conducted by the Coordinator, the Coordinator shall record a taped translation of the entire ballot, make the tape available to the translators, and train them in this translation at the training session. If the ballot contains offices or ballot proposition(s) specific to Cibola County for which the Office of the Secretary of State has not provided a Navajo or

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Keresan language translation, the Coordinator shall record a taped translation of the offices and/or proposition(s), make the tape available to the translators and train them in this translation at the training session. Training sessions shall be held at convenient locations within the appropriate community, as permitted by tribal officials, and shall be open to the public.

H. The Coordinator shall be available as needed at the Ramah Chapter House, in the case of the Navajo Coordinator, and the appropriate tribal offices in the case of the Keresan Coordinators, to assist in voter registration or to answer election-related questions when not engaged in the other activities required under this Program.

I. The County shall establish a travel, supply, and telephone budget for the Coordinator sufficient to cover expenses incurred in carrying out the Coordinator's duties in fulfilling the objectives of this Program.

## II. Intergovernmental Coordination

In administering the Program, Cibola County and its Coordinators shall:

A. Request and accept all training, materials, and services available from the State of New Mexico in furtherance of the implementation of this program. The Coordinators shall attend all election-related seminars or training sessions conducted by the New Mexico Office of the Secretary of State,

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including the Coordinator and/or County Clerk meetings sponsored by the New Mexico Native American Election Information Program.

B. Encourage contact and collaboration with other counties engaged in similar language assistance programs.

C. Invite assistance of tribal officials and the Navajo Elections Administration and the All Indian Pueblo Council as needed to administer effectively the Program.

D. The parties recognize the separate powers and authority of the tribal governments, and nothing in this amended agreement limits or infringes tribal powers or authority. Accordingly, where this Agreement requires Cibola County to perform acts in consultation and cooperation with tribal governments, the County is obligated to undertake its obligations using all good faith efforts. The County shall not be required to perform such acts if a tribal government refuses the County's efforts. In the event of any such refusal, the County shall promptly, and prior to the date for performance of the act or event to be performed by the County, notify counsel for the United States of the refusal or noncooperation.

### III. Satellite Election Offices

A. Within ten days of the effective date of this Agreement, the County shall contact tribal officials at the Acoma and Laguna Pueblos and the Ramah Chapter to discuss the possibility of

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establishing Satellite Election Offices convenient to the populations of the respective communities.

B. Each Satellite Election Office shall serve as the principal place for office hours for the voting rights coordinators, as a distribution point for the dissemination of election-related information, and as a site for the performance of functions related to the election process that can be performed at the County courthouse, including, but not limited to, registering to vote or updating voter registration information, early voting, and the casting of absentee ballots.

C. Delivery of a voter registration application or performance of any other election-related task at a Satellite Election Office shall be effective in terms of all time deadlines and requirements as if the application had been delivered to, or the task performed at, the County courthouse.

D. A supply of all forms and materials necessary to complete these functions shall be maintained at each Satellite Election Office.

#### IV. Translations

A. The County shall ensure that taped versions of the Navajo and Keresan language translations of the statewide offices and ballot propositions to appear on the ballot provided by the Office of the New Mexico Secretary of State are delivered to the Coordinator as soon as they are available. Taped versions of the

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translations and playback equipment shall be made available to the translators during their translation training and on election day at the Acoma, Laguna and Ramah polling places.

B. The County shall provide each Coordinator with tape recording and playback equipment and a sufficient supply of blank tapes for use in translator training.

C. During elections, translations of the ballot into Navajo and Keresan shall be provided according to the written and/or taped translations made by the Office of the New Mexico Secretary of State, to the extent such translations are available.

V. Election Day Procedures

A. The County shall assign at least one trained translator to the polling places at the Acoma and Laguna Pueblos and the Ramah Chapter for every voting machine.

B. Polling place translators shall orally advise voters of the availability of language assistance.

C. Any voter receiving language assistance from polling place translators shall be provided a full and complete translation of each office, the party (when appropriate) of each candidate, all ballot propositions, and relevant instructions on how to cast a ballot and the use of the voting machine (including, when appropriate, instructions on write-in votes), and shall be read all candidates' names for each office.

## VI. Voter List Maintenance

At least 30 days before any registrants from the Ramah Chapter or the Acoma or Laguna Pueblos, are sent notice of the potential cancellation of their registration in accordance with Section 8(d)(2) of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg-6(d)(2), a list of the names of these registrants shall be provided to the appropriate Coordinator. If the Coordinator or tribal officials identify any registrant on the list within the thirty day period who remains eligible to vote in Cibola County, that registrant shall not be sent a notice of potential cancellation and shall be maintained on the list of eligible voters provided that the Coordinator or tribal officials provide the current registration address of the registrant. The Program does not otherwise prohibit the proper authorities from removing from the voter list those ineligible to vote by reason of a change of address, assuming that the requirements of the National Voter Registration Act of 1993, 42 U.S.C. 1973gg, et seq., are met.

## VII. Records

For each election, the Coordinator shall record each activity that is performed in fulfillment of this Program on a copy of the Summary of Activities Form appended herein. Within 30 days after each election, the Coordinator shall submit the

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completed form to the County Clerk and shall make copies available, upon request, to the United States.

VIII. Adjustments to the Program

Before making any adjustments in this Program, the County shall endeavor to safeguard future compliance with Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973, 1973aa-1a, and the Fourteenth and Fifteenth Amendments to the Constitution, shall consult in good faith with tribal officials from the Acoma and Laguna Pueblos and the Ramah Chapter, and shall provide notice to counsel for the United States of any proposed changes.








Posting or distribution of election materials by Coordinator:

Date	Place	Materials

Other meetings attended by Coordinator (for example, with County or State officials):

Date	Place	Description of meeting




Training of poll workers organized and conducted by Coordinator:

Date	Place	PW*	O**	Description of training

\* Number of poll workers who attended the training.

\*\* Number of other persons, such as members of the public, who attended the training.

Number of voters registered by the Coordinator since the last election: \_\_\_\_\_

Other activities of the Coordinator, including voter registration drives:

Date	Place	Description of activity

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Statement of Interest of the United States of America

Exhibit 1  
(Exhibit 1\_E)

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FILED

MAY 22 1989

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

BY                       
DEP. CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF ARIZONA,  
et al.,

Defendants.

CIV 88-1989 PHX EHC

CONSENT DECREE

The United States filed its complaint on December 8, 1988, to enforce Sections 2 and 4(f)(4) of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973 et seq. Section 2 provides, in pertinent part, that: "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color..." Section 4(f)(4) is a special provision of the Act which, as it applies to this case, requires that the defendants provide oral instructions, assistance, or other information relating to registration and voting in the Navajo language.

The plaintiff alleged in its complaint that various election standards, practices, and procedures of the defendants unlawfully deny or abridge the voting rights of Navajo citizens residing in the defendant counties. The challenged practices include alleged Toyukak, et al. v. Treadwell, et al. Exhibit 1\_E

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1 discriminatory voter registration, absentee ballot, and voter  
2 registration cancellation procedures, and the alleged failure of  
3 the defendants to implement, as required by Section 4(f)(4),  
4 effective bilingual election procedures, including the effective  
5 dissemination of election information in Navajo and providing for  
6 a sufficient number of adequately trained bilingual persons to  
7 serve as translators for Navajo voters needing assistance at the  
8 polls on election day.

9 On January 20, 1989, the defendants<sup>1</sup> served their answer to  
10 the complaint. In their answer, the defendants denied that their  
11 registration, absentee ballot, registration cancellation, and  
12 bilingual election procedures violate the Voting Rights Act. The  
13 defendants affirmatively alleged that the plaintiff's failure to  
14 fulfill its treaty and trust responsibility to the Navajo tribe  
15 is responsible for the alleged poor road conditions, poor mail  
16 service, and limited availability of telephones and automobiles  
17 on the Navajo Reservation which the plaintiff claimed contributes  
18 to the defendants' alleged violations of the Voting Rights Act.  
19 The defendants also asserted a counterclaim alleging that the  
20 United States has continuously violated various provisions of an  
21 1868 treaty between the United States and the Navajo tribe, and  
22 that, but for its breach of those treaty obligations, the Navajo  
23

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24  
25 <sup>1</sup> The defendants include the State of Arizona and the  
26 members of the Apache County Board of Supervisors, a majority of  
27 whom are Navajo, and the members of the Navajo County Board of  
28 Supervisors, two out of five of whom are also Navajo.

1 people would be sufficiently bilingual that this action would be  
2 moot.

3 On March 24, 1989, the plaintiff moved to dismiss the  
4 defendants' counterclaim. On April 25, 1989, the defendants  
5 filed a motion for summary judgment on all of the plaintiff's  
6 claims in this action.

7 The parties to this litigation, without in any way  
8 derogating from their respective positions as to the merits of  
9 the claims asserted, have conferred and agree that it is in the  
10 best interest of all the parties that the controversy should be  
11 settled without the necessity and extraordinary expense of a  
12 trial. Accordingly, the plaintiff and the defendants have agreed  
13 to the entry of this Consent Decree, which resolves the  
14 plaintiff's claims, and ensures that the defendants' election  
15 practices and procedures provide Navajo citizens with an equal  
16 opportunity to participate effectively in the electoral process.  
17 For purposes of this litigation only, the parties further agree  
18 that, upon entry of a final order implementing the Consent Decree  
19 as provided in paragraph 2 below, the defendants' counterclaim,  
20 the plaintiff's motion to dismiss the counterclaim, and the  
21 defendants' motion for summary judgment will become moot. In the  
22 interim, the parties have requested that all further responses to  
23 the pending motions and responses to pending discovery be stayed.

24 Entry of this Decree shall not be construed as evidence of a  
25 violation of the Voting Rights Act in any future litigation.

26 This Decree shall not constitute an adjudication or admission by  
27



1 the defendants of any violation of the Voting Rights Act or the  
2 Attorney General's regulations implementing that Act, or an  
3 adjudication or admission by the plaintiff of any violation of  
4 the Treaty of 1868 or any other treaty or trust obligation to the  
5 Navajo tribe. The parties also waive any findings of fact and  
6 conclusions of law on all of the issues raised by the plaintiff's  
7 complaint.

8 This Court has jurisdiction over the parties and the subject  
9 matter of the plaintiff's complaint. This Decree is final and  
10 binding between the parties and their successors regarding the  
11 facts, claims, and issues raised in or underlying the plaintiff's  
12 complaint and resolved herein.

13 ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS  
14 FOLLOWS:

15 1. The counties have adopted, and the State of Arizona has  
16 agreed to subscribe to, the following Navajo Language Election  
17 Information Program which the Court hereby provisionally  
18 approves, as set forth below.

19 2. Within thirty (30) days of the entry of this Decree, the  
20 defendants will submit this program to the Attorney General of  
21 the United States for review pursuant to the requirements of  
22 Section 5 of the Voting Rights Act, 42 U.S.C. §1973c. If the  
23 requisite Section 5 preclearance is obtained, the parties will  
24 promptly notify this Court of such preclearance and the Court  
25 will enter an Order granting final approval to this Consent  
26 Decree. Upon entry of such Order, the defendants will forthwith

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1 begin to implement the Navajo Language Election Information  
2 Program to which they have agreed in this Decree.

3 3. All further proceedings in this action are hereby stayed  
4 pending the Attorney General's preclearance determination. If  
5 the requisite Section 5 preclearance is not obtained, this  
6 Consent Decree will be withdrawn and the parties will proceed to  
7 prepare for trial. The Court will thereafter enter an Order  
8 governing responses to all pending motions and discovery.

9  
10 I. THE NAVAJO LANGUAGE ELECTION INFORMATION PROGRAM

11 A. Introduction.

12 1. The purpose of the Navajo Language Election Information  
13 Program is to ensure the dissemination of election-related  
14 information to the Navajo language speaking populations of the  
15 counties. This program is intended to be an effort to deal with  
16 the deficiencies or to build on the successful programs that are  
17 already in place in said counties and to provide a structure by  
18 which a developing and improving program may be implemented in  
19 the future. In developing this program, the parties sought and  
20 obtained the assistance of the Navajo Elections Administration,  
21 the agency of the Navajo Nation that is responsible for  
22 conducting tribal elections on the Reservation.

23 2. It is the intent of the state and the counties to  
24 provide full and complete information as to all election-related  
25 matters including, but not limited to, registration, election  
26 dates, candidate information, proposition information, absentee

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1 voting information, and registration cancellation and  
2 reinstatement information. Most of all, this program is intended  
3 to improve the understanding of the electoral process among the  
4 Navajo populations of the counties and to ensure an equal  
5 opportunity to participate in the electoral process.

6 B. Elections Outreach Workers.

7 1. The counties will each employ at least two full time,  
8 bilingual<sup>2</sup>, permanent elections outreach workers who will be  
9 appointed as deputy registrars for purposes of voter  
10 registration. The board of supervisors and recorder's office of  
11 the counties, through and with the active advice and  
12 recommendations of the election outreach workers, will be  
13 responsible for the development and implementation of the Navajo  
14 Language Election Information Program. The elections outreach  
15 workers will be trained and qualified in election procedures  
16 through the state's certification program and through county  
17 programs. They will visit on a regular basis each precinct which  
18 includes any part of the Navajo Reservation and chapter houses  
19 within those precincts. The counties will maintain a record of  
20 the date and purpose of each election-related visit by the  
21 outreach worker or other county personnel to any location on the  
22 Navajo Reservation or off the reservation if it is related to the  
23 Navajo Language Election Information Program.

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25  
26 <sup>2</sup> Bilingual, as used herein, means fluent in the Navajo and  
English languages.

1        2. The counties, by and through the elections outreach  
2 workers and other staff, will conduct the training of all deputy  
3 registrars and election board officials, including the training  
4 of translators and other election-related personnel who will  
5 participate in the Navajo Language Election Information Program.  
6 The Navajo Elections Administration will be notified reasonably  
7 in advance of each scheduled training session and invited to send  
8 representatives to attend said training. Such representatives  
9 will be invited to make suggestions to county training officials  
10 as to appropriate training measures or how to improve the  
11 training measures, and all training sessions will be open to the  
12 public.

13        C. Voter Registration and the Appointment and Training of  
14        Deputy Registrars.

15        1. The counties will seek to increase voter registration  
16 information and opportunities for Navajo citizens by increasing  
17 both the number and practical availability of Navajo-speaking  
18 deputy registrars. The counties will request Navajo chapter and  
19 Navajo tribal officials and staff to become deputy registrars;  
20 request assistance from the Navajo Elections Administration in  
21 identifying potential deputy registrars; and, subject to state  
22 and tribal law, seek to coordinate state voter registration with  
23 tribal voter registration through, among other things, reciprocal  
24 deputationization of registrars for state and tribal elections;  
25 inviting school personnel, including each high school principal  
26 and each community liaison specialist, to become deputy  
27 registrars; and encouraging political parties recognized under

1 Arizona Law to recommend additional deputy registrars for  
2 reservation precincts.

3 2. The counties will deputize and train all qualified  
4 persons who desire to serve as deputy registrars and will attempt  
5 to do informal testing throughout their training to ensure the  
6 effectiveness of the sessions, but will not conduct any formal  
7 oral or written testing. A list identifying the names, addresses  
8 and telephone numbers (if available) of all deputy registrars on  
9 the reservation will be delivered to each chapter house and other  
10 public locations on the reservation with an explanation of the  
11 purpose and functions of the deputy registrar and will be  
12 accompanied by a request that the list of deputy registrars be  
13 permanently posted at the chapter houses and other public  
14 locations on the reservation.

15 3. The counties will take all reasonable steps in an  
16 attempt to appoint and train as deputy registrars at least three  
17 persons who are fluent in English and Navajo in each county  
18 precinct situated entirely or in part on the Navajo Reservation.  
19 The counties will attempt to appoint and train an additional  
20 bilingual deputy registrar as such appointments appear necessary  
21 in the larger precincts. Tribal chapter managers and other full  
22 time chapter employees and staff of each tribal chapter will be  
23 requested to serve as deputy registrars if qualified under state  
24 law and will be requested to be available to register voters at  
25 pre-determined regular locations during regular business hours.  
26 They will also be requested to attend tribal chapter meetings and

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1 register voters at those locations and at any other opportunities  
2 where there is a gathering of Navajo citizens. All deputy  
3 registrars will also be requested to be present outside the polls  
4 on election day to register voters who are found not to be  
5 registered at that time. Such registrars will not interfere in  
6 any way with the polling process nor shall they be present within  
7 the polling place. Deputy registrars will be provided with  
8 current voter registration lists and detailed precinct maps as  
9 required for their particular areas at the time they receive  
10 their training, and after such training they will be provided  
11 periodically with updated precinct maps and voter registration  
12 lists. For Navajo tribal chapters that include portions of both  
13 Navajo County and Apache County, the chapter managers or other  
14 designated persons who are residents of either county will be  
15 appointed, if they are willing, as special deputy recorders  
16 solely for the purpose of registering voters in both counties as  
17 authorized by A.R.S. §16-132(F).

18 4. Within thirty days of their agreement to serve, deputy  
19 registrars will be appointed and trained at convenient sites and  
20 times on the Navajo Reservation and will be given such additional  
21 training as from time to time may appear necessary or may be  
22 requested.

23 5. Training will also be provided to deputy registrars  
24 about all phases of the election process, including voter  
25 registration, candidate qualification procedures and deadlines,  
26 election day activities in general, the pertinent differences

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1 between state and tribal election regulations and procedures, the  
2 voter registration cancellation and reinstatement process, and  
3 absentee voting processes. Deputy registrars will be requested  
4 but not required to undergo such additional training.

5 6. The training of all deputy registrars will be conducted  
6 in Navajo and/or English as requested by the deputy registrars  
7 present except that the deputy registrars will be trained in the  
8 Navajo translation of all voter registration materials including  
9 voter registration cancellation and reinstatement procedures.  
10 The deputy registrars will be trained using appropriate audio  
11 visual materials and/or graphics such as audio tapes, slide  
12 presentations and/or video tapes, along with posters or graphics  
13 of other kinds in order to facilitate their training. The  
14 training material will be based on a current registrar training  
15 manual approved by the county recorder's office.

16 7. Telephone inquiries from these deputy registrars to  
17 county offices respecting election-related matters will be  
18 considered official government business, and the telephone  
19 charges may be reversed.

20 8. The counties will adopt recognition programs for deputy  
21 registrars to encourage registration activity.

22 9. The county recorder's office will conduct periodic voter  
23 registration drives at chapter houses determined by the counties  
24 and at meetings that include areas that cover more than one  
25 chapter. Such registration drives will be advertised in advance  
26 and also include registration drives conducted at fairs, rodeos,

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1 supermarkets and other gatherings of a significant population on  
2 the Navajo Reservation.

3 10. The translation of any materials necessary for the  
4 training of deputy registrars or election poll workers will be  
5 done by county personnel and approved by the county board of  
6 supervisors.

7 11. Any audio tape or video tape translations of election  
8 materials or explanations in the Navajo language of election  
9 procedures (such as voter registration, registration cancellation  
10 and reinstatement procedures, absentee voting, sample ballots,  
11 and ballot propositions) will be prepared by personnel of the  
12 counties or state personnel in consultation with the Navajo  
13 Elections Administration. Any unresolvable disputes as to the  
14 accuracy of a given translation will be resolved by a mutually  
15 agreed upon third party.

16 D. Dissemination of Election-Related Information.

17 1. The counties will inform and provide reasonable notice  
18 to the Navajo Elections Administration of their planned  
19 publicity, election related-announcements, materials, and other  
20 election information. The Navajo Elections Administration will  
21 also be requested to disseminate all such information through  
22 public service announcements on the radio stations that broadcast  
23 on the Navajo Reservation.

24 2. The counties, with the advice and recommendations of the  
25 outreach workers, will plan and publicize meetings at chapter  
26 houses or other sites convenient to voters on the reservation

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1 that may cover more than one chapter at which an outreach worker  
2 will make an oral presentation in Navajo with appropriate audio  
3 visual aids to be held at the following four times:

4 a. Between January 1 and April 1 following each general  
5 election to explain the voter registration cancellation and  
6 reinstatement process.

7 b. Prior to the deadline for filing candidacy petitions for  
8 the primary election to explain voter registration  
9 procedures, including registration cutoff dates, and  
10 candidate qualification procedures.

11 c. After the primary election sample ballot is finalized  
12 and by the Friday before the primary election.

13 d. After the general election sample ballot is finalized  
14 and by the Friday before the general election.

15 The meetings will be planned to cover all areas of the Navajo  
16 Reservation in each county.

17 3. The counties, through the elections outreach workers,  
18 will request of each tribal chapter serving any portion of the  
19 Navajo population in each county that the elections outreach  
20 workers be permitted to make announcements at appropriate chapter  
21 and other meetings referred to above. At such meetings, the  
22 elections outreach workers, if permitted, will explain election  
23 materials or election-related announcements orally in Navajo  
24 and/or through the use of appropriate audio visual materials such  
25 as graphics, slides, or posters. This information, both oral and  
26 in the graphic form, will also be made available in any areas  
27 containing Navajo population concentrations off the reservation,  
28 including Winslow and Holbrook in Navajo County, Sanders in  
Apache County, and any other areas of Navajo population

1 concentrations identified by the counties in consultation with  
2 the Navajo Elections Administration.

3 4. Audio tapes will be prepared by the appropriate  
4 governmental entity to identify briefly the nature and  
5 significance of each referendum, proposed constitutional  
6 amendment, or ballot proposition to be decided. Such tapes will  
7 be provided to each chapter house as soon as possible after the  
8 information is available and as long as possible before the time  
9 of the election so that the chapter officials may review the  
10 information contained therein and provide such announcements or  
11 training sessions regarding the content thereof as they deem  
12 appropriate. Such tapes need not be used for general  
13 broadcasting to the public. Preparation and distribution of  
14 these tapes will fulfill the state's obligation to translate and  
15 disseminate the publicity pamphlet orally in Navajo.

16 5. The counties will establish booths or displays at tribal  
17 fairs, functions, shopping centers, and other locations to be  
18 identified in consultation with the Navajo Elections  
19 Administration. Such booths or displays will be staffed by  
20 election outreach workers when it will further assist the  
21 dissemination of election information to Navajo citizens.

22 6. Radio announcements in the Navajo language and English  
23 language newspaper announcements will be made of the election  
24 information identified in paragraphs D-6a through D-6d below.  
25 Radio announcements in Navajo County will be conducted over KTNN  
26 (Window Rock) and KAFF (Flagstaff). Radio announcements in

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1 Apache County will be over KTNN (Window Rock), and over KNDN  
2 (Farmington) or an alternate radio station selected by the county  
3 to reach the greatest number of Navajo voters in the county.  
4 Public service announcements of the same information identified  
5 below will be provided as frequently as possible over other radio  
6 stations in coordination with and through the Navajo Elections  
7 Administration.

8 a. Deadlines for state voter registration, with  
9 explanations of any different deadlines for participation in  
10 state and federal elections and identification of regularly  
11 available registration sites in each chapter house or other  
12 location on the reservation. Radio announcements of such  
13 information will be made twice a day during the four weeks  
14 preceding the state and federal registration deadlines for  
15 each primary, general, and special election.

16 b. Procedures and deadlines for becoming a candidate.  
17 Radio announcements of such information will be made twice a  
18 day during the two week periods preceding the opening and  
19 closing of each candidate filing period for the primary  
20 election and general election and on a semi-weekly basis  
21 between those dates.

22 c. Dates of primary elections, general elections, and  
23 special elections, a list of the offices to be elected, and  
24 the availability of trained translators at the polls and the  
25 rights of each voter who requires assistance in casting a  
26 ballot to be assisted by a person of his or her choice in  
27 accordance with state and federal law. Radio announcements  
28 of such information will be made semi-weekly during the six  
week period prior to each primary, general, and special  
election.

d. Each of the announcements referred to in paragraphs D-6a  
through D-6c will be published in English on a weekly basis  
in the Navajo Times and in the Gallup Independent during the  
publicity periods described above, and English language  
signs with appropriate graphics will be distributed to each  
chapter house and other public locations on the reservation  
with a specific request that the graphics be permanently  
posted at the beginning of each publicity period and remain  
posted during the relevant period. Such requests shall  
emphasize the importance of these announcements to the  
Navajo voters.

1       7. Audio tapes of other election information, such as voter  
2 registration, registration cancellation and reinstatement  
3 procedures, and absentee voting will be prepared pursuant to the  
4 procedures set forth in paragraph C-11 and provided to radio  
5 stations identified in paragraph 6. However, neither the state  
6 nor the counties will be required to ensure radio broadcasts of  
7 the full text of lengthy election material such as the voter  
8 information pamphlet. Rather, the broadcasts may consist of  
9 brief descriptions of the nature and import of such materials and  
10 identify the times and locations including the chapter and other  
11 meetings and public gatherings where detailed Navajo language  
12 information will be available through county outreach workers or  
13 other county officials, or through the Navajo Elections  
14 Administration or other Navajo officials. The Navajo language  
15 publicity period for the voter information pamphlet and other  
16 election materials and the information not specifically  
17 referenced herein shall commence with their initial dissemination  
18 in English and end with the election itself, or other appropriate  
19 ending date.

20       8. The state and counties will monitor the effectiveness of  
21 their publicity programs on an ongoing basis and, to that end,  
22 will meet as needed with tribal chapter officials and Navajo  
23 Elections Administration officials and other Navajo citizens and  
24 organizations to identify groups or persons who are not being  
25 reached or subject matter which is not being explained

1 sufficiently, and shall take such additional steps as are  
2 reasonably necessary to cure such deficiencies.

3 E. Absentee Voting.

4 1. The counties will supply absentee ballot request forms  
5 including forms which may be used to request special election  
6 boards pursuant to A.R.S. §16-549 to all deputy registrars,  
7 chapter managers, state and county offices on the reservation, as  
8 well as to the Navajo Elections Administration.

9 2. Colored posters explaining the procedures for absentee  
10 voting, including the standards of eligibility for voting  
11 absentee, the availability of absentee ballot request forms at  
12 tribal chapter houses, and the availability of persons to  
13 translate the ballot will be provided to each chapter house and  
14 any other public facility on the reservation within the counties,  
15 accompanied by a request that the posters be prominently  
16 displayed at such facility. Such request will emphasize the  
17 importance of the announcements to the Navajo voters. Such  
18 announcements will also be made either live in the Navajo  
19 language by the outreach workers or by Navajo language tapes  
20 prepared by the counties in consultation with the Navajo  
21 Elections Administration over the radio stations identified in  
22 paragraph D-6 and through public service announcements twice a  
23 day during the two week periods preceding the opening and closing  
24 of absentee voting, and semi-weekly between those dates.

25 3. As previously indicated, the outreach workers will  
26 provide absentee ballot request forms and information and

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1 encourage absentee voting, and will inform prospective absentee  
2 voters that Navajo language translations of the ballot are  
3 available upon request.

4 F. Election Day Procedures.

5 1. The counties will take all reasonable steps to ensure  
6 that an adequate number of effectively trained precinct election  
7 board officials fluent in Navajo and English are present at the  
8 polls on election day for each precinct in which five percent or  
9 more of the total population is Navajo. The counties will invite  
10 the Navajo Elections Administration and tribal chapter officials  
11 to identify bilingual individuals who are qualified under state  
12 law to serve as precinct election board officials and willing to  
13 work at the polls.

14 a. Navajo County.

15 In addition to the number of precinct election board  
16 officials required at each polling place by state law during each  
17 election, Navajo County, in accordance with its present policy,  
18 will take all reasonable steps in an attempt to ensure that at  
19 least two bilingual translators are present or available at each  
20 polling place serving a portion of the Navajo Reservation to  
21 further assist Navajo speaking voters. Two poll workers will be  
22 fully trained as alternate translators at each polling place.

23 b. Apache County.

24 The county will train all bilingual precinct election board  
25 officials to provide Navajo language translations of the ballot  
26 and will assign at least two such officials to provide

1 translation services to Navajo speaking voters. The county will  
2 use precinct registration lists as well as turnout in prior  
3 elections to determine whether additional election board workers  
4 are necessary beyond the minimum number required by state law.

5 c. Nothing contained herein shall preclude either county  
6 from adopting and implementing in accordance with Section 5 of  
7 the Voting Rights Act the policy of the other regarding the  
8 assignment of translators to the polls on election day.

9 2. Poll officials and other county employees will monitor  
10 the polls during the course of the election to identify and  
11 record each instance in which unreasonable delays in voting or  
12 translation of the ballot occur. Where such delays occur, the  
13 counties will take steps, such as establishing additional voting  
14 booths, as are reasonably necessary to ensure that such delays do  
15 not recur in future elections.

16 3. The precinct election board officials and translators  
17 will be trained in Navajo and/or English as requested by the  
18 officials or translators to ensure that they understand polling  
19 place procedures, the contents of the ballot, and voter  
20 registration cancellation procedures. Training in translating  
21 the ballot language will be in Navajo and such training will  
22 include the use of appropriate audio visual materials including  
23 audio and/or video tapes and graphics. Training sessions shall  
24 be followed by oral testing in Navajo to ensure their  
25 effectiveness.

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1        4. Precinct election board officials will take all  
2 reasonable steps without disrupting the orderly and timely  
3 casting of ballots to maintain a record of all persons who come  
4 to the polls but are not allowed to vote, indicating the reason  
5 the person thought she or he was eligible to vote and the reason  
6 for not allowing the person to vote.

7        5. The counties will coordinate with the Navajo Elections  
8 Administration in the establishment of polling places in  
9 locations where the tribe agrees that the same buildings may be  
10 used for tribal and state elections.

11        G. Registration Cancellation Process.

12        1. As soon as possible and available, a list by appropriate  
13 precinct of all persons whose registration has been cancelled for  
14 failure to vote will be provided to each Navajo chapter manager  
15 in the county, to the Navajo Elections Administration, and to  
16 each deputy registrar who shall keep such lists confidential  
17 except for voter registration and reinstatement purposes.  
18 Updated lists of persons who have failed to be reinstated or to  
19 reregister shall be provided to each chapter manager and to the  
20 Navajo Elections Administration after the voter registration  
21 cancellation and reinstatement process is complete.

22        2. The counties will inform voters of the voter  
23 registration cancellation and reinstatement process through radio  
24 announcements live in the Navajo language by the outreach workers  
25 or by Navajo language tapes prepared by the counties in  
26 consultation with the Navajo Elections Administration on the

1 radio stations identified in paragraph D-6 and through the public  
2 service announcements specified therein. Such announcements are  
3 to be broadcast three times a day beginning January 20 and  
4 continuing through January 30, on a daily basis continuing  
5 through February 20, and thereafter twice a week through the  
6 close of the registration cancellation and reinstatement period  
7 on April 1. From January 20 through the close of the  
8 registration cancellation and reinstatement period, a similar  
9 announcement will be published weekly in English in the Navajo  
10 Times and in the Gallup Independent and will be provided in  
11 colored poster or graphic form to each chapter house and other  
12 public location on the Navajo reservation with a request that the  
13 posters be prominently posted at such locations. Such request  
14 will emphasize the importance of the posters to Navajo voters.  
15 Such information will also be disseminated at meetings identified  
16 in paragraph D-2 above and at other locations deemed to be  
17 effective by the election outreach workers and shall be  
18 disseminated in a timely manner.

19 3. The counties will develop a program in coordination with  
20 the Navajo Elections Administration, other counties with Navajo  
21 populations, and with the state, to provide colored postcards  
22 indicating the voter's registration has been cancelled so that  
23 the voter may realize by the color of the postcard received that  
24 he or she must return the postcard or reregister in order to  
25 participate in the next election.

1  
2 H. Records and Reports.

3 1. The state and counties will maintain copies of all  
4 tapes, graphics, and other materials provided for voter  
5 information purposes pursuant to this program along with records  
6 of how those materials were used and on what dates, and the  
7 locations and dates of all training sessions held pursuant to  
8 this program. In addition, the counties will maintain  
9 statistical records including but not limited to:

10 a. Voter Registration

- 11 -- Voter registration for each precinct  
12 on a quarterly basis as specified by the  
13 schedule set forth in A.R.S. §16-168  
14 (G).  
15 -- Number of voters registered during each quarter  
16 by precinct, as specified by the schedule set  
17 forth in A.R.S. §16-168 (G).  
18 -- Number of voters by precinct who are registered at  
19 voter registration drives conducted pursuant to  
20 this program.

21 b. Voter Registration Cancellation

- 22 -- Number of voters whose registration was cancelled  
23 for failure to vote by precinct.  
24 -- Number of voters retained due to possession of a  
25 current drivers license by precinct.  
26 -- Number of voters reinstated by returning prepaid  
27 post cards by precinct.  
28 -- Number of voters registered during the  
registration cancellation period (January 1-  
April 1) by precinct.



1           c. Absentee Voting

- 2           -- Number of requests for absentee  
3           ballots per precinct, with a  
4           breakdown of the number of requests  
5           received through the mail and the  
6           number received through deputy  
7           registrars pursuant to the  
8           provisions of this agreement, the  
9           total number of absentee ballot  
10          requests made in person at the  
11          county recorder's office, and the  
12          total number of absentee votes cast  
13          per precinct.
- 14          -- Number of absentee ballots cast per  
15          precinct before special election  
16          boards.
- 17          -- Number of absentee ballots cast per  
18          precinct in person at the county  
19          courthouse.
- 20          -- Number of absentee ballots cast per precinct by  
21          mail.

22           d. Publicity

- 23          -- Records of all paid radio announcements and public  
24          service announcements as those records may be  
25          available and of newspaper publications and  
26          posters of election-related information pursuant  
27          to this program.

28           2. The state and counties will maintain such other records  
as may be appropriate to permit review of the effectiveness of  
the program and to assist the state and counties in further  
developing the effectiveness of this program. Such records shall  
be available to the public upon request. Copies of any or all  
such records shall be forwarded to the United States upon  
request.

3. On June 1 of each year the counties or each of them  
will send to the United States a report showing by precinct the

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1 following: (a) the number of registered voters; (b) the number of  
2 voters who registered during the preceding year; (c) the number  
3 of voters whose registration was cancelled for failure to vote in  
4 the last general election; (d) the number of voters retained due  
5 to possession of a current drivers license; (e) the number of  
6 voters who were reinstated because they returned the postcard  
7 notice during the registration cancellation period; (f) the  
8 number of absentee ballots cast in each election; and (g) a brief  
9 explanation of any contemplated modifications or changes to the  
10 Navajo Language Election Information Program. Because of the  
11 detailed nature of this Consent Decree, the data included in the  
12 report are not intended to be the measure of compliance with this  
13 Consent Decree.

14 I. Adjustments to the Program.

15 1. The state and counties will have the authority to  
16 eliminate or modify any aspect of this program if shown to be  
17 unproductive or inefficient in furthering the goals of the  
18 program, subject to the preclearance requirements of Section 5 of  
19 the Voting Rights Act, 42 U.S.C. §1973c.

20 II. RETENTION OF JURISDICTION AND COSTS

21 It is the intention of the parties that this Decree  
22 constitute a complete and full resolution of all claims made in  
23 this case. Accordingly, the parties adopt the following  
24 provisions relating to termination of this Decree and continuing  
25 Court supervision hereunder:

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1        1. This Court shall retain jurisdiction to enter such  
2 further relief or other orders as may be necessary to effectuate  
3 the terms of this Decree.

4        2. The United States agrees, for a period of four years, not  
5 to seek any further or additional relief with respect to the  
6 Navajo Language Election Information Program prescribed herein  
7 for Apache and Navajo counties. It is contemplated by the  
8 parties that this four year period will be used to implement  
9 fully the bilingual election program set out in this Decree, and  
10 to make adjustments to that program as necessary in accordance  
11 with the provisions of paragraph I-1 above. At the end of such  
12 four year period, the United States will have 120 days within  
13 which to advise the Court whether, for good cause shown, this  
14 Decree or any of its provisions should remain in effect for an  
15 additional period of not more than two years. Absent such a  
16 showing by the United States, this Decree will then be terminated  
17 and the case will be dismissed.

18        3. Nothing contained herein shall preclude any party from  
19 moving to modify any provision of this Decree pursuant to the  
20 provisions of Fed. R. Civ. P. 60(b), nor is any provision of this  
21 Decree intended to limit this Court's enforcement authority in  
22 any future proceedings between the parties.

23        4. The parties agree to bear their own costs and attorneys  
24 fees in this litigation.

1 Entered this 28 day of May, 1989

Carl H. Pearson

UNITED STATES DISTRICT JUDGE

2  
3  
4  
5 Approved as to form  
6 and content:

7 For the Plaintiff:  
8 UNITED STATES OF AMERICA

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NAVAJO COUNTY, ARIZONA



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Statement of Interest of the United States of America

Exhibit 1

(Exhibit 1\_F)

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(Exhibit 1\_F Page 1)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

---

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
SANDOVAL COUNTY, NEW MEXICO;	)	
SANDOVAL COUNTY BOARD OF	)	No. CIV. 88-1457-BRB/DJS
COMMISSIONERS; WILLIAM SAPIEN,	)	
DON LEONARD, DAVID BENCY, JACK	)	
E. THOMAS, and JOSHUA MADALENA,	)	
Members of the Sandoval County Board of	)	
Commissioners; and SALLY PADILLA,	)	
Sandoval County Clerk,	)	
	)	
Defendants.	)	

---

ORDER EXTENDING AND MODIFYING CONSENT DECREE

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The United States initiated this action against the State of New Mexico and Sandoval County, New Mexico in December 1988, alleging violations of §§ 2 and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973 & 1973aa-1a. The action arises from election practices and procedures in Sandoval County as they affect Native American citizens. On March 23, 1990, the parties entered into a settlement agreement (doc. 123) that required Sandoval County to develop and implement a comprehensive bilingual Native American Election Information Program (NAEIP) for its Native American citizens. The parties filed a detailed description of the NAEIP with the Court on April 30, 1990 (doc. 124).

On May 17, 1990, the Court ordered Sandoval County to implement the NAEIP (doc. 125)

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pursuant to the settlement agreement. Also pursuant to the agreement, the Court dismissed the case as to the State of New Mexico.

Sandoval County failed to comply substantially with the NAEIP. In June 1993, the United States moved to reactivate the case and sought continued discovery (doc. 127). The Court granted that motion (doc. 139). Ensuing discovery uncovered significant evidence of Sandoval County's failure to comply with the settlement agreement. Accordingly, Sandoval County agreed to negotiate a consent decree. The parties filed a consent decree and revised NAEIP on August 30, 1994 (doc. 156). On September 9, 1994, the Court accepted the consent decree as the order of the Court, which, by its terms, was set to expire September 9, 2004 (doc. 157). Pursuant to the consent decree, the United States assigned federal observers to monitor Sandoval County elections, and investigated extensively Sandoval County's efforts to comply with the revised NAEIP and §§ 2 and 203 of the Voting Rights Act from 1994 through June 2004. Based on information gathered during that time, the United States determined that Sandoval County, despite making some improvements, failed to furnish all instructions, assistance, and other information relating to voting orally in the Navajo, Towa, and Keresan languages, in violation of the consent decree and §§ 2 and 203.

The United States conferred with Sandoval County to discuss and resolve these compliance problems. The parties agreed that circumstances justified extending the consent decree. Thus, the parties moved jointly to extend and amend the Court's September 9, 1994 consent decree through January 15, 2006 (doc. 162). The Court granted that joint motion, and entered the amended consent decree as the order of the Court on November 5, 2004 (doc. Toyukak, et al. v. Treadwell, et al.

165). Since the November 5, 2004 extension, the United States monitored three elections: the November 2004 general election and the 2006 primary and general elections. The United States and Sandoval County worked cooperatively to resolve compliance problems. Notwithstanding those efforts, compliance problems remained. Indeed, while Sandoval County progressed in making the election process accessible to its Native American population, the evidence demonstrates that it failed to furnish all instructions, assistance, and other information relating to voting orally in Keres, Towa, and Navajo, in violation of the Court's amended consent decree and §§ 2 and 203 of the Voting Rights Act.

The parties again conferred. Thereafter, on April 4, 2007, the parties filed a joint motion to extend and modify the amended consent decree through January 31, 2009 (doc. 175). On July 20, 2007, the Court held a hearing on that motion. On July 24, 2007, the Court entered an order (doc. 185) requiring the United States to file federal election observer reports for the 2004 and 2006 primary and general elections, as well as copies of letter agreements between the United States and other counties regarding programs to comply with § 203. The Court also ordered Defendants to file voting rights coordinator reports from the 2004 and 2006 elections. The Court afforded each party the right to respond to these filings, and ordered the parties to file a joint report setting forth any agreements they reached and identifying any outstanding issues the Court needed to resolve.

On September 10, 2007, the parties filed a Joint Report (doc. 205) in which they agreed that circumstances justified extending and modifying the consent decree a second time. Specifically, the parties' Joint Report noted that neither Sandoval County's Keres, Toyukak, et al. v. Treadwell, et al.

Navajo, nor Towa language program substantially complied with the Court's amended consent decree or §§ 2 or 203 of the Voting Rights Act and, thus, extension of the amended consent decree was appropriate. On September 28, 2007, the parties filed an amended Joint Stipulation and revised NAEIP (doc. 210). The revised NAEIP streamlines and simplifies Sandoval County's responsibilities.

Accordingly, upon consideration of the Joint Motion for Modification and Extension of Consent Decree (doc. 175), the parties' Joint Report (doc. 205), the Amended Joint Stipulation and modified NAEIP (doc. 210), and good cause appearing, the Court finds the terms of the second amended consent decree fair and reasonable, and it is hereby ORDERED that the Court's November 5, 2004 amended consent decree and NAEIP, as modified by the version filed with the Court on September 28, 2007, are hereby extended until January 31, 2009. The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with §§ 2 and 203 of the Voting Rights Act, 42 U.S.C. §§1973 and 1973aa-1a, and the Fourteenth and Fifteenth Amendments to the United States Constitution.

SO ORDERED.

Toyukak, et al. v. Treadwell, et al.

Case No. 3:13-CV-137-SLG



Entered for the Court  
this 28th day of November 2007

---

Bobby R. Baldock  
United States Circuit Judge

---

James A. Parker  
Senior United States District Judge

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Bruce D. Black  
United States District Judge

Toyukak v. Treadwell; Case No. 3:13-00137-SLG

Statement of Interest of the United States of America

Exhibit 1  
(Exhibit 1\_G)

Toyukak, et al. v. Treadwell, et al.  
Case No. 3:13-CV-137-SLG

(Exhibit 1\_G Page 1)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

**FILED**  
**AT ALBUQUERQUE**

FEB 4 1986

**JESSE CASAUS**  
**CLERK**

UNITED STATES OF AMERICA,  
Plaintiff,

v.

McKINLEY COUNTY, NEW MEXICO,  
ET AL.

Defendants.

CIV 86

0028 M

CIVIL ACTION NO.

CONSENT DECREE

ENTERED ON DOCKET  
*Feb 4, 1986*

The United States filed this action pursuant to 42 U.S.C. §1973 et seq., and 28 U.S.C. §2201 alleging that McKinley County, New Mexico failed to comply fully with the minority language requirements of Section 203 of the Voting Rights Act, 42 U.S.C. §1973aa-1a.

Under Section 203 of the Voting Rights Act, whenever McKinley County, New Mexico "provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the [Navajo] language ..." 42 U.S.C. §1973aa-1a(c). Because the Navajo language is historically unwritten, McKinley County, under Section 203, is "required to furnish oral instructions, assistance, or other information relating to registration and voting." 42 U.S.C. §1973 aa-1a(c).

Toyukak, et al. v. Treadwell, et al. Exhibit 1\_G

Case No. 3:13-CV-137-SLG (Exhibit 1\_G Page 2)

According to the 1980 Census, American Indians constitute approximately 65 percent of the population of McKinley County. The majority of the Indians are Navajo. A large proportion of the Navajos residing in McKinley County are unable to speak, write or read the English language, and instead speak the Navajo language.

The defendants claim, and the United States does not deny, that in the past the County has taken certain steps to comply with 42 U.S.C. §1973aa-1a. Defendants do not contest, however, that they have failed to comply fully with the minority language requirements of the Voting Rights Act, 42 U.S.C. §1973aa-1a. Defendants point out that they did not purposely fail to comply with this statute.

The parties to this litigation have conferred and agree that the controversy should be settled without the necessity and expense of a trial. Accordingly, the Plaintiff and Defendants have applied for and agree to the entry of the following final order which is intended by the parties to comprise all of the relief in this case.

I.

NOW THEREFORE, the Court finds that the defendants, although they have taken certain steps toward implementation, have failed to comply fully with the minority language requirements of the Voting Rights Act, 42 U.S.C. §1973aa-1a.

Toyukak, et al. v. Treadwell, et al.     - 2 -  
Case No. 3:13-CV-137-SLG

(Exhibit 1\_G Page 3)

Accordingly, it is ORDERED, ADJUDGED, AND DECREED that McKinley County, New Mexico, together with its officers, agents, employees, successors, and all persons in active concert and participation with them are hereby permanently enjoined from further non-compliance with the minority language requirements of the Voting Rights Act, 42 U.S.C. §1973aa-1a.

II.

IT IS FURTHER ORDERED THAT Defendants shall, for a period of five years, take the following steps to comply with the minority language requirements of the Voting Rights Act, 42 U.S.C. §1973aa-1a, and the implementing regulations, 23 C.F.R. §55.1 et seq. Nothing in this Order shall preclude the County from taking any additional steps to comply with the statute and regulations.

A. Defendants shall provide a bilingual voter registration program which includes:

1. The establishment of rural registration sites in McKinley County for all future elections run by the County. The county will work with the Navajo Tribal Election Commission and other appropriate federal, state and local agencies in determining where to locate the rural registration sites. Further, the Defendants bilingual voter registration program shall include:

(a) At least one voter registration site to be established in County precincts numbered 1-20, and 51-53 and in any future precinct in which Navajos comprise a



majority of the precinct population. Registration and other information will be available in Navajo at each of the sites, Monday through Friday, 9:00 a.m. to 4:00 p.m., during a one-week period preceding the County Clerk's statutory registration deadline for all future elections run by the county.

(b) Each rural registration site shall be staffed by one or more deputy registration officers who are bilingual in English and Navajo. Completion of the proper registration forms at the rural registration sites shall be deemed the equivalent of filing them with the County Clerk's office for purposes of the 5:00 p.m. deadline on the day that registration closes.

For purposes of compliance with this provision, the county may rely on volunteer assistance from the McKinley County Consolidated School District, the Navajo Tribal Election Commission, the Navajo Tribe, Navajo Tribal Chapters, the State of New Mexico or any other government or private individual who may be located in the rural Navajo precincts.

2. In McKinley County precinct's numbered 1-20, 51-53 and in any future precinct in which Navajos comprise a majority of the precinct population, the County shall designate a minimum of three deputy registration officers. At least two of the registration officers shall be bilingual in English and Navajo in order that they may properly assist Navajo-speaking persons register to vote. Swearing

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(Exhibit 1\_G Page 5)

in of these deputy registration officers, and registration training sessions should such be necessary, shall be performed in a location convenient to the deputy registration officers.

3. The county shall undertake a more comprehensive recruitment effort to enlist bilingual deputy registration officers. The following shall be the minimal mandatory requirements of the deputy registration officer recruitment program:

(a) Swearing in of deputy registration officers and training sessions, should such be necessary; shall be performed in a location and at a time convenient to the deputy registration officers.

(b) The county shall make no attempt to restrict the number of deputy registration officers appointed within McKinley County. Any person desiring to be a deputy registration officer and meeting the statutory requirements as set out by New Mexico state law shall be duly appointed.

(c) The county shall place no restrictions other than those imposed by state law on the number of registration cards or other registration materials requested by deputy registration officers. Deputy registration officers may request additional registration cards or materials in writing, in person or by telephone. The county shall honor such requests and promptly mail or otherwise make the requested material available to the deputy registration officers.

4. Announcement shall be made in Navajo and publication in English of all registration deadlines, and the announcement of the establishment of the rural Navajo registration sites, their locations, dates and hours of operation, and the availability of bilingual assistance at the sites. Specifically, during the one-week period preceding each election registration deadline, Defendants shall cause an announcement containing the above information:

(a) to be announced in Navajo twice a day on KYVA, KOVO, KGAK, or other appropriate radio stations, if any, with a substantial Navajo audience in McKinley County;

(b) to be announced in Navajo during the Navajo television hour on television station KOB/KOBF:

(c) to be prominently published in English twice in the Navajo Times; and

(d) to be announced in Navajo, either in person or by tape recorded message, at the Navajo tribal chapter meeting held closest in time prior to the registration deadline in each chapter having members residing in McKinley County.

B. The county shall undertake a more comprehensive recruitment effort to enlist bilingual poll officials and interpreters. A minimum of two bilingual interpreters shall be enlisted to serve at each polling place in precincts

Toyukak, et al. v. Treadwell, et al.  
Case No. 3:13-CV-137-SLG

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1-20, 51-53 and in any future precinct in which Navajos comprise a majority of the precinct population. Only one bilingual interpreter is necessary in each precinct in which the population is between five (5) and fifty (50) percent Navajo. No bilingual interpreters are necessary in precincts where the Navajo population is less than five (5) percent. One alternate bilingual interpreter shall be appointed to be on notice to serve at the polling place of each precinct where five (5) percent or more of the population is Navajo. An interpreter may not also serve as an election judge or other election official.

Bilingual interpreters shall determine whether a voter needs assistance, and shall assist that voter in any manner that he or she may desire. Interpreters shall maintain the secrecy of the ballot and shall not disclose the manner in which the assisted persons voted.

C. The county shall expand the current election worker training program to provide for the instruction of poll officials and all others involved in the electoral process in the bilingual voting requirements of federal law, bilingual registration and voting procedures undertaken by the county to comply with federal law, and methods of rendering effective assistance to Navajo-speaking voters.

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Such a program shall include the training and instruction of official poll interpreters in effective, accurate, and unbiased communication of all voting information to Navajo speaking voters. The county shall make all reasonable efforts to schedule and locate training and instruction sessions for official poll interpreters at times and locations convenient to the interpreter trainees.

D. During the two-week period immediately preceding each filing deadline for each county, state, federal or other local election conducted by the county election bureau, the defendants shall make the following information available in Navajo: the available positions for which candidates may file, candidate filing requirements, the deadline by which petitions for candidacy must be received, and any other information pertinent to qualify for candidacy which has been made available in English. All such information shall be:

(a) announced in Navajo at least once per week during each of the two weeks on KYVA, KOVO, KGAK, or other appropriate radio stations, if any, with a substantial Navajo audience in McKinley County;

(b) announced in Navajo during the Navajo television hour on television station KOB/KOBF;

(c) published prominently in English once each week in the Navajo Times; and



(d) announced in Navajo, either in person or by tape recorded message, at each Chapter of the Navajo Tribe located in McKinley County.

E. During the two-week period immediately preceding each election the defendants must make the following information available in Navajo: information concerning the offices subject to election; information concerning the identity of candidates for election; information concerning constitutional amendments, referendum and initiative issues on the ballot; eligibility to vote; dates of election and the hours and location of the polling places; and any other election or voting information which has been made available in English. All such information shall be:

(a) Announced in Navajo at least 3 times during each of the two weeks on KYVA, KOVO, KGAK, or other appropriate radio stations, if any, with a substantial Navajo audience in McKinley County;

(b) announced in Navjao during the Navajo television hour on television station KOB/KOBF.

(c) published prominently in English once each week in the Navajo Times; and

(d) announced in Navajo, either in person or by tape recorded message, at each Chapter of the Navajo Tribe located in McKinley County.

F. Defendants shall establish a rural absentee ballot program for the purpose of providing absentee voter information in the Navajo language. The following shall be the minimal mandatory elements of the rural absentee ballot program:

1. In County precincts numbered 1-20, 51-53, and in any future precinct in which Navajos comprise a majority of the precinct population, the county shall designate at least one notary public who resides within the precinct to notarize absentee ballots. If no notary public can be found who resides within a Navajo-majority precinct, the County will make all reasonable efforts to recruit and qualify a Navajo-speaking individual residing within the precinct as a notary public.

2. Commencing on the statutory date that absentee ballots become available for distribution and continuing until the statutory deadline for receipt of absentee ballots, the County shall make absentee ballot information available in Navajo. The absentee ballot information shall include an explanation of the absentee ballot process, notification of the location and availability of the designated notary publics in the majority-Navajo county precincts as delineated in the preceeding paragraph in this Section and any other information pertinent to absentee balloting procedures

which has been made available in English. Absentee ballot information shall be:

(a) announced in Navajo at least 3 times per week for a period of 2 weeks immediately preceeding the deadline for the receipt of absentee ballots on KYVA, KOVO, KGAK, or other appropriate radio stations, if any, with a substantial Navajo audience in McKinley County;

(b) announced in Navajo during the Navajo television hour on television station KOB/KOBF;

(c) published prominently in English once each week in the Navajo Times; and

(d) announced in Navajo, either in person or by tape recorded message, at each Chapter of the Navajo Tribe located in McKinley County.

3. At least 20 days prior to the availability of absentee ballots, the county shall provide absentee ballot applications to all designated deputy registration officers and designated notary publics who reside in precincts 1-20, 51-53, and in any future majority-Navajo county precinct. All persons and organizations who request absentee ballot applications either in writing, in person or by telephone shall be provided with applications by the county elections bureau. The County shall not place unreasonable restrictions on the number of absentee ballot applications to be distributed to any person or organization.

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(Exhibit 1\_G Page 12)

G. Each time the county undertakes to purge eligible voters from its registration rolls pursuant to § 1-4-22 through 1-4-32 of the state election code, the County shall carry out the following additional procedures to notify Navajo-speaking individuals who are subject to purge:

1. Each deputy registration officer residing in County precincts 1-20, 51-53 and in any future majority-Navajo precincts will receive from the county a list of registered voters who reside in their precinct and who are subject to purge. The county will request that each deputy registration officer notify the county concerning persons who are on the purge list and have died or moved from the precinct.

2. The county will mail to all registered voters subject to purge, a card notifying them that they are about to be purged. Within the time period set out in state law, voters may reassert their eligibility as registered voters by either: (1) returning the purge cards to the county clerk's office or (2) notifying the County Clerk, County Bureau of Elections, or deputy registration officer of their desire to be retained as an eligible registered voter.

3. The county will disseminate information reasonably designed to explain the purge process to Navajo voters. Such information shall include any information pertinent to

the purge process which has been made available in English. Specifically, during the period provided by state law in which voters are subject to purge, the county shall cause the above information:

(a) to be announced in Navajo twice a week on KYVA, KOVO, KGAK or other appropriate radio stations, if any, with a substantial Navajo audience in McKinley County;

(b) to be published prominently in English twice in the Navajo Times;

(c) to be announced in Navajo, either in person or by tape recorded message, at each Chapter of the Navajo Tribe located in McKinley County.

4. The county will encourage deputy registration officers to contact individuals subject to purge to determine whether affected persons desire to be retained on the registration rolls. Before any person in precincts 1-20, 51-53 or in any future precinct in which a majority of the population is Indian is removed from the registration list, the county will contact the deputy registration officer in those precincts to determine which voters have indicated a desire to be retained on the registration rolls. Should the County learn that any voter has indicated a desire to be retained on the registration rolls, that voter will be retained on the county's list of registered voters.



H. For each polling place location where the county places signs in English directing voters to the polling area, the County shall take appropriate steps, including the use of simple maps, to communicate the same information to Navajo-speaking voters.

I. (a) In order to more fully meet its responsibility under federal law, the County will assign at least one employee in the County Elections Bureau, who is fully bilingual in Navajo and English, the full time task of implementing the requirements of this Decree for a period of 2 years. Specifically, such person will be assigned to initiate, coordinate, implement and supervise McKinley County's compliance with the Navajo language requirements of Section 203 of the Voting Rights Act, 42 U.S.C. §1973aa-1a, including, but not limited to, compliance with the provisions of this consent decree.

(b) In addition, the County shall provide Navajo language assistance in the office of the Bureau of Elections during normal business hours.

J. Whenever the County provides or causes voting or election information to be made available in English, it shall rely on individuals who are capable of providing effective, accurate and unbiased translation of the same information into Navajo including constitutional amendments,

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referendum or initiative issues and the information contained in the Voter Information Pamphlet.

II.

Defendants shall cause to be made and preserved records of the actions taken to comply with this agreement and order. Representatives of the Plaintiffs shall be permitted to inspect and copy relevant records of the Defendants at reasonable times and upon reasonable notice.

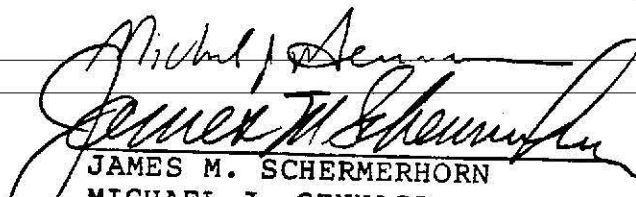
III.

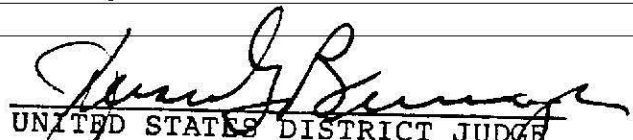
The Court shall retain jurisdiction over this matter for all purposes for a period of five years. At the end of the five year period, the defendants may move the court, upon 45 days written notice to the United States, for an order terminating the provisions of the consent decree. In considering whether the consent decree shall be dissolved, the Court will take into account, subject to a sufficient demonstration by the defendants, whether the basic objectives of the consent decree have been achieved.

ORDERED this 3<sup>rd</sup> day of February, 1986.

For the United States:

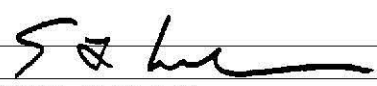
  
UNITED STATES APPELLATE JUDGE

  
JAMES M. SCHERMERHORN  
MICHAEL J. GENNACO  
Attorneys for the Plaintiff  
United States

  
UNITED STATES DISTRICT JUDGE

For the Defendants:

  
FORREST G. BUFFINGTON  
Attorney for the Defendants

(Exhibit 1)   
UNITED STATES DISTRICT JUDGE

Toyukak v. Treadwell; Case No. 3:13-00137-SLG

Statement of Interest of the United States of America

Exhibit 1  
(Exhibit 1\_H)

Toyukak, et al. v. Treadwell, et al.  
Case No. 3:13-CV-137-SLG

(Exhibit 1\_H Page 1)

FILED  
UNITED STATES  
DISTRICT COURT  
DISTRICT OF UTAH  
JAN 12 8 51 AM '84  
PAUL L. SAGGER  
CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
SAN JUAN COUNTY, UTAH, ET. AL.)  
 )  
Defendants. )  
\_\_\_\_\_ )

1287  
CIVIL ACTION NO. C-83-1987J  
AGREED SETTLEMENT AND ORDER

The United States filed this action pursuant to 42 U.S.C. §1973 et seq., and 28 U.S.C. §2201 alleging that San Juan County, Utah failed to comply with the minority language requirements of Section 203 the Voting Rights Act, 42 U.S.C. §1973aa-1a.

Under Section 203 of the Voting Rights Act, whenever San Juan County, Utah "provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the [Navajo] language ..." 42 USC §1973aa-1a(c). Because the Navajo language is historically unwritten, San Juan County, under Section 203, is "required to furnish oral instructions, assistance, or other information relating to registration and voting." 42 U.S.C. §1973aa-1a(c).

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Case No. 3:13-CV-137-SLG (Exhibit 1\_H Page 2)

According to the 1980 Census, American Indians constitute approximately 46 percent of the population of San Juan County. The vast majority of the Indians are Navajo. A large proportion of the Navajos residing in San Juan County are unable to speak, write or read the English language, and instead speak the Navajo language.

The defendants claim, and the United States does not deny, that in the past the County has taken certain steps to comply with 42 U.S.C. § 1973 aa-1a. Defendants do not contest however, that they have failed to fully comply with the minority language requirements of the Voting Rights Act, 42 U.S.C. § 1973aa-1a. Defendants aver, however, that they did not purposely fail to comply with this statute.

The parties to this litigation have conferred and agree that the controversy should be settled without the necessity and expense of a trial. Accordingly, the Plaintiff and Defendants have applied for and agree to the entry of the following final order which is intended by the parties to comprise all of the relief in this case.

I.

NOW THEREFORE, the Court finds that the defendants, although they have taken certain steps toward implementation, have failed to fully comply with the minority language requirements of the Voting Rights Act, 42 U.S.C. § 1973aa-1a.

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Toyukak, et al. v. Treadwell, et al.  
Case No. 3:13-CV-137-SLG

(Exhibit 1\_H Page 3)

Accordingly, it is ORDERED, ADJUDGED, AND DECREED that San Juan County Utah, together with its officers, agents, employees, successors, and all persons in active concert and participation with them are hereby permanently enjoined from further non-compliance with the minority language requirements of the Voting Rights Act, 42 U.S.C. §1973aa-1a.

II.

IT IS FURTHER ORDERED THAT Defendants shall, at a minimum, take the following steps to comply with the minority language requirements of the Voting Rights Act, 42 U.S.C. §1973aa-1a, and the implementing regulations, 28 C.F.R. §55.1 et seq. Nothing in this Order shall preclude the County from taking any additional steps to comply with the statute and regulations.

A. Defendants shall provide a bilingual voter registration program, including:

1. The establishment of one or more voter registration site(s) located in Mexican Hat or elsewhere on or near the Navajo Reservation for the 1984 and 1986 elections. Registration and other information will be available at each site or sites, in Navajo, Monday through Friday, 9:00a.m. to 4:00p.m. during the two-week period preceding the County Clerk's statutory registration deadline for each election in 1984 and 1986 run by the County, including

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both primary and general elections. This registration site or sites shall be staffed by one or more registration assistant(s) who are bilingual in English and Navajo. Completion of the proper registration forms at the on or near Navajo Reservation registration site(s) shall be deemed the equivalent of filing them with the County Clerk's office for purposes of the 5:00p.m. deadline on the day that registration closes;

For purposes of compliance with this provision, the County may rely on volunteer assistance from the San Juan County School District, the Utah Navajo Development Council, the Navajo Tribe, the State of Utah or any other government or private individual who may be located on the Navajo Reservation. The County may also choose, at its discretion, to assign an employee of the County Clerk's office to fulfil this function.

2. For each precinct in San Juan County which is in whole or in part on the Navajo Indian Reservation, the appointment of a registration agent and a minimum of one registration assistant. Both the registration agent and assistant shall be bilingual in English and Navajo in order that they properly assist Navajo-speaking persons to register to vote. One person may serve as both the registration agent and the registration assistant.

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(Exhibit 1\_H Page 5)

Swearing in of these registration agents and assistants, should such be necessary, shall be performed in a convenient location on or near the Navajo Indian Reservation; and

3. Announcement in Navajo and publication in English of all registration deadlines, and, in 1984 and 1986, the announcement of the establishment of the on or near Reservation registration site(s), its location(s), dates and hours of operation, and the availability of bilingual assistance at the site(s). Specifically, during the two-week period preceding each election registration deadline, Defendants shall cause an announcement containing the above information:

(a) to be announced in Navajo twice a day on KNDN, KRTZ, or other appropriate radio stations, if any, with a substantial Navajo audience on the reservation;

(b) to be published in English twice in the Navajo Times; and

(c) to be announced in Navajo, either in person or by tape recorded message, at one Navajo tribal chapter meeting of each chapter having members residing in San Juan County.

B. The County shall undertake a more comprehensive recruitment effort to enlist bilingual poll officials and interpreters. A minimum of two bilingual interpreters  
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Case No. 3:13-CV-137-SLG

and one bilingual poll official shall be enlisted to serve at the polling place of each precinct which is in whole or in part on the Navajo Reservation. Only one bilingual interpreter and no bilingual poll officials are necessary in each off-reservation precinct in which five (5) percent or more of the population is Navajo. In addition, one alternate bilingual interpreter shall be appointed to be on notice to serve at the polling place of each such precinct whether on or off the Reservation. An interpreter may not also serve as an election judge or other election official.

Bilingual interpreters shall assist voters who indicate a need for assistance in the Navajo language, and shall assist voters in the voting booths unless the voter objects to such assistance. Interpreters shall maintain the secrecy of the ballot and shall not disclose the manner in which the assisted persons voted.

C. The County shall expand the current election worker training program so as to provide for the instruction of poll officials and all other county employees involved in the electoral process in the bilingual voting requirements of federal law, bilingual registration and voting procedures undertaken by the County to comply with federal law, and methods of rendering effective assistance to Navajo-speaking

Toyukak, et al. v. Treadwell, et al.      -6-  
Case No. 3:13-CV-137-SLG

voters. Such program shall include the training and instruction of official poll interpreters for purposes of effective, accurate, and unbiased communication of all voting information to Navajo speaking voters.

D. The County Clerk shall provide on election day, for precincts 1, 2, 3 and 16, a master list of voters registered in precincts, 1, 2, 3, and 16. The master lists shall be provided for the purpose of allowing bilingual interpreters to assist Navajo-speaking voters locate their proper polling place.

E. During the two-week period immediately preceeding each election the following information must be made available in Navajo: information on the offices subject to election; information concerning the identity of candidates for election; constitutional amendments; referendum and initiative issues on the ballot; eligibility to vote; dates of election and the hours and location of the polling places; and any other election or voting information which has been made available in English. All such information shall be:

(a) Announced in Navajo at least 3 times during each of the two weeks on KNDN, KRTZ or other appropriate radio stations, if any, with a substantial Navajo audience on the reservation;

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(b) published in English once each week in the Navajo Times; and

(c) made available in Navajo, either in person or by tape recorded message, to each Chapter of the Navajo Tribe located in San Juan County.

F. Whenever the County provides or causes information to be made available in Navajo, for example, whenever the County provides training to bilingual poll workers, registration agents or assistants, or interpreters or whenever the County makes voting or election information available in Navajo by tape recording, in person or other means, it shall rely on individuals who are capable of providing effective, accurate and unbiased translation of all voting information into Navajo including constitutional amendments, referendum or initiative issues and the information contained in the Voter Information Pamphlet.

## II

Defendants shall take all reasonable steps to comply with the provisions of this Order, <sup>such as</sup> ~~including, when~~ *Am for U.S.*  
~~necessary,~~ *for County* on site recruitments efforts at Navajo Chapter meetings; announcements, in Navajo or English, on KNDN or KRTZ; and written requests for assistance to the Utah Navajo Development Council, the Navajo Tribe's Board of Election Supervisors in Window Rock and the San Juan Toyukak, et al. v. Treadwell, et al.

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School District. ~~If such steps are taken, the County's~~ *Per for U.S.*  
~~inability to comply with the provisions of this Order~~  
~~shall not be deemed a violation.~~ *OK for County*

III

Defendants shall cause to be made and preserved records of the actions taken to comply with this agreement and order. Representatives of the Plaintiff shall be permitted to inspect and copy relevant records of the Defendants at reasonable times and upon reasonable notice.

IV

San Juan County is hereby certified for federal examiners pursuant to 42 U.S.C. § 1973a(a).

V

This Court shall retain jurisdiction for all purposes.

ORDERED this 11 day of JANUARY, 1983.

*James M. Schermerhorn*  
*[Signature]*  
Attorney for the Plaintiff  
United States

*[Signature]*  
UNITED STATES DISTRICT JUDGE  
Copies mailed to counsel 1/13/84: mw  
Brent Ward, U.S. Atty.  
Bruce K. Halliday, Esq.

*[Signature]*  
Attorney for the Defendants

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