

Cynthia I. Weisman
Assistant United States Attorney
District of New Mexico
Post Office Box 607
Albuquerque, NM 87103

August 30, 2005

Sent via facsimile

Re: Information to Help Clarify Search for Title IV-D and Title IV-E agreements and possible ISDA 638 contract

Dear Cynthia:

About two years ago I was given a copy of a Joint Powers Agreement for Title IV-D between the State of New Mexico and Navajo Nation. The agreement says it is the 5th such agreement. It appears to be the same agreement cited to in your letter of August 19, 2005, p. 3, first full paragraph. The only differences are:

- 1) The copy I have is a signed agreement. The signature page only contains Navajo Nation and State of New Mexico names.
- 2) Attached to this agreement is an unidentified memorandum regarding the Navajo Nation Child Support Enforcement Program. This unidentified memorandum is attached to this letter.

It is this unidentified memorandum that leads me to believe that the Department of Interior (DOI) through the Bureau of Indian Affairs (BIA) must have original documents subject to my FOIA request.

The attached memorandum, taken as a whole, appears to have been originally written as part of a Tribal Self-Governance application. It is obviously altered to go with the Joint Power Agreement between New Mexico and the Navajo Nation for 1998-99. This memorandum on p. 1 actually says the special project was under AFDC but it is attached to a Joint Power Agreement dated two years after TANF replaced AFDC. Throughout the updated document it uses the term "proposal." The updated memorandum says that the purpose of the initial cooperative agreement was to develop and implement a Navajo Nation Child Support Enforcement Program. The last paragraph on p. 1 explains that to create this program required the Navajo Nation Supreme Court to issue child support guidelines and make alterations to the tribal court system for enforcement. The Navajo Nation Supreme Court created child support guidelines in 1992-3.

This updated memorandum is likely the proposal that was turned down by DHHS that led to the Navajo Nation filing suit in Phoenix. This would also explain why DHHS has this joint power agreement in its files as a draft agreement. This memorandum as updated may have been attached to a subsequent proposal to bring back an AFDC special program that had existed under AFDC as stated in the Navajo Nation case.

This is entirely possible if the Navajo Nation child support program was originally set up as part of a Tribal Self-Governance Demonstration Project under BIA pursuant to 102 Stat. 2296, codified as 25 U.S.C. § 450f. This law was extended to DHHS in 1992 under 106 Stat. 4590. These laws created special ISDA contracting authority for AFDC. A demonstration project would have allowed several tribal functions to have been extended or expanded simultaneously as a comprehensive project. Because of its management of the Indian Health Service (IHS), DHHS fully understood the problems of dealing with tribal governments and would not have wanted to promote tribal court or tribal agency authority over their programs. I agree with DHHS that Title IV programs are not part of IHS. Both of these laws were repealed under TANF.

Unlike DHHS, the DOI/BIA would have had a major interest in promoting the Navajo tribal courts and tribal self-governance. The 1992-96 time frame was the high point of tribal sovereignty. An ISDA Tribal Self-Governance Project 638 contract for a comprehensive Navajo AFDC program would explain the existence of Title IV-D and Title IV-E joint power agreements with New Mexico as well. Assuming an ISDA contract of this nature was federally approved, no other federal approval would have been required for the Navajo Nation to execute joint power agreements with New Mexico.

The State of New Mexico could not have empowered the Navajo tribal courts or the tribal agencies. Once the tribal courts and tribal agencies were federally empowered to exercise child support and family services then there could have been federal matching funds for New Mexico cooperating with the federal demonstration project as the Joint Power Agreement states to assist in setting up facilities and training personnel. Also as a demonstration project, a Model agreement would have been created.

If the FOIA requested documents were part of a Tribal Self-Governance Project, the ISDA contract and agreements would all be in a closed file separate and apart from regular BIA records for AFDC/TANF. This is what the gal from BIA Gallup said she remembered in our conference call. She remembered seeing separate Title IV-D and Title IV-E files beginning in 1992 when she first went to work in that office. She made a major point of saying these files had nothing to do with her records.

A regular FOIA search would not necessarily uncover records of this type in a well-organized record keeping system. BIA's record keeping is notoriously bad. The attached memorandum gives many descriptions of ways these records could have been classified. I hope it assists the BIA in its search.

Sincerely,

Lora E. Mancusser

*Per your request I am enclosing
the SPA and a NN chart.*