

Native American Redistricting Workgroup

Principles for Redistricting Native American Voters Consistent with the Voting Rights Act and Respect for Tribal Self-Determination

As Adopted by Tribal Leaders

A Native American Redistricting Workgroup, which included representation and input from the 19 Pueblos, the Jicarilla Apache Nation and the Navajo Nation, developed the attached maps reapportioning those areas of the State of New Mexico impacting the existing majority Native American electoral districts.¹ The maps and these principles are hereby submitted to the New Mexico Legislative Redistricting Committee, the New Mexico Legislature and Governor Susana Martinez on behalf of the endorsing Tribes.²

Tribes in NW Quadrant

The Jicarilla Apache Nation, Pueblo of Acoma, Pueblo of Laguna, Pueblo of Zuni, Pueblo of Santa Ana, Pueblo of Jemez, Pueblo of Zia, Santo Domingo Tribe, Pueblo de Cochiti, Pueblo of San Felipe, Sandia Pueblo, and the Navajo Nation, including Ramah, Tohajiilee, and Alamo, are located in the proposed Majority and Influence Districts in the NW Quadrant.

Endorsing Tribes:

The WorkGroup recognized that all Pueblos and Tribes in NM have an interest in the majority Native American districts created in the NW quadrant because the Native American and dedicated legislators elected in these districts have historically carried the most important pro-sovereignty legislation adopted by the State. All New Mexico Tribes share strong communities of interest regarding their historic and contemporary relationship with each other, with the State Government, and concerning cultural preservation, taxing jurisdiction, economic development, and natural resource development on their lands.

Tribal Self-Determination:

At the Acoma hearing of the Legislative Redistricting Committee, Tribal leaders testified that the maps must reflect the specific wishes of the individual Tribes. The consensus maps honor this and keep the individual Nations and Pueblos within the districts they specified. Importantly, the maps also respond to the testimony by maintaining and improving the voting strength of Native Americans in four Senate districts and in six House Districts. Preserving the core of an existing district is a traditional redistricting criteria. This traditional criteria is consistent with an approach that honors tribal self-determination. See Court's Findings of Fact and Conclusions of Law Concerning State House of Representatives Redistricting at Conclusion 10 recognizing tribal self-determination as a factor for

¹ The Workgroup would like to express our special appreciation to the Navajo Nation Human Rights Commission Staff and Leonard Gorman for their expertise and patience in drawing the attached maps.

² As of August 31, 2011, the following Tribes endorsed the maps and principles: Acoma Pueblo, Cochiti Pueblo, Isleta Pueblo, Jemez Pueblo, Jicarilla Apache Nation, Laguna Pueblo, Pojoaque Pueblo, Santa Ana Pueblo, Santa Clara Pueblo, Tesuque Pueblo, Ohkay Owingeh, and Zuni Pueblo. As other Tribal Councils meet, we anticipate receiving additional endorsements.

approving the Native American districts and their deviations. Jepsen v. Vigil-Giron, No. D-0101-CV-2001-02177 (N.M. 1st Jud. Dist. Jan. 24, 2002) ("Jepsen").

No Retrogression:

If a Court considers the 2011 redistricting maps, it will ensure that the 2011 maps are not retrogressive as to minority voting rights and existing majority minority districts. See id. at Conclusion 15. See also Georgia v. Ashcroft, 539 U.S. 461, 466 (2003) (plans which "would lead to a retrogression in the position of racial minorities with respect to their effective exercise" of their vote would fail Voting Rights Act section 5 requirements) (citation omitted). The 2002 Court Redistricting resulted in three Majority Native American Districts at total Native American percentages in 2001 (not voting age) of 85.6%; 69% and 67.9%. Six Majority House Districts were created at total percentages in 2002 of 77.3%, 69.6%, 67.2%, 65%, 64.8% and 64.8%.

The 2010 census demonstrates that due to population growth and shifts, the districts must be redrawn. However, the Native American population grew at a rate of 14.7% compared to the 13.2% growth for the State as a whole. Since the Native American population growth slightly exceeded the State growth rate, it is possible to maintain the existing majority minority Districts and increase the influence of Native Americans in a fourth Senate District. The consensus plans developed by the redistricting workgroup draw six majority Native American House Districts, three Majority Native American Senate Districts and one Influence Senate District. The proposed Native American consensus maps for 2011 do not retrogress from, and indeed improve upon, the Native American districts established in the 2002 plan.

Proportional Representation:

Native Americans constitute 10.7% of the population but only 4% of the State Legislators. The Supreme Court has acknowledged that proportionality – whether the number of districts in which the minority group forms an effective majority is equal to its share of the population – is a relevant consideration in redistricting consistent with the Voting Rights Act. League of United Latin American Citizens v. Perry, 548 U.S. 399, 426 (2006) (citing Johnson v. De Grandy, 512 U.S. 997, 1000 (1994)). Based on their relative population, Native Americans could hold seven House Districts and 4 Senate Districts. The goal of the 2011 redistricting should be to maximize the potential of Native Americans to elect a representative of their choice in as close to four Senate Districts and seven House districts as possible.

Majority Minority Effective Percentages:

In 2002, the New Mexico District Court ruled that a voting age population (VAP) of 55% "does not provide Native Americans with a reasonable opportunity to elect candidates of their choice." Court's Findings of Fact and Conclusions of Law Concerning State House of Representatives Redistricting at Finding 25, Jepsen. The Court did not determine what a sufficient percentage was, but the court did accept the Navajo Nation and Jicarilla Apache Nation's legal arguments and proposed maps. The Court adopted maps with a minimum total Native American population of 64.8%, with a VAP in excess of 60%, and found that these would create effective majority Native American districts. Id. at Conclusion 11.

The Supreme Court has not adopted a bright line rule as to how large of a super majority is needed to create "safe" majority/minority districts, but in United Jewish Organizations of Williamsburgh v. Carey 430 U.S. 144, 146 (1977), the Court found 65% to be reasonable. The lower courts have generally followed in this vein, but have also focused on the unique circumstances of the populations in consideration. In the case of African American Voting Rights Legal Defense Fund v. Villa, 54 F.3d 1345, (8th Cir. 1995), the court noted that a guideline of 65% of total population had achieved general acceptance in redistricting jurisprudence and had been adopted and maintained by the Department of Justice. Id. at 1348 n. 4. As the court explained, "[t]his figure is derived by augmenting a simple majority with an additional 5% for young population, 5% for low voter registration and 5% for low voter turn-out, for a total increment of 15%. This leads to a total target figure of 65% of total population." Id.

The Navajo Nation and Jicarilla Apache Nation presented expert witness testimony in 2002 that in New Mexico, the reasonable percentages were above 60% of VAP, which amounted to approximately 64% of total population. The Court adopted these findings. We consider the Jepsen Court ruling as the status of law in New Mexico. Accordingly, 64% is the optimal target for the plans.

No Packing or Cracking of Native American Populations:

The Research and Polling (R&P) Concept plans for the Senate came up with multiple scenarios that included three majority/minority Senate Districts and six majority/minority House Districts. Of the Senate Plans, at least two concepts had percentages of Native Americans in all three districts above 64%. Of the House Plans, R&P did not achieve the goal of having six districts with percentages above 64%. Instead, they tended to have wide variation in the six districts. As an example, one concept had a low of 48% in one district while another NW district was packed with 94% Native Americans.

The Consensus Plans proposed by the Native American Tribes themselves, which are focused on the Voting Rights Act claims of Native Americans, did better than the R&P plans. In addition, a classic challenge to plans that place a high percentage in one district, while weakening another is that they are packing and cracking. Under the VRA, plans cannot pack minorities into a few districts and dilute them in the other districts. See Voinovich v. Quilter, 507 U.S. 146, 153 (1993) (describing how such packing dilutes minority voting strength); Johnson, 512 U.S. at 1007 (packing minorities into a district "minimize[s] their influence in the districts next door.") Indeed, the Navajo and Jicarilla Apache Nation legally challenged several plans in 2002 precisely because the districts packed too many Native Americans into one district, thereby diluting their effectiveness in the other districts. See Navajo Nation's Post Trial Brief (State House of Representatives Redistricting) at 8, Jepsen; Jicarilla Apache Nation's Closing Brief of Law and Argument at 3, id.

DESCRIPTION OF THE CONSENSUS SENATE AND HOUSE PLANS and CONGRESSIONAL DISTRICT REQUESTS

The Native American Redistricting Work Group used the principles set out above when drafting proposed Senate and House Plans for the Native American Districts. The workgroup convened three times to review the principles and draw proposed maps which are referred to as

the consensus maps. The maps tried to accommodate requests of incumbents, but only if those requests did not clash with the principles of the Voting Rights Act, and the interests of Native American voters to have strong, effective Native American districts. The plans also recognized and accommodated traditional redistricting principles such as drawing compact districts, honoring communities of interest, maintaining the core of the existing districts, and not pitting incumbents against each other, if possible.

Native American Consensus Senate Plan:

The Native American Consensus Senate Plan creates 3 majority/minority districts and an influence district. The percentages of Native Americans in the districts are: 84.82% in District 3, 62.73% in District 4 and 65.4% in District 22. In addition, the plan increases the percentage of Native Americans in District 30 from 22% to 26.49%. (These percentages will increase by approximately 2 points when all Native Americans are counted, instead of just those that selected 100% Native American in the census. This change was recently made by Research and Polling and is not yet reflected in the data.)

Native American Consensus House Plan:

The Native American House Plan creates 6 majority/minority districts with effective Native American percentages as follows: District 4 – 81.12%; District 5 – 66.63%; District 6 – 63.12%; District 9 – 69%; District 65 – 62.9% and District 69 – 65.3%. (Percentages will increase by approximately 2% when all Native Americans are counted.)

Congressional Districts

The Pueblos and Nation have objected to plans that would concentrate all of the Native American voters in a single congressional district. The following Tribes testified and/or have stated that they wish to be placed in the following Congressional Districts:

<u>District 1</u>	<u>District 2</u>	<u>District 3</u>
Pueblo of Laguna (Bernalillo Pct. 31)	Pueblo of Laguna (Cibola & Valencia lands)	Jicarilla Apache Nation
Navajo Nation – Tohajiilee	Navajo Nation - Ramah, Alamo	Navajo Nation - Eastern Res.
	Isleta	Santa Clara
	Acoma	Tesuque
	Zuni	Zuni
		Pojoaque
		Zia
		San Felipe
		Ohkay Owingeh

PRC

The proposed PRC plan closely follows the current map, but draws District 4 so that it is 33.8% Native American. The community of interests shared by the Pueblos and Nations in the NM House and Senate Districts will flow through to their placement together in PRC District 4.

8/29/2011

NEW MEXICO SENATE Proposed Native American Working Group Plan

DISTRICT 1:
Population: 46,647
Deviation: -2,381
%Deviation: -4.08%
%American Indian Population: 23.71%

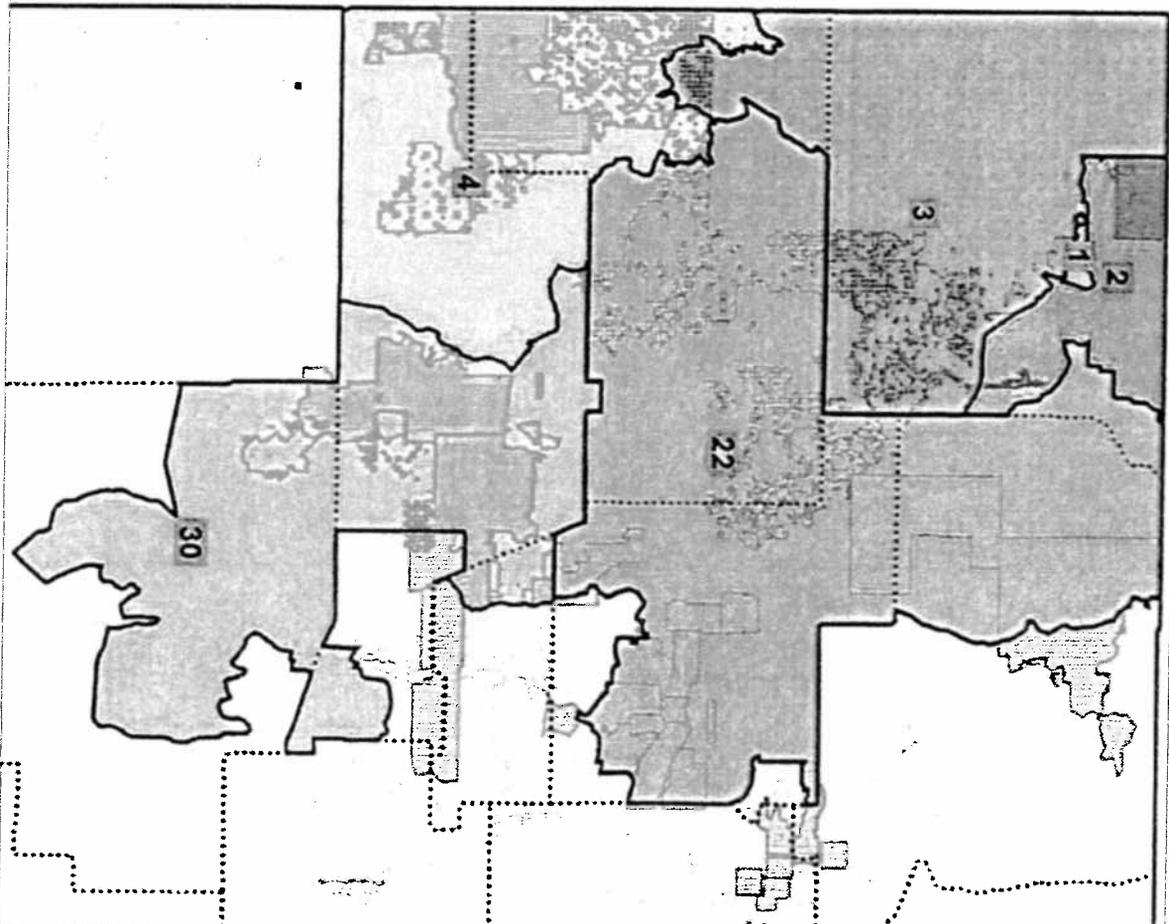
DISTRICT 2:
Population: 47,227
Deviation: -1,801
%Deviation: -3.67%
%American Indian Population: 13.79%

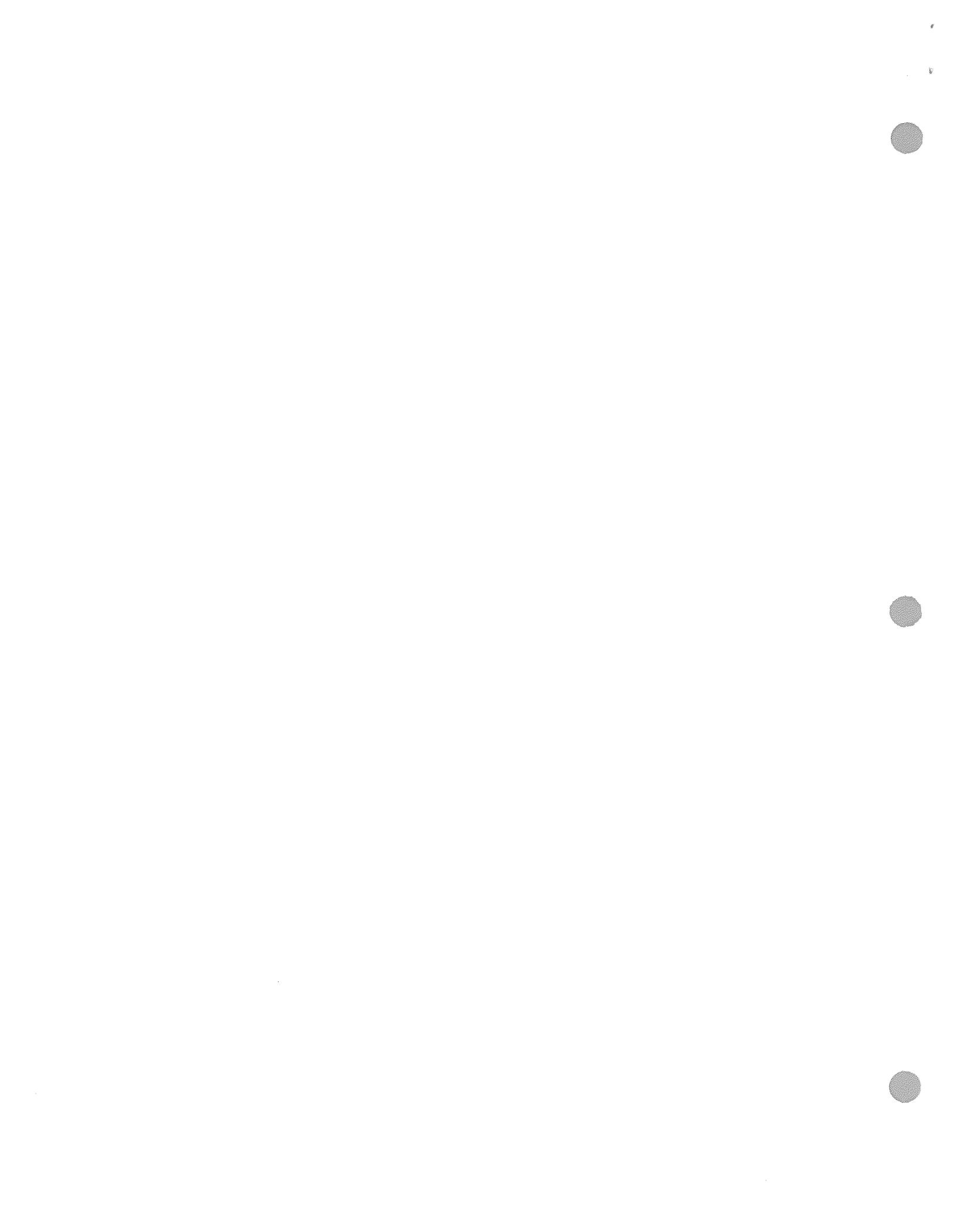
DISTRICT 3:
Population: 47,651
Deviation: -1,377
%Deviation: -2.81%
%American Indian Population: 84.82%

DISTRICT 4:
Population: 47,842
Deviation: -1,186
%Deviation: -2.42%
%American Indian Population: 62.73%

DISTRICT 22:
Population: 49,495
Deviation: 467
%Deviation: 0.95%
%American Indian Population: 65.44%

DISTRICT 30:
Population: 47,354
Deviation: -1,674
%Deviation: -3.41%
%American Indian Population: 26.49%

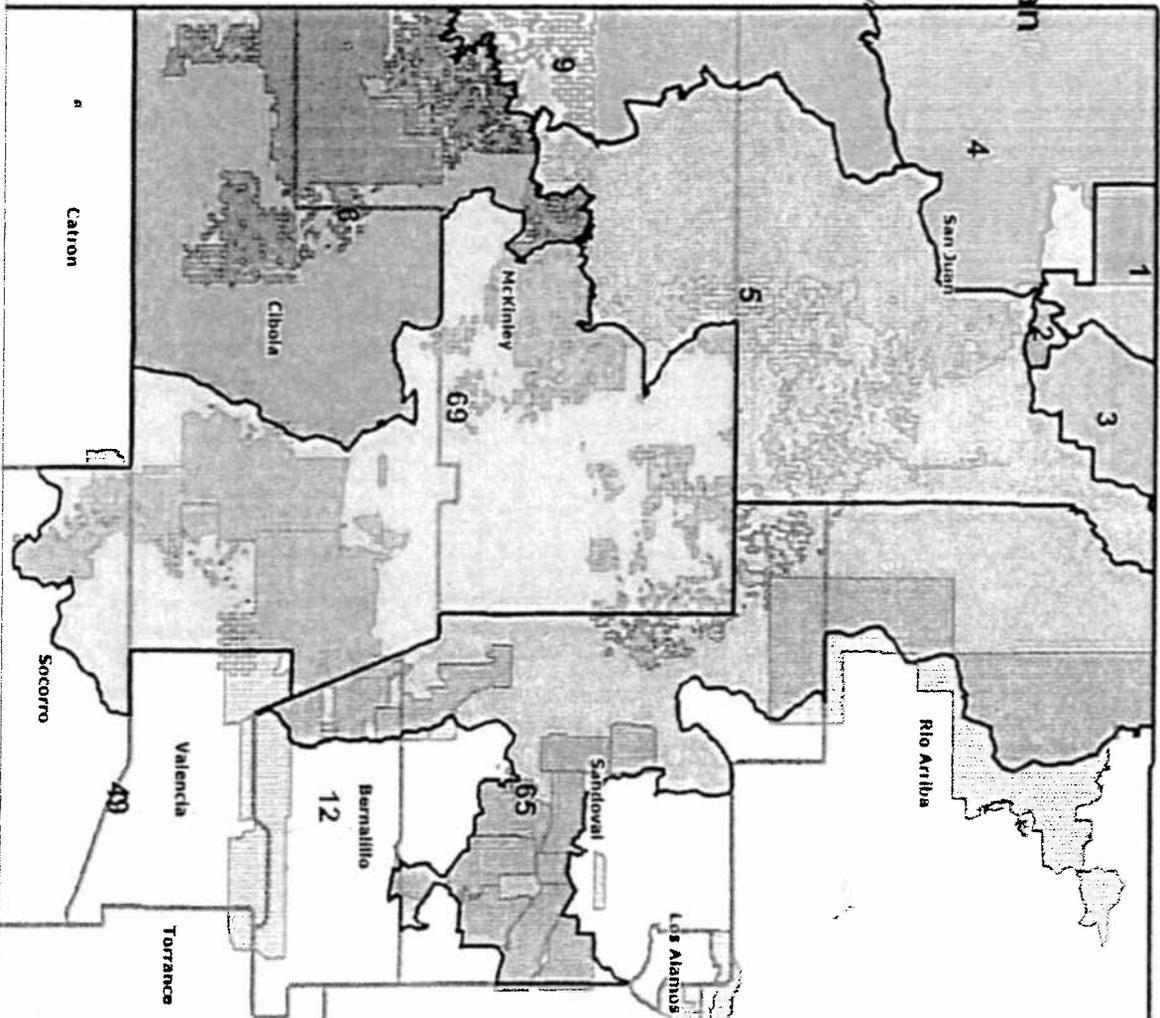




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NEW MEXICO HOUSE Proposed Native American Working Group Plan

DISTRICT 1: Population: 29,547 Deviation: 130 %Deviation: 0.44%	DISTRICT 6: Population: 29,470 Deviation: 53 %Deviation: 0.18%
%American Indian Population: 20.3%	%American Indian Population: 63.12%
DISTRICT 2: Population: 28,408 Deviation: -1,009 %Deviation: -3.43%	DISTRICT 9: Population: 29,500 Deviation: -917 %Deviation: -3.12%
%American Indian Population: 22.23%	%American Indian Population: 69%
DISTRICT 3: Population: 28,809 Deviation: -608 %Deviation: 2.07%	DISTRICT 65: Population: 28,523 Deviation: -894 %Deviation: -3.04%
%American Indian Population: 10.17%	%American Indian Population: 62.9%
DISTRICT 4: Population: 28,305 Deviation: -1,032 %Deviation: -3.51%	DISTRICT 69: Population: 28,443 Deviation: -974 %Deviation: -3.31%
%American Indian Population: 81.12%	%American Indian Population: 65.3%
DISTRICT 5: Population: 28,729 Deviation: -688 %Deviation: -2.34%	
%American Indian Population: 66.63%	





NEW MEXICO PUBLIC REGULATORY COMMISSION Navajo Nation Proposal

District 1:
Population: 413,027
Deviation: 1,191
%Deviation: 0.29%
%American Indian Population: 4.63%
District 2:
Population: 413,678
Deviation: 1,842
%Deviation: 0.45%
%American Indian Population: 2.2%
District 3:
Population: 409,470
Deviation: -2,386
%Deviation: -0.57%
%American Indian Population: 4.13%
District 4:
Population: 415,331
Deviation: 3,495
%Deviation: 0.85%
%American Indian Population: 33.8%
District 5:
Population: 407,873
Deviation: -4,163
%Deviation: -1.01%
%American Indian Population: 1.88%

