

**Testimony of Tex Hall
President, National Congress of American Indians and
Chairman, Mandan, Hidatsa and Arikara Nation on
Tribal Governments and the Homeland Security Act of 2002
Before the
Senate Indian Affairs Committee
July 30, 2003**

Dosha, Mr. Chairman, Members of the Committee, and my distinguished colleagues. My name is Tex Hall, President of the National Congress of American Indians and Chairman of the Mandan, Hidatsa and Arikara Nation. I want to acknowledge our friendship and the advocacy work this committee has done to protect the sovereign rights of Indian nations. I also want to thank the Committee for conducting this hearing on the Homeland Security Act of 2002, and your desire to hear the concern of tribal leaders regarding exclusion of tribal governments from all matters of homeland security. On behalf of the NCAI, I am also here to express support for Senate Bill 578 which will change the Homeland Security Act's incorrect definition of tribes as local governments.

There are two necessary changes to S.578 regarding the exclusion of Alaska Native tribal governments and the jurisdictional provisions contained in Section 13. We recommend the bill be changed to include Alaska Native tribal governments and that language is added to strengthen Section 13.

I need not elaborate on the daunting circumstances under which we live today. Since September 11, 2001 efforts have been made by the congress and the administration to better prepare and defend all sectors of this country against terrorist threats and activities. The Homeland Security Act of 2002 established the Department of Homeland Security (DHS) as the principal agency to develop a national effort through a system of counterterrorism analysis, preparedness, and information-sharing. The Act is quite comprehensive yet incomplete because it fails to include tribal governments as eligible entities entitled to participate in DHS program implementation. Tribal governments are placed in the local government category, a designation for counties and municipalities.

The DHS is not the first agency, but I do hope it will be the last, to encounter problems with federal program delivery and tribal consultation. For decades states and local governments have received hundreds of millions of dollars

for developing and enhancing their emergency management infrastructure, and for costs associated with training, staffing, and equipment. Only recently have tribal governments begun to receive funding and technical assistance from the Federal Emergency Management Agency (FEMA) and other federal agencies charged with the responsibility of emergency preparedness. FEMA issued its American Indian and Alaska Native Tribal Government Policy in 1999 but has not developed an implementation plan. However, significant progress has been made by FEMA in outreach and consultation to tribes in all matters under its charge.

The dramatic change in the domestic tranquility since pre 9-11, has sparked urgency in implementation of a national strategy in programs and policies geared toward incident and disaster management. Since its creation, the DHS has embarked on a speedy effort to implement homeland security measures involving state and local government officials. Implementation of the Homeland Security Act of 2002 includes current availability of tens of millions of dollars, and in the future potentially billions of dollars, to states, counties and municipalities for developing and enhancing homeland security infrastructure and related programs.

Tribal governments have responsibility for the health and safety of the residents and protection of property within their jurisdictional boundaries regarding homeland security matters. There are many matters of importance contained in the various sections of the Homeland Security Act crucial to tribal governments. Tribes must be treated minimally the same as states and be kept informed of DHS alerts, general notices, and programmatic initiatives. I believe the Indian nations have the right to train our emergency responders and provide them with the training and equipment to respond accordingly to the multitude of incident and disaster scenarios possible on our homelands. Unless the designation of tribal governments is changed within the Homeland Security Act, tribal communities will be at greater risk and a potential Achilles Heel in the fight against domestic terrorism.

Before passage of the Homeland Security Act and establishment of the Department of Homeland Security, NCAI representatives met with White House homeland security officials who stated that tribes would not be left out of DHS program implementation. DHS Secretary Ridge also has been made aware of the troubling, disparate treatment of tribal governments not receiving direct funding.

However, tribes are still on the outside waiting for the DHS to establish an intergovernmental relationship with them. The few tribal governments which have received Homeland Security funds have not received an equitable share. Those tribes fortunate enough to receive funding have either had to either go through the states or through counties, processes which are void of government to government protocols. In a recent supplemental distribution of homeland security grant monies, the states with tribal populations immediately earmarked significant amounts of the grants for their priority projects leaving relatively small amounts for tribes. My home state of North Dakota received over \$ 9,000,000 for homeland security. A paltry \$75,000 of this amount was earmarked for all the Indian Reservations in North Dakota. Furthermore, North Dakota never even bothered to consult with Indian Tribes to determine the homeland security needs on the Reservations located there. The failure of states to consult with Indian tribes and include them in their homeland security efforts appears to be the rule rather than the exception.

Adding to the frustration of tribal officials is the DHS lack of communication regarding matters pertaining to the health and welfare of tribal communities. The DHS has embarked on assembling various workgroups and task forces to identify needs, provide recommendations, and develop plans to address domestic homeland security threats and other issues. In developing these plans, DHS has invited interagency, state and local government officials to participate in the workgroup efforts as DHS “partners”, but has not invited tribal representatives to sit at the table.

A Homeland Security Presidential Directive (HSPD-5) sent out in February to DHS Secretary Tom Ridge instructed the Secretary to develop, submit for review to the Homeland Security Council, and administer a National Incident Management System (NIMS) and develop the National Response Plan (NRP). One of the stated purposes of the NIMS is to provide a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents. In May, state and local government officials were sent a preliminary working draft of the NRP for review and input. The NRP is designed to integrate federal government domestic awareness, prevention, preparedness, response, and recovery plans into a single all-discipline, all-hazards plan.

State and local officials were invited to attend a Homeland Security Partners briefing on the working draft of the NRP and the NIMS. Tribal officials did not receive notification of the development and were not asked for input on the National Incident Management System or the National Response Plan. Nor were any tribal officials invited to the Homeland Security Partners briefing.

Recently, Secretary Ridge created a State and Local Advisory Committee, which will advise the Homeland Security Advisory Council on increasing America's security in consultation with state and local government representatives. The makeup of the 13-member State and Local Advisory Committee includes governors, state legislators, mayors, city officials and a county judge. Again, no tribal representatives have been invited or involved in these critical discussions.

The tribal governmental responsibility to develop an emergency management infrastructure to respond to terrorist activities, natural and technological disasters has been recognized by many tribal leaders and governing bodies. Without federal or state assistance, several tribes have developed sophisticated comprehensive emergency preparedness organizations supported by all segments of the respective tribal communities. In some remote areas of the country, tribal responders are the only trained and qualified personnel serving non-Indian and tribal populations. A few tribes are able to proudly showcase their emergency response capacity with state of the art equipment and highly trained fire-fighters, law enforcement personnel, and emergency medical technicians.

The overwhelming majority of tribes unfortunately are not on the top rung of emergency preparedness capability. The NCAI is supportive of needed changes in federal policy and regulations to assist tribes in developing emergency management infrastructures. Tribes should not be denied the funding and technical assistance states and local governments have enjoyed for many decades. The NCAI passed resolutions in 2001 (BIS-02-036) and 2003 (PHX-03-001) to ensure that tribal governments are treated as states for planning, consultation, coordination considerations, and for eligibility for grant monies and funds to improve capacity and help prepare, prevent and respond to terrorist activities and for other purposes.

Funding, technical assistance, training opportunities, information and other resources are routinely available to state and local emergency management

programs. Tribal emergency management officials have been told to go through the states and local governments for assistance. Candidly speaking, the federal assistance theory of “trickle-down” has never worked for tribes and never will. There is a lack of complete communication, cooperation and interaction with state and local emergency management officials. In 2000, the FEMA Office of Inspector General determined that states are carrying over funding that should have been utilized for emergency preparedness programs for five years prior.

A FEMA 2002 congressional report titled, “Report on Cost-Share Capability of Indian Tribes in Emergency Management Programs,” provided insight into the view of tribes-state/local government relations. On a question about “understanding of unique Tribal needs”, sixty-three per cent of the tribes responding to the survey expressed dissatisfaction with state and local government understanding of tribal needs. Seventy-six percent of tribes surveyed were unhappy with state and local government “responsiveness to tribal needs”. Regarding “communication with tribes”, seventy-one percent of the tribes reported dissatisfaction with state and local government on this matter.

In closing let me share the daily risks in my homelands. The current size of the lands of the Mandan, Hidatsa and Arikara Nation is nowhere the size of our aboriginal territory and about 1/12 of the territory set aside for us in the Fort Laramie Treaty of 1851. We have over one million acres with about 500,000 acres held in trust. The resident population is approximately 6,000 Indians and non-Indians, but that figure can double during ceremonies and cultural events. We maintain five school districts, a tribal community college, a tribal health center, and a successful gaming enterprise. There is one small airport on the reservation and several nearby. The building of the Garrison Dam in the 1940s further reduced our land size and almost destroyed our autonomy and culture. Families, clans and political districts have been torn apart by a project that tribal members opposed without exception. We still have not recovered fully from the devastating impacts and it is unlikely we will. The geographical land pattern resulting from the flooding of our ancestral lands continues to cause problems in basic transportation, public safety and communication matters.

Although our tribal government is comprised of six political districts, the Missouri River reservoir has split our reservation into five water-bound separate areas. Tribal members who at one time were 20 miles from the

tribal offices and health center have to traverse more than 100 miles one way for services. Conversely, there is no direct route for the primary tribal emergency responders, law enforcement and fire services to provide assistance when needed.

You may be aware there are several Minuteman launch facilities located in North Dakota and on our tribal lands. The Minuteman missile is a strategic element of our homeland security defense system. Our police officers are regularly called out to investigate possible trespass incidents near these U.S. Air Force controlled sites. We have patrolled these areas for years without monetary support from the Air Force. Therefore we are at risk from at least two catastrophic events which could be terrorist-driven. Floods would inundate our lands if the dam collapsed due to terrorist activities, and our people are in harms way if one of the missile silos becomes a terrorist target.

The members of this Committee are keenly aware of what native peoples have done in many areas of homeland security throughout the history of this country. In fighting against a common enemy the people of this country have no better ally. The warrior spirit still exists throughout Indian country. The people of the Mandan, Hidatsa and Arikara Nation have entrusted me to seek every available avenue to preserve, protect and defend our homelands. Treaties, executive orders and court cases support tribal sovereign rights to engage federal agencies in consultation and participation activities. Today I am asking for fair and equitable treatment of tribal governments by the federal government. I am asking for access to homeland security assistance as we face another common enemy.

It is evident that the members of the Committee have once again listened to the voices of Indian country and provided me and other tribal leaders the opportunity to express our concern on this critical issue of sovereignty protection and protection of our homelands. I know that the members of this committee will join us in educating Department of Homeland security officials and the American public in upholding the constitutional sovereignty of tribal governments and support the passage of S. 578 with the recommendations we have made. We will continue to work together, and without a doubt make this country and our communities a safer place for our families and future generations.