

CHAPTER 4

TRIBAL GOVERNMENT AND FISCAL RESOURCES

I. Introduction.

Because of the unique history of the Northern Cheyenne Tribe and the Reservation, the structure and fiscal resources of Tribal government are unlike those of most other government entities. As discussed in Chapter 2, the Northern Cheyenne Reservation was established by Executive Order on November 24, 1884, following decades of warfare between the Cheyenne and other Plains Indians and the United States Army. Once moved onto the Reservation, the Northern Cheyenne became totally dependant on United States government rations for survival. These rations were administered by agents of the Bureau of Indian Affairs (BIA), an agency within the Department of the Interior which was established by Congress in 1849. Prior to this time, the functions of the BIA were carried out by the War Department.

From the very beginning of the Northern Cheyenne Reservation, the BIA played a dominant role in Reservation life. In the early Reservation period, effectively through the middle of the 20th century, the BIA ruled on the Reservation by administrative fiat, without the consent or often even the input of Tribal leaders. The BIA also played a major and often negative role in the management of Reservation lands and resources. As described in greater detail in Chapter 2, BIA management of the Tribe's livestock led to the virtual destruction of the Cheyenne ranching economy in the 1920s. In the late 1960s and 1970s, BIA acted to essentially give away the Tribe's valuable coal reserves to private mining companies.

Although the United States government still plays a dominant role on the Reservation, there has been a gradual devolution of Federal authority to Tribal government, beginning with the enactment of the Indian Reorganization Act of 1934 (IRA). The IRA authorized Tribes to enact Tribal constitutions and establish formal governmental institutions. In 1936, the Northern Cheyenne implemented the IRA by adopting a Constitution and By-Laws which was approved by the Secretary of the Interior. The Constitution established an elected Tribal Council as the governing body of the Northern Cheyenne Tribe as well as a Tribal Court. These documents have served as the structural basis for Tribal government for the past 65 years.

Despite the enactment of the IRA and the inauguration of the Tribal self-determination policy in the 1970s, the Federal government still plays a important role in Tribal government today. Tribal government remains almost entirely dependent on the Federal government to fund both its operations and programs. Under the Tribal Constitution, the BIA still exercises a formal supervisory role over the Tribal Council, the Tribe's governing body. The BIA and other federal agencies still manage vital public services on the Reservation, including the management of the Tribe's lands and resources

(including minerals, timber, range land, and farm land), Reservation law enforcement, the Reservation's road network, and the Reservation's health clinic and health insurance system.

Despite the heavy hand of the Federal government, there has been a significant movement toward Tribal governmental effectiveness and autonomy. Until the late 1960s, the Tribal Council operated as a virtual rubber stamp for BIA decisions – as illustrated in the coal leasing debacle. This near disaster provided the impetus for significant efforts to develop the Tribe's own capabilities and oversight. The Tribe is still struggling to develop these capabilities, with almost no discretionary resources of its own and with continuing BIA oversight over all important decisions.

II. Tribal Government Structure.

The Northern Cheyenne Tribal government is organized under a Constitution and By-Laws ("Tribal Constitution") adopted by the Tribe and approved by the Secretary of the Interior under the Indian Reorganization Act of 1934. The Tribal Constitution was adopted in 1935 and was amended in 1960 and 1996. It is attached to this report as Appendix C.

Under the 1996 amendments to the Tribal Constitution, the Tribal government now formally has three branches: (1) an Executive Branch, consisting of the Tribal President, Vice President, Secretary and Treasurer, all Tribal boards and commissions, and all other Tribal agencies and departments; (2) a Legislative Branch, consisting of the Tribal Council and all committees of the Tribal Council; and (3) a Judicial Branch, consisting of all courts established by ordinance by the Tribal Council under the Constitution.¹ Tribal Const., Art XI. The organization of each of these three branches is described below.

A. Legislative Branch.

Under the Tribe's original Constitution, the Tribal Council consisted of one part-time Council member for each 200 Tribal members. The 1996 amendments to the Constitution established a streamlined Tribal Council consisting of 11 full-time members. In addition to an at-large seat held by the Vice President, one seat is allocated to each of the five districts on the Reservation: Ashland, Birney, Busby, Muddy and Lame Deer. The remaining five seats are allocated among the five districts in accordance with the percentage of Tribal membership associated with each district, with fractional seats rounded to the nearest whole number. The ten Council seats allocated to the districts are selected through a primary election held at the district level followed by a general election in which the entire Reservation may vote. Council members are elected to staggered four-

¹ The separation between these three branches in the Tribal Constitution is not complete. The Tribal Constitution still designates the Tribal Council as the "governing body" of the Tribe. Tribal Const., Art. III, § 1. Moreover, the Tribal President still presides over the Tribal Council and the Vice-President still holds an at-large seat on the Council. Tribal Const. Art III, § 2.

year terms, with a general election every two years. Tribal Council members serve on a full-time basis and receive a salary commensurate with the responsibilities of office. Tribal Const., Art III, § 5.

The Tribal Council has numerous enumerated powers under the Tribal Constitution, the most important of which are described below:

Representative Powers. The Tribal Council has the power to negotiate with Federal, State and local governments on behalf of the Tribe and, subject to the approval of the Secretary of the Interior, to employ legal counsel for the protection and advancement of the rights of the Tribe and its members. Art. IV, § 1(a) & (b).

Proprietary Powers. The Tribal Council has the power to approve or prevent the sale, disposition, lease or encumbrance of Tribal lands or interests in lands, including minerals, gas and oil. The Council also has the power of eminent domain. The Council has the power to protect and preserve the property, wildlife and natural resources of the Tribe and to regulate the conduct of trade and the use and disposition of property upon the Reservation. However, any ordinance affecting non-members must be approved by the Secretary of the Interior. Art. IV, § 1(c), (j) & (k).

Fiscal Powers. The Tribal Council has the power to administer any funds within the control of the Tribe and, by resolution approved by a majority of the Council, to make expenditures for Tribal purposes. The Tribal Council, subject to approval of the Secretary of the Interior, must prepare annual budget requests pertaining to moneys appropriated by the Federal government for the use of the Tribe. Art. IV, § 1(f).

Police Powers. The Tribal Council has the power to levy taxes on Tribal members and, with the approval of the Secretary of the Interior, on non-members doing business on the Reservation. Subject to the approval of the Secretary of the Interior, the Council also has the power to adopt ordinances governing the conduct of both members and non-members coming within the Reservation's jurisdiction. This includes the regulation of the inheritance of property and domestic relations, and the appointment of guardians for minors and mental incompetents. The Council also has the power to exclude from trust lands any person not legally entitled to reside on the Reservation. The Council may also establish a Reservation court for the maintenance of law and order and the administration of justice. Art. IV, § 1(g), (h), (l) and (q).

Economic Powers. The Tribal Council has the power to engage in any business that will further the economic well-being of the Tribe and to undertake any economic activity that is not inconsistent with law or the Constitution. The Council may also administer charity and act to protect the health and general welfare of the tribe. Art. IV, § 1(e) & (m).

It is important to observe that many of the Council's powers may be exercised only with the approval of the Secretary of the Interior. This limitation on Tribal sovereignty gives the BIA an important role in overseeing Tribal government and makes Tribal government

quite unlike local governments of comparable size. The Federal role in Tribal government is discussed in more detail in Part III below.

B. Executive Branch.

The Executive Branch is composed of four constitutional officers including the Tribal President, Vice-President, Secretary and Treasurer. The President and Vice President are elected to four-year terms by the Tribe's membership. The Secretary and Treasurer are appointed by the Tribal Council. These constitutional officers employ an Executive Office Manager and an Executive Administrator.

In addition to presiding over the Tribal Council, the Tribal President oversees the Executive Branch of Tribal government. The President has the power, with the advice and consent of the Council, to appoint persons to all Tribal boards, commissions, departments and agencies. Tribal By-Laws, Art. I. According to the Tribe's organization chart, Tribal boards, commissions and committees report directly to the President. There are 15 Tribal boards, commissions and committees which are listed in Figure 4-1 below.

Figure 4-1 – Tribal Boards, Committees and Commissions

Culture Committee	Natural Resource Board
Economic Development Committee	Housing Authority
Enrollment Committee	Utilities Commission
Gaming Commission	TERO Commission
Land Committee	Board of Health
St. Labre Task Force	Ad Hoc Committee (Off-Res.
Newsletter Committee	Energy Development)
Grazing Board	Credit Committee

In addition to appointing Tribal boards and commissions, the President is responsible for overseeing numerous Tribal programs. An Executive Administrator is delegated direct responsibility for administering these programs. Beyond this, however, the Tribal programs and administrative agencies are not clearly organized. Unlike the Federal government and many State and local governments, there is no executive cabinet. Instead, the Tribe has 29 "program directors" each of whom report directly to the Executive Administrator and operate with little institutionalized coordination. Figure 4-2. This list of program directors does not include the directors of the Tribal Housing Authority, Dull Knife College, the Tribal Utilities Department, or the Busby School which operate independently from the Executive Branch of Tribal government and report to Tribal boards and commissions.

Figure 4-2 – Tribal Program Directors

Ambulance Service	Natural Resources
Buffalo Project	Personnel
Charging Horse Casino	Prosecutor
Community Health Representative	Drug and Alcohol Recovery
Circle Project	Rosebud Lodge
Commodities	Sand Creek
Community Health	Social Services
Economic Development	Tribal Employment Rights Office
Elderly	Title IV-E Foster Care
Environmental Protection	TRDP
Fire Department	Tribal Education
Forestry	Tribal Health
Head Start	Tribal Services/Enrollment
Housing Improvement Program	Workforce Investment Act
Low Income Energy Assistance Program	

This lack of centralized structure is largely a function of the way Tribal programs are established and funded. Most Tribal programs did not originate as Tribal programs per se, but were delegated to the Tribe by the BIA and other Federal agencies under the provisions of the Indian Self-Determination and Education Act, Pub. L. 93-638, and other comparable provisions of Federal law. The Tribal programs administered by the Tribe's Executive Branch are largely structured to conform to the numerous contracts and grants the Tribe administers. As an example, the Tribe's Social Services Department administers the general assistance, child protection, child welfare and foster care licensing programs funded by the BIA, but other programs traditionally coming under the rubric of social services, but which are funded by other Federal agencies (including the elderly food, Title IV(e) foster care, low income energy assistance, Temporary Aid to Needy Families (TANF) and commodities programs), are administered as separate programs overseen by semi-autonomous program directors.

In a similar vein, the Northern Cheyenne Housing Authority, which is funded by a HUD block grant, and its housing improvement program, which is funded by the BIA, are administered separately even though both programs relate to housing. The Workforce Investment Act program and the Job Training and Placement Act program are administered separately from the Tribal Employment Rights Office (TERO) and the adult education program despite the fact that all four programs directly relate to job training, placement and employment. Administration of these programs by separate departments of Tribal government stems in large measure from the fact that each program is funded by a different Federal agency. This fractionated system of administration certainly will make it more difficult for the Tribe to effectively respond to any social and economic impacts which may result from off-Reservation energy development.

The lack of clear organization and coordination is also prevalent in the area of natural resources protection and management. Many Tribal programs pertaining to natural resources including the Natural Resources Department, the Environmental Protection Department, forest development, the Buffalo Project, and the Tongue River Dam Project are administered separately. The Tribe's water and sewer service are managed by a separate, autonomous Tribal Utilities Commission. Other programs pertaining to natural resources including range management, forest management, and wildland fire management, are still administered directly by the BIA. There is no formal mechanism of coordination between the BIA and the Tribe's land management and environmental programs, and often little informal coordination, even where responsibilities overlap. This can result in serious gaps where no one is responsible and essential work does not get done, or is done haphazardly.

Monitoring and assessing impacts from neighboring off-Reservation land management decisions is one such area. No Tribal or Federal program is set up or funded to respond to off-Reservation development projects that may affect the Reservation environment. Environmental assessments, environmental impact statements and permit applications are reviewed by program staff on an ad hoc, unfunded basis. The lack of coherent and well-funded natural resource programs leaves the Reservation especially vulnerable to environmental degradation, not only from on-Reservation activities such as solid waste management, grazing and logging, but also to the environmental effects of large-scale off-Reservation development projects. Environmental documents for major off-Reservation projects that were likely to have major social, economic and environmental impacts on the Reservation, such as the first phase of proposed Tongue River Railroad, have been finalized without any comment from either the BIA or the Tribe.

C. Judicial Branch.

A Reservation court system is authorized by Article IV, § 1(i) of the Tribal Constitution. Although the 1996 amendments to the Constitution provide for separation of powers, the Constitution does not provide specific measures to ensure the independence of the judicial branch of Tribal government.

In 1998, the Tribal Council adopted a separation of powers ordinance designed to address this deficiency. The ordinance provides for the election of at least two full-time trial court judges and appointment by the Tribal President, with the advice and consent of the Tribal Council, of at least three part-time appellate judges. The ordinance also establishes a Constitutional Court which consists of the three members of the appellate court and which has the power to review the constitutionality of ordinances adopted by the Tribal Council. The Constitutional Court also serves as the body with the exclusive power to remove a Tribal judge from office. (Northern Cheyenne Tribe, 1998a). The Tribal Court system is described in greater detail in Chapter 5, Part III.C.

III. The Federal Role in Tribal Government.

As discussed earlier, the Federal government has always played a dominant role in the governance of the Northern Cheyenne Reservation. When the Northern Cheyenne Reservation was established in 1884, the Northern Cheyenne had been defeated in war and were almost completely dependent on the United States government. The relationship between the Federal government and Indian tribes during this time was likened by the Federal courts to that of a guardian and his wards. The Northern Cheyenne Reservation, like most Indian reservations, was governed directly by the Bureau of Indian Affairs with little input from the Tribe.

The trust relationship between the Federal government and the Northern Cheyenne Tribe persists even as the Tribe has gradually assumed a greater role in managing Reservation affairs under the Federal government's self-determination policy. Under the Indian Self-Determination and Education Act, Pub. L. 93-638, the BIA was authorized and encouraged to enter contracts with Tribes devolving responsibility for the administration of federal programs to Tribal governments. Other federal agencies, such as the Indian Health Service (IHS) and the Department of Housing and Urban Development (HUD), have since been given similar authority to contract with Indian tribes for the administration of federal programs on Reservations.

Between 1976 and 1997, the Northern Cheyenne Tribe has entered contracts with the BIA assuming responsibility for approximately 21 BIA programs with a total budget in FY 2002 of \$3.7 million. See Table 4-1.

Table 4-1– Contracted BIA Programs and Budgets

Year Contracted	Program Contracted	FY 2002 Budget
1997	Aid to Tribal Government	\$131,942.00
1997	Wildlife & Parks	\$65,483.00
1996	Youth Emergency Shelter	\$232,674.00
1996	Johnson O'Malley - Part B&C	\$11,726.00
1994	Adult Education	\$22,185.00
1993	Forest Development	\$431,732.00
1992	Youth, Work, Learn	\$28,967.00
1992	Community Fire Protection	\$105,220.00
1992	Transportation Planning	\$56,000.00
1991	Indian Child Welfare Act	\$64,715.00
1990	Noxious Weeds	\$50,000.00
1989	Social Services	\$856,148.00
1985	Natural Resources	\$52,173.00
1980	Water Resources	\$146,296.00
1979	Tribal Court	\$492,471.00
1979	Tribal Prosecution	\$174,389.00

Year Contracted	Program Contracted	FY 2002 Budget
1976	Housing Improvement Project (HIP)	\$138,807.00
1976	Scholarships	\$420,252.00
1976	Johnson O'Malley	\$100,208.00
1976	Adult Vocational Training (Job Placement)	\$130,208.00
Total:		\$3,711,596.00

(Donham, 1993 and 1994; Joseph Eve & Co., 1995, 1996, 1997, 1998, 1999, 2000, 2001; NCT, 2001d)

The Tribe also enters into annual funding agreements with the Indian Health Service (IHS) assuming responsibility for a variety of Federal health programs. In addition, the Tribe now receives Federal funds to administer Federal housing programs, Federal welfare programs, and Federal employment programs, among others. In all the Tribe administers approximately 70 Federal grants and programs with a combined value in FY 2002 of about \$21.3 million (NCT, 2001b). This does not include a block grant administered by the Northern Cheyenne Housing Authority, or Federal funds administered by Dull Knife Memorial College or the Tribe's school in Busby. See Chapter 5.

While this devolution of Federal authority and resources has increased the capacity of Tribal government to manage Reservation affairs and provide for the welfare of Tribal members, it has kept the Tribe greatly dependent on the Federal government. Direct Federal funding in the form of grants, contracts, and funding agreements and indirect cost recovery make up the lion's share of the Tribe's total revenues and expenditures. For example, in FY 2002, Federal funding for direct and indirect program expenditures is projected to exceed the Tribe's General Fund revenues by a factor of ten. See Table 4-2.

Table 4-2 -- Tribal Revenues FY 1993 through FY 2002

Fiscal Year	General Fund Revenues	Indirect Cost Recovery	Federal Grants and Contracts
1993	\$1,109,270.00	\$1,233,303.00	\$8,817,820.00
1994	\$3,689,597.00	\$1,142,211.00	\$8,229,797.00
1995	\$3,944,459.00	\$1,685,393.00	\$9,940,209.00
1996	\$5,603,939.00	\$1,652,309.00	\$9,869,615.00
1997	\$2,411,875.00	\$1,965,850.00	\$11,675,498.00
1998	\$3,707,110.00	\$1,593,085.00	\$17,735,586.00
1999	\$5,650,221.00	\$1,986,325.00	\$16,578,646.00
2000	\$3,602,202.00	\$2,272,632.00	\$13,430,851.00
2001	\$3,404,291.00	\$2,614,877.00	\$18,333,000.00
2002	\$2,031,026.00	\$2,420,380.00	\$18,260,648.00

(Donham, 1993 and 1994; Joseph Eve & Co., 1995, 1996, 1997, 1998, 1999, 2000, 2001; NCT, 2001d)

It is also important to recognize that the devolution of federal control is by no means complete and the Federal government still plays a far greater direct role in day-to-day lives

of Tribal members than is typical in off-Reservation communities, and even on other Indian reservations. A number of important and basic programs on the Reservation are still administered directly by the Federal government. The BIA is still directly responsible for providing law enforcement services on the Reservation and also manages the Reservation's forests and rangelands. The BIA is responsible for the Reservation's road network and oversees all real estate transactions. See Table 4-3.

Table 4-3 – Uncontracted BIA Programs and Budgets

Program	2001 Budget
Economic Development	\$50,838.00
Roads Maintenance	\$200,000.00
Agriculture	\$210,909.00
Agriculture	\$25,070.00
Forestry	\$335,847.00
Trust Services, General	\$14,343.00
Real Estate Services	\$250,780.00
Real Estate Appraisals	\$67,406.00
Probates	\$67,861.00
Executive Direction	\$173,280.00
Administrative Services	\$122,161.00
Law Enforcement	\$1,400,000.00
Contract Support	\$584,012.00
Total	\$3,502,507.00

(NCT, 2001d)

Similarly, while the Tribe has contracted to manage a number of IHS health programs since 1996, the IHS continues to directly administer the Reservation's Health Center as well as the Contract Health Care program, which is in charge of determining whether Tribal members qualify to receive federally funded off-Reservation health care. These programs literally exercise the power of life and death over Tribal members.

It is also important to point out that notwithstanding the flow of Federal funds to Tribal government, most of the programs supported by these Federal funds are effectively Federal programs. The Tribe is not free to spend these Federal program funds to meet the Tribe's own priorities and needs. Most Federal funds must be administered for the purposes and under rules and regulations determined by the Federal government. In a very real sense, Tribal agencies are creatures of the Federal programs they have been set up to administer and are not home-grown institutions of Tribal self-government which were developed organically to meet the Tribe's own needs and priorities. The fragmented organizational structure of the Tribe's Executive Branch stems in large measure from the fact that most Tribal administrative agencies and departments were established to

administer Federal programs.²

The devolution of Federal programs to the Tribe has not solved the Reservation's most fundamental problem – the lack of a self-sustaining Reservation economy that could serve as the foundation for the development of genuinely independent Tribal government institutions. The lack of substantial private economic activity means that the Reservation has almost no tax base that could provide discretionary income to support Tribal government. Tribal enterprises historically have generated little if any revenues. Tribal government receives no share of the Federal and State mineral royalties that are used by surrounding off-Reservation communities to fund discretionary programs. (Heaton, 1-09-2002) Income from sale or lease of the Tribe's natural resources is small and declining. See Table 4-4 below.

Table 4-4 – Tribal Income from Natural Resources – 1987-2001

Fiscal Year	Tribal Income from Timber Sales	Tribal Income from Grazing Permits	Tribal Income from Farm & Pasture Leases
2001	\$28,231.00	\$431,982.00	NA
2000	NA	\$525,888.00	\$24,875.00
1999	NA	\$442,717.00	\$24,230.00
1998	NA	\$400,867.00	\$35,098.00
1997	NA	\$67,659.00	\$29,874.00
1996	\$653,883.00	\$437,983.00	\$35,089.00
1995	\$845,945.00	\$365,799.00	\$44,985.00
1994	\$700,812.00	\$403,462.00	\$48,897.00
1993	\$1,152,524.00	NA	\$41,212.00
1992	\$370,544.00	NA	\$41,989.00
1991	\$191,935.00	NA	\$40,821.00
1990	\$222,402.00	NA	\$33,508.00
1989	\$375,287.00	NA	\$38,242.00
1988	\$245,258.00	NA	\$35,983.00
1987	\$39,988.00	NA	NA

(Donham, 1993 and 1994; Joseph Eve & Co., 1995, 1996, 1997, 1998, 1999, 2000, 2001; NCT, 2001d)

Thus, the resources available to Tribal government to expend on a discretionary basis to meet the Tribe's own priorities are extremely limited, especially when compared to the large amounts of Federal dollars awarded to the Tribe to administer Federal programs. These revenues are not only comparatively small, they are also subject to extreme fluctuation making budgeting and planning difficult. Figure 4-3. Ironically, the largest source of funds available to finance the operations of Tribal government in FY 2002

² The Tribe could garner additional flexibility to reprioritize many federal funds if it applied for and obtained Self Governance status. The Tribe reportedly qualifies for the Self-Governance program but has yet to submit an application. (White, 1-08- 2002)

will be revenue generated from recovery of the indirect costs of administering federal programs. Table 4-5.

Figure 4-3 – General Fund Revenues, FY 1993 - FY 2002

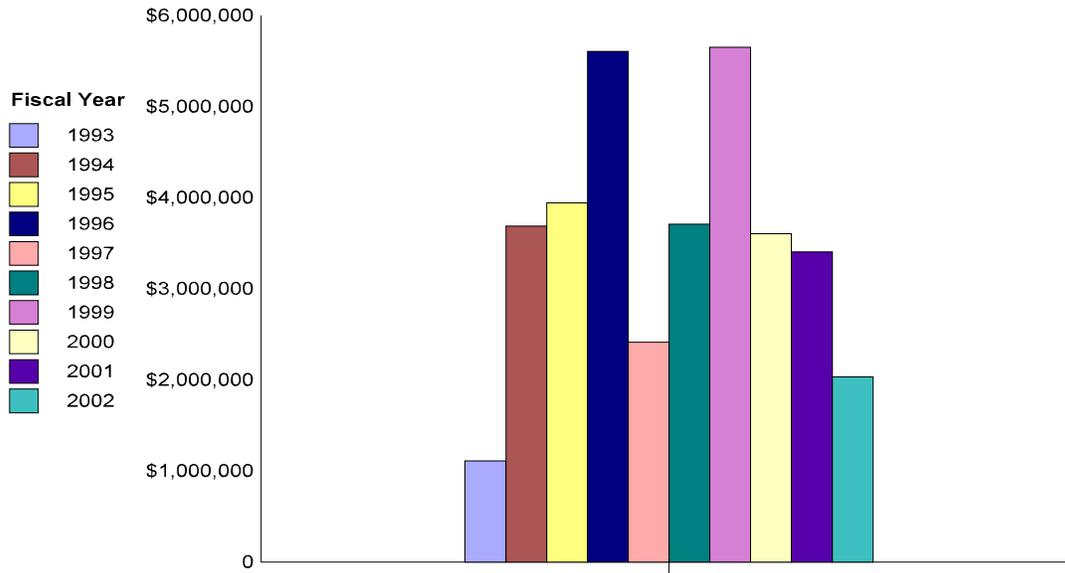


Table 4-5 – General Fund Revenues and Indirect Cost Recovery

Fiscal Year	General Fund Revenues	Indirect Cost Recovery
1993	\$1,109,270.00	\$1,233,303.00
1994	\$3,689,597.00	\$1,142,211.00
1995	\$3,944,459.00	\$1,685,393.00
1996	\$5,603,939.00	\$1,652,309.00
1997	\$2,411,875.00	\$1,965,850.00
1998	\$3,707,110.00	\$1,593,085.00
1999	\$5,650,221.00	\$1,986,325.00
2000	\$3,602,202.00	\$2,272,632.00
2001	\$3,404,291.00	\$2,614,847.00
2002	\$2,031,026.00	\$2,420,380.00

(Donham, 1993 and 1994; Joseph Eve & Co., 1995, 1996, 1997, 1998, 1999, 2000, 2001; NCT, 2001d)

Taken together, these factors combine to make the Tribe extremely vulnerable to external disruptions, including any social and economic impacts from off-Reservation energy development. Because discretionary funds are so limited, Tribal government has few resources at its disposal that can be devoted to effective participation in the complex

regulatory and political processes which will shape off-Reservation development of coal and coal-bed methane resources. Likewise, Tribal government lacks discretionary funds that can be used to address or mitigate the economic, social and environmental impacts of such off-Reservation development. The Tribe can act to prevent or mitigate the impacts of off-Reservation development only if it has financially stable programs which are supported by new Federal funds that are made available to the Tribe for these purposes.

IV. Tribal Government Fiscal Resources.

A. General Fund.

The General Fund is the major source of discretionary revenues for Tribal government. As discussed in the previous sections, most of the other sources of revenues to the Tribe, such as federal grants or contracts, are committed to specific purposes, and cannot be diverted to meet the Tribe's other priorities no matter how important or pressing. (Heaton, 1-09-2002.)

The General Fund is used to finance the basic operations of Tribal government, including a portion of the salaries of the Tribal President, Vice President and the Tribal Council, government travel expenses, utilities, solid waste management, attorneys' fees, community support services, the Cultural Commission, a portion of the budget of the Tribal Court, and the Grazing Board. In addition, the General Fund is used to provide required matching funds for Federal programs such as the elderly food program and to subsidize the indirect costs of administering certain underfunded Federal programs. Unless special Federal funding is made available, the General Fund will be the primary source of revenue available to the Tribe to address the impacts of off-Reservation energy development. (Heaton, 1-09-2002).

The General Fund revenues are derived from income from Tribal natural resources, primarily timber sales and grazing leases, earnings distributed from the Permanent Fund (see Part IV.C below), interest on other funds (especially State and Federal grant moneys), and federal payments in lieu of taxes. Because the Reservation tax base is so limited, the Tribe imposes no taxes and derives no revenues from taxation. (Heaton, 1-09-2002).

The General Fund budget for FY 2002 is \$2.03 million, which represents a decline of \$1.37 million or 40 percent from the \$3.4 million General Fund budget for FY 2001. The decline is attributable to a sharp decline in earnings distributed from the Permanent Fund – \$252,000 in FY 2002, down from \$1,100,000 in FY 2001 – as well as continued declines in income from Tribal natural resources (primarily timber and grazing). General Fund revenues are down even more substantially from levels typical in the 1990s. See Table 4-5 above. (Heaton, 1-09-2002).

The reduction in the General Fund budget in FY 2002 has resulted in elimination of Tribal funding for its forestry program, scholarships, food banks, housing improvement, the

Lame Deer High School, and the Boys and Girls Clubs. Funding for the Cultural Commission will be cut 60 percent from FY 2001 levels. There is no money available in the FY 2002 General Fund budget for natural resource monitoring or participation in the processes relating to off-Reservation energy development. (Heaton, 1-09-2002).

In the past, a major portion of the Tribe's General Fund came from income on Tribal trust assets managed by the BIA, including mineral leases, timber sales, grazing permits, and farm pasture leases. However, this source provides much less income today. Income from Tribal natural resources combined in FY 2001 to produce less than \$500,000 in revenue for the General Fund. Timber sales produced only \$28,231 in FY 2001, down from over \$1 million in 1993. No timber sales have been conducted since December 2000 due to closure of the Tribe's sawmill in Ashland. Grazing permits produced another \$431,982. See Table 4-4 above. Mineral leases, which provided substantial income during the 1970s and 1980s, produce little or no income today. (Heaton, 1-09-2002; White, 1-08-2002; Feeney, 1986).

B. Indirect Cost Reimbursement.

As explained previously, the Tribe contracts with the BIA, IHS and other Federal agencies to administer various Federal programs on the Reservation. The Tribe also receives Federal grants to pay for special programs and projects. Funding for these Federal programs typically includes both money to cover program expenditures and "indirect costs." Indirect costs represent the estimated cost to Tribal government for administering the federal program and are often set as a percentage of direct program expenditures. Although the use of indirect cost recovery funds is restricted, these revenues do provide a stable source of support for Tribal government as these funds can be used to cover the salaries of Tribal officials responsible for overseeing the programs. Indirect cost recovery represents a significant percentage of the revenues available to support Tribal government, and in FY 2002 will likely exceed the Tribe's own General Fund revenues. See Table 4-5, above.

While indirect cost reimbursement provides some support for Tribal government, the amount allocated by Federal agencies to cover the Tribe's indirect costs is in some cases inadequate to meet the Tribe's actual costs in administering the programs. The Tribe is required to cover these costs directly from its General Fund. The Tribe projects that it will provide a indirect cost subsidy from its General Fund of approximately \$450,000 in FY 2002. In addition, certain federal programs, such as the commodities, low-income energy assistance and Title IV(e) foster care programs, require a hard-dollar Tribal match. In FY 2002, the Tribe has budgeted approximately \$150,000 from its General Fund in order to remain eligible for these Federal programs. (Heaton, 1-09-2002; Northern Cheyenne Tribe, 2001)

C. Fiduciary Funds.

The Tribe manages two special endowment funds which were established in the 1990s to produce income to fund Tribal projects and programs: (1) the Northern Cheyenne Permanent Fund, and (2) the Northern Cheyenne Economic Development Fund.

Permanent Fund. The Permanent Fund was established by the Tribal Council and approved by the Tribe's membership in 1996. Its endowment derives primarily from funds awarded to the Tribe by the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992, Pub. L. 102-374 ("Water Settlement Act").

Under the Water Settlement Act, Congress appropriated \$10 million for the use of the Tribe as a Tribal development fund. Congress also appropriated \$11.5 million to be loaned by the Tribe to the State of Montana to pay costs incurred in repairing and enlarging the Tongue River Dam to provide additional water storage for Tribal use. The loan is to be repaid without interest by the State in 39 annual installments of approximately \$295,000. Finally, Congress appropriated \$31.5 million for use by the State and the Secretary of the Interior for planning, designing, and implementing the repair and enlargement of the Tongue River Dam. Interest and other earnings accruing on this money before it is spent (and all other money appropriated by Congress for the Tongue River Dam project) is credited to the Tribe. (NCT, 1996).

The endowment of the Permanent Fund therefore comes from three major sources: (1) the \$10 million Tribal development fund established by Congress; (2) the 39 annual loan payments of \$289,000 to be received from the State; and (3) interest and earnings on moneys deposited in various Federal and State accounts for the Tongue River Dam project. (NCT, 1996).

Under the Permanent Fund Plan adopted by the Tribal Council and ratified by the Tribe's membership, annual earnings of the Permanent Fund may be spent by the Council on Tribal projects and programs. In addition, ten percent of available annual earnings are automatically distributed among the five Reservation districts for uses determined by the districts. None of the earnings may be used for per capita payments. (NCT, 1996).

Under the Permanent Fund Plan, 80 percent of the Fund's annual earnings had to be kept in the Fund until the value of the Fund appreciates to \$20 million. During that build-up period, only the remaining 20 percent of the Fund's annual earnings are available for Tribal and district expenditures. After the build-up period, 75 percent of the Fund's annual earnings are available for Tribal and district expenditures. The Permanent Fund plan may be revised only by a two-thirds vote of the Tribal Council and approval of the Tribe's membership. (NCT, 1996).

As a result of the good investment climate during the late 1990s and the fact that the Tongue River Dam project was completed substantially under budget, the Permanent

Fund appreciated relatively quickly. The build-up period ended in September 1999. As of the beginning of 2001, the balance of the fund was approximately \$22 million. However, as of January 9, 2002, the Permanent Fund balance had dropped to approximately \$19 million, a drop of \$3.1 million since the beginning of 2001. These losses resulted from declines in the value of Tribal investments in 2001 which were exacerbated by the economic effects of the September 11, 2001, terrorist attacks. The value of the fund declined by \$2 million between September 11 and September 30, 2001. Under the rules of the Permanent Fund Plan, a drop in the Fund balance below the \$20 million threshold results in a sharp drop in the revenues available to the Tribal Council to fund Tribal projects and programs. (Gibbs, 2002).

Economic Development Fund. The Northern Cheyenne Economic Development Fund was established in 1998 with an initial endowment of \$2.74 million. The Economic Development Fund replaced the Northern Cheyenne Business Development Endowment Fund (Tribal Endowment Fund) which was chartered by the Tribal Council in 1984.

Under a 1984 agreement, the St. Labre Mission agreed to transfer certain portions of income and capital gain accruing within its own endowment to the Tribal Endowment Fund. St. Labre continued to manage these funds, however. Also in 1984, the ARCO Exploration Company donated \$250,000 to the Tribal Endowment Fund. In 1998, St. Labre and the Tribe reached a settlement as to the value of the Tribal Endowment Fund and St. Labre agreed to transfer these moneys to the Tribe. The Tribe then transferred these moneys to the Northern Cheyenne Economic Development Fund. (NCT, 1998a).

The purpose of the Economic Development Fund is to provide financial or other assistance to facilitate the successful development of commercial enterprises owned by the Tribe or its members. Any financial resource within the Economic Development Fund may be used to provide assistance to a Tribal enterprise, but only the net income of the Fund may be used to provide assistance to enterprise owned by a Tribal member. (NCT, 1998a).

The current balance of the Economic Development Fund is approximately \$2.8 million. However, a substantial portion of this fund has been committed to guarantee a loan by First Interstate Bank to the Tribe's Ashland sawmill, an unprofitable Tribal enterprise acquired from the St. Labre Mission in 1999. The mill has since shut down. (Heaton, 1-09-2002).

D. Special Revenue Funds.

The bulk of the financial resources at the disposal of Tribal government, approximately \$21.3 million in FY 2002, are special purpose funds awarded by the Federal government under contracts or grants to carry out specific Federal programs. This figure includes approximately \$3.93 million granted by the Department of the Interior, largely for BIA-delegated programs, \$2.69 million awarded by Department of Health and Human

Service for Tribal social welfare programs; \$5.8 million granted by the Indian Health Service for Tribal health programs; a \$4.75 million grant awarded by the Department of Justice on a one-time basis to enhance the Tribe's justice system; \$770,000 granted by the Environmental Protection Agency for Tribal environmental programs; and \$410,000 awarded by the Department of Labor for Tribal employment programs. It does not include the approximately \$3 million annual block grant awarded to the Tribal Housing Authority, \$3 million in federal funds awarded to Dull Knife College, or the \$2 million in Federal funds received annually by the Tribe's school in Busby. See Table 4-6.

Table 4-6 – Special Revenue Funds by Category

Agency	Funding
Department of the Interior	\$3,933,905.00
Department of Health & Human Services	\$3,031,092.00
Indian Health Service	\$5,802,759.00
Administration on Aging	\$33,721.00
State of Montana	\$35,993.00
Environmental Protection Agency	\$777,712.00
Equal Employment Opportunity Commission	\$29,193.00
Department of Labor	\$414,156.00
Department of Housing & Urban Development	\$113,681.00
Department of Commerce	\$70,972.00
Department of Justice	\$4,747,340.00
US Department of Agriculture	\$235,638.00
Other Funding	\$381,540.00
Bureau of Reclamation	\$1,718,011.00
Total	\$21,325,713.00

(NCT, 2001b)

V. Tribal Government Expenditures.

Tribal expenditures on programs funded by special revenue funds are discussed in Chapter 5 which addresses Reservation public services and facilities in some detail. It is shown there that although the amounts awarded are seemingly large, they are still inadequate to meet the need for public services and facilities on the Reservation.

The remainder of Chapter 4 address expenditures of the Tribe's discretionary funds – the General Fund and revenues received from indirect cost recovery (ICR). It is these funds that are available to the Tribal Council to fund the operations of Tribal government and discretionary Tribal programs and services. As is shown below, the Tribe currently has little, if any, funds that can be devoted to preventing, monitoring and mitigating the impacts of off-Reservation energy development. Virtually all of the Tribe's General Fund and ICR revenues are devoted to maintaining the basic operations of Tribal government and subsidizing the operations of various Federal programs. Over 91 percent of the FY 2002

General Fund and ICR budget is devoted to salaries of Tribal officials, the operating expenses of Tribal government, and the payment of matching funds and indirect cost subsidies for Federal programs. Less than 9 percent of the FY 2002 budget (\$390,000) is budgeted for community services and discretionary Tribal programs. The largest element of this discretionary spending (\$130,000) is devoted to payment of funeral expenses of Tribal members. The Tribe has no independent financial resources available to even begin to address the daunting social and economic problems currently besetting the Reservation, much less to address any added social, economic and environmental impacts that may result from off-Reservation energy development.

In FY 2001 and FY 2002, the Tribe budgeted the following categories expenditures from its General Fund and indirect cost revenues. See Table 4-7. These categories of expenditures are discussed in further detail below.

Table 4-7 – Combined General Fund & Indirect Cost Budgets -- FY 2001 & 2002

Expenditure Category	FY 2001	FY 2002
Salaries, Taxes & Benefits	\$2,149,450.32	\$2,268,944.42
Operating Expenses	\$1,717,800.00	\$1,193,747.85
Community Support Services	\$388,575.88	\$171,400.00
General Fund Departments	\$470,339.00	\$220,070.00
Matching Funds	\$189,565.69	\$147,243.86
Non-Recurring Funding	\$800,841.00	\$0.00
Indirect Cost Subsidies and Accounts Payable	\$461,000.00	\$450,000.00
Total	\$6,177,571.89	\$4,451,406.13

(NCT, 2001d)

Salaries, Taxes and Benefits. Approximately \$2.27 million from the total General Fund and ICR budget is budgeted for salaries, payroll taxes and benefits. Of this, \$799,405 is budgeted to pay the salaries of 18 “political” positions. Another \$1,070,049 is allocated to pay the salaries of the 29 “program directors.” The remainder is allocated to payroll taxes and fringe benefits for these employees.

The 18 Political Positions are listed in Figure 4-4 below and the 29 Program Directors were listed in Figure 4-2 above. Salaries for these elected and appointed Tribal officials are relatively modest ranging from approximately \$27,000 for the lowest paid position to about \$55,000 for the Tribal President. Tribal Council members each earn a salary of \$41,000 and the average salary for a program director is just under \$37,000.

Figure 4-4 – Tribal Political Positions

President	Executive Administrator
Vice President	Tribal Council Members (10)
Secretary	Clerk of Court
Treasurer	Chief Judge
Executive Office Manager	Tribal Judge

In all, the Tribe has a total of 265 full-time employees (including the 18 political positions), 34 part-time employees, and 135 temporary employees. Approximately 94 percent of these employees are Native American and 85 percent are Northern Cheyenne Tribal members. Most of these employees are paid from special revenue funds, not from the Tribe's General Fund.

Operating Expenses. Approximately \$1.19 million from the Tribe's General Fund and ICR budget is allocated to the operating expenses of Tribal government. This is a reduction of about \$520,000 from the \$1.72 million budgeted for this purpose in FY 2001. These expenses include travel, utilities, Reservation solid waste management, supplies, insurance, equipment, maintenance, and interest payments on bonds issued for construction of the capitol building. Approximately \$290,000 is budgeted for legal services, and \$140,000 for accounting services. The budgets for equipment, building maintenance, and supplies were all cut drastically in FY 2002 compared to FY 2001. The Tribe's computer consultant and self-governance specialist were terminated in FY 2002.

Community Support Services. Approximately \$170,000 is budgeted for community support services in FY 2002 compared with \$380,000 million in FY 2001. These community services are uniquely Tribal services that promote the Tribe's solidarity and culture. Of this, \$130,000 is budgeted for the funeral expenses of Tribal members. The rest will go to assist handicapped elders (\$5,000), support the Sacred Keeper (\$14,400), and pay the expenses of various Tribal boards and commissions (\$10,000). The budget for the support of the annual Pow-Wow was eliminated and the budget for other public ceremonies and events was cut from \$10,000 to \$2,000. The budget for the Sand Creek Massacre memorial program was cut from \$60,000 to \$10,000.

General Fund Departments. Approximately \$220,000 has been allocated from the FY 2002 General Fund budget for discretionary Tribal programs. These expenditures are significant in that they represent the Tribal Council's own spending priorities and are not required by any particular Federal program or grant. In FY 2002, the Council budgeted \$20,000 for the Cultural Commission (down from \$50,000 in FY 2001); \$24,000 for the Tribal Court, \$48,600 for the Grazing Board; \$57,470 to be distributed to the five districts (down from \$112,000 in FY 2001); \$10,000 for the Tribal Buffalo program; and \$80,000 to support children, elderly, health and education programs (down from \$134,000 in 2001). Support for the Tribal forest development program was eliminated.

Nonrecurring Funding. In FY 2001, the Council approved non-recurring expenditures of \$800,000. These expenditures were used to subsidize the Tribal Utilities Commission, provide scholarships to Tribal members, and support the Lane Deer High School, the Boys and Girls Club, the food bank, and the Tribal prosecutor. All of these expenditures were eliminated in FY 2002.

Matching Funds. Approximately \$150,000 has been allocated to pay the non-discretionary matching costs of various Federal programs. These payments are mandatory if the Tribe is to receive the benefits of the Federal programs. This includes \$65,000 for the Commodities program, \$38,000 for the elder food program, \$23,000 for low-income energy assistance, \$11,000 for child welfare, and \$10,000 for congregate housing for elders.

Subsidized Indirect Costs. In FY 2002, the Tribe allocated \$450,000 to subsidize the unrecoverable indirect costs of administering Federal programs and grants. These costs are non-discretionary in the sense that, without the Tribal subsidy, the Federal programs could not be continued.