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SOVEREIGNTY, SAFETY, AND SECURITY: TRIBAL GOVERNMENTS UNDER THE STAFFORD AND HOMELAND SECURITY ACTS*

Heidi K. Adams**

I. INTRODUCTION

Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (Stafford Act), which provides federal guidance and support for disaster relief efforts, American Indian tribal governments lack the ability to directly request a presidential declaration of a major disaster in Indian country.¹ Tribes governing reservation land must instead formally request their state governors to ask the President for federal assistance. The Homeland Security Act of 2002 (Homeland Act), which supplies funds and program assistance to state and local governments in order to prevent and respond to terrorist attacks, creates an effect similar to the Stafford Act with respect to Indian tribes. Both the Stafford Act and the Homeland Act list tribes under their constituencies, but only under the definition of “local governments.”² As such, both of these acts, one targeting general catastrophes and the other aimed at preventing and responding to human-made disasters, force tribal governments to place themselves at the mercy of their state executives. This not only creates administrative roadblocks in

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¹ “Indian country” as referred to in this piece is a combination of both the accepted legal definition under 18 U.S.C. § 1151, which includes Indian reservations, dependent Indian communities, and Indian allotments, and Indian lands not covered under this legal definition, particularly with regard to Alaska Native villages. See *generally* Alaska v. Native Village of Venetie Tribal Government et al., 522 U.S. 520 (1998) (as a result of the holding in this case and the provisions of the Alaska Native Claims Settlement Act of 1971, many Alaska Native villages no longer qualify as “dependent Indian communities,” thereby preventing most land held by Alaska Natives in that state from being considered part of “Indian country” for purposes of jurisdiction). “American Indians” and “Natives” as referred to in this article are used interchangeably as all-inclusive terms for the sake of brevity, and should be considered to reference members of any Indian or Alaska Native tribe, band, nation, pueblo, village, or indigenous community.

² 6 U.S.C. § 101(10)(A)–(B) (2003).

situations where timely response is essential, but also infringes upon tribal sovereignty and signifies a breach of the federal government's duty to adequately provide for tribes.³

In an attempt to address these concerns, the US House of Representatives is currently reviewing a bill proposing amendments to the Stafford Act. The amendments would provide tribes with the option of directly communicating emergency requests to the President and federal agencies, thereby addressing the needs of Native communities while reinforcing tribal sovereignty.⁴ Congress should therefore amend the Stafford Act as proposed, supporting the creation of a more robust emergency management system that treats Indian tribes equally compared to state and local governments.

Congress should also change the Homeland Act to mirror the amended version of the Stafford Act. Unfortunately, the Homeland Act has received less attention during the legislative proposal to amend the Stafford Act. This could be due to several factors: first, the Homeland Act is relatively young and untested within Indian country. Second, environmental threats and disparities in environmental justice seem more prevalent in this time of climate change and increasingly extreme weather patterns. Third, media coverage on the issue of climate change has risen, and along with it, increased awareness of environmental justice issues. Compared to the emergence of environmental justice awareness, the threat of foreign and domestic terrorism to tribes seems miniscule. Still, tribes and their allies should advocate for amending the Homeland Act now, in order to capitalize on the momentum of Congress's current attention to redrafting the language problems within the Stafford Act. Most importantly, strengthening the position of Indian tribes within the paradigm of homeland security now could prove to be pragmatic in the long-term, rather than waiting until real, significant terror threats occur.

Even if these changes are made, a potential caveat lies in the broad diversity between American Indian tribes. In some cases, smaller tribes with weaker resource bases may be reluctant to alter the current scheme, as states often bear the brunt of implementing and paying for disaster preparations and relief. Thus, it may be most prudent for Congress to amend the Stafford and Homeland Acts in a way that would provide dynamic flexibility between individual tribal governments. Specifically, these

³ Rob Capriccioso, *Tribal Sovereignty Disaster Legislation Introduced*, INDIAN COUNTRY TODAY MEDIA NETWORK, May 25, 2011, <http://indiancountrytodaymedianetwork.com/2011/05/tribal-sovereignty-disaster-legislation-introduced/> (last visited Nov. 16, 2012); see Exec. Order No. 13,175, 65 Fed. Reg. 67,249 (Nov. 6, 2000) (acknowledging the unique legal relationship between the federal government and tribes as "domestic dependent nations," where the federal government not only recognizes and encourages maximum tribal sovereignty, but also owes a trust duty to Indian tribes).

⁴ *Id.*

amendments and subsequent programs would be stronger if crafted to echo the policies of current federal environmental legislation, such as the Clean Water Act (CWA), the Clean Air Act (CAA), and the Safe Drinking Water Act (SDWA). These statutes allow tribes to determine internally if they want to apply for “Treatment in the Same Manner as a State” (TAS)⁵ status and formulate their own tribal environmental regulation entities, or if they wish to function entirely under the appropriate federal agency. In either case, states are precluded in these pieces of legislation and administrative procedures from participating in—or interfering with—tribal affairs. Thus, tribes would be afforded wide latitude in determining how to exercise their inherent sovereignty.

This article analyzes the current effects of the Stafford and Homeland Acts’ provisions with regard to Indian country, including difficulties faced by tribes and social justice implications for indigenous groups. The examination of applicable federal Indian law and policy will follow, along with a discussion of the importance of tribal sovereignty and the ways in which the current legislation violates these principles. Finally, this article will conclude with a review of the 2011 proposed amendments to the Stafford Act, as well as an outline of recommendations for Congress and tribal advocates to borrow tenets from environmental regulation and weave these into disaster prevention and recovery laws.

II. TRIBAL GOVERNMENTS UNDER THE STAFFORD AND HOMELAND ACTS

Under the Stafford and Homeland Acts, states are the primary beneficiaries. The acts authorize the President to grant funds to states for disaster preparation and relief, rather than funding efforts to “local governments.”⁶ The Stafford Act defines “local government” as including “an Indian tribe or authorized tribal organization, or Alaska Native village or organization.”⁷ The Homeland Act also lists “an Indian tribe or authorized tribal organization, or in Alaska a Native village or Alaska Regional Native Corporation” under its definition of “local government.”⁸ Thus, tribal lands are subordinate to states within the structure of these statutes.

This is particularly harmful to tribes in light of the complex nature of Indian land holdings. Indeed, jurisdiction and property ownership in Indian country are often described in legal scholarship as intricate “patchwork” or as creating a “checkerboard.”

⁵ *Treatment in the Same Manner as a State*, U.S. Environmental Protection Agency (June 25, 2012), <http://www.epa.gov/2012/06/tp/laws/tas.htm/American-Indian-Office-Tribal-Portal> (last visited Nov. 16, 2012).

⁶ See generally 42 U.S.C. § 5121–5207 and 6 U.S.C. § 101–613 (2003).

⁷ 42 U.S.C. § 5122(7)(B).

⁸ 6 U.S.C. § 101(11)(B) (2003).

Some land may be held in fee by tribal member individuals, or by the tribal government. Or, some parcels may be held in trust by the federal government for tribal or individual tribal member use. Numerous pieces of reservation land are leased to nontribal entities by the tribes or the federal government. To complicate the situation further, many land tracts in Indian country have multiple tribal member owners who hold restricted trust land in undivided shares—a product of decades of estate and probate practices that have continually fractionated Indian property allotments with each generation.⁹ Some of these allotments never passed to Indian descendants, as non-Indians settled on reservation lands that were “opened” by the federal government. This “checkerboard pattern . . . renders management and regulation of those lands and the peoples on them cumbersome at best.”¹⁰ Thus, in disaster law, adding the state as another player in this scheme complicates the framework from every angle, from pre-disaster planning and preparation to emergency response and recovery.

The Stafford Act provides program funds for “Pre-disaster Hazard Mitigation” that are awarded as a result of recommendations to the President from state governors.¹¹ Each year by an October 1 deadline, state governors are required to identify and recommend at least five local governments (including tribal governments) to receive this type of funding.¹² But state executives often have limited contact with tribes and tribal governments. While statistics are not available to show how many tribes as “local governments” are nominated by their respective state governors for federal pre-disaster hazard mitigation help, it seems likely that tribes are underrepresented within this scheme because the qualifications for such funding include proving cost-effectiveness and need, which can be difficult to show when compared to more populous or urban regions within a state. Thus, tribes face difficult barriers in garnering federal assistance through their states’ recommendations.¹³

Nevertheless, for certain types of funding, states may be forced into lending assistance to tribal governments. The Stafford Act requires that in order to be eligible for “an increased Federal share for hazard mitigation measures . . . a State, local, or tribal government shall develop . . . a mitigation plan that outlines processes for identifying natural hazards, risks, and vulnerabilities of the area under the jurisdiction of the government.”¹⁴ This section specifically names tribes as if they are separate and distinct from local governments, requiring that “[e]ach mitigation plan developed by a local or

⁹ See generally Douglas R. Nash & Cecelia E. Burke, *The Changing Landscape of Indian Estate Planning and Probate: The American Indian Probate Reform Act*, 5 SEATTLE J. FOR SOC. JUST. 121 (2006).

¹⁰ *Id.* at 127.

¹¹ 42 U.S.C. § 5133(d)(1)(A).

¹² *Id.*

¹³ See *infra* Part V.

¹⁴ 42 U.S.C. § 5165(a).

tribal government shall (1) describe actions to mitigate hazards, risks, and vulnerabilities identified under the plan; and (2) establish a strategy to implement those actions.”¹⁵ States have a similar requirement to identify risks and vulnerabilities, but also to “support development of local mitigation plans” and “provide for technical assistance to local and tribal governments for mitigation planning.”¹⁶ For Native communities, the explicit reference to tribal governments is a definite improvement over a strict definition of tribes as “local governments.” But while the Act expressly forces states to offer technical support for tribal programs, this system ultimately contravenes federal Indian policy and the spirit of tribal sovereignty.

The requirement of state governments to support mitigation planning efforts by tribal governments may be helpful to tribes, but presents an anomaly within the framework of federal Indian law. The separation of tribal and local governments under this section of the Stafford Act underscores the inclusion of tribes in the competition for state program assistance and federal funds along with cities, towns, and counties. Thus, tribes should have state support equal to that of other local governments when creating hazard mitigation plans. However, this still places tribal governments at the mercy of their state executives, a concept that violates basic federal Indian law principles.¹⁷

Similarly to pre-disaster hazard mitigation funding procedures, when disasters do occur, tribes must again seek assistance from the President through their state executive. But while the Stafford Act clearly states, “[a]ll requests for a declaration by the President that an emergency exists shall be made by the Governor of the affected State,” an exception may exist.¹⁸ Indeed, the President may act and declare a disaster without gubernatorial request “when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority.”¹⁹ While tribes are not specifically mentioned in this section, the relationship between the federal government and Indian tribes should fall under this category. Thus, it is possible that the President has the ability to declare a major disaster in Indian country notwithstanding a request from a state governor. This possibility has never been exercised before 2010, begging the question of whether tribes are aware that they may

¹⁵ *Id.* at § 5165(b).

¹⁶ *Id.* at § 5165(c).

¹⁷ Federal Indian law prescribes a duty of the federal government to care for and act as fiduciary to tribes on multiple levels. This relationship is discussed *infra* Part V.

¹⁸ 42 U.S.C. § 5191(a).

¹⁹ *Id.* at § 5191(b).

appeal to the federal government for disaster relief under this procedural exception.²⁰ Further, since this exception has been rarely and only recently exercised, it is unknown when and how tribes would qualify for this direct assistance.

III. ENVIRONMENTAL AND DISASTER JUSTICE: VULNERABILITIES IN NATIVE COMMUNITIES

Native communities are one of the most disadvantaged groups in the United States. Widespread poverty and lack of services are common throughout Indian country, leading to vulnerability on many levels.²¹ For example, tribes and their indigenous traditions may be particularly vulnerable to damage caused by environmental change, as “[t]ribal cultural practices and religious beliefs are rooted in the Earth and woven into the web of life. Tribal members use wildlife and plants and other natural resources in ways that are different from other ethnic groups that exist within the American society.”²² This dependence and closeness with the environment is true even today; while some tribes in urban areas or with wealth sources (e.g., minerals, gaming) have been able to modernize their lands and lifestyles, “traditional cultural and religious beliefs and practices are still important components of the identities of contemporary Indian people.”²³ Indeed, when Native lands are threatened by disaster, tribal members may lose access to food sources and important cultural sites, and further suffer emotional trauma from the disaster itself.²⁴

Because a healthful environment is so central to the continuance of indigenous lifeways, environmental changes are often more likely to adversely affect tribes than other communities. Even gradual changes in climate, rather than unexpected and immediate disaster, can harm tribal groups. For instance, temperatures in the arctic

²⁰ The Havasupai Tribe, traditionally residing around the Grand Canyon in Arizona, received direct FEMA funding to assist with recovery from floods that devastated the area in October 2010. This marks the first time that a Native tribe has received funds directly from FEMA exclusively for tribal use. Lee Allison, *Havasupai Tribe and FEMA sign disaster agreement today*, ARIZ. GEOLOGY: BLOG OF THE STATE GEOLOGIST OF ARIZ. (Jan. 27, 2011, 8:13 a.m.), <http://arizonageology.blogspot.com/2011/01/havasupai-tribe-and-fema-sign-disaster.html> (last visited Nov. 16, 2012).

²¹ See Duane Champagne, *Living or Surviving on Native American Reservations*, INDIAN COUNTRY TODAY MEDIA NETWORK, Oct. 8, 2011, <http://indiancountrytodaymedianetwork.com/2011/10/living-or-surviving-on-native-american-reservations/> (last visited Nov. 16, 2012).

²² Dean B. Suagee, *Dimensions of Environmental Justice in Indian Country and Native Alaska* (Second National People of Color Environmental Leadership Summit Resource Paper Series, 2002), in CLIFFORD RECHTSCHAFFEN ET AL., ENVIRONMENTAL JUSTICE: LAW, POLICY & REGULATION 107 (Carolina Academic Press 2009).

²³ *Id.*

²⁴ The Ute Indian Tribe suffered from major flooding and landslides in June 2011, and reported that “[c]ultural sites are . . . expected to be damaged by flood waters and road closures will prevent access to traditional hunting, gathering and ceremonial sites.” Ranae Bangerter & Geoff Liesik, *Tribe declares flooding emergency*, VERNAL EXPRESS, June 8, 2011, <http://www.vernal.com/stories/Tribe-declares-flooding-emergency-,1548086> (last visited Nov. 16, 2012).

have increased more than in most areas of the globe, melting sea ice and glaciers, thawing permafrost, and altering forest and tundra ecosystems. Aside from issues affecting wildlife, which arctic peoples depend upon for subsistence, the physical makeup of the changing arctic and subarctic is directly endangering indigenous communities. In particular, the increasing arctic temperatures have caused the sea ice to form later in the year than usual, and when the ice does form, it is smaller in area and thinner than normal. The ice then attaches to the coast later in the season, breaks up earlier, and melts earlier.²⁵ The melting sea ice prevents the buildup of natural protection of the shoreline from harsh storm surges.²⁶

This devastating change has created insurmountable challenges for Native villages in the arctic and subarctic regions. For example, the absence of the sea ice buffer has allowed an onslaught of waves against the western coast of Alaska, causing massive erosion and flooding. In one year, over one hundred fifty feet of beach at the Native village of Kivalina disappeared into the sea, forcing villagers to line their encroaching shores, in vain, with sandbags.²⁷ Likewise, the village of Shishmaref, located on an island above the Bering Strait, lost thirty feet of land in the span of two hours during a storm. Shishmaref lies only a few feet above sea level, and now deals with overnight erosion and flooding.²⁸

As another example, the village of Newtok, Alaska, directly west of Bethel, has similar problems with flooding and erosion. Newtok was constructed atop permafrost, which has melted and shifted with the changes in northern climate.²⁹ Buildings have sunk into the ground, their foundations crumbling and mixing with leaking sewage.³⁰ Shishmaref, Newtok, Kivalina, and others desperately seeking to move their communities to safer, higher ground have appealed to Congress to help them relocate

²⁵ Complaint at 4, lines 26–27, *Native Village of Kivalina v. ExxonMobil et al.*, 663, F. Supp. 2d 863 (N.D. Cal. Sept. 30, 2009).

²⁶ *Id.* The climate change situation in Alaska is also different from “the Lower 48” in terms of the relationships between governmental entities and tribes, because the legal status of Alaska Natives is unique. Only one reservation exists in Alaska, despite the state’s massive size. The remaining Native tribes and villages were divided into twelve regional areas and incorporated into Native-owned corporations. Thus, “tribal members” in the Lower 48 are akin to Alaska’s “Native shareholders.” Furthermore, Alaska Natives—through village and regional corporations—hold most of their lands in fee simple, rather than occupying lands held in trust for Native use by the federal government as in the Lower 48. See Alaska Native Claims Settlement Act, 43 U.S.C. §1601–1633.

²⁷ Elizabeth Arnold, *Tale of Two Alaskan Villages*, NPR, July 29, 2008, <http://www.npr.org/templates/story/story.php?storyId=93029431> (last visited Nov. 16, 2012).

²⁸ *Moving Alaskan Villages Away from Encroaching Sea*, NPR, Nov. 25, 2005, <http://www.npr.org/templates/story/story.php?storyId=5027517> (last visited Nov. 16, 2012).

²⁹ Anna York, *Alaskan village stands on leading edge of climate change*, POWERING A NATION, 2012, <http://unc.news21.com/index.php/stories/alaska.html> (last visited Nov. 16, 2012).

³⁰ *Id.*

inland. Congress has failed to aid the villages, however. In 2008, the Senate did not pass legislation that would have allowed appropriation of funds to relocate Alaska coastal villages. Since then, the situation has become more dire with each season, compelling Alaska Natives to seek federal assistance through the Stafford Act and the Federal Emergency Management Agency (FEMA), rather than new legislation directly addressing the concerns of the villages.³¹

FEMA, which is tasked with coordinating the federal government's responsibilities under the Stafford Act, has several disaster mitigation and recovery programs that could be applicable to the climate changes threatening Alaska Native villages.³² In order to qualify for most FEMA disaster mitigation grants, communities must submit mitigation plans for FEMA's approval.³³ Most Alaska Native villages have not done so; but for those that have, the villages face the problem of meeting FEMA's cost-effectiveness standards. Indeed, "[w]ith low populations and high construction costs in rural Alaska [because of the difficult terrain and high cost of transportation] village relocation projects have low benefit-to-cost ratios."³⁴ However, Alaska state officials have begun to assist Native villages with creating mitigation plans, specifically with the goal of obtaining grant funding from FEMA.³⁵ While this will undoubtedly aid threatened Alaska Native groups in qualifying for disaster mitigation programs, the cost-benefit analysis required by FEMA remains a significant hurdle because of the relatively low populations and high cost of transporting and working in rural Alaska. Moreover, FEMA generally provides grants on a statewide basis, rather than in local areas.³⁶ Given the size of Alaska and the isolation of some Native villages, federal aid under this framework is unlikely.

³¹ Arnold, *supra* note 27. In 2012, Congress enacted the Quileute Indian Tribe Tsunami and Flood Protection Act to assist the Quileute Tribe (located on the Olympic Peninsula in western Washington) with moving several tribal buildings to higher ground. The act has given the tribe 785 acres of trust land carved out of Olympic National Park, which will allow the Quileute to move the tribal school, elder center, and other buildings out of the immediate tsunami zone and floodplain. Pub. L. No. 112-97, 126 Stat. 257 (2012). The legislation is likely a result of concerns for the vulnerable coastal lowlands following the 2011 earthquake and tsunami in Japan. See Richard Walker, *Quileute Is Moving to Higher Ground*, INDIAN COUNTRY TODAY MEDIA NETWORK, Feb. 28, 2012, <http://indiancountrytodaymedianetwork.com/2012/02/28/quileute-is-moving-to-higher-ground-100321> (last visited Nov. 16, 2012).

³² A 2009 federal government report lists thirty-one "imminently threatened" Alaska Native villages along the Alaska coastline and river systems. U.S. GOV'T ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS GAO-09-551, ALASKA NATIVE VILLAGES: LIMITED PROGRESS HAS BEEN MADE ON RELOCATING VILLAGES THREATENED BY FLOODING AND EROSION 12 (June 2009), available at <http://www.gao.gov/new.items/d09551.pdf> (last visited on Nov. 16, 2012).

³³ See 42 U.S.C. § 5133(c).

³⁴ U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 32, at 22–23.

³⁵ *Id.* at 34.

³⁶ *Id.* at 23, n.19.

In addition, FEMA mitigation and recovery programs under the Stafford Act are only applicable in areas that have been declared federal disasters. This poses a problem for Alaska Native groups because “many of the villages are facing gradual erosion problems and have not received a declared disaster designation, [so] they do not qualify for these programs.”³⁷ Since the Stafford Act requires the governor of an endangered state to request that the President declare a major disaster before FEMA funding can be triggered, Alaska Native villages are thus dependent upon the governor of Alaska to request federal assistance. Considering the remote isolation of many villages and the fact that some are not incorporated as official towns, many villages are unable to request either funding from the state or convince the governor that federal funds are necessary. Where villages are able to gather state and/or federal assistance in creating disaster mitigation plans, most are only able to mitigate their losses by relocating to a safer area, which requires long-term planning and support. In most cases, long-term state and federal aid for villages have proved grossly insufficient.³⁸

Of course, Alaska Native villages are not the only indigenous communities threatened by climate change and other disasters. In the summer of 2011 alone, numerous Indian reservations on the Great Plains faced serious flooding issues. The Uintah and Ouray Reservation in northeast Utah depleted its own financial sources from the Ute Tribe Emergency Management Department, as well as funds it had been given from the state, in order to purchase sandbags for flooding.³⁹ The Blackfeet Indian Reservation in northwestern Montana suffered from flooding problems for several months after an unusually harsh winter caused rivers and culverts to overflow from melting snow on the Rocky Mountains.⁴⁰ In eastern Montana, the Crow Indian Reservation saw flooding from record rainfall, damaging hundreds of homes and revealing that many of the homes should have been condemned long before the

³⁷ *Id.* at 23.

³⁸ “After [the village of Allakaket] was flooded in 1994 and almost completely destroyed . . . homes were moved out of the floodplain . . . but many homes and infrastructure components were rebuilt or replaced in or near the floodplain. In August 1995, FEMA and the Alaska Division of Emergency Services provided a comprehensive plan to the people of Allakaket to use as guidance for completing the relocation process over a 20-year period. Subsequently, without a lead federal or state entity for providing relocation assistance and lacking the internal capacity and resources to sustain the relocation process, Allakaket has made minimal progress over the last 14 years.” *Id.* at 41.

³⁹ It is likely that the Ute Tribe is able to support its own Emergency Management Department because the reservation is the second largest in the United States, and generates revenue through its oil and gas drilling, as well as its water company that serves the three counties. Bangerter & Liesik, *supra* note 24.

⁴⁰ I observed this firsthand during the summer of 2011 while I lived and worked on the Blackfeet Reservation. Several of my clients and friends were forced to live with their family members in already grossly inadequate housing units and used FEMA trailers because the tribal government was unable to secure emergency housing.

floodwaters destroyed them.⁴¹ Many of these tribal members faced the prospect of completely rebuilding or relocating rather than repairing their homes, causing considerable hardship for some families. Additionally, the flooding in Montana was statewide, triggering the governor to request and receive a presidential disaster declaration.⁴² This secured some federal funding for tribes, but home ownership in Indian country is often complex and not easily discernable.⁴³ This presents an issue on reservation lands because “[h]omes that are [tribally owned] are eligible for the FEMA repair funds, but residents who own their homes are responsible for their own recovery and repairs. For those homeowners, flood insurance would be key—but many don’t have it.”⁴⁴ Therefore, FEMA funding through gubernatorial request is ineffective in these situations because no stopgap exists to cover uninsured or underinsured tribal homeowners on federal trust land.

These examples of current disaster-related problems on tribal lands represent the power disparity between tribal governments and states in obtaining assistance for mitigation and recovery programs. Not only do American Indian and Alaska Native communities face disaster on the same level as other communities, but their access to funds and services from the federal government is hindered by the complex nature of land ownership and jurisdiction in Indian country. As well, issues arise due to general vulnerabilities in tribal infrastructure and lack of socioeconomic strength, coupled with the stringent requirements for requesting federal disaster aid. These barriers signify a gross discrepancy between disaster law and federal Indian law, and also indicate an alarming failure on the part of the federal government to support tribal sovereignty.

IV. HOMELAND SECURITY: LACK OF PROTECTION FOR FIRST AMERICANS

Similar to the deficiencies in natural disaster law and procedure, the Homeland Act falls short of addressing tribal-specific concerns. Border patrol in particular can be a challenge to tribal governments, with 260 of the 7,400 miles of US international boundaries lying on tribal lands.⁴⁵ Critics have pointed to the potential for illegal border

⁴¹ *Crow Reservation in Montana on the Long Road to Recovery*, INDIAN COUNTRY TODAY MEDIA NETWORK, June 29, 2011, <http://indiancountrytodaymedianetwork.com/2011/06/crow-reservation-in-montana-on-the-long-road-to-recovery/> (last visited Nov. 16, 2012) [hereinafter *Crow Reservation*].

⁴² *Id.*

⁴³ Many of my Blackfeet clients did not know if they owned their land parcels or the structures on them, or if the tribe or the federal government owned them and “leased” them (usually for free) or held them in trust for the use of tribal members.

⁴⁴ *Crow Reservation*, *supra* note 41.

⁴⁵ Jennifer Butts, *Victims in Waiting: How the Homeland Security Act Falls Short of Fully Protecting Tribal Lands*, 28 AM. INDIAN L. REV. 373, 383 (2004).

crossings onto tribal lands where tribal law enforcement is severely limited.⁴⁶ Tribes that do not abut international borders are also at risk, as their lands could be targeted by domestic terrorists or other terror entities that have already successfully infiltrated US borders.

Potential terrorism targets are easily found within reservation boundaries, such as underground high-pressure interstate gas lines, manufacturing facilities catering to the US Department of Defense, important freight train routes, nuclear power plants and waste storage sites, hydroelectric dams, and even missile launch facilities.⁴⁷ In all of these places, as soon as tribes exhaust their own resources for addressing terrorist threats, state governments will likely control funding for preventing and immediately responding to a terrorist attack. Indeed, the Homeland Act “ignores congressional plenary power over the tribes, . . . [as states] are responsible for distributing the funding from the Department of Homeland Security. . . . Just as a county, city, or town would be subject to state control and supervision, so would a tribe.”⁴⁸ Subjecting tribes to state control and supervision thus presents a flagrant violation of the tenets of federal Indian law and tribal rights to self-governance, and ultimately leaves tribes vulnerable to terrorist attack without adequate protections.

V. BALANCING INTERESTS: GOVERNMENT EFFICIENCY AND TRIBAL SOVEREIGNTY

Modern federal Indian law rests upon three cases from the early 1800s, often referred to as the “Marshall trilogy.” In *Johnson v. M'Intosh*,⁴⁹ *Cherokee Nation v. State of Georgia*,⁵⁰ and *Worcester v. State of Georgia*,⁵¹ Chief Justice John Marshall laid foundational principles for the relationship between the federal government and Indian tribes.⁵² In *Cherokee Nation*, Marshall wrote that Indian tribes were neither state entities, nor foreign powers. Instead, they were “domestic dependent nations,” where the relationship between a tribe and the federal government is equal to that of “a ward

⁴⁶ For instance, the Blackfeet Reservation consists of 1.5 million acres of land, including approximately sixty miles along the Canadian border. The Reservation is internally patrolled by four to five on-duty tribal police officers at any given time. Interview with Nathan St. Goddard, Tribal Attorney, Blackfeet Nation (Oct. 11, 2012).

⁴⁷ Butts, *supra* note 45, at 385–86.

⁴⁸ *Id.* at 389.

⁴⁹ 21 U.S. 543 (1823).

⁵⁰ 30 U.S. 1 (1831).

⁵¹ 31 U.S. 515 (1832).

⁵² This article does not focus in detail on these three foundational cases, nor on the following 180 years of Indian law jurisprudence. My summation of these principles is an oversimplification of the vast complexities of federal Indian law. For more in-depth discussion, see Matthew L.M. Fletcher, *The Iron Cold of the Marshall Trilogy*, 82 N.D. L. REV. 627 (2006).

to his guardian.”⁵³ This relationship, or “trust doctrine,” has been interpreted as a fiduciary duty on the part of the federal government, with Congress ultimately responsible for the trusteeship on behalf of Indian tribes. As such, in exchange for lands and resources ceded by tribes to the federal government, the United States is responsible for protecting and preserving the borders of Indian country.⁵⁴ A large part of this includes keeping tribes safe from state encroachment by preventing states from interfering with tribal affairs.⁵⁵ But through a century and a half of harmful Indian policies, “that relationship with the United States became tainted, and corrupted by the betrayal of Andrew Jackson’s Executive Branch and by Congress, just as the relationship between all the other Indian tribes and the United States became tainted and corrupted by betrayal.”⁵⁶ Thus, the original holdings from the Marshall Court have been twisted, confused, and eroded into modern common law that makes defining today’s theoretical and de facto trust relationship nearly impossible.

Additionally, as a result of the civil rights movement in the 1960s, the federal government initiated a general policy towards Indian self-determination, empowering Congress to enact several laws aimed at strengthening tribal autonomy.⁵⁷ Both the trust doctrine and the self-determination policy highlight that there is a strong—albeit often dysfunctional⁵⁸—relationship between Indian tribes and the federal government. This relationship, with a few exceptions left over from darker periods of federal Indian law,⁵⁹ precludes states from intruding upon tribal communities. The Stafford and Homeland Acts clearly sidestep these principles by forcing tribes to route their disaster needs through their respective state executives. As such, not only do these laws fail in keeping consistent with federal Indian policy, but they also impede tribal abilities to exercise sovereignty.

⁵³ Cherokee Nation, 30 U.S. 1, 2 (1831).

⁵⁴ *Id.* at 17–18.

⁵⁵ *Id.*

⁵⁶ Fletcher, *supra* note 52, at 661.

⁵⁷ See, e.g., Indian Self-Determination Act, 25 U.S.C. §§ 450f–450n; Indian Education Assistance Act, 25 U.S.C. §§ 455–458e.

⁵⁸ For instance, the federal government as trustee is responsible for representing tribes in certain legal actions, even when an agency of the federal government is on the other side of such a lawsuit. See, Ann C. Juliano, *Conflicted Justice: The Department of Justice’s Conflict of Interest in Representing Native American Tribes*, 37 GA. L. REV. 1307 (2003) (“The Department of Justice takes a very Darth Vader-like position in its representation of Native American tribes. . . . When the Department of Justice seeks to resolve a conflict between a tribe and an agency, the conflict is not between two Executive agencies; rather, it is between trustee and beneficiary.”)

⁵⁹ For example, Public Law 83-280 (PL-280), which was enacted in 1953, transferred jurisdiction in Indian country from the federal government to some states. PL-280 did not require consent of Indian tribes, and tribes were not consulted. 18 U.S.C. § 1162; 28 U.S.C. § 1360.

In an effort to clarify federal Indian policy, President Clinton issued Executive Order (EO) 13,175 in late 2000 entitled, “Consultation and Coordination with Indian Tribal Governments.”⁶⁰ In his order, the President outlined three fundamental principles to guide governmental agencies in formulating policies that impact Indian country. First, the order delineates the Marshall trilogy concepts of federal Indian law—that the US government holds a special and unique legal relationship with tribes, where tribes are “domestic dependent nations” under the protection of the United States as trustee.⁶¹ Second, the President recognized that “[a]s domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory,” and that the working relationship between tribes and the federal government is on a “government-to-government basis.”⁶² Third, the EO states unequivocally that “[t]he United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.”⁶³ Again, the Stafford and Homeland Acts are crafted in such a way to prevent this government-to-government communication between the United States and tribes. Thus, these disaster laws do not conform to this important presidential reiteration of the federal duty to protect and support tribal sovereignty.

Federal agencies following the three guidelines set forth in EO 13,175 are thus instructed to respect tribal self-governance, and to create and implement policies according to the trust relationship. In general, agencies must “grant Indian tribal governments the maximum administrative discretion possible,” as well as defer to tribes wherever possible when establishing agency standards and goals.⁶⁴ Despite the strong language commanding maximum participation and deference to Indian tribal governments, federal governmental agencies may struggle with ambiguities strewn throughout the EO. For instance, defining the boundaries of where it is “possible” to allow for maximum tribal discretion could cause glitches where agencies are forced to balance the goals of preserving tribal sovereignty with resource allocation and expertise. Particularly where agencies are not equipped with culturally competent agency-tribal liaisons, following the EO could require overcoming significant communication obstacles between agencies and tribes.

One way to defeat this obstacle is to prescribe specific programmatic functions within agencies, where an employee trained in tribal relations is designated for the position of ensuring support for tribal objectives, while also advocating internally for

⁶⁰ Exec. Order No. 13,175, 65 Fed. Reg. 67,249 (Nov. 6, 2000); see also *Cherokee Nation*, 30 U.S. 1 (1831) (jurisdictional holding, wherein Chief Justice John Marshall ruled that the relationship between Indian tribes and the federal government is that of a “ward to its guardian”).

⁶¹ Exec. Order No. 13,175 § 2(a), 65 Fed. Reg. 67,249 (Nov. 6, 2000).

⁶² *Id.* at § 2(b).

⁶³ *Id.* at § 2(c).

⁶⁴ *Id.* at § 3(b).

agencies to meaningfully consider and consult with tribes when promulgating policies and regulations.⁶⁵ Furthermore, this could aid in increasing general agency knowledge and effectiveness, especially in the field of environmental regulation and response to natural disasters where tribes are more acquainted with their local ecosystems than outsiders.⁶⁶

In addressing the shortcomings of self-determination policies, federal agencies have begun taking steps to work cooperatively with tribal governments. In late 2009, President Obama attempted to address ambiguities in EO 13,175 by issuing a memorandum instructing agencies to complete “a detailed plan of actions [each] agency will take to implement the policies and directives of Executive Order 13,175” within ninety days.⁶⁷ The President explained that his administration is “committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications.”⁶⁸ Agencies were further directed to consult with tribal officials in creating their plans, and to continually report on their progress to the President.⁶⁹

Following President Obama’s memorandum, FEMA in 2010 released a document outlining its tribal policy. According to FEMA, in doing so it had “engaged all Federally-recognized [*sic*] Tribes to gather suggested revisions to FEMA’s existing Tribal Policy,” integrating feedback and ideas from these meetings in order to “enhance FEMA’s relationship with the Nation’s American Indian and Alaska Native Tribal communities to support preparing for, recovering from, mitigating, and responding to all natural and manmade hazards and disasters.”⁷⁰ Importantly, FEMA’s resulting policy states:

FEMA acknowledges the inherent sovereignty of American Indian and Alaska Native Tribal governments, the trust responsibility of the federal government, and the nation-to-

⁶⁵ FEMA’s 2010 tribal policy statement promises that the agency will “[c]onsider the designation of full-time tribal liaisons in appropriate FEMA regional offices and explore the possibility of assigning attorneys within the FEMA Office of Chief Counsel (OCC) who are trained and experienced in Federal Indian Law.” FEMA, FEMA TRIBAL POLICY 4 (June 29, 2010), *available at* http://www.fema.gov/pdf/government/tribal/fema_tribal_policy.pdf (last visited Nov. 16, 2012).

⁶⁶ This is often referred to as “indigenous knowledge” or “traditional ecological knowledge,” defined as “the culturally and spiritually based way in which indigenous peoples relate to their ecosystems,” where environmental knowledge collected over the span of generations can aid scientists and policymakers in determining and understanding environmental impact and change. *See generally* Winona LaDuke, *Traditional Ecological Knowledge and Environmental Futures*, 5 COLO. J. INT’L ENVTL L. & POL’Y 127 (1994); Erika M. Zimmerman, *Valuing Traditional Ecological Knowledge: Incorporating the Experiences of Indigenous People into Global Climate Change Policies*, 13 N.Y.U. ENVTL. L.J. 803 (2005); Rebecca Tsosie, *Tribal Environmental Policy in an Era of Self-Determination: The Role of Ethics, Economics, and Traditional Ecological Knowledge*, 21 VT. L. REV. 225 (1996).

⁶⁷ Memorandum on Tribal Consultation for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 57,881 (Nov. 5, 2009) [hereinafter 2009 Memorandum].

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ FEMA TRIBAL POLICY, *supra* note 65, at 1.

nation relationship between the US Government and American Indian and Alaska Native Tribal governments as established by specific statutes, treaties, court decisions, executive orders, regulations, and policies. FEMA further acknowledges the precedents of the Constitution, the President of the United States, and the US Congress as the foundation of this policy's content.⁷¹

However, FEMA's policy also states that while it will follow the spirit of the policy's content—presumably stemming from EO 13,175 and the 2009 Presidential Memorandum—the policy will have to operate within the confines of existing law and will remain consistent with current authority.⁷² But current authority points to the Stafford and Homeland Acts, which lump tribes within the definition of “local governments.” Therefore, without amending these two pieces of legislation, FEMA's Tribal Policy contradicts the procedural requirements of federal disaster law and ultimately has little real effect upon practices of engaging tribes on a government-to-government basis. While new policy from the executive branch requires “regular and meaningful consultation and collaboration with tribal officials,”⁷³ doing so could effectively mean operating outside the construction of the Stafford and Homeland Acts.

VI. PROPOSED LEGISLATION: ATTEMPTS TO ELEVATE TRIBAL STATUS

Congressman Nick J. Rahall from Wyoming introduced a bill in the House of Representatives on May 24, 2011, proposing significant amendments to the Stafford Act with regard to American Indian tribes.⁷⁴ In addition to minor changes to the language of the original Stafford Act, HR 1953 states under “Indian Tribal Government Requests” that “[t]he Chief Executive of an affected Indian tribal government may submit a request for declaration by the President that a major disaster exists.”⁷⁵ This simple provision is key in addressing the barriers for tribal government in directly requesting and receiving federal assistance. Additionally, the use of the word “may” in this amendment would presumably allow tribes the option to continue routing requests through state executives. This supports both tribal sovereignty—allowing tribes to autonomously make decisions about whether to approach the federal government directly or to continue within the Stafford Act's historical scheme—and also indicates congressional understanding of the wide variances between tribes and their respective resources and interests.

⁷¹ *Id.* at 2.

⁷² *Id.* at 2, 4.

⁷³ 2009 Memorandum, *supra* note 67.

⁷⁴ Capriccioso, *supra* note 3.

⁷⁵ H.R. 1953, 112th Cong. (2011).

Next, HR 1953 would amend the Stafford Act to designate tribes as separate government entities. The bill specifies that when a tribal chief executive requests a declaration of disaster from the President in order to qualify for federal assistance, “references to ‘State’ and ‘Governor’ in . . . this Act shall mean ‘Indian tribal government’ and the ‘Chief Executive’ of an affected Indian tribal government, respectively.”⁷⁶ The same language is repeated for emergency declarations in addition to major disaster declarations. Furthermore, “Indian tribal government is defined” as “the governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List,” and that “[t]he term ‘Chief Executive’ means the person who is recognized by the Secretary of the Interior as the chief elected administrative officer of an Indian tribal government.”⁷⁷ The proposed amendment clearly attempts to be as inclusive with tribes as possible. Importantly, it also allows tribes the choice to opt out, thereby supporting sovereignty principles in multiple ways. It potentially strengthens the tribal-federal relationship as well by providing tribal governments with an avenue for directly communicating their needs with the federal government—an ability that should be protected on all levels of federal procedure in order to comply with foundations of Indian law, EO 13,175, and President Obama’s 2009 Memorandum.

While the proposed amendment to the Stafford Act is a vital step for protecting tribal self-government and strengthening the tribal-federal relationship, this change may fall short of addressing increasing needs in Indian country. For instance, coastal villages in Alaska facing climate change emergencies still would not qualify under FEMA cost-benefit requirements and continue to face an uphill battle securing funds through the traditional meaning of a “disaster.” Furthermore, the proposed amendment does not necessarily provide additional scaffolding to support tribes in creating functional and professional emergency management departments, so significant economic barriers remain for smaller and poorer tribes.

In 2009, Congressman Frank Pallone, Jr. of New Jersey introduced HR 1697, which is intended to “ensure the coordination and integration of Indian tribes in the National Homeland Security strategy and to establish an Office of Tribal Government Homeland Security within the Department of Homeland Security.”⁷⁸ The bill appears to have died before reaching the Senate, but acknowledged in its findings that “[d]espite the government-to-government relationship between Indian tribes and the United States, the United States has failed to include and consult with Indian tribes with regard

⁷⁶ Internal quotation marks added. *Id.*

⁷⁷ *Id.*

⁷⁸ H.R. 1697, 111th Cong. (2009).

to homeland security prevention, protection, and response activities planning.”⁷⁹ The bill would have provided for full participation of tribal governments within national security strategies, as well as given tribes shares of funding to prevent and respond to terror threats. The proposal outlined several goals for enhancing coordination of Indian tribes with the Department of Homeland Security (DHS), including meeting the federal government’s trust responsibility to American Indians.⁸⁰ If Congress had enacted this piece of legislation, it would have elevated tribes to equal status as states and local governments in dealing with terrorist threats. The failure to create a tribal government department within DHS thus leaves tribes on the periphery of national security policies, and limits the government-to-government relationship between tribes and the federal government.

The death of HR 1697 is particularly disappointing considering the potential shortcomings of HR 1953. The former would have made an extraordinary leap for American Indian rights and sovereignty, providing tribes and DHS with a comprehensive system that would have compelled the federal government to cooperate as equals with tribal entities and to fund them accordingly. In contrast, HR 1953 would signify a step in a healthy direction for tribal sovereignty, adding tribal governments in the Stafford Act as separate from local and state governments. But HR 1953 does not acknowledge basic and unique challenges in Indian country that must be addressed in order to make disaster preparation, mitigation, and response systems fully effective.

VII. TREATING TRIBES IN THE SAME MANNER AS STATES IN DISASTER LAW

Treating tribal governments in the same way as states would address many of these issues in both the Stafford and Homeland Acts. In fact, current regulations in environmental law provide a glimpse of how this proposed framework could successfully function. Under the CAA, CWA, and SDWA, tribes may be granted treatment as state (TAS) status in order to allow tribal governments to exercise regulatory and civil jurisdiction over tribal lands. The purpose of bestowing tribal TAS status is “to recognize and promote the right of tribal governments to protect the health and welfare of their members,” thereby reinforcing tribal sovereignty and strengthening the tribal-federal

⁷⁹ *Id.*

⁸⁰ The bill also purported to provide funds for the Indian Health Service and the Bureau of Indian Affairs in order to “respond to the homeland security needs of American Indians and Alaska Natives, without jeopardizing the non-security missions of the Indian Health Service and the Bureau of Indian Affairs.” *Id.* Particularly with respect to IHS, budget constraints and underfunding are a chronic issue in Indian country. If a human-made disaster were to occur within Indian country, IHS would likely be grossly incapable of an appropriate emergency medical response.

relationship by preventing outside encroachment upon tribal regulatory rights.⁸¹ Even if the Stafford Act is amended through HR 1953 and Congress follows suit with a parallel amendment to the Homeland Act, these provisions may be more beneficial to tribes if additional procedures are inserted to echo those within the CAA, CWA, and SDWA.

In order to qualify for TAS status under these environmental statutes, tribes must achieve the approval of the Environmental Protection Agency (EPA), through the following conditions:

1. The tribe must be federally recognized and must be “exercising governmental authority over a Federal Indian reservation.”
2. The tribe must have “a governing body carrying out substantial governmental duties and powers.”
3. The functions exercised by the Indian tribe must pertain “to the management and protection of water resources which are . . . held by the Indian tribe . . . [or] held by the United States in trust for Indians . . . [or] held by a member of the Indian Tribe if such property interest is subject to a trust restriction or alienation, or otherwise within the borders of the Indian reservation.”
4. The Indian tribe must be “reasonably” capable, in the “Administrator’s judgment, of carrying out the functions.”⁸²

Once these baseline requirements are met, qualifying tribes must submit a statement detailing the nature of the land and resources to be regulated by the tribe, as well as a description of the management capabilities of the tribal administration. This description should also contain a comprehensive plan for gaining the expertise and tools needed for effective regulation, including a strategy for gaining the necessary funds for resource management.⁸³

Tribal governments would be more likely to achieve a clearer understanding of best practices for disaster prevention, mitigation, and recovery programs with the implementation of these TAS status procedures. Tribes would be able to gain easier access to a higher level of support from federal agencies during the planning process, as this would elevate tribal status to a point where the EPA or FEMA would serve as supporting agencies, rather than as the primary administering agencies. Most importantly, TAS status under the Stafford and Homeland Acts would provide tribes the option to internally prioritize safety and security issues, thereby providing tribal

⁸¹ Courtney A. Stouff, *Native Americans and Homeland Security: Failure of the Homeland Security Act to Recognize Tribal Sovereignty*, 108 PENN ST. L. REV. 375, 385, 387 (2003).

⁸² Marren Sanders, *Clean Water in Indian Country: The Risks (and Rewards) of Being Treated in the Same Manner as a State*, 36 WM. MITCHELL L. REV. 533, 538 (2010) (outlining 40 C.F.R. § 131.8(a)(1)–(4) and 40 C.F.R. § 131.3(l)).

⁸³ *Id.* at 538–39.

governments discretion in exercising their inherent sovereignty in protecting their lands and people.

However, TAS status also has its shortcomings. It mirrors paternalistic policies with strict application requirements, thereby forcing theoretically sovereign nations to apply for power they should already possess. In addition, some Indian reservations contain considerable populations of nontribal members who may resent being subject to tribal jurisdiction. For instance, in the 1990s the EPA granted TAS status under the CWA to the Confederated Salish and Kootenai Tribes in order to regulate pollutant discharges on the Flathead Indian Reservation in Montana.⁸⁴ The Flathead Reservation holds within its boundaries several nontribal facilities owned in fee simple by state, county, and municipality entities, in addition to a high population of nonmembers.⁸⁵ Several nontribal groups challenged the EPA's TAS designation, questioning the tribes' jurisdictional ability to control and regulate activities of nontribal entities within the external boundaries of the reservation.⁸⁶ While the court ultimately upheld the TAS grant, the tribes faced much resistance and tension as a result of the EPA's delegation of authority.⁸⁷

Finally, the TAS status framework cannot alleviate the challenges faced by poorer and smaller tribes. Tribes without strong revenue sources would have difficulty demonstrating to the administering agency that they could fund their own regulations for disaster planning and response, especially if tribes want to lead planning efforts for national security risks in addition to environmental disasters. Each area of disaster law would require a different set of tools and expertise, thereby requiring more tribal time and money to put these systems in place. Additionally, tribes with smaller population and/or land bases would likely struggle to justify the use of limited resources for disaster regulation. As such, a faithful application of the TAS status regime would probably not function seamlessly in every tribal environmental or security management project. Instead, the optimum approach for tribes could be a framework that combines TAS regulations and the amended Stafford and Homeland Acts.

VIII. CONCLUSION

The best option for tribes could be a hybrid of current and amended disaster laws combined with the TAS status system in environmental law. Identifying and then blending the best practices from both realms may be an ambitious task, as it would first

⁸⁴ See *Montana v. EPA*, 137 F.3d 1135 (9th Cir. 1998), cert. denied, 525 U.S. 921 (1998).

⁸⁵ *Id.* at 1139–40.

⁸⁶ *Id.* at 1140.

⁸⁷ *Sanders*, *supra* note 82, at 544.

require selecting the provisions that are most beneficial to tribal entities. Even through careful selection and merging of these provisions, the resulting system would not necessarily address the funding issue, which is often an underlying roadblock for programs in Indian country. But it may still be worthwhile—the hybrid model could compel the EPA, FEMA, DHS, Customs and Border Protection, and Congress to meet tribal governments at an equal level to address the threats and interests of those in Indian country. It would also create a dynamic system, wherein tribes that do have the capability to implement their own disaster regulations would be able to do so with direct federal support. At the same time, tribes that do not have the resources or choose not to create their own programs could still rely on the federal government and retain their sovereignty instead of appealing to states for assistance. Finally, a hybrid model would also benefit the federal government by easing administrative burdens while satisfying federal aims of supporting tribal self-governance.

Regardless of whether this hybrid strategy is employed in the future for tribes within the disaster law realm, the Stafford and Homeland Acts must be amended to remove tribal governments and lands from the legal definitions of “local government.” The current statutes have proven too dangerous for the well-being of tribal lands and peoples, as the laws force tribal governments to beg their state executives for assistance that may never be granted, or may be granted in grossly inadequate form. Thus, when disasters do strike in Indian country, tribal members often suffer needlessly due to this basic lack of services and access. Amending the Stafford and Homeland Acts would not only begin the process of addressing these dramatic shortcomings, but would also comply with federal law regarding the US government’s obligations to American Indian tribes and, perhaps most importantly, would give greater deference to inherent tribal rights for sovereignty and self-determination. Without serious, fundamental changes to these laws now, along with continual reassessment and restructuring in the future shaping of disaster law, American Indians remain subject to grave social injustices in times of great need.