

NATIONAL POLICY MATRIX: CROSS- JURISDICTIONAL SHARING ARRANGEMENTS BETWEEN TRIBES AND COUNTIES

INTERVIEW DATA FROM NATIONAL REPRESENTATIVES
ABOUT CROSS-JURISDICTIONAL SHARING OF EMERGENCY
MANAGEMENT SERVICES



Robert Wood Johnson Foundation

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ISSUED OCTOBER 2015

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National Policy Matrix: Cross-Jurisdictional Sharing Arrangements Between Tribes and Counties

Based on the scope of work for the Robert Wood Johnson Foundation (RWJF) funded project, “A Study of Cross-Jurisdictional Sharing (CJS) Arrangements Between Tribes and Counties in California for Emergency Preparedness Readiness,” staff from the California Rural Indian Health Board (CRIHB) interviewed representatives from the National Congress of American Indians (NCAI), the National Indian Health Board (NIHB), and each of the 12 Indian Health Service (IHS) Areas in order to gather information about knowledge of CJS arrangements between tribes and counties throughout the nation.¹ This document, which serves as the National Policy Matrix deliverable for CRIHB’s CJS Project, is structured as follows:

- Background of tribes as sovereigns;
- Overview of federal disaster and emergency assistance laws;
- Data collection approach for National Policy Matrix interviews;
- Summary and themes from National Policy Matrix interviews;
- Descriptions of individual National Policy Matrix interviews;
- Lessons learned in conducting National Policy Matrix interviews and areas for additional research; and
- Conclusions.

Background: Tribes as Sovereigns

Tribes and States: Early Days

“[Indian communities] owe no allegiance to the states, and receive from them no protection. Because of the local ill feeling, the people of the states where they are found are often their deadliest enemies.” – Justice Miller, *United States v. Kagama*²

Beginning early in the history of the United States, the federal government established exclusive authority to interact with tribes, in part motivated by the need to protect tribes from state citizens and local governments. Professor Matthew L.M. Fletcher writes that the “deadliest enemies model” of tribal-state relations “...derives from an age-old, intergenerational enmity between the people of Indian communities and the non-Indians who live on or near Indian country. This model of relations arose out of the often violent conflict over limited resources between Indians and non-Indians during the westward expansion of the American nation in the 19th and early 20th centuries.”³ The foundation for exclusive federal authority to interact with tribes derives in part from Article I, Section 8 of the United States Constitution and the federal Trade and Intercourse Act of 1790. Counties, one step removed from state government, historically had even less legal authority or incentive to interact directly with tribes.

¹ Each IHS Area encompasses one or more states and as many as 50-110 tribes. The areas are Alaska, Albuquerque, Bemidji, Billings, California, Great Plains, Nashville, Navajo, New Mexico, Oklahoma, Portland, and Tucson.

² *United States v. Kagama*, 118 U.S. 375, 384 (1886).

³ Matthew L.M. Fletcher, “Retiring the ‘Deadliest Enemies’ Model of Tribal State Relations,” Michigan State University College of Law Legal Studies Research Paper Series, Research paper No. 05-03 (August 15, 2007), p. 2-3.

The federal trust responsibility is a legal and moral obligation to tribes that has been at the heart of many significant Indian law cases, making it a central principle of federal Indian law. The trust responsibility includes the obligation to provide education, health, law enforcement, and many other services to tribal communities and as a result, tribes relinquished most of their homeland to the United States. Some tribal leaders have made persuasive arguments that the trust duty also includes the obligation to promote and protect tribal sovereignty.

According to the *Marshall* trilogy of cases decided in the 1830s, tribes are dependent domestic nations and retain inherent powers of self government. Tribal sovereignty guarantees tribes the right to make their own laws and be ruled by them (*Santa Clara Pueblo v. Martinez*, 436 US 49 (1978)). As a general rule, tribes retain all rights not relinquished in treaties extinguished by Congress, including the rights to form governments, determine enrollments, and regulate trust land within reservation boundaries. Tribes have tribal lands set aside through federal reservation by treaty, executive order, statute, or administrative action and govern those lands, concurrent with federal and sometimes state jurisdiction. The Bureau of Indian Affairs maintains a list of all federally recognized tribes, currently 566 in number, which have a government-to-government relationship with the United States. In more recent times, many states have recognized a government-to-government relationship with tribes as well.⁴

Over the past 100 years, the federal Indian policy of Congress has been described as a pendulum because it has varied so widely between assimilation and termination on the one hand, and recognition of tribal sovereignty and restoration of homelands on the other. In the General Allotment Act of 1887 and the termination acts of the 1950s, for example, Congress sought to assimilate American Indians and Alaska Natives, strip them of tribally owned lands, and terminate their status. At other times Congress has recognized a collective tribal right to govern, as it did when it enacted the Indian Reorganization Act (IRA) of 1934, and aboriginal rights that date back to time immemorial. Fortunately for tribal governments, since 1975, when the Indian Self Determination, Education and Assistance Act (ISDEAA) was passed, tribes today are generally recognized as sovereigns. Thanks to the ISDEAA, tribes today contract with the federal government to provide services and programs to their own communities on behalf of the federal government, including those provided by the Indian Health Service and the Bureau of Indian Affairs. At various times federal legislation, such as H.R. 4347 in 2010, has been proposed to expand the reach of ISDEAA contracting to other agencies that provide services to American Indians and Alaska Natives, like the National Park Service, the Substance Abuse and Mental Health Services Administration, or even the Federal Emergency Management Administration.

The IRA of 1934 recognized the authority of tribes to enact Constitutions and organize their governments. Today, while tribes generally all enjoy the same sovereign status, each tribal government is unique both culturally and in the way its governing institutions operate.⁵

⁴ See, e.g., California Governor Jerry Brown's Executive Order B-10-11.

⁵ Institute for Wisconsin's Health, Inc., "Exploring Service Sharing to Improve Tribal Public Health," (September 2014), p. 4-5

Example of Sovereignty: Tribes in California

These general legal principles about the federal trust duty and tribal sovereignty protect the rights of the 111 federally recognized tribes in California. However, the history of early Spanish conquest, subsequent annexation by the United States, the impacts of the Gold Rush of 1849 and failure of the United States to ratify treaties with tribes in California uniquely define the historical experience of tribes and continue to impact their land tenure and their working relationships with local and state government today.

In 1852, the United States Congress voted not to ratify 18 treaties negotiated in 1851 and 1852, reserving 8.5 million acres for more than 100 tribes in California. The vote was kept secret and the treaties were sealed, but the Indians had already kept their part of the bargain, vacating land as required by the treaties. As one legal scholar has written, “Maybe it was because no one wanted to attempt this rather uncomfortable explanation that the Indians, many of whom had relocated to the areas reserved in the treaties in compliance therewith, were not informed of the Senate’s refusal to ratify the treaties.”⁶

The incident of the “lost treaties,” which rendered many Indians in California landless, is the foundation of many of the land tenure struggles Indians in California endure today.⁷ Had the treaties been ratified, Indians and their extended family groups living within ancestral territories could have formed the first tribal governments. Instead, they were rendered homeless and landless.⁸ Although reservations were made by executive order for a handful of tribes in the late 1800s, primarily in southern California, land was never set aside for the majority of tribes. The resulting dislocation of most Indians from their ancestral territories created havoc for communities and has continued to hinder the organization and recognition of tribal governments in California for many years.

Starting in 1905, after archivists discovered the un-ratified treaties, Congress appropriated funds to purchase rancherias for the “homeless Indians of California.”⁹ Fifty years later, when Congress adopted the policy of terminating tribes and reservations and assimilating tribal members, forty four of these rancherias were terminated by the California Rancheria Termination Act of 1958. In contrast to the 8.5 million acres promised to them in the treaties, today the 111 federally recognized tribes own less than 1% of land within California, including reservations, rancherias, allotments, and other forms of Indian land ownership.

Tribes and States Revisited

Over the past 75 years, several important legal and political developments have changed the exclusive federal jurisdiction of tribes throughout the United States and shifted some of that relationship to states. In 1953, Congress passed Public Law 280, which shifted federal jurisdiction over criminal offenses and civil cases to some of the states. In six states named in the statute, the grant of authority to the state was mandatory, including California, Alaska, Oregon, Minnesota, Nebraska, and Wisconsin. Public Law 280 also authorized the remaining states to assume

⁶ William Wood, *The Trajectory of Indian Country in California: Rancherias, Villages, Pueblos, Missions, Ranchos, Reservations, Colonies, and Rancherias*, 44 *Tulsa L. Rev.* 317 (2008), p. 24 (citations omitted).

⁷ *Ibid.*

⁸ *Ibid.* at 40-41.

⁹ Memorandum of the Department of the Interior Solicitor to the Commissioner of Indian Affairs, “Request for opinion on “Rancheria Act” of August 18, 1958 (72 Stat. 619)”, August 1, 1960.

jurisdiction over criminal offenses and civil cases with tribal consent. States that opted to assume this jurisdiction and received tribal consent include Washington, Idaho, and Nevada.

In terms of jurisdiction, Public Law 280 does not grant states regulatory power over tribes or Indian land or interfere with the ability of tribes to make their own laws and be ruled by them. Its scope is instead limited to a grant of criminal jurisdiction over American Indians on reservations and a grant of state court jurisdiction over civil cases that arise on Indian lands. Subsequent legislation, court decisions, and state actions to return jurisdiction to the federal government have mitigated the effects of Public Law 280 and strengthened the inherent tribal sovereignty of tribes. Nevertheless, Public Law 280 remains in place in California and a handful of other states.

The other revolution in the relationship between states and tribes is due to Indian gaming. As Professor Fletcher writes, “In effect, a new political relationship is springing up all over the nation between states, local units of government, and Indian tribes... As a result of the relative success of the cooperation between gaming tribes and states, tribal state cooperation and agreement is growing.”¹⁰ Cooperative agreements between tribes and state and local governments are not limited to Indian gaming and encompass taxation, economic development partnerships, law enforcement cross-deputization, and emergency response.

Understanding the complex sovereign status of tribal governments vis-à-vis federal, state, and county governments, can be very challenging. Other barriers to cross-jurisdictional sharing between tribes and local governments have been documented in other contexts, including past history, significant cultural differences, geographic distances, and real or legal obstacles, e.g. statutes, codes or regulations, and the need to fund sharing arrangements.¹¹ Some of these barriers have been documented in the emergency preparedness context as well, particularly in the context of the recent amendment of the Stafford Act, which was prompted by widespread tribal frustration with the federal emergency declaration request process.

Overview of Federal Disaster and Emergency Assistance Laws

In 1988, Congress enacted The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100-707. The Stafford Act addressed the role of the Federal Emergency Management Administration (FEMA), which had been created by Presidential Executive Order in 1979 by President Jimmy Carter. The Stafford Act also provided a process for state governors to request that the President declare a disaster and contained many provisions about when and how funding would be provided to mitigate the emergency.

The disaster declaration process was designed to provide federal aid to state and local governments when an emergency overwhelms a state’s capacity to respond. Until 2012, although tribes had developed their own local emergency response capacities, they were forced to rely on state and local partners to request a disaster declaration and ensure coordination of short-term and long-term assistance to their communities, including “pass through” emergency funding.

¹⁰ Matthew L.M. Fletcher, “Retiring the ‘Deadliest Enemies’ Model of Tribal State Relations,” Michigan State University College of Law Legal Studies Research Paper Series, Research paper No. 05-03 (August 15, 2007), p. 4.

¹¹ Institute for Wisconsin’s Health, Inc., “Exploring Service Sharing to Improve Tribal Public Health,” (September 2014), p. 7.

After experiencing administrative and funding delays caused by this arrangement, many tribal leaders questioned whether it was consistent with tribal sovereignty and the status of tribes as local partners. For example, in 2004, the National Congress of American Indians, the largest Indian organization in the United States, passed Resolution #FTL-04-044, which asked Congress "...to work with Indian tribes to amend the Stafford Act to allow Tribal Governments to request the President of the United States to declare a disaster on their respective reservations in the event of a disaster."

In July 2011, Santa Clara Pueblo Governor Walter Dasheno of New Mexico questioned the inability of tribes, as sovereigns, to request an emergency declaration in his testimony before the Senate Committee on Indian Affairs:

Because only a state governor can set this process into motion, we ask this committee to address why tribal governments, who have a direct government-to-government relationship with the United States, must go through state governors to request federal disaster relief. Such relief clearly falls within the federal trust obligation. We urge Congress to pass legislation that allows the tribes to directly request this relief.¹²

There were also logistical reasons for tribes to request this change in the Stafford Act. As analysts for the Congressional Research Service wrote:

States might at times be reluctant to request on behalf of a tribe when the damage was localized on tribal property. Other challenges to administering disaster relief involved language barriers and the physical isolation of some tribal lands. Also the tribes wished to have the same ability as states to help manage the response and recovery from a disaster. All of these factors created challenges for emergency management following disaster events in tribal areas.¹³

Ensuring that tribes received their fair share of funding, or that funding was even provided to assist in reservation mitigation efforts, was also a struggle for tribal governments. In requesting emergency funding, Governor Dasheno also testified about the difficulty of obtaining federal "pass through" funding from the State of New Mexico:

While we attempt to devote the resources we can to the healing of our land and the protection of our community, we cannot do it alone... There has to be equity in the allocation of resources. Many tribes don't have the means to do this. Many tribes don't have the means to allocate the resources that are necessary. And many times, tribes are at their [the state's] mercy because they tell us that funding should be made available through gaming funding. That's not correct, Mr. Chairman. There is only limited funding in gaming and other resources.

¹² Testimony of Santa Clara Pueblo Governor Walter Dasheno, US Senate Committee on Indian Affairs, "Oversight Hearing on Facing Floods and Fires: Emergency Preparedness for Natural Disasters in Native Communities," July 21, 2015, <http://www.indian.senate.gov/hearing/oversight-hearing-facing-floods-and-fires-emergency-preparedness-natural-disasters-native>.

¹³ Jared T. Brown, Francis X. McCarthy, and Edward Liu, "Analysis of the Sandy Recovery Act," March 11, 2013, Congressional Research Service, 7-5700, www.crs.gov, R42991, p. 3.

Due to unified support throughout Indian country, in 2012, the Stafford Act was amended to allow federally recognized tribal governments to directly request disaster declarations from the President. The amendment also changed the funding mechanism for tribes from a “pass through” from the state to a “matching” requirement, which now requires tribes, like states, to provide 25% of funding to match 75% of federal funding. The law also vests some discretion in the President to waive the matching requirement.¹⁴

Data Collection Approach for National Policy Matrix Interviews

Staff from CRIHB interviewed representatives from NCAI, NIHB, and each of the 12 IHS Areas in order to gather information about knowledge of CJS arrangements¹⁵ between tribes and counties throughout the nation. To select representatives within each of these agencies and organizations, CRIHB first contacted NCAI and NIHB and requested that they nominate a representative for the project. CRIHB’s recruitment approach also involved contacting leadership staff at health boards from each IHS Area in order to gather perspectives about the entirety of CJS-related emergency management activities in the IHS Area. In many cases, however, the health boards in each IHS Area did not staff the appropriate contact for CRIHB’s CJS Project. This was either due to lack of availability of staff to participate in the interviews or due to the organization’s expressed concerns that it would be more appropriate to speak to a tribe or an individual from an alternative organization with expertise in CJS between tribes and counties in emergency management. As a result, participants in National Policy Matrix interviews ranged from inter-tribal organization representatives to state government officials to employees of tribes who were identified as having knowledge about CJS arrangements.

Once national representatives were identified, CRIHB staff conducted stakeholder interviews by telephone with each individual. During the interviews, national representatives were provided with a brief description of the CRIHB CJS Project. They were then asked specific questions about their knowledge of CJS emergency management between tribes and counties in their area as well as their awareness of other people’s work that involves government-to-government sharing of emergency management services between tribes and counties. Lastly, each representative was asked to provide a copy of a written emergency management-related CJS arrangement from their area, if available. See Appendix A.

Using a web-based data entry mechanism developed for purposes of guiding discussions with national representatives and obtaining quantitative and qualitative information from calls, CRIHB conducted a total of eleven stakeholder interviews with one representative from each of the following: NCAI, NIHB, and 10 of the 12 IHS Areas. It is important to note that due to CRIHB’s location in California, this goal of this deliverable was to provide a national overview of tasks outside of California. For this reason, individuals from the California IHS Area were not interviewed for the National Policy Matrix. In addition, the Inter-Tribal Council of Arizona represents and provides

¹⁴ Id. at 3-4.

¹⁵ The term “CJS arrangements” encompasses a broad range of organizational strategies tribal and county governments employ to jointly address emergency management issues. “CJS arrangements” could, for example, include everything from a phone tree to a formalized written memorandum of understanding executed by multiple government entities, including tribal and county governments. During our interview process, CRIHB staff discovered that many participants consistently used the term “CJS agreement.” As a “CJS agreement” is one form of a “CJS arrangement,” we use the term “CJS agreement” where appropriate.

services to both the Phoenix and Tucson IHS Areas so data from the Tucson IHS Area were not directly obtained for the development of this National Policy Matrix deliverable.

Summary and Themes from National Policy Matrix Interviews

As previously mentioned, each representative who participated in the National Policy Matrix interview was asked specific questions about current knowledge about CJS arrangements in emergency management between tribes and counties in their area. They were also asked about their awareness of other people’s work involving government-to-government sharing of emergency management services between tribes and counties. When applicable, each representative who participated in the interviews was also asked to provide a copy of written, formal CJS arrangements between tribes and counties in emergency management from their area. In the following text, a summary of findings from discussions with national representatives is presented first, followed by the themes extracted from the phone interviews. Finally, a summary of each individual stakeholder interview has been included to enhance the reader’s understanding of the major summary of and themes extracted from discussions with national representatives.

Knowledge about CJS Arrangements in Emergency Management

A total of 12 of 12 representatives had knowledge of CJS arrangements in emergency management between tribes and counties, either in their IHS Area or outside of it. A total of 9 of the 12 representatives had experience with CJS arrangements on a direct or indirect level in their IHS Area. While representatives from NCAI and NIHB do not conduct work about this issue directly, both representatives were broadly knowledgeable about the existence of CJS arrangements with tribes and counties across the United States. See Table 1 for information about representatives’ knowledge about CJS arrangements.

Table 1. Had Knowledge of CJS Arrangements

Representative’s Affiliation	Had Knowledge of CJS Arrangements in Emergency Management (Yes/No)
NCAI	Yes
NIHB	Yes
Alaska IHS Area	Yes
Albuquerque IHS Area	Yes
Bemidji IHS Area	Yes
Billings IHS Area	Yes
California IHS Area	<i>Not Applicable</i>
Great Plains IHS Area	Yes
Nashville IHS Area	Yes
Navajo IHS Area	Yes
Oklahoma IHS Area	Yes
Phoenix/Tucson IHS Areas	Yes
Portland IHS Area	Yes

Knowledge of Other Work Related to CJS Arrangements in Emergency Management

A total of 8 of 12 national representatives indicated that they had knowledge of external CJS arrangements (i.e., outside of organization or IHS Area) between tribes and counties for emergency management and/or had knowledge of current efforts to develop CJS arrangements between tribes and counties for emergency management. In fact, several individuals were able to recommend CJS-related contacts from other IHS Areas to CRIHB staff, and, unbeknownst to one another, many national representatives identified each other as being knowledgeable about CJS arrangements between tribes and counties. In one instance, CRIHB staff received a call from a federal representative who had learned about the National Policy Matrix interviews from another respondent who previously completed the interview with CRIHB staff. See Table 2 for information about respondents' knowledge of other work related to CJS arrangements in emergency management.

Table 2. Had Knowledge of Other Work Related to CJS Arrangements in Emergency Management

Representative's Affiliation	Had Knowledge of Other Work Related to CJSs in Emergency Management (Yes/No)
NCAI	Yes
NIHB	Yes
Alaska IHS Area	Yes
Albuquerque IHS Area	No
Bemidji IHS Area	No
Billings IHS Area	Yes
California IHS Area	<i>Not Applicable</i>
Great Plains IHS Area	No
Nashville IHS Area	Yes
Navajo IHS Area	No
Oklahoma IHS Area	Yes
Phoenix/Tucson IHS Areas	Yes
Portland IHS Area	Yes

Shared Written CJS Arrangements

A total of 11 of 12 national representatives did not provide a written CJS agreement in emergency management to CRIHB staff, either because of confidentiality concerns or because the representative's organization provided technical assistance to develop the CJS arrangement but did not receive a final version of the written document. According to respondents, CJS agreements exist in some capacity in 10 of 11 IHS Areas surveyed for the National Policy Matrix interviews. The exception was the Oklahoma IHS Area because there is a legislative restriction that limits the formation of independent tribal-municipal partnerships in this region. Because of this restriction, tribal and other government jurisdictions in the Area operate under a formal statewide mutual aid agreement between tribes and counties rather than through individual government-to-government CJS agreements related to emergency management. Currently in the Oklahoma Area, both the Governor and the Joint Committee on State-Tribal Relations must grant permission before a tribal-municipal partnership can be implemented.¹⁶ See Table 3 which outlines whether representatives had

¹⁶ Collard, James C. 2007. *Tribal - municipal cooperation in Oklahoma*.

knowledge of CJS agreements between tribes and counties related to emergency management or provided a written CJS agreement related to emergency management.

Table 3. Had and Provided Written CJS Arrangement in Emergency Management

Representative's Affiliation	Had CJS Agreement in Area (Yes/No)	Provided CJS Agreement (Yes/No)
NCAI	<i>Not Applicable</i>	No
NIHB	<i>Not Applicable</i>	No
Alaska IHS Area	Yes	No
Albuquerque IHS Area	Yes	No
Bemidji IHS Area	Yes	No
Billings IHS Area	Yes	No
California IHS Area	<i>Not Applicable</i>	
Great Plains IHS Area	Yes	No
Nashville IHS Area	Yes	Provided CJS arrangement template
Navajo IHS Area	Yes	No
Oklahoma IHS Area	No – Statewide mutual aid agreement in place	No
Phoenix/Tucson IHS Areas	Yes	Provided CJS arrangement template
Portland IHS Area	Yes	Yes

Interview Themes

Several themes were identified throughout the interviews that CRIHB staff conducted with national representatives. All representatives spoke about the importance of emergency management work and potential benefits of CJS agreements between tribes and counties in emergency management. Some representatives spoke about experiencing an emergency first hand. Regardless of whether they had that direct experience, each representative discussed their enthusiasm for work in emergency management and expressed hope that CJS arrangements already in place between tribes and counties around the country would prevent confusion and frustration in responding to and recovering from emergencies in the future.

Many interviewees spoke about having general emergency management funding concerns as well as specific funding concerns related to the provision of technical assistance for emergency operations planning and CJS arrangement development. Representatives indicated that if there was adequate funding to employ emergency management staff, tribal organizations could provide the technical assistance necessary to help tribes advance emergency planning efforts. For example, one representative indicated that before losing funding, the representative's organization employed personnel that helped tribes develop an area-wide mutual aid agreement. At the request of tribes, these staff members also shared strategies and supported tribes as they finalized emergency operations plans, hazard mitigation plans, and relevant government-to-government CJS agreements. Furthermore, national representatives expressed concern about stringent funding eligibility requirements that limit the breadth and depth of technical assistance that organizations can provide for tribal emergency operations planning and CJS agreement development.

Next, representatives discussed the 2013 amendment to the Stafford Act, which allows tribes to request a disaster declaration directly from the federal government. Several individuals discussed the

25 percent cost-sharing and other administrative requirements for obtaining assistance after a federal declaration. These requirements were reported to be burdensome to tribes who do not all have the necessary financial resources or technical capacity to fulfill all the requirements of requesting a declaration. Despite overall positive sentiments about this relatively new authority for tribal governments to request declarations independently, national representatives indicated that in some cases, a tribe would benefit by allowing the state to request a disaster declaration rather than meet the requirements attached to a tribal declaration request.

The final theme from the National Policy Matrix interviews involves inter-tribal coordination and communication, which were often anecdotally discussed in relation to the development of CJS arrangements between two or more tribes or between tribes and counties. It is important to note, therefore, that national representatives indicated that government-to-government relationship building has been crucial to building emergency management capacity, community involvement, and resource sharing.

Descriptions of Individual National Policy Matrix Interviews

Below are summaries of the information from interviews with representatives from NCAI and NIHB as well as representatives from 10 of the 12 IHS Areas. As noted previously, representatives from the California and Tucson IHS Areas were not interviewed for the National Policy Matrix.

NCAI

A representative who is employed at a director level at NCAI indicated that the organization is primarily an advocacy organization. This individual mentioned that although the organization works with Congress to increase funding for emergency management-related projects, it does not work directly with tribes on the issue of CJS arrangements between tribes and counties related to emergency management.

Even though NCAI does not directly work on CJS arrangements with tribes, the representative indicated knowing that CJS agreements were in place between tribes and counties across the country and that CJS arrangements were important to many tribes. The representative provided contact information for other individuals and organizations in other IHS Areas who had knowledge and experience with CJS arrangements. The representative also discussed the project with a federal representative who became a contact for CRIHB staff and provided valuable information about CJS arrangements.

The representative from NCAI did not provide a written CJS agreement to CRIHB staff because the organization does not currently help tribes develop such arrangements, nor does NCAI currently monitor or store existing written CJS agreements between tribes and counties related to emergency management.

NIHB

A director-level leader at NIHB reported that NIHB does not work on CJS arrangements between tribes and counties related to emergency management either at the policy level or directly with tribes.

The representative was knowledgeable about work related to CJS arrangements between tribes and counties on emergency management in other IHS Areas and provided contact information for representatives in other IHS Areas who had knowledge about CJS arrangements. CRIHB used the resources described by the NIHB representative to identify representatives in IHS Areas and complete subsequent interviews for the National Policy Matrix.

The representative from NIHB did not provide a written CJS agreement to CRIHB staff because the organization does not currently help tribes develop such arrangements, nor does NIHB currently monitor or store existing written CJS agreements between tribes and counties about emergency management.

Alaska IHS Area

A manager-level representative with experience in emergency preparedness from an inter-tribal organization participated in the interview with CRIHB staff and discussed the representative's knowledge about emergency management activities in the Alaska IHS Area. The representative said that the organization receives state and federal funding to develop and implement emergency preparedness/management programs. Funded work includes conducting exercises to evaluate mass casualty incidents in hospitals and hosting traveling health fairs to promote emergency management.

The representative noted the existence of CJS arrangements in the Alaska IHS Area and also stated that the majority of Alaska municipalities, commonly referred to as "boroughs," have emergency management plans in place and employ emergency management staff. In the case of an emergency where a borough may not have an emergency plan in place, the state would provide resources. Additionally, the representative reported that if there were an emergency in a borough and local organizations were overwhelmed, the state would provide resources. Additionally, the representative mentioned that the representative's inter-tribal organization works closely with the 13 Native Corporations¹⁷ in Alaska to make sure emergency management plans and staff are in place. The representative indicated that the Department of Homeland Security works with many small rural communities to establish disaster checklists that assist Native communities in recovering from emergencies until local and state resources arrive. Due to the rural nature of many Alaska Native villages, most communities try to be prepared to sustain their people 7 to 10 days after an emergency rather than the typical 72 hours for which most communities prepare. The representative therefore noted that Alaska Native communities are used to being self-sufficient.

Finally, the Alaska IHS Area representative discussed the Stafford Act, which allows tribes to request a Presidential emergency or major disaster declaration independently of a state or seek assistance under the declaration requested by a state. The representative noted that although tribes can now independently request a disaster declaration, the 25 percent emergency recovery cost-

¹⁷ Alaska Native Regional Corporations (ANCSA Corporations) were established in 1971 when the United States passed the Alaska Native Claims Settlement Act, which settled land and financial claims made by Alaska Natives and established 13 regional corporations to administer settlement assets.

sharing requirements under the Stafford Act could make a disaster declaration request cost-prohibitive. If the disaster was declared by the state, the state would be responsible for the cost-sharing. The representative indicated that there are other administrative requirements involved in requesting a disaster declaration and receiving federal assistance that can be challenging for tribes. Administrative requirements include a preliminary damage assessment, which determines the extent of the disaster and its impact on individuals and families. The tribe must have the administrative capacity to work with the Federal Emergency Management Agency (FEMA), to estimate the exact amounts of disaster impacts, and to provide appropriate supporting documentation to support the declaration request.

The representative from the Alaska IHS Area reported knowing about work in the Alaska IHS Area and in other IHS Areas related to CJS arrangements in emergency management. Specifically, the representative mentioned that in some states there are state statutes prohibiting counties from providing assistance to tribes in an emergency situation. In these states, tribes have to go directly to IHS for resources. Additionally, the representative said that IHS works closely with the Department of Health and Human Services to provide emergency preparedness resources to tribes.

The Alaska IHS Area representative did not provide CRIHB staff with written CJS agreements between Alaska Native villages and boroughs in emergency management; the representative's inter-tribal organization provides emergency management technical support to tribes but the organization does not have access to final versions of these written CJS agreements.

Albuquerque IHS Area

A tribal leader from a tribe in the Albuquerque IHS Area participated in the National Policy Matrix interview and discussed his tribe's emergency management activities and experiences. The tribe has an Emergency Management Division that handles emergency situations on tribal land including fires and floods as well as power and gas outages.

The tribe also has an Incident Action Plan (IAP), which specifies the person in the tribe's incident commander role as well as other critical emergency management roles. The IAP also specifies logistics-related details, including the designated hospital for emergencies. The representative said that the IAP was put into action during the 2011 fires and a subsequent flooding. The representative reported that the IAP worked well during those emergencies and that individuals from the tribe who are involved in emergency management efforts are dedicated and well-trained, which the representative stated as being vital for the success of an IAP.

CRIHB staff also spoke with a former tribal councilman from the same tribe. This representative worked with the tribe's incident command system and rehabilitation teams during fires that occurred in 1998 and 2000 as well as during the fire in 2011. The councilman reported that as a result of experiences during the 2011 fire, the tribe was active in advocacy around an amendment to the Stafford Act that allow tribes to request a disaster declaration from the federal government independent from a state declaration request. However, the representative also noted that if a tribe requests a disaster declaration, the tribe is also responsible for the emergency recovery cost-sharing match of 25 percent, which can be financially difficult for tribes.

With regards to CJS arrangements between tribes and counties in emergency management, the first interviewee stated that the tribe has mutual aid agreements with city and county jurisdictions for

paramedic and fire services. The agreements indicate that the local 9-1-1 response and dispatch system will send tribal paramedics and firefighters to respond to emergencies outside of tribal jurisdiction if county paramedics and firefighters are not available. The CJS agreement also allows county paramedics and firefighters to respond to emergencies and support road closures on tribal land if necessary.

The representatives from the Albuquerque IHS Area reported that they were unsure about whether other tribes and counties were working on CJS arrangements in emergency management within the Albuquerque IHS Area or in other IHS Areas.

A copy of the tribe's mutual aid agreement with the county was requested but it was not available to CRIHB staff.

Bemidji IHS Area

An administrative-level representative from a tribe in the Bemidji IHS Area discussed her work coordinating emergency preparedness services for the tribe. The tribe currently has an emergency operations plan and a hazard mitigation plan and reportedly does work similar to a county Office of Emergency Services. The tribe works with the county on general emergency management issues, but the representative did not specify whether the work was in emergency preparedness, mitigation, response, or recovery.

The representative from the Bemidji IHS Area reported that she was unsure about whether other tribes and counties were working on CJS arrangements in emergency management within the Bemidji IHS Area or in other IHS Areas.

Furthermore, the representative's tribe does not have a written CJS agreement in emergency management with the county, therefore, a written CJS arrangement was not provided to CRIHB staff.

Billings IHS Area

A director-level representative from an inter-tribal organization in the Billings IHS Area reported that CJS-related emergency management activities in the Billings IHS Area include an annual meeting that brings tribal and county emergency management stakeholders together. With respect to CJS arrangements in the Billings IHS Area, the representative mentioned that some tribes are very active in emergency management and actively engage with local counties, while others are less active in this area. Similarly, some tribes are actively engaged in federal emergency management activities while others have expressed concerns about a lack of communication and collaboration between the federal government and the tribes.

The representative from the Billings IHS Area reported knowing about work in other IHS Areas related to CJS arrangements in emergency management and recommended that CRIHB staff contact a federal representative and also a local representative with experience in CJS arrangements in the Billings IHS Area.

The Billings IHS Area representative did not have access to written CJS arrangements between tribes and counties to provide to CRIHB staff.

Great Plains IHS Area

A state government representative with experience working with tribes and emergency management mentioned that there is a varying level of emergency preparedness and management work throughout South Dakota. Some tribes have mitigation plans to work with the federal government and some tribes are receiving planning grants from FEMA. The representative reported that FEMA works with each tribe on emergency management issues. The representative also discussed the availability of state resources if a tribe declares an emergency in collaboration with the state. The representative said that in the event of an emergency the state will provide an additional 10 percent in recovery funding for tribes.¹⁸ The representative said that the state also works with the tribes on emergency preparedness and management topics, including planning; however, the representative noted that relationships between the tribes and state vary depending on the tribe.

The representatives from the Great Plains IHS Area reported being unsure about whether other tribes and counties were working on CJS arrangements in emergency management within the Great Plains IHS Area or in other IHS Areas.

The Great Plains IHS Area representative did not have access to written CJS arrangements between tribes and counties to provide to CRIHB staff.

Nashville IHS Area

A director-level representative from an inter-tribal organization in the Nashville IHS Area discussed emergency management work in the region, including a previously funded FEMA project called the Tribal Emergency Mutual Aid Compact (TEMAC). TEMAC was an inter-tribal emergency mutual aid agreement for 26 member tribes from as far north as Maine to as far south as Florida and as far as west as Texas (i.e., southern and eastern tribes). TEMAC facilitated the provision of mutual aid between member tribes in emergency situations, and the program allowed one tribe to request provisions in an emergency situation and other tribes to indicate the extent to which the tribes could respond to the request. The representative stated that it is important to note that TEMAC did not require tribes to provide aid to other tribes in an emergency situation, but instead *allowed* them to do so.

In general, TEMAC encouraged tribes to coordinate emergency management training exercises, develop emergency management plans, and assess individual tribal hazards as well as participate in National Incident Management System training courses. In the past, the representative's inter-tribal organization's staff was funded through TEMAC to assist tribes in developing emergency management plans and agreements. According to the representative, the TEMAC program was funded from 2010 to 2013, but unfortunately this program is no longer being funded through FEMA due a change in FEMA's funding allocations. The program was also reportedly impacted by amendment of the Stafford Act, which now allows tribes to make their own disaster declaration requests.

The representative was aware of CJS arrangements between tribes and counties in emergency management throughout the Nashville IHS Area because, under the TEMAC program, the

¹⁸ It is not clear if this funding supplements the 25% match if a tribe requests a declaration or if this is on top of the funding the tribe gets if the state requests a declaration.

representative provided technical assistance to tribes to help establish CJS agreements. According to the representative, tribes in the Nashville IHS Area are currently involved in developing and implementing CJS agreements at varying levels. This is typically dictated by each tribe's program capabilities and capacities.

The representative from the Nashville IHS Area reported knowing about work in other IHS Areas related to CJS arrangements in emergency management and provided contact information for three federal contacts from organizations that work on CJS arrangements on emergency management to CRIHB staff.

The representative did not have access to any finalized CJS agreements to provide to CRIHB staff. However, the representative did provide a sample written CJS agreement to CRIHB staff.

Navajo IHS Area

An administrative-level representative from an emergency preparedness department within the Navajo Nation mentioned that the Navajo Nation has a tri-state emergency management agreement with Arizona, New Mexico and Utah. The Navajo Nation currently has an emergency operations plan in place. Additionally, the Navajo Nation has Memorandums of Understanding and Memorandums of Agreement with city and county jurisdictions that border the reservation.

The representatives from the Navajo IHS Area reported that they were unsure about whether other tribes and counties were working on CJS arrangements on emergency management within the Navajo IHS Area or in other IHS Areas.

Due to confidentiality concerns, the representative from the Navajo IHS Area was not able to share any written CJS agreements between tribes and counties in emergency management.

Oklahoma IHS Area

A director-level representative from a tribe in the Oklahoma IHS Area discussed his work in the area of emergency preparedness and recovery from natural disasters including tornadoes, earthquakes, and floods.

The representative stated that in Oklahoma, there are only informal agreements and not formal CJS arrangements for emergency management. The representative's tribe works with the county on several areas of emergency management, including joint weather-spotting efforts. Additionally, the tribe houses county-funded rural fire departments on the reservation. According to the representative, at the state level, there is an existing unwritten and non-binding Oklahoma Mutual Aid Agreement that states, counties, and the tribes will work together to share emergency resources and services if possible. Also in the Oklahoma IHS Area, 34 tribes have representatives who participate in the Inter-Tribal Emergency Managers Coalition (ITEMC). In addition to tribal representatives, ITEMC has involvement from individuals from the Southwest Center for Public Health Preparedness, the United States Attorney's Office, the Oklahoma State Department of Health, the Oklahoma Office of Homeland Security, and the Oklahoma Department of Emergency Management. ITEMC meets on a monthly basis to discuss upcoming trainings, funding opportunities, and other emergency management topics. This group works closely with the FEMA Region VI Tribal Liaison.

The representative from the Oklahoma IHS Area reported knowing about work in the Oklahoma IHS Area and specifically noted the work of the ITEMCM with tribes, specific coalition members/organizations, and local emergency management agencies. The representative was unsure, however, about whether there was ongoing work between tribes and counties to develop CJS arrangements related to emergency management in other IHS Areas.

The representative indicated that they did not know of any formal CJS agreements in the Oklahoma IHS Area, so it was not possible to provide a written CJS arrangement to CRIHB staff.

Phoenix/Tucson IHS Areas¹⁹

A coordinator-level representative from an inter-tribal organization representing tribes in the Phoenix and Tucson IHS Areas discussed the organization's work in emergency management, including training and planning for emergencies and developing an emergency operations plan for tribes within the Phoenix/Tucson IHS Area. The representative reported that many tribes in Arizona have emergency management-specific Memorandums of Understanding, Memorandums of Agreement, and/or mutual aid agreements with city and county jurisdictions. The representative's inter-tribal organization frequently works with tribes to develop government-to-government CJS agreements in emergency management, although tribes typically finalize CJS agreements at the tribal council level.

The representative reported knowing about tribes in the Phoenix/Tucson IHS Areas with CJS arrangements in emergency management and provided contact information for a representative at a tribe in Arizona with a written CJS agreement. The representative also recommended that CRIHB staff reach out to the IHS Area office because the representative thought it might be possible that IHS Area staff would be knowledgeable about CJS arrangements between tribes and counties related to emergency management.

The representative provided a sample written emergency management CJS agreement to CRIHB staff. Specifically, the representative shared an Intergovernmental Memorandum of Understanding (IMOU) template with the CRIHB CJS Project team. The finalized version of the IMOU was not available to the representative or CRIHB staff.

Portland IHS Area

A director-level representative from an inter-tribal organization in the Portland IHS Area discussed the organization's work in emergency management, which involves providing guidance to tribes about sharing services for law enforcement, public health, and paramedic and fire services. A significant amount of the representative's work includes facilitating relationships between tribes and local public and non-profit partners and jurisdictions. The representative's organization provides guidance about how to resolve challenges in sharing emergency services and assists tribes in planning relevant CJS projects and trainings (e.g., shared emergency communications trainings). The representative's organization has the capacity to help tribes develop hazard mitigation plans, comprehensive emergency management plans, incident command systems, Community Emergency

¹⁹ For the Phoenix/Tucson IHS Areas, CRIHB staff interviewed a representative from the Inter-Tribal Council of Arizona, which provides services to both the Phoenix and Tucson IHS Areas.

Response Teams (CERTs), and government-to-government CJS arrangements for emergency management.

In addition to work in the Portland IHS Area, the representative's organization serves as staff for a national organization that provides emergency management support, including help developing CJS agreements, to tribes throughout the country. For this reason, the representative from the Portland IHS Area reported knowing about work in other IHS Areas related to CJS arrangements in emergency management.

The representative from the Portland IHS Area provided CRIHB staff with a copy of an IMOU between Public Health-Seattle and King County with the Snoqualmie Indian Tribe. The IMOU was also publically available on the organization's website because it is a resource for tribal and non-tribal leaders seeking to develop government-to-government CJS arrangements for emergency management.

Lessons Learned in Conducting National Policy Matrix Interviews and Areas for Additional Research

Conducting interviews for the National Policy Matrix provided CRIHB with valuable preliminary information about the CJS arrangements in emergency management between tribes and counties in the United States. Although this information offers an initial understanding of the national state-of-affairs regarding CJS arrangements, CRIHB staff learned important lessons from the interviewing process and development of the National Policy Matrix document which can inform the future research of individuals assessing national CJS arrangements between tribes and counties in emergency management.

First, CRIHB staff learned that it was difficult to identify national representatives who were knowledgeable about CJS arrangements in emergency management using the aforementioned approach of recruiting individuals from each of the IHS Areas. As proposed in the scope of work, CRIHB staff recruited participants by contacting representatives from health boards and inter-tribal organizations that represented entire IHS Areas. Although representatives interviewed for the National Policy Matrix were knowledgeable about health issues in the IHS Area and had contacts with health clinics and staff, they often did not have extensive knowledge of or experience with CJS arrangements between tribes and counties in emergency management.

Moreover, based on the findings from National Policy Matrix interviews with individuals from different IHS Areas, CRIHB found that deeper understanding about CJS arrangements between tribes and counties in emergency management was often held by staff at the tribal level and/or by staff from inter-tribal organizations. These staff work with tribes on a variety of topics, which sometimes included health, instead of with health board or inter-tribal health organizations. For this reason, CRIHB recommends a future approach to conducting interviews with national representatives using BIA regions²⁰ - from tribes and intertribal organizations that represent BIA regions - as a reference point for recruiting representatives for stakeholder interviews instead of IHS Areas. The BIA provides services directly to federally recognized tribes, which are the entities who

²⁰ Each BIA Area encompasses one or more states and as many as 50-110 tribes. The areas are Alaska, Eastern, Eastern Oklahoma, Great Plains, Midwest, Navajo, Northwest, Pacific, Rocky Mountain, Southern Plains, Southwest and Western.

often enter into CJS arrangements, while the IHS provides services to IHS programs which are health-focused but not necessarily emergency management-focused. Recruiting National Policy Matrix interviewees by BIA regions or using BIA contacts may have resulted in different responses from individuals interviewed for the National Policy Matrix.

Second, CRIHB staff learned that it was challenging to use the same set of interview questions when speaking with representatives from inter-tribal organizations and tribes across IHS Areas because, depending on where the representative worked, they had varied knowledge about CJS arrangements between tribes and counties in emergency management. For example, often representatives from inter-tribal organizations could provide an overview of emergency management activities and CJS arrangements in the IHS Area, but the individuals was not aware about a specific tribe's CJS arrangements. On the other hand, representatives from individual tribes provided focused, tribe-specific information about CJS arrangements, but these individuals had limited knowledge about other work related to CJS arrangements between tribes and counties with other tribes in the IHS Area or between tribes and counties outside of the IHS Area. In the future, CRIHB recommends discussing CJS arrangements between tribes and counties related to emergency management with representatives from either inter-tribal organizations *or* specific tribes in each IHS Area.

There are several avenues for additional research about CJS arrangements between tribes and counties in emergency management. In the future, it will be important for researchers to collect information about areas of the nation where CJS arrangements are more prevalent and determine what sets the stage for the development and implementation of successful CJS arrangements. For example, it may be the case that statutorily mandated business venture-related CJS arrangements between tribes and counties (e.g., gaming compacts) are more likely to result in a CJS arrangement between tribal and county governments than arrangements that emphasize general emergency management staffing and sharing of resources (e.g., shared training or sheltering spaces). It may also be valuable to determine whether a better understanding of state and federal laws related to jurisdictional issues, like Public Law 280, make CJS more likely, or whether any changes in state and federal laws might make CJS easier to navigate for tribes and counties.

Alternatively, funding for emergency planning or technical assistance may be the most predictive of the development of successful CJS arrangements between tribes and counties in emergency management, and researchers should assess the effectiveness of funding agencies like the Tribal Emergency Mutual Aid Compact (TEMAC) to educate and support tribes in the facilitation of government-to-government partnerships for emergency management. In the future, researchers should also determine whether successful CJS arrangements are contingent on prior experience(s) with emergencies or emergency declarations or whether the most successful CJS arrangements between tribes and counties are developed during times of non-emergency. Finally, in order to develop a more comprehensive understanding of CJS arrangements between tribes and counties and emergency management, researchers should conduct in-depth investigations about why tribal and/or county officials discourage the development of CJS arrangements in some areas of the United States.

Conclusions

CRIHB staff conducted National Policy Matrix interviews about CJS arrangements between tribes and counties for emergency management. A total of 12 interviews were conducted with representatives from NCAI, NIHB, and many of the IHS Areas. All representatives spoke about the importance of emergency management and potential benefits of CJS arrangements between tribes and counties; however, many representatives also articulated the difficulties (e.g. cost-sharing) associated with collaborating with other jurisdictions to secure funding for tribe- or IHS Area-specific emergency preparedness, mitigation, response, and recovery. Variations in the content of discussions with representatives are reflective of the complexity and diversity of CJS arrangements between tribes and counties. Considering the complicated history between tribes and local and state governments, this diversity, as well as varying degrees of success in creating CJS arrangements in emergency management, is not surprising. In addition, several participants spoke about varying levels of institutional capacity to work on emergency preparedness within tribes, including financial barriers.

Although CJS arrangements can be beneficial to residents of more than one jurisdiction, further legislative action is needed to ensure that it is both possible and advantageous for tribal and county governments to enter into CJS arrangements for emergency management. Potential legislative changes could involve creating a bill for multi-year tribal set-aside grants or program funding to support sustained capacity building and full-time management technical assistance positions within tribal governments. Legislative action could also include the development of a bill for planning grants for both tribes and counties to develop CJS arrangements for emergency management.

Appendix A: National Policy Matrix Interview Questions

1. Please briefly describe your work in Emergency Preparedness/Management.

2. Does your work involve government-to-government sharing of Emergency Preparedness/Management services between counties and tribes?
 - a. *If yes:* Please describe this work.
 - i. Would it be possible to get a copy of any written agreements in place between counties and tribes for sharing Emergency Preparedness or Emergency Management services?

 - b. *If no:* Please provide more information about why not.

 - c. *If unsure:* Is there someone we should speak to who would know about cross-jurisdictional sharing between tribes and county government for Emergency Preparedness/Management?

3. Are you aware of other people's work that involves government-to-government sharing of emergency preparedness/management services between counties and tribes?
 - a. *If yes:* Please describe this work.
 - i. Would it be possible to get a copy of any written agreements in place between counties and tribes for sharing emergency preparedness or emergency management services?

 - ii. Thank you for your time today.

 - b. *If no,* Thank you for your time today.

 - c. *If unsure:* Is there someone we should speak to who would know about cross-jurisdictional sharing between tribes and county government for Emergency Preparedness/Management?
 - i. Thank you for your time today.