CHAPTER SIX
MULTIPLE SOVEREIGNS AND UNCOOPERATIVE RELATIONSHIPS

Introduction

At times not all is well, in terms of relationships between multiple sovereigns. The conflicts and legacies of the past often remain in Indian country such as open dumps and substandard landfills. This may be caused by financial, political, or social conflicts such as inadequate funding, questions about jurisdiction, or questions about who should administer a solid waste management program. The conflicts and tensions between sovereigns, which are referred to as uncooperative relationships in this study, are important to examine in terms of their implications for federalism and tribal governance.

This chapter will focus on uncooperative relationships that took place between tribes and the federal and state governments. It will examine cases involving conflict between sovereigns concerning construction of tribal landfills and toxic legacies left on tribal lands. Finally, it is important to understand why uncooperative relationships occur between sovereigns because they affect the administration of programs and the implementation of public policy.

The Campo Band of Mission Indians Landfill Project

The Campo Band of Indians is a federally recognized tribe located in southeastern San Diego County atop the Laguna Mountains. The reservation covers some 16,512 acres with a population of approximately 270 tribal residents. The tribal government of the Campo Band is governed by a General Council that consists of all adult members and exercises the tribe’s power of self-government as defined in the Campo Constitution.

In 1987, the General Council considered opening a commercial solid waste landfill on its reservation. Communities and environmental groups surrounding the reservation voiced opposition against constructing the landfill. For example, there was a whole-Earth commune next to the reservation, which had fifteen farms growing organic vegetables. Environmentalists feared that toxic materials from the landfill would contaminate the area groundwater and ruin both drinking water and irrigation supplies. They also believed that allowing tribes to use their lands for non-tribally generated waste
would compromise the tribe’s long-term interests and would spur unscrupulous businesses to target tribal lands for waste disposal. However, pro-tribal activists believed that the attitudes of many of the environmental groups were paternalistic, at best. They argued that the tribe should be left free to make their own decision. Furthermore, construction of the landfill would result in the creation of 55 permanent jobs in the tribal community.

According to the final environmental impact statement (EIS) that was prepared for the landfill site, the landfill did not violate federal environmental statutes or regulations at the time. However, many in the California state government opposed the project, especially the provision that the landfill only would conform to federal law, rather than the more stringent state standards. The state insisted that the landfill comply with both federal and state environmental regulations. The tribe, however, believed that as a sovereign, it only needed to follow federal and not state requirements. The result was that a protracted “war” ensued between many parties on all sides. In addition, any chance of cooperative relationships was poisoned by distrust and suspicion on all sides. Even Secretary of the Interior Bruce Babbitt stated, “I do not believe the Department should be in the business of encouraging proposals to build large waste facilities on Indian reservations primarily to handle non-Indian waste.”

Construction of the 400-acre landfill began, however, in 1994, amidst tribal and non-tribal protests which added to the already bitter relations. In 1996, Muht-Hei, Inc., a tribal corporation, took over the construction and operation of the landfill from the former contract operator. The landfill has currently completed its final phase of construction and has already accepted non-hazardous municipal solid waste.

The prevention of deterioration of water and air quality remains a high priority items for all landfills. On May 3, 1999, the EPA issued an extension of an air permit for the Campo Landfill until November 2, 2000. However, as with landfills everywhere, it is not without its current share of controversy. Several environmental groups have filed suit in both federal and state courts against the respective California air, water and waste quality boards alleging overall environmental degradation and the deterioration of air and water in surrounding communities as a result of Campo Landfill activities.
The significance of the Campo Landfill project is that it stands out as an example of what happens when sovereigns do not act cooperatively. Although the tribe eventually got the landfill by exercising its sovereignty, it resulted in mutual hostilities that exist still to this day among the tribe, state, and surrounding communities. Furthermore, the State of California has repeatedly sought redress in federal court against many other Indian tribes for contamination of municipal drinking water caused by tribal landfills and open dumps. Such issues have even fueled the hotly contested and extremely controversial issue of reallocation of water rights to surrounding communities impacted by contamination from tribal lands, particularly in the western states. Such were the allegations and innuendos surrounding the Campo Landfill Project. It was borne of conflict and mutual distrust on all sides. The Campo Landfill Project provides us with a lesson about what happens when sovereigns do not deal with one another in an atmosphere of honor and mutual respect.

High Mesa Waste Management Facility

The Nambe Pueblo, a federally recognized tribe, is located in northern New Mexico, sixteen miles north of Santa Fe. The tribe owns approximately 19,000 acres of reservation land and has a population of about 600 people. A Tribal Council consisting of past governors and elders constitutes the tribal government and the tribe has no constitution or charter.

The proposed waste management facility is located in the central portion of the Espanola Basin, part of the Alamosa-Santa Fe segment of the Rio Grande rift, seventeen miles northwest of Santa Fe, New Mexico. This action would allow the High Mesa Environmental Corporation, a Native corporation, to lease 1000 acres of the 19,000 acre reservation for the purposes of constructing and operating a combined municipal solid waste and construction and demolition waste facility for a variety of non-hazardous wastes.

The purpose of the waste management facility as claimed by the tribe is to help meet the northern New Mexico Pueblo’s solid waste management needs, and to provide a foundation for economic development for the Pueblo of Nambe. The Nambe Pueblo has a resident population of approximately six hundred and has an unemployment rate of
eighteen percent. Most residents are employed either off-reservation in nearby cities or by the tribal and federal government. Other residents are engaged in ranching, farming, and some income is derived from the manufacture of clay pottery and weaving.

The operations of the waste management facility will result in a work force of seven persons from the Nambe Pueblo. The proposed site is isolated and is located about three miles from the Pueblo where there is no infrastructure such as roads or power lines. Therefore, the surrounding infrastructure would have to be built. The terrain in this area is steep and mostly clay, with little or no vegetation, and is considered badlands. According to the draft Environmental Impact Statement, the project includes an initial construction and demolition waste cell, with an operations area, and a site well. The facility will ultimately include five additional lined cells for combined municipal solid waste and construction and demolition waste, two collection ponds, monitoring wells and an evaporation pond. Offsite roadway improvements would also be necessary. Approximately 200-400 tons per day of waste material are planned for delivery to the facility by truck. Based on conceptual design, full utilization will result in an approximately thirty-year disposal life of the waste management facility.

The significance of the proposed waste management facility to this discussion is that several groups, including the state and local environmental organizations, have already raised suspicion about the proposed facility. Although one of the purposes of this facility is to provide for local employment and training in an area of high unemployment, it is alleged by opponents of the landfill that the Nambe Pueblo will receive only a portion of the profits as a means of revenue generation. There is also fear by those opponents that outside unscrupulous venture capitalists will be siphoning the bulk of the funds from tipping and transportations fees.

Environmental groups are greatly disturbed that the construction and demolition portion of the facility will accept vehicular tires. They claim that there will be increased mosquito and vermin populations caused by liquids (e.g., stagnant water) contained within the disposed tires. The tribe, however, has claimed that they will process the tires in such a way as to remove all liquids from them. Also, environmentalists claim that an increased threat of toxic and uncontrolled “tire fires” in the landfill is possible. Also,
there is extensive residential and industrial development occurring in the surrounding areas of Santa Fe, Los Alamos, Rio Arriba, San Miguel, and Taos Counties.

Opponents of the landfill argue that the facility could easily receive shipments of hazardous waste from unscrupulous waste haulers that might be accepted by the facility either knowingly or unknowingly. However, proponents of the landfill argue that the Nambe Pueblo has the right to develop a disposal facility on its own land that will meet many of the regional waste management needs. Proponents also argue that, without such a facility that can be controlled and regulated, the increased residential and industrial development occurring in surrounding counties will lead to unregulated dumping on undeveloped land, which will cause detrimental environmental impacts.

The controversial High Mesa Waste Management Facility is still awaiting final review and approval by EPA. What sums up the status of this proposed facility was best reflected in the words of a BIA employee who requested anonymity. He stated that the background and on-going discussions about the facility “[are] a real mess and very, very political.” This is another example of different groups bypassing each other with their respective agendas instead of cooperating in good faith. Again, the sovereigns have not acted in good faith towards one another and have generated discord, confusion and bitterness.

The Cortina Integrated Waste Management Project

The Cortina Indian Rancheria of Wintun Indians is located in a remote area of Colusa County, California, and consists of 640 acres and includes a total enrollment of 161 persons, with almost 86 percent of the membership living off the Rancheria as of 1999. A General Council composed of all tribal members eighteen years or older governs the tribe. Of the twenty-three people living on the Rancheria, about half are over eighteen years old, and four are sixty-five or older. In general, there is lack of housing, poor employment opportunities, and scarce water and land resources on the Rancheria. Members of the Rancheria continue to hunt on and in the vicinity of the Rancheria for small game species. Since permanent surface waters are not found on the Rancheria, fishing is not possible.
In the summer of 1999, the Rancheria proposed to enter into a lease agreement for a lease of tribal land to the Cortina Integrated Waste Management, Inc. (CIWMI) for shipment of solid wastes to the Rancheria for the recovery of recyclable materials. The 640-acre (1 square mile) Cortina Rancheria is located in the relatively isolated southwest corner of Colusa County, accessible by only one all-weather road, which terminates at the Rancheria. The nearest city is Williams, approximately 11 miles northeast of the Rancheria.

The proposed project site will be physically on the Cortina Rancheria. The area of land for lease consists of 443 acres of the 640-acre Rancheria. The proposed facilities (landfill, materials, recovery, composting, bioremediation, and ancillary facilities) would occupy less than half (approximately 213 acres) of the lease site. The remainder of the lease area (approximately 230 acres) would remain as undisturbed open space. Recyclable materials would be transported to various market destinations and non-recyclable materials would be disposed as solid waste in a landfill on-site within the Rancheria. Waste would be transported to the on-site landfill via truck.

Through a combination of leased revenues, tipping-fee arrangements, and resale into the recycling market, the project would provide long-term revenue to the Cortina Band that would enable them to increase funding for education, housing, health care, and other programs and developments need to improve tribal living conditions. In addition, the project would provide employment opportunities both needed by and suitable for Band members. Employment opportunities would be provided directly by the project and indirectly through expansion of tribal governmental services. The lease agreement will not be valid unless the BIA first approves it, which remains problematic. This is due to the fact that BIA wants environmental concerns to be the first priority for this project while employment remains the first priority for the tribe.

However, major problems have emerged. The existing topography of the proposed site would be considerably altered by grading activities (including excavation and filling) for development of the landfill phases and other project facilities. Grading would affect approximately 213 acres of the 443-acre lease area. Implementation of the project would commit permanently at least 125 acres of land as a waste repository and would require continuous monitoring and maintenance to ensure containment of the
waste, prevent adverse impacts on groundwater and surface water, and provide for proper collection and destruction of landfill gas.

The project would have long-term effects due to removal of approximately 213 acres of foothill woodland, chaparral, and riparian vegetation. Some endemic plant species would eventually return in some areas, but the deep-rooted oaks and pines would have to be excluded from the landfill areas after closure, because their roots could penetrate the final cover.

Other environmental concerns emerged as well. For example, there were public health and safety concerns such as potential groundwater contamination, possible storm water runoff that could carry litter and contamination downstream, the ability of the landfill liner to withstand chemical degradation and damage from burrowing animals. There exists the possibility for small mammals, such as mice, to be brought in with waste material and become vectors for pathogens such as viruses or parasites that could be transmitted to local small mammal populations. Vegetative wastes from other areas may contain insects or arthropods that could transmit blood-borne pathogens to local mammal or avian populations.

Additional concerns raised included accidental spills of garbage, compost material, or petroleum-contaminated soils on roads or highways, including cleanup responsibilities. Also, there is a need for additional training or equipment for emergency response agencies, such as law enforcement and fire departments, in order to respond to spills or fires, particularly landfill fires that could spread beyond the Rancheria boundary.

The question of the adequacy of waste checking procedures at the landfill entrance was raised since waste would be delivered to the site by large vehicles including packer trucks, dump trucks, transfer trucks, and rail cars via flat bed trucks. Another issue was the relationship of the proposed landfill to other solid waste management sites already situated in Colusa County.

There were concerns raised about the impacts on property values in the vicinity of the Rancheria and along the access roads as a result of project operations, project traffic, and/or the resulting loss of privacy, including potential effects on the Colusa County tax base. Due to these many concerns, some members of the tribe urged for the development of a waste management facility at some other off-Rancheria location. Environmental
advocacy groups have recommended that the tribe raise game elk or deer instead as another possible means of economic development. Environmental groups are currently challenging the project in court.

The significance of the Cortina Integrated Waste Management Project to this discussion is that once again it demonstrates what happens when sovereigns are uncooperative. The tribe exercised initiative in requesting that the proposed waste management facility be built. The BIA has yet to approve the proposal and the surrounding communities are threatening legal action to prevent the construction of the facility. Furthermore, the federally mandated requirement that Colusa County and the nearby cities of Williams and Colusa reduce or recycle fifty-percent of their waste by the end of year 2000 has also raised the ire of local county and municipal government officials who charge that the federal government is applying “double standards” in favor of the tribe. The County has threatened to impose importation transport fees to be assessed for waste brought in from outside the County to the tribal landfill.

The Toxic Legacy of the Military in Alaska

There are hundreds of military installations and sites located throughout Alaska. These include full-scale military bases, early warning radar tracking sites, missile bases, and highly secret sites operated by the Central Intelligence Agency and the National Security Agency stemming from the cold war to present-day military operations. Many of these installations still have strategic importance while others are no longer in use. The military would like to transfer installations and sites they no longer use to the U. S. Department of the Interior and to Alaska Native Villages.

Unfortunately, many of these installations and sites are heavily contaminated with hazardous materials and wastes such as aviation fuel, solvents, pesticides, gasoline, fuel oil, napalm, polychlorinated biphenyls and unexploded ordnance. Hundreds of thousands of barrels containing hazardous materials and waste were disposed in wetlands at the King Salmon Air Force Base located 284 miles southwest of Anchorage. Chemical weapons were disposed of at the Gerstle River Test Site in Fort Greely which is located about 120 miles south of Fairbanks and in the Bering Sea off of the Island of Attu at the end of the Aleutian chain.
Many Native Villages in Alaska are situated near military installations and sites. In the past, these Native Villages often allowed the military to dispose of their trash in village landfills in exchange for direct dumping fees or other services offered by the military. However, what was often dumped by the military was not limited to just trash. It also included a lot of hazardous materials and waste as well. Therefore, many older Native Village dumps and landfills have a compounded problem -- there is co-mingling of hazardous and non-hazardous waste. Since it is difficult to separate co-mingled hazardous and non-hazardous wastes, both EPA and the state consider the whole dump or landfill as hazardous and the cost to clean up such sites are prohibitive. An environmental official of the Aleutian and Pribilof Islands Association captured these concerns quite well:

There is a major problem with the special needs of the Aleutian and Pribilof Islands. You can build a landfill that conforms to the best available technology and regulatory requirements. The problem is: How are you going to maintain it? Maintenance costs money and that is almost never factored in the landfill construction and closure costs. Furthermore, there is a lot of turnover in local native governments. Native communities need to be part of the solution and dealt with as equal partners. This is what EPA in Washington, D.C. doesn’t understand. They just don’t get it when it comes to understanding the unique local considerations.

Adding to financial problems is the remoteness of many military installations and Alaska Native Villages. For example, there are military installations and adjacent Native Villages all along the islands of the Aleutian chain and on the very remote Pribilof Islands with huge distances from the mainland that can range in distances of hundreds and even thousands of miles. The environmental official of the Aleutian and Pribilof Islands Association was right in stating that local considerations are not quite understood by other sovereigns. However, a more insidious situation obtains and it is only now that the actions of the past are unfolding. These contaminants have remained in the ground for many years and have now found their way into the drinking water supplies and the subsistence foods (e.g., fish) of many Alaska Natives. An environmentalist from the Alaska Native Inter-Tribal Council offered the following perspective:

The one thing that you have to remember about Alaska is that in terms of its tribes, subsistence is a key issue. In many rural areas you have an
economy based upon half-cash and half-subsistence (e.g., fishing, hunting, etc.).

Subsistence foods of Alaska Native peoples add to the seriousness of this discussion. As previously stated, many of these military installations and sites as well as nearby surrounding communities, which include Native Villages, are heavily contaminated by former military activities. The damage to the environment and wildlife is already done. However, Alaska Natives are now asking about the carcinogenic and teratogenic effects of these environmental contaminants on their population as a whole. An environmental professor at the University of Alaska noted “where we are finding contamination [e.g., gasoline, fuel oil], we are finding deformities in fish such as sores and lesions.” The findings by this professor are not unknown to the affected Native Villages. They add to the increasing bitter relations that have recently occurred between Native Village communities, the military, and a general distrust of both the federal and state governments as well.

The tragic toxic legacy of the military on the human population throughout Alaska is beginning to unfold. A former federal employee summed this up well when he said:

I worked for the federal government for 31 years and just recently retired. Even though I worked for the government, I went hunting every year for my family and I’ve seen a lot of studies on contaminants and animal behavior. We never get feedback on why this behavior is happening and what contaminants are present in them until it is too late. In the meantime, we are eating them and possibly being contaminated by something we don’t know.

Former federal employees like the above are generally a conservative lot. However, something was wrong and he knew it. Contamination caused by the military destroyed subsistence fishing in his Native Village. This is why relationships between the military and surrounding Native Alaska communities remain hostile, problematic and uncooperative. It will take many, many years for restoration to occur and in some cases the damage is irreparable.
Observations: Uncooperative Relationships Between Sovereigns

What observations can we make about these cases and why are they important to public administration? First, uncooperative relationships between sovereigns may be caused by a multitude of factors since the range of relationships is often very complex. For all sovereigns concerned, however, the issues associated with solid waste management do affect the relationships between sovereigns since they involve cross-jurisdictional relationships, which in turn affect budget and program administration. Second, individual sovereigns oftentimes fail to recognize or understand these issues, which result in the breakdown of relationships and lead to uncooperative settings. Third, uncooperative relationships cause chasms or walls to be built between parties and without the willingness to understand the other side these chasms or walls can become permanent.

Fourth, both the tone and texture of uncooperative relationships produce high levels of distrust and suspicion between sovereigns. For example, tribes frequently complain that they are treated in a paternalistic manner. On the other hand, states complain that tribes see everything in terms of infringement upon their tribal sovereignty. As these case studies have illustrated, in uncooperative relationships, issues like solid waste management may polarize groups, leading to destructive tendencies that do not necessarily achieve environmental goals.

The existence of different perspectives related to the cultural, economic, legal, scientific, and symbolic aspects attached to solid waste management can form barriers to cooperation between and among governments seeking the same general goals. Attempts by non-Indians to indiscriminately legislate or judicially constrain what may occur on tribal lands are perceived by tribes to constitute an assault upon their sovereignty. Furthermore, it denigrates tribes by implying that they cannot manage their own lands.

As environmental programmatic coordination among Indian tribes, federal, state, and local governments increasingly becomes necessary, the ability of these governments to communicate with and work together appropriately is critical to the ultimate success for issues such as solid waste management. This is especially true where coordination is sought between Indian and non-Indian environmental programs in general.

Uncooperative relationships are most likely when tribes and governmental agencies consider each other’s priorities and goals to be antithetical to their own. As
discussed in Chapter Three, Indian tribes do not represent one monolithic community. Neither do federal and state governments. Given the institutional interests and issues, like solid waste management, different agencies and actors within the same tribe or government can nurture different types of relationships, even at the same time. This will depend upon the issue and the particular situation at hand.

In general, relationships between sovereigns in the solid waste arena have been steeped in litigation and remain one of the most adversarial fields of environmental law. Even though new forms of mediation and partnership are being tried in some environmental arenas, the overall trend is one of continued distrust and polarization. General institutional and capacity problems affect many tribes. There are often too few resources available to enable a reasonable economy of scale for cost-effective solid waste collection. Jurisdictional disputes within sovereigns such as the BIA and IHS and a lack of clarity in the division of responsibilities constrain institutions, which contribute to uncooperative relationships. The same tribe may have an uncooperative relationship with BIA and a cooperative one with the IHS. Finally, one thing is certain: painting with one broad brush all government (federal, state, and local) or all tribes as monolithic promotes uncooperative relationships between sovereigns.

Summary

What is evident throughout this chapter is that tribes are not to be considered, nor do they fit the definition of mere stakeholders. They are sovereigns. Finding the path that yields a desired environmental benefit (e.g., regionally shared landfill or recycling of solid waste generated) through cooperative ventures most certainly outweighs the destructive tendencies associated with uncooperative relationships. We now turn to Chapter Seven, which will examine multiple sovereigns in cooperative formal relationships.
NOTES


2 Ibid, 248.


8 Personal contact, 3 August 1999.


10 Personal interview, 7 May 1999.

11 Ibid.

12 Ibid.

13 Personal interview, 5 May 1999.

14 Personal interview, 4 May 1999.

15 Personal interview, 6 May 1999.

16 Personal interview, 5 May 1999.