

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.

CX-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.

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

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

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.

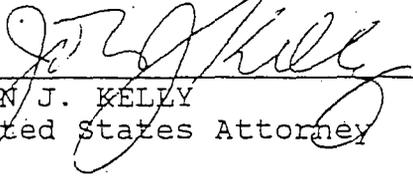
12. The parties to this Agreement and the NLC will be in contact semi-annually for the duration of this order to discuss the effectiveness and efficiency of the county's actions in complying with the Voting Rights Act. Bernalillo County has the authority to eliminate or modify any aspect of its program 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.

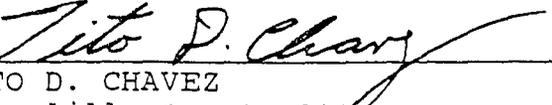
Entered this 22 day of April, 1998.

For Plaintiff:
UNITED STATES OF AMERICA



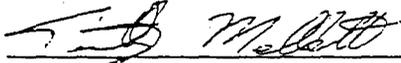
JOHN J. KELLY
United States Attorney

For Defendants:
BERNALILLO COUNTY



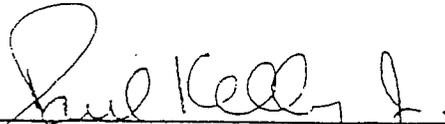
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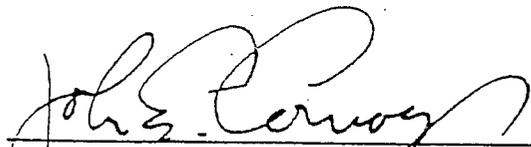


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Entered this 22d day of April, 1998.



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.

(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 1st 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:

- 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.

