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What are the key factors in sustainable economic & community development?

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# TWO APPROACHES TO DEVELOPMENT IN INDIAN COUNTRY

THE STANDARD APPROACH	THE NATION REBUILDING APPROACH
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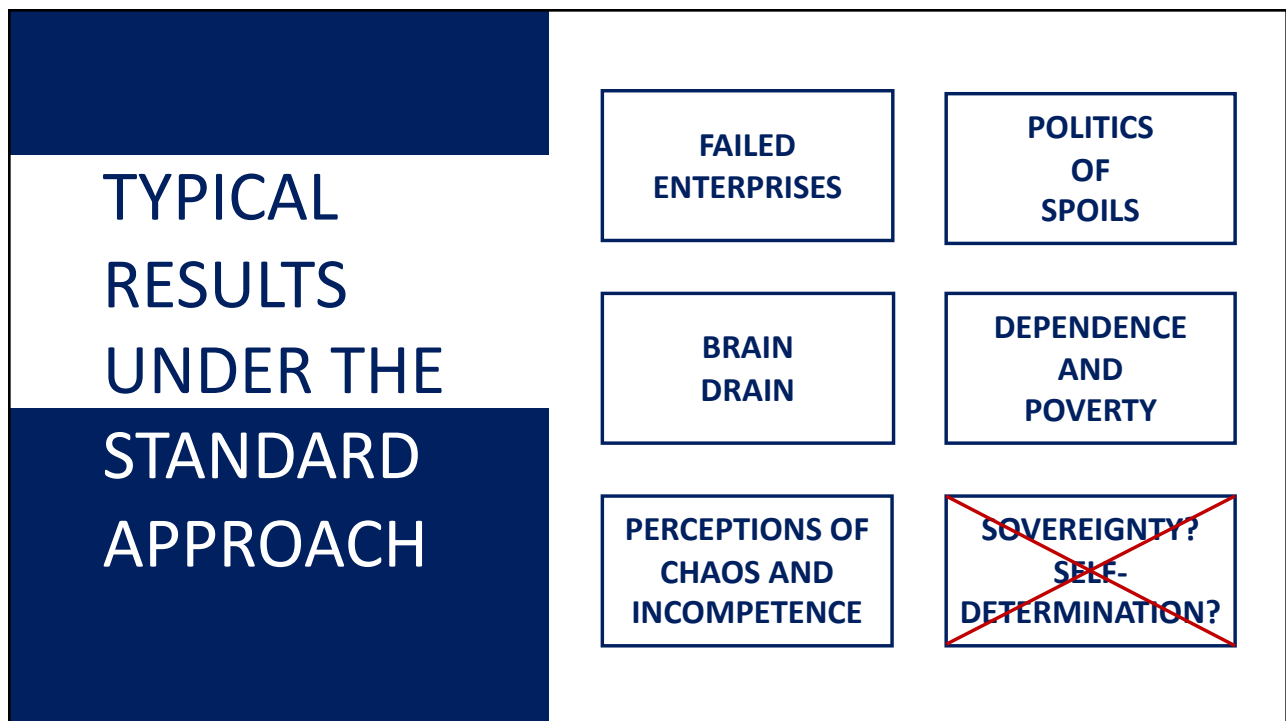
## THE STANDARD APPROACH

GRANTS = SUCCESS	ECONOMIC DEVELOPMENT <i>IS</i> THE PROBLEM	HOME RUNS
SHORT-TERM NOT STRATEGIC	INDIGENOUS CULTURE = OBSTACLE	EXTERNAL AGENDA

# NON-INDIAN GOVERNMENTS UNDER THE STANDARD APPROACH



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Is there an  
alternative?

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***Nation rebuilding** refers to the processes by which a Native nation enhances its own **foundational capacity** for effective self-governance and self-determined community and economic development.*

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THE  
NATION  
REBUILDING  
APPROACH

## PRACTICAL SOVEREIGNTY

Practical sovereignty means that Indigenous nations have decision-making control over what happens in their communities.

**But is sovereignty all-or-nothing?**

- No. It may be high in some governmental domains and low in others.
- And, responsibility can be shared.

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**THE  
NATION  
REBUILDING  
APPROACH**


## PRACTICAL SOVEREIGNTY

Practical sovereignty with respect to child welfare means that First Nations have decision-making control over what happens to their children.

**Child welfare decision-making includes:**

- Which children are identified as at risk
- How children are identified as at risk
- What steps are taken to assist children and families
- Which entities and individuals are involved in assisting children and families
- Etc.

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**THE  
NATION  
REBUILDING  
APPROACH**

## CAPABLE GOVERNING INSTITUTIONS

Are characterized by:

Effective and non-politicized resolution of disputes	Management of the politics-business connection
The ability to make binding decisions in a timely fashion	

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# THE NATION REBUILDING APPROACH

## CAPABLE GOVERNING INSTITUTIONS

The example of the US Indian Child Welfare Act:

ICWA recognizes tribal authority and encourages tribes to establish codes, programs, and courts

Recognition of appropriate jurisdiction

State → Tribes



# THE NATION REBUILDING APPROACH

## CAPABLE GOVERNING INSTITUTIONS

The challenge for First Nations:

Federal and provincial law and policy acknowledges First Nations' inherent rights to exercise responsibility for FN children's welfare

What is necessary to Implement this shift?

Canadian entities → First Nation entities





# THE NATION REBUILDING APPROACH


## CULTURAL MATCH

Institutions that match contemporary Indigenous cultures are more successful than those that don't.

Match Indigenous ideas about how authority should be organized and exercised.

To be effective, governing institutions must have legitimacy with the people.

...the incorporation of cultural practices alone is insufficient: institutions and strategies have to *work*.



# THE NATION REBUILDING APPROACH

## CULTURAL MATCH


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CHILD WELFARE PROGRAM

*Mainstream community values and culture*

*Protection of the child and the preservation of the family*



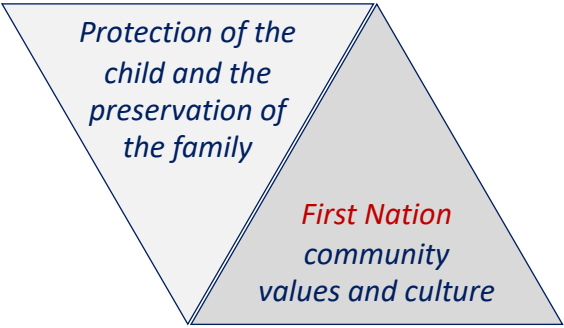


# THE NATION REBUILDING APPROACH

## CULTURAL MATCH

Institutions that match contemporary Indigenous cultures are more successful than those that don't.

CHILD WELFARE PROGRAM



*Protection of the child and the preservation of the family*

*First Nation community values and culture*

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# THE NATION REBUILDING APPROACH

## STRATEGIC ORIENTATION

Shift from reactive thinking to proactive thinking  
(not just responding to crisis but trying to gain some control over the future)



Short-term Thinking → Long-term Thinking

Opportunistic Thinking → Systemic Thinking

Narrow Problem Focus → Broad Community Focus

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**THE  
NATION  
REBUILDING  
APPROACH**


## STRATEGIC ORIENTATION

Shift from reactive thinking to proactive thinking  
(not just responding to crisis but trying to gain some control over the future)

**“In 10, 20, or 50 years from now, what kind of community to you want to live in?”**

**“What does a healthy \_\_\_\_\_ community look like?”**

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**THE  
NATION  
REBUILDING  
APPROACH**

## STRATEGIC ORIENTATION

What constitutes proactive, strategic thinking about child welfare for First Nations?

**“In 10, 20, or 50 years from now, what kind of *adults* do we want as citizens of our First Nation?”**

**“What does a strong and self-determined \_\_\_\_\_ child and family services system look like?”**

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**THE  
NATION  
REBUILDING  
APPROACH**

## **PUBLIC SPIRITED LEADERSHIP**

Individuals or groups who...

- Present a new vision** of the nation's future
- Promote the foundational change** that such visions require

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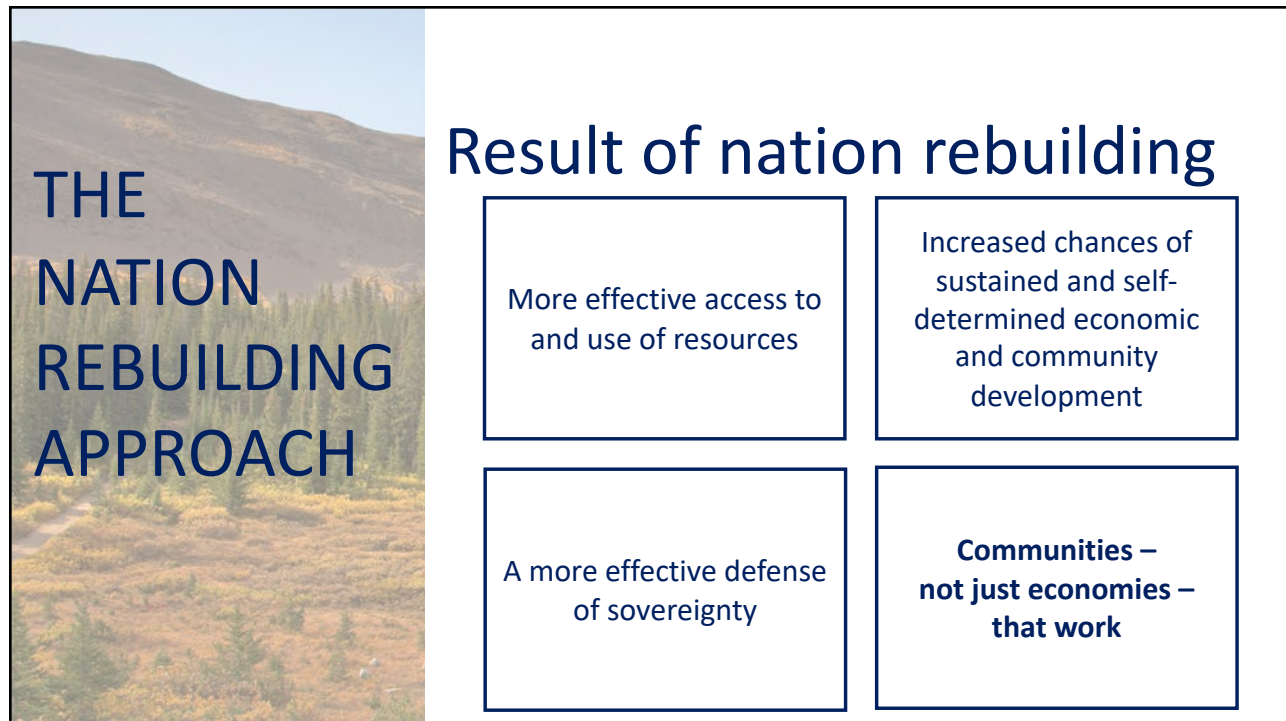
**THE  
NATION  
REBUILDING  
APPROACH**

## **PUBLIC SPIRITED LEADERSHIP**

For First Nations child welfare transformation...

- Elected, organizational, and grassroots leaders present a vision of self-determination over child protective services
- Chief and Council pass laws that empower agencies to take action – and then trust agency leaders to do so
- FN child welfare agency works with FN to implement regulations and rules that match the nation's culture and are effective
- FN Chief and Council and child welfare agency build productive relationships with provincial and federal entities

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Avoiding work on the necessary foundation is what foils success in nation rebuilding...

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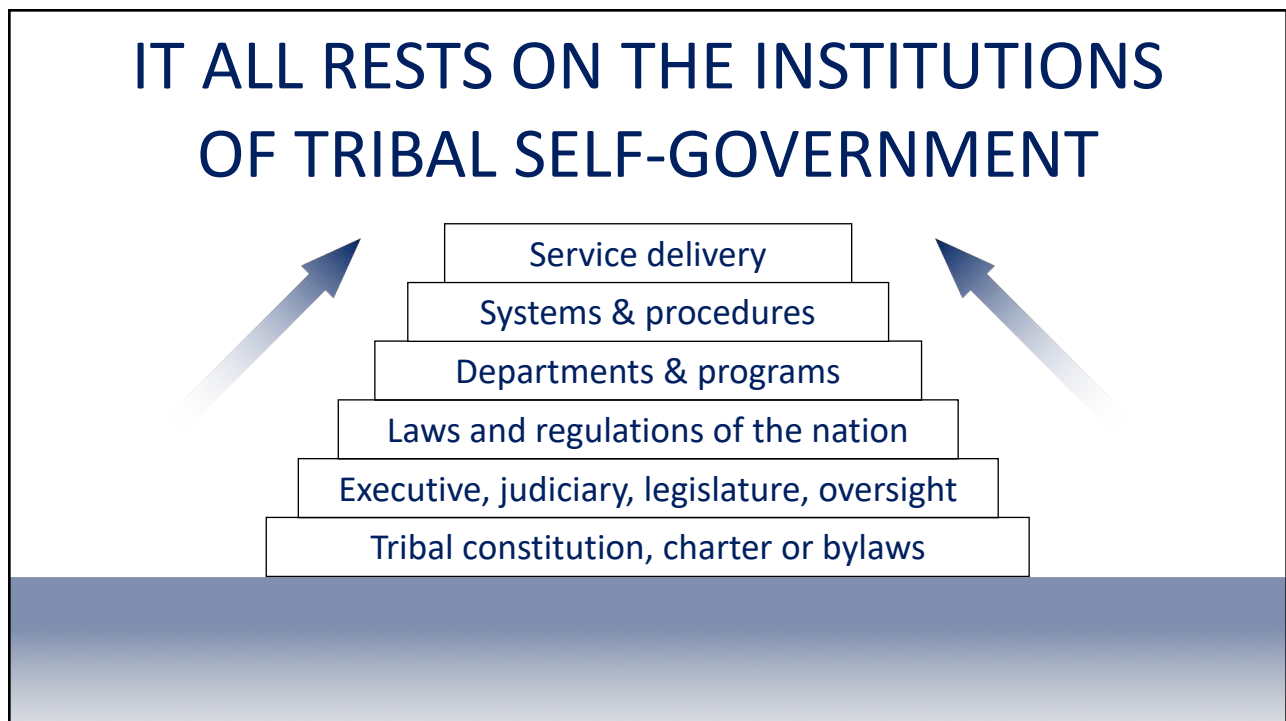
## THE STANDARD APPROACH TO COMMUNITY DEVELOPMENT



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## Who is an Indian Child?

### NO EXPLICIT JURISDICTIONAL STATEMENTS:

If the tribal code makes no explicit jurisdictional statements, ICWA jurisdictional rules would apply.

### EXPLICIT STATEMENT OF JURISDICTION OVER:



-  Indian Child
-  Non-Indian Child
-  On tribal land
-  Off tribal land

*More expansive definitions provide more avenues for protection of all the children in which the First Nation has an interest.*



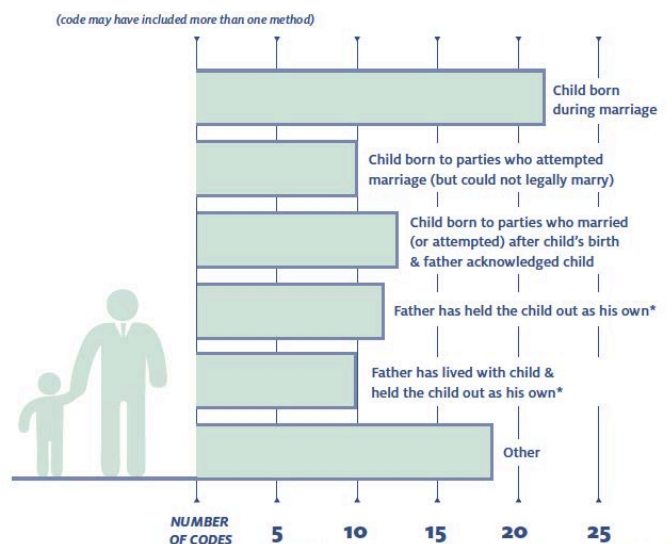
## Some questions to ask:

- *Has the nation determined the extent of child welfare jurisdiction that it wishes to assert? Is the extent of jurisdiction made clear in the First Nation's child welfare law?*
- *Has the nation examined whether its requirements for child welfare eligibility overlap with or depart from its requirements for citizenship? Does the First Nation's child welfare code address eligibility conflicts?*
- *Does the nation's agreement with Canada/the province describes the First Nation's jurisdiction? Does the First Nation's child welfare law reflect this agreement?*
- *Has the First Nation identified a designated recipient for notification about child welfare cases involving member children? Is that designation known (or knowable) for all relevant parties?*
- *Has the First Nation specified a process for transferring jurisdiction?*

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## How is paternity established?



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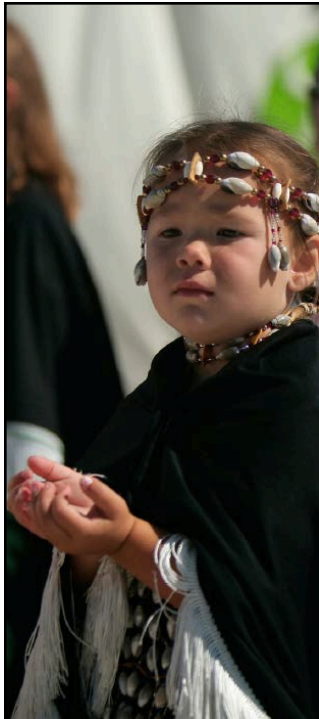




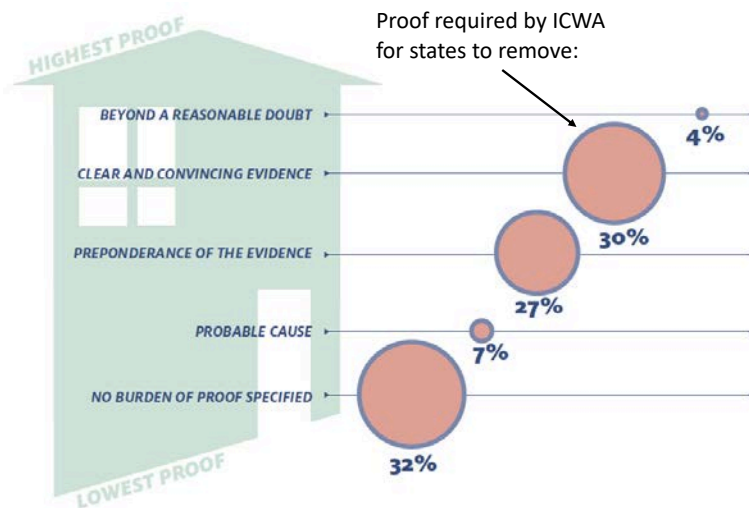
## Some questions to ask:

- *Does the First Nation's child welfare code address paternity issues? Does it make clear what the grounds are for presuming paternity? Does it specify the process by which potential legal fathers can establish paternity?*
- *Should the First Nation's child welfare code and its processes for establishing paternity take into account the tribe's concepts of fatherhood and of who should hold parental rights (if those differ from the concepts in mainstream concepts)?*

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## When will the tribes remove a child from the family home?



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## Some questions to ask:

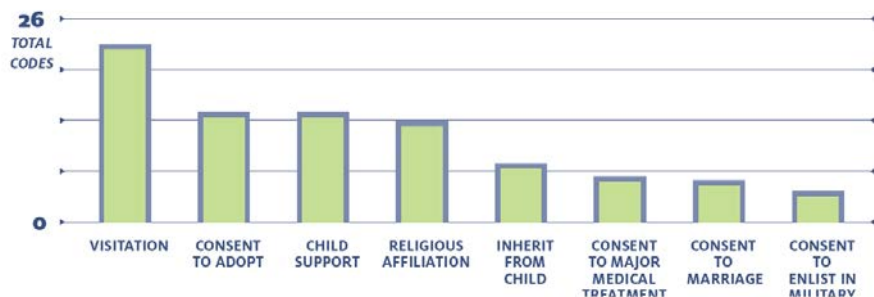
- *Has the nation considered the burden of proof it prefers for removal? Is it more appropriate to put this in the code or be silent and leave it to the discretion of the agency?*
- *Is the nation/its child welfare agency equipped (with policies and services) to engage with children and families if it sets a lower burden of proof?*
- *How do cultural considerations play into intervention? Does clearly defining “family” in the code help?*
- *Is the nation equipped to identify and certify appropriate short-term (overnight, weekend, respite, etc.) placement homes?*

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## Where will children go, and what rights will natural parents retain?

Residual rights after termination of parental rights or alternatives to TPR



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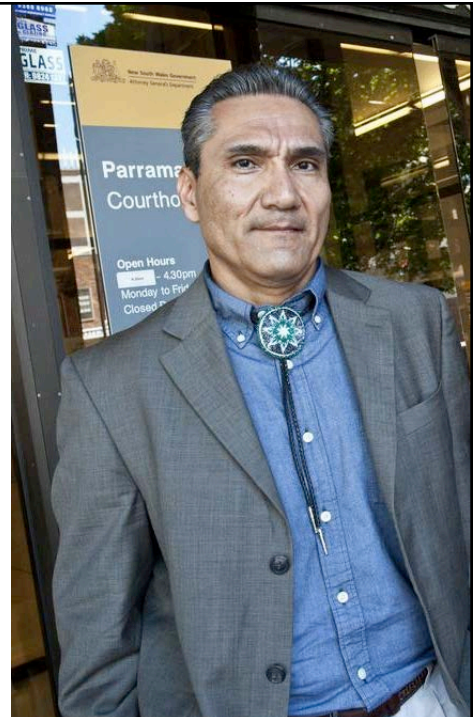
## Some questions to ask:

- *What level of evidence should your code require before parental rights can be terminated? What level of effort to keep the family together and find alternatives ways of addressing abuse should the code require before TPR?*
- *Should your tribe's child welfare code include alternatives to complete TPR? What alternatives will the community believe are appropriate?*
- *Does your tribe's child welfare code take into account and protect cultural understandings in the relationships of children to other kin and to the tribal community?*
- *Does your tribal welfare code include guardianship provisions? If not, should it?*
- *What adoption possibilities does your tribal welfare code provide for: conventional (closed) adoption, open adoption, customary adoption? These may be alternatives to complete TPR.*
- *Does your tribal child welfare code specify preferred placements for children whose parents can no longer care for them? Do those placements reflect the community's views of appropriate placements for such children?*

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“A nation's laws are the deepest expression of its culture. They say what we value and how we intend to get along and hold ourselves together as a people.”

Hon. Joseph Thomas Flies-Away,  
Tribal Court Judge  
Hualapai, Gila River, Karuk



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