



A painting by local artist Jim Toenjes of the Agua Caliente Band of Cahuilla Indians Tribal Council in the 1950s. The history-making group — the first all-women tribal council in the United States — included, from left, Secretary Eileen Miguel, Vice Chairman LaVerne Saubel, Member Gloria Gillette, Member Elizabeth Monk, and Chairman Vyola Ortner.

# By the People, for the People

Sovereignty tells the story of the Tribe's self-determination.

In December 2014, Agua Caliente Band of Cahuilla Indians Chairman Jeff L. Grubbe and a handful of other tribal leaders from across the country sat down with President Obama to discuss matters ranging from economic development in tribal communities to the federal government's Indian treaty and trust responsibilities.

The special intimate meeting with President Obama and key administration officials was part of a larger gathering known as the White House Tribal Nations Conference. It's at this annual event that elected officials from the 566 federally recognized tribes in the United States are invited to engage with the President on a leader-to-leader basis.

President Obama noted at the conference that he "wanted to turn the page on a history that is riddled with too many broken promises [and] write a new chapter with a spirit of respect and trust."

Such an active discussion with the highest levels of the federal government is vital to the mission of the nation's tribal leaders, something that the Agua Caliente Band of Cahuilla Indians deeply recognizes and embraces.

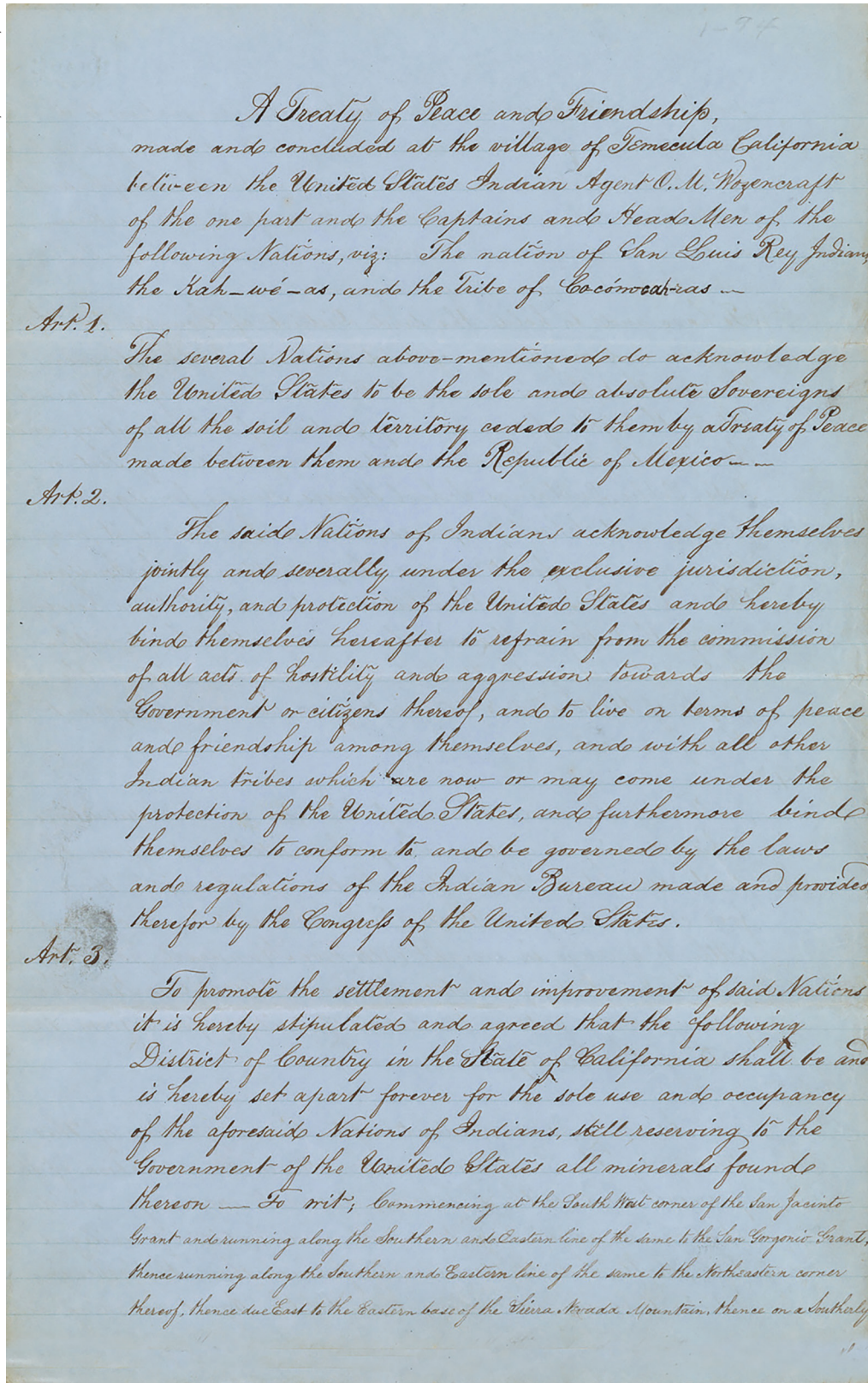
"It's important for the federal government to keep its promises to the Native Americans and ensure that tribal voices are included in policymaking," says Grubbe about this

relationship. "At the heart of all this is tribal sovereignty, both understanding it and respecting it."

The concept of tribal sovereignty can be difficult to understand or even grasp. Perhaps with good reason, as the question "What is Tribal sovereignty?" defies simple explanation.

UCLA School of Law Professor Carole E. Goldberg, an expert on federal Indian law who the President appointed to the Indian Law and Order Commission, describes it this way: "Tribal sovereignty reflects the fact that native nations are governments just like the United States and the states of the union." As a beginning point, the basic understanding that tribes are governments, she says, helps clarify that there are certain powers that go along with being a government recognized by other governments.

To truly start to understand tribal sovereignty, one must look into the past. To look, for example, to the tribal people who have lived for hundreds of generations in the desert, valleys, canyons, and mountains around Palm Springs and beyond. As a people, the Cahuilla were connected across this territory by language, relationships, and certain beliefs and customs. But separate communities existed with their own political entities among a network of their own leaders and their own government. ►►



Unratified California Treaty K, signed Jan. 5, 1852, at the village of Temecula. During the Mexican War (1846–1848), United States troops occupied California. In 1846, they issued orders that denied Indians the vote, restricted Indian movement, and banned them from testifying in court against white people. On July 8, 1852, the Senate refused to ratify the 18 treaties Native Californians signed in 1851–52 creating reservations. The treaties were filed under an injunction of secrecy and were not made public until Jan. 19, 1905. Treaty K was signed by the main United States negotiator, Commissioner O.M. Wozencraft, and people from the San Luis Rey (Luiseño), Cahuilla, and Serrano tribes. Article 3 states that its purpose was “to promote the settlement and improvement of said Nations,” and award the United States all their land except a reservation.

This past is relevant when discussing the meaning of tribal sovereignty today. To appreciate tribal sovereignty in the 21st century, you must consider the world before Christopher Columbus, or, more appropriately in the case of California, before Juan Rodriguez Cabrillo set sail in the 16th century.

#### THE HISTORY OF TRIBAL SELF-GOVERNANCE

Tribal self-governance for Native Americans predates the arrival of European explorers. It has long been central to the Cahuilla and other native peoples, although the word “sovereignty” may not have been uttered.

Consider the words of Cahuilla leader Pedro Chino, who was born circa 1816 at the foot of the mountains above Palm Springs in the place now known as Chino Canyon. “We have claim upon our homes in which our fathers and grandfathers lived, died, and were buried. ... Whoever wishes to (come onto our lands) must ask for consent,” he said.

The right to self-government is an inherent one derived from the tribal people themselves. Fundamental to comprehending tribal sovereignty is understanding from where it initially evolved, how and why it exists today, and the reason tribal people vigorously protect it.

Tribal sovereignty can be viewed through many prisms, including legal, political, historical, and cultural. In the U.S. Constitution, America’s Founding Fathers referred to tribes as distinct political entities with their own inherent powers. The provision, known as the Indian Commerce Clause, states, “Congress shall have the power to ... regulate commerce with foreign nations and among the several states, and with the Indian tribes.”

“The colonists who came to North America encountered tribes that were already functioning as governments,” Goldberg says. “They dealt with those tribes on a government-to-government basis, making treaties, for example. As questions arose about the status of tribes within the growing governmental structure of the United States, the United States Supreme Court in the 1830s acknowledged that tribes have inherent sovereign powers that come from being governments constituted and recognized by their own people.”

The authority tribes possess as part of their government-to-government relationship with the United States, however, has often been misunderstood, swept under the rug, and challenged over the years.

“Our inherent sovereign right to govern ourselves stems from our ancestors and has existed for thousands of years.”

— Chairman Jeff L. Grubbe

#### DISPUTES OVER SOVEREIGNTY

Beginning in the early 1800s, the U.S. Supreme Court ruled that tribes are “domestic dependent nations” and that Congress has “plenary power” in regard to Indian matters. Internal tribal affairs, however, are beyond the reach of Congress and the courts.

States, too, have tested the limits of tribal sovereignty. In 1850, for instance, California law prohibited tribal peoples from practicing their religious and traditional ceremonies. In addition, state officials during this era persuaded Congress to ignore, and never ratify, treaties negotiated with tribes in California.

Tribal sovereignty also has been continually tested in the courts. “Tribal sovereignty has been upheld in cases involving tribes’ authority to exercise taxing powers, to exercise environmental regulatory powers,” Goldberg says. “These are standard government functions.”

A tribe’s authority to govern itself persevered. The federal Bureau of Indian Affairs notes on its website that while

tribal sovereignty is limited under treaties, congressional acts, executive orders, federal administrative agreements, and court decisions, “what remains is nevertheless protected and maintained by the federally recognized tribes against further encroachment by other sovereigns, such as the states. Tribal sovereignty ensures that any decisions about the tribes with regard to their property and citizens are made with their participation and consent.”

#### SELF-DEFINING GOVERNMENTS

“Tribal sovereignty is very much alive in the present,” Goldberg says.

Each of the 566 tribes, including the Agua Caliente Band of Cahuilla Indians, has a government-to-government relationship with the United States as a “federally recognized tribe.”

Each tribe determines its own membership rules, just as the United States does for its citizenship. As individual entities, tribes across the country each have constitutions or bylaws

that guide internal governmental operations. Tribes vary somewhat in the internal functioning of their institutions of government, but also share many similarities.

For instance, tribal members elect a tribal council to oversee governmental and business operations. Tribes, like other governments, provide vital services to their members, such as educational and housing programs, often through proceeds from economic development. Also as governments, tribes make land-use decisions within their reservations. Some tribes have their own courts and police forces.

Vyola Ortner, leader of the Agua Caliente Band of Cahuilla Indians during the 1950s and a former Palm Springs City Council member, connected the past and the future when she said: “Our love of this land goes back hundreds of generations. We respect the right of individuals of good faith and government agencies to give us their opinions. ... However, we have the obligation as tribal members to our own people and the right under the laws of this nation to determine the use of our own land and the destiny of our tribe.”

More than a half century later, the Agua Caliente government continues to determine the destiny of the Tribe for the good of its members today and for generations to come. “Our inherent sovereign right to govern ourselves stems from our ancestors and has existed for thousands of years,” says Tribal Chairman Grubbe. “It is not a gift from Washington. Sovereignty is part of our past, crucial to our present, and is our future as a people.” — Travis Armstrong



#### Meet Indian Law Expert Carole E. Goldberg

Carole E. Goldberg serves as the Jonathan D. Varat Distinguished Professor of Law at UCLA and UCLA’s Vice Chancellor, Academic Personnel. She is also the former Associate Dean of the UCLA School of Law and Chair of UCLA’s Academic Senate.

From 2011 to 2014, Goldberg was one of President Barack Obama’s appointees to the Indian Law and Order

Commission. She has also been a Justice of the Hualapai Court of Appeals since 2007.

A prolific author on the topics of federal Indian law and tribal law, her publications include *Defying the Odds: The Tule River Tribe’s Struggle for Sovereignty in Three Centuries* (Yale University Press, 2010); *Indian Law Stories* (Foundation Press, 2011); and *Captured Justice: Native*

*Nations and Public Law 280* (Carolina Academic Press, 2012). She also served on the Executive Board of Authors and Editors for *Cohen’s Handbook of Federal Indian Law* (1982, 2005, and 2012 editions).

Goldberg received the Lawrence Baca Lifetime Achievement Award from the Federal Bar Association’s Indian Law Section in 2013.