Tribal Lands and Environment:
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Solid Waste, Emergency Response,
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Sandy Recovery
Improvement Act of 2013: Tribal Sovereignty and Federal Disaster Relief

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Climate Change: Severe Weather Events

- Increased number of severely destructive natural disasters - extreme flooding, severe droughts, tornadoes.

- Efficient response from the federal government crucial.

- Sandy Recovery Improvement Act of 2013 (the "Sandy Act") signed into law on January 29, 2013.
Sandy Recovery Improvement Act of 2013: Increased Tribal Sovereignty

- Tribal governments may now apply directly to the federal government for a declaration of emergency or major disaster.

- Result: Tribal governments no longer have to depend on a state for declaration requests to be made.

- Allows, not requires, direct disaster or emergency declaration requests.

- Streamline federal disaster assistance.

- Especially helpful for tribes whose territories cross one or more state lines.
Sandy Recovery Improvement Act: What’s Changed?

- Amends sections 401 (Major Disasters) and 501 (Emergencies) of the Stafford Act.

- Also amends sections 102 (Definitions) and 103 (References) of the Stafford Act to add “Indian tribal governments” as a new term and to incorporate the term throughout the Act wherever the terms “State” or “local government” appear.
“... any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of the States, local governments, [Indian tribal governments] and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.” 42 U.S. 5122(2) (Emphasis Added).
Stafford Act §401: Who May Request a Declaration

- States
- Local governments
- Indian Tribal Governments
Stafford Act §401(c): Cost Sharing Adjustments for Indian Tribal Governments

- President may waive or adjust any required non-Federal contribution if certain criteria are met.

- Waiver or adjustment must be necessary and appropriate.

- Flexibility in making the adjustments depends upon the type of grant/funding sought

⇒ Example: Hazard Mitigation Grant Program ("up to" 75 %) v. Public Assistance Program ("up to" 90 %)
Stafford Act §501: Emergency Defined

• “Emergency” is defined as “… any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and [Tribal] local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.”

• FEMA views emergency declarations as intended to supplement efforts in providing short-term emergency services
Additional Amendments to the Stafford Act

- “Indian tribal government” is a newly defined term
- §103 of the Stafford Act amended to provide that any references in the Act to State or local governments “is deemed to also refer to Indian tribal governments and officials.”
Implementation of the Sandy Act

- Federal government must “consider the unique conditions that affect the general welfare of Indian tribal governments.”
- Immediate implementation using current regulations
- FEMA solicited public comments on applicability of current regulations to Tribal Governments
  - 35 Comments from various Tribal officials and organizations
  - No responses yet from FEMA
- Pilot program for declaration requests from Tribal governments
Current Declaration Requirements

- Requests made to the regional FEMA office
- Must demonstrate that the disaster or emergency is of such severity and magnitude that effective response is beyond the capabilities of the Tribal government and that Federal assistance is necessary.

- Preliminary Damage Assessment (PDA)
  - Estimates extent of the disaster and its impact on individuals and public facilities
  - PDA not required for emergency declarations
  - PDA Team
Preliminary Damage Assessment (PDA)

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- PDA Team
- PDA not required for emergency declarations
Emergency and Disaster Declarations: Current Requirements

- Emergency Plan
- Have committed or will commit resources to alleviate the disaster impacts
  - Federal disaster assistance meant to supplement State and tribal government resources
- Certification of compliance with all future cost-sharing requirements
- Various other plans for funding under Public Assistance, Individual Assistance and Hazard Mitigation grant programs (e.g. Administrative Plan, Mitigation Plan and Other Needs Assistance Administrative Plan)
Timing for Declaration Requests

- Current FEMA regulations require that requests for an emergency or major disaster declaration be submitted within 30 days of the date of the incident.

- Extensions of time may be requested so long as the request for additional time is submitted within 30 days after the incident and includes a reason why additional time is necessary.
Case Studies

- Since enactment of Sandy Act, three tribes have received major disaster declarations

- March 1, 2013: Eastern Band of Cherokee Indians
  - severe storms, flooding, landslides and mudslides during the period of January 14 – 17, 2013

- March 5, 2013: Navajo Nation
  - severe freeze during the period of December 15, 2012 to January 21, 2013

- June 25, 2013: Standing Rock Sioux Tribe
  - severe storms and flooding from May 25 – June 1, 2013
Case Studies: Funding

- Funding provided under Hazard Mitigation Grant program & Public Assistance program, with cost-sharing by the Federal government of up to 75%.

- Funding available for:
  - emergency work
  - repair or replacement of damaged facilities
  - hazard mitigation measures
FEMA-assisted projects include repair of tribal-owned roads, landslides and a tribal-owned golf course.

Regional FEMA personnel working with more than half a dozen tribal departments to get federal funds issued so that repairs can be made.

Funding increased several months after the initial disaster declaration.
Navajo Nation Major Disaster Declaration: “Operation Winter Freeze”

- Three weeks of temperatures as low as 25 degrees below zero, causing waterline breakages
- 8,000 people without running water for as long as two months
- Repair costs estimated to be more than $7 million
- FEMA sharing 75% of the costs to restore water to homes and for structural repairs to prevent future water line breaks

Photo by Valerie Taliman
Major Disaster and Emergency Declarations: Plan Ahead

- Develop and maintain an Emergency Operations Plan
  - Evaluate vulnerable areas and populations
  - Examine history of natural disasters
- Build relationships with local FEMA office
  - Reservation visit with FEMA personnel
Planning Fundamentals

- Consider all threats and hazards
- Clear mission, supporting goals and desired results
- Identify tasks
- Allocate Resources
- Establish accountability
- Use examples
What Does the Future Hold for Tribes?

- Increased sovereignty
- Stronger relationships with the federal government
- More timely federal disaster assistance
- Consistency in disaster response actions
Questions & Answers