

# THE CIP REPORT

CENTER FOR INFRASTRUCTURE PROTECTION VOLUME 9 NUMBER 4  
AND HOMELAND SECURITY

## OCTOBER 2010 TRIBES AND U.S. TERRITORIES

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In this month's issue of *The CIP Report*, we highlight tribes and U.S. territories, particularly Guam and the U.S. Virgin Islands. Tribal nations and U.S. territories are integral components of homeland security that perhaps do not receive as much media attention as other elements of homeland security.

First, the Director of the U.S. Virgin Islands Fusion Center (VIFC) discusses the importance of sharing information and intelligence to ensure the security of the U.S. Virgin Islands. We provide information on the impacts of the military build-up on the island of Guam through an interview with Simon A. Sanchez II, Chairman of the Consolidated Commission on Utilities (CCU) on Guam. We then provide a reprint of an article, recently published in the *National Park Service (NPS) Digest*, which describes the Desire, Knowledge and Hope (DKH) Initiative, a program within the Department of Interior's (DOI) Operation Alliance. Next, we highlight the California Tribal Emergency Management/ Homeland Security Project (CTEMHS). We also examine a course offered through the Emergency Management Institute's (EMI) Independent Study Program (ISP) that provides information on building partnerships with tribal governments.

This month's *Legal Insights* discusses the complicated legal relationship between Federal, State, and local governments that arises when dealing with critical infrastructure on tribal lands.

Finally, we are very pleased to announce that our website was redesigned and has just launched this week. Please feel free to visit our website at <http://cip.gmu.edu/>.

We would like to take this opportunity to thank the contributors of this month's issue. We truly appreciate your valuable insight.

We hope you enjoy this issue of *The CIP Report* and find it useful and informative. Thank you for your support and feedback.



### School of Law

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A handwritten signature in black ink that reads "Mick Kicklighter".

Mick Kicklighter  
Director, CIP/HS  
George Mason University, School of Law

## U.S. Virgin Islands Fusion Center

by Wayne A. Bryan, Director,  
U.S. Virgin Islands Fusion Center

When the sun rises in the east, St. Croix, the easternmost part of the United States in the Virgin Islands, is the first to see a sunrise. Sometimes referred to as “America’s Paradise,” the islands are indeed beautiful with natural resources of sun, sand, sea, and surf. But the territory faces some very serious ingrained problems.

The combined land area of the islands is roughly twice the size of Washington, D.C, with a land area of 133.73 square miles. With a population of about 110,000, in 2009, the U.S. Virgin Islands had a homicide rate approximately 10 times the United State’s national average of five killings per 100,000 people. In fact, the territory is now on track for a record homicide rate in 2010, approaching 13 times the national average. Of the U.S. Virgin Islands, St. Thomas has the highest crime rate. Per capita, the Virgin Islands’ crime rate is higher than its neighbor Puerto Rico. It is suggested that the increase of guns, drugs, and gang activity in the territory is partly responsible for the growing violence.

Most problems occur in Charlotte Amalie, the busiest and largest natural deep water port in the Caribbean and the capital of the Virgin Islands. Not only are Federal agents inspecting the many ships that dock daily but also the pipes

that lead to the ships from land.

The solution for many States and larger cities has been to create State and local fusion centers to share information and intelligence within their jurisdictions as well as with the Federal government to protect their States, territories and borders. As of July 2009, there were 72 designated fusion centers around the country and the Virgin Islands are no exception. The Virgin Islands



Fusion Center (VIFC) will follow the model of an “all crimes, all hazards, all threats” approach, with primary focus presently on an “all crimes collaboration.” The VIFC is co-located with the 911 center and the Virgin Islands Territorial Emergency Management Agency (VITEMA) and will be able to provide support when needed.

So how does a fusion center share information and intelligence

securely not only within their jurisdiction but also outside their borders? Through the U.S. Department of Homeland Security’s (DHS) Homeland Security Information Network (HSIN).

HSIN provides fusion centers with a suite of content management, virtual collaboration, and reporting tools, including HSIN Connect, Jabber, document management, discussion boards, alerts, announcements, and notifications. Fusion centers can use HSIN to share information with partner agencies through daily situational reports and incident/topic-specific reports that can be viewed only by appropriately vetted partners. HSIN also allows users to create and distribute blast messages to large, mission-specific contact lists.

Wayne Bryan, the VIFC Director, stated, “HSIN will be my window to share information securely across all levels of government and disciplines; within our region and outside. It will be our nexus of communication giving us the liberty to manage our secure environment on HSIN as well as vetting the user’s rights to collaborate. HSIN provides interoperability and collaboration at all levels.”

Combating crime in the Virgin

*(Continued on Page 15)*

# The Impact of the U.S. Military Build-up on Guam

The island of Guam, with its sandy beaches, cascading waterfalls, and coral reefs, lies in the western North Pacific Ocean. Its history is as rich as its floral landscape. While the island has been inhabited for over four thousand years, the western world was alerted to its presence in 1521, when Portuguese explorer Ferdinand Magellan set foot on its shores. In 1898, following its defeat in the Spanish-American War, Spain ceded the island to the United States. During World War II, from December 10, 1941 to July 21, 1944, or Liberation Day, the island was occupied by the Japanese. Since its liberation by U.S. forces, Guam has steadily been advancing its economic growth. Its current population is estimated at 180,000. On average, 1 to 1.2 million tourists visit Guam each year. In fact, tourism is a vital source of income for the inhabitants of Guam. In addition to tourism, considering that Guam currently hosts U.S. forces, Guam also relies on Federal military spending as a source of income.<sup>1</sup>

In mid 2005, the community and government of Guam learned that the island was the target of a massive military build-up. Specifically, 8,600 Marines and their 9,000 dependents will relocate from Okinawa, Japan to Guam. It is estimated that the population of Guam will increase by 20-30% in the next decade. This military

build-up has raised some concerns about the sustainability of the infrastructure on Guam, particularly its power, water, and wastewater systems, to support such a dramatic increase in the population. Simon A. Sanchez II, Chairman of the Consolidated Commission on Utilities (CCU) for the past eight years, discussed the ensuing military build-up on Guam and its potential impact on the power, water, and wastewater infrastructure systems. Mr. Sanchez characterizes the military build-up as “the single largest move of military assets since World War II.” As the current Chairman of CCU, a five-member elected board that oversees the Guam Power Authority (GPA) and the Guam Waterworks Authority (GWA), Mr. Sanchez is working directly with the Department of Defense (DoD) to plan for the military build-up.

The relocation of military personnel from Okinawa to Guam is estimated to cost \$10 billion. The government of Japan will provide \$6.09 billion while the United States will pay the remaining amount. In addition to the \$10 billion for the construction of the new base, existing bases are currently being upgraded at an estimated cost of \$5 billion. Mr. Sanchez estimates that the relocation of military personnel and subsequent construction projects will amount to \$20 billion in the

next decade. Needless to say, considering that the population will double within ten years, some Guamanians are questioning the affects the military build-up will have on their livelihood. Others in the community view the build-up as an opportunity for economic growth and a solution to aging infrastructure. Regardless, the community of Guam has always been staunch supporters of the U.S. military. Even civilians who are concerned about the build-up continue to support the military. As Mr. Sanchez explains, “Guam is a very patriotic community.”

The residents of Guam are not the only group concerned about the impacts of the build-up. The U.S. government, specifically the U.S. Environmental Protection Agency (EPA), is also concerned about the affects the build-up will have on power, water, and wastewater systems. It is projected that the population will increase by 41,000 in the next decade. Although, this number may decrease to 34,000 once construction has been completed. In addition, much like the United States, Guam is confronting infrastructure challenges, such as aging infrastructure and inadequate roads, bridges, water, and gas lines.

In 2006, Japan and the United

*(Continued on Page 4)*

<sup>1</sup> For more information about Guam, please visit the website of the Guam Visitors Bureau, available at: <http://www.visitguam.org/Pages/Default.aspx>.



*Guam (Cont. from 3)*

States concluded negotiations to relocate 9,000 marines and their dependents from Okinawa to Guam. This decision was part of a strategy to secure U.S. interests in the Pacific. Specifically, this move was the result of “redefining the U.S. defense posture in the Pacific region and the U.S. alliance with Japan... This relocation of Marine Corps forces will meet international agreement and treaty requirements and fulfill U.S. national security policy requirements to provide mutual defense, deter aggression, and dissuade coercion in the Western Pacific Region in response to the evolving security environment in the Pacific region.”<sup>2</sup> Since this announcement, Guam and the Federal government, particularly EPA and DoD, have been preparing for the move.

The National Environmental Policy Act (NEPA) of 1969 requires Federal agencies to investigate the environmental impacts of proposed actions. Therefore, an action as expansive as the move to Guam required an environmental impact statement (EIS). DoD directed the U.S. Navy to establish a Joint Guam Program Office to serve as the lead organization.<sup>3</sup>

The Draft EIS was available for public review and comment for 90 days. Many comments pertained to concerns about infrastructure sustainability and the impact on culture. There were also concerns that the military planned to

establish a shooting range adjacent to a culturally sensitive area. However, the military pledged to negotiate with landowners for use of the land and implement imminent domain as a last resort. After the Draft EIS was released, the government of Guam and DoD worked together to address the concerns listed in the Draft EIS about the power, water, and wastewater systems.

In the aftermath of World War II, the U.S. Navy co-generated power with Guam. However, in the 1990s, the U.S. Navy transferred its control of water systems to GPA. Therefore, GPA is the sole provider of power on the island. According to GPA, there is sufficient reliable power for both the civilian community and the new base. In addition, this system has an excellent reserve capacity. On a day-to-day basis, the island requires 260 megawatts of power. However, 540 megawatts are available. Considering that Guam is eight hours from Hawaii by air and situated in a typhoon/natural disaster area, the sizable reserve power is a necessity. GPA and DoD estimated that the build-up will require another 30 megawatts of power. This would bring the daily total power requirements to 290 megawatts, significantly under the reserve power capacity. However, while there is enough reserve power to handle the relocation, the government of Guam does not want to overwhelm its system. The total

cost of upgrading the power system is estimated at \$160 million. Three generators will be upgraded at a cost of \$40 million while connecting to the system will cost \$120 million.

The water and wastewater systems have historically presented numerous challenges. For example, in November 2002, EPA sued GWA for violation of the Safe Drinking Water Act and Clean Water Act. In June 2003, EPA and GWA negotiated a stipulated order. GWA has been operating under this order since 2003. Essentially, the order stated that GWA must be compliant with Federal laws. A total of 56 items were listed in the order; however, GWA has completed 85 percent of the requirements. In 2005, EPA declared that the water system is as safe as it had been in decades.

Since World War II, the U.S. Navy has managed their own water system. Therefore, at present, the civilian water system is operated by GWA while the U.S. Navy continues to manage their water system. However, there is a working relationship between GWA and the U.S. Navy. GWA supplies water to the U.S. Navy in the North while the U.S. Navy supplies water to several civilian communities in the South. The new base will be built in Northern Guam, the most populous region in Guam. An aquifer supplies 70% of water on

*(Continued on Page 12)*

<sup>2</sup> Department of Defense. Record of Decision (ROD) for the Guam and Commonwealth of Northern Mariana Islands Military Relocation: Relocating Marines from Okinawa, Visiting Aircraft Carrier Berthing, and Air and Missile Defense Task Force (September 2010).

<sup>3</sup> More information and electronic versions of relevant documents are available on the website of the Joint Guam Program Office, available at: <http://www.guambuildupeis.us/>.

## Desire, Knowledge and Hope: Community Outreach in DOI's Operation Alliance, One Family at a Time

by Lauren Kessler, Office of Law Enforcement and Security,  
U.S. Department of Interior

*U.S. Park Police officer LaShaun Beckett pulls up to a home in a neighborhood stricken with poverty. As she exits her patrol car, three young children burst through their front door and run toward her with joy on their wearied faces, jumping into her arms as she bends down to hug them all at once.*

Beckett has experienced first-hand the power of one individual to change the lives of a community in need. Drawing upon her experience in law enforcement and social work, she has developed a successful community outreach program — the Desire, Knowledge and Hope (DKH) Initiative. She works closely with several

communities in the Standing Rock tribal agency in the Dakotas to benefit underprivileged and at-risk children and families, as well as victims of domestic violence.

A United States Park Police (USPP) officer stationed at the Statue of Liberty National Monument in New York, Beckett recently deployed to Standing Rock agency in order to serve in the Department of Interior's (DOI) Operation Alliance, a DOI high-priority performance goal.

The six-month program provides additional law enforcement officers from partner bureaus to assist DOI's Bureau of Indian Affairs with

community policing at four reservations with high crime rates and lack of law enforcement services: Standing Rock, North Dakota/South Dakota; Mescalero, New Mexico; Wind River, Wyoming; and Rocky Boy's Reservation, Montana.

Operation

Alliance supports the Bureau of Indian Affairs (BIA) in providing public safety and working with tribal communities and their respective governments to protect life and property and to advance community-policing initiatives. To do so, it brings together the law enforcement efforts of the following partner bureaus:

- National Park Service
- Bureau of Land Management
- Bureau of Reclamation - Hoover Dam Police Department
- U.S. Fish and Wildlife Service
- U.S. Department of Agriculture Forest Service

The goal of Beckett's DKH Initiative at Standing Rock supports Operation Alliance by helping children develop basic values of respect, discipline, and integrity. Though still in its beginning phase, the program has already shown a significant change in behavior and an increasing sense of well-being within the community. Families complete group projects and activities together such as household and community clean-up efforts, arts and crafts, and relationship-building exercises. Beckett provides information and services to children and families about physical and mental health care, drug and alcohol abuse, gun safety, and suicide awareness, which are

*(Continued on Page 6)*



U.S. Park Police officer LaShaun Beckett hands out dental gum to children from the Standing Rock community in the Dakotas. Beckett works to benefit the at-risk children and families of Standing Rock through a community-outreach program she has developed – the Desire, Knowledge and Hope Initiative.

*Photo by Greg Lawler, OLES.*

## Operation Alliance (Cont. from 5)

essential for a community with such staggering rates of substance abuse and addiction, depression, and suicide. “The people there desire change. So if you give them a little bit of knowledge and hope, you will see change,” says Beckett of her program.

Officers at Standing Rock have made their personal involvement with family and community a priority. They conduct daily neighborhood foot patrols, welfare and security checks, attend domestic violence meetings, participate in youth activity programs, and join in ceremonies such as the Day of Healing event. Officers have also met with Indian Health Services regarding health and dental care for at-risk youth. U.S. Park Police Chief Salvatore Lauro expressed pride in Beckett, noting “[her] work demonstrates that all cultures have a common desire for safety, community, and a promising future. Officer Beckett brings her years of experience working with the

underlying issues of social need to create a more effective law enforcement program.”

Each bureau involved in Operation Alliance has devoted a great amount of time and energy in appreciation of personal and direct community assistance. They have supplied valuable law enforcement officers during the bureau’s busiest season of the year in order to help tribal members. The Operation has seen much success in the form of crime reduction, as well as improved safety and security within the communities. “We’re police officers, but we have heart and passion and want to see the society and community succeed,” says Beckett.

During her time at home in New York, Beckett keeps in touch with many tribal members. One young woman remains close with her via text messaging, telling her about new positive developments in her life, which in part Beckett made

possible by her efforts. The young woman removed herself from an abusive relationship and into an assisted-living home, is working on her General Education Development (GED), and is now moving from assisted living to her

own home.

Another woman who suffered with major depression and suicidal ideation, having herself lost four sons to suicide, has been feeling more hopeful about her life and is going to domestic-abuse and mental-health counseling, services which Beckett helped provide. “LaShaun’s doing a lot of good. She’s helping a lot of people in a good, positive way. We all love her, all appreciate her. [LaShaun] is a blessing,” she notes. “We had no support, no counseling. She’s touched our hearts and made a big difference. Otherwise I’d still be locked in my home.”

One young couple whose infant child Beckett removed from the home due to neglect has since gone to behavioral counseling and anger-management classes together, have taken advantage of Beckett’s parental skills training, and now enjoy a better relationship with each other and with their child. When asked if she thought the DKH Initiative would leave a lasting impression on her and her community, the young mother responded, “For me [it will], because I never really liked looking ahead until I met LaShaun. She helped me get along with my husband and see life in a new way.”

The concern Beckett has expressed through the DKH Initiative has been a critical service in a community of learned helplessness and despair. She is only one person, but to each child and family at



Officers from the U.S. Park Police and the National Park Service stand alongside Officer Beckett and a family that has greatly benefited from Beckett’s Desire, Knowledge and Hope Initiative.

Photo by Greg Lawler, OLES.

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## California Tribal Emergency Management/Homeland Security Project

The California Tribal Emergency Management/Homeland Security Project (CTEMHS) is a DHS grant-funded project administered through the California Emergency Management Agency (Cal EMA) in partnership with the Inter-Tribal Council of California (ITCC). The purpose of CTEMHS is to enhance and develop emergency management/homeland security capabilities of tribal governments for the preservation of life, land, and culture.<sup>1</sup>

The CTEMHS project is not a substitute for government-to-government relations and consultation, rather it is meant to complement the Federal trust relationship by steadily building tribal capacity despite decreases in Federal funding.<sup>2</sup> Many tribes located in California are Federally recognized and qualify for emergency management/homeland security funding directly from DHS. However, not all tribes are Federally recognized and therefore do not qualify for these funds. Decreases in Federal programs and funding have left fewer tribes meeting the eligibility requirements for direct Federal funding for emergency management/homeland

security preparedness.<sup>3</sup>

The *Implementing Recommendations of the 9/11 Commission Act of 2007* (Pub. L. No. 110-053) provided a path for tribes falling outside of the direct Federal funding eligibility to access emergency management/homeland security funding through the State instead of the Federal government. In response to this act, Cal EMA and ITCC developed the CTEMHS grant program to fund planning and response efforts for all tribes, both Federally recognized and non-Federally recognized tribes.<sup>4</sup> As a result, CTEMHS fills an important gap in tribal emergency management/homeland security funding and provides a solid foundation for all California tribes to move forward together in improving tribal preparedness.<sup>5</sup>

Overarching goals of the CTEMHS project are to assist California Tribal governments in developing the capacity to prepare and manage emergencies, and to ensure that California's Indian lands are included in statewide emergency management/homeland security planning efforts.<sup>6</sup> CTEMHS seeks to realize these goals by establishing a statewide communication

network that integrates California's tribal emergency response efforts and supports financial resource allocation, disaster planning, training, and capacity building. In particular, the CTEMHS project seeks to build tribal capacity in four focus areas: (1) transportation and logistics; (2) environmental health and safety; (3) communications and technical support; and (4) manmade/natural disaster responses.<sup>7</sup>

One of the strengths of CTEMHS is that it builds tribal capacity while respecting unique tribal heritages, traditions, and customs. Currently, there are 110 Federally recognized tribes in California alone.<sup>8</sup> Some tribes are located within metropolitan areas while others are in rural, isolated tribal lands. Each represent varying interests and face disparate threats. CTEMHS provides a platform for tribes to share their vision of how to best protect their own lands and people, seek funding to address those individualized vulnerabilities, and collaborate with other Tribal, local, State, and Federal governments to effectively prepare for and respond to disasters.

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<sup>1</sup> [http://www.oes.ca.gov/WebPage/oeswebsite.nsf/ClientOESFileLibrary/Homeland%20Security%20Files/\\$file/Homelandbrochure.pdf](http://www.oes.ca.gov/WebPage/oeswebsite.nsf/ClientOESFileLibrary/Homeland%20Security%20Files/$file/Homelandbrochure.pdf).

<sup>2</sup> <http://www.naaep.org/CalEMA%20Presentation.ppt>.

<sup>3</sup> See Supra note 1.

<sup>4</sup> Ibid.

<sup>5</sup> <http://www.naaep.org/IHS%20Presentation.pptx>.

<sup>6</sup> See Supra note 2.

<sup>7</sup> See Supra note 1.

<sup>8</sup> [http://www.calema.ca.gov/WebPage/oeswebsite.nsf/PDF/Cal%20EMA%20Consolidation%20Plan/\\$file/CalEMAConsolidationPlan\\_FINAL.pdf](http://www.calema.ca.gov/WebPage/oeswebsite.nsf/PDF/Cal%20EMA%20Consolidation%20Plan/$file/CalEMAConsolidationPlan_FINAL.pdf).

## The Emergency Management Institute: An Education in Building Partnerships with Tribal Governments

The Emergency Management Institute (EMI), part of the Federal Emergency Management Agency (FEMA), has been delivering emergency management training to Federal, State, local, and tribal government officials, volunteer organizations, and the public and private sectors since 1979.<sup>1</sup> Its courses provide instruction on mitigating, preparing, responding, and recovering from natural hazards and technological hazards (including hazardous materials and terrorism), as well as professional development, leadership, exercise design and evaluation, information technology, and integrated emergency management.<sup>2</sup> While its headquarters are located at the National Emergency Training Center in Emmitsburg, Maryland, EMI offers online courses to emergency management personnel as well as to the general public through the Independent Study Program (ISP). The ISP is a web-based distance learning program that provides extensive online training in topics such as incident management, emergency communications, and hazard mitigation.<sup>3</sup>

This year, ISP is offering a new interactive course that focuses on tribal communities. The goal of the course, *IS-650.a Building Partnerships with Tribal Governments*, is to support

emergency management representatives build effective partnerships with tribal governments to protect tribal nations and property against all natural hazards. Most importantly, this course provides learners with information on the history and culture of tribal communities from the perspective of tribal representatives. As the course explains, it is essential for individual partners and organizations to understand the history and respect the traditions of their collaborators to build effective partnerships. In fact, the course begins with a “Myth or Fact” section to illustrate the common misconceptions about Native Americans that have stemmed from popular culture. For example, contrary to popular belief, the U.S. Census Bureau demonstrates that the Native American population has approximately tripled since 1890. In addition, according to the course, there is a common misconception that casinos have increased the income of many tribal nations. However, as the course explains, this is not the case. In 1997, out of the 564 Federally-recognized tribes, ten earned 56 percent of income from gaming. This short section then segues into the lessons of the course.

The course is divided into eight lessons. The first lesson introduces the course and discusses the

challenges emergency management personnel may encounter working with tribal governments to provide financial and technical assistance before, during, and after disasters. For example, even though tribal communities may be eligible for Federal disaster assistance, they may be overlooked by the State and local emergency management system. Also, as a former FEMA employee points out, each tribe is unique; therefore, each tribe must be approached differently. In addition, tribes often administer assistance to their own communities. Therefore, tribes may not be aware that they are eligible for disaster assistance.

The second lesson provides a brief background on the long history of tribal nations in the United States. For those students whose American history may be rusty, this is a valuable review. This section also provides information on key legislation in Native American history, including the Indian Reorganization Act (IRA), which recognized the rights of tribal communities to “exist as a separate culture,” albeit a temporary recognition, the Indian Civil Rights Act, and the more recent FEMA tribal policy.

The third lesson focuses on tribal relations and presents an overview

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<sup>1</sup> <http://training.fema.gov/>.

<sup>2</sup> <http://training.fema.gov/aboutEMI.asp>.

<sup>3</sup> For more information on ISP, please visit the following website: <http://training.fema.gov/IS/>.



EMI *(Cont. from 8)*

of tribal cultures. In particular, this lesson discusses how to address and interact with different tribes. For example, according to the course, most tribal communities prefer to be addressed by their specific tribal name. In addition, when communicating with tribes, the tribal elders must be sought out and consulted. Federal employees must also demonstrate patience when working with tribal communities as information is often presented in the form of a story. Further, tribal elders often take the time to seriously mull over questions. Therefore, interactions with tribal communities should never be rushed.

Lesson four discusses the interaction with tribal communities before a disaster affects a tribal region. The course encourages FEMA Regional Offices to work with tribal communities “to develop emergency operations plans, encourage participation in programs such as the National Flood Insurance Program (NFIP), obtain flood insurance rate maps through the NFIP, and help tribes gain the funds and technical assistance needed to develop their ability to carry out emergency functions.” Considering that each tribe has created a different protocol for establishing contact with tribal officials, this lesson provides guidance for the initial meeting with tribal leadership, such as reviewing information about specific tribes and contacting FEMA Regional Tribal Liaisons before the initial meeting. This lesson also describes how to explain disaster assistance to various tribes.

The next two lessons describe the types of Federal assistance that are available to tribes, including Individual Assistance (IA), depending upon the type of disaster, and Public Assistance (PA) programs. There are various challenges involved in delivering these types of Federal assistance. For example, with regards to IA, there are often questions about determining home ownership. An individual may own the house, but not the land. The land may be the property of the tribes and/or held in trust by the BIA. Emergency management personnel should also be familiar with infrastructure that is the responsibility of BIA so as to avoid duplicating payment efforts following a disaster. PA programs provide funding through grants to rebuild infrastructure damaged by disasters, such as bridges and roads. Finally, FEMA employees should work with tribal communities to preserve environmental and historic preservation.

The seventh lesson focuses on working with tribes to mitigate an all hazards event. This lesson describes pre-mitigation grants such as the National Flood Insurance Program, Pre-Disaster Mitigation Grants, and Flood Mitigation Assistance. Post-mitigation grants are also available, such as the Hazard Mitigation Grant Program. The last lesson provides a summary of the entire course, including key points from each lesson.

At the end of each lesson, the student will be asked several questions to review the content learned in each lesson. This is

particularly helpful when the information presented relates to learning about the background and history of individual tribes and interacting with tribal communities, especially tribal elders. For example, the course explains that emergency management representatives should respect and understand the tribal communities as they may or may not trust Federal employees. This may be attributed to the uneasy relationship developed between tribes and the Federal government throughout history and/or some tribes may be unfamiliar with Federal assistance programs due to their isolation from communities that Federal, State, and local employees traditionally assist. Each question is designed to highlight the key points in each lesson. In addition, a majority of the lessons begin with a fictional scenario in which an all hazards event is described. The lesson then proceeds to educate the student on how to provide emergency services to tribal communities.

This course is successful in providing learners with information on how to interact with tribal communities. Most importantly, this course provides students with a background on Native Americans. The lessons learned will equip emergency management personnel with strategies to interact with tribal communities and governments.

This course is just a sample of the many courses that EMI provides to the public and private sectors as well

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## LEGAL INSIGHTS

## Between Nation & Tribe: The Legal Entanglements of Critical Infrastructure on Tribal Territory

by Hasan Aijaz, J.D.

Since the founding of the United States, the authority of Native American tribes over the land that currently makes up reservations has shifted. Initially, Native American tribes were independent, sovereign nations, but in 1831, the Supreme Court changed this status to domestic dependent nations.<sup>1</sup> The current relationship between tribal, Federal, and State governments is not entirely clear. Native American tribes have a recognized right to self-government and Congress “has endorsed a policy of promoting and encouraging tribal self-determination” excepting those areas which sovereignty has not been “withdrawn by treaty or statute.”<sup>2</sup> However, the Federal government also has a “trust” relationship with tribal lands for which it can be held liable in certain circumstances, but the exact contours of the relationship is

unclear.<sup>3</sup> This complicated relationship between tribal and Federal governments affects the development and maintenance of critical infrastructure located on and running through tribal lands.

Tribal lands include major critical infrastructure installations such as the Grand Coulee Dam, which is one of the largest producers of electric energy in the United States<sup>4</sup> and one of the largest concrete structures in the United States.<sup>5</sup> Tribal lands also house “nuclear power facilities, power grids, military supply manufacturers, and transportation routes.”<sup>6</sup> In addition, reservations and territories account for approximately three percent of the total land mass of the United States.<sup>7</sup> Moreover, major highways, railroad lines, and gas lines and other vital pipelines of people and material cross through

tribal territory.<sup>8</sup> The National Native American Law Enforcement noted that “[e]very successful effort to harden sites outside tribal lands will increase the vulnerabilities of people, assets and infrastructure on tribal lands as they remain softer targets easier for terrorists to successfully attack.”<sup>9</sup>

Infrastructure protection concerns are especially difficult on tribal lands because those concerns must also be balanced along-side unique Native American attempts to “maintain traditional homelands, exercise sovereignty, and regain a sense of the past by reestablishing ties to the land and its waters.”<sup>10</sup>

Furthermore, as the government seeks to strengthen energy and water infrastructure through the

*(Continued on Page 11)*

<sup>1</sup> Alex Skibine, Reconciling Federal and State Power Inside Indian Reservations with the Right of Tribal Self-Government and the Process of Self-Determination, 1995 Utah L. Rev. 1105, 1005 (1995).

<sup>2</sup> *Id.* at 1106.

<sup>3</sup> *Id.*, see also Kristoffer P. Kiefer, Exercising Their Rights: Native American Nations of the United States Enhancing Political Sovereignty Through Ratification of the Rome Statute, 32 Syracuse J. Int'l L. & Com. 345, 353 (2005).

<sup>4</sup> See <http://www.eia.doe.gov/neic/rankings/rankbyplantgeneration.htm> (last accessed September 22, 2010).

<sup>5</sup> See [http://www.seattlepi.com/getaways/89497\\_shorttrips03.shtml](http://www.seattlepi.com/getaways/89497_shorttrips03.shtml) (last accessed September 22, 2010).

<sup>6</sup> Jennifer Buts, Victims in Waiting: How the Homeland Security Act Falls Short of Fully Protecting Tribal Lands, 28 Am. Indian L. Rev. 373, 374, 375 (2003-2004).

<sup>7</sup> See <http://www.bia.gov/WhoWeAre/index.htm> and Summary of 2000 Census, US Census Bureau available at <http://www.census.gov/prod/cen2000/phc3-us-pt1.pdf>, (last visited September 14, 2010).

<sup>8</sup> *Id.* At 385.

<sup>9</sup> NNALEA, Tribal Lands Homeland Security Report 2002, available at (<http://www.nnalea.org/hlsecurity/summitreport.pdf>) (last accessed September 22, 2010).

<sup>10</sup> Daniel McCool, Rivers of the Homeland: River Restoration on Indian Reservations, 16 Cornell J.L. & Pub. Pol'y 539, 540 (2007).

Legal Insights (*Cont. from 10*)

creation of dams and waterpower facilities, Native American reservations are disproportionately impacted by these development efforts in the form of, among other effects, flooding and reduced fish stocks.<sup>11</sup> In some instances, the Native American community has negotiated with State and Federal counterparts to remove dams which enlarge habitable areas for fish, including one of the largest ecosystem restoration projects undertaken by the National Park Service.<sup>12</sup> Updated infrastructure can benefit Native American tribes by providing support for “technological integration and innovation that will play an important role in shaping, developing, and preserving Navajo culture” as well as the cultures of other Native Americans.<sup>13</sup> Native American tribes have a history of lagging behind the rest of the country in adopting newer technologies;<sup>14</sup> however, with the recent availability of spectrum-based technology, Native American tribes can potentially bypass the limitation on physical wires and immediately segue into present day technologies.<sup>15</sup>

## Native American adoption of

advanced technologies must, however, proceed in conformance with a variety of Federal laws, including the 1934 Communications Act, which authorizes spectrum regulation, and Section 706 of the 1996 Telecommunications Act, which provides authority to regulate Internet infrastructure.<sup>16</sup> However, there are questions as to the extent to which the Federal government has authority to regulate telecommunications services on tribal lands.<sup>17</sup> This uncertainty is attributed to the concept of tribal sovereignty and the Federal government’s trust responsibilities to tribal lands. The 9th circuit discussed the interplay between Federal regulations and tribal sovereignty in its 1985 decision *Donovan v. Coeur d’Alene Tribal Farm*. This decision, which provided that if a Federal statute is silent on the question of applicability to tribal lands, then the law does not apply if it touches on “exclusive rights of self-governance in purely intramural matters;” if the application of the law would “abrogate rights guaranteed by Indian treaties;” or there is proof that Congress intended the law not to apply to Indian reservations.<sup>18</sup> However, even if tribes asserted this

legal argument, they would still need to demonstrate that the Internet infrastructure would not fall under the jurisdiction of State governments.

One commentator notes that “state public utility commissions often act to fill the regulatory void where tribes have not regulated telecommunications.”<sup>19</sup> Under existing legal precedent and commentary, it appears that States likely would not have the regulatory authority to regulate a tribal telecommunication provider. However, a stronger case is available for State regulatory authority over a non-tribal telecommunication provider, in which case the State government would have to show that its interest in regulation outweighed the relationship between the Native American tribe and the Federal government.<sup>20</sup>

The Federal government has a working relationship with certain Native American tribes to improve telecommunication services, including efforts like the Indian Telecommunications Initiative and the Universal Service Fund, which funds the Enhanced Link-Up

(*Continued on Page 14*)

<sup>11</sup> *Id.* at 541, 542.

<sup>12</sup> *Id.* at 547.

<sup>13</sup> David B. Wilson, Weaving the Navajo .NET, J. Telecomm. & High Tech. L. 425, 426 (2009).

<sup>14</sup> *See id.* Fn 5 citing Federal Communications Commission, Telephone Subscribership on American Indian Reservations and Off-Reservation Trust Lands 1, indicating that 67.9% of Native Americans households on reservations had a telephone compared with 94% of non-native rural households which had telephones.

<sup>15</sup> *Id.* At 427.

<sup>16</sup> *Id.* at 439.

<sup>17</sup> *Id.*

<sup>18</sup> *See id.* at 443, quoting *Donovan v. Coeur d’Alene Tribal Farm* 751 F.2d 113, 1116 (9th Cir. 1985) (quoting *United States v. Farris*, 624, F.2d 890, 893-94 (9th Cir. 1980)).

<sup>19</sup> *See* 7 J. Telecomm. & High Tech. L. 425, 448.

<sup>20</sup> *Id.* At 452.



**Guam** (*Cont. from 4*)

Guam, primarily in Northern Guam where a majority of the population is located and the site of the new base. Considering that the build-up will increase the population by 20-30%, especially in Northern Guam, the government of Guam has focused their efforts on protecting the aquifer to ensure that there is enough water for the population growth.

The Water and Environmental Research Institute (WERI) of the Western Pacific at the University of Guam has studied the aquifer for 20 years. According to WERI, the capacity of the aquifer is 80 million gallons per day (MGD). Currently, the civilian community consumes approximately 40 MGD while the military (Air Force and Navy) consumes 7-8 MGD. Therefore, it is believed that there is enough water capacity to sustain the military build-up. Even at the peak of the build-up, the water capacity should not exceed 60 MGD. However, to ensure that there is enough water capacity and to determine the best place to harvest water, an additional 20 to 40 wells will be drilled into the aquifer over the next decade. At present, the military plans to build 20 wells while Guam plans to build additional 20 wells.

While the water system has presented numerous challenges, the wastewater system has notoriously been the most expensive. The new base will be adjacent to the largest civilian wastewater facility in Guam. During negotiations with DoD, the government of Guam requested that

only one wastewater facility be located near the aquifer in Northern Guam. Therefore, the government of Guam proposed that the civilian facility, or the Northern Wastewater Treatment Plant, next to the aquifer be upgraded as opposed to building a new system. In the Record of Decision (ROD), DoD agreed to upgrade the existing wastewater facility in Northern Guam.

The Final EIS was released in July 2010. In September 2010, the EPA stated that the Final EIS was “adequate for purposes of the NEPA because it includes an adequate discussion of environmental impacts and proposes a mitigation plan. Further, if the mitigation proposed in the EIS is successfully implemented, the project will avoid unsatisfactory public health and environmental impacts, making the project environmentally satisfactory.”<sup>4</sup> The ROD, released in September 2010, announced DoD’s decision to proceed with the build-up and determined the cost-sharing responsibilities of invested participants to upgrade infrastructure.

As previously mentioned, Japan plans to contribute \$6.09 billion. Of the \$6.09 billion, \$740 million will be used for both on base and off base improvements. Specifically, \$580 million of the \$740 will be used to upgrade off base improvements, such as the power and wastewater systems. This includes \$160 million to upgrade the power system and \$420 million to upgrade Guam’s wastewater system. Of the \$420 million, \$340

million will be used to upgrade the Northern Wastewater Treatment Plant as well as the second largest wastewater facility in Central Guam. Both of these facilities will be upgraded to secondary treatment, the treatment level required in the United States. An additional \$80 million will be used to upgrade sewer lines that connect to the plants.

In total, the government of Guam and the EPA, in the Draft and Final EISs, estimated that \$1.3 billion will be needed to upgrade infrastructure in response to the build-up. As discussed above, \$740 million of the \$6.09 billion provided by Japan will be used to upgrade power and wastewater utility systems. In the ROD, DoD agreed to procure the remaining \$600 million. This agreement stems from President Obama’s “One Guam, Green Guam” concept developed late last year. Essentially, says Sanchez, this concept contends that the build-up needs to be good for Guam.

The signing of the ROD triggers the release of funds to provide for construction costs. As Sanchez explains, upgrading the power and wastewater systems and protecting the aquifer is beneficial to both the civilian and military communities. While the build-up continues to generate debate, both Guam and the United States recognize that this is a valuable opportunity to work intimately together to protect Guam’s critical infrastructure and ensure the security of the United States in the Pacific. ♦

<sup>4</sup> U.S. Environmental Protection Agency. EPA Comments on the Final EIS for Guam and Northern Mariana Islands (September 3, 2010).

**CTEMHS** (*Cont. from 7*)

The guiding principles of the CTEMHS project demonstrate a commitment to embracing tribal leadership in disaster planning and response. The guiding principles call for early and genuine engagement of Federal, State, and local officials, first responders, and other emergency service organizations with tribal leaders. In addition, the guiding principles identify the need to honor tribal sovereignty and acknowledge tribal contributions and achievements.<sup>9</sup> The goal is to encourage active tribal participation.

One example of the active participation is the formation of a Project Advisory Team. The Project Advisory Team is an advisory group that consists of tribal leaders, technical advisors, State and local government representatives, first responders, and other emergency management organizations. This team provides participants the opportunity to offer strategic project guidance from their various perspectives and ensure a collaborative effort in disaster planning and response efforts.<sup>10</sup>

Cal EMA has identified a three-phased approach to the CTEMHS project. Phase I includes establishing a communications network, forming the Project Advisory Team, hosting a statewide summit to assess tribal needs, and holding regional workshops and trainings. Phase II consists of compiling information and lessons learned from these events to develop

an “Implementation Framework” to serve as the foundation for planning and response efforts. The framework will include four parts: (1) a gap analysis based on tribal assessments; (2) a concept of operations to outline how tribal, Federal, State, and local governments work together; (3) a governance structure to address identification and coordination of funding priorities; and (4) a strategy for moving forward to address identified issues and needs. In Phase III the Implementation Framework will be utilized to enhance capacity of tribes, coordinate the allocation of grant funding, and institute change on identified issues.<sup>11</sup>

Currently, the CTEMHS project is still in its early developmental stages, having formed a Project Advisory Team and participated in statewide summits. However, the true value of the program will be realized in the months and years ahead as the Implementation Plan is developed, executed, and revised. Hopefully through the CTEMHS forum, tribal leaders will be able to effectively share their own vision of how tribal, local, State, and Federal governments should communicate, coordinate, and collaborate before, during, and after emergencies. The desired goal is a more resilient tribal community that is capable of responding to emergency management/homeland security incidents while preserving the unique life, land, and culture of the tribal community. ❖

For more on California Tribal Emergency Management/Homeland Security Project (CTEMHS), please visit the [Cal EMA website](#).

<sup>9</sup> See *Supra* note 5.

<sup>10</sup> See *Supra* note 1.

<sup>11</sup> See *Supra* note 5.

## Operation Alliance (Cont. from 6)

Standing Rock who has known her, she is hope. ❖

*This article is excerpted from National Park Service (NPS) Digest, an information gateway for partner and friends of the National Park Service at the U.S. Department of the Interior (DOI). To learn more about NPS Digest, please visit <http://www.nps.gov/applications/digest/index.cfm>. To read the complete article, please click [here](#).*

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## Legal Insights (Cont. from 11)

program and Lifeline program. Both of these programs are geared towards helping low-income individuals in rural areas obtain phone service.<sup>21</sup> Along with the Federal working relationship, intra-tribal efforts are also in place, such as the Navajo Nation's framework to regulate telecommunication services in the Navajo Nation Telecommunications Regulatory Commission (NNTRC).<sup>22</sup> Installing telecommunications infrastructure would require authorization from the NNTRC as well as authorization from the BIA to approve the right-of-way permissions necessary to install infrastructure.<sup>23</sup>

The issue of how infrastructure on tribal lands is protected, maintained, and developed has important implications for meeting energy needs.<sup>24</sup> Developing these resources on tribal lands could help “the new American energy economy [and] meet needs of the tribes that own the resources by providing a means of sustainable economic development.”<sup>25</sup> Tribal lands are especially well suited to wind-power electrical generation because they present large swathes of land owned by a single owner.<sup>26</sup> The total potential capacity for wind-power on tribal lands is equal to “roughly one-third of the electrical capacity of the entire nation.”<sup>27</sup> However, as discussed above, any infrastructure development must necessarily proceed in accordance with relevant Federal and potentially applicable State law. The concern over Federal regulation led to provisions in the Energy Policy Act of 2005, which included “Title V (‘the Indian Energy Act’)”<sup>28</sup> — including provisions allowing tribes to enter into tribal energy resource agreements (“TERA”).<sup>29</sup> The Indian Energy Act included provisions to allow for development on and usage of tribal lands for infrastructure purposes including “rights of way for energy development or transmission.”<sup>30</sup>

Creating and securing critical infrastructure on tribal lands requires carefully navigating a legal thicket that involves the Federal, State, local, and tribal governments. However these issues must be navigated in order to have a comprehensive plan for the Nation as a whole. ❖

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<sup>21</sup> *Id.* At 455,456.

<sup>22</sup> See <http://www.nntrc.org/> (last accessed September 21, 2010).

<sup>23</sup> *Id.* At 459.

<sup>24</sup> Kathleen R. Unger, Change is in the Wind: Self-Determination and Wind Power Through Tribal Energy Resource Agreements, 43 Loy. L.A. L. Rev. 329 (2009) (specific page cites unavailable).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> 25 U.S.C. § 3504.

<sup>30</sup> 43 Loy. L.A. L. Rev. 329.



**Virgin Islands** *(Cont. from 2)*

Islands is not the only concern. Protecting critical infrastructure is also a challenge. The Virgin Islands is home to the largest refinery in the western hemisphere. There are also 175 miles of unprotected borders on the Virgin Islands; it is the gateway to the United States at its most southern border. The Virgin Islands fusion center and leadership recognize their need to share within and outside its borders. The Virgin Islands is also a member of the southeast consortium of fusion centers, Southern Shield. The States/fusion centers involved in Southern Shield also use HSIN to collaborate among their State, Federal, local, tribal, and private sector partners to share information, intelligence, threats, and suspicious incidents. HSIN will enable the VIFC to collaborate not only among the islands but also with its neighboring areas.

In addition, collaborating securely within HSIN allows for real-time information sharing with the DHS National Operations Center (NOC), which acts as the National Fusion Center, to collect and fuse data from multiple homeland security partner organizations. The NOC's Common Operational Picture (COP) is a valuable tool that helps to facilitate better situational awareness among many

homeland security partners. The NOC COP also includes the Integrated Common Analytical Viewer (iCAV), which provides a geospatial view that allows users to apply different viewing layers of resources such as hospitals, industrial facilities, and other street-level views for critical decision making.

The Virgin Islands Fusion Center is anticipating that the use of HSIN Connect will assist with training and communication between the the different districts of the territory that are separated by ocean. The HSIN Communities of Interest (COI) allows for information sharing, communications, situational awareness, and is supported by dedicated mission advocates to assist the territory in expanding its capabilities. ❖

**EMI** *(Cont. from 9)*

as the general public. Continuing education, especially about topics that are not highlighted on a daily basis, is essential for developing and sustaining an informed and responsible cadre of homeland security professionals. ❖

For more information about this course, please visit the following website: <http://training.fema.gov/EMIWeb/IS/is650a.asp>.

The Center for Infrastructure Protection works in conjunction with James Madison University and seeks to fully integrate the disciplines of law, policy, and technology for enhancing the security of cyber-networks, physical systems, and economic processes supporting the Nation's critical infrastructure. The Center is funded by a grant from the National Institute of Standards and Technology (NIST).

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