

# DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS FOR 1988

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## HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS HOUSE OF REPRESENTATIVES ONE HUNDREDTH CONGRESS FIRST SESSION

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### PART 12

### BUREAU OF INDIAN AFFAIRS

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# **DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS FOR 1988**

**TUESDAY, OCTOBER 27, 1987.**

## **BUREAU OF INDIAN AFFAIRS**

### **WITNESSES**

**DONALD PAUL HODEL, SECRETARY OF THE INTERIOR**

**ROSS O. SWIMMER, ASSISTANT SECRETARY, INDIAN AFFAIRS**

**RALPH W. TARR, SOLICITOR**

**TIMOTHY A. VOLLMANN, REGIONAL SOLICITOR FOR THE SOUTHWEST  
REGION, TULSA**

**WILLIAM P. RAGSDALE, DEPUTY TO THE ASSISTANT SECRETARY-INDIAN  
AFFAIRS (OPERATIONS)**

**FRANK RYAN, DIRECTOR, OFFICE OF TRUST AND ECONOMIC DEVELOP-  
MENT**

**Mr. YATES.** Mr. Reporter, show the hearing as coming to order.

It is hard to designate by title the subject of this hearing. It could be called by the headline in the articles that I am sure the Secretary has received and Mr. Swimmer has received. It could be called "Fraud in Indian Country, A Billion-Dollar Betrayal," or it could be called, "The State of the BIA and What Should Be Done About It." I suppose it could be called any number of other things, but the fact remains that there is a condition out in Indian country that has been described in the articles of the Arizona Republic.

We have statements that have been prepared by the Secretary and by Mr. Swimmer, and those may go into the record at this point.

[The statements of Secretary Hodel and Mr. Swimmer follow:]

STATEMENT OF THE SECRETARY OF THE INTERIOR  
DONALD PAUL HODEL

before the  
Subcommittee on Interior and Related Agencies  
Committee on Appropriations  
United States House of Representatives

October 27, 1987

Mr. Chairman and Members of the Subcommittee: I am pleased to have the opportunity to appear before the Subcommittee today to discuss the relationship between American Indians and Alaskan Native people and the Federal Government. Establishing an appropriate relationship between Indian people and the Federal Government has been a serious dilemma for more than two centuries.

I would like to remind you, Mr. Chairman, that when I first appeared before you, we addressed three major problems in the Department of the Interior: One was the Minerals Management Service's royalty management program, on which we have made significant progress; the second was computers, on which there has also been significant progress; and the third was Indians, on which we had no consensus on how to solve the problems.

Over the years there have been conflicts in cultures, conflicts in goals, conflicts in approaches to solving problems. As many reports point out problems persist in education, health, law enforcement, and the delivery of services. The Federal Government over many Congresses and Administrations has tried innumerable ways to solve the problems. It has passed so many laws that the portion of United States Code related to Indian Affairs is about the same size as that related to labor law or laws governing the Congress. The Government has poured billions of dollars into Indian programs -- nearly three billion dollars appropriated annually in recent years, about one-third of which is to the Department of the Interior.

Time and again the government has set up commissions to examine Indian problems and recommend solutions. Although proposed solutions are many and varied, two major themes recur: the need for economic development on reservations and the desire of American Indians for self-government to decide their own goals and directions.



(2)

In 1983 President Reagan's Policy on American Indians reinforced the government-to-government relationship of Indian Tribes with the United States for purposes of self determination for Indian people and promoted both tribal self government and the development of reservation economies.

In keeping with this policy, the President's choice for the Assistant Secretary for Indian Affairs in the Department of the Interior, was a person who would continue to stress the themes of economic development and self-determination. Ross Swimmer is the former Chief of the Cherokee Nation of Oklahoma, the second largest tribe in population in the country. He is the first Chairman of any tribe to lead Indian Affairs for the Department of the Interior. He continues to have the President's and my support.

Since Mr. Swimmer has been in office, the Administration has proposed some of the most exciting and promising initiatives on Indian Affairs in years. But we have not been able to generate broad-based support for these initiatives. Examples of the initiatives are:

- A self assistance program that would enable a welfare recipient to achieve sustained and meaningful work and skill development.
- Major changes in the area of self determination including a new approach to equitably funding tribal indirect contracting costs and funding a new program targeted at enhancing small tribes' capabilities.
- A new plan to improve for full financial trust services for the \$1.7 billion held in trust for tribes and individual Indians by contracting with a qualified financial institution.
- The transfer of the operation of the remaining Federal Indian schools to tribal or public schools through the use of contracting or cooperative agreements. Currently, the Federally and tribally operated schools account for only 10 percent of all Indian students nationwide and such a transfer would move the policy and decision making to the local level.

Because of the diversity and complexity of tribes, almost every proposal to change the status quo in Indian country is met with fear and resistance. To attain a consensus among 500 such groups has been impossible. To obtain congressional concurrence in major changes has been extraordinarily difficult.

(3)

Mr. Chairman, we view this as a new opportunity to focus attention on the need to get unified with the Congress and tribal leaders -- a chance to focus attention on the fundamental problem. The tribes, the Federal employees, the lobbyists and the political leaders in Congress and the Administration must find new ways to work together toward our common goal: to create a framework within which American Indians can improve the quality of their lives. The old ways of doing things are not leading to the accomplishment of this goal. We believe with bold, creative approaches, perhaps we could develop proposals which would work. It is in that spirit that I appear before you today -- ready to work with you, American Indians, and Alaskan Natives to meet that goal.

Assistant Secretary Swimmer and the Department of Interior Solicitor Tarr are here with me to discuss improved relationships between Indian tribes and the Federal Government, new approaches to funding for the tribes, and to respond to the areas of concern that the Subcommittee may have. Mr. Swimmer has prepared a statement which he would like to summarize for you.

Statement  
of the  
Assistant Secretary - Indian Affairs  
before the  
Subcommittee on Interior and Related Agencies  
Committee on Appropriations  
United States House of Representatives  
October 27, 1987

Mr. Chairman and Members of the Committee, I appreciate the opportunity to appear before the subcommittee today to discuss current problems and future directions for the Bureau of Indian Affairs. I want to attempt to provide an overall perspective of the far-ranging responsibilities the Administration and the Congress have placed on the Bureau of Indian Affairs.

With the exceptions of national defense and health care, some form of virtually every other federal, state and local program is found in the Bureau of Indian Affairs: BIA operates schools and colleges, police departments, courts, social services, job training and employment programs. It acts as a bank for deposits, payments, investments and credit programs, and as a trustee of tribal and individual Indian assets. The Bureau oversees forests and fisheries, and irrigation and power systems. It employs experts in mining and minerals, and agriculture and archeology. The Bureau builds houses, dams, roads, schools, and jails. Bureau employees operate programs while preparing to work themselves out of a job by providing training and technical assistance to allow tribal contracting. The Bureau must meet federal trust responsibilities while encouraging tribal self-determination.

The Bureau of Indian Affairs is expected to address almost every social and economic ill known to mankind through approximately 100 discrete programs. The BIA provides services to almost 500 tribes and Alaska Native groups in 30 states from California to Maine. Rather than asking why there are problems in the operation of Indian programs, we should ask how anyone can realistically think that one Bureau could fulfill such expectations.

If a member of Congress requests funds to expedite cadastral surveys in his state, the Committee does not add the money to the Smithsonian budget -- it goes to the BLM because they have the expertise. Funds to increase reforestation efforts go to the Forest Service, not the Bureau of Mines. Yet, if these activities were proposed for Indian country, the money would not be added to the Bureau of Land Management or the Forest Service but to the budget of the Bureau of Indian Affairs -- not because we have the best surveyors or the best foresters, but simply and solely because it is an Indian project.

We are all responsible for this anomaly: the Administration, the Congress, and the Indian tribes. No one identifies a need in Indian country and then asks which Federal agency is most capable to do the job. If it's not health related, the responsibility is usually given to the Bureau.

There are obvious reasons for this. We want to hold someone accountable; we want to be able to readily identify expenditures for Indian programs; and we want to ensure that within the competing demands for Federal services, the voice

of the Indian people is heard. Title 25 of the Annotated Code is almost 1500 pages long and the regulations governing Indian programs cover more than 800 pages. Felix Cohen's Handbook of Federal Indian Law states: "The federal law governing Indians is a mass of statutes, treaties, and judicial and administrative rulings, that includes practically all the fields of law known to textbook writers -- the laws of real property, contracts, corporations, torts, domestic relations, procedure, criminal law, federal jurisdiction, constitutional law, conflict of laws, and international law. And in each of these fields the fact that Indians are involved gives the basic doctrines and concepts of the field a new quirk which sometimes carries unpredictable consequences." There are over 4,000 different treaties and statutes which have been approved. The Bureau is often criticized for not meeting all of its responsibilities but those responsibilities have become truly monumental, and in some cases, conflicting.

Even with all these duties, it might be possible for the Bureau to operate in a manner which meets with the approval of the Administration, the Congress, and the tribes -- if everyone could agree on the priorities. What is the most important program of the Bureau -- where should we concentrate most resources and energies? What program is second on the list? And so on, until we can name the least important program of the Bureau of Indian Affairs. I would suggest that if you posed that question -- program specific -- to each tribe and each Member of Congress with an interest in Indian affairs, that you wouldn't get a dozen identical lists. There simply is no agreement on the priorities of the Bureau of Indian Affairs. No agreement among tribes, members of Congress, or even among employees of the Bureau. Without such basic consensus among those who pass the laws, those who are charged to carry out the laws, and those whom the laws are designed to serve, how much of the fault can really be laid on the management of the Bureau?

Let me give an example of what this multiplicity of programs means at the local level: one employee at an agency office in Oklahoma is responsible for certifying general assistance clients and applicants for child welfare assistance. This person also approves expenditures from individual trust accounts held for incapacitated adults and minor children. In addition, this employee oversees the scholarship, adult education, and adult vocational training programs. And for next year, the tribe has recommended that this individual also assume all clerical duties associated with the programs. Which portion of this job should the individual do first and spend the most time on? This is not necessarily an extreme example, because at the agency level, many individual programs have relatively few dollars and small workloads, thus, making it impossible to justify a full-time position for each.

We recognize that the Congress is sincere in its desire to help Indian people. Please believe that we at the Department of the Interior share this desire. I would agree that the administration of Indian programs has been and continues to be plagued with many problems, program deficiencies and shortcomings. I have tried, and will continue to try, to work with Congress and the Indian tribes to resolve these issues. Having served as a tribal chairman for years, when I came to Washington I had some ideas on changes that could be made to improve Bureau operations. A number of these ideas -- none of which was associated with a budget reduction -- met with approval of the Secretary and the Administration and were included in the Bureau's budget proposal for fiscal year 1988: placing control of education programs at the local level; combining

a number of disparate programs to create a unified job training - job creation effort as an alternative to welfare; standardizing contract support payments, while including a subsidy to stabilize funding to small tribal governments; and, securing competent, professional, private sector assistance to properly manage one and one-half billion dollars in trust funds. Unfortunately, the Bureau apparently did not present a sufficiently compelling case for adoption of these recommendations, as most have met with strong opposition.

In your letter of October 16, 1987 requesting that we appear for this hearing, reference is made to the report of the American Indian Policy Review Commission which stated that present budgetary practices do not provide an equitable share of Federal appropriations for Indian services and that there was one Federal administrator for every 19 Indians. You asked that we be prepared to address ways of assuring a greater passthrough of appropriations to tribes themselves rather than to layers of the BIA bureaucracy.

We are prepared to make two very basic recommendations which I believe will accomplish what you seek. Before addressing those, however, I would like to clarify the record regarding the so-called "bloated bureaucracy" of the BIA. Employment in the Bureau of Indian Affairs has decreased by 20 percent since 1976. That is remarkable enough, but when one considers that during this same period of time, the Indian population served by the Bureau has increased by over 30 percent, the difference is even more striking.

With respect to the recommendations I am about to make, it is understood that working out the details will require time and effort, but it is an effort the Department is willing to make if the tribes and the Congress will do the same. I should also stress that the views set forth in my statement are solely those of the Department of the Interior and should be viewed as such. The development of specific recommendations will require coordination with other affected executive branch agencies prior to submission of an Administration proposal.

First, we should specifically identify those federal programs which deal with the management of Indian trust resources, i.e. lands, minerals resources, and trust funds. Trust programs need to be distinguished from other programs which may be necessary and important, and which may meet very real needs, but do not involve the management of trust assets. I would not argue against the need for other programs in addition to those necessary to fulfill trust responsibilities but "need" does not necessarily equate with "trust responsibilities."

We should then determine if there are other agencies of the Federal Government more capable to upgrade and carry out the various program functions involved in the management of trust assets. These programs should not reside solely within the Bureau of Indian Affairs -- it is a responsibility of the entire Federal Government to ensure that the best available services are provided in connection with the management of Indian lands, resources and trust funds.

The Bureau of Indian Affairs and the Indian Health Service are subject to "Indian preference" in hiring and promotion of employees. I fully subscribe to the intent of Indian preference, and feel that the fact that 83 percent of BIA employees are Indians is proof of our sincere attempts at compliance, but it should be examined in context of changed conditions. Less than one-

half of one percent of the population of the United States meets the requirements to be extended Indian preference in Federal hiring. I have been told that of the working-age population, only 47,000 Indians have completed college. The BIA, IHS, national Indian organizations, some Committees of Congress, and hundreds of tribal governments are all competing to obtain the best of a very small workforce. And, of course, not all Indians are interested in working for either the Federal government or tribal governments. Congress has allowed tribal contractors operating programs with Federal funds to waive Indian preference. At a minimum, I think we need to review the categories of employment where we currently have, or are projecting, a shortage and be granted waiver authority at the Federal level.

The following recommendation concerns the operation of all other programs which have not been specifically identified through the foregoing process. Our recommendation is that there be only one other category in the Bureau's budget -- true self-determination grants. We currently have a situation where self-determination is limited to allowing tribes to contract for programs which the Bureau has operated in the past. And, the tribes are supposed to run the programs in much the same way as the Bureau had, being held to the same requirements and regulations. If, for instance, a tribe spends education funds on a social services program, that cost would most likely be disallowed under an audit and the Bureau would be directed to recoup those funds from the tribe. It doesn't matter that the need is real and the funds were put to good use. It only matters that the expenditure was outside the scope of the contract. This occurs because of the large number of separate programs the Bureau is required to operate, since notwithstanding the rhetoric of self-determination, both the Administration and the Congress want to know exactly how much we are spending on every conceivable activity in Indian country.

A formula should be established as the basis for the distribution of these self-determination funds. Since the Bureau's budget is based largely on historical spending, including tribal-specific increases over a number of years, there is currently a great disparity in funds available to similarly situated tribes. In establishing the formula, we would suggest that it be based primarily on a per capita distribution, with some adjustment for small tribes, and perhaps, an adjustment for tribes which have no economic or natural resource base. The per capita distribution should address the expansion of many tribes' membership criteria.

With these self-determination funds the tribes would have complete autonomy in determining what programs would be provided. Tribes not wishing to operate the programs directly could contract with the Bureau to operate the programs for them. Thus, rather than having programs which the tribe can contract from the Bureau, the tribes could design their own programs and contract them to the Bureau, or if they chose, to another Federal or local agency. This would also address the question of the size of the BIA labor force. Once the statutory responsibilities were defined and staff resources identified to meet these responsibilities the size of the BIA workforce would be a result of specific tribal requests for services. It would be necessary to establish some broad parameters in that the use of the funds would have to be legal; that it comport with certain minimum standards with respect to protection of individual rights and public safety; that programs contracted to the Bureau not include requirements which civil servants are not otherwise allowed to perform; and

that sufficient advance notice be given for any new program to be contracted to the Bureau so that appropriate staff could be made available.

While these recommendations sound fairly straightforward, I do not underestimate the time and effort that would be involved in reaching a consensus with the tribes and the Congress in identifying those specific activities required to meet the statutory responsibility, or in devising a fair way to distribute the remaining federal resources. Such an undertaking could, however, profoundly affect the way the Bureau of Indian Affairs currently operates and would better enable the Department and the Bureau to carry out their responsibilities once we have all agreed on exactly what those programs should be.

It would also provide much needed changes by making self-determination truly meaningful. Responsibility would properly be placed at the tribal level for the design and oversight of programs that respond to local needs. Such action would be consistent with President Reagan's 1983 statement on American Indian policy, which reinforced the policy developed during the Nixon Administration endorsing self-determination and government-to-government relationship with Indian tribes. A policy statement without a concomitant change in structure and direction to implement the policy, has hampered the ability of the Federal government to meet the raised expectations of the Indian people.

True self-determination cannot be limited to programs designed 50 years ago -- or even those designed 15 years ago. Those programs and delivery systems represent Washington's view of what is needed or what will work on reservations; and, being Bureau-wide programs, they also operate on the assumption that what works on the Navajo reservation should work on the Mississippi Choctaw reservation.

True self-determination must mean more, and it is time to revisit the concepts of self-determination and self-government -- not merely to tinker with the law which maintains a contractual relationship between the Bureau and the tribes within the limitations imposed by pre-established funding levels for specific programs. It is time to give the tribes the responsibility they seek. That concludes my opening statement, Mr. Chairman. We are prepared to discuss the issues raised in the news articles, as well as other matters the Committee may wish to address. While we would have written the news articles differently, at least what was written gives us the opportunity to respond to these concerns.

10  
OPENING STATEMENTS

Mr. YATES. Ordinarily we ask for a statement supplementing the written statement, but I think I would rather get right into the hearing, if you don't mind, Mr. Secretary, and express to you that frankly I was very much disappointed in your statement. I don't think you prepared it. I don't know who prepared it for you, but I just don't believe that it represents you. I think you are much too smart for this statement that we have here, too intelligent to have drafted it. It is a statement that throws up your hands about the BIA, and I refer you to page 2 of your statement. You say, "Because of the diversity of tribes, almost every proposal to change the status quo in Indian country is met with resistance. To attain a consensus among 500 such groups is impossible. To obtain congressional concurrence in major changes has been extraordinarily difficult."

Those are facts, I will accept those, but that is throwing up your hands at the situation.

Mr. Swimmer's statement, I think, was a realistic statement of the problems that he has, and I don't think anybody envies him these problems or the job that he has done, but again, apart from the two suggestions that you made as to what ought to be done, and I think they are worthy of consideration, it leaves us with the problem: Where do we go? Where does the United States go? Where does the Department of the Interior go with the BIA? What do we do in the best interests of the Indian people?

I must say, Mr. Secretary, that in your statement I was kind of shocked that you didn't express any outrage over what the articles are reporting. The articles detailed flagrant wrongs and injustices against the Indian people. The articles were rife with examples of fraud and corruption. It is charged that there is a billion-dollar loss that the Indian people are suffering. I would have thought that you would have been outraged.

Is the BIA so unmanageable that what was described in the articles are commonplace? Are these the things that have to be expected, in view of the condition of BIA? There were no remedies suggested in your statement, I thought. You have four items that were outlined, but I thought those were really band-aid approaches and really didn't address fundamental problems in the BIA.

You say you have confidence in Ross Swimmer. I read the report of what the Indians are saying about Ross Swimmer, and they don't express the same kind of opinion, and I assume some of them will be here today to state why. I assume in their statements today they will say why they don't agree with Mr. Swimmer.

Mr. Swimmer's conclusion, I think, in his statement is that there is so much to do in BIA that it is too much for any single agency to handle. If that is true, should you do as some of the Indian leaders have suggested? Should you be setting up a separate department, not an agency, a separate department for BIA, in order to try to get a handle on all this?

It is true that there are so many activities in BIA that it will require special attention to take care of all of the problems that are raised, in order to take care of the needs and the requirements and the aspirations of the Indian people.



## SPECIAL RELATIONSHIP WITH INDIAN PEOPLE

Let me ask the first question. Don't we have a special—we, the United States—have a special relationship with the Indian people?

Secretary HODEL. Yes.

Mr. YATES. If there is a conflict, suppose the BIA and Indian people find themselves in a conflict over water rights, for example, with BLM; do you still have a special relationship with the Indian people that would require you to take their side?

Secretary HODEL. Yes, and we have done that.

Mr. YATES. Now, suppose you had a conflict with the Bureau of Reclamation, in which the Bureau wants to build a dam and to flood part of an Indian reservation over the protests of Indian people. Do you concede that your special relationship requires you to side with the Indian people in that instance?

Secretary HODEL. Special relationship does not necessarily require siding with the Indian people, because you are suggesting that there is a single point of view or position that is in the best interests of Indian people, agreed upon by Indian people, which is never true. But, I think the special relationship requires an evaluation on our part of what is in the best interest, and support that position. For example, Mr. Chairman, we have received a proposal from water interests in the West that in any case where Indian water rights are involved, we should have two lawyers present. One would represent the Indian rights, and the reason being the water rights people feel that that is who we consistently do represent, to the disadvantage of people who also have rights coming from the Federal Government. Consequently they would like to have two lawyers. We have a little trouble as lawyers thinking that it makes sense to be in essence on both sides of the same case, but it points up the problem that you are touching on.

Mr. YATES. Now, suppose the Indian people or a group of the Indian people have a conflict with an oil and gas company. Should you not be on the side of the Indian people against the oil and gas company?

Secretary HODEL. We should be on the side of what is in the best interests of the Indian people in that dispute, yes.

Mr. YATES. Let's take MMS, for example, and the question of royalties. MMS has taken the position on the question of payment of royalties under regulations that were established for the payment of ceiling prices, that was unfair to the gas companies, and therefore they took the position of the gas companies, did they not?

Secretary HODEL. I don't think, Mr. Chairman, that the special relationship calls for the Secretary or the Department to support an insupportable, inappropriate position, from an equitable or legal standpoint. In other words, I do not think it is even in the long-term best interests of Indian country to maintain an inequitable position on behalf of a tribe or an allottee, if the long-term effect may be to provide uncertainty related to a contract to the point where future contracts or future activities on the reservation, which bring economic activity there, are prevented by that or discouraged by that.

It seems to me that the responsible exercise of that special relationship requires making that kind of evaluation. In other words, I

don't think it is just as simple as asking. "Is this what someone in Indian country is demanding?" and therefore I must and the Department must automatically support it. But rather I think it requires, as with a trustee for a beneficiary, to evaluate what is in the real interest of the beneficiary to the best of their ability and to make that judgment, not just what the beneficiary requests or demands.

#### JICARILLA DECISION

Mr. YATES. Let's take a look at the Jicarilla decision on the question of trust responsibilities. I am reading from a case, Jicarilla Apache tribe, 728 Federal second 1555 in 1984. It says, the court speaking,

If the Secretary is obligated to act as a fiduciary to the tribe in his administration of the tribe's oil and gas reserves, and in his determination of what royalties the tribe is due, then his actions must not merely meet the mineral requirements of administrative law, but must also pass scrutiny under the more stringent standards demanded of a fiduciary. Therefore, the need to determine whether the Secretary owes any duty or trust to the tribe is unavoidable.

The court goes on a little further in the opinion to say, for the same reason,

Because of this trust relationship, the Government in both its executive and legislative branches is held to a high standard of conduct, one consonant with its 'moral obligations of the highest obligation of trust.' For the same reason, whenever doubt or ambiguity exists in Federal statutes or regulation, such doubt is resolved in favor of the tribes.

We then come to what the articles say. They say that Federal Indian programs are a shambles, are plagued by fraud, by incompetence and deceit, that they are strangled by a morass of red tape. The Bureau of Indian Affairs—this is the article, which charges, "The Bureau of Indian Affairs has earned the dubious reputation of being the worst managed agency in the whole U.S. Government."

If my memory serves me correctly, somebody who stated that said that he had the opinion that perhaps the defense agency, the Department of Defense, had that reputation, but he said he thinks that BIA goes beyond that.

Would you like to comment on that?

Secretary HODEL. I would like to comment on several aspects of your question, Mr. Chairman, if I may.

Mr. YATES. Please do.

Secretary HODEL. On the quote from the case which was to resolve doubts in favor of the tribe—

Mr. YATES. The Jicarilla case.

Secretary HODEL. We believe that that is what we essentially try to do. I use the qualifier "essentially," but essentially what we try to do, and I think it is precisely that that has led to the request I mentioned to you earlier from other parties also deriving benefits or rights from the Federal Government asking that they be represented. Because they, I think with some justification, point out that they have what appear to be valid, Federally-based rights which are not being represented by the Federal Government, because when we go into the case we do attempt to resolve the doubts in favor of the tribes.

I don't think that cuts across what I previously said. My understanding of a fiduciary's responsibility is not to do the bidding of the beneficiary, but to do what is in the best interests of the beneficiary. I think we will eventually today get to the basic question. I think a considerable amount of the problem in Indian country today is the fact that we are trying to abide by that standard. At the same time we are telling and responding to Indian country requests for increased self-determination. It is not unlike a beneficiary of a trust, of a minor beneficiary coming of age and saying, "I am to the point where I want to dictate some of the activities of the trust."

The beneficiary has to make a judgment. The trustee has to make a judgment. Does he do what the beneficiary requests at his peril if it turns out subsequently to be wrong, or does he exercise his best judgment which he is prepared later to defend?

If I may tell an anecdote, when Ken Smith, who was formerly manager of the Warm Springs Confederated Tribes of Warm Springs Reservation, was assistant secretary, he was making a presentation to me one day when I was Under Secretary of the Interior. I said,

Ken, what it sounds to me like you are saying is that the tribes want the authority to do whatever they want with their resources. If 20 years later it appears to have been an improvident decision, they want to be able to come back and have the Federal Government make them whole," and Ken, with a wry smile, said, "Well, I think that is right."

I don't blame tribes and tribal leadership for having that aspiration, but I would blame us if we unwittingly acquiesced in that without at least thinking through what was the potential consequence. This is a constant source of tension between whoever is charged with management of BIA and Indian country.

The management question which you raised flows from that, I think. We have a situation in which there is opportunity for substantial tension.

Mr. Swimmer, I can assure you, was not anxious to become assistant secretary. When I interviewed him he had been sought by prior secretaries to take this job. He was known to us as a man who had a broad knowledge not only of tribal government but of Indian country. I finally prevailed upon him by pointing out that in my estimation, Indian country was in terrible disarray. Our handling of it was totally unacceptable.

None of these statements in the articles are new to us. They have come out at hearings before this committee. They have come out in Inspector General's reports. They come out in news reports over time, but this accumulation has been augmented by current stories.

When I talked to Ross about becoming assistant secretary, the point that finally persuaded him was that I assured him that he had a President and a Secretary who wanted to do something about the problem, but honest to goodness, did not have any idea of how to proceed.

We were confronted—any time we sought to make any change in Indian country, we were blocked. There was no clear understanding on the part of the Congress as to what our overall objectives were. Although we had a stated Indian policy, there was no way we

were breathing life into it. Finally, Ross accepted because my feeling was we had an opportunity to try one more time to make a beneficial change. He has made the proposals, which were outlined in my opening statement and which I thought were important, as a means of moving toward what we seem to want in Indian country, more self-determination, greater responsibility on the part of the tribes, not abandoning in any way our overall responsibility, because that responsibility comes to us through treaties and Federal laws.

We have been unsuccessful in that, Mr. Chairman, and the articles catalogue that, and my concern is that when we approached this hearing, I said this is an opportunity to talk not only about those assertions and try to respond to them but also to talk about how, if ever, do we come to some agreement about where we ought to be going.

Mr. YATES. I agree with you.

#### SUPPORT FOR CHANGE IN INDIAN PROGRAMS

Secretary HODEL. You talked about Indians having said some fairly harsh things about Ross Swimmer. I have received petitions asking that I fire him.

Mr. YATES. In increasing number?

Secretary HODEL. No. It has run along at a fairly steady level. It is probably like the petitions the President receives about me as Secretary of the Interior, about the same level.

But who speaks for Indian country? As you well know, tribal leadership changes in some tribes on an annual or even on a more frequent basis. And there is a very substantial disagreement within tribes over the direction that they ought to be going. When you have a change suddenly, there is a new voice saying, "Now we want to go this way."

I welcome this opportunity to discuss these matters with you. I do not believe that we are going to solve this problem unless the Federal Government, which means both the Congress and the Administration, can reach agreement on what our underlying objectives really are. We do not have that agreement today.

Mr. YATES. Have not the Indian people in great measure stated what their objectives are? I think they are the same ones that you have. I think that they want greater self-determination for one thing, and they want a greater say in the control of their resources.

Is that not true, Ross? I think that is what you said in your statement.

Mr. SWIMMER. That is the statement that we are hearing, but when you attempt to do something about it, it doesn't come out that way. I can understand some of the reluctance about the initiatives that I brought up last year. I cannot necessarily understand the reluctance after a year has gone by and we have had agency people go to every tribe and visit with them about these initiatives, yet we are still hearing the same kind of problems.

Back in my predecessor's time, there was a great cry about the bureaucracy of the BIA. Many dollars were taken out of our administrative budget with the idea that there were going to be closures of some of the field offices, and some of these closures were

being demanded at the time by the tribes. Yet when those closures were attempted, the tribes were the ones who came in and said, "No, don't close."

I proposed a major restructuring of the education program, and suggested the tribes should get involved in the development of education on the reservation, that it was much better to run it at that level than from Washington. Almost to a tribe they rejected it out of hand and said, "We want the BIA to continue the education program that it runs today," and it is hard for me to accept.

Mr. YATES. Was the choice you gave them at that point one of either having the BIA run it or having an inadequate sum to run it themselves, in which case, as I understood the options you gave them, the Indian children would have had to go to public schools.

[Brief recess.]

Mr. YATES. When we were interrupted by the illness of the reporter, I think that Mr. Swimmer was making a statement. Had you completed it, Mr. Swimmer?

Mr. SWIMMER. No. I was speaking to the issue of what kind of support we got and some of the difficulties that we were facing, one of which had been in the education area.

You asked if we weren't simply turning these over to the public school systems. My opinion of education generally, and that is both tribal and non-tribal, is that local education works best and encourages parental involvement and that of the school boards. We have a system that runs Indian education at least for 10 percent of the Indian children out there from Washington, D.C. It is a very cumbersome system.

What I advocated last year was that we turn over the money and the authority to tribal contractors and that the tribes get into the business of managing their education programs on the reservations. We would give them the money we are operating on now. There could be other bonuses or benefits provided by Congress and built into the transfer. In the places where this has happened, particularly the example in Alaska, it has worked. We see in that case it wasn't the tribe but rather the State. Indian education improved substantially.

It is my opinion if you turn education over to the tribes or the local public school systems you are going to have tribal involvement because Indian people will run or be involved in school systems on the reservation or locally. You find Indian members on the school boards of the public school systems and Indian people on our school boards.

My point is that we have a fragmented system. On some reservations students have as many as four different opportunities for an educational experience during any one year, and we lose children. They fall through the cracks. Nor do we have knowledge of where kids are going or if they are going at all. There is no one system that is accountable for all this. Our system is supposed to be accountable for 10 percent of the Indian children. There are another 90 percent out there on the reservation who, in many cases, even in other school systems, aren't receiving an adequate education.

If we moved this program to the local level and incorporated it into one system, tribal, tribal co-operation with states, states, local or public, or something that establishes an education program that

is accountable on the reservation and not to some bureaucrat in Washington, D.C., we would be ahead of the game.

The other proposals that I mentioned were brought up after I had spent extensive time visiting tribal leadership in Indian country during my first year in office, as well as during the sum experience of my ten years as being chief of the tribe. Those involved four areas of operation. One was in the alcohol area. We have to do something about that, but not that alone. Education is tied to it; social welfare reform is tied into it also.

I feel we must get people into a work ethic mode. People have to be responsible for whatever they are doing on the reservation and not simply be given checks in the form of general assistance. They can do something. We have proven they can do something. Tied with that comes economic development.

You can't concentrate on any one of those things. And each of those things must be a major commitment by the tribal government, not the Federal Government.

The Cherokee Tribe had over 200 Federally funded line-item programs we had to account for. That is where my 10 cents on the dollar came from. If I have to take what the Federal Government provides and deal with only that, and I don't have the chance to mix and match or create new programs, then I cannot get an effective use of the dollars.

My estimate is I get 20 percent of the use of those dollars that flow down because I am spending all my time counting separate bank accounts, separate accounting forms, separate reporting forms at least 200 times.

#### BLOCK GRANTS AND WILLINGNESS TO CHANGE

Mr. YATES. You are speaking in favor of a block grant, then, aren't you?

Mr. SWIMMER. Exactly. We must stop dictating to tribes that all you can do is take what we have and transfer it to the tribe. The tribe should be able to take the funds, and use that as a tribal budget. They should make out their budget, send it to us and then be held accountable for how they are going to spend the money, rather than simply taking our programs, rehashing them in the same way we have been doing it, and running them the same way we have been doing it on the reservation.

Mr. YATES. Have you advanced this idea to the tribe?

Mr. SWIMMER. I have on several occasions.

Mr. YATES. What did they say?

Mr. SWIMMER. Generally they reject the proposal. They reject it because they fear this is going back to a block grant. They fear if they see all this money—

Mr. YATES. That is understandable, because when this was generally proposed, I think it was 1981 or 1982—

Mr. SWIMMER. It was accompanied by a cut in the budget.

Mr. YATES. Of \$41 million.

Mr. SWIMMER. I made it clear with as much authority as I could, and I might add, none of the proposals I advanced last year contain any budget cuts. In fact, we had to add money in some cases for the operation of some of those items.

We should maintain the level of funding that we have now. It is not the money. It is that we are not spending it the right way. We can do with \$3 billion provided by this government for Indian programs, and the tribes can do a lot more for themselves if they are given that opportunity. But we cannot stay here as a Federal agency that is responsible for the daily lives and care and feeding and housing and clothing and law enforcement and everything for 650,000 Indians and tribes, and at the same time turn over to them that full responsibility. You can't—it is inevitable we are going to have this clash if we don't get out of the way. It is not moving this agency. It is not creating a new one. It is not putting us into some other program. It is getting out of the way.

Mr. YATES. Did you make clear to the Indian people that your block grant was accompanied by the full amount of money?

Mr. SWIMMER. To the degree that I could, I have. We did not advance any kind of a budget cut.

I think I need to say one other thing. There is an implication in these articles that we have 12,000 BIA employees who are uncaring and callous. That is not true. It is simply not true. This is not representative of the standards that we have in the Bureau of Indian Affairs.

Mr. YATES. When you say this, what do you mean?

Mr. SWIMMER. These articles and this publicity are not representative of the standards we set. It is representative of the exceptions to those standards.

We are faced with allegations that go back ten years or more, many of which we have acted on. But we continue to get into this conflict of responsibility and authority between whether we should be making the decisions for the tribes and the individual Indians or should they make them for themselves.

We have people who come to us and say, "We demand you execute this lease, we demand you do such and such." If we acquiesce in those demands, we can immediately be called on the carpet for breach of responsibility. If we fail to, we can also be charged with breach of trust responsibility.

Mr. YATES. Way back—here is a report of the Inspector General. Significant, long-standing problems within the Bureau of Indian Affairs is the subject, and it is sent by the IG. It says, "We have completed a summary and analysis of audit reports we and our predecessor organizations have issued since 1967 covering various aspects of BIA programs and activities . . . We reviewed 261 audit reports . . ." and they conclude, "Although some improvements may have alleviated problems at the specific sites where they were identified, BIA has rarely acted to correct problems Bureauwide." That is the Inspector General of Interior saying BIA just doesn't do it. That doesn't bear on what you have just testified except insofar as it shows that the corrections aren't taking place.

Now, I get the impression from your testimony that the Indian people don't want changes. Is that what you are saying?

Mr. SWIMMER. The impression I get is that there is great fear in Indian country of change, because they know the status quo. They may not get everything they want, but they know how to get it, and they know they can come to Congress. They can get add-ons

and they can come to the Bureau and they can beat us over the head with failures here and failures there.

Mr. YATES. There are lots of them, aren't there?

Mr. SWIMMER. It is a system they know, and I think the tribes, generally speaking, are opting for this particular system rather than seeking major changes.

#### THE MC CLANAHAN CASE

Mr. YATES. We will have a chance to explore that later in the day when we have some Indian leaders, leaders of Indian tribes who want to come in and recommend certain changes in the structure, and we will let them comment on the fact the Indian people don't want to move away from the status quo.

Now, let's turn to some of these charges that have been addressed in the article. You know of the Austin Walker case and you know what the court said in that case. They called it a deliberate breach of fiduciary duty by favoring the oil companies. You are familiar with the McClanahan case?

Mr. SWIMMER. Yes.

Mr. YATES. The judge said the Federal officials had "severed at the knees" the interest of the Indians when they "concocted a dubious legal theory" and approved extension of leases without the owners' consent. In Oklahoma, BIA and MMS were trying to collect \$80,000 for an oil company from a 68-year-old woman. An independent audit subsequently revealed the firm owed her \$64,000.

The articles also allege area offices have allowed firms to drill oil and gas wells without a lease on Indian land. Government attorneys have back-dated leases for oil companies. What do you say about these?

In the McClanahan case the district judge in Albuquerque found BIA and Interior generally seemed to have been more concerned throughout the leasing process with their relationship with Mobil than their relationship with the Indian owners. That counters what the Secretary said in his testimony today.

Judge Mecham is the one who talked about severing at the knees the interests of the Indian people, and the dubious legal theories, and he cited there, he stated his opinion that the Secretary simply cannot approve leases without unanimous consent of the Indian owners.

Now, as I understand it, in your proposed regulations you propose that leases be approved without the unanimous consent of the Indian owners, contrary to what the opinion of the court was here.

Mr. SWIMMER. It is my understanding that was recommended in the proposed mineral leasing regulations. This recommendation came from the Solicitor's office and from the operating people largely because of this particular issue.

What we have is a situation where we have a few lessors who are able to hold up the deal for all the rest of the lessors. In fact, you could get down to a situation where you have one very fractional lessor, say a 1 percent owner of minerals who says, "I don't want to, I don't want the deal."

Mr. YATES. Why didn't you appeal Judge Mecham's decision then?



Mr. SWIMMER. I believe it is under appeal.

Mr. TARR. That isn't a final order.

Mr. YATES. It is certainly clear from what he says that you have to get the consent of all the Indians before you can go into a combined lease.

Mr. SWIMMER. That may be the law.

Mr. YATES. Is that on appeal now, Mr. Tarr?

Mr. TARR. No, that is not a final decision as yet. What the judge was referring to was an opinion of one of my predecessors, Solicitor Marx at the conclusion of the Carter administration, in which he applied common law principles to the statute. It is not clear to me at this point whether that is right or wrong. This is my first opportunity to look at that and we are looking at it closely.

Mr. YATES. Well, we have the decision of the court, memorandum and opinion order dated August 14 this year.

Mr. TARR. The time for appeal has not begun to run on that.

Mr. YATES. Regardless of that, why would you still put it in the regulations where the court has distinctly said, and I quote the court, "I hold that Section 396 does not authorize the Secretary to approve the lease of allotted land in the absence of unanimous consent on the part of Indian owners of the tract to be leased." That, I take it, is the law at the present time until it is reversed, right, Mr. Tarr?

Mr. TARR. The point at which the judge enters the order, that is correct.

#### PERCENTAGE OF LEASE HOLDERS COMMITTED TO A LEASE

Mr. YATES. Why do you put into your regulations, that it is perfectly proper for the Secretary to approve the contract for less than 100 percent of the undivided mineral lease interests committed to the contract when the Secretary has determined it to be in the best interest of the Indian owners, provided 66⅔ percent or more of the undivided oil and gas is committed to the lease? And you want comments on it. Suppose that becomes final. Would you still have that in your regulations? Suppose the court's order becomes final.

Mr. SWIMMER. In this case it would have been in the regulations. The regulations were completed in 1983 and 1984 after comments were received. I presume comments were received about that particular issue, and it is a burden to the individual allottees to require unanimous consent. If 99 percent of the owners want the lease and 1 percent say no, they can hold up the other 99 percent.

The point is that when those regulations were being prepared, it is my understanding this case had not been decided.

Mr. YATES. But isn't this something you should ask Congress to change instead of doing it yourselves?

Mr. SWIMMER. If it needs to be, I agree.

Mr. YATES. Mr. Regula.

Mr. REGULA. Is it statutory to require unanimous consent?

Mr. TARR. That is the judge's interpretation of the statute. The previous solicitor had the view the statute did accommodate——

Mr. REGULA. There is some ambiguity in the statute at least to the point the judge is trying to interpret what the statute says.

Mr. YATES. The judge's decision currently is the law. Even if it isn't final—I don't understand why BIA would go ahead with regulations, proposed regulations.

Mr. TARR. Mr. Chairman, there is a benefit in having that proposal on the table, which is to know whether or not, what the view of Indian country is with regard to this problem. It is a practical problem.

The question is, which beneficiary do you serve here? Do you serve the 60 percent of the owners who want a lease or do you serve the 30 percent who don't want a lease? It would be helpful I think for us to have the comments from Indian country on that proposal as to how it is viewed.

Mr. YATES. I didn't know Ross could get opinions from Indian country.

Mr. SWIMMER. I can get plenty of opinions.

Mr. YATES. You don't get any unanimity.

Mr. SWIMMER. Right.

Mr. TARR. If the judge's opinion holds and we are in that position, we will have to come back to Congress.

Mr. YATES. The point is, Mr. Tarr, that your regulations proposed to go final with this provision. You weren't seeking opinion of Indian country again. You sought that opinion four years ago before this decision. Even after this decision, you proposed to go forward the way it was before that.

Mr. SWIMMER. When these regulations were being published as final, I checked with the people listed on the regulations as submitting comments, because comments can be made even when they are in final. I think of the one or two comments that came in, none related to that issue.

Mr. YATES. Mr. Regula?

Mr. REGULA. I think if the regulations are in conflict with the law as set forth in case law, the case law would be binding. It seems to me there is some value in exploring this as they have done in the proposed regulations so that in the event BIA chooses to come to the authorizing committee with the proposed changes in the statute, that you have some idea what you should propose, should you propose 80 percent, 90 percent, 66 percent? And I assume that one point in proposing these regulations is to get some determination as to what would make an equitable statutory requirement.

Secretary HODEL. What would be helpful for us would be to have some feeling of how key members of this Committee and the Congress might feel about such a proposal. Basically our problem is this. We are going to be reviewing whether the court order should be appealed or not. That will partly depend on whether we think we can win it on appeal. But if there were a clear legislative avenue open to us based upon comments we received, we could lay out what those comments are to the Congress and say we think it is intolerable to permit a fractional interest to hold hostage the larger share. But we need legislation, we believe, to do that if we don't think we have a good shot on an appeal.

It would be helpful to us if we had some feeling whether at least in principle you and Mr. Regula and others thought we were on the right track. If your feeling is we should permit a one-tenth of 1

percent interest or a 1 percent, 10 percent or 20 percent interest to say no, even though the majority of the interests want a lease and BIA thinks it is in the best interest of all of the allottees, we are going to let that percentage say no, that will tell us our chances on legislation aren't very good either.

Mr. YATES. Speaking for myself, I want to do what the Indian people want to do. If your Cherokees in Oklahoma, or the Crows or any of the others of the rich oil-owning tribes want to provide for leases for less than 100 percent, that is their privilege.

Mr. SWIMMER. But we violate the trusteeship.

Mr. YATES. I don't think that is true if the tribe has taken that action. I don't think the tribe took that action in the McClanahan—

Mr. SWIMMER. Those were allottees. They took the action.

Mr. TARR. They were individual allotments though.

#### APPEALING THE MC CLANAHAN CASE

Mr. REGULA. Two questions. One, in the event you were successful on appeal, then what becomes the controlling action? If, say, the appeal were successful and the case law as set forth here would be rejected, at that point then what controls?

Secretary HODEL. And presumably the prior Solicitor's opinion would be applicable and would permit a reasonable regulation—

Mr. REGULA. Which would make your regulations, once finalized, binding.

The second question: As a matter of law, is there such a thing as a partition suit that lies? Because that is what you would do if you were in the normal course of events, if you are an undivided interest in any realty, you could bring a partition suit to exercise your right to sell or lease.

Mr. SWIMMER. Not in these kinds of cases in most areas. In Oklahoma partition suits can be forced on the other owners. In most of the rest of Indian country, they can't be. That is one of our problems with fractionated ownership. It continues to be inherited in fractions and there is no legal remedy.

Secretary HODEL. Didn't Congress attempt to pass legislation—

Mr. SWIMMER. There is provision in the law that would allow the land—

Secretary HODEL. There was a provision in the law which said an interest below a certain level would no longer have to be recognized, and that has been overturned so that all interests, however small, need to continue to be recognized.

Mr. TARR. There is a repairing piece of legislation. We are at the moment seeking from Justice their view of whether or not it has solved the problem the Supreme Court found last term.

Mr. REGULA. I assume fractionalization results from inheritance where it goes down and keeps getting smaller.

Mr. SWIMMER. Yes.

Mr. REGULA. Thank you, Mr. Chairman.

#### THE AUSTIN WALKER CASE

Mr. YATES. Let's talk about the Austin Walker case where the judge said, Judge Cook—I quote from the judge's order: "The peti-

tion for conveyance of the lease was prepared by Albert Kelly as attorney of record for Austin Walker, the petitioner. However, Albert Kelly was hired by Bristow Resources, Inc.," that is the oil company, "to procure the oil and gas lease from Austin Walker. This represents a complete breakdown in the fundamental principles of legal representation. . . . This recognized and customary procedure for commencing approval hearings creates an inherent conflict of interest by the attorney's apparent dual representation. . . . The Court finds that the procedural aspects of the state court approval process are fatally flawed. There is no justification for the Department of Interior to permit this type of procedural masquerade. . . . It is the Department of Interior's responsibility to change this procedure."

Now, I am told that procedure is still going on in the allotment cases in Oklahoma. The oil companies make their cases with the allottees, take it into court and they are making the representation for the allottees. Where is your solicitor?

Mr. TARR. Let me say I am not going to defend the actions of our regional people as described by the court in that case.

Mr. YATES. In the Austin Walker case.

Mr. TARR. They are totally unacceptable.

Mr. YATES. I understand you are appealing that decision?

Mr. TARR. No, that case has been settled and there is a final order.

Mr. YATES. I will ask about that in a second. That was a case in which the court granted judgment against the Government of the United States for over \$600,000 in tort, a tort case, for a wrong done by your office in misrepresenting or failing to represent the Indian allottees properly.

When I talked to your assistant solicitor, he said at that time, which was some weeks ago, he said that you were appealing on the grounds the judgment was excessive. That has been dismissed and that is settled now, you say?

Mr. TARR. Yes.

Mr. YATES. I asked Mr. Vollmann at the time the facts on the case where the company came in and settled whatever it had to settle with Austin Walker, apparently without his being able to consult with you or any lawyer, for \$4,000 for all the oil they had taken out of his allotment, which had a value something like \$600,000, according to an appraisal, if my information is correct.

And the question I asked Mr. Vollman was, why didn't the government sue the oil company to get a payment by the oil company rather than having the government foot the entire bill? And he said they haven't looked into it.

Mr. TARR. My understanding is Mr. Vollman indicated to you in your conversation that that issue had been looked into and it was the considered judgment of our office and the Department of Justice that we did not have the basis for a claim and that our participation in the suit would not be beneficial to the Indian owner here.

I would like to ask you a question about the procedure.

Mr. YATES. It is still going on, I understand.

Mr. TARR. Let me explain the difficulty we have. The statute sets up the state courts of Oklahoma as the entity which settles these lease arrangements.

Mr. REGULA. Federal statute?

Mr. TARR. Federal statute. It imposes on the courts of Oklahoma—

Mr. YATES. 1906, I think it was.

Mr. REGULA. When you say districts—

Mr. TARR. State courts of Oklahoma. The Congress has placed on the state courts of Oklahoma this responsibility. The way these normally get into a court, as you might suspect, is either the landowner or the oil company approach one another and they make their deal and then at that point there is an assumption, I am sure, on the Indian landowner's part that the only thing left is a perfunctory confirmation by the court and he will get his money.

Often times, there is a bonus that will be handed over at the close of the court proceeding. Under the statute, there is only a provision for a ten-day notice to our lawyers that this is going to happen. Generally when we get that notice in the past, we have not been advised—

Mr. YATES. Who gets that notice?

Mr. TARR. That is the obligation of the petitioning party and, yes, it is quite common for the attorney for the oil company to file that proceeding in order to get the confirmation.

#### LEGAL PROCEDURES FOR LEASING ON INDIAN LAND

Mr. REGULA. Does every lease, even though the Indian landowner and oil company reach a meeting of the minds, still have to be ratified by the court and in effect you are, the BIA is a party to that ratification?

Mr. TARR. No, we are not a party per se.

Mr. REGULA. You do get a notice 10 days before the hearing of ratification and you have an opportunity if you file to say that equity is not being achieved on behalf of the landowner, that he has been misrepresented by the company. You have an opportunity to enter a plea or an appearance.

Mr. TARR. We have some procedural difficulties which we are taking steps at the moment to correct.

Mr. Vollman has provided me with a draft letter he is sending out to the courts of Oklahoma to try to get their assistance in this problem. Normally, we get a 10-day notice with no notice of the whereabouts of the landowner.

Generally, the first opportunity my lawyer has to see the Indian landowner is when he walks into the court for the proceeding. At that point, the Indian is expecting to go through a perfunctory proceeding and receive a \$1,500 check at the end of the proceeding. We become an obstacle at that point to the realization of the Indian landowner's financial interest in his assets. At that point it is very difficult for a lawyer to establish an attorney-client relationship where he says, "Now, look, you have got to pay attention to the appraisal on this property," and whether or not you should get bids. And, of course, the landowner is thinking bids mean I have got to spend several weeks going out with competitive bidding and I am not going to get my money right away. The other co-owners of the property may not be properly heard from, either.

It is very difficult at that point to establish the attorney-client relationship. We are trying to enlist the support of the Oklahoma bar and the courts to provide us with more information when they give us a 10-day notice so we have an opportunity to contact the landowners sooner. We cannot prevent, there is no way we can prevent this petitioning by the oil company on behalf of the landowner.

It is not uncommon in tort cases in other areas for an insurance company lawyer to file on behalf of a minor with whom they are settling and to take that to court—that is how the process gets started for the court approval of the minor's settlement.

Mr. YATES. As a result of this procedure, isn't the Government of the United States being subjected to the possibility of many more tort suits?

Mr. TARR. If we fail to give as much information as we have, as the judge found we did not in this case, that would be accurate. We do have some—

Mr. YATES. Is there any doubt the judge was correct in this case?

Mr. TARR. There was a dispute on the facts.

Mr. YATES. As to whether he represented the petitioner properly? That isn't shown in the record. I mean the record shows he didn't participate at all.

Mr. TARR. He did go to the trial and there was a dispute about whether or not he told—in fact there is some indication he told the judge about the production level—or perhaps he didn't tell the landowner. He participated in the proceedings, the judge said. As far as I am concerned, he didn't do enough to be considered to have participated. As far as I am concerned—

Mr. YATES. Schultz was the one who entered his plea as attorney of record for petitioner, not Herren. Schultz has since disappeared, I understand.

Mr. TARR. I don't know the answer to that.

Mr. REGULA. Was the allegation in the case that the BIA attorney did not adequately represent the landowner?

Mr. YATES. Not only that, but pressed to get the lease through. Herren was the one pushing.

Mr. REGULA. The landowner was not pressing in that case.

Mr. TARR. That is not accurate, Mr. Chairman.

Mr. YATES. The landowner didn't know quite what his rights were in that case. In the first place, the oil company got hold of someone named Austin Walker who didn't own the land and brought him into court and the court approved the lease with the non-owner Walker. That is what happened in the first case and the oil company started to drill on the land based upon—

Mr. REGULA. But they didn't have a proper lessor.

Mr. YATES. They didn't have a lessor. The legitimate Austin Walker came along to find out why he wasn't getting his allotment for some grazing fees.

Mr. REGULA. He discovered he had an oil well.

Mr. YATES. That is what happened. When he didn't get his fees, he went to see a lawyer. He was grateful he found a good lawyer.

Here is Mr. Herren speaking in court. Mr. Herren says, "If it please the court, we have no objection to the sale and we move the sale be approved." This is Herren in court.

Secretary HODEL. Is that the sum total of his participation, Mr. Chairman? Did he say nothing else during the course of the proceeding?

Mr. TARR. It would be quite normal for our attorney to move for confirmation if he has done his job properly.

Mr. YATES. The court says you are willing to waive competitive my motion that the land be offered for competitive bidding. We're dealing with an entirely different situation. . . . I fail to see how the Court can satisfy itself that this individual is getting the highest possible consideration unless it's offered for competitive bidding." He withdrew that subsequently.

Mr. TARR. The landowner said he did not want that. I am not defending the case——

Mr. YATES. I don't know how you can defend the case.

Secretary HODEL. It needs to be clear, Mr. Chairman, we are not attempting to defend that case.

Mr. YATES. Why are we talking about this? Has the Department of Interior ever sued an oil company?

Mr. SWIMMER. On numerous occasions, for royalties and underpayments.

Mr. YATES. But have you ever sued it——

Secretary HODEL. Yes, the Department of Interior has, and it is the way we attempt to collect appropriate fees. I don't think it is fair to say—it is Interior through MMS—we are trying to do the job. May we supply it for the record?

Mr. YATES. Oh, sure.

Secretary HODEL. I hope we have something to supply.

[The information follows:]

## ACTIONS AGAINST OIL COMPANIES

Following is our response to your request to provide for the record all cases which the United States has brought against oil companies on behalf of the Indians. The following list is limited to cases filed during this Administration (1-20-81). As a point of clarification, most cases involving Indian minerals arise as a result of an administrative determination by the Department in favor of the Indians which is then appealed by the oil companies in district court. Therefore, our position in litigation is usually as a defendant protecting the Indian mineral interests.

1. Kenai Oil & Gas, Inc. v. Department of the Interior, 671 F.2d 383 (10th Cir. 1982)

This case involved the disapproval of a communitization agreement by the BIA Area Director based on a determination that it was not in the Indians best interest to communitize the leases when the primary terms were due to expire shortly, thus allowing the Indians the opportunity to release for larger bonuses and better royalty rates. The Tenth Circuit Court of Appeals held that it was within the Secretary's discretion to consider economic factors in determining what was in the best interest of the Indians and that the Secretary's decision was not limited to consideration of merely geologic and conservation factors.

2. Cotton Petroleum Corporation v. United States Department of the Interior, et al., Decided November 3, 1986 (U.S.D.C. W.D. Okla.)

This case involves the appeal of a decision issued by the Deputy Assistant Secretary--Indian Affairs (Operations) on January 13, 1984. The Assistant Secretary reversed the Area Director's decision to communitize the disputed Indian tract and held that the tract was unleased acreage within the communitized area. The Assistant Secretary directed Cotton Petroleum to submit an accounting of past production and to make certain payments to the Indian mineral owners. On June 19, 1984 the Assistant Secretary issued a second order stating that Cotton Petroleum had failed to make the payments required by the January 13, 1984 decision and stating that this order constituted a Notice of Violation under the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1719.



The United States District Court for the Western District of Oklahoma issued a decision on November 3, 1986 holding that the Assistant Secretary had not acted arbitrarily and capriciously nor abused his discretion in the January 13, 1984 decision. The case was remanded to the Secretary for decision as to how an equitable lease should be negotiated and what bonus the Indian lessors should receive. Cotton Petroleum appealed to the Tenth Circuit. The case has been fully briefed and is awaiting decision.

3. Woods Petroleum Corporation, et al. v. United States Department of the Interior, et al., No. CIV-36-1623-A (U.S.D.C. W.D. Okla.)

This case involves the appeal of Woods Petroleum from a decision issued by the Assistant Secretary--Indian Affairs on May 15, 1986. In that decision, the Assistant Secretary found that the Area Director had not acted in the best interest of the Indian mineral owners when he approved the disputed communitization agreement, reversed the Area Director's decision and held that the Indian leases had expired. The Assistant Secretary's decision was based partially on evidence in the record that if the leases were released, the Indian mineral owners would receive substantial bonus monies. The lands were subsequently released to co-defendant Tomlinson, Inc. for \$400,000 in bonuses. Woods Petroleum has alleged that the Assistant Secretary abused his discretion in considering economic factors in making his determination. The Judge has ruled from the bench that the Assistant Secretary did not abuse his discretion. A written order to this effect is expected shortly.

4. F. Howard Walsh, Jr. v. Deputy Assistant Secretary--Indian Affairs (Operations), IBLA No. 86-98

This action is still in the administrative process and is presently scheduled for trial before an Administrative Law Judge on December 7, 1987. Walsh is appealing a decision issued by the Deputy Assistant Secretary billing Walsh for over a half million dollars for lost gas from an Indian lease due to unauthorized venting. The Interior Board of Land Appeals remanded the issue of damages to an Administrative Law Judge for a determination of the actual amount of gas lost and the compensation owed the Indian mineral owners.

5. Atlantic Richfield Company & Murchison Brothers v. Donald Hodel, et al., No. 86-2472, U.S. District Court

Suit to enjoin enforcement of MMS order requiring plaintiff to pay unpaid royalties to Indian Tribe.

6. Tricentrol US Inc. v. United States, No. CIV 86-212-GF-PGH,  
U.S. District Court

Suit to enjoin enforcement of MMS order requiring plaintiff to pay royalty on severance tax reimbursement.

7. United States v. Bill R. Long, No. CIV 87-1393-T

Suit brought for failure to comply with MMS order to pay additional royalties for failure to protect from drainage.

8. Chevron U.S.A., Inc. v. Hodel, No. CIV 87-1211 JC, U.S.  
District Court

Suit by Chevron to obtain a refund of royalties and interest paid to MMS for off-lease storage fees paid by purchaser to Chevron's predecessor in interest for uranium from two Navajo allottee leases.

Following is a list of appeals pending before the Department involving Indian leases and assessments against oil companies for flared gas, late payment charges and additional royalty charges.

- |             |   |
|-------------|---|
| 83-0006-IND | Dietrich Resources Corporation<br>- Payment of additional royalties.  |
| 85-0035-IND | Conoco Inc.<br>- Assessment of late payment charge.   |
| 85-0125-IND | ANR Production Company<br>- Additional royalties. NTL-5.  |
| 85-0159-IND | Roy Lawrence Drilling Company, Inc. and Phillips<br>Petroleum Co.<br>- Royalty value of gas using FERC ceiling price<br>vs. sales contract price. Section 102 filing<br>delayed by lessee. NTL-5. |
| 85-0162-IND | Koch Oil Company<br>- Incorrect reporting and payment of royalty under<br>communitization agreement.  |
| 85-0228-IND | Mobil Exploration and Producing Services, Inc.<br>- Mobil (Superior) vs. other working interest<br>owner's liability for underpaid royalties.   |
| 85-0255-IND | Mesa Petroleum Co.<br>- Flared gas.   |
| 85-0256-IND | Mesa Petroleum Co.<br>- Royalty value of gas. Appellant wants to deduct<br>15 percent of value paid to processor. NTL-5.  |

85-0298-IND The RAM Group, Ltd.  
- Royalty underpayment by predecessor lessee.

85-0312-IND Roy Lawrence Drilling Company, Inc. and Phillips  
- Late payment charges. NTL-5.

86-0133-IND Tricentrol United States, Inc.  
- Valuation of gas at less than NGPA price/NTL-5.

86-0195-IND Tricentrol United States, Inc.  
- Late payment charges.

86-0211-IND Inexco Oil Company  
- Allocation of production in unit. Blanchard case.

86-0347-IND Sanguine, Ltd.  
- Excess royalties under Blanchard.

86-0356-IND The RAM Group, Ltd.  
- Underpaid royalty under major portion analysis by predecessor lessee.

86-0385-IND ARCO Oil and Gas Company  
- Natural gas royalty value under NGPA Section 108 & 105.

86-0397-IND Santa Fe Southern Pacific Corporation  
- Dispute as to proper payor. Reconciliation of account balances.

86-0441-IND Peabody Coal Company  
- Adjustments to gross realization and royalty on crushed rock.

86-0472-IND Wilshire Oil Company of Texas  
- Late payment charges.

86-0489-IND Tricentrol United States, Inc.  
- Value gas at highest NGPA price/NTL-5.

86-0494-IND Santa Fe Energy Company  
- Interest charges.

86-0495-IND Midcon Central Corporation  
- NTL-5.

86-0512-IND Raymond T. Duncan  
- Unauthorized flaring/venting of gas.

86-0555-IND Page Petroleum, Inc.  
- Underpayment of royalties.

86-0558-IND Chase Energy, Inc.  
- Underpayment of royalties. Liability of lessee vs. purchaser. Liability of current lessee vs. former lessee in bankruptcy.

86-0591-IND Diamond Shamrock  
- Interest charges.

86-0598-IND William Perlman and Amoco Production Company  
- Underpayment of royalties/NTL-5.

86-0600-IND Sanguine, Ltd.  
- Late payment charges.

87-0001-IND The RAM Group, Ltd.  
- Late payment charges on underpayment by predecessor lessee.

87-0002-IND The RAM Group, Ltd.  
- Late payment charges on underpayment by predecessor lessee.

87-0009-IND Wellhead Enterprises, Inc.  
- Deduction of compression charges from royalty payment.

87-0054-IND Bow Valley Petroleum Inc.  
- Underpayment of royalties.

87-0056-IND Bow Valley Petroleum Inc.  
- Underpayment of royalties.

87-0088-IND Tom Brown, Inc.  
- Denial of transportation allowance request.

87-0106-IND L.F. Peterson  
- Underpayment of royalties.

87-0141-IND Bow Valley Petroleum Inc.  
- Underpayment of royalties.

87-0147-IND Montana Power Company  
- Underpayment of royalties.

87-0179-IND Mapco Inc.  
- Late payment interest charges.

87-0244-IND Long Royalty Co.  
- Working interest due Cheyenne and Arapaho Tribes.

87-0248-IND Peabody Coal Company  
- Underpayment of royalties.

87-0264-IND Frank W. Podpechan  
- Additional royalties due on net profit share Navajo lease.

87-0291-IND Cotton Petroleum Corporation  
- Royalty valuation methodology.

87-0292-IND Tenneco Oil  
- Royalty due on Indian leases exempt from windfall profit taxes.

87-0293-IND Sun Exploration and Production Company  
- Royalty due on Indian leases exempt from windfall profit taxes.

87-0294-IND Grace Petroleum Corporation  
- Royalty due on Indian leases exempt from windfall profit taxes.

87-0295-IND Conoco Inc.  
- Royalty due on Indian leases exempt from windfall profit taxes.

87-0296-IND Cities Service Oil and Gas Corporation  
- Royalty due on Indian leases exempt from windfall profit taxes.

87-0297-IND Fina Oil and Chemical Company  
- Royalty due on Indian leases exempt from windfall profit taxes.

87-0298-IND Marathon Oil Company  
- Royalty due on Indian leases exempt from windfall profit taxes.

87-0315-IND Conoco Inc. and Tenneco Oil Company  
- Compensatory royalty assessment.

87-0318-IND Peabody Coal Company  
- Late payment interest charges.

87-0319-IND ANR Production Company  
- Late payment interest charges.

87-0325-IND Sun Exploration and Production Company  
- Late payment interest charges.

87-0326-IND Farmland Industries, Inc.  
- Royalty due on Indian leases exempt from windfall profit taxes.

87-0331-IND	Woods Petroleum Corporation - Late payment interest charges.
87-0338-IND	ANR Production Company - Late payment interest charges.

Mr. YATES. I was going to say, I hope you do, too. That is why I asked the question.

#### SIDING WITH THE INDIANS OR THE OIL COMPANIES

Reading all these articles and reading all these cases, I come to the conclusion, or it is charged in those articles that BIA tends to go with the company rather than the Indians.

Secretary HODEL. Can I go back and make a point I think we have overlooked here. The Austin Walker case is an egregious and outrageous situation.

Mr. YATES. It is indeed. So is McClanahan.

Secretary HODEL. You not only have the enormous difference in value but the false identity of the beneficiary in this case. But earlier you were pressing us as trustees to do what it was that the Indians want. In these situations, as Solicitor Tarr has so clearly pointed out, by the time we get to that case it is often likely we don't know and in this case obviously did not know, who Austin Walker really was. But the alleged Austin Walker said, "I want this to go through, I want my money."

Now, I don't think, going back to our earlier discussion, that it is appropriate, and I think the Solicitor totally agrees, as does the Assistant Secretary. It is not appropriate in our opinion simply to abide by the wishes of the beneficiary. We have to take a look and say, is this the right thing to do. At that point the beneficiary may become outraged himself because we are depriving him of his expectation. But I think the Austin Walker case highlights the fact that you can't put us in the position on the one hand of having to do precisely what it is we are demanded to do and at the same time exercise our full trust responsibility. And it is a point Mr. Swimmer has been trying to make throughout and I think it is a serious problem.

Mr. YATES. I don't know whether that is the answer. I don't know whether whether we can continue to have confidence in the BIA and Interior in view of these cases that we are discussing at the present time if one of the Indians who has a resource wants to make a deal and you want to check to see if he should make the deal. I don't know why he shouldn't be able to get himself a lawyer or some expert to give him advice in addition to the BIA.

You have so many conflicts. You have to worry about either BLM in some instances; you have to worry about water rights of other claimants. He has to get outside help.

Secretary HODEL. Which he clearly has the right to do now, but does not do now, and the question is, can we protect him from himself or the slick salesman who comes in and sells him something? In fact, Mr. Chairman, we do have authority and attempt to exercise it in those kinds of cases and, as you know, when we don't approve an Indian contract we receive all kinds of complaints that we are substituting our judgment for the desire of the tribe or the individual involved. That is our—

Mr. YATES. Of course that is what is happening to the Crow now, isn't it? With Mr. Real Bird. Crow is trying to get more money for the Crow people for the leases.

## GAMBLING OPERATIONS

Secretary HODEL. That is what is happening in my refusal to approve the gambling operations.

Mr. YATES. That is one I don't know about. Tell me about that one. Are you talking about bingo?

Secretary HODEL. I don't mean bingo. Our refusal to approve parimutuel betting on Indian reservations. We have had proposals for that. We have opposed it and I can assure you in those cases the tribes that aspired to have—we are not talking a few dollars, very sizable amounts of money—have objected enormously to substituting our judgment as special trustee for their desire to do what they think is economically beneficial.

Mr. YATES. They want to set up another Las Vegas?

Secretary HODEL. We have had horse racing, parimutuel, high stakes, and all of the above. We have not objected to bingo, high stakes bingo, which was a policy call on my part when I came in as Secretary. I met with a handful of representatives from Indian country; I realize now in dealing with a handful of representatives I did not necessarily have representatives of all of Indian country.

## CHANGES IN SOLICITOR'S OFFICE

Mr. YATES. As a result of the Walker, McClanahan case, the Jicarilla and Quinault cases, have you ordered any specific changes in BIA and the solicitor's office?

Mr. SWIMMER. We have sent notices to the field.

Mr. YATES. To do what?

Mr. SWIMMER. For one thing, in the Austin Walker case, there were, in my opinion, plenty of guidelines to avoid what happened there. All of the protections of the system broke down and, as I said, that is an exception to the standard we set up there. We should go forward with appraisals, yet we went to court and asked for a waiver. We should identify the individual who claims to be who he is and make sure he is the right person. There are all kinds of things we could have done to prevent this occurrence, and every single one of the systems failed. We advised our offices that as far as the procedural work by the Bureau of Indian Affairs, that we will insist on those kinds of things being done properly in the future.

Mr. YATES. The court said it is the—I quote from the court decision.

It is the Department of Interior's responsibility to change this procedure. Until such time, the trial attorneys within the Office of the Solicitor cannot and must not solely rely upon representations made to them by the private attorneys to the exclusion of their individual judgment and responsibility. To do so is negligence and a breach of their statutory duty to represent the best interests of their clients, who are title holders of restricted Indian land."

Mr. TARR. Could I respond to that? That is not the office procedure the judge described there. The office procedure has never been that my attorneys are to listen to the oil company's attorneys for any representations about any of those things. As soon as the judge's opinion was out and we had a chance to read it, I wrote a memorandum to all of my attorneys and I reminded them that was not office procedure and that they had an obligation to be attor-



neys for the Indian landowners and could not shirk their responsibility as an attorney.

What we did—let me just outline. This first came to my attention when the U.S. Attorney in Oklahoma suggested we should settle it. At that point I initiated an investigation through my Associate Solicitor of Indian Affairs to look into how we were doing these cases in Oklahoma.

When the judge announced from the bench he was going to rule against us and find us negligent, I sent out a special assistant to the Tulsa office to look at all those procedures, and he came back and reported to me. Shortly thereafter, the opinion came out, and at that point I removed the individual involved, Mr. Herren, from all Indian matters and from any management responsibilities in the office. He subsequently chose to resign about a week later. So we resolved the personnel issue at issue there.

Procedurally, I installed, then, Mr. Vollmann, who has about 10 years of experience in the Department as an Indian lawyer, and whom I consider an expert. One of the charges I gave him was to look at these procedures very carefully, review the court's decision and do what we can to solve any of these problems. Mr. Vollmann has chosen to remain there as the Regional Solicitor, and he is now deeply engaged in that activity. He is reaching out to the courts, to the bar, to Indian country, and setting up internal control procedures in the office, one of which is that every one of these cases requires a report to be made that is then reviewed by the supervisor to make sure the procedures have in fact been followed. We get down to the one procedure, as I indicated——

Mr. YATES. What procedures?

Mr. TARR. That you get an appraisal.

Mr. YATES. Would you please place into the record the procedures that you require now which you think have changed the situation so that cases like the Austin Walker will not reoccur?

Mr. TARR. I would be happy to, Mr. Chairman. And we are still trying to refine those to make sure that we don't have other situations of this kind.

[The information follows:]



## United States Department of the Interior

OFFICE OF THE SOLICITOR  
WASHINGTON, D.C. 20240

NOV 25 1987

Honorable Sidney R. Yates  
Chairman, Subcommittee on Interior of the  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

Re: Oversight Hearings on the Bureau of Indian Affairs

Dear Chairman Yates:

At the hearing before your subcommittee on October 27, 1987, you requested that I provide you with the procedures that have been undertaken by the Southwest Regional Solicitor's Office to prevent a recurrence of the events which led to the decision in Walker v. United States, 663 F.Supp. 258 (E.D. Okla. 1987). This letter responds to that request.

The court in the Walker case found that government representation of an Indian was improper in an Oklahoma state court proceeding to approve an oil and gas lease on the Indian's land. Under existing procedures for these types of actions, attorneys for the lessees file petitions to approve the leases on behalf of both Indian owners and the lessees. The court in Walker felt there was an inherent conflict of interest involved, calling such procedures "fatally flawed." The court felt that Indian owners would be put in a position where they might rely to their detriment on private attorneys representing competing interests. 663 F.Supp. at 262, 263.

We have already moved to clarify and strengthen the government's role in these state court proceedings. First of all, it is not and never has been the policy of this Office for its trial attorneys to rely on lessee's attorneys for any aspect of actual representation of Indian owners. In fact, the court in the Walker case highlighted the former Regional Solicitor's memorandum establishing the trial attorneys' duties in these matters, with emphasis added by the court, "The Trial Attorney has the responsibility to insure that the Indian owners are fully and completely protected in the proceedings." 663 F.Supp. at 263.

To ensure that there is no misunderstanding on this point, I sent a memorandum to all attorneys in the Southwest Regional Office on April 3, 1987 (copy enclosed), stressing the responsibilities of government attorneys and stating, "Proper Solicitor's Office procedure also does not permit you to defer to or rely upon attorneys for persons acquiring Indian interests to discharge any of these responsibilities." As you know, another corrective step taken in April was to send Mr. Tim Vollmann to Tulsa as Regional Solicitor. A copy of my April 6, 1987, memorandum to Mr. Vollmann with special instructions for his assignment is also enclosed.

Since then, Mr. Vollmann and his staff have met often with officials of the Bureau of Indian Affairs, tribal leaders and individual landowners to explore ways of improving communications between government attorneys and the landowners. If the trial attorneys know the whereabouts of the Indian owners prior to a hearing, they are directed to endeavor to contact them beforehand. However, locating owners well in advance of hearings is often difficult, so we wanted to build in further safeguards.

Enclosed is a copy of a letter dated November 2, 1987, which Mr. Vollmann, has sent to the Associate District Judges for the district courts in the 40 Oklahoma counties where the restricted property interests of Indians of the Five Civilized Tribes are subject to conveyance approval proceedings such as the one at issue in the Walker case, pursuant to Section 1 of the Act of August 4, 1947 (61 Stat. 731). We advised you at the hearing of the anticipated transmittal of this letter. It recommends that the courts' procedures be revised to give the government trial attorneys a greater opportunity to confer with the Indian landowners prior to the approval proceedings, to clarify representation by all attorneys involved in the proceedings (an important theme of the Walker ruling), and generally to make the proceedings more meaningful to the Indian landowners whom they are intended to benefit. It is too early to advise you of the judges' responses to this letter, but we hope that the letter will precipitate discussions with the courts charged with responsibilities under the federal statute on how to comply with the intent of Congress as set forth in the 1947 Act. The nature of the proceedings authorized by the Act may be unique in American jurisprudence. These state court proceedings certainly have no analog elsewhere in Indian Country where the alienation of interests in trust or restricted Indian land is normally done administratively. Initial state court reaction to the November 2 letter has been uniformly favorable.

The key to improving the process under the 1947 Act lies in expanding the involvement of the Indian people most directly affected by that process. Lawyers tend to dominate matters in

the courtroom, and greater efforts need to be made to clarify the process for the Indian landowners before they enter the courtroom. Existing procedures of the Regional Solicitor's Office, introduced as evidence in the Walker case, required the trial attorney to be present in the courtroom at least 30 minutes prior to a scheduled hearing to confer with as many Indian landowners as possible. Those procedures further directed the trial attorney to request a court recess if pre-hearing consultation had not been possible. We intend to improve measurably on that standard, but will need the assistance of the state court judges to do so, by requiring that the trial attorneys be given the addresses and phone numbers of the Indian landowners who have petitioned the court.

An essential element in the process of preparing for these conveyance approval proceedings is for the government trial attorney to secure from the Bureau of Indian Affairs an appraisal of the restricted Indian property interest sought to be conveyed. The former Regional Solicitor and two trial attorneys testified at the Walker trial, and the court found,

"that one of the primary and routine responsibilities of a trial attorney . . . is to obtain an appraisal of the property. . . . If the trial attorney cannot obtain an appraisal within the ten-day time period allotted [by the 1947 Act as necessary notice of the hearing, ( 1(b), 61 Stat. 731)], then it is the duty of the trial attorney to move for a continuance of the approval hearing until such time that an appraisal can reasonably be obtained." 663 F.Supp. at 263.

In the Walker case no appraisal had been obtained by the trial attorney, and no continuance had been sought. This was a principal basis for the court's finding of negligence.

We are insisting on the need for an appraisal at these hearings, and are working with the Bureau of Indian Affairs to improve the quality of these appraisals. When there is a producing oil or gas well on the property to be alienated, we have been requesting the Bureau of Indian Affairs to obtain reservoir studies on the tracts in question. These provide an estimate of the producible reserve underlying the tract. The extra time necessary to prepare such a study often necessitates a continuance of the hearing, and the trial attorneys have been directed to seek such continuances when necessary.

The appraisals obtained by our trial attorneys are shared with the Indian landowners prior to the hearing. The appraisal's methodology and conclusions are explained to the landowners so

that they can exercise informed judgment on whether to accept the offer previously made to them to purchase their property interests. If the appraisal reveals a value of the property interest which is substantially higher than the highest bid made at the hearing, the government trial attorney has been instructed by the Regional Solicitor to oppose approval of the conveyance -- even over the objection of the Indian landowners, if necessary.

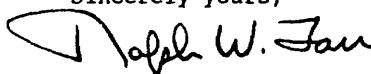
Another theme of the Walker case is the need for competitive bidding at the conveyance approval proceedings so that the Indian landowner will receive the highest possible value for the property interest being conveyed. The court criticized the trial attorney in that case for allowing the Indian landowner to waive competitive bidding at the proceeding without full knowledge of the value of the oil and gas lease being approved. 663 F.Supp. at 264. The existing procedures in place at the time the matters in the Walker case occurred, already state that it is the policy of the Regional Solicitor's office that there must be an opportunity for open, competitive bidding in the courtroom on any conveyance of a restricted interest on Indian land, except for one-acre transfers to tribal housing authorities and gift deeds to a member of the landowner's family. This policy on competitive bidding is being rigidly adhered to.

If there is any irregularity at any approval hearing, the trial attorney is under instruction to note his or her objection for the record so that the opportunity for appeal remains open. The Regional Solicitor intends to appeal from any final order of a district court approval proceeding which does not insure that the Indian landowners will receive fair value for the property interest being conveyed -- even if the landowners oppose appeal and wish to accept the consideration offered.

The Regional Solicitor requires reports on each proceeding for use as an internal control.

I hope this is responsive to your request. If you or your staff have any questions, I will be happy to address them.

Sincerely yours,

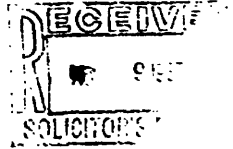


Ralph W. Tarr  
Solicitor

Enclosure



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SOLICITOR  
REGIONAL OFFICE, SOUTHWEST REGION  
P. O. BOX 3158  
TULSA, OKLAHOMA 74101



REFERENCE NO

November 2, 1987

BIA.SW.1521

Honorable Tommy David Harris  
Associate District Judge  
Adair County Courthouse  
Stilwell, OK 74960

RE: Proceedings for the Approval of Conveyances of  
Restricted Land and Minerals Owned by Members of the  
Five Civilized Tribes

Dear Judge Harris:

I am the new Regional Solicitor, Southwest Region, for the U.S. Department of the Interior. Important among my responsibilities is the supervision of the trial attorneys who appear in your court on behalf of Indians of the Five Civilized Tribes whose restricted property is the subject of conveyance approval proceedings pursuant to federal statute, namely Section 1 of the Act of August 4, 1947 (61 Stat. 731). Earlier this year the U.S. District Court for the Eastern District of Oklahoma found the United States liable under the Federal Tort Claims Act for negligent representation of the interests of an Indian landowner at an oil and gas lease approval proceeding in the District Court of Creek County in 1983. Walker v. United States, 663 F.Supp. 258 (1987). Judgment has been entered against the United States, and the case is now concluded. This letter is prompted by the outcome of the Walker case and also by certain findings of the federal court regarding the conduct of proceedings under Section 1 of the 1947 Act.

Section 1 provides in pertinent part:

"(a) . . . no conveyance, including an oil and gas or mineral lease, of any interest in land acquired . . . by an Indian heir or devisee of one-half or more Indian blood . . . shall be valid unless approved in open court by the county court of the county in Oklahoma in which the land is situated . . . (c) . . . The court in its discretion, when deemed for the best interest of the Indian, may approve the conveyance conditionally, or may withhold approval . . . ."

Congress has thus decided to rely on the wisdom of Oklahoma's district court judges for determinations whether the proposed alienation of certain restricted Indian lands and minerals is in the best interest of the Indian owners. This is a unique judicial role; no less unique are the judicial proceedings which lead up to the judge's approval decision. It is our experience that the Indian owners negotiate or execute a lease or sale of their property before going to court to obtain approval. The attorney for the prospective lessee or buyer then files a "petition for approval of conveyance" pursuant to Section 1(b) of the 1947 Act. This petition, along with a (minimum 10-day) notice of hearing, is required by the statute to be served on the "probate attorney," an evident reference to this Department's trial attorneys. See Section 8 of the Act of January 27, 1933 (47 Stat. 777), and Section 4 of the Act of August 4, 1947 (61 Stat. 733). The relationship among the Indian landowner, the government trial attorney, and the attorney filing the conveyance approval petition was the subject of the federal court's decision in Walker v. United States, supra.

That case dealt with an oil and gas lease which had been erroneously approved by the Creek County District Court because the petitioner who had appeared before the court at the approval proceeding was not the owner of the restricted Indian tract in question. When the true Indian owner appeared some months later, he was offered the same bonus and lease terms as the impostor, though by that time there were producing oil wells on his property. This offer was the subject of a new petition for lease approval which was filed with the District Court by the oil company's attorney. The company's offer was approved by the court at that amount without benefit of an updated appraisal, competitive bidding, or any courtroom discussion of the enhanced value of the property due to the oil production. The federal court later found that the government trial attorney was grossly negligent for failing to advise the Indian landowner of the true value of his property and for failing to seek greater compensation for the leasing of his property.

While the circumstances of the Walker case are unusual, the federal court made a number of findings and observations which pertain generally to the conveyance approval proceedings in Oklahoma's district courts. Indeed, Judge Cook found "that the procedural aspects of the state court approval process are fatally flawed." 663 F.Supp. at 263.

Without question, it is the responsibility of this Department's trial attorneys to represent the interests of the Indian landowners who petition the court. Judge Cook characterized this responsibility as "a particularized fiduciary duty." 663 F.Supp. at 267. I take this responsibility very seriously. Please be assured that I will not permit a recurrence of the events which gave rise to the Walker litigation.

Nevertheless, I believe some revision in the district court judicial procedures will be necessary to insure that Indian landowners are well served by these proceedings.

REPRESENTATION:

The Code of Professional Responsibility does not permit the representation of multiple clients unless "it is obvious that [counsel] can adequately represent the interests of each . . . ." 5 Okla. Stat. Ann., Ch. 1, App. 3, DR 5-105(C). In the Walker case Judge Cook found that the Indian landowner's petition for conveyance was prepared by the attorney who was hired by the oil company to procure the oil and gas lease from the Indian-petitioner, and that that attorney was listed as attorney of record for the Indian petitioner. Judge Cook commented:

"This represents a complete breakdown in the fundamental principles of legal representation. [The oil company and Indian landowner] were in an adversarial position in that [the landowner] would expect to receive the highest price possible for the lease, whereas [the oil company] would attempt to acquire the lease at the lowest possible cost . . . . This recognized and customary procedure for commencing approval hearings creates an inherent conflict of interest by the attorney's apparent dual representation." 663 F.Supp. at 262.

Judge Cook further found that it is the responsibility of the Department of the Interior to prevent what he called "this type of procedural masquerade." Id., at 263. Certainly, our trial attorneys have been instructed, and they understand, that one of their initial tasks at the courthouse on hearing day is to disabuse the Indian petitioners of any idea that the attorney who filed their petition has an unimpaired, full attorney-client relationship with them. But this task is made difficult by the prior negotiations which lead to the proposed transaction for which court approval is sought -- and the trial attorney's lack of opportunity to confer with the landowner prior to hearing day. There is evidence that Indian petitioners often leave the courtroom feeling completely confused by the proceedings, and sometimes believing later that they have been misled.

Neither the court nor the government's trial attorneys have control over the initial transaction where the Indian landowners are offered remuneration (sometimes getting an immediate "bonus") for the sale or lease of their property. The landowners agree to file the petition for approval in anticipation of further benefits. At this point, they may be expected to act as advocates for the approval and consummation of the transaction as negotiated. The filing of the petition on their behalf by the buyer or lessee's attorney does indeed appear to them to be in their best interest.



That attorney is allowed by current procedures to represent him or herself as "attorney for petitioners," presumably because he or she filed the petition on behalf of the Indian landowners in the first place. Counsel may introduce him or herself to the Indian landowners in the courtroom in a manner which does not discourage the appearance of an attorney-client relationship. (Parenthetically I should note that the federal statute itself appears to contribute to the appearance of dual representation; Section 1(c) of the 1947 Act requires that the ultimate grantee of the Indian property interest pay all attorney fees and court costs. 61 Stat. 732.) The government trial attorney then steps in, attempting to get a few minutes of the landowner's attention in private: to review an appraisal, to discuss prospects for competitive bidding and enhanced remuneration, to inquire of the attitudes of their absent family members who are co-owners of the property but who have evidently waived their appearance in writing, to rehearse testimony, and generally to gain their confidence. The trial attorneys are customarily given no information in advance on the whereabouts of the Indian landowners whose interests they are charged with representing. Hence, consultation is often short and hurried. The landowners may well view the trial attorney's presence as a bureaucratic obstacle to their goal of obtaining the compensation promised them weeks before the court proceeding.

I recommend the following procedure as at least a partial solution to the confusion depicted in this scenario. The attorney filing the petition should be given the responsibility of advising the Indian petitioners in writing that their interests will be represented by a government trial attorney, and the address and phone number of this office should be provided. The attorney filing the petition should also make clear that he or she has been retained by the prospective buyer or lessee, and that he or she cannot represent the Indian landowners' interests beyond the filing of the petition. We can prepare a form letter to this effect which the court's clerk could distribute to attorneys practicing before your court.

In addition, service of the petition and notice of hearing on the trial attorney should include the last known addresses and phone numbers (if any) of the Indian petitioners. This information is often not available to the trial attorneys from the Bureau of Indian Affairs. Without knowledge of the petitioners' whereabouts the Department's trial attorneys must wait until hearing day to meet them, assuming they are even present in court. Their duty of effective representation of the Indian landowners' interests cannot be met without a full opportunity to confer with them.

#### VERIFICATION OF INDIAN LANDOWNER IDENTITY:

One of the most troublesome aspects of the Walker case was that an impostor with the same name as the true Indian landowner represented himself as the lessor/petitioner at the first

district court hearing. The payment of bonus checks or purchase prices at the close of such hearings makes fraudulent identities very real possibilities. - When tracts with numerous Indian owners of undivided interests are the subject of lease or sale proceedings, the risk of misidentification may be even greater, as family names are often identical and the Indian estate may still be unprobated.

Some district judges are already insisting on some documentary evidence of landowner identity in the courtroom, and this seems wise. A mere name verification, however, as with a driver's license, will not prevent a recurrence of the Walker fiasco, as the impostor was indeed "Austin Walker."

Most Indians of the Five Civilized Tribes possess identification cards known as Certificates of Degree of Indian Blood, or "CDIB cards." The procedure for obtaining a CDIB card from the Bureau of Indian Affairs is relatively detailed in that the applicant must present birth records and other ancestral and family documentation prior to the issuance of the certification. I believe that the CDIB card is a preferable means of identification for purposes of 1947 Act proceedings. When multiple landowners appear at a hearing, it may be adequate to rely on the CDIB card of only one, as long as he or she testifies to the identity of the other present family members, who may still be expected to show some identification.

#### ABSENT LANDOWNERS:

A more common problem than the identity of Indian petitioners in the courtroom is verification of the waivers of appearance ostensibly signed by absent Indian petitioners. Section 1(b) of the 1947 Act provides that the consent of the government trial attorney to the absence of an Indian petitioner is a prerequisite to court approval of the conveyance. Notwithstanding the weight which the federal statute gives to the trial attorney's consent, often the only "evidence" which is shown to the trial attorney prior to the hearing to demonstrate that a petitioner has knowingly waived his or her appearance is a recitation in the petition that the petitioner both seeks approval of the proposed lease or sale and also waives his or her appearance at the hearing. In such circumstances the government trial attorney not only has no opportunity to interview the petitioner prior to the hearing day, the petitioner is not even available for a courtroom conference. The notarized waiver, obtained by agents of the prospective buyer or lessee, gives the government counsel little or no basis for consenting to non-appearance. Since, under the Walker ruling, the petitioners are entitled to government representation at the hearing, mere reliance on the notarized waiver would appear to subject the United States to the risk of liability.

Therefore, I am instructing the trial attorneys not to consent to the absence of Indian petitioners at the hearing unless substantial evidence of their knowing waiver of appearance and their agreement to alienate their property interests is made available to the trial attorney prior to the hearing to support the naked allegations in the petition. It would be helpful to this exercise for the petitioning attorney to provide government counsel with information on the whereabouts of the absent petitioners. The court could require that this information appear in the petition itself. Also helpful would be the testimony of others at the hearing (such as family members) regarding the state of mind of the absent petitioner with respect to the proposed conveyance. Such testimony by agents of the prospective buyer or lessee would be probative but less persuasive than the testimony of others who have no stake in the outcome of the proceedings.

#### TITLE WARRANTY:

In many cases approval of a proposed sale or lease is sought with respect to restricted Indian tracts for which no recent probate has been conducted to bring record ownership up-to-date. In such cases, it would be wise to introduce the most recent probate decree into evidence at the hearing, and for counsel (including the government trial attorney), the court, and the landowners to be comfortable with any presumptive determination of heirship. The trial attorney cannot guarantee the correctness of such a presumptive determination, nor the validity of the title being conveyed; and thus the prospective buyer or lessee should understand that there is some risk in completing the sale or lease prior to a complete probate of the restricted Indian estate, as well as other measures to insure the validity of title. I have instructed the trial attorneys to move to strike any warranty language as to title contained in Indian conveyances of restricted property where an estate is unprobated or where there is some other cloud on the title which raises a legitimate question of marketability.

#### COMPETITIVE BIDDING:

Section 1 of the 1947 Act requires that

"(b) . . . a description of the land shall be given by publication in at least one issue of a newspaper of general circulation in the county where the land is located . . . [and] (d) that at said hearing competitive bidding may be had and a conveyance may be confirmed in the name of the person offering the highest bid therefor or when deemed necessary the court may set the petition for further hearing . . . ." 61 Stat. 731-32.

Nevertheless, courtroom competition to purchase rights in the restricted Indian property appears to be less common than no competition at all, especially since oil and gas prices dropped a

few years ago. Often the appraisal which the government trial attorney has obtained prior to the hearing will be sufficient to demonstrate that the price offered is fair and reasonable. But some transactions are not as easily appraised, such as the outright conveyance of a mineral estate, as opposed to a lease. In these instances, when the statutory advertisement yields no competition, both the court and government counsel must make hard decisions about whether to acquiesce in the proposed sale as being in "the best interest of the Indian," as required by the statute.

Wider advertisement of the tract could yield other bids, and I am instructing our trial attorneys to move for continuances when that option appears helpful. This avenue clearly appears to be contemplated in the federal statute, which gives the court the "discretion" to "withhold approval" (§1(c) of the 1947 Act) and to "set the petition for further hearing" (§1(d) of the Act). Even if a second advertisement does not result in competition, a better record can still be developed to support approval of the original transaction.

CONCLUSION:

The Walker decision, beyond finding that a government trial attorney was negligent, also stands as an express indictment of the process designed to effectuate Section 1 of the 1947 Act. I would like to work closely with the bar, the bench, and the Indian community to improve both the integrity and the efficiency of that process. Certainly, the Indian people whom this process is intended to benefit should be more active, knowledgeable participants in it. A similar letter has been sent to all district courts where these proceedings are held. This office's trial attorneys and I would be happy to discuss this important matter with you further at your convenience.

Sincerely yours,

  
Tim Vollmann  
Regional Solicitor  
Southwest Region

✓cc:  
Ralph W. Tarr, Solicitor



## United States Department of the Interior

OFFICE OF THE SOLICITOR  
WASHINGTON, D.C. 20240

APR 3 1987

## Memorandum

To: All Attorneys, Southwest Regional Office

From: Solicitor

Subject: Representation of Indian Interests in State Courts

I have reviewed the opinion in Walker v. U.S., No. 85-547-C, slip op. (D. Okla. March 19, 1987), concerning representation of Indians before Oklahoma State courts in proceedings to approve alienation of interests in restricted Indian lands. I am troubled by the conduct of the government's attorney in that case as described by the court, and by the court's suggestion that the Solicitor's Office might condone such conduct through its procedures.

Let there be no confusion about your responsibilities under the procedures of this Office and the ethical standards of our profession. In counseling the Indian owner, establishing the value of land involved, confirming the Indian owner's understanding of the transaction, and other issues in the proceedings, our staff serves as the attorney for the Indian owner and as the Indian's advocate in the proceedings. Attendant duties are established by long practice and standards of the profession. Proper Solicitor's Office procedure also does not permit you to defer to or rely upon attorneys for persons acquiring Indian interests to discharge any of these responsibilities.

The Congress has placed a significant responsibility upon each of us in undertaking to represent restricted Indian landowners. I know that I can count on each of you to take this responsibility seriously and exercise the utmost of care in fulfilling your obligations in these matters.

*Daph W. Fan*



## United States Department of the Interior

OFFICE OF THE SOLICITOR  
WASHINGTON, D.C. 20240

April 6, 1987

## Memorandum

To: Tim Vollmann  
Associate Solicitor, Division of Indian Affairs

From: Solicitor

Subject: Tasks to be Accomplished During Tulsa Detail

Your detail as Acting Regional Solicitor of the Southwest Regional Solicitor's Office shall include the following duties:

1. To establish swift, effective management control of the Tulsa Office. Using your full managerial authority, assess the nature and quantity as well as the status of the workload, and utilize appropriate measures to ensure high quality and professional work product;
2. To conduct an extensive, in-depth review of the structure of the Regional Office and its field offices, personnel issues, and office procedures, especially with respect to representation of Indians in restricted land transactions; to evaluate whether the responsibilities of the Office of Solicitor and, in particular, Indian-related responsibilities, are being carried out, and make recommendations for improvements in structure, personnel and procedures; as part of your review, to conduct interviews and discussions with client agencies, the appropriate U.S. Attorneys' Offices, the state bar and the state courts;
3. To report to me on your progress as frequently as you deem appropriate and at a minimum on a weekly basis.

Resolution of questions that have been raised about the operation of the Southwest Regional Office is a top priority. Please be confident that you have my full support to accomplish this task.

A handwritten signature in dark ink, reading "Ralph W. Tarr".

Ralph W. Tarr

Mr. TARR. There is one aspect of this we can change, and that is to the extent the judge was bothered by this dual representation notion of the oil company filing that is a matter over which we have no control—but the point that I have made very clear to my attorneys is if that oil company attorney is in court, he does not subsume your responsibility. You have the obligation to establish that attorney-client relationship with the landowner and to give him all the information and make sure he has been properly advised.

#### BIA'S RELATIONSHIP TO THE ALLOTTEE

Mr. YATES. What is the relationship of BIA to your allottee in this whole procedure? Has your trust relationship been shifted to the state courts of Oklahoma?

Mr. SWIMMER. Jurisdiction is with the state courts in Oklahoma.

Mr. YATES. To approve the deal?

Mr. SWIMMER. Yes.

Mr. YATES. You have nothing to do on the question of whether the lease of a particular allottee should be approved?

Mr. SWIMMER. Yes, we do. We are supposed to approve it for the amount that it is fair and reasonable. We, as trustees, feel it is in the best interests of the Indian to do that. We have appraisals that we can present to the court.

We are supposed to go into court with our lawyers and the Indians' lawyers.

#### COURT APPEARANCE IN THE AUSTIN WALKER CASE

Mr. YATES. Did you go to court in the Austin Walker case?

Mr. SWIMMER. We were in court through the Solicitor's office. I don't know if our area—

Mr. YATES. The Solicitor was there but were you there too?

Mr. SWIMMER. I am not aware if we were represented in court or not. We offered to waive the appraisal.

Mr. REGULA. You mentioned you only got a 10-day notice. Do I presume from that the hearing is fixed at the end of the 10 days or can you get extensions if you are going to get appraisals and all these other verification tactics?

Mr. TARR. I assume that we can. When we can get the notice, as I said, the minimum time is 10 days in the statute. If we can get the—

Mr. REGULA. Federal or state statute?

Mr. TARR. Federal statute.

Mr. REGULA. The rules governing these procedures are established by Federal statute or do the state statutes apply?

Mr. TARR. A little of both. Ten-day notice is one. The rest of it is the management of the state court's calendar. But that is part of what we are trying to enlist the aid of the state courts in. If we can get them to establish a rule that we will be given the last known address of the landowner, we can contact them in advance and perhaps see if we have problems that require a different hearing date. That has been one of our problems in the past.

Mr. REGULA. Does BIA get into the negotiations prior to this in any way, shape or form?

Mr. SWIMMER. We can. When we get notice, we normally do an appraisal. If we find by doing the appraisal the proposal suggested between the oil company and Indians is not fair, we would advise them of that and recommend disapproval of the sale.

#### VALUE OF COAL RESOURCES ON THE CROW RESERVATION

Mr. YATES. When you recommend approval of a lease to any company, do you know the value of the property that is being—that is the subject of the lease?

Mr. TARR. Normally we do.

Mr. YATES. Do you know the value of the coal deposits on the Crow reservation?

Mr. SWIMMER. In gross terms, no.

Mr. YATES. Have you ever taken any kind of an inventory on behalf of the Indian people of what their mineral resources are?

Mr. SWIMMER. Overall?

Mr. YATES. Overall.

Mr. SWIMMER. No. It would be virtually impossible because it is going to vary so much.

Mr. YATES. Did you want to speak?

Mr. RYAN. There had been a study done by the Bureau of Mines and I believe it found that the Crow coal resources are about 400—I can give you the exact figure, I think 406 billion tons.

Mr. YATES. That is a lot of coal.

Mr. RYAN. The way the map worked out on it was about 100 train cars. At the rate of a train of 100 cars a day 1,096 years exhaust the supply.

Mr. YATES. Mr. Ryan, one of these articles, which is entitled "BIA Turns Tribe's Resources Against Them," says this. "Crow reservation tribal officials know they are sitting on billions of dollars worth of coal but they don't know how much they have. They have asked BIA for figures but agency officials have refused to supply them." Is that true?

Mr. RYAN. I believe there is a misunderstanding there. I am not sure that is true. When the Crow delegation came in in early 1986, they spoke to Mr. Swimmer and to me and they asked for information about their natural resources. I followed through and talked to the area director and said they would like to have some information about their basic natural resources, why don't you give it to them? He said they had. The information was available at the agency, so on and so forth. I said, "Do me a favor, give it to them again." What he did was, he had sent in a record of basic communications that they had had with the tribe and it discloses that they had provided some information to the tribe on their coal resources.

Mr. SWIMMER. He did a study out there, I think, costing a couple million dollars, and it provided a lot of detailed information. The problem is, even if you have a billion tons of coal, if nobody wants to buy it, it is not worth a whole lot.

Mr. YATES. Why is Mr. Real Bird suing? What is the purpose? Why the lawsuit? What is the basis for the lawsuit?

Is Mr. Real Bird here? I assume he will testify later. We will do it later, Mr. Real Bird.



What is the misunderstanding, Mr. Ryan? If you said you have given them the information, what information have you kept from them?

Mr. RYAN. When I had a discussion with the tribe in the very early spring of 1986 about this issue, it appeared to me there were two areas of concern. One had to do with information about their basic accounting—they didn't really understand what their state of accounts was or the fiscal budget of the tribe, and were concerned about that. The other had to do with the tribe's basic natural resources.

When I talked to the area director, I talked to him twice about it, he informed me he had provided some information. At one point more recently, the tribe expressed an interest to us on the Westmoreland coal lease, the tribe actually came in and asked us to approve of a lower royalty rate than the 1976 coal——

Mr. YATES. A lower royalty rate?

Mr. RYAN. The Act provides for 12½ percent; they asked for 8 percent.

Mr. YATES. Why would they do that?

Mr. RYAN. Because of the state of the market on coal and the fact that by Federal law there is a restriction on the Department of what royalty rate can be approved, and that, I am not sure of——

Mr. SWIMMER. It is a classic case of what we have been talking about. When the Westmoreland proposal came to me, the area director, had recommended it and said this looks like the best deal we can get. I asked him what the values were, what we considered to be a fair royalty rate. In addition to the tribe's asking for a below market or at least what we projected to be a below market royalty rate, they also wanted a long-term lease. I refused that. I said we cannot sit here as a trustee and propose we give a lower royalty rate without a re-opener clause for a multi-year period of time.

Coal may be selling for nothing today, and tomorrow it may be selling for who knows what. If we lock ourselves into an 8 percent royalty rate for 20 years, all we are doing is setting ourselves up for a lawsuit. Regardless of the fact the Crow tribe is demanding I get into those kinds of deals, I have to say no.

Now, if I owned that coal, I would probably do it differently. I could figure out a way I could lease it. I would figure out a way I could get money in hand today. I may be projecting that the coal is not going to be leaseable for another 10 years. We are fairly fixed in what we can do in those kinds of cases, in my opinion.

#### INVENTORIES OF INDIAN RESOURCES

Mr. YATES. Why isn't it a good idea and why haven't you done it if it is a good idea, to take an inventory of the Indians' resources, of the oil that you have in Oklahoma, for example, or the coal the Crow have? You are shaking your head, Mr. Hodel.

Secretary HODEL. Mr. Chairman, what we have heard is that inventories have been taken——

Mr. YATES. Have we heard that?

Secretary HODEL. Yes.

Mr. YATES. Of all the resources?

Mr. SWIMMER. There is no way to do a total inventory, because it fluctuates. It varies from day to day and varies in price from day to day. New ways of doing seismic work are developed—this would have to be updated on a yearly basis.

Secretary HODEL. I think we need to get some terms clarified. When you say inventory, if we mean an inventory in which we catalogue all resources and try to identify not only where they are but the exact amounts—the U.S. Geological Survey has maps. In addition you have the Council of Energy Resources Tribes' surveys of those that seem to have greater potential.

In the case of oil and gas, as we know from non-Indian land-leasing activities, we don't know where some seismologists may conclude there is another prospect and if he finds there is a prospect, he may not find any oil. He may pay somebody for the privilege of finding out. I think we have a pretty good idea of what the potentials may be and the areas that tend to be oil prone. I smiled when he said 406 billion tons.

Mr. Chairman, I will wager the person who made that estimate would himself admit he is very fortunate if he is within 10 percent on that kind of figure. Around 400 billion tons is a reasonable projection. If we require a 4½ percent royalty, it may be worth zero and the members of the tribe and the allottees will say to us, "You are depriving us of the economic benefit."

Mr. Swimmer says, "I will not let you sign a long-term lease. I think it is not going to be a good lease." There is a conflict. But he has made the judgment to protect them, to deprive them of current income—a very serious problem. He is trying to exercise the trust responsibility.

Take the other side. Perhaps he did grant an 8 percent lease. The fact is, we are holding Federal royalties on a number of leases out there at 12½ percent in spite of requests to reduce the royalties, and what I will immediately hear from the lessees on Federal land is, "Wait a minute, you have given lessees on Indian land a competitive advantage. You have to come down here as well." There are some complexities here that come into conflict with this responsibility we have.

Mr. YATES. Mr. Regula.

Mr. REGULA. Thank you, Mr. Chairman.

I think you have answered the question. That is, how do you make these projections in the absence of exploratory drilling?

Mr. SWIMMER. It is a matter of where you want the resources spent.

Mr. REGULA. We don't even do that on the lands the government manages for themselves. It is enormously expensive to put down exploratory wells and/or drill—these are the best guesses.

Secretary HODEL. In some cases, they are better because in the case of the Crows, that coal was previously sold under contract and therefore it had been drilled and there was some specific information about the extent of the holdings as well as the quality. There was some actual knowledge. That doesn't mean it is all of the information. It gives you ball-park figures.

Frank Ryan just advised me he is building a data base in Lakewood, Colorado, using the Geological Survey's detailed information,

Mr. Chairman, which will try to provide at least a resource shopping list.

Mr. REGULA. May I go off the record?

[Discussion off the record.]

#### OUTSIDE EXPERTS

Mr. YATES. Let's go back on the record.

The articles in the Arizona Republic are not the first time examples come to mind. Before Mr. Swimmer was assistant Secretary and, I think, possibly before Mr. Hodel was the Secretary, the Denver Post had a series of articles, as well, on "The War Against the Indians". And according to the Denver Post, it said there are two major reasons why Indians stay poor: they don't control their own resources; and they don't have the expertise to avoid bad deals.

You have submitted what you think is a very reasonable explanation as to why you rejected the Crow request. Suppose they had outside experts.

Do you pay for outside experts? Does the government pay for advising Indian tribes on the exploitation of their resources?

Mr. SWIMMER. Yes.

Mr. YATES. So the Crow could have hired a geologist or something else to advise them on this or a lawyer?

Mr. SWIMMER. They could have, yes.

Mr. YATES. And you would have paid for that?

Mr. SWIMMER. I wouldn't say it was automatic, but normally we would have, subject to funds being available.

Mr. YATES. Are more technical advisers needed to assist tribes and allottees?

Mr. SWIMMER. I think so. I think the real profound issue is whether we should be acting as trustee in those cases where we don't have the capability of going out and doing it ourselves.

Why doesn't the tribe go out and hire its own—I am perfectly willing to do that. It is the same way with 250,000 allottees. These people aren't incompetent; these people are only held hostage by us because we have a law that says we have to do it for them.

I think if more of the responsibility could be turned over in that sense, then we would make progress.

#### BIA'S NATURAL RESOURCE DATA BASE

Mr. YATES. Mr. Ryan, you said the Crow had an inventory of their coal resources. How many other tribes have inventories of their resources?

Mr. RYAN. Mr. Chairman, there is a mineral assessment program and funds are appropriated for that. It has been going on now for some time, and USGS and Bureau of Mines and sometimes contractors do the work and these technical studies are performed.

And as a result of that, we have, I can't measure it in pounds, but we have a lot of data. What I have been trying to do is organize this data in such a way we can—

Mr. YATES. Is the answer to the question you don't know at this time?

Mr. RYAN. I don't know how many tribes, at this time, we have provided—

Mr. YATES. How long will it take you to put that in order?

Mr. RYAN. It would require for oil and gas and subsurface to do an awful lot of seismic work—

Mr. YATES. I thought you said you had it done?

Mr. RYAN. No, for the work that has been done what I am doing is developing a minerals data base for that to work with that information.

However, that information does not cover the millions of acres of Federal Indian land for which no minerals assessment has been done.

Mr. AuCoin. How long will it take to get that in usable form?

Mr. RYAN. I hope within a year. We started work on this last winter. But I would hope within a year that I—

Mr. AuCoin. Why does it take so long to get the organized in the usual form?

Mr. RYAN. Basically, because these reports are technical and you have to go through them and to pull out information a particular way, it has to be formatted, each is a data field, each data field fits into a system.

Mr. AuCoin. How many people are doing that?

Mr. RYAN. Right now, I have quite a few people, probably 10.

Mr. YATES. Who would do this?

Mr. RYAN. We are doing it.

Mr. YATES. Would it be better if GS did it?

Mr. RYAN. I couldn't comment on that. I haven't thought about it.

Mr. YATES. Are they more expert at this than you are?

Mr. RYAN. They are more expert in terms of the actual technical work. In terms of developing the data base for looking at it and assessing whether or not the minerals or the values are economically viable, I am not sure.

Mr. YATES. How important is it that the study be completed? It has some importance, hasn't it?

Mr. RYAN. Yes.

Mr. YATES. The Committee has been advised that there are \$16 million in tribal requests to contract to do their own mineral surveys.

Mr. RYAN. Yes, sir.

Mr. YATES. And the cost of the tribes' request would be in the neighborhood of \$16 million?

Mr. RYAN. Probably in any given year.

Mr. YATES. This is an estimate from Mrs. Crosby.

Mr. RYAN. Requested by your committee?

Mr. YATES. Yes.

Do you know anything about it?

Mr. RYAN. Oh, yes, there are nine pieces of information that you requested. You wanted copies of mineral assessments and so forth.

Mr. YATES. And you can't give that to us now because of the state of the data?

What is it that you have to put together?

Mr. RYAN. Information has to be taken from those assessments and the data base format developed and that information put into

a computer format so that the we can do certain kinds of analysis of basic mineral data.

Secretary HODEL. I think the analogy is the day after the census has been taken, there is an enormous volume of information, but it then has to be organized into categories and cross-categories where it has some usefulness or meaning, and I think that is the process—

Mr. YATES. Is this something I should ask GS about?

Secretary HODEL. There is no reason why you shouldn't. I think actually, Mr. Chairman, it wouldn't be inappropriate at all.

There is good cooperation in this particular case between BIA and Geological Survey.

Mr. YATES. I think we ought to get a report from you and GS in how he can achieve this in the most expeditious way and what the costs would be.

Would you do that, Mr. Ryan?

#### EFFICIENT EMPLOYMENT OF EXPERT PERSONNEL

Secretary HODEL. I think you are quite rightly talking about an issue which Mr. Swimmer touched on earlier.

The question we need to be asking is: Is it sensible to have the BIA try to become geological experts and mining experts in order to evaluate something, when we have Bureau of Mines and the Geological Survey, and we are not called upon to be the Health Service, because there is an Indian Health Service; but we are called upon to be a lot of other things and the question is, is that what we ought to be doing?

Mr. YATES. What do you think? How do you answer your own question?

Secretary HODEL. Clearly what we ought to be doing is seeking the best people in the Federal Government to do those things, not trying to build up a duplicated capability in BIA.

We, the Federal Government, long before I was involved and I suspect long before you were, has been doing it the other way.

Mr. YATES. Later in the day there will be witnesses who come and testify the way to do it is to establish a separate department.

Secretary HODEL. I think that is totally erroneous, and will be a disaster, but at least it will postpone the problem. Everytime we reorganize, the answer is we are in reorganization.

It won't solve the problem. It won't do what I think you want to do and the Committee wants to do and what the Indian Country ought to want to do, which is do something about the fundamental problem.

Mr. REGULA. Mr. Chairman, I think the secretary is making a good point, and that is that at best we don't want to duplicate USGS and all those other agencies that are charged with doing this service for all the other Federal lands. Am I not correct?

In terms of public lands, how many acres nationally, totally, are in BIA jurisdiction?

Mr. SWIMMER. 55 million.

Secretary HODEL. Out of 700 million plus acres—

Mr. REGULA. So USGS has responsibility for 700 million acres and therefore should have a pool of knowledge, and it would seem

logical in this particular area as in others you have mentioned, they would be able to manage the 55 million acres most efficiently or at least provide advice.

#### SEISMIC DATA

I have a second question, Mr. Chairman, who pays for all the seismic—you are talking about trying to get this kind of information, that is extremely expensive.

Secretary HODEL. If we do it pre-lease, either the Federal Government—a large portion of the money will come from the Federal Government, so it will be government.

If you do it post-lease, as would most normal land owners—most normal land owners don't do a seismic on their property, they lease it to somebody who comes in and does the seismic work and if he finds something, then he drills, produces, has to pay a royalty. The explorer then takes all the risk of the seismic work.

Mr. REGULA. What I am leading up to, if you are talking about doing an inventory of minerals on the Indian lands, aren't you talking about an enormous commitment of resources to do this with any degree of accuracy?

Secretary HODEL. If you want to do it with specificity—it is unlimited. But what we normally do, what we have always done in a rational fashion is we go where we think there is a likely resource and we find someone who is willing to risk his capital in—

Mr. REGULA. That is the lease procedure.

Secretary HODEL. And then we lease. This is true for Federal land that is not Indian land. It is true of private land, because it works.

Mr. REGULA. That is correct, but that is not an inventory process, that is a—when you start talking about an inventory process you don't know when you will lease it.

Mr. YATES. If I can interrupt you, I was trying to find out from Mr. Ryan what he thought. I still don't know what he—

Secretary HODEL. I think we will have a pretty good shopping list. If I understand what they are talking about in terms of Geological Survey data plus the existing well data and core drilling work that has been done out there, I think we will have a pretty good check list.

Mr. YATES. Give us a report on what you have, I have asked for that, and advise GS on it.

[The information follows:]

## Assessments of Indian Mineral Resources

A distinction must be made between the assessments made by the Bureau of Indian Affairs, and the inventory information discussed by the Committee. An "inventory" would measure the exact amount of mineral commodities, whereas an "assessment" is made to demonstrate the potential for the existence of resources within a geographical area. Following an assessment, further investigation is needed to determine geologic environments that have good potential for mineral resources.

The Bureau of Indian Affairs has had a mineral assessment program in effect since FY 1976. It was established as a phased program, with the first phase being the research for and collection of all available data for each reservation, and compiling that information into usable reports. All reservations have had Phase I reports completed.

Phase II consists of additional on-site data collection for validation and evaluation. The new data is acquired by geological mapping, geochemical analysis, assays, drilling, exploratory excavations or other techniques. These assessments may be accomplished over a number of years. Several reservations are completed and others are partially complete. Phase II programs are performed only if warranted and only where tribes request this level of effort for use in the orderly development of tribal mineral resources.

Phase III studies would apply still more sophisticated procedures to quantify the resource, establish its value in place, determine viability of economic production, perform market and economic analysis and possibly provide operational and design recommendations. No new Phase III studies are being funded because the results of completed Phase II studies are considered sufficient to inform industry and the tribes whether it is cost effective to proceed with any additional pre-development analysis.

We believe that the Bureau's minerals assessment program provides sufficient data for tribes to decide on further development. Currently, 68 reservations, including over 43 million acres and representing approximately 80 percent of the trust land base, have had or are undergoing a Phase II minerals assessment. The Bureau is in the process of establishing a computerized data base, using information collected to date, and adding to it available industry data. This data base can be used for quick retrieval and evaluation, to take advantage of changing economic conditions. As commodities come into demand, areas with potential can be highlighted to alert tribes of impending opportunities.

Not all of the reservations will require a Phase II assessment, either because the basic data does not indicate that one is warranted, or because the tribe(s) do not wish to pursue the mineral development. At this time, we do not know how many Phase II studies will be required, and cannot estimate a total cost or time frame. However, we do have requests from tribes to fund further activities in their mineral development, which are primarily Phase II studies. These requests total more than \$16 million.

Although the Bureau of Indian Affairs is the primary agent in this work, there are other entities involved in the mineral assessment and development process which must be considered in this response. The others include the U. S. Geological Survey (USGS), the Bureau of Mines (Mines), the Council of Energy Resource Tribes (CERT), and tribes

who wish to do this work themselves, through P.L. 93-638 contracts. When the BIA initiated the assessment program, USGS and Mines were utilized because they had professional expertise available to pursue these studies. CERT was intended to be funded only until the Council could get established, with funding to be phased out when they became self-sufficient; however, Congress has been encouraging the BIA to continue funding for CERT. Tribes have become more interested in contracting for mineral development on their reservations and Congress has directed the BIA to increase the emphasis on these contracts.

The national program of mineral assessments is managed through the Central Office; whereas all other funding and staffing proposals are made by the tribes through the Indian Priority System. In addition, several tribes have their own geologists and other mineral expertise; some tribes have no interest in developing their mineral resources; and some mineral resources are not mineable. Both the USGS and Mines believe that advance knowledge of which projects would be funded would greatly increase the effectiveness of coordinating and completing mineral assessment studies. Therefore, it appears that a balanced program, utilizing USGS and Mines, and allowing the tribes to contract for their own mineral development, utilizing CERT, USGS, Mines, or private contractors, as they think appropriate, would probably provide the most effective results.

The funding history of the BIA minerals program is as follows:

FY	(In Dollars)				
	USGS	Mines	CERT	Other*	TOTAL
1975	242,670	242,670		514,660	1,000,000
1976	293,085	273,085		383,830	950,000
1977	373,366	373,366	200,000	153,268	1,100,000
1978	1,796,235	1,095,000	500,000	3,608,765	7,000,000
1979	3,308,500	947,500		2,244,000	6,500,000
1980	4,190,000	1,057,000	1,000,000	253,000	6,500,000
1981	3,300,000	1,546,500	1,126,000	550,000	6,522,500
1982	3,250,000	1,540,720	750,000	986,000	6,526,720
1983	2,975,760	1,464,000	750,000	1,096,600	6,286,360
1984	2,508,818	789,682	330,000	1,071,500	4,700,000
1985	4,095,000	1,405,000	500,000	3,872,500	9,872,500
1986	3,734,000	1,262,000	432,000	718,000	6,136,000
1987	2,809,000	666,900	250,000	2,473,500	6,200,000
1988 Est.	700,000	300,000	250,000	3,212,000	4,462,000

\*Includes P.L. 93-638 contracts, private contractors, etc.



## ACCESS TO NATURAL RESOURCE INFORMATION

Secretary HOPUL. May I say one other thing. I have listened to testimony, and I was taken aback by the implications we were not providing or might hesitate to provide information to a tribe about its resources.

I don't believe that has been our policy, if it has been it will change. Anything we know along that line is automatically and ought to be available to the tribe.

If it is not, we have not been doing the job we should be doing. It is inconceivable to me we would not make the information available.

Mr. YATES. It is inconceivable to me.  
Is it happening?

Mr. SWIMMER. Not to my knowledge.

Mr. YATES. Would you place in the record, Mr. Tarr, a list of pending litigation by Indian people against the United States Government on charges of a breach of trust responsibility, the status of those cases and the amount of damages claimed?

I understand there is one suit against you arising out of the Sanguine case for \$45 million?

[The information follows:]

## BREACH OF TRUST CASES

The following list of cases is submitted for the record as requested. These are cases we are aware of filed during this Administration (1-20-81) by Indians in the Claims Court seeking money damages based on a breach of trust theory caused by action or inaction of the Department.

1. LaPaz Enterprises, Ltd. v. Department of the Interior, No. 2-83, Cl.Ct.

Suit for damages resulting from cancellation of a lease of tribal lands issued by BIA without tribal approval. No specific amount claimed.

2. Toohy, et al. v. United States, No. 429-87, Cl.Ct.

Allegation that U.S. breached fiduciary duties in not properly litigating Indian mineral interests and the alleged failure to properly communitize mineral interests and account for royalties. No specific amount claimed.

3. Melvin Billy & Lloyd Billy v. United States, No. 626-87 Cl.Ct.

Breach of trust responsibilities in failing to properly fight a forest fire on the Rocky Boy's Reservation. No specific amount claimed.

4. Zuni Indian Tribe of New Mexico v. United States, No. 224-84 Cl.Ct.

Tucker Act & Indian Tucker Act claim by Zuni Indian Tribe for alleged failure to acquire Zuni Salt Fr. State; also Mitchell-type claim for general mismanagement of reservation lands. No specific amount claimed.

5. Hopi Tribe v. United States, No. 319-84, Cl.Ct.

Claim for damages (breach of trust) from failure to collect and pay livestock trespass penalties to tribe. No specific amount claimed.

6. Hopi Tribe v. United States, No. 321-84, Cl.Ct.

Claim for damages (breach of trust) arising from overgrazing by livestock--i.e., damage to land. No specific amount claimed.

7. Hopi Tribe v. United States, No. 320-84, Cl.Ct.

Claim for damages (breach of trust) arising from loss of forage to livestock from overgrazing. No specific amount claimed.

8. Joe Begay & Esther Begay v. United States, No. 268-85, Cl.Ct.

Plaintiffs allege that in effecting the Navajo and Hopi Indian Settlement Act, the United States breached fiduciary, statutory, and contractual obligations. Claim is for \$2,000,000.

9. Louise Jane Begay v. United States, No. 335-85, Cl.Ct.

Plaintiff alleges violations of various provisions of 25 USC 6400, et seq. (Navajo and Hopi Indian Settlement Act) including 640.14(d). Claim is for \$100,000,000.

10. Oglala Sioux Tribe of Pine Ridge Indian Reservation v. United States, No. 735-85, Cl.Ct.

Suit is to recover money damages arising from alleged mismanagement and improper disposition of the property of the plaintiff. Claim is for \$10,000,000.

11. Navajo Nation v. United States, No. 575-86, Cl.Ct.

Alleged breach of trust for failure to periodically adjust oil and gas royalty rates on a lease. Claim is for \$2,000,000.

12. Florence Anderson, Juanita Antone & Alice Connor Elliott, et al. v. United States, No. 20-87, Cl.Ct.

Breach of trust alleged for improper and illegal termination of Hopland Rancheros. Claim is for \$100,000.

13. Cheyenne-Arapaho Tribes of Oklahoma v. United States, No. 247-87, Cl.Ct.

Suit for damages alleging breach of Indian oil and gas leases by Secretary of the Interior. No specific amount claimed.

14. Chippewa Cree Tribe of the Rocky Boy's Reservation v. United States, No. 405-87, Cl.Ct.

Breach of fiduciary duty in failing to properly fight a forest fire causing damage to 11,650 acres. Claim is for \$3,000,000.

15. Freeman Pawnee, et al. v. Secretary of the Interior, No. 87-1131, Cl.Ct.

Class action suit for breach of fiduciary duties owed Indians involving gas leases in Oklahoma. Claim is for \$500,000,000.

16. Ellen Moose and Jane Moose, et al. v. United States, No. 184

Suit seeking additional payments to minors based on alleged "Trustee" failures. Court judgment \$125,000.

Mr. TARR. I am not sure what the status of that case is. That is the one we have administrative proceeding pending at this time.

If I recall the case correctly, it has been remanded to Mr. Swimmer on the determination of the unitization issue. There is apparently a collateral Claims Court suit.

Mr. YATES. Are you Mr. Vollmann?

Mr. VOLLMANN. Yes.

#### SOLICITOR'S SOUTHWEST REGIONAL OFFICE

Mr. YATES. Tell me about your job in Oklahoma. What have you done to correct the situation so the five civilized tribes and the other tribes in the area can be sure they are getting a square deal now?

Mr. VOLLMANN. I appreciate the opportunity to do so.

When I arrived in Tulsa in mid-April in an acting capacity, I immediately appointed Sharon Blackwell to be Assistant Regional Solicitor in charge of Indian Affairs. She is an accomplished Indian attorney with a lot of experience and a sound reputation in Indian Country.

I directed that all trial attorneys represent Indian interests in these cases with an exclusive eye to the Indian interests involved. The procedures which were in place at the time of the Austin Walker case in 1983 already stated that.

I reaffirmed that. I have met with Bureau of Indian Affairs people, I have met with a large number of people who have come into our office raising questions about their lands.

I am, as Solicitor Tarr mentioned, prepared to write a letter to the judges now that the Walker case is concluded—I just received formal notice of that this morning—to recommend changes in the state court procedures to assure the trail attorneys from my office have a better opportunity to meet with the Indian land owners and discuss the issue in the proceeding prior to the proceeding.

Those opportunities are very minimal right now. I have attended hearings to see how the proceedings are conducted; I have talked to Indian people after the proceedings to ask what their understanding of the proceedings were.

I am trying on every level to understand what the nature of these proceedings are, how the Indian land owners' interests can best be represented, and I think there is no substitute for improving relations with Indian Country in Eastern Oklahoma and that is what I am striving to do.

Mr. YATES. How far does your region extend? Do you include the Navajo?

Mr. VOLLMANN. My region does include the Navajo Reservation, yes.

Mr. YATES. As I remember, the McClanahan case, that was Navajo.

Mr. VOLLMANN. That is correct.

Mr. YATES. Do you require any corrections in procedures to prevent cases like McClanahan from reoccurring?

Mr. VOLLMANN. The Solicitor's Office involvement in that case, and I have first-hand knowledge of that, was limited to preparing legal opinions in 1980 and 1981 in connection with legal issues that

arose in those proceedings. That was basically a Bureau of Indian Affairs managed matter in connection with these uranium leases.

Mobil Oil, when they were not able to get the consensus of all the allottees in an 1100 acre unit where they had planned on doing in-situ leaching of uranium ore, when they did not have all the consent—a small minority of owners had not consented, they proposed a rule which would allow them or would allow the BIA to approve a lease without the consent of all the Indians.

The Solicitor's Office at that time issued an opinion to the effect the rule offered for public comment by Mobil exceeded the Secretary's authority.

The then-Solicitor, Mr. Martz, was of the view that another alternative was available and that was applying common law principles of co-tenancy which apply to oil and gas leasing in many states to the Indian mineral leases, and he signed an opinion in January, 1981 to that effect.

And that is what was challenged in the McClanahan case. The judge found it exceeded the Secretary's authority.

There is flat disagreement on that legal issue.

#### RELATIONSHIP BETWEEN THE SOLICITOR'S OFFICE AND THE U.S. ATTORNEY

Mr. YATES. Is there anything in the relationship between the Solicitor and the U.S. Attorney that ought to be improved? Do they control actual litigation or do you control it?

Mr. TARR. They have the ultimate responsibility. At times they will remind us of that, more frequently than we like sometimes.

Mr. YATES. Are you their client in a sense, or is the government their client?

Mr. TARR. That is a bit of an esoteric question. I suppose they view the government as ultimately their client.

#### SOLICITOR'S BRIEFINGS OF THE SECRETARY

Mr. YATES. How much of this do you know about, Mr. Secretary?

Mr. Vollmann is out in the trenches working, he has these problems. How does this work, Mr. Vollmann? Do you send notice of your problems to the Solicitor?

Mr. VOLLMANN. Yes, I do.

Mr. YATES. Do you send notice of Mr. Vollmann's problems to the BIA and the Secretary?

Mr. TARR. When that is appropriate. If we can take care of the matters, there is no sense of sending anything further on.

Secretary HODEL. I meet with the Solicitor on a weekly basis. I am advised of those things they think have reached a level of significance that they may involve some secretarial action or decision.

Mr. YATES. Do you know of the Austin Walker case?

Secretary HODEL. I heard of that at one of the Solicitor's briefings and I think it was immediately following Mr. Tarr's becoming aware of the case, because he was so outraged. As I heard the facts unfold, I was outraged, and he and I—

Mr. YATES. It seems to me it would be appropriate to express your outrage.

Secretary HODEL. Mr. Chairman, there is a tendency to do BIA bashing—

Mr. YATES. It isn't BIA bashing. This is your job, Mr. Secretary. You're the boss of BIA. Where does the buck stop?

Secretary HODEL. Mr. Chairman, I know that you understand fully with 70,000 employees, I am not at the elbow of each of them when he makes a decision or takes an action.

All of it has to be done through intermediaries and intervening supervisors, and when I learned of the case I gave full support to the Solicitor to deal with it. I concurred in Mr. Vollmann's going out there to take all actions appropriate. I thought his report was excellent.

#### MAKING CHANGES IN INDIAN COUNTRY

Mr. YATES. Isn't that why some of the chiefs want to get out of your department, because you have such a huge jurisdiction and responsibility?

Secretary HODEL. Now you are getting somewhere. Again we are back to the basic point.

The Bureau is being asked to manage a hundred kinds of programs involving an enormous breadth of expertise. It is not practical to consider that the people we have been able to hire in our operation are going to be able to do all that successfully and efficiently.

We think there needs to be—

Mr. YATES. I agree. Now we are getting down to bedrock.

Secretary HODEL. We can talk about these specific cases but let me point out one thing. Many of the cases catalogued by critics of BIA, we discover through our own management and we try to blow the whistle on them and we are public about it.

Mr. YATES. Who is "we"?

Are you doing it or someone under you?

Secretary HODEL. In the view of the people who work for me, I don't do any work. You know—

Mr. YATES. Then you have reached the ultimate.

Secretary HODEL. I spend lots of hours in meetings in the office but I am sure in their view, they do it all and in reality that is true. All I can do is hear of the problem and say let's solve it, can we solve it, do we need legislation, do we need some change?

When I brought Mr. Swimmer on board, the thing I said to him was:

It is clear to me nothing we have been doing as a Federal Government for a hundred years has solved the problems we all care about. If we continue doing what we have been doing, Ross, it will be that way a hundred years from now. You know Indian Country better than I ever can hope to know it, can you possibly try to find a way to solve some of these problems?

He spent essentially a year, Mr. Chairman, in spite of the vast knowledge he brought, talking and working with people in Indian Country. He was operating on two basic assumptions. One was that we wanted to improve the quality of life in Indian Country and secondly, the best way to get there was to improve Indian ability for self-help, self-determination.

He ultimately came up with this set of proposals he felt contributed to carrying that out. We are not going to get self-determina-

tion if the BIA in its wisdom constantly says, "you can't do this, you must do that, here is how you have to spend your money even if it doesn't make sense on your reservation."

He came up with proposals to alter that relationship. Those did not wash and it wasn't that there hadn't been consultation, there had been. It was that they didn't serve the purpose of all the various constituencies and those not happy with them have spoken up clearly and loudly.

If the test we have to meet is unanimity among 500 different tribes in Indian Country we will not make any progress on the solution. Ultimately the Federal Government has to decide that it wants to work with the broad base of representatives of Indian Country, but we cannot seek unanimity just as we have this problem with individual owners. One—

Mr. YATES. Well, then are you saying that the things have to go along as they are going along now?

Secretary HODEL. Unless the Congress and the Administration and the representatives of Indian Country come together to agreement on the basic thrust.

Mr. YATES. We are going to have some of the representatives of Indian Country come and testify—I just want to tell the people here who have time schedules. We intend to stay with the secretary and Mr. Swimmer until 12:30.

We will come back at 1:30 to listen to the witnesses from Indian Country, and we will go on until they finish their testimony.

I find that very discouraging. I find your testimony extremely discouraging and as one who has fought for years to advance the standard of living of the Indian people it seems to be totally unmanageable.

#### ROLE OF BIA

Mr. SWIMMER. It is, Mr. Chairman. You cannot go out there and manage lives of 700,000 people who live on the reservation and all the tribal governments. And the Federal Government is never going to make that kind of change in people's lives.

If people want to make those changes, they will have to make them. We can provide sources, and it is not the failure or the excess of the resources we provide but the manner in which we are doing it. That is true self-determination, to put those decisions out there, with the tribes. If they are going to be tribes, they must be accountable for the quality of life on that reservation. You and I can't be. If we are going to be held accountable, we would treat these people a different way.

If the government is going to take the Indian people of this country and all the afterborns, and they are going to be our responsibility in a way as our children from now on, then we would treat them very differently than what we are attempting to do. There wouldn't be self-determination, because we would decide what is best for them and we would go out there and do that.

We wouldn't have all those conflicts about who is doing what to whom. We would make sure those decisions got made. We can't on the one hand make those decisions and then say but wait a minute tribes, you have the ultimate responsibility, you should be develop-

ing self-determination. You tell us whether it is the right thing to do.

The question is, should the Federal Government be in the Indian business in the manner in which it is today? The answer is no. We must get out of it, not transfer it to another agency, not set up a Federal independent agency, not go out and continue doing the same thing in the same way.

We must free the Indians, we must give them the ability to deal with their own resources, give them the money to go out and hire the experts to advise them. If they make a bad deal, let them be accountable for it, but don't let them come back to say BIA made them do it.

I have tribes coming in every day asking me, "Why did you let me make that loan, didn't you know that was a bad deal?" Now they want me to charge it off because I made a bad loan or my predecessor made a bad loan. It wasn't Washington.

We can't continue doing that kind of thing. The Federal Government is not the problem solver for the problems on the reservations. The tribes are and the people are. It must be turned over to them.

Mr. REGULA. Mr. Chairman?

Mr. YATES. Mr. Regula.

Mr. REGULA. It seems to me the problem is in part policy that is implemented by Congress. And so the real issue is do we make a judgment to change statutorily the way in which this operation is carried on rather than to try to look for people that have done—not done things well?

Mr. YATES. Mr. Secretary?

Secretary HODEL. I think there is validity to that. When you say Congress, I should throw the Administration in with that.

Mr. YATES. I think you ought to throw them out.

Secretary HODEL. They were passed at the request of the Administration, whichever Administration was in power, in an effort to deal with what were perceived as problems.

And your discouragement, Mr. Chairman, let me remind you, you and I have had this conversation privately. Before Mr. Swimmer came on, I told you I absolutely could not see a way around the intractable problems of the BIA; they were intractable. That is why I sought Mr. Swimmer, that is the challenge I gave him and that is the challenge we still have.

#### INDIAN REPRESENTATION

Mr. YATES. What is the voice of the Indian people?

Secretary HODEL. Let me make one comment. If you treat testimony today as representative of Indian Country, we may be misled. You have a handful of people who represent their point of view and represent it very effectively. I don't know what they are going to say.

Mr. YATES. Stay here and listen to them.

Secretary HODEL. I understand you have requested I stay. I would like to hear as much of that testimony as I can. But I will have to listen with an automatic discount from the standpoint that I don't think this is a plebiscite mechanism that we have here. We



will hear certain points of view; they will represent a sector of Indian Country and that is perfectly fair and proper.

But I think if we were to listen to these witnesses today and say that is the whole answer, we would have not done our job of consulting with a whole lot of people who might hold counter-views.

One other thing, some of the people speaking here today will represent their point of view very effectively, but remember they are elected to their positions by a majority, not unanimity of tribal members. We have that complication.

Mr. YATES. We have that complication and we have Judge Mecham's decision, too, don't we?

Secretary HODEL. I don't think the courts are the proper forums for resolving these matters. They have to make decisions based on the laws.

If we think something is wrong and ought to be fixed, we ought to be finding legislative corrections for it.

Mr. YATES. Oh, boy. How can you?

Mr. REGULA. The court can't make policy. That is not their function. It is to interpret what we do.

Judge Bork agrees with that.

Mr. YATES. Look at what happened to him.

Secretary HODEL. Mr. Chairman, an estimate is that somewhat less than 10 percent of Indian Country in totality will be represented by those who will appear here later today.

Again, even within that 10 percent there may be divisions and the other 90 percent is not heard from here today, although some of their views will be represented.

Mr. YATES. The other 90—what should we do? Have this 10 percent set up a separate agency and let the 90 percent stay with BIA?

Secretary HODEL. I think we need to decide what it is we would like to accomplish.

Mr. YATES. What do you want to accomplish?

#### ALTERNATIVE RELATIONSHIPS BETWEEN INDIANS AND THE BIA

Secretary HODEL. If what we want to accomplish is free people in Indian Country to aspire to a satisfactory lifestyle as distinguished from keeping them in a form of bondage—

Mr. YATES. Can you have two forms, can you have a BIA that still exists for people who don't want to have that kind of self-determination and another BIA or different agency for those who do? Can you split this up in some way?

Secretary HODEL. It could be done.

Mr. YATES. Is that desirable?

Mr. SWIMMER. You would have a difficult problem in deciding who that is going to be.

Mr. YATES. Why don't you let them decide for themselves?

Secretary HODEL. Mr. Chairman, I think I would say that it is wrong, that we should never consciously set up a situation where we say to people you can sell your soul to the Federal Government.

If you opt to have us protect you from cradle to grave you sign on the line here. We will decide what you wear, where you wear it, and what your jobs will be.

Mr. YATES. What Ross is saying is that that is what some of them want. Haven't you said that?

Mr. SWIMMER. I have said that, and I think that is the bargain they have struck in exchange for the dollars that they get. I think they are willing to stay in that condition because if they don't—

Mr. YATES. How many of them are there? We have 10 percent of the leaders here today, only 10 percent presumably. How much of the remaining 90 percent have that attitude, in your judgment?

Mr. SWIMMER. I don't know, and I can't say how it varies from tribe to tribe, or individual to individual. There are a lot of underlying reasons why individuals keep their properties in trust with us.

Secretary HODEL. Mr. Chairman, these are not the kinds of things being decided by an informed judgment, and what you postulate is an informed judgment.

You sit down and say you have two choices, you can have freedom, opportunity and risk or you can have a welfare state imposed upon you. You choose now once and forever. What we are trying to do is find a way for people who I think have inadvertently and undesirably found themselves in a welfare situation, to give them the freedom to improve that.

Mr. YATES. Aren't you saying that because we cannot come to any conclusion for a change, because of this split in Indian opinion, we have to keep the BIA going the way it is going?

Secretary HODEL. No. We are saying Mr. Swimmer's proposals are exactly not to do that.

Mr. YATES. What does he want to do?

Secretary HODEL. I had better have him characterize it. What he is saying is let's move the responsibility wherever possible to the local level. Let's give the resources we are now funneling, spending and perhaps misapplying to the tribe. But we have got to be prepared, Mr. Chairman, if we do that, to accept reports from time to time that the tribe has taken the money and spent it in a way which you wouldn't like, I wouldn't like or someone else might not like.

Mr. YATES. Are the tribes ready for this?

Secretary HODEL. Some are and some are not, I feel.

Mr. YATES. He is going to do it for all tribes.

#### THE POLICY OF SELF-DETERMINATION

Mr. SWIMMER. Not all tribes are ready for it. I don't support that. I support a phase out. Every Indian policy since the late 19th Century has been brought about by the idea there would not need to be a Bureau of Indian Affairs.

Self-determination was also that. At some time we wouldn't need a Bureau of Indian Affairs, because we would be moving people into these self-determining or some other way of being. But nobody ever set a time.

If you set a time and say 10 years from now, it is your responsibility then—and you are charged, Mr. Swimmer, with the responsibility to go out there and evaluate tribal governments and assist them in any way they deem necessary in order to take over the

management of their assets and assume their sovereignty, then I have got something to do.

But if you tell me the Bureau of Indian Affairs will continue for the next 100 years, and you are supposed to be in this mishmash of saying we want you to help tribes but we also want you to be responsible for what they do, but if they make a mistake, you have to be the guarantor for it. I can't operate that way.

I don't think anyone in my position can or that any of my predecessors have been able to. If the Congress decides on a goal and that is decided with the tribes and we say we are going to move in the direction of getting out of the Indian business in terms of management, not dollars and cents, we will provide the resources. We recognize tribes don't have the tax base, the way of raising revenues most governments do. We will provide them resources and turn it over in the next 10 years and you will set a plan, in effect, that will say at the end of 10 years you will have accomplished such and such.

It is much easier to work with that kind of goal. We can set out what trusteeship is. The Congress can decide what the trusteeship is; it has never been decided.

The courts are deciding now what trusteeship is. We need a definite statement as to what the corpus is, what the thinking is, what we are supposed to be trustees over, land minerals, water, education, social services, law enforcement?

What are these things we call trusteeship and what is our responsibility. That gives me a clear direction. I know then where I have to come down and say this is the rule. We are your trustee, you can not cross over this line.

On the other hand, in the social service problems, if the expertise, as we said, lies in other areas of government, we can draw on it to provide a lot of these things and I think we should.

But on the social service side for the most part whether it is education, law enforcement, tribal general assistance, or whatever, tribes should be making the decisions.

Mr. YATES. Under your scheme, how much of the bureaucracy do you eliminate?

Mr. SWIMMER. I think depending on the degree tribes assume the management over trusts, we could eliminate up to half to two thirds of it. But there would also have to be that commitment.

You cannot retain the same administration out there, the same 12 area offices, the same 82 agencies. Those have to go. And your local chambers of commerce, and your local people who work there on that reservation are the ones who are going to scream about that.

Mr. YATES. Suppose you have the tribes taking over the agencies, suppose you have the tribes under their contracting power taking over the local BIA groups, do you see any objection to that?

Mr. SWIMMER. Absolutely not. That is the responsibility of every agency superintendent out there—to attempt to contract everything he can.

My proposal this year was to make it easier. We shouldn't go through contracts. We ought to have a transfer process and transfer the dollars, not necessarily programs but most of the dollars

over subject to the budget the tribes develops and let them tell us how they are going to spend the money.

I have an obvious conflict because if that agency superintendent has done it he loses his job. That is not much of an incentive.

I think it should be built in and there should be incentives built into it. In many cases, if we did away with the bureaucracy out there, the tribes would be hiring those people from us who have the experience.

#### DETERMINING TRUST RESPONSIBILITY

Mr. YATES. Let me ask you a question. In 1973 President Nixon set up a proposal to provide for the creation of the Indian Trust Council Authority and this is what he said. "The United States Government acts as a legal trustee for the land and water rights of American Indians, these rights are often of critical economic importance to the Indian people.

"Frequently they are also the subject of extensive legal dispute. In many of these legal confrontations the Federal Government is faced with an inherent conflict of interest. The Secretary of Interior and the Attorney General must at the same time advance both the national interests in the use of land and water rights and the private interests of Indians and lands which the government holds as trustee.

"Every trustee has a legal obligation to advance the interests of beneficiaries of the trust without reservation and with the highest degree of diligence and skill. Under present conditions it is often difficult for the Department of Interior and Justice to fulfill this obligation.

"No self-respecting law firm would ever allow itself to represent two opposing clients in a dispute and yet the Federal Government has found itself in precisely that position.

"There is considerable evidence the Indians are the losers when such situations arise, more than that the credibility of the Federal Government is damaged."

He proposes to correct this situation by calling on the Congress to establish an Indian Trust Council Authority to assure independent representation for the Indians' natural resource rights. I was reading from a letter President Nixon sent to the Chairman of the Senate Interior and Insular Affairs Committee, who was Scoop Jackson at the time.

Do you have a comment on that proposal?

Mr. SWIMMER. As long as that remains in the Federal Government, independent agency or otherwise, you are going to have some conflicts. They have to report to the same President and Congress.

The idea is that we must move out of the management of and the protection of those resources, but not move out of our recognition of tribes as governments. That means tribes should have the resources to seek the advice that they need to manage those resources on their own. That should be the ultimate goal of the Federal Government, to get the tribes in a position where they can do it themselves.

That is the only way they will be independent. It is the only way they will make that deal they believe is a fair deal.

#### DEPARTMENT OF INDIAN AFFAIRS AND EXPERT ASSISTANCE

Mr. YATES. Suppose you had a proposal that would establish a Department of Indian Affairs, and you had enclosed within that department, you had an Assistant Secretary for Health and Assistant Secretary for Trust and an Assistant Secretary for Housing, and an Assistant Secretary for the next duty which BIA now performs, welfare, perhaps, and then you had just at the local level tribes governing and you use the Assistant Secretaries in the Washington operation just to create a center of experts to help them in connection with self-determination.

Mr. SWIMMER. It shouldn't be done in the Federal Government. If that system should be set up, it could be done in the private sector where they would have access to independent data. You are going to wind up with the same problem of the government suing the government.

We don't have the ability to bring those kinds of experts in. The kind of expertise that tribes are hiring now, they are paying \$250 an hour for.

We can't hire people at those kinds of rates. The tribes can go out and use their resources to do it.

Mr. YATES. Would the BIA be in the nature of a pass through agency for transmitting funds to Indian tribes and letting them govern themselves?

Mr. SWIMMER. For the interim they would be. There has to be a Federal vehicle to pass money through, and I think the Bureau of Indian Affairs could operate in that way.

We could report, file whatever reports Congress wants, but we would be a passive agency in that respect and the tribes would simply submit their budgets to us. We would submit them to the Congress.

Mr. YATES. What happens to the trusteeship relationship then if you have that kind of a set up?

Mr. SWIMMER. Eventually the tribes would become their own trustee.

Mr. YATES. That would disappear then?

Mr. SWIMMER. It could, but it would take much time. It would depend upon the capability of the tribes.

You also have a second tier of trusteeship which is to the individual.

We should act as trustees for those people who are incompetent, who are minors, who cannot represent themselves. Eventually we should allow people to make their decisions about their resources, including tribes.

Secretary HODEL. Mr. Chairman, it is important to draw a distinction here, if I understand this correctly, and jump in if I don't state this correctly, when you talk about the trustee responsibility, the one we are talking about here is the kind of activity that ultimately, if this proceeded appropriately, would diminish. That is not the same as the treaty obligation which I think some people mix with the trust obligation.

The treaty obligation is to provide the resources. Because in those treaties we, the United States of America, made certain commitments with regard to what it would and would not do. We also have reservations which do not have adequate resources for the foreseeable future to become independent or self-sufficient economically, at least as we view the world from this point.

Therefore there will continue to be a treaty obligation to provide resource support. What we are describing here is the mechanism by which it is received and managed. We are suggesting our goal ought to be to permit the management to be in the lands of the tribes and the individual Indians if possible.

#### CONFLICT OF INTEREST

Mr. YATES. Under this kind of set up, would this prevent from happening the wrongs, the injustices that have been described in the Arizona Republic articles and the Denver Post articles a few years ago?

Mr. SWIMMER. Not necessarily. A lot of problems that are reflected in there are actual contracts we have with tribes and tribal groups now.

You can't protect people against themselves. We make mistakes, tribes will make mistakes. You will find some errors made out there in the negotiations process between a tribe and an energy company and between an individual and an energy company.

I think it could eliminate some of the problems because of the sheer bureaucracy of it and the difficult layers that are out there and the potential for error that might exist under the current system.

Mr. YATES. Under your set up the potential for conflict of interest would exist, would it not, between the Indian people and the BIA and BLM and the others who had interests in Indian resources?

You know what I am talking about? For instance BLM has a water rights dispute with an Indian tribe. How would you settle that? Would BIA come into that at all or would they have to go to court?

Mr. SWIMMER. In that case the tribes would hire the expertise, they would go to court much as they do today—

Mr. YATES. And BIA would have nothing to do with that?

Mr. SWIMMER. Except providing resources to the tribe helping them in their battle.

Mr. YATES. You would still remain in the Department of the Interior under your set up?

Mr. SWIMMER. I would assume so. I have no preference. The Secretary has a preference. He would like to see us some place else, I think. That is irrelevant at that point.

#### ACCOUNTING FOR MINERALS ROYALTY PAYMENTS

Mr. YATES. I think we are going to have some additional questions.

Let me ask you this question, for example. The Republic articles talk about low BIA officials intentionally may have withheld min-

erals royalty payments from poverty-stricken Indians so they could invest the money and divert interests into slush funds.

For example, Indians in Oklahoma allege BIA officials diverted \$28 million from individuals and tribes into an illegal slush fund under the name of Mr. Larsen—we found inappropriate transactions in the accounts.

Can you tell us what happened there?

Mr. SWIMMER. This is Pat Ragsdale.

Mr. RAGSDALE. I was area director for the Anadarko area.

Mr. YATES. That was the time period of this allegation?

Mr. RAGSDALE. This was the time period the allegation surfaced. It surfaced at the Synar hearing in Oklahoma City sometime in April of 1984, Mr. Chairman.

The Larsen account was essentially a clearing account that was closed out in 1979. R.L. Larsen, as I recall, was a U.S. Treasury disbursing agent we routinely disbursed monies to. That is how the name came into being.

An allegation was made at the Synar hearing that the R.L. Larsen account had been used as a \$28 million slush fund. At Congressman Synar's request, the Inspector General investigated the account and determined that there had been some problems with the accounting system.

There were a number of errors in the accounting. At one time one tribal payment was made erroneously into the R.L. Larsen account which was subsequently corrected by the Bureau of Indian Affairs. At no point during the existence of the account did the account ever exceed \$109,000.

Mr. YATES. Rather than the \$28 million?

Mr. RAGSDALE. Rather than the \$28 million.

#### PROPERTY INVENTORY

Mr. YATES. It also charges BIA's handling of money—BIA office managers don't trust the regular finance reports. That isn't the question I wanted to ask, although that is one of the charges.

I want to ask a question about do you have inventories of your personal property? As I remember the articles, there was an allegation made that you don't—you lose hundreds of thousands, millions of dollars because you don't have adequate inventory to know what your property is?

Mr. SWIMMER. We believe those problems have been corrected in terms of accounting for inventory. The Navajo area has approximately 25 percent of the property, we have to account for. The IG has reviewed that system and found there were no flaws in it, that we have been operating well.

Mr. YATES. Does that mean you have all of your properties in inventory?

Mr. SWIMMER. It means if we don't, we are well on our way to doing it.

Mr. YATES. That doesn't answer my question. How much is inventoried and how much is not inventoried?

Mr. SWIMMER. It is all on some kind of inventory.

Mr. YATES. Is it computerized?

Mr. RAGSDALE. Yes, sir.

Mr. YATES. All of it?

Mr. RAGSDALE. Yes, sir.

Mr. YATES. You didn't tell me that.

Mr. RAGSDALE. Yes, sir, we do have a revised system.

Mr. YATES. Then you know where it is?

Mr. RAGSDALE. Yes, sir.

Mr. YATES. Every—

Secretary HODEL. Let me intervene.

Having asked some questions of not only this but other bureaus from time to time—

Mr. YATES. We have a statement, I will let you answer in just a second.

Mr. Ross Swimmer is alleged to have said we have a lot of property unaccounted for and we don't have sufficient controls. Should he answer that or you?

Secretary HODEL. I think he should respond to the question. I still would like a shot, Mr. Chairman.

Mr. SWIMMER. I don't take credit for that quote. If I did say it, it was in reference to something a reporter had handed me and said look at this report.

I was not aware of all the corrections that have been done. I have reviewed our system. We have been able to automate the system.

It is my understanding we have an accountable system for personal property, and that it has been tested in at least one spot on that reservation.

Mr. RAGSDALE. I wouldn't want to testify we have every piece of property, we are 100 percent accountable, but there is an indication we do have an improved system. My understanding is that the Inspector General has been out and done a subsequent review at the Navajo office which maintains about 25 percent of the property in question, and did not find any discrepancies.

I think that is a fairly good indication the Bureau of Indian Affairs has made some improvements and we have a system that does work.

#### INSPECTOR GENERAL'S REPORT ON BIA PROPERTY MANAGEMENT

Mr. YATES. Well, let me read to you from a GAO report. Excuse me, from your own Inspector General, dated September 1987, page 23, Review of Property Management, Minneapolis Area Office, January 28, 1985.

This review was to evaluate the effectiveness of the Minneapolis area office operations and determine whether it complies with management regulations on personal property. It found personal property listings of various offices and agencies were inaccurate and out of date.

Initial inventory techniques had to be improved and the area office needed to reconcile. We recommended the bureau assess the area office in performing a thorough inventory, adjust, and reconcile the general ledger. And then in November the Bureau responded by stating the area office will be required to conduct a complete inventory; two, determine excess property; three, convene boards and surveys for missing, lost and stolen property; and four, to



adjust all official inventory and general ledger records by September 30, 1985.

Then they come along and they say our followup shows none of the three recommendations have been implemented. The last documented physical inventory was performed by the area office in January 1984. Before our prior audit. Therefore the area office could not adjust its reports to agree with the results.

Mr. SWIMMER. It is my understanding we have sent a team as of two months ago to the Minneapolis office and we are doing that very thing.

Mr. YATES. What is the very thing?

Mr. SWIMMER. To reconcile the inventory and get the inventory accounted for.

Mr. YATES. Now, what if IG were to go to your other offices? Would he come back with the same results?

Mr. SWIMMER. They have been to the Navajo office.

Mr. RAGSDALE. Mr. Chairman, I think they would find improvements in our overall system.

Mr. YATES. You couldn't very well go the other way.

Mr. HODEL. Mr. Chairman.

Mr. YATES. Mr. Secretary.

#### PROPERTY MANAGEMENT SYSTEM

Mr. HODEL. The legitimate concern and the one I think as a manager I have, and the Bureau of Indian Affairs ought to have in the Washington office is, do we have a system in place which gives us reasonable assurance that everything is supposed to be inventoried. Now, the reason we have an Inspector General is that no matter how good our system may be, we periodically have to go out and see to it that the systems are being followed.

I was attempting to interject this point previously, while you were asking is every piece of equipment on inventory and do you know where it is.

Mr. YATES. Accounted for.

Mr. HODEL. I don't believe that a manager, with as vast an empire as this department, can ever say he knows where it all is. He knows where it is supposed to be and he may have a complete listing of what it was on January 1st, and the last time they updated the inventory, but it is a changing situation. The key is to have a system of periodically updating that and holding accountable—this is important—holding accountable the people who are charged with managing the property.

Mr. YATES. Right. Because it is alleged that you are losing hundreds of thousands, if not millions, of dollars in property. You say that isn't true.

Mr. HODEL. The allegations, I believe, are based upon the Inspector General's reports previously filed which gave every indication that that could be happening, and we would not know about it. It is that situation that is intended to be corrected by the imposition of these systems we are now talking about.

Mr. YATES. Let's come back at 1:30.

Mr. HODEL. Thank you, Mr. Chairman.

[Recess.]

Mr. YATES. Show the hearing as coming to order. We now have as witnesses for the committee Mr. Roger Jourdain, Chairman of the Red Lake Band of Chippewa Indians, Wendell Chino, President, Mescalero Apache Tribe, Joe DeLaCruz, President, Quinault Nation, and Larry Kinley, Chairman, Lummi Business Council.

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TUESDAY, OCTOBER 27, 1987.

## INDIAN AFFAIRS

### WITNESSES

ROGER A. JOURDAIN, CHAIRMAN, RED LAKE BAND OF CHIPPEWA INDI-  
ANS

WENDELL CHINO, PRESIDENT, MESCALERO APACHE TRIBE

JOE DeLaCRUZ, PRESIDENT, QUINAULT NATION

LARRY KINLEY, CHAIRMAN, LUMMI BUSINESS COUNCIL

Mr. YATES. The statements of these witnesses may go into the record at this time.

[The prepared statements of Mr. Jourdain, Mr. DeLaCruz, and Mr. Kinley follow:]

TESTIMONY OF ROGER JOURDAIN  
CHAIRMAN, RED LAKE BAND OF CHIPPEWA INDIANS  
BEFORE THE HOUSE INTERIOR APPROPRIATIONS SUBCOMMITTEE  
OCTOBER 27, 1987

Good morning, Mr. Chairman. My name is Roger Jourdain and I am the duly elected Chairman of the Red Lake Band of Chippewa Indians, a position I have held for 28 years. I am also Co-Chairman of the Alliance of American Indian Leaders and the Indian Rights Association, and an expert on Bureau of Indian Affairs and Indian Health Services atrocities. As a Tribal leader who has been calling for the abolishment of the BIA since 1959, I appreciate the opportunity finally to discuss these issues with a group of congressmen who have the power to do something. My remarks may seem blunt, but the time for politeness and protocol has long since passed. We need action not words to solve our problems.

As anyone reading the Arizona Republic articles or even remotely familiar with the BIA or everyday life on an Indian reservation will tell you, the BIA has outlived its welcome. It has become one of the biggest obstacles to success an Indian tribe must overcome.

While I have serious problems with the entire BIA, my attention always focuses first on its area office system. We at Red Lake would like nothing better than to see our area office abolished today. The Minneapolis Area Office provides nothing more than an additional layer of paperwork slowing down progress on our reservation.

Along with many other tribal leaders, until a few years ago, I thought that in conjunction with abolishment of area offices the authority of the local agency offices should be increased. However, experience under Pub. L. 93-638 has taught us that the funding and authority at the local level should be in the tribes themselves.

The administration of tribal affairs by our governing body, the Red Lake Tribal Council, has become more sophisticated than and technically superior to both the agency and area offices. All of our grants, contracts, payroll and enrollment records are computerized, while the BIA limps along in an obsolete manner using hand kept records and other equally arcane methods. It is not unusual for BIA's "experts" to come to the Tribe looking for advice on contracts and grants management. Moreover, there are not even complete files on Red Lake grants and contracts at the area office. When the agency needs information it, therefore, has to come to the Tribe.

Indian tribes have too long suffered the consequences of dealing with the BIA. While each Indian nation has similar but different disastrous experiences trying to work with the monstrous, cumbersome Bureau of Indian Affairs, I must share some of the Red Lake Band's current and continuing problems. They support my call for a drastic and immediate change in federal Indian administration.

A classic example of the manner in which the BIA interprets and carries out the mandates established by the Congress is the 1916 Red Lake Forestry Act. In that piece of legislation, Congress authorized the Bureau to establish and operate a sawmill as an economic enterprise for the benefit of the Red Lake Band. For the past 70 years we have been trying to get the BIA to follow that congressional directive.

Instead, the Red Lake Band has suffered almost wholesale loss of merchantable timber, unauthorized expenditures of trust funds, non-payment of stumpage and the refusal to repay the Tribe some \$200,000 in loans. It took a federal court order to end the bureaucratic bungling that put us in our current situation. That situation is a mill that is obsolete, forest resources depleted to the point of bankruptcy, and a work force that has been deprived of a means to earn a living. We are presently in federal court to establish the financial accountability of the BIA to the Red Lake Band of Chippewa Indians.

One branch of Congress, the Senate, has properly assumed the responsibility for rectifying this problem. We urge this Committee and the House of Representatives to support the Senate action to appropriate \$100,000 and earmark another \$100,000 in the BIA's FY 1988 budget to assist the Red Lake Band to develop and implement its forest products industries. Moreover, we urge this Committee and the Congress to direct the BIA to repay the Tribe the \$200,000 it borrowed from our Docket 18A account to fund mill activities. These loan agreements were entered into in the 1960's at the BIA's request, yet here we are 20 years later still seeking repayment.

Another example of how the BIA will not meet the needs of Indian Tribes is the unilateral assignment of agency personnel. Since 1969 the Red Lake Band has had a succession of 11 acting agency superintendents. None of these individuals were assigned or reassigned with Tribal consultation. Since the agency superintendent is the first line officer between a Tribe and the U.S. Government it is imperative that this individual be selected with the idea of being acceptable to both the Tribe and the federal government.

Under the current administration, the Bureau has concertedly tried to relinquish the United States' trust responsibility in education and the management of trust funds. This is a ploy. One federal boarding school located at Red Lake was arbitrarily turned over to state control in 1936.

In areas of economic development the BIA has said simply, "Go to the private sector." We did. The Red Lake Band opened negotiations with private interests to purchase land on which to locate a Tribal enterprise. The success of this venture depended upon the Bureau's ability to complete the necessary federal paperwork in a timely manner. After 18 months of waiting for the BIA to complete the work required by federal law and the BIA's own regulations, the

private sector dropped out because it couldn't afford to wait any longer. Not only did the BIA drag its feet, the realty personnel at the agency and area did not even know how to perform the most basic realty functions. Throughout this process our area director continued to make promises and demand paperwork from the Tribe.

Tribal efforts to assume all contractible Red Lake Agency functions pursuant to Pub. L. 93-638 have encountered the same bureaucratic obstacles. The BIA has repeatedly violated its own regulations, failing to meet deadlines for review of applications to contract, failing to meet with the Tribe to discuss technical problems raised by the applications, and in one case the area office failed even to review the application at all, sending it to the central office after eight months without notifying the Tribe.

In the face of such incompetence and stonewalling, and in the face of the commonly accepted low opinion of the Bureau's performance of its duties, the Bureau has the incredible temerity to try to retain six residual staff at the agency level while the Tribe contracts every contractible function. The Bureau intends even to retain a GS-14 superintendent to supervise no programs! Moreover, BIA proposes to retain the function of criminal investigator because it thinks that the Bureau, not the Tribe, is capable of performing that function. The Tribe has met the requirements of the Pub. L. 93-638 regulations and it is absolutely illegal for the Bureau to refuse to contract the criminal investigator's function. In the end the Tribe will prevail, but not before the Tribal Council, staff, consultants, and attorneys have expended countless hours and dollars, dollars from the Red Lake Band's scarce supply of funds. We, therefore, feel that it is ironic for the Bureau to be asking why the Red Lake Band is unable to meet BIA match requirements for its economic development grant program.

At most the Bureau needs one administrative officer for contract monitoring and a trust officer for the forestry program. We request that the Congress direct the Bureau to reprogram to the contracted programs all funds not needed for those two positions and their support.

After 75 years of personal interaction with the BIA, 28 years of which have been as the Red Lake Tribal Chairman, it is my considered opinion that the Congress must act today to institute a process for change. Congress has the responsibility to maintain the government-to-government relationship between Indian Tribes and the United States. The commitment to government-to-government relations is contained in treaties, congressional legislation and decisions of the United States Supreme Court. That commitment requires a federal governmental agency that works in partnership with Tribal governments, not a domineering, arbitrary and incompetent agency that out of interest in perpetuating itself presumes to manage all the affairs of Indians.

Moreover, in actual practice, the Bureau does not serve either the will of Congress or the needs of Tribes. The Bureau is accountable to the Office of Management and Budget which is accountable to the President. At each level of decision making, political appointees of the President and spineless, unprincipled federal employees ensure that the Administration's underlying policy of getting rid of the federal government's responsibility to Tribes is followed. Although the President issued an Indian Policy Statement in 1981 proclaiming a commitment to strengthen tribal governments and economic development and to honor the government-to-government relationship, that was mere rhetoric. In actuality the BIA officials have laughed at the policy. One area director even threw his copy in the trash.

It is no different when the directive comes from the Congress. On October 15, 1987, upon learning of the Arizona Republic articles, Senator Inouye directed Assistant Secretary Ross Swimmer to ensure that all BIA records regarding issues raised in the articles be sealed. I have attached to my testimony a memorandum dated October 20, 1987, signed by Deputy Assistant Secretary Ragsdale, which directs all area directors to "insure that your records are complete". This directive opens the door for changes and justifications of a "CYA" nature to the very records that Senator Inouye directed be sealed.

Now is the time to cut our losses and create a cabinet level, separate Department of Indian Affairs. Over the years there have been recommendations for change in the administration of Indian affairs. These recommendations have gone unimplemented. It is time to act. The Bureau has had too many second chances. We want a divorce.

The idea of a divorce is not new. As early as 1961 the American Indian Chicago Conference established a comprehensive position on the character and structure of federal Indian administration. In its Declaration of Purpose the Conference urged that area offices be abolished. I was a part of that Conference of Tribal leaders. Unfortunately, I am the only one of those chairmen still alive and in office today. In 1976 you, Mr. Yates, and other members of the American Indian Policy Review Commission, after taking testimony from Tribes across the country, called for the abolishment of area offices and the creation of an independent agency. As noted by the Commission, Tribal support for separation of Indian affairs has always been conditioned on full participation of Indian Tribes in the planning and development of the new department. The new department must be designed so that Tribal governments have appropriate control of appointments, policies, budgeting, and other critical elements of departmental operations. A new department without appropriate Tribal control would be just another BIA.

The Red Lake Band is willing to participate with other Tribal governments in this planning and developmental process. To say that

we are willing is not a small commitment. We have, since December 1986, worked at great Tribal expense with other Tribal leaders in an alliance to effect change in the institutional framework within which the Tribal and federal governments interact. We and other Tribes have paid for the analysis of issues, the preparation and dissemination of materials, the holding of meetings for setting goals and objectives, the education of the general public, and meetings with congressional members and staff. Most recently, the Red Lake Band had its attorneys prepare a draft bill to create a new Department of Indian Affairs and then disseminated it to all other Tribal chairpersons. Mr. Yates, I am sure you know that to do so was an expensive proposition, and that is only one example of the work and expenses born by Red Lake and other Tribes in our efforts to bring about a workable solution.

These Tribal leaders have joined in an alliance with each other and the Indian Rights Association of Philadelphia. We are called the Alliance of American Indian Leaders and the Indian Rights Association. We began with ten strong Tribal chairmen and focused our energy on the formulation of issues and strategy for their accomplishment. We have been fortunate to have the assistance of the Native American Rights Fund, particularly Mr. John Echohawk and Ms. Arlinda Locklear. Our tenacity is attracting other Tribal leaders and our numbers are growing.

The mere existence of this alliance in these days of scarce monetary resources is a demonstration of just how totally bankrupt the present federal bureaucracy is and how strongly committed we are to resolving the problems. The Alliance tribes have committed themselves to restoration of the relationship between Indian tribes and the United States to a nation-to-nation basis. By that we mean government-to-government relations in reality. It will be necessary first that the Congress commit itself to those principles as a matter of policy. Senator Inouye and 18 co-sponsors introduced S. Con. Res. 76 on September 16. That resolution affirms the constitutionally recognized government-to-government relationship, acknowledges and reaffirms the United States trust responsibility and obligation to Tribes, and commits the United States to honor the treaties with Tribes. We urge your active support for S. Con. Res. 76.

To implement the foundation principles contained in S. Res. 76 so that they are not hollow rhetoric, it is essential that the Congress enact specific legislation institutionalizing the right of Tribal governments to participate in the federal governmental process as it relates to Indian affairs. The federal government must be accountable, accessible and responsive to Indian Tribes.

We urge that the Congress assume responsibility to assist the Tribes with the financial burden involved in planning and developing an alternative to the present situation, an alternative which will restore relations between the United States and Tribes to a true government-to-government basis. We do not ask for funding for the

Alliance. The Alliance does not speak for other Tribes. It has functioned as a forum for Tribal leadership and as a conduit to disseminate their concerns to all tribes. We propose that the Congress fund certain essential functions which lie ahead: the technical analysis and the policy review involved in the planning and development of an alternative solution. We ask that there be funding to the Tribes for research, analysis, preparation and dissemination of materials, intertribal meetings for policy officials to review and develop recommendations and reach as nearly as possible a consensus approach to be presented to you, Chairman Udall, Chairman Byrd and Chairman Inouye.

Again, I appreciate the opportunity to testify, and I will be glad to answer any questions you have.





## Quinault Indian Nation

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**TESTIMONY OF JOE DELACRUZ,  
PRESIDENT, QUINAULT INDIAN NATION  
BEFORE THE  
HOUSE INTERIOR APPROPRIATIONS SUBCOMMITTEE  
HEARING ON  
PROBLEMS & SOLUTIONS TO THE TRIBAL-FEDERAL RELATIONSHIP**

October 27, 1987

I appreciate the opportunity as President of the Quinault Indian Nation to appear before this Congressional Subcommittee discussing, once again, the problems associated with the BIA-IHS delivery of resources and services to Indian Tribal governments and potential solutions to improve Tribal development. I've appeared before Congress many, many times and presented the same message over and over again. I've been a panelist on countless forums across the country debating, explaining, and discussing American Indian treaties, sovereignty, trust relationship, and rights. I've come to the basic conclusion that American society really doesn't want American Indians to be different.

I recently participated in a forum hosted by the Alliance of American Indian Leaders and the Indian Rights Association in Philadelphia, in commemoration of the bicentennial of the Constitution, to explore the topic: "In search of 'A More Perfect Union': American Indian Tribes and the United States Constitution." It was an enlightening and saddening experience to refresh my knowledge of the United States and American Indian Tribes at the time of the Constitution and the historic relationship established between sovereign nations. American Indian people have suffered, endured, and survived over the last 200 years despite the assurances of the Constitution and solemn agreements between leaders of nations.

I quote an appropriate statement by a presenter at the Philadelphia forum, Milner S. Ball, in the introduction to his fascinating American Bar Association Journal presentation: Constitution, Court, Indian Tribes. He states:

We claim that the "constitution, and the laws of the United States which shall be made in pursuance thereof...shall be the supreme law of the land." But we also claim to recognize the sovereignty of Native

American nations, the original occupants of the land. These claims-one to jurisdictional monopoly, the other to jurisdictional multiplicity-are irreconcilable. Two hundred years have produced no resolution of the contradiction except at the expense of the tribes and the loss to non-Indians of the Indians' gift of their difference.

The words of the Constitution, the words of our treaties, the words of our mutual understanding as sovereigns, the words of modern Presidents, the words of current bureaucrats, the words we speak today about Tribal self-government and Indian Self-Determination do not mirror the reality of our current relationship. And that is why, once again, we sit down to exchange words.

Nothing is going to change until Congress and the Administration willingly recognize and realistically deal with American Indian Tribes in a government-to-government relationship. Not a relationship of bureaucrats playing petty administrative games to protect their positions or subjugate us to their phony perspectives and paper priorities. Not a relationship of policy makers deciding what's good for Indians behind closed doors and imposing their destructive will while preserving their comfort. Not a relationship whereby Congress, the Courts, the Administration and society speak eloquently of Tribal sovereignty, yet condone the constant attempts to erode our rights and steal our resources. We represent sovereign governments within this nation and need to be dealt with accordingly.

#### THE MORE THINGS CHANGE, THE MORE THEY STAY THE SAME

Chief Taholah, an original signer of the Treaty of Quinalt in 1855, came to Washington, D.C. by train in 1925 and spoke before Congress as to how the United States wasn't living up to its word and questioned why intruders and missionaries were being allowed onto the reservation. I've read the Arizona Republic's revelations and recollect in this decade similar articles appearing in the Denver Post on economic development failures and the Seattle Post Intelligencer on fishing and jurisdictional issues. These problems all stem from well intentioned legislative policy being defined by rules and regulations often misinterpreted by the multi-layered branches of a Federal agency to define local programs far removed from original policy. Multiply this scenario 500 to 1000 times for each reservation and you can begin to understand how problems might emerge.

The Federal BIA-IHS bureaucracy serving American Indian people has expanded to address identified needs almost in parallel patterns

of Administrative levels. We expected, with the enactment of P.L. 93-638, the bureaucracies to refine and shrink. Both agencies have grown in the past decade and have promulgated different P.L. 93-638 rules and regulations for us to interpret to protect their administrative egos at our expense. Although task forces have been formed to reshape, refine and redirect these agencies, I doubt they can be usefully reformed as the bureaucracies will simply entrench for another decade to protect and preserve their careers and comforts.

American Indian Tribes have become big business for the bureaucracy, especially the BIA and IHS. Thousands of bureaucrats work to serve our needs and protect our interests. The paradox and sad irony, of course, is that although we are the very reason and purpose for their livelihood, we are the first budgets to be cut. And if we complain too loudly, we are considered ungrateful for demanding what is rightfully ours. Over the generations we have learned to listen to the words, but to observe carefully the deeds.

#### TRIBES SURVIVE BY REACTION AS QUINULT FOREST DEVELOPMENT EXEMPLIFIES

The Quinault Tribe decided to assume control over its natural resources in the 1960's. The Quinault Tribal forests had been devastated by BIA mismanagement as documented in the Supreme Court ruling of Mitchell v. U.S. The Quinault lands had been fractionated by the Dawes Act of 1887 into a patch work maze of allotted and alienated ownerships making manageable forest redevelopment most difficult. Unrestricted logging practices had ruined salmon spawning grounds so important to our peoples' livelihood. We began our jurisdictional struggles with the BIA in the late 1960's to restore our forests and revive spawning areas by official objection to BIA policies and practices.

In 1977, we contracted all forestry from the BIA and this Committee provided the first forest development add-ons to assist the timber tribes. Our struggle to assume jurisdiction over our forestry management with the BIA Agency and Area Offices became so volatile that our Indian Self-Determination Act forestry management contract had to be managed out of the BIA Central Office until 1980.

Although the condition of our forests and the needs of forestry Tribes have been well documented, the current Administration has sought forestry reductions each fiscal year. In FY83 and again in FY84 the BIA targeted Quinault for \$100,000 reductions, but the funds were restored by this Committee. So each year we come to Congress reacting to administration policy decisions designed to

October 27, 1987

reduce our forest redevelopment capabilities. Each year we must react to restore our programs. This ritual repeats itself each year as the BIA forestry budget has expanded from \$23.2 million in FY80 to \$33.8 million in FY86. The following chart identifies some interesting statistics.

	Congressional Appropriations	PAO Allocation	OPA Allocation	TOTAL QIN Forest Allocation	Amount Available Direct Forestry Expenditures
FY82	\$23,272,933	\$ 9,876,174	\$2,176,500	\$1,191,606	\$800,000
FY86	<u>\$33,801,000</u>	<u>\$14,638,400</u>	<u>\$2,753,500</u>	<u>\$1,196,700</u>	<u>\$767,573</u>
% Difference:	+45.2	+48.2	+26.5	+0.4	-4.1

This year, being no exception, the Administration requested a \$3.15 million reduction in Forest Development funds and switched some forestry funding into various program accounts. The House restored the Forestry Development funds, the Senate restored 80 percent of the FY87, and we await the final FY88 funding level to ascertain our FY88 Forest Development funding level. But this year we've apparently been outmanuevered by the BIA unless Congress intervenes.

The Quinault Nation, like all other Tribes, are required to submit new fiscal year budgets based on the Administration's budget request rather than previous fiscal year's funding. Although the Administration's budget never resembles Congressional appropriations, Tribal and BIA staff waste thousands of administrative hours each Summer creating these meaningless documents. According to the Administration's budget, our Forest Development budget in FY88 was less than one-fifth of the previous year or \$253,100. Our budget was submitted under protest to accommodate the BIA's warning that no funds would be provided for FY88 without one. Our budget carried the Forest Development program until Christmas Day. But the best is yet to come!

Congress was slow to make appropriations decisions as is the case for many years and a Continuing Resolution was enacted until November 10. Assistant Secretary Swimmer issued a 9/29/87 memorandum to his Area Offices advising only 11 percent allocation of Tribal funding with the proviso: "The authorized level shall be the lower of the FY87 level or the FY88 budget request," during the Continuing Resolution period. And so, the Quinault Nation was now to operate on 11 percent of 20 percent of a previous fiscal year's budget meaning our program would operate until October 9 or seven operational days totaling \$27,841. By convincing the Area

October 27, 1987

Office to pro-rate our budget, we will last till November 10. If Congress extends the Continuing Resolution, our Forest Development program shuts down even though Congress has every intention to continue its funding.

I use this example to show how the BIA can use an Administration budget request as a weapon of manipulation. And, we are the governments being served!

#### **TRIBAL BASE PROGRAM FUNDING LEVELS & DIRECT SERVICE FUNCTIONS MUST BE PROTECTED**

Tribal governments and Indian people suffer proposed and actual reductions in budgets and services each year while the bureaucracies existing for our benefit thrive and expand. If a Gramm-Rudman percentage budget reduction is imposed in FY88, it will be a good bet that a four percent cut will be passed down the administrative line to a twelve percent cut at the Tribe or service level. The ones who control the money will always protect themselves with their power even at the expense of the people they're hired to serve. It's a very simple fact of life Tribes continually face.

The best assurance that Tribes and Indian people are served is to mandate that direct Tribal budgets and Tribal services are not to be reduced. It's a shame with the massive appropriations for IHS that all but two Area Offices were under Priority 1 care restrictions for the last quarter of FY87 meaning that over one million Indians had to be critically ill or dying to receive service. We suffered, but I doubt the high paid budget planners insulated from reality in the dual, multi-layered bureaucracy lost any sleep.

By allowing reductions in Indian Self-Determination contracts and direct services, the Congress has reverted back to the days of Indian Agents controlling by having the ability to withhold food or clothing. What is rightfully ours is being manipulated for the benefit of the Administrators. The only way to ensure self-determination and quality service is to protect those appropriation levels from reductions as a matter of Congressional policy.

#### **TRIBAL GOVERNMENT PARTICIPATION IN POLICY & AGREEMENT FORMULATIONS HAVE PROVEN EFFECTIVE**

Tribal governments and their leaders, when directly involved in the development of agreements, have proven the importance of their direct involvement. The recent example is the ratification and implementation of the U.S.-Canada Pacific Salmon Treaty ratified

by Congress in 1985. Twenty-four Pacific Northwest Tribal representatives were substantively involved in the treaty negotiation process involving the Departments of State-Commerce-Interior, the States of Washington-Oregon-Alaska, and Canadian representatives. Tribal representatives, as included in the Treaty, serve on the Commission and fisheries panels.

In the State of Washington, the Timber-Fish-Wildlife Agreement also involved negotiations between Washington State Tribes, private industry, and Washington State to conclude agreements to protect, preserve and rehabilitate the environment.

Why should involvement of Indian Tribes through consultation and policy discussions at the Federal level be so difficult? Indeed it is a mystery why we have been excluded, but our exclusion has proven that Tribal representatives probably know more about policy issues than the policy-makers. The recent efforts to impose administratively and through the budget process a fifteen percent flat fee on Tribal P.L. 93-638 contracts gave impetus to the creation of the Northwest Affiliated Tribes Task Force on Indirect Cost. After researching the issue and extensive consultation with Tribes, a definitive explanation of Tribal indirect cost issues was published this Spring serving as an excellent educational tool for both the Tribes and the Administration.

**A NEW TRIBAL-FEDERAL RESOURCE/SERVICE STRUCTURE NEEDS CONSIDERATION, BUT TRIBAL REPRESENTATION MUST BE SUBSTANTIVE**

Obviously, a new Federal delivery of resources and services to tribal governments must be explored and created as the current system continues to bureaucratically expand with each identified need. I would propose an appropriation for an independent Indian organization over the next three years to research current systems, determine structural options, and reach consensus among Indian leadership as to proposed changes. I suggest this independent study to ensure Tribal control of policy, research, consultation, and consensus in Indian Country.

Over the last year, I have been involved in The Alliance of Tribal Leaders, comprised of Tribal Chairmen from across the nation, who have joined together under the common concern for American Indian Tribal status, recognition, and participation in the United States system of government. As in ancestral days, the Tribal Alliance membership speak for their people when the Alliance convenes. And the Alliance speaks for the consensus of members.

As I mentioned, the Alliance of American Indian Leaders co-hosted the recent Philadelphia conference with the Indian Rights Association. The Alliance, also, wholeheartedly endorses and

supports Senate Concurrent Resolution 76 introduced on September 16, 1987 by Senator Daniel Inouye and eighteen bi-partisan co-sponsors. The resolution has initiated our goals of recognition and education with its defined purpose:

To acknowledge the contribution of the Iroquois Confederacy of Nations to the development of the U.S. Constitution and to reaffirm the continuing Government-to-Government relationship between Indian Tribes and the United States established in the Constitution.

In this year of the bi-centennial of the Constitution, it is proper that we review our current relationship and restore our government-to-government status to meaningful structures. By Congressional and Tribal joint commitment, I would hope we can bridge that chasm between words and deeds.

**ANY NEW FEDERAL-TRIBAL DELIVERY SYSTEM MUST PROTECT THE TRUST AND THOSE TRIBES MOST IN NEED**

I am not in a position today on such short notice to propose specifics regarding a Federal-Tribal Resource and Services delivery mechanism. As stated, Tribes must be involved in the research, planning, and deliberation stages to reach a consensus among us. The bureaucracies, I expect, will create obstacles to progress in achieving our goal of a meaningful relationship, but we all have experienced these self-serving obstructions including the spreading of false rumors among Indian people and manipulation by regulation and contract compliance schemes.

I expect that any new structure will have a clearly defined independence and American/Indian oversight. The trust relationship must be protected. And, the agency must have the capacity to provide service to those Tribes and individuals most dependent, accommodate Tribes evolving in the 93-638 process, and serve as a conduit from Congress for Tribes seeking true self-governance. I envision, in time, grants-in-aid to Tribal governments encompassing the resources of Federal Departments.

Ultimately, we should consider an "Indian Government Aid and Assistance Act" to enable the following process:

- a. Line item appropriations for direct funding of specific Indian Nations at financial levels negotiated between each Indian Government and the United States Government.
- b. The Funding approach should be modeled on U.S. foreign aid appropriation models where funds support

economic, institutional and infrastructure development.

- c. Funds should be directly issued by the U.S. Treasury Department.
- d. Fund accounting should be the sole responsibility of the receiving Indian Government with only an end of term audit being conducted to account for expenditures. No limitations should be placed on the funds, except, to define broad categories.
- e. Legislation must reaffirm the U.S. trust responsibility to defend Indian Nations and "preserve, protect and guarantee treaty rights and property" of Indian Nations.
- f. Provisions of the legislation should provide for a commitment of 5 years, after which a review of the Act's successes or failures should be reviewed.
- g. The legislation should look to the Compacts of Free Association negotiated with the Federation of Micronesia and the Marshall Islands to define the government-to-government negotiation procedures between the United States and each Indian Nation, and for provisions describing the payment of funds by the United States to those governments.

As President of the Quinault Indian Nation, I appreciate your consideration of my remarks and your willingness to host hearings to determine new, improved relationships between American Indian Tribes and the United States. I look forward to working with you and your colleagues towards this most important goal.





# LUMMI INDIAN BUSINESS COUNCIL

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## TESTIMONY OF LARRY G. KINLEY, CHAIRMAN LUMMI INDIAN BUSINESS COUNCIL BEFORE THE HOUSE INTERIOR APPROPRIATIONS SUBCOMMITTEE REGARDING

### PROBLEMS AND SOLUTIONS IN THE TRIBAL-FEDERAL RELATIONSHIP

October 27, 1987

I am Larry Kinley, Chairman of the Lummi Indian Business Council. I appreciate the opportunity to present our views on the current problems and potential solutions associated with Tribal governments and their relationship with the Federal bureaucracy, particularly the Bureau of Indian Affairs and Indian Health Service.

The basic issue confronting us today is a cumbersome, unwieldy bureaucracy built layer upon layer over the years being pressured by frustrated Tribal governments yearning for independence in the management of their affairs and seeking a larger share of the resources allocated for their benefit. The great Felix Cohen stated it so well many years ago:

The most basic of all Indian rights, the right of self-government, is the Indian's last defense against administrative oppression, for in a realm where the states are powerless to govern and where the Congress, occupied with more pressing national affairs, cannot govern wisely and well, there remains a large no man's-land in which government can emanate only from officials of the Interior Department or from the Indians themselves. Self-government is thus the Indians' only alternative to rule by a government department. (Handbook of Federal Indian Law, 1942; 122)

I truly believe that American Indian Tribes and Congress over the next several years should restructure the Federal service and resource delivery system to Indian Country to efficiently and effectively address the broad spectrum of Tribal government needs from those totally dependent Tribes to Tribes desiring true self-government. The process of change is always unsettling and painful, but the new system could still provide strong trust protection and allocate a greater share of existing resource expenditures to Tribes without dramatically increasing government appropriations.

**DOES THE BUREAUCRACY EXIST FOR THE BENEFIT OF TRIBAL GOVERNMENTS  
OR DO INDIAN TRIBES ENDURE FOR THE BENEFIT OF THE BUREAUCRACY?**

American Indian Tribes, as sovereign governments empowered by Treaties with the United States embodied in the Constitution, have a trust responsibility constituting a United States commitment of support and protection. Over the last two centuries, the reality of this commitment has ebbed and flowed according to prevailing political sentiment in Congress and the Federal bureaucracy. Unfortunately, over these many generations, the United States has exercised control and manipulation over Indian people creating dependency and extreme poverty.

The growth of the Federal bureaucracy managing Indian Affairs was probably attributable to a well-intentioned Congress. These bureaucracies have served their respective purposes addressing identified problems and needs in Indian Country. These bureaucracies, of course, are comprised of thousands of individuals professionally serving Indian people as career bureaucrats. Their personal lives, including plans and dreams, obviously become integrally entwined with their career advancements and ultimate retirement. A professional career dependency resistant to change is a bureaucratic reality.

In my lifetime I've experienced and observed dramatic changes in the Lummi Indian Tribe and other Tribes across the nation with the advent of Federal assistance designed to strengthen Tribal governments. Congressional action in the 1970's with the Indian Self-Determination Act (P.L. 93-638) and corresponding legislation directed to Indian Country gave a further impetus to Tribal self-government.

I do believe that the Federal and State bureaucracies as well as society in general want American Indian Tribes to fit into the established mold and resist the emergence of Tribalism. I appreciate the insight of Milner S. Ball in his conclusion from Constitution, Court, Indian Tribes of the American Bar Association Journal in observing:

Tribalism offers the hope of empowerment. Non-Indians have consistently resisted acknowledging the validity of the way Indians live together and govern themselves. Tribalism is typically viewed as a lower form of Western society, and Indians are perceived as aspiring, or needing to aspire, to the higher life of non-Indians. The Tribe, however, is not a lower evolutionary form of our society. It took root in this land long before the coming of the Europeans. Remarkably, it has adapted, survived, grown, been renewed. It is a different reality.

I do not mean to romanticize the Tribe. That would be to trivialize it. I do mean to say Tribes demonstrate that the political structures designed by 18th-century newcomers and the society that has followed are not the only way to live in this land.

Tribes teach us that the non-Indian system is not the only American way, that the dominant structures are contingent, an invention that can be reinvented. Just the fact of the tribes' continuing existence presses a range of fundamental questions, including these: Where are Indian nations to fit in our Federal system? Should they be made states? Should they be related to the United States by Treaty? What of the possibility of treaty federalism?

But the growing bureaucracy, maze of rules and regulations, and myriad program compliance standards began to dictate our progress with their Federal financial strings.

The Federal bureaucracy serving Indian Country, continued to grow in spite of the Indian Self-Determination Act, the Administration openly opposes the Senate Indian Self-Determination Act amendment provisions designed by Indian people to improve Indian Self-Determination operations, and, the BIA and IHS actively promote administrative policies detrimental to Indian people. During this administration's tenure, Presidential budgets consistently reflect cuts in Tribal Indian Self-Determination funds and elimination of programs utilized and appreciated by the Tribes. The Arizona Republic expose' of criminal activity and abuse of power, documents well known bureaucratic failures. These are symptoms of an ineffective system teetering, toppling, and imploding on itself due to an unwillingness to further promote Tribal independence and self-government.

#### **THE BUREAUCRACY NOW IMPEDES AND FRUSTRATES TRIBAL GROWTH AND DEVELOPMENT**

The Federal bureaucracy, particularly the BIA and IHS, but also other Federal agencies, impede and frustrate Tribal economic and social growth as currently structured. The BIA system has grown incrementally over the years to address an ever-broadening array of Indian needs. But the system now usurps the majority of resources as a matter of tradition as Tribes demand greater participation. The IHS system, buried in the Health and Human Services Department, offers field services on thinly stretched budgets while an unidentified management mass gobbles up resources and an unaccessible bureaucratic layer make policy. The other Federal agencies, aside from special legislated units designed to

October 27, 1987

assist Indian Country, shirk their responsibility to us due to the existence of the BIA/IHS or block access to resources with administrative mechanisms.

The Federal programs, by nature of their targeted assistance, create their own casualties in the Tribes. Imposed Federal limitations often clash with our cultural values when individuals are excluded from employment due to academic skills or families receive limited assistance when truly in need due to program guidelines. The lack of flexibility in Federal programs inhibits their effectiveness and usefulness. This is especially true with the problem of disfunctional families. The significance of our culture is based on families and their extended families.

The current Federal system, in general, now impedes Lummi development initiatives. The Lummi Indian Tribe is the largest of twelve Tribal governments served by the BIA Puget Sound Agency. Our problems stem from a growing frustration with the multi-Tribe-Agency system; the continued disregard and apparent disdain for Tribal priorities in the creation of administration policy; the ever-increasing entanglements of regulations and red tape; and, the obvious unwillingness of other Federal agencies to assume responsibilities in Indian Country. As examples of these frustrations, we cite the following:

**Tribe Blocked from Contracting BIA Law & Order Generally; Now Can't Contract For Available Criminal Investigator Although 40% of Crime in Agency Jurisdiction Occurs at Lummi**

The Lummi Indian Reservation, located near urban settings, has experienced increasing criminal activities in recent years. A BIA Officer was assigned to the Lummi Tribe from 1950 - 1980. When the Tribe announced plans to contract the law enforcement services, the officer was removed from the Tribe and the position was reclassified as a Criminal Investigator. The Tribe had extensive difficulty creating a contracted law and order program at Lummi. Over the last decade, the Lummi Tribe has gradually built a law and order program to meet its needs. We have developed cooperative relationships with the local municipal, County, and State enforcement services including cross-deputization to compliment force strength. The only missing element of specialized service is a Criminal Investigator.

Three Criminal Investigator positions are filled at the Puget Sound Agency, but the agency refuses to contract an investigator position to the Tribe even though 40 percent of all major crimes and felonies occur at Lummi. In the last four years the Lummi Tribe has sent 230 major crime reports to the Puget Sound Agency resulting in receipt of two written follow-up reports and one property recovery.

The Lummi Tribe has appealed to the Agency, Area, and Central BIA offices for assistance to no avail. We highly suspect that Agency position protection and family comforts have been given priority over investigation of crimes at Lummi. The agency will only release the position if the 11 other Tribes agree and then politicizes our request to ensure failure.

**The Indian Priority System is a Crapshoot at Best, A Charade of Indian Involvement in BIA Decision-Making Processes**

All twelve Tribes in the Puget Sound Agency are summoned annually to make presentations as to their priorities in BIA programs to be implemented two years into the future. Usually, the twelve individual priorities are consolidated by the agency to represent a consensus. When all twelve Tribes placed Indian Self-Determination Grants as the highest priority in recent years, the Administration first cut the programs and then proposed its elimination. When the Lummi Tribe did not place Aid to Tribal Government as its higher priority one year, we were excluded from funds when limited ATG appropriation reached the Agency. We're constantly placed in the position of establishing meaningless priorities among budget constraints and are destined to win or lose depending on the luck of our guesses.

**Tribe Plays The Indian Child Welfare Game Well; The BIA Then Changes The Rules: Child Abuse Requirements a Maze of Jurisdictions and Procedures**

The Indian Child Welfare program is extremely important for the Lummi Tribe. As funds are limited, Tribes compete with applications to document need. The applications are ranked by the BIA according to judgements based on established BIA criteria. In FY87 the Lummi Tribe was ranked second in the BIA Portland Area. As funds were limited, only the highest ranking project was funded. This priority project funded was an urban Center serving urban Indian youth, and, the Tribes for which the legislation was designed were left unfunded. Congress restored \$2.7 million of this program in the FY87 Supplemental Appropriations, but the Central Office decided that the Portland Area Office funding needs estimates were incorrect. With no explanation, the Lummi Tribe was awarded 80 percent of the Indian Child Welfare grant level in late August.

We are also extremely concerned about the agency resources and services directed to child abuse. This most difficult social service concern is a virtual maze of jurisdictions and procedures. The loser is always the vulnerable child.

**Large Sums Are Expended To Educate Lummi Youth, But Tribe Has Very Little Control: Elderly and Youth often are Excluded**

The Federal government expends sizeable funds each year targeted to Lummi education, but the Tribe has minimal control over how our youth are educated. The Department of Education spends, through the State or directly to local school districts, funding directly attributable to the presence of Lummi youth such as Impact Aid, but we have little, if any, input in program priorities or focus. Education funding for the BIA is scattered into separate programs managed by the Puget Sound Agency. Although we've sought to contract and consolidate BIA funding to establish a meaningful education effort, our requests have been thwarted due to the multi-Tribe Agency problem and limited funds.

The design of specific programs to assist particular ages generally excludes the wholeness of the education process. The elderly and young, those important linkages to our past and future, are vital elements to our society. Yet, their interaction is often limited by program rules and regulations.

**Tribal Staff Rely on Federal Directions; Tribal Membership Cycle of Generational Dependency Difficult to Redirect**

The very nature of Federal contracting for multiple Federal programs with their respective guidelines and project officers create a cadre of Tribal staff more concerned with Federal directions than overall Tribal concerns. Administrative pockets naturally form with narrow focus to ensure future Federal favor in resource allocations. Although not an insurmountable problem, the Tribal management suffers as a consequence.

The greatest challenge the Lummi Tribe faces in achieving self-governance is to reverse the problem of generational cycles of dependence on the system. This false reality, imposed on our peoples' minds and reinforced by ingrained perceptions and behavior patterns, continues to destroy the fabric of our society; namely, the family. Although we've developed strategies to address this most basic Tribal concern, no BIA or IHS Federal agency programs specifically address the family unit. Many programs target assistance to separate elements depending on factors of age, skills, behavior, and employment to name a few. But we must coordinate these assistance efforts to symptoms with program managers keeping one eye focused on Federal guidelines and approval. Although we know what we would like to do to preserve the family in an encompassing, supportive, sensitive manner, we can't, due to the limitations of Federal mechanisms.

**HEIRSHIP PROBLEMS CREATED BY BIA: VALUABLE LAND LOST BY QUESTIONABLE MEANS**

The Lummi Tribe and its members have lost valuable lands through the obvious BIA breach of its Trust responsibility. Our Tribe, located in close proximity to Canada, have natural kin relationships with Canadian Indians. By BIA policy, Canadian Indians cannot own land in Trust. When no Lummi heirs exist, the land has switched to Canadian ownership, reverted to fee status, became delinquents on the County tax rolls, and was sold at public auction.

Lummi land has also been lost due to unscrupulous BIA direction. A local doctor treating Lummi people accepted sizeable prime waterfront acreage in lieu of payment. A County road, serving non-Indian reservation residents, was build over Indian land by the BIA signing away title over Tribal member protest. As State law prohibits recipients of public assistance to own property, the BIA allowed poor Indians to sell their land in order to receive aid. The only reason land remains in Indians ownership is because the multiple heirship problems created title uncertainty. The Tribe is beginning to unravel this tangled real estate mess by itself as the bureaucracy and its computers prove meaningless.

**TRIBES AND CONGRESS CAN CREATE MEANINGFUL SOLUTIONS, BUT EXISTING BUREAUCRACY WILL RESIST CHANGE AND CREATE BARRIERS**

I truly believe Congress and American Indian Tribal leadership can create solutions to protect the Trust relationship and promote self-governance. The ~~Federal~~ bureaucracy, however, has stockpiled an arsenal of obstacles and are well trained in their application.

A fresh approach is needed to overcome these institutional obstacles. I do not believe the present system can be sufficiently repaired or restructured to effectively achieve the intent of the Congress or to serve the needs of Indian Tribes to become truly self-determining and self-sufficient.

It has been determined by numerous studies that very few of the dollars Congress appropriates to the BIA are actually spent addressing problems in Indian Country. Furthermore, the BIA's priority for these problems and their approach to these problems often conflict with the various perceptions of a diverse collection of independent Tribal entities across America. For true self-determination to become a reality, the Tribes must be allowed to direct all available resources to meet the greatest needs for that Tribe. This cannot be done by a Federal bureau-

Larry Kinley's Testimony

October 27, 1987

cracy but only by a local strong Tribal government that share the same values and concerns as the people being served.

I believe a grant-in-aid approach would be much more effective in accomplishing Tribal and Congressional goals to achieve Indian self-determination and self-reliance. Grant-in-aid would provide a direct appropriation of funds to the Tribe and by-pass the present BIA bureaucracy. The Tribal government would then appropriate the funds to address the Tribe's most pressing problems in the manner most effective for the particular circumstances.

The benefits of a grant-in-aid system would accrue to the Tribe, Congress, and society as a whole. The Tribe benefits from the increased self-respect it has as a separate but inclusive people that can now be expressed in self-directed action to improve their quality of life. The positive impacts of Congress' recognition of a Tribe's ability to handle its own affairs more effectively than can a collection of Federal employees in a distant city office building, would be as dramatic as they would be lasting.

The grant-in-aid approach is a much more efficient means of addressing Federal funds to the problems in Indian Country. It is expected the Tribe would receive three to five times the amount of funds it now receives to address pressing Tribal problems. Without additional appropriations, the Tribe would have greater resources to more effectively address Congressional concerns in a manner that accomplishes the unique needs and means of the Tribe.

The American society would perhaps be the biggest winner of a grant-in-aid system. It is society as a whole that pays for the inefficiencies of the present bureaucratic system and resulting dependence of Indian Tribes and individuals on Federal and State handouts. With true self-determination and the efficient transfer of funds from Congress to the Tribes, the Tribes will increase many times over their contribution to the national economy. Even more importantly, the perpetuation and growth of unique native cultures will avoid the slow strangulation imposed by the present system. It is the ability of this Country to accept and respect the wealth of diverse cultures - from immigrant Europeans - to immigrant Vietnamese, to native Indians - that have made it the envy of the world. Society is the greatest benefactor of national support of Indian Tribes and Indian Tribal governments.

#### **LUMMI TRIBE WILLING TO PROVE EFFICIENCY/EFFECTIVENESS OF DIRECT CONSOLIDATED BIA GRANT FOR TRUE SELF-DETERMINATION**

The Lummi Indian Tribe offers to serve as a model demonstration Tribe to pilot test the feasibility of a multi-year consolidated



block grant approach to Indian Self-Determination. The Lummi Indian Self-Determination block grant, as a negotiated agreement between the Tribe and the Department of Interior, must include identifiable program direct and indirect costs associated with the Lummi Tribe at the BIA Agency, Area, and Central Offices as well as support received by the BIA from other Federal agencies to operate these programs.

We would expect under a Lummi multi-year consolidated Indian Self-Determination block grant that the appropriations received by the Tribe will be allocated according to priorities and programs established by the Lummi Indian Business Council. To prove efficiency and effectiveness, the project should last from three to five years with progress measured against a mutually agreed baseline of quantitative/qualitative existing conditions. Identifiable progress should be measurable over the long term. Since this is a pilot project of interest to Congress and other Tribes, we are willing to document and report on the process to facilitate legislative considerations, avoid duplication of problems, and identify viable strategies.

The Tribe would enter this pilot project with the expectation of resistance by the Department of Interior at every level due to the obvious threat of our potential success. We will need some Congressional assurance of involvement in the negotiation process to resolve Tribal/Departmental disagreements. And, we will need assistance to research the bureaucracy and prepare ourselves administratively.

Although our suggestions may be somewhat sketchy, given limited preparation time, we would propose some concepts for negotiation and an FY88 preparation budget for us to commence operations in FY89.

#### NEGOTIATIONS CONSIDERATIONS

The negotiation process will undoubtedly involve disagreements between the Secretary and the Tribes: the Tribe and the Secretary should mutually agree on their positions on each point of disagreement and prepare justifications for their positions on each point of disagreement. The disagreements between the Secretary and the Tribe shall be arbitrated by an independent four (4) member review panel consisting of representatives from the Office of Management of Budget, the House Interior and Insular Affairs Committee, the Senate Select Committee on Indian Affairs, and the House Interior Appropriations Subcommittee.

In the negotiation process, the Secretary shall seek a minimum of Federal oversight requirements and a maximum of Tribal Council

flexibility in the Demonstration project in the spirit of Indian Self-Determination.

The annual negotiated agreement, financed by Letter of Credit, should include:

1. A listing of all identifiable program elements and budgets included in the agreement
2. A mutually agreed upon measurement system to determine operational/administrative improvements and problems compared to established P.L. 93-638 agreements
3. A mutually agreed financial audit and quantifiable operational efficiency audit
4. A clear delineation of the Trust responsibilities retained by the Secretary and those assumed by the Tribal government
5. A statement of eligibility to compete or access specific Departmental programs or services not included in the agreement

In the negotiation, the Secretary would be expected to give consideration for cost of living allowances or special Congressional appropriations for which the Tribe would normally be eligible.

#### FY87 RESEARCH/PREPARATION BUDGET

The Lummi Tribe will need to make substantial preparations to assume this pilot demonstration project status. As the Tribe will be the first to venture into this new Tribal-BIA structural relationship, we request Congressional consideration of a \$400,000 appropriation to defray research, preparation, and negotiation expenses. A separate budget breakdown of the projected expenses is available for Committee review and consideration.

Basically, this budget would cover expenses for:

- research at the BIA Agency-Area-Central Offices and related Federal agencies to determine applicable programs and corresponding budgets
- restructure of the Tribal administration in preparation for the new appropriation process, new administrative structure, new financial and operational measurement

systems, Constitutional changes to include both legal and financial analysis

- the negotiation process

We would also expect, in the annual negotiations, that costs identified for Congressional monitoring/reporting purposes would be covered by the Federal government.

The Lummi Indian Business Council is committed to self-government. We realize the transition will be as difficult internally as externally. We are willing to face these problems and resolve them as a government for the benefit of our Tribal future. And, we are willing to document the process for the benefit of others in the future.

I am convinced an effective solution to the inefficiencies and mis-direction of the BIA can only be found in an alternative approach such as I have just described. It is, without question, possible to make the current system more efficient, but its effectiveness is limited. The improvements I am about to offer will serve to protect the Tribes to some degree from the political and bureaucratic games that are now played with our ability to serve our people, but they should not be construed as an endorsement of this system.

**SHORT TERM SOLUTION TO MULTIPLE TRIBE-AGENCY CONTRACTING DILEMMA:  
ESTABLISH BASE PROGRAM ACCOUNT POOL TO BE AUGMENTED BY FUTURE  
SAVINGS**

The dilemma of Tribal contracting of BIA/IHS programs in a multi-Tribal agency with small program elements for specific purposes has been an unresolved issue. The agency does not have enough program operation funds to contract out to several Tribes without crippling the function for the remaining Tribes. The Tribes can't operate a contracted function on limited funds.

We suggest a multi-Tribal agency fund pool be established as a test operation at \$500,000 in the BIA Central Office. Tribal governments wishing to contract an agency program element with insufficient funds would be assured a \$20,000 program base amount plus a proportionate share of program expendable funds based on a population formula. Contracting Tribes should be allowed to consolidate program funds within functional elements (i.e., education - social services - law enforcement) to maximize use of program dollars. The agency personnel and management operations plus remaining expendable funds would remain intact to serve other participating Tribes.

**TRIBAL BASE CONTRACT LEVELS SHOULD BE MAINTAINED EXCEPT WHEN EXPRESSLY CUT BY CONGRESS**

Each year the Administration whimsically proposes major Tribal program reductions, reallocations, or elimination with minimal justification and virtually no consultation. Each year we approach Congress to restore these funds with expressed justification. During the year, Tribal administrators must prepare next fiscal year budget submission based on the Administration's budget request. Congress generally restores Tribal appropriations. And, this cycle renews itself fostering instability and meaningless paperwork at the Tribal level while the Federal agency proceed insulated and secure.

Why do Federal agencies serving Indian Country always target Tribal budgets for major reductions yet testify before Congress that their actions are in our best interest? We assume this is self-preservation within the politics of budget constraints.

We would suggest within Committee authority that an understanding be reached to preserve Tribal base appropriations from Fiscal year to Fiscal year to stabilize Tribal program operations. Although a most logical request considering that Tribal governments are the very reasons these agencies exist, we realize politics do not necessarily correlate with logic.

**SUMMARY: NEW FEDERAL ASSISTANCE MECHANISMS MUST BE CREATED BY TRIBES AND CONGRESS**

Current Federal BIA agencies serving Indian Country are duplicative in operations and each supports layers of bureaucracy inhibiting financial resources from reaching American Indian people. Other Federal agencies are either reluctant to provide resources and services or offer them in modes designed for urban settings. I believe the Federal assistance system can be logically restructured acceptable to Tribal leadership ensuring direct, increased dollars to Indian people without substantial increases in appropriations.

Historically, Tribes have advocated a separate Federal agency with cabinet level status. I am not in the position at this hearing to advocate specific structures, but I urge that consideration focus on Tribal access and participation in the process. We've expressed willingness to immediately serve as a pilot model for direct BIA-Tribal funding for future Federal-Tribal review. I most certainly want the Lummi Tribe and other Tribal leaders across the nation to be substantively involved in the research on formulation process.

I encourage this Committee to seriously consider appropriating funds this fiscal year to begin research on existing delivery systems and alternative structures. The Federal research on BIA/IHS should be of the depth to determine position classification, responsibilities, and associated costs at all levels. And, other Federal agencies should be explored for their current assistance to Indian Country and potential future obligations. I envision a multi-year process to research the Federal system and develop an alternative acceptable to Tribes, the Administration, and Congress.

A special Tribal Task Force, controlled by the Tribal leadership, should be formed to implement the research stage this fiscal year. Hopefully, information uncovered will be useful to the Lummi's if we become a pilot model for direct funding. Future years would support exploration of models, consultation with Tribal leadership, and the creation of legislation.

#### **FUTURE TRIBAL STATUS SHOULD BE OFFICIALLY RECOGNIZED BY CONGRESS**

President Reagan's White House Indian Policy statement spoke of "government-to-government relations." This sounds attractive as policy, but in practice has proven most hollow. Future considerations of Tribal government status should include discussions of representation in Congress, Cabinet level status for Indian Affairs, and other meaningful commitments to ensure we become an integral part of the political process affecting our lives and our Tribal membership.

Mr. YATES. How do you want to proceed? The statements are in the record.

Mr. DELACRUZ. I will yield to my senior statesman, Mr. Jourdain.

Mr. JOURDAIN. I am going to yield to Geronimo's great grandson, Wendell Chino.

Mr. YATES. Wendell, what do you want to say?

Mr. CHINO. I am yielding back to Mr. Jourdain.

Mr. JOURDAIN. Mr. Chairman——

#### INCREASE AUTHORITY IN THE BIA SYSTEM

Mr. YATES. You are not going to read that long statement.

Mr. JOURDAIN. No. I just want to see if this is the right one. It has been a long time for the Indian tribes, the elected leaders, to have the opportunity to voice their concerns about the uncontrollable bureaucracy that has been developing in the Bureau of Indian Affairs. I hope that you can help, your committee can help bail us out.

Now, the news is front-page stuff about Wall Street going down the tubes and they appealed to the Congress and to the White House to bail them out. So, we are appealing too to be bailed out.

Mr. YATES. How do you want to be bailed out?

Mr. JOURDAIN. We want to have more authority in the system that is existing right now in the Bureau of Indian Affairs.

Mr. YATES. What kind of authority do you want?

Mr. JOURDAIN. In the statements here I read briefly, that the tribes want to come in and sit down and become unified with this Administration and others.

We have been unified for a long time but they have been trying to destroy the unity of the American Indians. With the resources we are entitled to, we have been bogged down because of the bureaucracy that has got a stranglehold on the economic development on reservations. Just as an example, since 1979 we had 10 acting superintendents, 10 of them. We haven't been able to get rid of one of them. We have had 10 acting superintendents for 8 years. All they have accomplished is to leave the reservation in economic shambles.

They have been pitting people against the Tribal Council, trying to keep the Tribal Council administration upset and we have wasted countless hours of productivity in defending one rule after another, like the Quinault Rule, Mescalero Rule and the Interior rules, and the BIA rules. They hide behind the Federal Register. That is their bible. When you have got to face the reality, you have got to act now. I had asked Mr. Swimmer back in January to issue a mandate to all the area offices and to the agency offices and give them a Executive Order to proceed and act forthwith with the tribes and see if we can get something developed.

But we encountered all of this obstruction existing at the area offices. At least they are blaming the area offices now.

#### COOPERATION OF AGENCY OFFICES

Mr. YATES. What about the local offices? Are they cooperative?

Mr. JOURDAIN. No. All they are doing is sitting there protecting their tushes. They want to protect their performance record to be as white as this. Now, as far as the area office, talking about the Bureau of Indian Affairs 25 years ago, we made strong recommendations to eliminate the area offices and reprogram their budgets back to the reservation level where it belongs, where it could be used, not downtown Minneapolis in the Chamber of Commerce Building. It doesn't do them any good in the Great Lakes area, Minnesota and Michigan.

We made a recommendation not too long ago, the same recommendation when the new Administration came in since they were trying to find ways and means to cut down the spending and nobody listened to us. We wanted that money to be reprogrammed back to the reservation. As I understand, there are about 200 in the Minneapolis area office protecting each other everyday. So we are at a standstill and impasse.

With the recommendations that have been talked about just recently about a separate Indian Affairs Administration, I am supporting this for the simple reason we are going to have to separate the Bureau of Indian Affairs bureaucracy. We have got to isolate them somewhere, send them over to Newfoundland or someplace, to protect those seals.

We are going to have to make some drastic move here and I would appeal to you, Mr. Chairman, and your committee and also I am going to be appealing the same thing over on the other side in the Senate, that in the event something develops, we are insisting, we are recommending that the elected leadership be considered. We represent the reservations. We represent our tribes because of the elections. I have been in office for 28 years and I was elected, even though the Bureau of Indian Affairs, the Secretary of the Interior and the Congressmen and the Senators are saying I run crooked elections.

It has been tested in the courts twice now. I am sitting here having been elected according to the Constitution and by-laws that we have at home.

Mr. YATES. Are you all in agreement on what you want to do?

Mr. JOURDAIN. Yes.

Mr. YATES. Can you tell me what it is that you want to do?

Mr. JOURDAIN. We have got to explore immediately how we are going to separate the Bureau of Indian Affairs bureaucracy. Perhaps it can be net level.

#### NEW CONGRESSIONAL POLICY

Mr. CHINO. Mr. Chairman, I think that a climate and an environment must be created. That is for you, at our request, to introduce something similar to the Senate Concurrent Resolution 76, which will establish, I think, a new Congressional policy that you understand and we understand as leaders of the various Indian tribes. I think this would be a good beginning.

Mr. YATES. What is the new policy you want us to declare?

Mr. CHINO. The recognition of a government to government relationship, the recognition of treaty obligations of the United States to Indian people so that we don't talk about welfare states. We are

not talking about welfare states. Whatever Indians receive are by virtue of their treaties. This is not welfare. This is an exchange program and this is not to be confused with trusteeship.

This is the foremost obligation assumed by the United States, and we expect the United States to honor, to continue to honor it and from that point, I think, that I agree with my colleague here that the time has arrived for us to modify, overhaul the agency that has to do with Indian affairs.

If Mr. Hodel and Mr. Swimmer want to stay in the Interior Department, that is fine. But some of us want to get out and see a new department, a department that is willing to honor this new policy that we are talking about and to see that the treaty obligations and services are carried out. In the process, then, we will have an opportunity to change that delivery system that has become so cumbersome to the Indian people that you have to go through three layers of bureaucracy to have your request taken care of. No other segment of the American public is asked to go through such a procedure. So we need to change the delivery system.

Number 2, we are all talking about the budget deficit. A good way to make some impact on that budget deficit is to reduce the bureaucracy of the Bureau of Indian Affairs because some of us believe that the central office, perhaps the Washington office of Indian Affairs, should now be charged with two responsibilities only: the budget for Indian tribes and personnel out in the field.

Mr. YATES. Personnel where?

Mr. CHINO. Out in the field. And then also what you take away from the central office should be given to that superintendent out on the Indian reservation. Give him more discretionary authority over funds, over personnel so that job can be done in concert with the Indian leadership.

Then, finally, the area offices. There are some differences of opinion with regard to the area offices that now exist. I maintain that these area offices ought to be converted into technical offices where the expertise that have become necessary can be found, not to use the area offices as presently used, to exercise authority over the superintendent or over the local agency and the Indian tribes.

Mr. YATES. Okay. Thank you.

Mr. JOURDAIN. I want to add one point, a very short one. In 1982, January, the former Secretary, James Watt, made a public statement and said that Indian reservations were all failures. That is the only thing I ever agreed with James Watt because he had the absolute authority to correct those failures. That was five years ago, nothing has moved. It has gotten progressively worse. I yield.

#### REMOVAL FROM THE BIA

Mr. DeLaCruz. Mr. Chairman, I am Joe DeLaCruz. I am the president of the Quinalt Indian Nation for the record. I concur with what my two colleagues have brought out to this committee. About 20 years ago across the street at the Capitol, as a young chairman I got accused of pounding my fist upon the table, asking to be freed from the Bureau of Indian Affairs as a pilot project,



with the Quinault Nation funded directly from the Treasury and I will show you a tribe that will move.

The committee was chaired by Congresswoman Julia Butler Hansen in those days. In my experience, in the 20 years since then I feel one of the things that has split and divided Indian country when people speak of change is this fictitious trust they wave around with the Bureau of Indian Affairs. We, with our Alliance, sponsored a forum a couple of weeks ago in Philadelphia with the Indian Rights Association to sit and review with a lot of professors, academic people, the United States Constitution, the Indian treaties, and the Tribal-Federal relationship. It was very clear to many people that were there, as it was clear to us, that the United States Constitution, the treaties that were made by our forefathers, there is a clear relationship there as far as the areas that are specified in the Constitution, the treaties we have, the territory that we gave up to the United States, and the United States' obligation to our people.

If there is a separate department set up as requested by the executive and legislative, I think legislative is going to have to have that language clearly in it. I wanted to comment on some things that came out this morning about the problems of Indian affairs. When I hear that tribes are afraid of change and they can't do things for themselves, tribes are the most audited, investigated people in this nation as far as governments go. We find that if we are able to get some help from the Bureau or in services or dollars, we can put together the task forces and clarify things for the Congress that the bureaucrats have been unable to do. I have been on the steering committee of this. I never got paid anything. I don't know who these consultants are that are getting \$250 an hour. This was presented to the committee, describing the true cost of contracting federal programs for Indians.

The other things that were brought out, it seems like again when I look back at stuff I pull out of the computer on the history of the Indian-Federal relationship, even going back to King George's proclamation, we are dealing again with the same misunderstandings, good meaning people with a wrong attitude, an attitude that they know what is best for Indian people. I have got these new programs. I am going to make these changes. Here they are. That ain't the way you do business with Indian people and that has failed for over 200 years.

In the Pacific Northwest, we have experience where we have been treated as equals and not as children, we have been able to sit down equally with the state, with the United States, and with Canada and we have been able to sit there as long as we were able to provide and have our own technical information, pick our policy people and sit there and deal equally with anyone. People know the results of those negotiations. It was the tribes that moved them forward. We find in other areas in the Pacific Northwest where we have conflicts and disputes as private people with governments, states, industries or corporations that we can set up the proper framework and sit down as equals, we can hammer out the way renewable resources will be managed going on into the future. I am speaking of timber and wildlife.

The tribes' initiative brings the proper people to the table. I take issue when people say tribes are incapable of doing things. If they are given the tools, under the responsibility and obligation of the United States Government, there are a few of us that are willing to make that step forward, but the language has to be clear that the treaties are still there. They are valid. They are valid under the Constitution and everything appropriated for what we put together as a framework. When we move forward in the future, we will be able to accomplish these things.

This morning, when I heard the witnesses testify from the Department of the Interior, it reminded me of something when I was president of the National Congress of American Indians. The United States Government hosted, for once, in I don't know how many years, an Inter-American Indian conference that was created in 1943 by a treaty with the Americas. We had submitted for the first time that there be Indian delegates to that conference representing Indian tribes. We selected some of the first and foremost Indian minds that were familiar with international affairs. We spent a whole week there with Under Secretary Montoya, with Ross Swimmer and, I think that group of people had some good ideas they wanted to move forth in this Administration. They had a whole week to meet with these people.

Mr. YATES. I thought you said 1943.

#### TRIBAL CONSULTATION

Mr. DELACRUZ. 1985. I talked to the leaders that were there. No one ever called them to bounce anything off them. Consultation, government to government, everything that has been developed, I have written letters. It has been developed behind closed doors: this is good for you Indian people and then come back around and set up a consultation when things started off on the wrong foot to begin with. In my written statement, I lay out a lot of history. It is in the record of some of this whole relationship. It isn't just dealing with this present Administration. We have been dealing with it for a long time. I read those articles in the Arizona paper. I view them another way. It gives me and my people a bum rap that the United States is appropriating \$3 billion for us and we are sitting here wasting those dollars.

None of those articles point out what, I think, was part of the Library of Congress study a few years ago requested by Warren Magnuson that \$3 billion is appropriated and, given the benefit of the doubt, about 16 percent of those dollars and services actually get down to Indian people. Those articles don't point out the federal bureaucracy, the executive bureaucracy, and people don't say anything about that. We are all talking Bureau now but Indian Health is no better. They have Health and Human Services, the IHS director is down at the fifth level. They have a two-tier structure of Commissioned Corps officers that go all the way down to the reservation, then they have Civil Service officers that go down to the reservation. They have Albuquerque—headquarters west, where they put a bunch of zero-sixes out there to retire, and my people sit there without health.

We take the rap for appropriations. These people sit there with about \$100,000 a shot waiting for retirement. I can't measure any service that comes out of that. These are the type of things, I think, the Administration should have looked into, what it can do to restructure. They came out saying they are going to reduce paperwork, reduce staff, reduce all this stuff. Their own records, their own studies, show they have increased everything that they have done. In 1985, we had 89 people in the Indian health offices. There are 125 now. I lost the figures that were in the BIA area. Dollars are eaten up there. They are not eaten up by the tribes. I gave an example of my testimony on something we worked with this committee for years.

The Timber Council, the Quinault spearheaded it. Now it forced development monies. You can look at our work, wasn't the Bureau asking for those dollars to the committee that the committee gave them. 48 percent increases went to the area office, 24 percent to the agency, and 4 percent down at the tribal level. It wasn't the Administration—

Mr. YATES. What is the basis for those figures?

Mr. DELACRUZ. The appropriations of 1987. What would go out in the advice of allotment from the President's budget down. That is what you end up with. They sit and blame the tribes because things are failing. IHS' own information system points out they are only requesting 60 percent of the needs in dollars to provide health to the Indian people, so they can use the information system to provide 60 percent of health, so 40 percent of the time we go without money, then the Indians take the rap for it.

#### DEPARTMENT OF INDIAN AFFAIRS

Mr. YATES. What do you want to do about it?

Mr. DELACRUZ. I think we need to look at what we are talking about, some type of cabinet level or some type of Department of Indian Affairs as guaranteed by the Constitution and treaty language and that these things are obligations for those of us that are willing to move in that direction and set up some type of direct relationship. I see no reason why Indian people today, with the things that have happened—I think the government has helped and there are a lot of Indians that have helped, have been educated. We have to have sometimes 5 layers of bureaucrats and all the groups that go with us for us to do something that is necessary down on the reservation level and there needs to be change.

Thank you.

Mr. YATES. All right.

#### PARTICIPATION IN THE PROCESS

Mr. KINLEY. Thank you, Mr. Chairman, It is a pleasure to be here. I am Larry Kinley from Lummi. I really agree with my colleagues here. From our perception, we see it as one of a continuous process where we deal with the symptoms instead of the problem and coming forth with solutions. From the standpoint of the Alliance, what we are proposing in general terms is that we be allowed to participate in the process. I am also from the Northwest, like Joe, and Billy Frank who is going to be speaking later from the

Fish Commission. We found from experience when we participate in the process, truly where we are part of the process, reasonable people sitting down can come to solutions.

Mr. YATES. What do you mean by part of the process?

Mr. KINLEY. Right now on the whole U.S. policy, everybody says we have access to the process. We disagree.

Mr. YATES. What is the process?

Mr. KINLEY. The process is both the legislative, the executive, to participate in the U.S. system. Right now it is all from the top down. Even in the court systems, we have white anthropologists in the courts telling us who we are, instead of tribal elders. The written word of the court system has more validity than the oral language based on our traditions. It is really one where everybody knows what is best for us, even though from the very beginning, our people have said who we are.

We know where we come from. People don't seem to listen. We have had—I don't know if always is the proper word but we have had to adjust to understand the U.S. system so we can survive in it. We continue to recognize we have to address to survive in a greater society, but that does not mean we have to completely become part of U.S. society. We can continue to live as we are and yet still participate in the U.S. society. In the Northwest, for example, if we were to say in the legislative process, they say you have got a U.S. Congressman. You have got a U.S. Senator. It is very simple to point out—I can digress into personalities and everything and talk about our representatives in the Northwest. I don't think that is productive to this. I think the relationship to the Bureau of Indian Affairs is one of a top down system in a maze of bureaucracy, as to how we participate in that process.

Mr. YATES. Let me interrupt a minute. You heard Ross Swimmer this morning suggest that BIA ought to be restructured to provide for grants from the Federal Government to the tribes themselves to carry out their own activities. What is your feeling about that?

Mr. KINLEY. Conceptually, I agree. If I may elaborate, the relationship should not be one, in my opinion, of a dependency of trusteeship. It should be one where we can participate. I disagree with the Secretary when he mentioned they need to get out of the way. I think we need to all sit down and work things and think this through together so we literally can participate in the U.S. process. The Secretary mentioned about the matter of his trust responsibility to some allotments where they have multiple owners. I thought the whole point was missed when he didn't talk about why are there so many owners of those small parcels of land. Who is the trustee theoretically as to why there are so many heirship problems in Indian country?

#### AGREEMENT IN INDIAN COUNTRY

Mr. YATES. What about the point that was made by the Secretary, and by Mr. Swimmer, to the effect that you can't get agreement in the Indian community as to what should be done?

Mr. KINLEY. My perception is based on history and colonialism and that is the lack of recognition of our differences. We respect each other in Indian country, as nations.

We seem to be the only ones that respect that, though, and we can't fit in the same way. We propose the relationship be set up based on recognition of those differences, and that we are governments. If we choose to be different than Quinault, that is our choice.

Let's set up relations to allow that to happen. Some tribes, based on colonialism, may be more dependent than others, some may be ready to go.

I think reasonable people sitting down can figure that out, based upon our experience in other areas, such as fisheries, where we as tribes have very, very tight differences, because we are literally dependent on economics for our survival. With other people, we are in tremendous disagreement.

Mr. YATES. Perhaps, I haven't understood you correctly. Do I understand you agreed with Mr. Swimmer about the grants from the Federal Government; let the tribes do it themselves?

Mr. KINLEY. Concept, I agree. Again, it is back to the relationship how that happens.

Mr. YATES. Your colleague is shaking his head.

Mr. DELACRUZ. In concept, I agree, too. For better than 10 years now, we have had the self-determination act on the books and on the records.

We have two dual systems as far as regulations go. We put together this study, right now, from our perspective, which clarifies some of the mistakes, and recommended amendments.

I believe Ross has his staff down there trying to produce something else. It wasn't a situation where we came together and came to agreement, these things we will correct in making a smoother delivery of services.

Mr. YATES. I don't understand you.

You mean Swimmer doesn't agree with your—

Mr. DELACRUZ. I don't know. They are putting together something else down there, I understand.

Mr. SWIMMER. I am aware of the study. We had asked for it. As our proposal went out, we had asked tribes to give us documentation as to what that should be. This is one of the studies that has been done in that regard.

I don't necessarily agree with the conclusion reached in the study but it is an analysis. It is one analysis of many we have received and would bear weight on what would be done.

Mr. YATES. Let me ask you a question. This is the attitude of the Quinaults as to what should be done.

Under your proposal as you stated it this morning, would the Quinault have been able to proceed to carry out whatever they wanted to carry out in accordance with the study they did?

Mr. SWIMMER. Yes.

Mr. YATES. They wouldn't have to ask for your approval on it?

Mr. SWIMMER. That is right. Under my proposal the money would be going to the tribes. They would decide how much to spend on overhead. If they want to spend it on overhead and none on the programs, they could do it.

Mr. DELACRUZ. We had the bureaucrats out of Ross' office, those familiar with the regulations. We do have a difference of opinion on the way we assess services as far as dollars go.

We follow what the IG's in their audits have said are the rules. A tribe is entitled to recover whatever is negotiated through experience going through the years. Initially Mr. Swimmer came out with a flat proposal. That is what brought this to a head.

No one took a look at it, and I didn't even know Mr. Swimmer's office took a look at it until the tribes asked for help from the local IHS people. We had picked our technical people who would come together and analyze this. We worked with a couple of IGs.

If we have a difference, it is who has the best expertise. The other thing that is kind of ironic, as I look to the structures of IHS, they don't have many analysts on their staff.

Mr. YATES. Let me ask Mr. Swimmer a question.

Let's go back to your scheme. The Quinaults would have been able to carry out that study with the appropriation that it received.

How do you propose that appropriation be made to the Quinaults, or to the Apache or Lummi, or to the Red Lake Band? Do you foresee that there would be a total appropriation made to BIA as it is today and that BIA would distribute it to the tribes, or do you have some other plan in mind?

Mr. SWIMMER. That would be essentially the proposal. Obviously, there is a tremendous amount of detail to work out, and a lot of congressional work to do because the issue of accountability comes in.

But the broad proposal is, yes, to use the BIA as the appropriate agency. We, in turn, receive budgets.

At some time you have to say what is going to be appropriated. Once that has been done, an equitable formula would have to be arrived at per tribe of what those Federal dollars are going to represent in the tribal budget. They then would have to submit a budget to us.

Mr. YATES. As they do now. Now they give you a band.

Mr. SWIMMER. They massage the existing programs. I am suggesting maybe they don't want the programs on the band at all.

They would have the ability to put all of their money into tribal administration if they wanted to.

Mr. YATES. That is the key in this whole thing, how much money they get for the tribes isn't it, in a sense?

Mr. CHINO. Mr. Chairman, I would like to comment on Mr. Kinley's remark regarding receiving funds in the manner which he mentioned, but I think that is only one option.

I think there are other options available, such as direct funding. We are talking about government to government——

Mr. YATES. I see.

Mr. CHINO. I think that requires some study. I am sure the American Indian Policy Review Commission had a report, and then the Presidential Commission on Reservation Economies had a report, and the Tribal Chairman would like to have a shot at some kind of report, so we will give you a report also.

Mr. SWIMMER. I don't think there is unanimity, Mr. Chairman.

Mr. YATES. I was just going to say——

Mr. CHINO. Talking about unanimity, some chairmen——

## GREATER SELF DETERMINATION

Mr. YATES. Just a minute.

It is interesting, I don't know that you are terribly far apart in a sense. I think what the tribes are saying, what these witnesses are saying is, one, they want recognition as equals rather than a kind of a dependency situation as many think they have today.

Did you say something?

Mr. DELACRUZ. I wanted to respond to what you said earlier.

Mr. YATES. Okay.

Perhaps, something can be worked out for greater self-determination on a local level. The appropriations process becomes very key, very important at that point as to how the funds flow from the Federal Government to the tribes, as to whether they go through an intermediary, such as a BIA, whether they go through some other agency.

Mr. CHINO. They go to the state at the present time, a portion of it.

Mr. YATES. Right.

The point I am making is maybe you have the framework of some kind of agreement here, assuming you have the agreement of other Indian tribes on this. I don't know how many Indian tribes you need to consent to it.

Mr. DELACRUZ. I want to correct something for the record, that the report there was put together by a task force that was picked by the Northwestern Indian Health Board which is tribes of the Northwest and affiliated tribes.

There are tribes that contributed some of their own dollars for the budget to do that task force. And one of the reasons we had to do that task force again goes back to attitude.

I mean you have a President that made a statement in 1983, a fine statement about honoring treaties and government to government relationships; then these budget requests and reflections don't follow with that, and the people that work for him, some of their statements don't follow that statement.

I call it the arrogant attitude of the U.S. People that work for the Administration say, okay, you Indians are all alike, your operations are all alike, so it is one flat rate. That isn't the way the thing works. That isn't the way the IG interprets it. That laid it out.

I guess we are going to be faced with another task force saying this is the way it should be. We are going to have a conflict, we are going to work that out.

The thing is, Mr. Chairman, I have been coming before this committee for supplemental appropriations for the Bureau for years, and years, and years, and it seems like our figures, I am talking about the tribal figures, always end up more accurate than what the Bureau is presenting.

We are going to run across the same thing in 1988 on indirect costs. We figure there needed to be \$50 million, we got that back up, their staff comes in and says, Mr. Inouye, you don't need that much. We need \$3 million more, not \$6.

We will see again whose figures are closer, the Indian people or people presenting those budgets. We will see what happens on that one.

Mr. YATES. That is another point. I have got other witnesses that I want to hear. What I want to suggest is that I have your statements.

If you want to amplify your statements in view of the testimony that the secretary has given, Ross has given, and others, I wish you would send it in to us.

Mr. JOURDAIN. One last comment, please?

Mr. YATES. Yes, Mr. Jourdain.

Mr. JOURDAIN. We have a tremendous overhead coming out of the central office, and that is the consultants, consultant contracts. And this is one way of keeping you divided with all kinds of recommendations coming into the Bureau.

We need a task force of our own. We need some money here to approach this task force because we are operating on a shoestring right now.

There are many tribes who would be here today if they had the money, and that money has been cut back considerably, and many of them are afraid to come out publicly and state what they would like to say about the Bureau of Indian Affairs for the simple reason they get put on the hit list.

Mr. YATES. You mean Mr. Swimmer has a hit list?

Mr. JOURDAIN. We have some in the magazine we can show you, a computerized hit list. Those who don't agree——

Mr. SWIMMER. I had better take a look at it to make sure I am right.

Mr. JOURDAIN. You might be on it, too.

Mr. YATES. Thank you very much.

Mr. YATES. The next group, Mr. Gahbow, Mr. Real Bird, Mr. Lunderman, and Mr. Ducheneaux.

I just wanted to ask one question, how do you propose to find out what the thinking of the Indian community is with respect to what the structure of the BIA and the tribes should be?

Mr. KINLEY. We do need some dollars but we are going to have to decide on the framework of how do we get the type of meetings and such to try to update people, our own people even on the Constitution, the treaty relationship and the things that have happened over time.

Mr. YATES. Suppose you had an appropriation that was made available, I don't know whether it is possible, to pay for the transportation of tribal chiefs, all the tribal chiefs, say, to a meeting to discuss things, is that what should be done?

Mr. KINLEY. I think it is worth considering. I know one thing, if we were able to do that, Congressman, we are going to need the stuff to try to get information that is in writing of what we are thinking here and to be able to bring a consensus. Roger is right, some of the small tribes do not have the resources to be traveling around.



Mr. YATES. Somebody ought to give us a background paper on that.

TUESDAY, OCTOBER 27, 1987.

## INDIAN AFFAIRS

### WITNESSES

ARTHUR GAHBOW, CHAIRMAN, MILLE LACS BAND OF CHIPPEWA INDIANS

RICHARD REAL BIRD, CHAIRMAN, CROW TRIBAL COUNCIL

ALEX LUNDERMAN, CHAIRMAN, ROSEBUD SIOUX TRIBE

WAYNE DUCHENEAUX, CHAIRMAN, CHEYENNE RIVER SIOUX TRIBE

Mr. YATES. Mr. Real Bird, we are glad to see you again. They say you have a lot of coal.

Mr. REAL BIRD. I was surprised to see we have that much.

Mr. YATES. How do you want to proceed?

Mr. GAHBOW. That has always been the case. The Mille Lacs Band has always been looked at as somebody that is not around, so today he is here.

### DIRECT FUNDING OF TRIBES

Mr. YATES. Tell us why you are here then?

Mr. GAHBOW. Mr. Chairman, I am glad to be here, and you do have my testimony.

Mr. YATES. Your statements, all of your statements may be made part of the record.

Is that one statement?

Mr. DUCHENEAUX. Yes.

I am not going to read it all.

Mr. YATES. Go ahead.

Mr. GAHBOW. Mr. Chairman, I guess it is a pleasure for me to be here today to testify before your committee. I guess I am part of the Alliance to the Indian Association.

I was in total agreement in their statements that have been made. I believe some of the questions and some of the issues that have been brought out this morning about it, putting together a different type of department or whatever to do these things, I guess some of the issues, I don't know if I should bring them out.

Basically, every tribal leader has had the similar problems as we have.

Let me get back to the issue of the Constitutional rights of Indian tribes under the Constitution of the United States of America. I guess that is where I will be coming from, where we have our traditions, our religions, our way of life, which predates the existence of the United States by thousands of years.

Mr. YATES. You heard Mr. Swimmer this morning indicate—what do you think of Mr. Swimmer's idea of having the funds go directly to the tribes for carrying out their own operations?

Mr. GAHBOW. Mr. Chairman, I want to, I guess with that I am in agreement with his concept of having the monies come directly to the tribes, but I want to stress that maybe one of the things that ought to be looked at here is that we did have something similar to this situation called the block grant concept where they used the population figures of each tribe.

I am one of the smallest tribes in the State of Minnesota, which belongs to the Minnesota Chippewa Tribe, and I have a problem with that because of the fact I am a small tribe and they do not give separate—I would like to have a separate budget, but because of the size of my tribe, I have enrolled membership of 2,000 members of the Mille Lacs Band of Chippewa Indians.

Mr. YATES. You feel under that kind of a situation you wouldn't receive as much money as you are receiving now?

Mr. GAHBOW. Yes. Based on the interpretation of what the block grant concept was at the time.

It would initially kill us for administrative purposes, too, we couldn't survive using the population figures that block grant concept has.

Mr. YATES. Do you find BIA has too much bureaucracy?

Mr. GAHBOW. Yes, I do.

Mr. YATES. Would you eliminate area offices?

Mr. GAHBOW. Yes. In fact, you will find our resolution back in 1976, I passed a resolution, made a motion for the area office to be eliminated, and that is still a standing resolution to this date.

That also, Mr. Chairman, has been a threat to Indian tribes mainly to small tribes. I am one of the smallest tribes.

I went into what you call a separation of powers of government, which deals with our own form of government, which has been placed and then we have done this, we have completed it. We have our own ordinances and our own law enforcement and all judicial systems, court systems, and the whole bit.

We have all that, but in the process of trying to get the monies, we can't get the monies over to us. We have placed budget requests on these.

[The statement of Mr. Gahbow follows:]

TESTIMONY TO HOUSE OF REPRESENTATIVES  
OVERSITE HEARING

PRESENTED BY  
Arthur Gahbow, Chief Executive  
of the  
Mille Lacs Band of Chippewa Indians

Mr. Chairman and honorable members of the Committee. My name is Arthur Gahbow. I am the Chief Executive of the two thousand members of the Non-Removable Mille Lacs Band of Chippewa Indians.

I am honored to be here and thank you for hearing my testimony.

Our reservation is located in East Central Minnesota. Our traditions, our religion, our way of life pre-dates the existence of the United States by thousands of years.

Today we co-exist with the United States. We strongly believe a reform is needed to improve our relations with the federal government.

We need to see concrete proposals to problems we have been experiencing for generations. We would be elated to see these proposals become the law of the land.

Speaking for the Mille Lacs Band, I would like to provide for you a list of priorities on the legislation which are of paramount importance to us. I have a list of five long range priorities and conclude with pilot project request.

First, our main priority is to see the re-establishment of a government to government relationship with the United States.

At first the United States viewed us as sovereign nations. They made treaties with us to assure their own safety because in the early part of this country's history the Indians were a formidable military might.

Until 1871, the United States made treaties with us and clearly recognized the sovereignty of Indian tribes. This was mostly because we possessed the best piece of real estate in the world and your leaders believed in a Manifest Destiny. Your leaders believed there was a divine mandate and they could take these lands by any means. The means they used were treaties.

But we were not sovereign nations simply because the fledgling government of the United States chose to treaty with us. We were sovereigns because we existed as a nation before Columbus saw the New World. From time immemorial we had the right and ability to control our own destiny.

We believe we have never lost our sovereign status. We firmly believe the Founding Fathers meant us to retain our sovereignty. And we do retain it.

Now it is time for the Congress of the United States to rekindle the vision of Indian tribes, which was held by your forefathers who sat in Philadelphia on the hot summer of 1787.

Those great men meant for our nation to meet with the United States on an equal footing with an equal bargaining position.

Therefore, priority one requires you to recognize our sovereignty and respect our government. These are not new ideas. In fact they are ideas that are older than the Republic.

Priority two can be stated as a question: How can you legislate over us, make policies regarding us, and have pervasive regulatory powers over us and yet not give us any voice in the political process?

The Supreme Court imposed the status of Domestic Dependent Nation upon us, yet this dependency allowed us no recourse in the American political process.

American Indians did not have the vote until 1924. For the most part Indians did not want the vote because they viewed themselves as separate sovereigns. In addition the federal and state governments did not want to give Indians the franchise in the 19th century because they were more numerous than white settlers in the territories and western states. Indeed, the Indians could have controlled most state legislatures and many Congressional seats had they been able to vote and run for public office in the last century.

Eventually, citizenship was imposed upon them and they have been given the greatest gift of that imposition, the right to vote.

But the right to vote is only valuable if one has an elected representative who reflects one's views.

Indian people make up a relatively small percentage of the American population today. There are not really enough of us to make a significant political impact.

However, we have legitimate concerns which constantly go unheeded. Only the courage of people like Senator Inouye allows us to be heard.

But we can't always count on the benevolence of Congress. Can we count on you 50 or 100 years from now? We don't know and you don't know.

Therefore it is time now for a mechanism in the federal government to insure that we are heard.

We need to get together to explore ways to vent our concerns. The pendulum has swung your way for 200 years. You have all the real estate, the mineral rights, and the lakes and streams.

It is time to give us a voice in choosing our destiny.

We need to talk about giving Indian people a voting power on a par with the states.

We need two senators to speak for Indian lands and Indian people.

Our third priority is a cabinet level position exclusively devoted to Indian affairs.

We have been dealing with the Department of Interior for many years.

We are not happy, to say the least, with the job the Bureau of Indian Affairs is doing.

We believe this resolution could make the federal bureaucracy more accessible and accountable to tribal governments.

This much needed funds for our people are absorbed in a massive, ineffective, and many times, Incompetent Bureau of Indian Affairs.

These funds were designated by you, the Congress, to help us, the Indians.

The middle man is the Bureau of Indian Affairs. As a general rule, the Bureau uses the monies earmarked for Indian people to fund positions in its' own agency.

We feel that if funds were directly disbursed, we could employ our own people or hire experts who could work at a higher level of competence than those who work for the BIA.

But how do we start such a reorganization?

We feel the first step is to have a cabinet level position for Indian Affairs. This is step one because to reshuffle a bureaucracy as big as the BIA a separation from the Interior Department is essential.

We need the President's ear on Indian Affairs. We need the power of a Secretary of Indian Affairs to reorganize and improve our relations with the federal government.

Ultimately, it is in the best interest of you, the Congress, to reorganize the BIA and put a person in the cabinet. You have been trying to give us money. But the money is not getting to us.

Our fourth priority is to curtail the plenary power Congress has over Indian Affairs.

Actually nowhere in the U.S. Constitution does it say that Congress has plenary power over Indians.

The only real power Congress is imbued with regarding Indians is the power to regulate commerce involving Indian tribes.

We acknowledge the power to regulate commerce. However, in 1987, the federal government regulates virtually everything involving Indian people.

We respectfully request that the federal government step back. We request that you give us the same deference you give states to regulate their affairs.

In fact, our right to make policies within our boundaries predates the states and the federal government.

Our request is reasonable. Simply recognize our sovereignty as you did when you made the treaties. But this time back up your recognition with a solemn pledge that you will honor your promises, treat us with respect and not steal what little we have left.

After you recognize our sovereignty, then recognize our abilities. We existed centuries before the United States. We have the right and ability to govern ourselves.

Allow us to do this. Surrender some of these plenary power that leaders have erroneously assumed

Our fifth priority is our future. I'm very concerned about the future of Indian people in general. I'm especially concerned with the future of the Mille Lacs Band.

I know we will continue to exist as a people. We have been here longer than you and we will continue to exist

But I'm concerned about the power you have over us



In the last six generations of my people you made us promises and as a result our lands were taken.

In the past three generations of my people we have seen an attempted cultural genocide on your part.

Our parents and grandparents were discouraged from speaking their native tongue in your government schools.

Your government encouraged missionaries to eliminate our traditional religion.

Today, there is a greater respect for our first amendment rights. Our religion is strong. Our language continues to be spoken and learned as a second language by our young.

While 97% of our land which we retained under the Treaty of 1855 was taken by state or federal government agencies, we hold strong to the small piece of turf we retain.

We are a strong people and we will continue to exist. But we would like to continue with your assurance that you will do nothing else to destroy us. We would like to continue with your assurance that you will honor the promises you made in the treaties.

We would like to continue with your recognition of our sovereign status.

What I am proposing is a new beginning between our two governments.

But a journey of a thousand miles begins with but a single step.

The first step I am proposing is the item I shall leave you with today. It is the short term goal I mentioned at the beginning.

We propose that the Mille Lacs Band be allowed to obtain all of its funding from the BIA in the form of a Block Grant. We propose this so that the needs of our people can be met with the immediacy the people deserve and expediency Congress desires.

In 1980, the Mille Lacs Band implemented a strong governmental structure with three branches, Separation of Powers, and checks and balances. For the past seven years the reservation has operated under this government.

Now, more than ever, the Band government is feeling the restrictions imposed by the BIA.

We feel that we are now at the level of self-sufficiency and competency to handle our own affairs.

We have the following grievances against the Bureau

1. Over the last three years the BIA has increased its staff by 50%;
2. In that same period, our funds were reduced by 46%;
3. In violation of federal law, administrative rules and decisions have been imposed upon us without proper procedures or opportunity to comment;
4. My staff is unable to obtain the raises in pay given most employees in the private sector because of the dearth of federal dollars.

Therefore, in order to assure that we may govern ourselves, in order to assure that the monies your propose reaches our people; in order to reduce unnecessary spending by bureaucrats, We respectfully request a Block Grant. We request that you give the money directly to us and eliminate the intermeddling middle man, the BIA.

Thank you for allowing me to voice my opinions

## NUMBER OF BIA PROCESSING CENTERS

Mr. YATES. Mr. Ducheneaux, did you have something?

Your statement may be made part of the record.

What is it you want to tell us? You have been up here a number of times.

Mr. DUCHENEAUX. The back page probably tells the best of all.

Mr. YATES. What do you say on the back page?

Mr. DUCHENEAUX. The last page, the very last page.

Mr. YATES. The picture?

Mr. DUCHENEAUX. Yes.

Mr. YATES. How would you explain that chart?

Mr. DUCHENEAUX. That, sir, is the justification for doing something with the Bureau of Indian Affairs. Those are all the places we have to go to do business with the Bureau of Indian Affairs.

You have got disbursement out in San Francisco; you have got management in Albuquerque. There is not one single place you can go and get all the answers.

You run here, you run there; it ain't his job; it is this fellow's job. So you have to run back over here to talk to this guy and then anyone who tries to help you ends up in Point Barrow. There is a little deal on Point Barrow——

Mr. YATES. Do you want to comment on this?

Mr. SWIMMER. Since I have been on board, nobody has gone to Point Barrow.

If anything, we have a stable work force out there, at least to my knowledge. There certainly has been no effort at retribution or criticism of people trying to help tribes.

Mr. YATES. What about all the places he has to go to get his work done?

Mr. SWIMMER. We have various processing centers, various spots around the country. He should be able to go directly to his agency or the area office.

Mr. DUCHENEAUX. I sure should, sir, and I am glad you said that. I can't go directly to the area office.

Mr. YATES. Why can't you?

Mr. DUCHENEAUX. They don't know what they are talking about. Mr. Swimmer said he came out and consulted with us on all these things, initiatives, schools, all this other stuff, now the superintendent was down there. If you ask him questions, he can't answer them.

He says, I will get back to you on that later. And the answers never come.

So the one on the Mellon Bank, they came down to Aberdeen, they sent a couple of fellows, I can't remember their names. You should remember who you sent down to Aberdeen. I read the whole thing they sent out, I asked questions, none of them could answer the questions I wanted answered.

And so out in Denver we were having a meeting out there, and a fellow by the name of Mr. Ragsdale came out and he was going to purport to tell us about the trust fund initiative. We went to ask him questions, he can't answer them.

So the consultation that he tells you he is out here giving is not working, because his folks can't answer those questions.

Mr. YATES. Do you want to ask him that question now? He is sitting in the first row.

Mr. DUCHENEAUX. If he could give me a copy of the research, I would know what questions to ask him.

Mr. RAGSDALE. The meeting he is referring to, Mr. Chairman, I was not in Denver on the trust fund.

Mr. DUCHENEAUX. You have no business standing up proposing to tell us about the trust fund initiatives if you couldn't answer the questions.

Mr. RAGSDALE. I tried to answer his questions, Mr. Chairman.

#### DEPARTMENTAL AND BIA RESPONSIVENESS

Mr. YATES. All right.

Would you do away with area offices?

Mr. DUCHENEAUX. Sir, if I might, first, I would like to take exception to the arrogance of Secretary Hodel and Secretary Swimmer this morning, sitting up here saying there is only 10 percent of us here. And even if we were all here, we wouldn't be speaking for all the Indians, because we are elected officials.

Well, we have got a President that was elected by a minority of our country. Is he speaking for all of America when he stands up there?

The majority of people of the tribe—so I speak for the tribe until they tell me I don't. It is not always for the best.

I didn't always agree with them. That is the type of arrogant attitude we have been getting out of the Bureau of Indian Affairs since I have been chairman this time, and that is October 6.

Go down and try to have a conversation with Mr. Swimmer, well, do it, go do it. We tried to do things, but there is never any back up.

He told me I should be out scrounging up business, so I tried to scrounge some of his business. I have a print shop now.

I have authorization, at least I think I have, because he tells me I don't, and I tell him I do, to do business with GPO. It was given to me by Chairman Wilbur Mills when he was in Congress, he gave us a waiver to work for the Bureau of Indian Affairs.

I asked that in April; I haven't got an answer. Mr. Swimmer set up these BOCs. Business Opportunity Centers, three of them.

They are supposed to give us technical assistance. I told him I have a print shop. Call Dave Gordon, he says. I called Dave Gordon; I couldn't get a hold of him for a couple of months. I finally did.

He said, send him what I had and he would help us. So I sent him whatever our print shop could do, and I got a letter back saying he sent what we could do to General Motors.

I could have done that. I wanted him to come out and evaluate the system. But that is neither here nor there. It is a fight I am going to have with Mr. Swimmer. Mr. Swimmer says he would like us all to have a 10 year plan, and I agree 100 percent.

We started on it last fall when I got elected chairman. We are going to decide what it takes to run Cheyenne River for 10 years and we are going to come in and ask the IG like he said, to fund it at that level.

What is going to happen; he is going to take a look and say, no, I can't do this, and it is going to be cut. The area office is going to say that.

The superintendent is going to try it but he won't get by with it. The area office probably will, Secretary Swimmer will, and Secretary Hodel, and OMB.

Now I passed a resolution through our council requesting Mr. Swimmer to arrange a meeting with the Office of Management and Budget with us when we get through with this so we can present it to them and see if we can submit it as our budget. I haven't heard what happened to the resolution yet.

I do know Secretary Swimmer must have it by now because that was way back in June or July when we passed the resolution. It is getting close, appropriations time is coming.

We are going to need to know what to do about it. But that is the first installment. We will have the plan developed, 10-year plan on how to operate Cheyenne River for the next 10 years. We have got the first installment coming.

We will get the rest done here. It is going to take a while. There is a lot of work to be done and a lot of work that hasn't been done, but we will get it to you.

#### TECHNICAL ASSISTANCE AND LEASING

Another thing, and this kind of concerns the Crow Indian Reservation up there, I hear them talking about leasing of Federal lands, and the law that says they must advertise was passed because the Bureau was making the bad deals, not the Indians.

There was a Solicitor's Opinion to that effect. If tribes could make their own deals—but it has been overturned by a later Solicitor's Opinion.

Now, back in 1970 we were trying to cut our own deal in leasing of oil lands so we went to the Bureau of Indian Affairs for technical assistance on how to go about doing this and they didn't have any.

The reason I am saying this is because I want to get back to these area offices a little later, we went out and hired some people to help; to come in and give us technical assistance on how to go about leasing—we don't have a lot of oil fields, so we don't have thousands of companies trying to lease it.

We wait until the price gets darned high. And they were showing us how to go about working the lease deals, they had to show and tell things up there; we had people from the Bureau in there, and his only comment was, gee, I didn't know that. That is the kind of people that are in some of those jobs.

Now, talk about training and technical assistance, we need a place to get this, but we aren't getting it.

One more thing on this lease, Secretary Hodel this morning said you can't lease one parcel for 10½ percent and one for 8 percent. I don't know why not.

They are doing it now. BLM lands are going at \$1.35. A lot of land on our reservation is going for \$7.80 an animal unit. And the lands aren't different.

Mr. YATES. That is Congress' fault.

Mr. DUCHENEAUX. Okay, then you are at fault.

Mr. YATES. No, I voted against it because I know what the difference is. We tried to change it in our appropriations bill, but every time we do it, the Senate knocks it out.

Mr. DUCHENEAUX. I am sorry.

Mr. YATES. You have done much better than BLM has.

Mr. DUCHENEAUX. Well, that is those guys then. They are leasing it both ways, \$7.80 an animal unit and \$1.35. That is Secretary Hodel, not Mr. Swimmer. He doesn't get in on BLM. I won't lay that on you, sir.

Another thing, you know, I heard Mr. Swimmer using CERT, CERT is responsible for leasing oil up there, CERT is an organization founded by tribes to help them with some of the things the Bureau couldn't help them with. Of course I guess they were getting some of these—they started getting something from the Bureau of Indian Affairs and what happened? Secretary Swimmer cut CERT funding out. It was this committee that put the funding back in so CERT could survive.

#### INCREASED TRIBAL CONTROL

Now, Mr. Swimmer says the tribes should be cut loose. Probably should, but they are not all ready to go. We started this self-government stuff back in 1934 or 1935 I guess when our constitution was adopted, and you would think in 50 years we should learn a heck of a lot in that time, but all those 50 years have been spent fighting other people just to hang on to what we have got.

We haven't had time to go out and really learn how to operate our governments and do all the things. It is just in 1980 we determined and settled our border question, whether or not our borders are diminished so we knew whether we had control over our own lands or not.

So sure, some of them are ready to go. But some of them aren't, either. I think they have got to take that into consideration. I think before he sets up here and just bluntly says cut them loose and let them shift for themselves, he has got to go out and spend some time maybe in Cherokee, South Dakota and listen to those folks.

Mr. YATES. What is your view about the idea?

Mr. DUCHENEAUX. I think if you, Mr. Swimmer and Congress would give us the absolute jurisdiction within our boundaries so we can have parimutuel racing if we wanted, we can have gambling if we want it, we can try a youth for murder if he commits a crime, I think yes. But we don't have that. We are not in complete control of all that. I guess like they say, we are still under tutelage. But the tutors are bad. I feel we probably should. Let's get back to the budgeting process where he said we must move the dollars around in the Indian priority system. We do.

The President says here, plan your 1989 budget on this. Probably should be the 1889 budget. That is about what we have got to deal with. He sends down a figure based on last year's appropriation. So we have got to sit there and take those figures and then he says

figure it out at 75 percent, 100 percent, 110 percent. You know you are never going to get out of sight for 110. Hopefully you will get 100 percent of what you got last year, but the way things have been going you probably won't, so the 75 percent figure is right. Put it anywhere you want to and leave out anything you want.

First off, it is not enough money to do any of it. You take a look at social service. What do you do? Do you zero them out when you have got people out there that aren't even eating half the time? What do you do? Do you zero law and order out when you have crime, and drug and alcohol abuse problems on the reservation? Do you zero out the roads? If you do that, people can't get in to get the services. But they took the roads off, so now we have no control over the maintenance of our roads which wouldn't have been so bad but before they did, they talked us into putting money into roads as a priority.

So there are a lot of things wrong with this. The Bureau assistance, people object to it. People probably should be made to work for general assistance and things like that. Want to start a training project. I have anywhere from 50 to 60 percent unemployment on the reservation. What am I going to do when I get them all trained? I have got carpenters, welders, brick layers trained now. There aren't any jobs. We need jobs out there if you want us to get off this and we need help getting them. It is nice to say turn them loose. Let them go out and shift for themselves, but what are you going to shift for if there is nothing there? There isn't anything in South Dakota so we can't let them off the reservation.

I can send them down to Joe or Alex. He can't hire them, can you?

Mr. LUNDERMAN. I will hire them.

Mr. DUCHENEAUX. We need something there first and then we will go train them. The primary thing you want to know is what I think of the one agency concept. I think it would be a good thing. Whether we can make it work or not, I don't know. Right now Secretary Hodel is in charge of everything. He has absolute authority under the President as far as Indian affairs is concerned. But he has got BLM, the forestry and all this other stuff to take care of. A lot of times they are in direct conflict with Indians and when they are, the Indians take the short end of the stick.

Mr. YATES. Every time?

Mr. DUCHENEAUX. Practically every time. We went out there and they were pumping oil on our reservation, trying to pump oil. They were getting water mostly but there was a little oil mixed in. They were dumping the water in the creek. Our people drink out of that creek. They go down with a bucket and dip it and carry it up to the house. That is all the water they had at the time. The water smelled like kerosene and they told us that. We went and talked to these fellows and told them clean that up. Well, that ain't ours. What do you call that place in New Castle?

Mr. YATES. GS, Geological Survey?

Mr. DUCHENEAUX. That is the guys. They are supposed to take care of it and enforce EPA regulations. They wouldn't do it so as a tribe we got mad and went out and we passed our own. We said before any more oil is pumped on this reservation, you are going to follow these EPA regulations. The Bureau sided with USGS. They

said these guys will enforce them. We fought them all the way to Secretary Anderson and finally got our regulations passed. So they have to be followed before they pump oil but they fought us all the way. It cost us several thousand dollars when they should have been saying, hey look; you are hurting these "fellers" here. In fact, they should have been paying for our attorney.

Mr. YATES. Okay. Thank you.

Mr. DUCHENEAUX. You are welcome, sir. I think it is a good idea. I think the area office shouldn't be wiped out.

Mr. YATES. Should not be?

Mr. DUCHENEAUX. No. They should be redirected. That is where Mr. Swimmer could get some of the technical assistance he needs to give to tribes by making those actually what the other gentleman said, technical assistance specialized.

Thank you, sir.

[The statement of Mr. Ducheneaux follows:]



TESTIMONY  
TO THE  
CONGRESS OF THE UNITED STATES  
HOUSE OF REPRESENTATIVES

HOUSE APPROPRIATIONS  
SUBCOMMITTEE FOR INTERIOR  
and  
RELATED AGENCIES

10:00 A.M. - OCTOBER 27, 1987  
ROOM B-308 - RAYBURN BUILDING  
Panel No. 2

by  
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MR. CHAIRMAN, MEMBERS OF THE COMMITTEE AND STAFF; THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON OUR RECOMMENDATIONS REGARDING THE ADMINISTRATION OF THE BUREAU OF INDIAN AFFAIRS, INDIAN HEALTH SERVICE AND DEPARTMENT OF EDUCATION OF INDIAN PROGRAMS.

I HAVE BEEN TOLD THAT IT IS BETTER TO BE A LITTLE FISH IN A BIG POND THAN A BIG FISH IN A LITTLE POND. THIS STATEMENT WAS MADE ABOUT THE BIA BEING TRANSFERRED TO THE FORMER DEPARTMENT OF HEALTH, EDUCATION AND WELFARE. PRESUMABLY THERE WOULD HAVE BEEN MORE MONEY FOR INDIAN SERVICES IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES THAN IN THE BIA, BUT IN REALITY THERE WOULD HAVE BEEN LESS BECAUSE OF THE ADDITIONAL LAYER OF BUREAUCRACY BETWEEN THE INDIANS AND THOSE WHO MAKE THE DECISIONS THAT AFFECT US.

IT SEEMS THAT A CONCERTED EFFORT IS BEING MADE TO BURY INDIAN ISSUES IN THE VARIOUS DEPARTMENTS OF GOVERNMENT. THIS FRAGMENTATION OF INDIAN PROGRAMS HAS RESULTED IN MEMORANDUMS OF AGREEMENTS BETWEEN THE VARIOUS SECRETARIES WHICH ARE NOT ONLY CONFUSING TO INDIAN TRIBES BUT ALSO TO THE BUREAUCRATS WHO ADMINISTER THESE PROGRAMS. TO EFFECTIVELY IMPLEMENT THE REGULATIONS OF THESE PROGRAMS, TRIBES MUST MAINTAIN AND HAVE KNOWLEDGE OF ALL THE TITLES OF THE CODE OF FEDERAL REGULATIONS (CFR) AND THEIR ACCOMPANYING POLICIES AND PROCEDURES MANUALS. TO INTERPRET THIS HODGEPODGE OF REGULATIONS AND POLICIES TRIBES MUST RELY ON THE SERVICES OF HIGH-PRICED PROFESSIONALS, SUCH AS ATTORNEYS. WHEN THIS INFORMATION SHOULD BE READILY AVAILABLE IN A CONSISTENT AND CONCISE FORMAT FROM ONE SOURCE. THIS HAS FORCED TRIBES TO DEAL WITH UNRESPONSIVE AND ILL-INFORMED STAFF MEMBERS WHICH LEADS

TO INEFFECTIVE FUNDING OF INDIAN PROGRAMS AND A REDUCTION OF ACTUAL SERVICE TO THE INDIAN PEOPLE.

#### BIA PROCEDURES MANUALS

BIA PROCEDURES MANUALS ARE COUCHED IN SUCH VAGUE TERMS THAT NO PERSON IN THE BIA HAS A CLEAR MANDATE ON HOW PROGRAMS SHOULD BE OPERATED. LACKING THIS MANDATE, A SUPERINTENDENT IS LEFT HANGING OUT ON A LIMB UNSURE OF HOW TO IMPLEMENT A PARTICULAR POLICY, HE MUST CALL EITHER THE AREA OFFICE OR CENTRAL OFFICE, WHO INSTEAD OF GIVING CLEAR DIRECTIONS WILL TELL HIM "ITS YOUR PROGRAM, OPERATE IT." FOR FEAR OF WINDING UP ON THE SAME LIMB AS THE SUPERINTENDENT.

WHEN ASKED FOR WRITTEN BACKUP TO VERBAL INSTRUCTIONS TO PROCEED, THEY ARE EITHER NOT FORTHCOMING OR ARE WRITTEN IN SUCH A WAY THAT NO DECISION CAN BE MADE.

#### AUTOMATED DATA PROCESSING

• THE BUREAU HAS IMPLEMENTED AN ADP SYSTEM TO AUTOMATE THEIR DAILY ROUTINE ACTIVITIES AND PROCESS SPECIFIC INFORMATION FROM THE LOCAL AGENCY TO VARIOUS LEVELS OF THE BUREAUCRACY. WE AGREE THAT AN ADP SYSTEM IS NEEDED AND IN THEORY USEFUL TO THE TRIBES AND BUREAU BUT THE ADP SYSTEM WAS IMPLEMENTED BY THE CENTRAL OFFICE DICTATING THEIR NEEDS TO THE AREA AND AGENCY OFFICES INSTEAD OF AGENCY AND AREA OFFICES INFORMING THE CENTRAL OFFICE OF THEIR NEEDS. THE NEEDS OF THE AGENCY SHOULD HAVE BEEN THE FIRST LEVEL TO BE AUTOMATED BECAUSE THIS IS WHERE THE INFORMATION ORIGINATES,

SUCH AS ENROLLMENTS, INDIVIDUAL LAND INVENTORY, ETC.

THE ADP SYSTEMS WERE DESIGNED FOR THE CENTRAL OFFICE WITH COMPLETE DISREGARD FOR THE PEOPLE WHO PROCESS AND MAINTAIN THE SYSTEM. THIS HAS RESULTED IN DELAYED IMPLEMENTATION, NUMEROUS BREAKDOWNS, PROGRAM REDESIGNS, AND DUAL SYSTEMS OF RECORD KEEPING. (AUTOMATED AND MANUAL)

WE RECOMMEND THAT THE SYSTEM BE REDESIGNED TO MEET THE NEEDS OF THE AGENCY OFFICE AND FOR THE CENTRAL OFFICE TO ADAPT TO THE REDESIGNED SYSTEM.

COMPUTER SERVICES FOR IMPLEMENTING THE GENERAL ASSISTANCE PROGRAM FOR ABERDEEN HAVE BEEN RE-DIRECTED FROM A LOCAL INDEPENDENT CONTRACTORS TO THE BUREAU OF MINES IN DENVER. THIS REDIRECTION HAS CAUSED OUR LOCAL AGENCY NUMEROUS PROBLEMS WITH THE ADP PROCESS. IN TURN, OUR TRIBAL MEMBERS ARE SUFFERING UNDUE HARDSHIPS BECAUSE THEIR GENERAL ASSISTANCE CHECKS ARE DELAYED. PRIOR TO THE REDIRECTION, ALTHOUGH THERE WERE OCCASIONAL PROBLEMS THEY WERE IMMEDIATELY ADDRESSED BY THE LOCAL INDEPENDENT CONTRACTOR MARTIN-MARIETTA OF ABERDEEN, SD, BUT NOW WITH THE ADP PROCESS CHANNELED THROUGH THE BUREAU OF MINES WHEN A PROBLEM OCCURS WITHIN THE LOCAL AGENCY'S SYSTEM THE AGENCY SUPERINTENDENT MUST CLIMB THE BUREAUCRATIC LADDER TO RESOLVE PROBLEMS.

WE RECOMMEND THAT THE ABERDEEN AREA REINSTATE THE MARTIN-MARIETTA CONTRACT FOR PROVIDING COMPUTER SERVICES FOR THE AREA'S GENERAL ASSISTANCE PROGRAM OF THE BRANCH OF SOCIAL SERVICES.

## INTEGRATED RECORDS MANAGEMENT SYSTEM (IRMS)

THE CENTRAL OFFICE HAS IMPLEMENTED IRMS THROUGHOUT THE BUREAU WITH HIGH HOPES THAT THIS SYSTEM WOULD IMPROVE THE MANAGEMENT OF ITS RECORDS. HOWEVER, IN DEVELOPING THE IRMS THE DECENTRALIZATION POLICY WAS OVERLOOKED.

WHAT IS NOW IN EXISTENCE IS A POWER BASE FOR THE BUREAU'S IRMS DIRECTOR AT THE CENTRAL OFFICE. HE, AND HE ALONE, CONTROLS ALL ACTIVITIES FROM HIS OFFICE, THE LINES OF AUTHORITY BY-PASS THE AREA DIRECTOR. EXAMPLE: THE AGENCY'S ACTIVITIES ARE CHanneled THROUGH THE AREA IRMS OFFICE. IF THE AGENCY SUPERINTENDENT WANTS TO REQUEST ADDITIONAL COMPUTER TIME HE MUST RELY ENTIRELY UPON THE CONGENIAL MOOD OF THE AREA'S IRMS STAFF. IF THERE IS A DENIAL OF THE AGENCY SUPERINTENDENT'S REQUEST THEN HE MUST BEGIN THE TIME CONSUMING PROCESS OF CLIMBING THE BUREAUCRATIC LADDER FROM SUPERINTENDENT TO AREA DIRECTOR TO DIRECTOR OF DATA SYSTEMS CENTRAL OFFICE BACK TO THE AREA OFFICE. IN A COUNTRY THE SIZE OF THE UNITED STATES WHICH SPANS 4 TIME ZONES THIS PROCESS CAN TAKE UP TO 3 DAYS, WHEN IN REALITY A SIMPLE PHONE CALL TO THE AREA DIRECTOR SHOULD HAVE SOLVED ANY PROBLEM ENCOUNTERED WITH THE AREA IRMS STAFF. THIS HOWEVER, IS IMPOSSIBLE BECAUSE THE EXISTING LINES OF AUTHORITY DO NOT ALLOW THE AREA DIRECTOR TO PROVIDE DIRECTION AND SUPERVISION TO THE IRMS AREA STAFF.

## TRIBAL CONSULTATION

IN MANY CASES CONGRESS HAS MANDATED TRIBAL CONSULTATION BEFORE ACTION BE TAKEN. IN TOO MANY CASES THE BIA HAS PLAYED LIP

SERVICE TO THE CONCEPT OF TRIBAL CONSULTATION, WHEN IN ACTUAL PRACTICE MOST DECISIONS THAT AFFECT TRIBES ARE DONE WITHOUT ANY CONSULTATION, FOR EXAMPLE, CONTRACTING BIA SCHOOLS TO STATES, EARN INCENTIVE, MELLON BANK TRUST FUND PROPOSAL, ETC.

IN THOSE INSTANCES WHERE THE BUREAU HAS TRIED TO FULFILL THEIR OBLIGATION TO THE TRIBES BUREAU STAFF SENT OUT TO CONSULT WITH TRIBES KNOW LITTLE OR NOTHING OF THE SUBJECT MATTER . WHEN QUESTIONED BY TRIBAL COUNCILS AND THEIR STAFF THE RECURRENT THEME THAT RUNS THROUGH THE STAFF IS, "I'LL HAVE TO GET BACK TO YOU ON THAT LATER." AT THE END OF THE SUPPOSED CONSULTATION PROCESS, TRIBES ARE LEFT WITH LITTLE OF NO KNOWLEDGE OF THE SUBJECT MATTER THAT THEY WERE BEING CONSULTED ON. THERE IS LITTLE OR NO FOLLOW-UP ON THE "I'LL GET BACK TO YOU LATER". WHEN INQUIRIES ARE MADE TO THE CENTRAL OFFICE ABOUT THE UNANSWERED QUESTIONS TOO MUCH TIME HAS ELAPSED, THE FINAL RULE IS IN PLACE AND THE REGULATIONS IMPLEMENTED. THE QUESTIONS REMAIN UNANSWERED.

MR. SWIMMER'S IDEA OF TRIBAL CONSULTATION IS TO HAVE TRIBAL RESOLUTIONS OF ENDORSEMENT FOR COMPETITIVE GRANT FUNDING, WHILE FEW ARE AWARDED MANY HAVE ENDORSED.

#### INDIAN PRIORITY SYSTEM (IPS)

TRIBES CONSIDER ALL OF THEIR EXISTING PROGRAMS AS A PRIORITY, NONE BEING OF MORE IMPORTANCE THAN THE OTHER.

WE HERE ON CHEYENNE RIVER CONSIDER THE HIGHLY TOUTED INDIAN PRIORITY SYSTEM AS PROCESS OF "ROBBING PETER TO PAY PAUL". THE AGENCY IS GIVEN X-AMOUNT OF DOLLARS TO IMPLEMENT THEIR PROGRAMS.

THE TRIBES ARE THEN TOLD TO RATE THEIR PROGRAMS IN PRIORITY ORDER BUT STILL WORK WITHIN THE SAME BUDGETED DOLLARS SENT DOWN BY CENTRAL OFFICE. THE REALITY OF THIS IS THAT BY THE TIME PROGRAMS AT THE TOP ARE ADEQUATELY FUNDED TO BE IN COMPLIANCE WITH FEDERAL REGULATIONS, PROGRAMS AT THE MID-RANGE TO LOWER LEVELS ARE LEFT WITHOUT THE NECESSARY FUNDS TO CARRY-OUT THEIR SCOPE OF SERVICE.

IF CONGRESS AND THE BIA ARE SERIOUS ABOUT PROMOTING TRIBAL SELF-DETERMINATION THEN THE EXISTING INDIAN PRIORITY SYSTEM MUST BE SCRAPPED AND REPLACED WITH A NEEDS ASSESSMENT WHICH WOULD BE SUBMITTED TO CONGRESS BY THE TRIBES THEMSELVES WITH CONSULTATION OF LOCAL AGENCIES.

IN ADDITION, THOSE PROGRAMS WHICH WERE REMOVED FROM THE IPO SYSTEM SUCH AS ROADS, HOME IMPROVEMENT, IIM, SELF-DETERMINATION GRANTS, ETC., MUST BE PUT BACK IN THE FUNDING PROCESS AS THEY ARE AN IMPORTANT PART IN THE FORMULA TO SELF-DETERMINATION.

#### CONTRACTING AND INDIRECT COSTS

CONTRACTING WITH THE BUREAU OF INDIAN AFFAIRS INDIAN HEALTH SERVICE, AND OTHER FEDERAL AGENCIES IS CUMBERSOME AND TIME CONSUMING AT BEST. THERE IS A MAZE OF REGULATIONS, POLICIES AND PEOPLE THAT THE TRIBES MUST GO THROUGH IN ORDER TO ACQUIRE, MANAGE AND SUCCESSFULLY COMPLETE A CONTRACT.

FUNDING IS A MAJOR CONCERN. FUNDING IN TRIBAL CONTRACTS IS NOT BASED ON NEED OR EVEN FEDERAL REGULATION REQUIREMENTS, IT IS GENERALLY BASED ON "AVAILABILITY OF FUNDS", DOLLARS APPROPRIATED BY CONGRESS USUALLY TURN INTO PENNIES BY THE TIME THEY ACTUALLY

REACH THE TRIBE AND BECOME AVAILABLE TO CONTRACT. THE BUREAUCRACY MUST ALWAYS GET ITS SHARE, AND ITS USUALLY A BIG CHUNK. WHILE THE TRIBES CONTRACT FUNDS ARE BASED ON AVAILABILITY OF FUNDS, TRIBES ARE STILL REQUIRED TO MAINTAIN PERFORMANCE ON THE CONTRACT AND FULFILL THE REQUIREMENTS OF THE FEDERAL REGULATIONS.

WHILE THE FUNDING IS BASED ON AVAILABLE FUNDS AT THE LOCAL AGENCY LEVEL, THE ACTUAL CONTRACT IS PREPARED AND SUPPORTED FROM THE AREA OFFICE. THERE IS NO LOCAL CONTROL OR DECISION MAKING. WHILE LOCAL BUREAU OFFICIALS ARE ASSIGNED TO OVER-SEE A CONTRACT, ANY DECISION MUST BE AFFIRMED BY THE AREA OFFICE. CONTROVERSIAL DECISIONS ARE OFTEN REFERRED TO THE CENTRAL OFFICE. EACH TIME A DECISION IS REFERRED AWAY FROM THE LOCAL AGENCY IT MUST PASS BY SEVERAL PEOPLE BEFORE THEY MAKE A DECISION. THE WHOLE PROCESS IS VERY TIME CONSUMING AND COULD TAKE MONTHS TO COMPLETE. TIME WASTED ALWAYS HURTS CONTRACT PERFORMANCE AND SERVICES TO THE PEOPLE AND CAN COST MONEY. OFTEN TIMES A DECISION OR ACTION REFERRED FROM THE LOCAL AGENCY COMES BACK TO THE AGENCY COMPLETELY DIFFERENT FROM OR IRRELEVANT TO THE ACTUAL ISSUE AT HAND.

ANOTHER PROBLEM THAT ARISES IS THE LEAD AGENCY BUSINESS IN REGARDS TO INDIRECT COST. INDIRECT COSTS, WHICH ARE SUPPOSED TO PAY FOR CONTRACT SUPPORT SERVICES PROVIDED BY THE TRIBES, ARE BOTH UNDER FUNDED AND A BURDEN TO COLLECT. IN THEORY, TRIBES ARE SUPPOSED TO NEGOTIATE A RATE WITH THE INSPECTOR GENERALS OFFICE AND APPLY THAT RATE TO ALL CONTRACTS WITH THE U.S. GOVERNMENT. IN ACTUAL PRACTICE, THAT IS NOT THE CASE. ONE AGENCY WILL ALLOW



ONE RATE AND ANOTHER AGENCY A DIFFERENT RATE. SOME AGENCIES PLACE RESTRICTIONS ON THE PERCENTAGE OF DOLLARS THAT CAN BE COLLECTED IRREGARDLESS OF THE TRIBES NEGOTIATED RATE AND THE DOLLARS IT SHOULD HAVE COLLECTED. SOME AGENCIES FORCE THE TRIBES TO TAKE THEIR INDIRECT COSTS OUT OF THEIR DIRECT-SERVICE DOLLARS, ASSURING AN UNDER-FUNDED CONTRACT DOOMED TO FAIL FROM THE BEGINNING.

IN CALCULATING A NEGOTIATED RATE, THE FORMULA USED BY THE INSPECTOR GENERAL'S AUDITORS IS BASED ON A THEORETICAL RECOVERY RATE AND NOT ON THE ACTUAL RECOVERY RATE. FEDERAL AGENCIES DO NOT GIVE TRIBES ENOUGH FUNDS TO RECOVER THE THEORETICAL RATE TO BEGIN WITH. BECAUSE OF THE THEORETICAL RECOVERY AND THE LACK OF FUNDING THE TRIBE'S INDIRECT COSTS RATE FLUCTUATES AND IS NOT A TRUE REFLECTION OF THE COSTS OF THE SUPPORT SERVICES IT IS PROVIDING. AS A RESULT TRIBES MUST SPEND SCARCE TRIBAL FUNDS TO TAIL UP THE ADMINISTRATION OF GOVERNMENT CONTRACTS.

#### LOCAL CONTROL

THE BIA CENTRAL OFFICE HAS IMPLEMENTED A POLICY WHERE THE LOCAL AGENCIES ARE CHARGED WITH THE MAJORITY OF THE TRUST RESPONSIBILITIES SET DOWN BY CONGRESS BUT ARE NOT GIVEN THE OPPORTUNITY NOR THE AUTHORITY TO BE A INTEGRAL PART OF THE DECISION MAKING PROCESS THAT TAKES PLACE ONLY AT THE AREA AND CENTRAL OFFICE LEVELS. CASE IN POINT, THE CHEYENNE RIVER SIOUX TRIBE RECENTLY ACQUIRED A PROPANE GAS DISTRIBUTORSHIP. IN DEALING WITH THE AREA OFFICE CONCERNING BIA'S GUARANTY PROGRAM WE FOUND ON EVERY ACCOUNT THE AREA OFFICE HAVING TO REFER OUR REQUEST THE (90%

GUARANTEE) TO THE WASHINGTON OFFICES. THE FIRST STEP TAKEN IN OUR ATTEMPTS TO OBTAIN A 90% GAURANTEE WERE AT THE LOCAL AGENCY FROM THE LOCAL AGENCY WE WERE REFERRED TO THE AREA OFFICE AND FINALLY WE HAD TO CONTACT THE CENTPAL OFFICE. AFTER RECIEVING APPROVAL OF THE 90% GAURANTEE FROM THE CENTRAL OFFICE, WHO WAS TO INFORM THE AREA OFFICE WHO WAS TO INFORM THE LOCAL AGENCY, WHO WAS TO INFORM US OF THE 90% GUARANTEE APPROVAL. WHEN WE CONTACTED THE LOCAL AGENCY THEY KNEW NOTHING OF THE APPROVAL. THEN WE CONTACTED THE AREA OFFICE WHO KNEW NOTHING OF THE APPROVAL. THEN WE CONTACTED THE CENTRAL OFFICE AGAIN AND ASKED THEM TO REINFORM THE AREA OFFICE OF THE 90% GAURANTEE APPROVAL. HOPEFULLY TO FINALLY REACH THE CHEYENNE RIVER SIOUX TRIBE. THEREFORE, MR. CHAIRMAN WE FEEL THAT THE AGENCY SUPERINTENDENTS POSITION SHOULD BE ONE OF A DECISION MAKING AUTHORITY RATHER THAN AN INDIVIDUAL WHO IS MERELY A SIGNATURE AND OR A STOPPING POINT BEFORE MOVING ON TO THE AREA OFFICE.

#### PERSONNEL

##### POINT BARROW SYNDROME

MR. CHAIRMAN, I WOULD ALSO LIKE TO ADDRESS A SITUATION THAT ARISES OFTEN WITHIN THE BIA CHAIN OF COMMAN AND WHICH WE TERM ON THE CHEYENNE RIVER AS THE POINT BARROW ALASKA SYNDROME.

AT EVERY LEVEL OF THE BIA'S CHAIN OF COMMAND (CENTRAL OFFICE, AREA, AND AGENCY) THE PERSONNEL ARE INTIMIDATED AND STIFLED IN VOICING REAL AND ACCURATE CONCERNS OF BIA POLICY AND PROCEDURES. THIS SITUATION IS CREATED BECAUSE BIA PERSONNEL FOLLOW AN UN-

WRITTEN CODE OF NOT QUESTIONING SUPERVISORS, FROM THE JANITORS IN OUR SCHOOL SYSTEMS TO THE DEPUTIES OF THE ASSISTANT SECRETARY TO THE INTERIOR. NO MATTER HOW EXPERIENCED, DEDICATED, OR WELL MEANING, IF THIS CODE IS BREACHED BIA PERSONNEL ARE SUBJECTED TO POSSIBLE TRANSFER OR ARE ADMINISTRATIVELY OSTRACIZED. AS A RESULT, THE BIA PERSONNEL WHO SEEK TO CONSTRUCTIVELY QUESTION OUT-DATED AND UN-WORKABLE POLICIES FIND THEMSELVES LITERALLY OUT-IN-THE-COLD IN POINT BARROW. THOSE BIA EMPLOYEES WHO ARE DERELICT IN THEIR DUTIES AND RESPONSIBILITIES AND ARE CONFRONTED BY TRIBES ARE TRANSFERRED TO A HIGHER LEVEL WITHIN THE BIA IF THE ADHERE TO THE UNWRITTEN CODE.

#### AREA OFFICE

BACK IN THE DAYS OF THE 1950'S, BEFORE MODERN COMMUNICATION AND AIR TRAVEL, THE AREA OFFICES WERE CREATED AND ESTABLISHED TO PROVIDE READY ACCESS TO DECISION MAKING AUTHORITY WITHOUT HAVING TO INCUR COMMUNICATION EXPENSES WITH THE CENTRAL OFFICE. WITH THE ADVENT OF MODERN COMMUNICATION AND TECHNOLOGY THE ORIGINAL FUNCTIONS OF THE AREA OFFICES ARE NOW ANTIQUATED.

IN THE COMPUTERIZED WORLD OF TODAY, WHERE DECISIONS CAN AND SHOULD BE MADE INSTANTANEOUSLY, DIRECT LINES AUTHORITY BETWEEN TRIBES' LOCAL AGENCIES AND CENTRAL OFFICE NEED TO BE RE-ESTABLISHED. THE AREA OFFICE'S FUNCTIONS NEED TO BE REDIRECTED.

THE PRIMARY PURPOSE OF THE AREA OFFICE NOW SHOULD BE TO PROVIDE TRAINING AND TECHNICAL ASSISTANCE TO TRIBES AND LOCAL AGENCIES. THESE AREA OFFICES SHOULD BE STAFFED WITH PERSONNEL

WHO HAVE THE EXPERTISE IN SPECIALIZED FIELDS SUCH AS CREDIT, CONTRACTING, LAW ENFORCEMENT, ETC. THIS WOULD ENABLE THE AREA OFFICE TO DEVELOPE SPECIALIZED TEAMS WHO WOULD PROVIDE CONSULTATION AND OTHER SERVICES TO EXPLAIN BUREAU REGULATIONS AND NEW PROGRAMS.

#### CENTRAL OFFICE

ONE OF THE MAJOR PROBLEMS WITH THE BIA IS THAT IT HAS BECOME THE MAIN DUMPING GROUND FOR POLITICAL HACKS AND UNWANTED PERSONNEL FROM OTHER DEPARTMENTS OF THE GOVERNMENT. MANY OF THESE EMPLOYEES ARE INSTALLED IN CLEAR VIOLATION OF THE INDIAN PREFERENCE LAW THAT ATE A REQUIREMENT OF BIA EMPLOYMENT. THESE EMPLOYEES, WELL INSULATED FROM NORMAL REPRIMANDS AND REMOVAL PROCEDURES BY THEIR POLITICAL PATRONS, KNOW LITTLE OR NOTHING OF INDIANS OR INDIAN AFFAIRS. ONCE ENTRENCHED IN THE BIA SYSTEM THEY ARE FREE TO WREAK HAVOC ON INDIAN PROGRAMS WHILE WORKING OUT THEIR FRUSTRATIONS FROM BEING BOOTED OUT OF MORE PRESTIGIOUS JOBS IN OTHER DEPARTMENTS. WITH THESE TYPES OF EMPLOYEES TO ADVISE HIM, THE ASSISTANT SECRETARY OF INDIAN AFFAIRS HAS DISPLAYED AN ARROGANCE TOWARDS THE PEOPLE HE IS APPOINTED TO SERVE, SELDOM MATCHED BY A PUBLIC SERVANT OF THE U.S. GOVERNMENT.

MR. CHAIRMAN IN A FIELD OF GOVERNMENT AS COMPLICATED AND DEMANDING AS INDIAN AFFAIRS WITH NUMEROUS TREATIES, ACTS OF CONGRESS, AND SOME 300 SEPARATE AND DISTINCT TRIBAL GOVERNMENTS TO SERVE THE INTEGRITY AND DEDICATION OF BUREAU EMPLOYEES SHOULD BE DICTATED BY THE EXISTING FIDUCIARY STANDARDS AS SET DOWN BY

THE U.S. SUPREME COURT.

WE ARE RECOMMENDING THAT AN EVALUATION OF ALL PRESENT AND SOON-TO-BE APPOINTED CENTRAL OFFICE STAFF HOLDING DECISION MAKING POSITIONS BE IMMEDIATELY IMPLEMENTED. THIS EVALUATION WILL ENSURE COMPLIANCE OF THE EMPLOYMENT LAWS GOVERNING THE BUREAU AND THAT INDIAN PEOPLE ARE BEING SERVED BY QUALIFIED PEOPLE WHO TRULY WANT TO SERVE RATHER THAN PEOPLE WHO ARE FORCED TO DO SO BY POLITICAL EXPEDIENCY.

#### BUREAUCRATIC RUN-AROUND

MR. CHAIRMAN, THERE ARE NO WORDS EXPRESSIVE ENOUGH TO ADEQUATELY DESCRIBE THE MAZE OF DEPARTMENTS, REGIONAL OFFICES, AREA OFFICES AND THEIR CONCOMITANT REGULATIONS POLICY AND DIRECTIVES. THEREFORE, MR. CHAIRMAN, PLEASE LET ME SUBMIT THIS SIMPLE ILLUSTRATION WHICH GRAPHICALLY DESCRIBES THE DIFFICULTIES ENCOUNTERED BY TRIBAL PERSONNEL AND ELECTED OFFICIALS IN CARRYING OUT THEIR OBLIGATIONS TO THOSE THEY SERVE (ILLUSTRATION ATTACHED).

#### CONCLUSION DEPARTMENT OF INDIAN AFFAIRS

MR. CHAIRMAN, IN THE TESTIMONY PRESENTED TODAY YOU HAVE HEARD NUMEROUS SINS VISITED UPON THE INDIANS BY THE U.S. GOVERNMENT'S FAILURE TO CARRY OUT ITS TRUST RESPONSIBILITY. TRIBES FOR YEARS HAVE PLEADED WITH THE CONGRESS AND THE COURTS FOR JUSTICE IN THEIR DEALINGS WITH THE U.S. GOVERNMENT. OVER THE YEARS, I SUSPECT YOU HAVE HEARD INFINITE REMARKS ON THE IN-

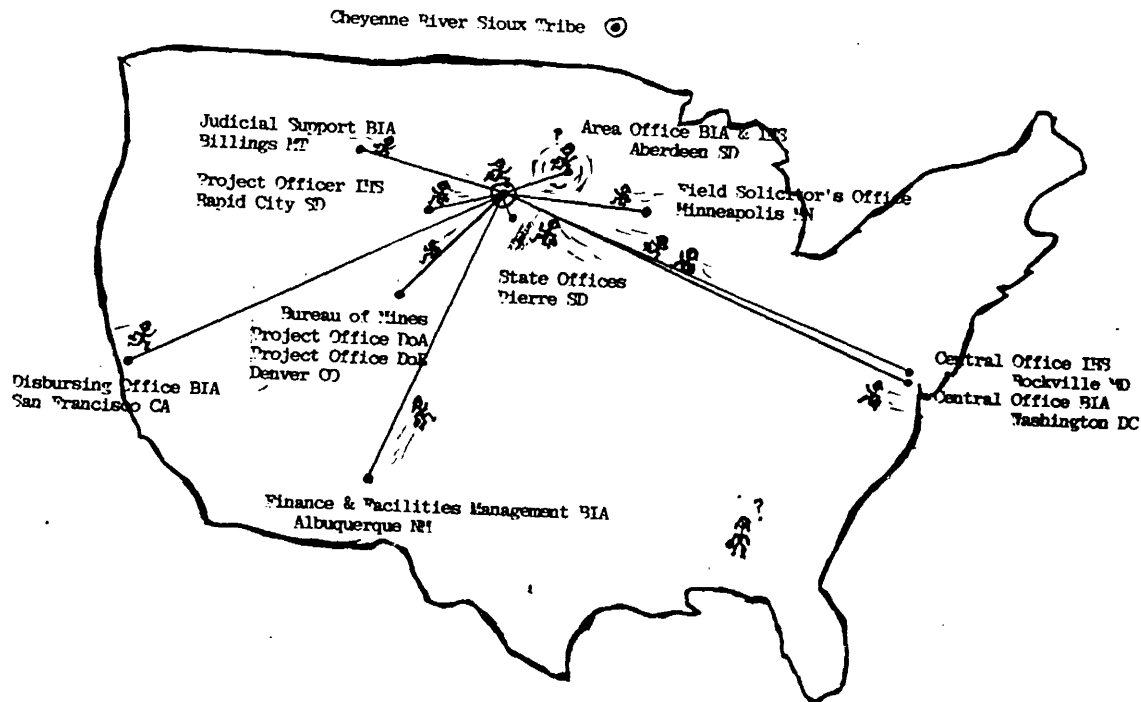
ADEQUACIES OF THE BIA. SINCE THE FOUNDING OF THE BIA, THERE HAVE BEEN NUMEROUS REPORTS AND STUDIES GIVEN BY COMMISSIONS (INCLUDING CONGRESS' OWN POLICY REVIEW COMMISSION) AND THE GENERAL ACCOUNTING OFFICE'S REPORTS TO THE CONGRESS. THROUGHOUT ALL OF THESE STUDIES RUNS ONE COMMON THREAD POINTING TO THE DEFICIENCIES OF THE BIA.

IT IS OUR BELIEF THAT ALL OF THE PROBLEMS MENTIONED TODAY COULD BE CORRECTED BY THE ESTABLISHMENT OF A DEPARTMENT OF INDIANS AFFAIRS DEDICATED TO AND ADVOCATING FOR A PEOPLE WHO'S SURVIVAL DEPENDS UPON THE FULFILLMENT OF THE PROMISES MADE TO THEM BY THE UNITED STATES GOVERNMENT.

THE ESTABLISHMENT OF A DEPARTMENT OF INDIAN AFFAIRS WOULD ASSURE THAT THE NATIVE PEOPLE OF THIS LAND WOULD REALIZE THEIR RIGHTFUL PLACE IN AMERICAN SOCIETY.



Point Barrow Alaska  
Conscientious Bureau Employee



Getting the Bureaucratic Run-around

Mr. YATES. Okay. Sir.

Mr. LUNDERMAN. It is I. I don't want to speak too lengthy here. I have come a long ways. I think you have my statement up there.

Mr. YATES. Your statement is in the record.

#### LEADERSHIP AND TRIBAL PROBLEMS

Mr. LUNDERMAN. I think the total elimination of area office starts with number one, reduction of central staff, revised regulation. It is all there.

Mr. YATES. We will read it.

Mr. LUNDERMAN. But I need to speak about sober leadership, myself. They always say problems on the reservation are 99 percent alcohol and now IHS is on a smoking kick, which is fine. But I think alcohol is number one. It is a hundred percent. All families are touched by this.

Now, in IHS there were some monies that were appropriated for the juvenile alcohol and drug abuse problem. IHS in Aberdeen area has 3 million of that. On the Bureau side nothing has happened at this point as yet. I know we got \$40,000 in education. That was at St. Francis Indian School to develop curriculum but we haven't seen any monies from the Bureau side as yet. I am sure that will be forthcoming because we have got a lot of patience and we learn that.

But for us to develop economically we need improved law enforcement. Now, that is a trust responsibility. Our crime rate is very high on the Rosebud and throughout the Sioux nation and I am sure through every tribe. If you are going to attract someone or a business there you need to assure them that they will be protected. We run about 5,000 in tribal court criminal cases. We have approximately 8 police officers to cover approximately a million acres of land. I think I said that last year and I say it this year again, and I am saying it again now. I would like to see the Bureau, myself, eliminate nepotism. I found that out even in tribal politics. Notice I am real gray and it only took two years. But relationships—

Mr. YATES. I have been in politics longer than you and you can see the results.

Mr. LUNDERMAN. It catches up to you. But that is what I see. This is my own opinion, my thoughts, my ideas. You can complain about a person and next thing you know, things happen or it is kind of a joke on our reservation that if you pass a resolution of the Council to remove someone from your reservation, what generally happens is they transfer them elsewhere and they get a raise and they are promoted. That has been proven often times.

So what we do now is I don't know, just talk I guess like we are doing right now.

Mr. YATES. What about the area offices? Do you think they do a good job?

Mr. LUNDERMAN. They eat up about 73 percent of a budget, I think, our budget.

Mr. YATES. Do they do a good job for you?

Mr. LUNDERMAN. It depends. It really depends.

Mr. YATES. On what?



Mr. LUNDERMAN. Oh, I guess I would say—they call me a clown now behind my back.

Mr. YATES. Who does?

Mr. LUNDERMAN. In Aberdeen. But I can stand that. Maybe it is because of what I am saying like right now. I am only saying I want sober leadership and I provide sober leadership and that is all I want. I need truthfulness. That is another thing that is lacking out here, to the best of our ability. If you can't do something, then say so. That is what I believe. Don't send me around the corner or down the road or to another office. Just tell me the truth.

Say, look, we don't have no money, we can't help you and that would be fine. Then we would know what to do. But they always say, run to your Congressman. That is why we are here now I think. But these are the things I see. Everything is written down. I do not wish to take up too much of your time.

Mr. YATES. Thank you very much for your testimony.

Mr. LUNDERMAN. I am working on a five-year plan and a ten-year plan and a 25-year plan because I will be on this earth 25 more years.

Thank you very much.

[The statement of Mr. Lunderman follows:]

ROSEBUD SIOUX TRIBE  
BIA - RESTRUCTURING RECOMMENDATIONS  
"OVERVIEW"

1. Total Elimination of Area Offices

These offices are unproductive and totally unnecessary in the overall functioning of the BIA. Elimination would and could mean the increasing of staff at the agency level and better services to the tribes and Indian people.

2. Reduction of Central Office Staff

These offices are also unproductive and totally insensitive to the needs of tribes and individual Indians. Most staff have never been to a reservation and that is reflected in the day-to-day attitude. Reduction at this level would mean increasing staff at the agency level where the workload originates and normally is completed.

3. Revised regulations/Leasing and  
Permitting/Probates/Acquisition and Disposal/Rights-of-Way

4. Tribal Contracting of BIA Programs

The RST fully intends to contract under P.L. 93-638 those BIA programs that can better be administered by the tribe. It is felt that this is the direction of self-determination and the RST fully intendst to pursue contracting.

5. Development and Protection of Natural Resources

The RST desires that the BIA conduct a complete inventory of all natural resources on the Rosebud Reservation and assist the tribe in developing a management plan. The protection of all natural resources is a priority of the RST, and the BIA has a trust responsibility to insure all natural resources are protected for the use and benefit of the RST and its enrolled members.

6. Improved and upgraded Law Enforcement Services

Law enforcement is near non-existent on the Rosebud Reservation due to budget limitations of the BIA. Law and order is vital to the continued peaceful existence of the Rosebud Reservation residents.

7. Elevate BIA to a cabinet level position, leadership will be selected by tribal nations. Take all monetary funds that various government agencies have, that are earmarked for tribal nations and put these funds under the new restructured Bureau of Indian Affairs.

TESTIMONY ON BUREAU OF INDIAN AFFAIRS  
TO THE  
HOUSE INTERIOR COMMITTEE  
BY ALEX LUNDERMAN, PRESIDENT  
ROSEBUD SIOUX TRIBE

Good Morning. My name is Alex Lunderman, and I am the President of the Rosebud Sioux Tribe. I am pleased to come before the Committee to present testimony on the Bureau of Indian Affairs, and to suggest improvements to this federal agency.

The Rosebud Sioux Tribe strongly encourages the elimination of all Area offices and supports the distribution of funding to the Agency/Tribe to ensure that the needs of the Indian people are properly met. The Bureau of Indian Affairs originally established Area offices to provide high-level technical assistance to the Agencies and Tribes in their areas. It is now very evident that Area offices have swelled into the "middle man" between the Agency/Tribe and the Central office. The passing of years has seen Area offices consistently add positions at the expense of the Agency/Tribe; constantly reducing the manpower availability where it is most critically required, at the Agency level. Area offices serve only as another obstacle in the path of Tribes, constantly halting progressive ideas. Technical assistance is no longer available and certainly not cooperatively provided.

The Rosebud Sioux Tribe feels that the Area offices are an unnecessary arm of bureaucracy which perpetuates its own existence at the expense of local Agencies and Tribes. The dollars spent to operate and maintain these offices could be allocated to the Agency/Tribe and the improvement and increase in production, and overall effectiveness would be evident. Local Agency offices are not providing services to the people that are mandated, and this is due almost wholly to the lack of available funding and positions. Law Enforcement services, Realty services, Social services, Educational services, land management services and executive direction are all critically short of funding, personnel, and available space. These services are vital to the continued existence of our Reservation and must be addressed.

Those problems which are so graphically described at the Area level--problems created by the remoteness and misdirected focus of the Area office--are compounded at the Central office level. the Central office in Washington, D.C. was originally designed to provide executive direction and technical assistance. Through the years the staff at Central office has been increasing to a level which now promotes insensitivity, complacency, and total lack of genuine concern for those the Bureau purports to serve. It has become next to impossible to obtain genuine assistance from the Central office level.

The field personnel are operating with outdated and obsolete Bureau of Indian Affairs manuals. Requests for technical opinions, Solicitor's opinions, and general assistance usually take one to two years for a response. the Bureau has grown so big at the Central office level that it has totally lost sight of the mission to which it was assigned.

The Rosebud Sioux Tribe advocates the reduction of Central office staff to a level which will make them responsive to the needs of the Indian people. The money saved by reducing staff could be used to provide upgraded services at the Agency level.

The Bureau should be required to develop new regulations in the land management area. Current regulations are over protective, prohibitive, and certainly outdated in today's computerized world. This Tribe is particularly concerned with the regulations related to establishment of grazing rates, bonding, and the overall system, used in payouts of monies collected for Tribes and individual landowners. A very detailed review should be implemented with Tribal input at every level. The system now in place to insure timely payouts are in a sad state of affairs. Computer experts indicate that the Bureau system is obsolete and unable to perform the tasks required; yet the Bureau continues to pump money into this white elephant. Millions of dollars are being spent to insure that a few egos are kept intact.

This is being done in the name of progress for the Indian people. The Rosebud Sioux Tribe strongly recommends a complete review of Bureau regulations as they relate to Land Management. The Tribe also advocates the replacement of the present computer system in the interest of saving money, and moving to a more practical modern system with the capabilities to accomplish what is needed: timely payments to Tribes and individual landowners.

The Rosebud Sioux Tribe advocates the eventual (within three years) contracting of most BIA programs. It is felt that Tribal control of programs such as social services, leasing and permitting, facilities management, Tribal courts, police protection and land operations would be beneficial to those served and would result in a more responsive overall system. The bureaucratic controls now in place makes it difficult and cumbersome to take strides in the direction of self-determination. When an organization is directly responsible and answerable to the people, there is always the pressure to do the best. Tribes should be given these responsibilities with the government red-tape restrictions being lifted. It is the intent of the Rosebud Sioux Tribe to contract those BIA programs that will not directly hinder the trust responsibility of the BIA. It is not the intent of the Tribe to assume the trust that the BIA is charged with. The Rosebud Sioux Tribe desires that the Trust remain with the

## Bureau of Indian Affairs.

The Rosebud Sioux Tribe advocates the expenditure of dollars in the development and protection of all Natural Resources located on all Trust properties of the Rosebud Sioux. There is a need to establish codes on water rights, hunting and fishing rights, minerals and mining capabilities and codes, and timber production capabilities and codes. Most tribes do not have any idea of what exists on their reservations in the area of minerals, natural gas or oil. These studies need to be done in detail to determine what exists and give the tribes the opportunity to deal with the issue. The protection of Natural Resources must be a priority with the BIA and must be done in a manner that insures the interests of Tribes and individual trust landowners are protected. Leasing and permitting of trust lands is in a state of shambles within the BIA and needs a complete review and reorganization. Tribes and individual trust landowners are being cheated, lied to and generally exploited by the very people that are employed to protect their interests. The Rosebud Sioux Tribe advocates the development and protection of all Natural Resources on the Rosebud Reservation. Also, we recommend a thorough review of the leasing and permitting done by the BIA. We also recommend the total review of the regulations currently in place as they relate to leasing and permitting.

The Rosebud Sioux Tribe strongly advocates the review and restructuring of law enforcement services on the Rosebud reservation. History will indicate this Tribe has consistently requested additional funding, additional police officers, jailers, clerks and dispatchers to upgrade our police services. The BIA has been consistently denying the requests on the basis of funding while they increased their staff at both area and central office levels. Police services is the basis for a stable, improved society and results in trust, area growth, lower insurance rates, tourism increasing and general public confidence. The BIA should be mandated to provide at least adequate police services, which has been absent on this reservation for many years.

The Rosebud Sioux Tribe recommends that a review of police protection programs be done. We also would recommend that additional funding be provided to insure that adequate police protection is provided for Tribal nations.

The final analysis according to the RST is that the BIA now operates on a level that does not meet the needs of the Indian people and must be restructured to once again provide those services at the level of the Agency. Through the years the BIA has insured its continued existence by insuring progress was held to a minimum at the Tribal level.



The BIA has insured this through bureaucratic maneuvering of regulations interpreted to insure that progressive self-determination projects were delayed or forgotten in a maze of paperwork. Built in delays instituted by the BIA have been an obstacle the Tribes have been unable to overcome.

The RST fully advocates, supports and encourages the restructuring of the BIA so that once again the primary needs of the tribes and Indian people are met and addressed, Also, it is recommended that tribal input in the restructuring process be at every level. It is strongly recommended that tribal leaders and their staff be a part of the committee assigned to restructure. It is felt that tribal input will insure tha the BIA is restructured to meet the needs of all tribes and Indian people.

## RESPONSIBILITIES AND FUNDING LEVELS FOR BLOCK GRANTS

Mr. YATES. All right.

Mr. Regula has a question.

Mr. REGULA. Thank you.

First of all, a couple of comments. You mentioned about budget. I just want to point out that the 1988 House appropriation is \$39 million more than last year. Indian health services is up \$80 million. Indian education is up \$2 million. In my experience on this subcommittee, which covers about 13 years, I don't know of any time that we had a lesser amount. There may have been some changes in priorities but never a smaller total. So I don't think it is quite fair to say that Congress is not adequately financing this, given our budget constraints, because every year it has been going up.

Congress makes the final decision. So whatever the President sends down is just his wish list. The real test is what we finally do and what he signs. That is the one that puts the cash in the checking account, which is what you are interested in.

Mr. DUCHENEAUX. Yes, sir, I am. That is the reason last time I was here I asked Congressman Yates if he ever wondered why we were all sitting here all the time every year at appropriations, because what they are asking for us, we are not getting.

Mr. REGULA. I would like to ask both of you, how do you feel about the idea of block grants whereby instead of parceling it out on all these programs, we give a block grant to the tribe and then they are responsible for health and safety and education and housing and all these various features, and if you were to get that, are you perfectly willing to accept it without recourse?

If you mismanage the money, you don't come back to us then to bail you out.

Mr. DUCHENEAUX. Under one condition, sir.

Mr. REGULA. What is that?

Mr. DUCHENEAUX. Now Secretary Swimmer gets the money, then he will give a share of that money. The law is there to do this, this and this. If Congress doesn't vote him enough money, he can't do the rest of this over here. But he doesn't have to make that up out of his pocket. But if we take on a contract or a grant and the first year it is okay, there is enough money there to do the scope of services, but when Congress or the President or somebody cuts that back and we take the contract over, we have still got that same scope of services to do.

Now, if that won't be charged as an audit finding against us, we will do it.

Mr. REGULA. You are saying so long as the amount of the block grant is not reduced—

Mr. DUCHENEAUX. I am saying if we contract with you to do what you want us to do and you cut the funds, you cut the scope of work.

Mr. REGULA. I think that block grant you get the money in a block.

Mr. DUCHENEAUX. If I get that from you, you are going to require me to carry out certain things, right?

Mr. REGULA. Well, not necessarily. If you don't want to educate the children then you are going to be in charge. Isn't that what you want? Don't you want to be responsible for health and education and housing?

Mr. DUCHENEAUX. Wait a minute. If you are going to give me the block grant and I go spend it anyway I want to, no questions asked? Is that what you are saying?

Mr. REGULA. That is one of the suggestions. If so, and if you don't take care of those things, you will have no recourse to come back to us to do it for you then.

Mr. DUCHENEAUX. But I won't charge anything for carrying out a scope of work like I am now.

Mr. REGULA. I would suspect you won't get elected at the next election.

Mr. DUCHENEAUX. I may not. That is the least of my worries. I didn't want the job when I got it.

Mr. LUNDERMAN. Let me answer part of that also. I lived in Chicago when I was living in an urban area ten years. I learned well from Mayor Daley back then. He campaigned every day and that is what I am doing. I want to build a dynasty.

Mr. REGULA. I hope you didn't learn all his lessons.

Mr. LUNDERMAN. I learned well. I had a drinking problem then. I voted four times in one day. I think one of the prerequisites to be a tribal chairman is going through all that experience. I am well developed. I have no problems personally of being responsible for my people with their monies that are earmarked. I wish other people in positions of authority would accept that responsibility.

If I go wrong, I will go to jail. If they do wrong, they will go to jail. That is a good challenge. I accept that. But if I sit in there they are going to sit in there with me, and we are going to be happy to go knowing we don't know how to do what we say, okay?

The challenge is there. I will take it. The Sioux Nation accepts it.

Mr. REGULA. What is the membership of the Sioux nation?

Mr. LUNDERMAN. 75,000. That is total now enrolled membership. 52,000 voting age. I want the Congress always to remember that. We are going to make our move. We are going to control the state next election.

Mr. REGULA. Is that South Dakota?

Mr. LUNDERMAN. No. We are going to spread out. I think I have got Mr. Jourdain there, Mr. Real Bird here. I think we will control Rosebud anyway.

Mr. YATES. Mayor Daley would say you better get them registered.

Mr. LUNDERMAN. We are doing that. We are in that process. Thank you very much.

Mr. YATES. Thank you. Mr. Real Bird, you now have Mr. Swimmer to talk to you about your coal.

#### CROW NATURAL RESOURCES AND RESERVATION POVERTY

Mr. REAL BIRD. Thank you. Good afternoon, Mr. Chairman and members of the subcommittee that are present here this afternoon.

My name is Richard Real Bird. I am the chairman of the Crow Tribe. I have been chairman of that tribe for 15 months. I want to

take the opportunity to thank the Chairman and the committee for the opportunity to testify before this hearing on the administration of the Bureau of Indian Affairs and the Indian Health Service.

When I learned today that the Crow Tribe owns 406 billion tons of coal I didn't know whether to be happy or to be sad. I have called for inventories of our resources through the Bureau of Indian Affairs and to date, I have not seen an inventory delivered to my office. I do not have a copy of it. I guess the reason I am sad when I hear that we own 406 billion tons of coal is that along with that coal goes 3.2 million acre feet of water that flows through the Crow Indian Reservation, the capacity to produce 20 million board feet of lumber a year, unexplored gas reserves totaling maybe 1.9 million acres of land, with no inventory.

There are no geophysical data available to me. There is no seismic data available to me. I have witnessed myself personally miles of seismic lines out within the boundaries of the Crow Reservation. Today I have to tell this committee and you, Mr. Chairman, that I am tired. I am tired of telling my people that trust responsibility will help us develop our resources. I am tired of trying to justify my actions and the actions of the Bureau of Indian Affairs when I have to tell my people you have to live in poverty for just a little bit longer. I am tired of the 85 to 90 percent unemployment on my reservation. I am tired of my people living in substandard conditions, substandard housing, substandard health care.

I am new in this business, having been chairman for 15 months. I looked at the relationship between the federal government and the Crow Tribe established through treaties, through acts of Congress, through judicial decisions. I was fortunate in being a part of a symposium in Philadelphia two weeks ago today which addressed what I had been looking for. What part does the American Indian play in the Constitution or what rights does he have under that Constitution?

At the symposium I spoke on what we American Indians, the Crows in this particular case, believe about treaties and what they established. The Crow Tribe treaties are made up of words that we cannot get around, under, over. We have to abide by these words. So then we look at that treaty. We look at that trust responsibility. Unfortunately that Crow Tribe in this case is entitled to all the rights guaranteed under the Constitution of the United States plus all the rights guaranteed under treaties under their right to self government under the sovereignty that is guaranteed to them for being able to sign treaties with the federal government.

I am tired today because again I have to go back and tell my people that we now have 4.6 billion tons of coal instead of 18 like we figured, and we will have to go through this winter again on general assistance. We will have to go through this winter again with energy assistance from the federal government because it doesn't look like through trust responsibility we are going to be able to develop these resources so that we can create real jobs, so that we can restore self-government for the people, so that we can restore self-esteem in these people by creating for them real jobs and taking away general assistance, energy assistance and all the other assistance that we have to deal with.

## DIFFERENT FEDERAL AGENCIES AFFECTING THE CROW TRIBE

I want to talk a little bit today about what I may term as conflicts of interest that I have to deal with. On the Crow Indian Reservation, I have to deal with not only the Bureau of Indian Affairs, I have to deal with the National Park Service. I have to deal with the Office of Surface Mining. I have to deal with the Bureau of Reclamation. I have to deal with Transportation. I have to deal with the Agriculture Department. With all these regulations, all these guidelines that I have to deal with, many of which are under the Department of Interior, all he can do is sit around and try to figure out how I am going to get around these guidelines, how I am going to deal with these regulations so that I can start developing my resources, so that I can make my people self-sufficient, so that I can contribute to the economy, to be a part of the economy of Southeastern Montana.

That conflict of interest plays such an important part, especially when different bureaus within the Department of Interior have to provide some protection for the state in which different Indian tribes reside. A case in point here might be the problems that I have had with the Office of Surface Mining. Prior to the passage of legislation authorizing the Crow Tribe access to reclamation monies, an agreement, a memorandum of agreement was made with the State of Montana by the Director of the Office of Surface Mining. When that law was passed it seems that that memorandum of agreement overrode the law. Is that the way it is supposed to be?

Then I have to look at the trust responsibility that the Bureau of Indian Affairs has over the Crow tribe and how it deals with the different departments or the different bureaus within the Department of Interior. The Park Service in particular has two national parks within the boundaries of the Crow Reservation. They plan, they develop, they come up with long-range development goals without involving the Crow Tribe. This is a tribal resource. Tourism is a resource that belongs to the Crow Tribe within the boundaries of that reservation. Labor is a resource that belongs to the Crow Tribe within the boundaries of that reservation.

## CONFISCATION OF CROW TRIBAL RECORDS

These are my resources, my tribe's resources that they deal with, that they develop, that they plan without my involvement. So what does the Bureau of Indian Affairs do in a situation like this when the direction comes from the Secretary of Interior for the National Park Service to do the planning and designing, development of my resource? I look at trust responsibility and last Friday my tribal administration building was raided by agents of the Federal government. I have photographs here that I wish for you to look at. 18 to 25 Federal agents raided the Crow tribal administration building and confiscated records that dealt with the lawsuit that I filed on August 18, 1987 before the U.S. District Court in Washington, D.C.

Mr. YATES. What kind of agents?

Mr. REAL BIRD. Treasury agents, agents from Sacramento, Portland, Oregon, and Arlington, Virginia. The records that were confiscated are records dealing with the lawsuit that I filed in District

Court here in Washington, D.C. That same court issued orders to not go into full discovery until after November 30, 1987. I feel that the Inspector General's office, the Bureau of Indian Affairs, has acted in contempt of that court.

Mr. YATES. Whose order was it that they raided your building?

Mr. REAL BIRD. It was upon the order of a U.S. Magistrate by the name of Jack Shanstrom in Billings, Montana.

Mr. YATES. What was the basis for issuing the order?

Mr. REAL BIRD. I don't know. The warrant I was served with did not specify any charges. I was never read my rights. I was never informed as to what the charges were for the administration, me or the other members of my administration. I also feel that the actions were in contempt of Congress, for it is true that this trust responsibility is handed down through the Secretary of Interior through the Assistant Secretary of Interior to the area director who gave the order to raid the Crow Tribe. Or is that the intent of trust responsibility, to oppose the Crow tribe?

Mr. YATES. I don't understand. You are in a law suit with the Government of the United States. They have taken your records. Even under discovery the——

Mr. REAL BIRD. D.C. District Court——

Mr. YATES. Here in the District of Columbia?

Mr. REAL BIRD. District Court's Judge Johnson's order was for no one to go into full discovery until the 30th of November.

Mr. YATES. Why did this happen, Mr. Swimmer?

Mr. SWIMMER. I would be happy to submit the search warrant for the record. As I look at it, my understanding of the facts is that there are a number of federally funded programs contracted to the tribe. Withholding payments had not been deposited with IRS for some time, along with State unemployment compensation, and IRS wanted to secure the records to see if they could track any of the money and conduct an investigation.

[The information follows:]

# United States District Court

DISTRICT OF MONTANA

In the Matter of the Search of

(Name, address or other description of person or property to be searched)

CROW TRIBAL ADMINISTRATION OFFICE,  
CROW AGENCY, MT

## SEARCH WARRANT

CASE NUMBER

MCA 87-17-Play

TO: Walter J. Main and any Authorized Officer of the United States

Affidavit(s) having been made before me by Walter J. Main who has reason to  
(Affiant)  
 believe that ☐ on the person of or ☒ on the premises known as (Name, description and/or location)

See attached Exhibit "A"

In the State and District of Montana there is now  
 concealed a certain person or property, namely (Describe the person or property)

See attached Exhibit "B"

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before October 31, 1987  
Date

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime — 8:00 A.M. to 10:00 P.M.) (at any time in the day or night as I find reasonable cause has been established) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to Jack D. Shanstrom, U.S. Magistrate  
U.S. Judge or Magistrate  
 as required by law.

10-22-87 11:17  
 Date and Time Issued

at Billings, Montana  
 City and State

Jack D. Shanstrom, U.S. Magistrate

Jack D. Shanstrom  
 Signature of Judicial Officer

87. 10/26 11:43 P03 \*B.I.A. BILLINGS.MT.

FILED

IN THE UNITED STATES DISTRICT COURT

OCT 22 1987

FOR THE DISTRICT OF MONTANA

LCU ALEKSICH, JR. CLERK

BILLINGS DIVISION

By \_\_\_\_\_  
Deputy Clerk

IN THE MATTER OF THE SEARCH )  
 OF THE CROW TRIBAL ADMINISTRATION )  
 CROW AGENCY, MONTANA ) MCR-87-47-BLG-JDS

## ORDER SEALING APPLICATION FOR SEARCH WARRANT

The government, having made application to this court for the purpose of sealing the application and affidavit for search warrant in the above entitled matter, and good cause appearing therefore,

IT IS HEREBY ORDERED that the application and affidavit for search warrant dated October 22, 1987, in the above entitled matter is hereby sealed until after the warrant is executed.

DATED this 22nd day of October, 1987.

JACK D. SHANSTROM

JACK D. SHANSTROM



87. 10/26 11:43 P04 \*B.I.A. BILLINGS.MT.

## United States District Court

DISTRICT OF MONTANA

FILED

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)  
CROW TRIBAL ADMINISTRATION OFFICE,  
CROW AGENCY, MT

APPLICATION AND AFFIDAVIT  
FOR SEARCH WARRANT

CASE NUMBER

By Deputy Clerk102-2-1987  
MC87-47-018I Walter J. Main being duly sworn depose and say:I am a(n) Criminal Investigator, Bureau of Indian Affairs and have reason to believethat ☐ on the person of or ☒ on the premises known as (name, description and/or location)

See attached Exhibit "A"

In the State and District of Montana  
there is now concealed a certain person or property, namely (describe the person or property)

See attached Exhibit "B"

which is (give alleged grounds for search and seizure under Rule 41(b) of the Federal Rules of Criminal Procedure)  
evidence

In violation of Title 18 United States Code, Section(s) 641  
The facts to support the issuance of a Search Warrant are as follows:

See attached Affidavit

Continued on the attached sheet and made a part hereof.

☒ Yes ☐ NoSignature of Affiant Walter J. Main

Sworn to before me, and subscribed in my presence

10-22-87

Date

at

Billings, Montana

City and State

JACK D. SHANSTON

Notary Public for Montana

Signature of Judicial Officer Jack D. Shanston

87. 10/26 11:43 P05 \*B.I.A. BILLINGS.MT.

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## EXHIBIT A

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The Crow Tribal Administration Office. The office is located approximately one mile south of the Crow Agency headquarters, and south of the Crow Tribal Ceremonial and Fairgrounds, Crow Agency, Montana, on the Crow Indian Reservation. The office is a one story structure with a basement constructed of earthtone colored rock. Prominently displayed in yellow letters on the exterior wall at the main entrance on the south side are the words "Crow Tribal Administration Office." There are also three entrances on the north side and one entrance on the west side. The building is officially referred to as the Crow Tribal Administration Office and has no official address.

87.10/26 11:43 P06 \*B.I.A. BILLINGS.MT.

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## EXHIBIT B

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3 Crow Tribal records, documents and/or computer software, for  
4 the time period July 1, 1984, to the present. Said records,  
5 documents and/or computer software are believed to be located in  
6 the Crow Tribal Payroll Office, Computer Room, and other offices  
7 where these records and evidence may be maintained. Those  
8 records include, but are not limited to records pertaining to the  
9 contracts and grants awarded to the Crow Tribe as particularly  
10 described in the attached list consisting of 13 pages provided by  
11 Special Agent Thomas Gallagher, Office of the Inspector General,  
12 Department of the Interior.

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## U. S. DEPARTMENT OF INTERIOR (USDI)

## Bureau of Indian Affairs (BIA)

Program Title: Highway Safety Program  
Contract/Grant No.: C50-1420-1004  
Performance Period: November 1, 1981 to December 31, 1981  
Obligated Amount: \$59,931  
Remarks: BIA payments made to Crow Tribe on 9/9/85 for \$11,607.07 and 7/14/87 for \$23,026.03

Program Title: Tribal Work Experience Program (TWEF)  
Contract/Grant No.: C50-C-1420-5427  
Performance Period: March 16, 1982 to September 30, 1985  
Obligated Amount: \$242,000  
Remarks: FY 1984 - \$121,000 / FY1985 - \$121,000

Program Title: Jobs Bill Project  
Contract/Grant No.: C50-C-1420-5547  
Performance Period: June 28, 1983 to June 30, 1984  
Obligated Amount: \$277,933

Program Title: Industrial Development Commission  
Contract/Grant No.: C52-G-1420-3003  
Performance Period: August 1, 1983 to February 29, 1984  
Obligated Amount: \$24,960  
Remarks: BIA final payment to Crow Tribe on 9/30/87 for \$10,190.93

Program Title: Crow Tribal Employment Rights Office  
Contract/Grant No.: C52-G-1420-3004  
Performance Period: August 1, 1983 to January 30, 1984  
Obligated Amount: \$24,608

Program Title: Crow Tribal Fish and Wildlife Management Program  
Contract/Grant No.: C52-G-1420-3002  
Performance Period: August 1, 1983 to October 12, 1984  
Obligated Amount: \$30,000

Program Title: Tribal Court Program  
Contract/Grant No.: C50-C-1420-5588  
Performance Period: October 1, 1983 to September 30, 1984  
Obligated Amount: \$125,339.61

Program Title: Funding for Implementation of Indian Child Welfare Act  
Contract/Grant No.: C52-G-1420-4001  
Performance Period: June 1, 1984 to September 30, 1985  
Obligated Amount: \$54,400

Program Title: Home Improvement Project  
Contract/Grant No.: C50-C-1420-5624  
Performance Period: September 21, 1984 to November 30, 1985  
Obligated Amount: \$172,483

Program Title: Crow Tribe Audit Program  
Contract/Grant No.: C52-G-1420-4002  
Performance Period: September 20, 1984 to September 19, 1985  
Obligated Amount: \$23,500

Program Title: Tribal Court Program  
Contract/Grant No.: C50-C-1420-5626  
Performance Period: October 1, 1984 to September 30, 1987  
Obligated Amount: \$240,318.70

Program Title: Bark Beetle Control  
Contract/Grant No.: C50-C-1420-5649  
Performance Period: September 4, 1985 to March 31, 1986  
Obligated Amount: \$21,235

Program Title: Land Ownership Lease Program  
Contract/Grant No.: C50-1420-5659  
Performance Period: September 18, 1985 to December 31, 1986  
Obligated Amount: \$59,000

Program Title: Crow Tribe Irrigation Program  
Contract/Grant No.: C50-C-1420-5656  
Performance Period: September 18, 1985 to June 30, 1986  
Obligated Amount: \$14,500

Program Title: Tribal Work Experience Program  
Contract/Grant No.: C50-C-1420-5679  
Performance Period: October 1, 1985 to September 30, 1987  
Obligated Amount: \$558,696

Program Title: Housing Improvement Program  
Contract/Grant No.: C50-C-1420-5681  
Performance Period: November 20, 1985 to September 30, 1986  
Obligated Amount: \$164,301.59

Program Title: Royalty Arbitration  
Contract/Grant No.: C52-G-1420-6002  
Performance Period: May 9, 1986 to June 30, 1987  
Obligated Amount: \$10,000

Program Title: Establish Water Rights  
Contract/Grant No.: C52-G-1420-7001  
Performance Period: October 1, 1986 to June 30, 1987  
Obligated Amount: \$27,897

- The above information was provided by John Parker, Crow Contract Specialist, Bureau of Indian Affairs, Billings Area Office, Billings, Montana (FTS) 585-6313.

## Office of Surface Mining (OSM)

Program Title: Torray Johnson Ranch  
Contract/Grant No.: C5139825  
Performance Period: September 14, 1983 to October 1, 1986  
Obligated Amount: \$60,872.30

Program Title: Cooperative Agreement Title IV and Title V  
Administration  
Contract/Grant No.: C5144820  
Performance Period: October 1, 1983 to November 30, 1984  
Obligated Amount: \$270,334

Program Title: Anderson Allotment/Reclamation  
Contract/Grant No.: C5139821  
Performance Period: October 1, 1983 to September 30, 1984  
Obligated Amount: \$64,144.97

Program Title: Doyle A&B Reclamation  
Contract/Grant No.: C5139828  
Performance Period: December 1, 1983 to August 31, 1984  
Obligated Amount: \$99,333.68

Program Title: Lodge Grass  
Contract/Grant No.: C5139826  
Performance Period: December 1, 1983 to February 15, 1984  
Obligated Amount: \$28,094.09

Program Title: Torray Johnson  
Contract/Grant No.: C5139825  
Performance Period: December 1, 1983 to May 31, 1984  
Obligated Amount: \$45,872.30

Program Title: Murray Brown  
Contract/Grant No.: C5139828  
Performance Period: April 4, 1984 to September 30, 1984  
Obligated Amount: \$53,175

Program Title: Water Mine Project Phase II  
Contract/Grant No.: C5169820  
Performance Period: October 1, 1984 to October 1, 1986  
Obligated Amount: \$240,110.49

Program Title: Cooperative Agreement  
Contract/Grant No.: C5154820  
Performance Period: December 1, 1984 to December 31, 1985  
Obligated Amount: \$307,819.00

Program Title: Cooperative Agreement  
Contract/Grant No.: C5164820  
Performance Period: January 1, 1986 to September 30, 1986  
Obligated Amount: \$102,979

Program Title: Little Owl Creek Mine I  
Contract/Grant No.: C5169820  
Performance Period: November 12, 1985 to October 1, 1986  
Obligated Amount: \$240,110.49

Program Title: Little Owl-Creek Mine II  
Contract/Grant No.: OR 799820  
Performance Period: September 26, 1986 to September 30, 1987  
Obligated Amount: \$250,000

Program Title: Cooperative Agreement  
Contract/Grant No.: OR 794820  
Performance Period: January 1, 1987 to September 30, 1987  
Obligated Amount: \$63,100

- The above information was obtained from Larry Floyd,  
Director, Contract Operations, Casper Field Office, OSM,  
Casper, Wyoming (307) 261-5776.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Indian Health Service (IHS)

Program Title: Crow Detoxification Program  
Contract/Grant No.: 244-83-0008  
Performance Period: October 1, 1982 to September 30, 1984  
Obligated Amount: \$227,746

Program Title: Crow Community Health Representative (CHR)  
Contract/Grant No.: 244-83-0028  
Performance Period: December 18, 1982 to September 30, 1984  
Obligated Amount: \$318,655



Program Title: Crow Housekeeping (Janitorial Services for Dental Clinic)  
Contract/Grant No.: 244-83-0012  
Performance Period: November 16, 1982 to September 30, 1985  
Obligated Amount: \$121,465

Program Title: Tribal Health Department  
Contract/Grant No.: 244-84-0042  
Performance Period: January 9, 1984 to September 30, 1984  
Obligated Amount: \$68,750

Program Title: Tribal Health Department/CHR/Detoxification (Master Contract)  
Contract/Grant No.: 244-95-0017  
Performance Period: October 1, 1984 to September 30, 1985  
Obligated Amount: \$542,914

Program Title: Lodge Grass Housing (Public Law 93-638 Construction Contract)  
Contract/Grant No.: 244-84-0033  
Performance Period: September 17, 1984 to October 16, 1985  
Obligated Amount: \$655,090  
Remarks: Crow Tribe received \$119,539 (18.25%) of obligated amount as profit on construction contract contrary to the intent of P.L. 93-638 and 42 CFR 36.218, according to HHS Region VIII Audit No. 08-41451.

Program Title: Alcohol Program  
Contract/Grant No.: 244-86-0010  
Performance Period: October 1, 1985 to October 31, 1987  
Obligated Amount: \$229,100 (does not include 10/1/87-10/31/87)

Program Title: Crow Community Health Representative (CHR)  
Contract/Grant No.: 244-86-0009  
Performance Period: October 1, 1985 to October 31, 1987  
Obligated Amount: \$656,214 (does not include 10/1/87-10/31/87)

Program Title: Crow Janitorial  
Contract/Grant No.: 244-86-0014  
Performance Period: November 1, 1985 to October 31, 1987  
Obligated Amount: \$70,984 (does not include 10/1/87-10/31/87)

- The above information was obtained from Diana Buckles, Crow Tribal Contract Specialist, IHS, HHS, Billings Area Office, Billings, Montana (FTS) 585-6623.

Office of Human Development (OHD)

Program Title: Title IV Tribal Elders Program (Community Development Project)  
Contract/Grant No.: 90AK4038  
Performance Period: September 30, 1985 - February 28, 1987  
Obligated Amount: \$20,000

Program Title: Title VI Tribal Elders Program (Nutrition)  
Contract/Grant No.: 90AI074-02  
Performance Period: April 1, 1986 to March 31, 1987  
Obligated Amount: \$58,411

Program Title: Title VI Tribal Elders Program (Nutrition)  
Contract/Grant No.: 90AI074-03  
Performance Period: April 1, 1987 to March 31, 1988  
Obligated Amount: \$79,406

- The above information was obtained from Clint Hess, Director, Administration on Aging, CHD, HHS, Denver, Colorado (FTS) 564-2951.

Family Support Administration (FSA)  
Office of Grants Management

Program Title: Low Income Home Energy Assistance Program  
Contract/Grant No.: 84ICMTLIEA  
Performance Period: October 1, 1983 to September 30, 1984  
Obligated Amount: \$464,095

Program Title: Low Income Home Energy Assistance Program  
Contract/Grant No.: 85ICMTLIEA  
Performance Period: October 1, 1984 to September 30, 1985  
Obligated Amount: \$464,095

Program Title: Low Income Home Energy Assistance Program  
Contract/Grant No.: 86ICMTLIEA  
Performance Period: October 1, 1985 to September 30, 1986  
Obligated Amount: \$397,431

Program Title: Low Income Home Energy Assistance Program  
Contract/Grant No.: 08710MTLIEA  
Performance Period: October 1, 1986 to September 30, 1987  
Obligated Amount: \$330,692  
Remarks: For LIHEAP grants, up to 10 percent of the obligated amount is allowable for administrative costs, i.e., salaries, tax withholding.

- The above information was obtained from Jan Mucka, Director, Energy Grants and Programs Assistance Division, FSA, HHS, Washington, D. C. (ETS) 245-2032, and Yvonne Parker, Grants Management Specialist, Formula/Entitlement Grants Division, Office of Grants Management, FSA, HHS, Washington, D.C. (ETS) 245-0978.

U.S. DEPARTMENT OF LABOR (DOL)

Division of Indian and Inter-American Programs (DIIAP)

Program Title: Job Training Partnership (JTPA), Title II (Summer Youth Program)  
Contract/Grant No.: 99-4-0030-55-086-02 (3 year grant)  
Performance Period: July 1, 1983 to June 30, 1984  
Obligated Amount: \$91,425

Program Title: JTPA, Title IV (year-long program)  
Contract/Grant No.: 99-4-0030-55-086-02 (3 year grant)  
Performance Period: October 1, 1983 to September 30, 1984  
Obligated Amount: \$163,870

Program Title: JTPA, Title II  
Contract/Grant No.: 99-4-0030-55-086-02 (3 year grant)  
Performance Period: July 1, 1984 to June 30, 1985  
Obligated Amount: \$82,647

Program Title: JTPA, Title IV  
Contract/Grant No.: 99-4-0030-55-086-02 (3 year grant)  
Performance Period: October 1, 1984 to September 30, 1985  
Obligated Amount: \$218,487

Program Title: JTPA, Title II  
Contract/Grant No.: 99-4-0030-55-086-02 (3 year grant)  
Performance Period: July 1, 1985 to June 30, 1986  
Obligated Amount: \$85,524

Program Title: JTPA, Title IV  
Contract/Grant No.: 99-4-0030-55-086-02 (3 year grant)  
Performance Period: October 1, 1985 to September 30, 1986  
Obligated Amount: \$209,093

Program Title: JTPA, Title II  
Contract/Grant No.: 99-7-0030-55-029-02  
Performance Period: July 1, 1986 to June 30, 1987  
Obligated Amount: \$72,132

Program Title: JTPA, Title IV  
Contract/Grant No.: 99-7-0030-55-029-02  
Performance Period: October 1, 1986 to September 30, 1987  
Obligated Amount: \$215,814  
Remarks: For JTPA contracts, up to 20 percent of the obligated amount is allowable for administrative costs, i.e., salaries, tax withholding.

- The above information was obtained from Bill McVeigh, Manpower Development Specialist, DIIAP, Employment and Training Administration, DOL, Washington, D.C. (FTS) 535-0507.

#### U.S. DEPARTMENT OF COMMERCE

##### Economic Development Administration (EDA)

Program Title: Economic Development Grant - Staffing and Support  
Contract/Grant No.: 05-05-15063-60  
Performance Period: April 4, 1984 to April 23, 1985  
Obligated Amount: \$35,000

Program Title: Economic Development Grant - Staffing and Support  
Contract/Grant No.: 05-05-15063-61  
Performance Period: April 24, 1985 to April 23, 1986  
Obligated Amount: \$35,000

Program Title: Economic Development Grant - Staffing and Support  
Contract/Grant No.: 05-05-15063-62  
Performance Period: April 24, 1986 to July 31, 1987  
Obligated Amount: \$35,000

**Program Title:** Economic Development Grant - Staffing and Support

**Contract/Grant No.:** 05-05-15063-65

**Performance Period:** August 1, 1987 to July 3, 1988

**Obligated Amount:** \$35,000

**Remarks:** EDA has not allowed the Crow Tribe to draw down on any of the obligated amount as of October 16, 1987.

- The above information was provided by Robert Turner, Chief of Planning and Technical Assistance, EDA, Denver Area Office, Denver Colorado (FTS) 564-4474

**U.S. DEPARTMENT OF ENERGY (DOE)**

**Weatherization Administration**

**Program Title:** Weatherization Grant

**Contract/Grant No.:** DE-FG48-84-R803077-A-000

**Performance Period:** May 9, 1984 to March 18, 1985

**Obligated Amount:** \$43,147

**Program Title:** Weatherization Grant

**Contract/Grant No.:** DE-FG48-84-R803077-A-0010

**Performance Period:** March 19, 1985 to March 13, 1986

**Obligated Amount:** \$70,975

**Program Title:** Weatherization Grant

**Contract/Grant No.:** DE-FG48-84-R803077-A-002

**Performance Period:** March 28, 1985 to March 13, 1986

**Obligated Amount:** \$53,759

**Program Title:** Weatherization Grant

**Contract/Grant No.:** DE-FG48-84-R803077-A-004

**Performance Period:** March 26, 1986

**Obligated Amount:** \$1,485

**Remarks:** Transfer amount from 1985.

**Program Title:** Weatherization Grant

**Contract/Grant No.:** DE-FG48-84-R803077-A-005

**Performance Period:** March 14, 1986 to May 5, 1987

**Obligated Amount:** \$47,217

**Remarks:** Crow Tribe failed to submit any documentation for award. Tribes owes entire amount.

Program Title: Weatherization Grant  
Contract/Grant No.: DE-FG48-84-R803077-A-009  
Performance Period: May 6, 1987  
Obligated Amount: \$28,253  
Remarks: This grant on hold, tribe not allowed to draw down on funds.

- The above information was supplied by Van Pace, Contracting Officer, DOE, Denver, Colorado (FTS) 776-2000.

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Air/Water/Pesticides and Indian Programs

Program Title: Air Quality  
Contract/Grant No.: X008381-01  
Performance Period: December 17, 1982 to December 16, 1983  
Obligated Amount: \$80,041

Program Title: Air Quality  
Contract/Grant No.: X008381-84  
Performance Period: December 17, 1983 to September 30, 1984  
Obligated Amount: \$40,367

Program Title: Water Quality  
Contract/Grant No.: P008344011  
Performance Period: September 30, 1983 to September 30, 1984  
Obligated Amount: \$0  
Remarks: Tribe did incur costs for this period.

Program Title: Air Quality  
Contract/Grant No.: X008381-85  
Performance Period: October 1, 1984 to September 30, 1985  
Obligated Amount: \$58,847

Program Title: Air Quality  
Contract/Grant No.: X008381-86  
Performance Period: October 1, 1985 to September 30, 1986  
Obligated Amount: \$52,293

Program Title: Air Quality  
Contract/Grant No.: X008381-87  
Performance Period: October 1, 1986 to September 30, 1987  
Obligated Amount: \$42,410

- The above information supplied by Anne Doan, Contract Specialist, Bureau of Indian Programs, Montana Operations Office, EPA, Helena, Montana (FTS) 585-5486.

U.S. DEPARTMENT OF THE TREASURY

Office of Revenue Sharing

Program Title: Treasury Revenue Sharing  
Contract/Grant No.: UNK  
Performance Period: October 1, 1983 to September 30, 1984  
Obligated Amount: \$167,300  
Remarks: Revenue sharing program disbanded after FY 1986. Information regarding FY 85-86 not available at this time due to the Crow Tribe's failure to report their revenue sharing expenditures to the Census Bureau, U.S. Department of Commerce. The above obligated amount was used by the tribe to pay Financial and General Administration costs.

- The above information was obtained from U.S. Harris, Branch Chief, Census Bureau, U.S. Department of Commerce, Temple Hills, Maryland (FTS) 763-2555.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Office of Indian Programs

Program Title: Community Development Block Grant  
Contract/Grant No.: B-84-SR-30-0005  
Performance Period: September 24, 1984 to September 23, 1985  
Obligated Amount: \$400,000

Program Title: Community Development Block Grant  
Contract/Grant No.: B-84-SR-30-0006  
Performance Period: September 29, 1985 to September 28, 1986  
Obligated Amount: \$400,000  
Remarks: On October 14, 1987, Dom Nessi, Director, Office of Indian Programs, HUD, stated that when Real Bird's administration first came to power, the tribe attempted to consolidate the Crow Tribal Housing Account into the Crow Tribe's Central Payroll Account. Nessi stated that he disallowed this action and required that the Housing Authority maintain a sole and separate account, apart from the tribe's central account.

- The above information was provided by Don Nessi, Director, Office of Indian Programs, HUD, Denver Area Office, Denver, Colorado (303) 844-2963.

*Gordon A. Peterson*  
/ Gordon A. Peterson  
Special Agent-in-Charge



## A F F I D A V I T

- - - - -

I, Walter J. Main, being first duly sworn on oath, hereby dispose and say that:

I am a criminal investigator for the Bureau of Indian Affairs and stationed in Billings, Montana. I have been so employed for 14 years and have worked on thirty Indian reservations during my career. During this period of time, I have received training in the investigation of felony crimes and have prepared and executed Federal and tribal search warrants, and assisted State law enforcement agencies in the execution of State search warrants. My formal training includes a basic police academy course, U.S. Treasury Academy Criminal Investigator course, and numerous workshops in crime scene investigation. I am presently assigned to the Billings Area Office for the Bureau of Indian Affairs and my duties include the investigation of felony crimes on six Indian reservations in the State of Montana and one Indian reservation in the State of Wyoming.

On September 18, 1987, Bureau of Indian Affairs Area Director, Mr. Richard Whitesell, told me that an auditor he identified as Mr. Samuel D. Bogges informed him the Crow Tribe was not making required income tax payments to the Internal Revenue Service. Mr. Whitesell said Mr. Bogges is a certified public accountant who conducts program audits on the Crow Indian Reservation. Mr. Whitesell said that Mr. Bogges informed him that he had conducted an audit on the Crow Reservation in August 1987 and had

1  
2 developed this information at that time. Mr. Whitesell in-  
3 structed me to contact Mr. Boggess to get more specific informa-  
4 tion about these allegations. Mr. Whitesell told me that Mr.  
5 Boggess is the owner of Fredericks Restaurant which is located at  
6 the junction of Main Street and Airport Road in Billings,  
7 Montana.

8 At approximately 1:30 p.m., on September 18, 1987, I pro-  
9 ceeded to Fredericks Restaurant and contacted Mr. Samuel Boggess.  
10 I identified myself as a criminal investigator for the Bureau of  
11 Indian Affairs and advised Mr. Boggess I was investigating the  
12 alleged federal income tax delinquent case against the Crow  
13 Tribe. Mr. Boggess told me that he is a member of the Crow Tribe  
14 and is the owner of Fredericks Restaurant. He said he is also a  
15 certified public accountant and specialized in governmental  
16 audits such as school, local governments, small towns, Indian  
17 tribes and any other organization funded by federal grants or  
18 contracts. Mr. Boggess said he received a bachelor of arts  
19 degree from Rocky Mountain College in Billings, Montana, in 1971,  
20 and has been a certified public accountant since 1972. He also  
21 received a Master's of Business Administration degree from Syra-  
22 cuse University, Syracuse, New York. Mr. Boggess said he has  
23 conducted approximately five or six audits per year since 1983  
24 He also held the position of finance director for the City of  
25 Billings, Montana, for 7 years and resigned in 1983. Mr. Boggess  
26 told me he lives in Pryor, Montana, address, Pryor Star Route,  
Billings, Montana, 59101, telephone number (406) 252-8420.

1  
2 Mr. Boggess told me he conducted an audit of the Competent  
3 Lease program on the Crow Reservation in August 1987. He said  
4 that while he was conducting this audit, two enrolled Crow tri-  
5 bal member employees informed him that the tribe was not making  
6 required federal income tax payments to the Internal Revenue  
7 Service. He told me these two tribal members provided this in-  
8 formation to him in confidence and he could not identify them.

9 Mr. Boggess said he has been conducting program audits on  
10 the Crow Reservation since 1976. He informed me that the last  
11 comprehensive audit of all tribal programs was conducted in 1985  
12 and the federal income taxes were current at that time. Mr.  
13 Boggess said the Competent Lease Program was only a small part of  
14 the total tribal administration and he could not determine to  
15 what extent the Crow tribe was delinquent in federal income tax  
16 payments by reviewing the records in that one program.

17 Mr. Boggess said that all tribal programs on the Crow Reser-  
18 vation submit their payment vouchers to one centralized branch  
19 that is identified as Central Services, finance and accounting,  
20 and commonly referred to as the "payroll Office." He said that  
21 all employee payroll vouchers are processed in this department  
22 and approximately 38 percent is withheld from employee wages for  
23 federal income taxes, unemployment withholding and workmen's  
24 compensation. The payroll is then entered into a computerized  
25 system which is programmed to automatically withhold individual  
26 employees withholding contributions. Payroll checks are automat-  
ically printed for employees and also for federal and state with-

1  
2 holding. Mr. Boggess said a computerized payroll printout is  
3 available in the computer room in the Crow Tribal Office. This  
4 printout will include the employees names and federal and state  
5 withholding contributions. Mr. Boggess told me that the payments  
6 to the federal and state agencies are never delivered. These  
7 funds are transferred from the payroll account to a separate  
8 tribal checking account and used to provide a separate payroll to  
9 members of the Crow Tribe. Mr. Boggess said he reviewed a quar-  
10 terly income tax report for the period ending in December 1986,  
11 and noted that the tribe was delinquent on their federal income  
12 tax for that quarter.

13 Mr. Boggess told me that the Crow Tribe has their bank  
14 accounts at the Little Horn State Bank in Hardin, Montana. The  
15 payroll for the tribe is from \$60,000 to \$80,000 every 2 weeks.  
16 Mr. Boggess said that the payroll can be verified from informa-  
17 tion contained in the computerized printouts in the finance and  
18 accounting office in the tribal office and also from checking  
19 account records at the Little Horn State Bank in Hardin, Montana.  
20 He said that Mr. Garland Williams and Ms. Darla Three Irons are  
21 the two employees who are in charge of the payroll records and  
22 time sheets. These two employees work in the payroll office in  
23 the Crow tribal office. Mr. Boggess said that Lauren Old Bear is  
24 the computer operator for the tribal computerized payroll system.  
25 Mr. Old Bear is also responsible for preparing the quarterly  
26 income tax reports and will have these records in his desk or  
work area near the computer room. Carol Bad Bear is responsible

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2 for maintaining all the checking account records and reconciling  
3 bank statements at the end of each month. Mr. Boggess said she  
4 is also responsible for transferring funds from one checking  
5 account to another. Ms. Bad Bear is also responsible for main-  
6 taining the general ledger program and will have these records on  
7 her desk or work area near the computer room in the tribal  
8 finance and accounting office.

9 Mr. Boggess said the payroll computer system was developed  
10 in 1981 by an organization known as Dakota Data from Rapid City,  
11 South Dakota. He said an individual identified as Mr. James  
12 Vincent Hudson was the troubleshooter for this company. Mr.  
13 Boggess said this company is no longer in existence.

14 Mr. Boggess said all the tribal checks require a dual signa-  
15 ture. He told me that four individuals are authorized to sign  
16 checks and he identified these employees as Mr. Barney Old  
17 Coyote, Mr. Marvin Falls Down, Mr. John Old Elk, and Mr. Lauren  
18 Old Bear.

19 I asked Mr. Boggess if this alleged diversion of funds was  
20 deliberate or simply a lack of good accounting methods and he  
21 told me it appeared to be deliberate. He said the unemployment  
22 rate on the Crow reservation was extremely high and this was a  
23 scheme by the Crow tribal administration to provide additional  
24 employment. Mr. Boggess said he discussed this matter with Crow  
25 Tribal Manager, Mr. Barney Old Coyote, in August. He told me  
26 when he pointed out this discrepancy, Mr. Old Coyote said "we run  
a net payroll because that is the way the boss wants it." Mr.

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2 Boggess said Mr. Old Coyote referred to tribal chairman, Mr.  
3 Richard Real Bird as the boss in this instance.

4 Mr. Boggess stated that in his opinion, Mr. Robert "Sergie"  
5 Howe is the individual responsible for this diversion of funds.  
6 He said Mr. Howe is the financial advisor to the tribal chairman,  
7 Mr. Real Bird, and the authorization to implement the system was  
8 then given to subordinate tribal managers by Mr. Real Bird.

9 Mr. Boggess provided the names of individuals who are  
10 subordinate tribal managers working in the finance and accounting  
11 department at the tribal office. These individuals are:

- 12 1. Mr. Garland Williams, Head of Payroll
- 13 2. Mr. Barney Old Coyote, Crow Tribal Manager
- 14 3. Mr. John Old Elk, Head of Finance
- 15 4. Mr. Marvin Falls Down, Tribal Comptroller

16 Mr. Boggess told me the records and evidence needed to  
17 document this diversion of funds are contained in the finance and  
18 accounting section of the Crow Tribal Office.

19 On September 18, 1987, I discussed this case with Mr. Steve  
20 Lunsford, Assistant Agent in Charge, U.S. Department of  
21 Interior, Office of Inspector General, Western Region  
22 Investigators, Sacramento, California. He told me that he has  
23 prepared a letter to Mr. John Rigler, Disclosure Officer,  
24 Internal Revenue Service, District Office, Helena, Montana,  
25 requesting delinquent income tax information for the Crow Tribe.

26 On October 1, 1987, Mr. Stephen Lunsford contacted me by

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2 telephone and advised me that he received the report from the  
3 Internal Revenue Service. He telefaxed a copy of the report to  
4 my office in Billings, Montana, on this same date. This report  
5 lists delinquencies in employee tax returns beginning in  
6 September 1984 and ending on December 1986 for the Crow Tribe. A  
7 copy of this report is made a part of this affidavit as Exhibit  
8 C.

9 Based upon the above described information, your affiant  
10 believes that evidence of the crime of embezzlement, Title 18,  
11 Section 641, and records pertaining to the contracts and grants  
12 awarded to the Crow Tribe and particularly described on Exhibit  
13 B, attached hereto, are located in the Crow Tribal Administration  
14 Office, Crow Agency, Montana.

15 Therefore, your affiant respectfully requests that this  
16 court issue its warrant for the above described office for the  
17 above described evidence.

18 DATED this 22 day of October, 1987.

19  
20   
21 WALTER J. MAIN  
22  
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Mr. YATES. Why would they not go into court for it rather than going into his office and pulling them out?

Mr. TARR. They had the search warrant issued through the courts.

Mr. YATES. Why, without notifying the Crow people or requesting the Crow people to produce the records as lawyers usually do?

Mr. SWIMMER. On the other hand, there was the fear of loss of records. I don't know.

Mr. REAL BIRD. What I might add at this time, the trust responsibility that you have delegated to these gentlemen is being abused by an area director. I feel that he has acted perhaps on his own sometimes because he seems to feel that he has some personal vendetta against me and the Crow tribe.

Mr. YATES. Is he the one responsible for the raid?

Mr. REAL BIRD. Yes.

Mr. YATES. The area director?

Mr. REAL BIRD. From what I understand, it can be shown here in the affidavit that was signed by BIA special officer from what I have heard.

Mr. YATES. He says you may have, based upon the described information, your client who is Walter Main—is he the area director?

Mr. REAL BIRD. He is the area special investigator and he did this under the direction—

Mr. YATES. Is this a BIA investigator?

Mr. SWIMMER. Yes.

Mr. REAL BIRD. He did this under direction of the area director.

Mr. YATES. "Records pertaining to the contracts and awards awarded to the Crow tribe and particularly described in exhibits are located in the Crow Tribal Administration Office." You are charging them with a crime, aren't you?

Mr. SWIMMER. The special investigator apparently believes there could have been a crime. This is the first time I have seen the search warrant, but apparently he backed it up with some belief there could have been a crime committed, and they are trying to secure the records.

It is not really a civil matter. It has nothing to do with the court case in Washington.

Mr. YATES. What is the basis for suggesting a crime has been committed?

Mr. SWIMMER. Disappearance of funds, misapplication of funds, misuse of funds.

Mr. YATES. Is there a basis for that?

Mr. SWIMMER. Apparently so. The magistrate was presented that evidence.

Mr. REAL BIRD. This is the issue I filed before D.C. District Court, questioning the same things being questioned in this affidavit. Where did the money go back in 1982, 1983, 1984, 1985 when the Bureau of Indian Affairs had total control of the Crow Tribal Government? The day-to-day operation of the Crow Tribal Government? My records indicate IRS delinquencies date back to 1982, 1983, 1984 and 1985.

I have made two payments to the IRS. I have made monthly and quarterly reports to them indicating how much delinquency this



administration has built up. Plus I have taken responsibility for the time the Bureau of Indian Affairs was in charge of the tribal government.

#### REFUSAL TO CONTRACT WITH THE CROW TRIBE

Mr. YATES. Well, maybe we ought to take a look at it. At any rate, Mr. Real Bird, you are going into court in the District of Columbia on this question, are you not?

Mr. REAL BIRD. Yes, same thing.

Mr. YATES. You are going to pull them in—this isn't a question of discovery, is it?

Mr. SWIMMER. It involves a question of the authority of the area director to decline to contract with the tribe, as I understand it.

Mr. YATES. Because it is Mr. Real Bird?

Mr. SWIMMER. No, because of the tribe's inability to manage its records.

Mr. YATES. Why shouldn't he have access to his records?

Mr. SWIMMER. I don't know the legal issue here.

Mr. TARR. I don't know that he wouldn't.

Mr. YATES. Where are the records?

Mr. SWIMMER. They are within the custody of the magistrate. Certainly they should be able to get copies.

Mr. REAL BIRD. I have never been served with that affidavit. Can you serve it?

Mr. YATES. If Mr. Tarr has no objection, we will make copies of it and make it available. Apparently he has a lawyer with him.

Mr. YATES. Did you want to say something else?

Mr. REAL BIRD. All the programs listed in this Exhibit B of the search warrant that I was given last Friday are included in the discovery process that I have filed here in D.C. District Court.

Mr. YATES. Are you saying this is a vindictive action?

Mr. REAL BIRD. On their part, yes.

Mr. YATES. We will take a look at it. What is the period it is supposed to have taken place, while BIA was in charge of the Crow reservation? He just got through saying—didn't you say the BIA was in charge of the Crow reservation?

#### CONTROL OF CROW TRIBE'S AFFAIRS

Mr. REAL BIRD. The BIA, through what is known as the memorandum of agreement of 1982, assumed total control of the Crow Tribe's affairs, including the operation and disbursement of funds and in one memo in that time period, the Federal administrator was directed to twist legal precedence to accomplish his objective on the Crow reservation.

These are the issues I brought before the D.C. District Court.

Mr. REGULA. Mr. Chairman.

Mr. YATES. Mr. Regula?

Mr. REGULA. According to this newspaper story account from the Tribune, it says they seized many of the records relating to federally financed programs administered by the tribe between 1982 and 1986. Now, is that correct? Were these programs you were administering as a tribe?

Mr. REAL BIRD. I have been Chairman for 15 months, the lawsuit brought before D.C. District Court deals with these same issues.

Mr. REGULA. From 1982 to 1986.

Mr. REAL BIRD. Yes.

Mr. REGULA. Do you agree between 1982 and 1986 there were a number of programs that the tribal government was administering even though they were federally financed? Is that correct?

Mr. YATES. He just said BIA was in charge of that.

Mr. REAL BIRD. During that period of time they were in total control of all Federal programs, disbursement of funds.

Mr. REGULA. You are saying the information related in this article is incorrect? And if what you are saying is true, why did not the BIA pay the withholding and the various—

Mr. REAL BIRD. That's what I was asking. IRS is not the only problem. When I took office on July 1, 1986, I had \$5,000 in my budget left for the three months. And what I got was \$1.6 million in outstanding debt.

Mr. REGULA. Who was in charge?

Mr. REAL BIRD. The Federal Administrator.

Mr. REGULA. Wait a minute. The Federal Administrator was in charge. The funds would have been paid to the appropriate agencies.

Mr. YATES. They were.

Mr. REGULA. I find that hard to believe. And if that is true, this newspaper account is totally erroneous.

Mr. REAL BIRD. Who wrote that?

Mr. REGULA. It was written by Steve Devitt of the Tribune Correspondent and this was apparently submitted by the Tribal Council.

Can somebody answer my question? In 1982 to 1986 were there in fact federally financed programs being administered by the tribe, and are those the programs in question as to whether or not the appropriate monies were paid to IRS?

Mr. SWIMMER. That is the question. We went in during 1982 when the Inspector General found that the tribe was well over \$1.8 million in debt.

Mr. REGULA. How could they be?

Mr. SWIMMER. In meeting with the tribe it is my understanding the area office recommended to the tribe that they have a Federal administrator, as we called them, somebody to help the tribe.

Mr. REGULA. Post 1982.

Mr. SWIMMER. Through an IPA, an individual from the area office went in to assist them in the management of the tribe. That is my understanding. At no time was that individual in charge of the books, the bookkeeping or the financial affairs of the tribe. He was assisting in trying to give some direction in how the tribe's programs could be better managed.

Mr. REGULA. Who had the right to write the checks?

Mr. SWIMMER. I believe the tribe had its own accountant.

Mr. REAL BIRD. He signed checks. He was in total control of disbursement.

Mr. REGULA. Who is he?

Mr. REAL BIRD. Gil Lummis, an engineer with the Department of Interior who was put in charge of all our government affairs. The

money Mr. Swimmer referred to was one-half of 1 percent of the total Federal monies the Crow tribes were—

Mr. YATES. He asks a very pertinent question. Whose name is on the checks as having signed the checks?

Mr. REAL BIRD. That was his.

Mr. YATES. His name was on the checks? You are sure of that?

Mr. REAL BIRD. He had the authority to sign checks, yes.

Mr. YATES. He said Mr. Lummis had the authority.

Mr. REGULA. If that was the case, what happened to the million? Did Mr. Lummis spend that million dollars that is unaccounted for?

Mr. YATES. He says he did.

Mr. SWIMMER. I think we are attempting to try this law suit here, and I think there are differing opinions on what Mr. Lummis had authority to do. He had an agreement with the tribe to do certain things.

Mr. REGULA. He was a BIA employee, am I correct?

Mr. SWIMMER. He was a BIA employee, and he transferred to the tribe at their request to help them in the administration.

Mr. REGULA. But still on the BIA payroll apparently.

Mr. SWIMMER. That's right. It is my understanding he never authorized any writing of checks until the money was in the account, but on occasion the tribe went ahead and spent money that wasn't in the account.

Mr. REAL BIRD. We had documents that indicated he had total control which now is in the hands of the Bureau of Indian Affairs. These are the same records that the District Court in D.C. told us not to go into full disclosure on.

Mr. YATES. Perhaps we can look into it further, but I think you are going to have to get your relief in the District Court. From your description, it seems to me that they have taken some advantage of you. The Secretary shakes his head, no.

#### DEPARTMENT'S LEGAL OBLIGATION

Secretary HODEL. If I could make a comment.

Mr. YATES. Wait a minute, Mr. Real Bird.

Secretary HODEL. Mr. Chairman, Mr. Swimmer is in charge of the details here, but let me say based on what we have heard here I think this committee and other committees of the Congress would be outraged with the Department of Interior if we did not seek to carry out what we believe to be our statutory and legal obligations.

Our investigator made the necessary affidavit and made the showing before a magistrate. We will carry out in the proper court of law the finding or the investigation that has to be carried out to determine what the truth is. Truly, I think it is clear now there is a dispute as to what the facts are.

A fair amount of what Mr. Real Bird is talking about is his experience post last year. He has only been here for a short time. What we are looking at is an issue that is extended over a much longer period of time, but I have had enough experience with you, Mr. Chairman, and with others who are concerned about these kinds of things to know if I came to you a few months from now and said, "Yes, we had these kinds of problems, but, no, we did not carry out

the legal authorities with us to try to get to the bottom of them." You would quite rightly be very very upset with me.

Mr. YATES. All right. Mr. Real Bird, I am going to have to put other witnesses on. Did you want to complete your statement?

Mr. REAL BIRD. Yes. I guess in closing I would like to submit this three-year plan of direct funding to the Crow tribe, which I will present to you.

Mr. YATES. Okay. Thank you very much.

[The information follows:]

CONGRESSIONAL TESTIMONY PRESENTED TO THE SUBCOMMITTEE ON INTERIOR  
APPROPRIATIONS RELATIVE TO THE OVERSIGHT HEARING ON THE ADMINISTRATION OF  
THE BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

prepared by:

Mr. Richard Real Bird  
Chairman  
Crow Tribal Council  
P.O. Box 159  
Crow Agency, Montana 59022

presented to:

The Honorable Sidney R. Yates  
Chairman  
Subcommittee On Interior Appropriations  
Room B-308  
Rayburn House Office Building  
U.S. House of Representatives  
Washington, D.C. 20515

October 27, 1987

Goodmorning Mr. Chairman and members of the Subcommittee On Interior Appropriations of the U.S. House of Representatives. My name is Mr. Richard Real Bird, and I am the Chairman of the Crow Tribal Council. I want to thank you for the opportunity to appear before the Subcommittee today at your Hearing on the Administration of the Bureau of Indian Affairs.

As I appear before you today my Crow Tribal Government has been forced to shut-down due to a "financial crisis" caused directly by the arbitrary and capricious policies of the Bureau of Indian Affairs. Our Tribal unemployment rate stands at 85%, and though we are the owners of vast quantities of natural resources, our "economic sovereignty" is being systematically impeded by each of the Bureaus located in the U.S. Department of the Interior.

My testimony today provides a brief overview of three examples of direct "conflict of interest" and adverse behavior by three Bureaus located within the U.S. Department of the Interior directed toward the Crow Tribe. The three Federal Agencies include the following: (1) the National Park Service; (2) the Office of Surface Mining Reclamation and Enforcement; and, (3) the Bureau of Indian Affairs.

With respect to each of the three Bureaus of the U.S. Department of the Interior, I will provide examples in which the goals and objectives of these Federal Agencies are in direct conflict with the goals and objectives of the Crow Tribe. However, such behavior is not limited to these three Federal Agencies, but extends through all of the Bureaus located in the U.S. Department of the Interior.

#### **Part 1.0 The National Park Service and the Crow Tribe**

The National Park Service has expended considerable Federal funds in the development of extensive Recreation Development Plans unilaterally, without the direct consultation or approval of the Crow Tribe required by the government-to-government relationship prescribed by the Secretary of the Interior at the direction of the President of the United States. In each instance the Crow Tribal Estate is directly affected in the event that such plans are implemented by the National Park Service. One example is The Bighorn Canyon National Recreation Area Plan, published by the National Park Service, Denver Service Center, in June, 1981. Though there is a disclaimer printed on the inside cover of this document stating that Crow Reservation lands were not included in the Plan, there is evidence that the Plan represents "de facto" planning for the future development of Crow Tribal resources. It is my strong assertion that the political integrity, health, and welfare of the Crow Tribe have been abrogated by the development of such a Plan in the absence of consultation and approval of the Crow Tribal Council. During my term as Chairman of the Crow Tribe I have attempted to discuss the contents of this Plan with the National Park Service. However, my efforts have not been welcomed by that Federal Agency. Though the Crow Tribe wishes to develop our own "Crow Recreational Resources", funds required by my Tribe to develop our own plans are not available.

Page two: Chairman Sidney R. Yates

For instance, though the Crow Tribe is the "Master Concessionaire" with the first right of refusal in the Montana portion of the Recreation Area, the National Park Service consistently refuses to seriously consider our Tribal rights in the development of Crow Concession Facilities within the Bighorn Canyon National Recreation Area. On March 6, 1987 I met personally with Mr. William Mott, Director of the U.S. Park Service at his offices in Washington, D.C. for the purpose of discussing this very subject. At that meeting I discussed the need for funds required to implement our Crow Project Plan, in which it is the intent of the Tribe to exercise our Concession Rights in accordance with the agreement between us and the National Park Service. Mr. Mott responded that all of their funds are either obligated or in rescission, but that he'd respond to us by the middle of March, 1987. Following this meeting, I developed a proposed budget for the Crow Project Plan, which I submitted to his attention on March 12, 1987. To date, we have not received a reasonable response to this request for funds (SEE: Appendix A).

A second issue of far greater concern to the Crow Tribe regards the development of a secondary Plan by the U.S. Park Service for the construction of what is termed the "Trans-Park Highway", which has been proposed to be built directly across the Crow Indian Reservation, through our Big Horn Mountains to Lovell, Wyoming. I first learned about this proposal several years ago, in November, 1985, when as Vice-Chairman of the Crow Tribe I attended a meeting hosted by the U.S. Park Service in Philadelphia, Pennsylvania. I arrived at this meeting with Mr. Truman Jefferson, the Secretary of the Crow Tribe, but unannounced and apparently unexpected. We were both startled to learn that the proposed "Trans-Park Highway" was being discussed as if it were a foregone conclusion. When I introduced myself and Secretary Jefferson, and then stated that the Crow Tribal Council had never approved the planning or construction of any such highway across the Crow Reservation, my comments were regarded with disbelief.

A third issue of immediate concern to the Crow Tribe regards the latest Plan announced by the U.S. Park Service in June, 1987 by Mr. William Mott and a private, non-profit group located in Hardin, Montana called the "Custer Battlefield Land Preservation Committee" whereby the National Park Service plans to acquire title or easements to an additional 10,000 acres surrounding the 725 acre Custer Battlefield National Monument. Mr. Mott's proposal was delivered on the grounds near the Monument, and although I had met with him personally less than three months earlier in Washington on March 6th, he failed to apprise me of both his Plan to expand the memorial, nor did he extend to me the courtesy of informing me of his visit to the Custer Battlefield National Monument. Once again, the Crow Tribe had been denied any consultation by the U.S. Park Service.

As indicated in the article found in The Billings Gazette dated Wednesday, July 8, 1987, Mr. Mott's speech was met by a peaceful protest from a group of Crow Tribal members who oppose such an expansion in the absence of full consideration and approval of the Crow Tribal

Page three: Chairman Sidney R. Yates

Council (SEE: Appendix B). Most of the land in question is owned by members of the Crow Tribe, including some members of my own family.

As Chairman of the Crow Tribe I must assert strongly that each of the proposed Plans undertaken by the U.S. Park Service are an unauthorized encroachment upon the sovereignty of the Crow Tribe established by our Treaties of 1825, 1851, and 1868 with the United States. Furthermore, I must report that such activities by the U.S. Park Service are a serious breach of trust responsibility by that Agency.

In my current capacity as Chairman, and therefore the elected custodian of the Crow Tribal Estate, I must express my most profound objection to the Subcommittee On Interior Appropriations of the U.S. House of Representatives, with regard to the continued attempts by the U.S. Park Service to treat a Federally-recognized Tribe as if we were included in the National Park System. To the contrary, I assert that the Crow Tribal Estate is not a National Park! Such a flagrant conflict of interest must not be allowed to continue by the Congress of the United States.

**RECOMMENDATION #1:** The Crow Tribe recommends that the Subcommittee On Interior Appropriations undertake the necessary actions required to preclude any future conflict of interest by the U.S. Park Service in its relationship with the Crow Tribe.

**RECOMMENDATION #2:** The Crow Tribe recommends that the Subcommittee On Interior Appropriations withdraw financial support from the U.S. Park Service with regard to the development of any current or future Plan which involves land, timber, water, or other natural resources which are in the ownership of the Crow Tribe.

**RECOMMENDATION #3:** The Crow Tribe and the Subcommittee On Interior Appropriations be immediately notified and consulted with regard to the development of any future plans by the U.S. Park Service which directly or indirectly discuss Crow Tribal natural resources.

**RECOMMENDATION #4:** The Crow Tribe recommends that the Subcommittee On Interior Appropriations provide funds in the FY 1988 Budget for the development and implementation of a "Crow Tribal Recreation Development Plan."

## **Part 2.0 The Office of Surface Mining Reclamation and Enforcement and the Crow Tribe**

The Office of Surface Mining Reclamation and Enforcement, located in the U.S. Department of the Interior is responsible for the administration of the Abandoned Mine Lands Program managed by the Crow Tribe. As you are well aware, the Congress of the United States recently approved funding in the amount of \$6.5m for reclamation projects on the Crow Reservation. However, since the approval of H.R. 1827, the Crow Tribe has experienced several problems in attempting to implement our AML Program. For instance, shortly after



Page four: Chairman Sidney R. Yates

H.R. 1827 was approved by the Congress, on October 9, 1987, Mr. Larry Floyd, Project Officer for the Crow Tribe from the Caspar Field Office, Office of Surface Mining, hand-delivered comments regarding the 1984 AML Reclamation Plan submission. The Office of Surface Mining continues to insist that under Section 402(g)(2) Projects (i.e. Impact Assistance) of the Surface Mining Control and Reclamation Act (SMCRA), Part 4, Title IV, " . . . if all four of the above requirements are met, then the Secretary may at his discretion, fund impact assistance projects. However, the Act provides that such funds may be used for Projects in other areas of the Nation, and need not be allocated in whole or in part to the Tribe (i.e. Crow Tribe)". This statement is contrary to the intent of H.R. 1827, which provided \$6.5m of AML Reclamation Fees to the Crow Tribe. In essence, the Office of Surface Mining insists that the Law gives the Crow Tribe the right to access the AML Fees, but must compete with the state(s) for the money.

On July 28, 1987, the Director of the Caspar Field Office of the Office of Surface Mining, Mr. Jerry Ennis, at a meeting held in Caspar, Wyoming with the Crow Tribe verbally informed us that Title V of the Surface Mining Control and Reclamation Act would not be funded in FY 1987-1988. On Wednesday, October 14, 1987, I personally met with Dr. Brent Wahlquist and another official at the Office of Surface Mining in Washington, D.C., at which time I presented the official position of the Crow Tribe relative to Title V of the Surface Mining Control and Reclamation Act (SEE: Appendix C).

In conclusion, the Crow Tribe is currently receiving mixed signals from the Central Washington Office, the Denver Office, and the Caspar Office of the Office of Surface Mining Reclamation and Enforcement. These activities have severely inhibited the Crow Tribe's ability to move forward in a logical and consistent manner in its development of a sound Regulatory and Abandoned Mine Lands Program. The issues identified above need to be resolved as soon as possible.

**RECOMMENDATION #1:** The Crow Tribe recommends to the Subcommittee On Interior Appropriations that a Central Indian Office be established at the Washington Level for the purpose of administering the intent of the Surface Mining Control and Reclamation Act relative to Title IV and Title V, consistent with the intent of H.R. 1827.

**RECOMMENDATION #2:** The Crow Tribe recommends to the Subcommittee On Interior Appropriations that the Office of Surface Mining be specifically directed to recognize the sovereignty of the Crow Tribe in its government-to-government relationship.

**RECOMMENDATION #3:** The Crow Tribe recommends to the Subcommittee On Interior Appropriations that all funding to the Crow Tribe via Title IV and Title V of the Surface Mining Control and Reclamation Act be channeled directly to the Crow Tribe.

Page five: Chairman Sidney R. Yates

**Part 3.0 The Bureau of Indian Affairs and the Crow Tribe**

At your Hearing held last March 4, 1987 I presented Congressional testimony before the Subcommittee On Interior Appropriations of the U.S. House of Representatives in which I called the attention of the Subcommittee to serious problems between the Bureau of Indian Affairs and the Crow Tribe. In Part 2.0 of that testimony, I indicated that the current Area Director of the Bureau of Indian Affairs, at the direction of the Assistant Secretary, the Honorable Ross O. Swimmer, had threatened to remove Secretarial signature from the Crow Tribal Constitution unless \$1.6m in accrued debts and disallowed costs allegedly owed by the Crow Tribe were repaid. The position of the Crow Tribe relative to this assertion by the Bureau was that these debts and disallowed costs were incurred during the previous Crow Tribal Administration, which at that time was under the direct fiscal and administrative control of a Bureau of Indian Affairs appointed Federal Administrator ----- not by the Crow Tribal Administration. I then requested an immediate investigation by the U.S. General Accounting Office for the purpose of resolving this entire matter. As I proceeded into my first year of Office, the financial stability of the Crow Tribe deteriorated substantially. Due to the ensuing "financial crisis" I was forced into taking immediate action, and on August 4, 1987, I filed suit in the United States District Court For The District Of Columbia against the Secretary of the Interior, Mr. Donald Paul Hodel, and the Assistant Secretary of the Interior, Bureau of Indian Affairs, Mr. Ross O. Swimmer, and others in Civil Action No. 87-2155, The Crow Tribe Of Montana v. The United States Of America, et. al. (SEE: Appendix D). I would like to respectfully call your attention to the contents of this lawsuit for a full description of those serious issues which we assert constitute a breach of trust by the Bureau of Indian Affairs. The case is currently pending consideration in the United States District Court For The District of Columbia.

Today, October 27, 1987, I have returned to the Subcommittee On Interior Appropriations for the purpose of bringing these matters to the attention of the Subcommittee, and to call the attention of the Subcommittee to the subject of adequate free and independent counsel required by the Crow Tribe in FY 1988.

This past year, at the first Hearing held by Senator Daniel Inouye, Chairman of the Senate Select Committee On Indian Affairs, Senator Inouye asked the Honorable Ross O. Swimmer, Assistant Secretary for Indian Affairs whether Indian Tribes were provided sufficient funds to retain legal representation. Based upon this question, I immediately requested that our Crow Tribal Attorney undertake a "Budget Needs Analysis For Legal and Legislative Services For The Crow Tribe" (SEE: Appendix E), based upon our legal needs for FY 1988. The findings of this analysis were startling. First, the Crow Tribe found that we required nine (9) full-time attorneys to address the pending legal work in the coming year. At the same time, we had funds to support only one (1) Crow Tribal Attorney. Second, we estimated that the cost of such representation for the Crow Tribe,

Page six: Chairman Sidney R. Yates

computed at 1500 hours per attorney, at \$150/hour for a projected 13,500 hours of legal work totaled \$2,343,000 for the coming year alone. Thus, according to our analysis, the Crow Tribe will be seriously under-represented by legal counsel in FY 1988. Given the estimated value of the Crow Tribal Estate, which is conservatively estimated by this analysis to be in the range of \$774.3m to \$2,139m, the Tribe is severely deficient in terms of legal protection.

A related problem of immediate concern to the Crow Tribe may be characterized as the absence of our access to "free and independent counsel". At the present time the Crow Tribe is precluded from retaining our own legal representation due to the fact that under Title 5 of the Code of Federal Regulations, the Bureau of Indian Affairs retains final approval authority with regard to all attorney contracts authorized by resolution of the Crow Tribal Council. Second, the Bureau of Indian Affairs also retains approval authority with regard to the payment of attorneys fees. In an instance when the Tribe is in litigation with the Bureau, as we are now, the Agency is pre-disposed against the approval of attorney contracts under such circumstances.

The estimated cost of litigation by our attorney in our current lawsuit is approximately 1700 hours of legal work @ \$150/hour for a total of \$255,000. At the same time, the entire budget of the Crow Tribe in FY 1988 is only \$551,000. Therefore, it is clear that the Tribe will be unable to protect our rights in this one case in the absence of additional funds. I must urgently call the attention of the Subcommittee to our critical need for funds for the purpose of providing "free and independent counsel" to the Crow Tribe in the case of The Crow Tribe Of Montana v. The United States Of America, et. al.

Due to the intractable "conflict of interest" which exists between the goals and objectives of each of the Bureaus located in the U.S. Department of the Interior, and those of the Crow Tribe, several major structural changes in the location and administration of Indian Affairs are now required by the Congress of the United States to ensure that the Federal-Indian Trust Responsibility is properly executed and maintained by the U.S. Government.

**RECOMMENDATION #1:** The Crow Tribe recommends to the Subcommittee On Interior Appropriations that the administration of Indian Affairs be located in a new organizational entity separate from the U.S. Department of the Interior, subject to the approval of the Crow Tribe.

**RECOMMENDATION #2:** The Crow Tribe recommends to the Subcommittee On Interior Appropriations that all Area Offices of the Bureau of Indian Affairs be immediately abolished by the Congress of the United States.

**RECOMMENDATION #3:** The Crow Tribe recommends to the Subcommittee On Interior Appropriations undertake the direct funding of the Crow Tribe on an experimental basis for a period of three (3) years beginning in FY 1988.

Page seven: Chairman Sidney R. Yates

**RECOMMENDATION #4:** The Crow Tribe recommends to the Subcommittee On Interior Appropriations that the Subcommittee provide line-item funding directly to the Crow Tribe in FY 1988 in the amount of \$255,000 for the support of litigation by the Tribe against the Bureau of Indian Affairs in Civil Action #87-2155, The Crow Tribe Of Montana v. The United States Of America.

It is my contention that "meaningful change" in the administration of Indian Affairs is required by the Congress of the United States. Furthermore, it is imperative that the planning for such a change be undertaken at the earliest possible time, including the "transitional planning" which will be required once a new, Tribally-approved organizational entity has been identified. It would not be acceptable to abolish the Bureau of Indian Affairs in the absence of replacing it with another, superior organizational entity designed to meet the needs of Tribes.

In closing I would like to respectfully request the opportunity to submit a proposal to the Subcommittee On Interior Appropriations for the direct funding of the Crow Tribe on an experimental basis for the next three years.

Respectfully submitted,

Mr. Richard Real Bird  
Chairman



# CROW TRIBAL COUNCIL

P.O. Box 159  
Crow Agency, MT 59022

RICHARD REAL BIRD, Chairman  
JEROME HUGS, Vice Chairman  
TRUMAN C. JEFFERSON, Secretary  
CARLTON NOME, SR., Vice Secretary

Crow Country

October 30, 1987

The Honorable Sidney R. Yates  
Chairman  
Subcommittee On Interior Appropriations  
Room B-308  
Rayburn House Office Building  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Yates:

First, I'd like to thank you and the members of the Subcommittee On Interior Appropriations for permitting me to testify on behalf of the Crow Tribe at your Hearing this week on October 27, 1987.

With your consent, I would like to respectfully request that I may amend my written statement, since the shortage of time did not permit me to verbally add one extremely important recommendation.

As you recall, last March 4, 1987 I had the honor of testifying before the Subcommittee On Appropriations. In Recommendation #1 of my testimony I requested that the Congress of the United States authorize a full and immediate investigation by the U.S. General Accounting Office of the financial management of the Crow Tribe from 1982 to 1986, while under the Federal Administrative authority of the Bureau of Indian Affairs.

I'd like to repeat this recommendation and request that it be inserted into the Hearing record at Page Six of my testimony, toward the bottom of the page, as our new Recommendation #1. Each of the subsequent recommendations numbered 1-4 will now become recommendations 2-5. Please add the following:

**Recommendation #1. The Crow Tribe recommends to the Subcommittee On Interior Appropriations that the Subcommittee conduct an immediate and full Congressional investigation of all Federal Program Funds received from all Agencies of the Federal Government by the Crow Tribe from 1981 to 1987.**

In addition, I would like to request that full and complete copies of the transcript of your Hearing held this past week, on October 27, 1987, including all references to the Crow Tribe, be sent to my Attorney, Mr. Charles Cervantes, Esq., and to me as soon as it is available. Mr. Cervantes may be contacted at his Washington Office at 457-8054, and his address is: Mr. Charles Cervantes, P.C.,

Page two: The Honorable Sidney R. Yates

Attorney at Law, Suite 1200, 1050 Connecticut Avenue, N.W.,  
Washington, D.C. 20036.

Thank you for your kind attention to this request.

Respectfully yours,

*Richard Real Bird* by: *(mpd)*

Mr. Richard Real Bird  
Chairman

cc: Senator Daniel K. Inouye  
Senator John Melcher  
Senator Max Baucus  
Senator Tom Harkin  
Congressman Jim Wright  
Congressman Morris Udall  
Congressman Pat Williams  
Congressman Ben Highthorse Campbell  
Mr. Charles Cervantes, P.C.

Mr. REAL BIRD. I also would like to have Roger say a few things as to the similar experience he has had with the Bureau of Indian Affairs.

Mr. YATES. Mr. Regula has a question.

#### BLOCK GRANTS AND THE CROW TRIBE

Mr. REGULA. Mr. Real Bird, one, would you like sovereignty? Would you like a block grant and then you take your tribe and the administration of the tribe, yourself and others, take full responsibility for these functions? And if you don't do them well you would understand there would be no recourse to us, and, secondly, if that were the case, if the answer is, yes, how would you address the problem of poverty?

Mr. REAL BIRD. Poverty?

Mr. REGULA. If you were in charge.

Mr. REAL BIRD. I think the first thing I would do is get real jobs through development of my resource.

Mr. REGULA. What is the market?

Mr. REAL BIRD. There is a market for coal. We have looked at some of the Pacific Rim countries. We have talked with different power plants and so forth. The next step in this development would be the construction of power plants to meet the energy needs that are expected. I have made agreement with Wayne Ducheneaux to look into the possibility of building power plants on the Rosebud Sioux Reservation. They have similar unemployment problems.

Wayne has an unemployment rate of about 98 percent. Alex has about 85 percent, which is similar to what I have got. The power plant during the construction phase would hire about 800 people on both reservations. Completion, say a 700 megawatt plant, would hire about 300 to 400 people, plus the mine that would supply the coal for that on the Crow Indian Reservation, hiring another 200 Crows.

We have plans that nobody listens to. Thank you.

Mr. YATES. Would you give us a letter on that, Mr. Jourdain?

Mr. JOURDAIN. I just came from the court with regard to our tort claim regarding a simple incident of the Bureau of Indian Affairs, the FBI, the Inspector General. We are supposed to provide the law enforcement at the Red Lake Reservation when the violence took place. That was the most disorganized law enforcement there ever was, and they made similar accusations, that we were short of money.

We had embezzlers and so forth. The inspectors all moved in. They wanted the records. Though we did it in a fashion that would have maintained integrity of those records, and they never lived up to it, the FBI auditors or the Inspector General auditors. They went in there and got the records. Now they want to turn them back after they discovered there was not one dime, one nickel missing that was charged with embezzlement and fraud.

But the point I am making here is my friend, Chairman Real Bird, when they took those records out of there, they destroyed the integrity of your records. They could be manipulated, doctoring them up.

Mr. YATES. Be careful. With that admonition, we will call the next panel.

Mr. LUNDERMAN. Mr. Chairman, could you set up such a hearing like this for Indian health service? We would like to start on them next.

Mr. YATES. Okay.

Mr. LUNDERMAN. Thank you very much.

Mr. YATES. Next, Mr. Thomas, Mr. Pace, Mr. Frank, and Mr. Jackson.

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TUESDAY, OCTOBER 27, 1987.

## INDIAN RIGHTS

### WITNESSES

ZANE JACKSON, CHAIRMAN, CONFEDERATED TRIBES OF WARM SPRINGS  
CHARLES PACE, DIRECTOR OF ECONOMIC ANALYSIS, SHOSHONE-BAN-  
NOCK TRIBE

ED THOMAS, PRESIDENT, TLINGIT AND HAIDA TRIBES OF ALASKA  
BILLY FRANK, CHAIRMAN, NORTHWEST INDIAN FISH COMMISSION

Mr. YATES. Gentlemen, we welcome you. Who is to speak first?  
You are Mr. Thomas?

Mr. THOMAS. Yes, I am.

### CONDITIONS OF THE TLINGIT AND HAIDA PEOPLE

Good afternoon and greetings from Alaska. I appreciate the opportunity to speak before this committee. I want to make it clear that on behalf of the Tlingit and Haida people I speak on behalf of all of them just as any other nation does.

We have had numerous problems, and we have tried to work within the framework of the existing system in order to accomplish what is said to be done either through regulation or tribal action. We have testimony, and I won't go on reading it.

Mr. YATES. Your statements may be made part of the record.

Mr. THOMAS. Thank you.

[The statement of Mr. Thomas follows:]



STATEMENT OF EDWARD K. THOMAS, PRESIDENT  
TLINGIT & HAIDA TRIBES OF ALASKA, CENTRAL COUNCIL

BEFORE THE SUBCOMMITTEE ON THE INTERIOR AND RELATED AGENCIES  
OF THE HOUSE COMMITTEE ON APPROPRIATIONS

October 27, 1987

I. INTRODUCTION.

Greetings. My name is Edward Thomas. I am the elected President of the Central Council of the Tlingit & Haida Tribes of Alaska. On behalf of those tribes, I would like to thank you for allowing me to testify here today about the critical problems we as tribal leaders have had in dealing with the Bureau of Indian Affairs (BIA).

I am grateful for the leadership you and members of the Alliance of American Indian Leaders have exercised in establishing these hearings. There can be no dispute that drastic new measures must be developed and must be developed quickly.

In what follows, I will explain the Tlingit & Haida Tribes' position that the Bureau of Indian Affairs' Southeast Agency be completely abolished and will identify three specific obstacles to BIA responsiveness to Indian Tribes we have encountered.

Let me also indicate at the outset my support for the idea of funding of a review by the Tribes of the policies and procedures that have led to the current BIA administrative failure and funding of a plan to develop alternative solutions. A concerted and cooperative effort between the Tribes and Congress is required to develop as nearly as possible a Tribal consensus approach to these problems.

II. BACKGROUND.

As you are no doubt well aware, the Tlingit & Haida Tribes do not often appear at hearings in Washington, D.C. simply because of the prohibitive travel expenses involved. Despite public myths about the wealth of Native Alaskans, passage of the Alaska Native Claims Settlement Act and the discovery of oil on the North Slope have not dramatically improved our social and economic conditions in the past several decades. Alaska Natives' unemployment rate is over 68%. Most of those employed earn very little money -- only 18% of our employed earn more than \$7,000 annually.

The recent oil development has not significantly benefited our communities; instead it has imported outsiders from the lower 48 states whose presence has hiked the cost of living for all of us. This change has actually worked most harshly against our members who are on fixed incomes.

The skyrocketing cost of living has eroded our ability to deliver services to our people, because of the failure of Washington, D.C. based agencies to adequately adjust for the great cost differentials we encounter. And perhaps most critical, Southeast Alaska has recently suffered from an economic downturn in virtually all of its economic activities. Most of our Tribes' communities have been declared disaster areas by local officials due to an unusually bad commercial fishing season.

### III. ABOLISH THE BIA'S SOUTHEAST ALASKA AGENCY.

#### A. TRIBAL CONTRACTING AND AGENCY OFFICE HISTORY.

Well before contracting with Tribes under P.L. 93-638 was begun, the Central Council of the Tlingit & Haida Indian Tribes of Alaska was a pioneer in tribal contracting, operating the entire administration and service delivery of all BIA services for our region under contracting authority of the Buy Indian Act. Under this arrangement, the contractor, Central Council, dealt directly with the BIA's Juneau Area Office. The Central Council was then, as now, located in Juneau.

The BIA began to change all of this in 1975. It established an Agency Office for our Tribes' region, called the Southeast Alaska Agency Office. The new Agency Office was located in the same building as the ongoing Area Office in Juneau. This simply added yet another level of bureaucracy and it increased bureaucracy staffing by two positions.

Since 1975, this Southeast Agency Office has grown to a staff of nine, largely at the expense of programs designed to benefit the needy of our communities. The annual budget to run this "extra" office is approximately \$285,000.00. Each year, as our Central Council has received fewer and fewer contracting dollars, the Agency Office budget has been increased by nearly equal amounts, dollar for dollar.

#### B. 1987 CENTRAL COUNCIL PROPOSAL TO ABOLISH AGENCY OFFICE.

In May of this year, sixteen of the nineteen Tribal governments within the jurisdiction of the Southeast Agency Office asked the BIA to abolish the Agency Office and contract out the administration and oversight responsibilities of the Agency Office to the Central Council.

Our reasons for discontinuing the Agency Office include a pressing need to free up critically short funds to strengthen direct services to needy Tribal members, given the economically harsh times now being experienced by members of our communities. In addition, the Southeast Agency Office has outlived its effective usefulness. Its administrative tasks are duplicative of those performed by the Juneau Area Office. Its decisions on contracts and grants are, more often than not, overturned by Area Office officials. It is an extra, and hence, not only unnecessary but obstructive, layer of bureaucracy.

All but one of the Tribes in our region have developed the level of administrative competence required to administer programs without the assistance of the Southeast Agency Office. Our proposal to discontinue the Agency Office is motivated simply by a desire to maximize the delivery of services to our members; it is not borne of malice -- six of the nine Agency Office staff members are members of our own Tribes.

We have strongly opposed the current internal BIA plan to reorganize and relocate the Juneau Area Office to Anchorage. Our opposition is based on the fact that it will cost approximately \$18.5 million. Historically, we have always seen the funds required for reorganization and relocation squeezed from our program budgets. We see nothing to indicate that this will not happen again. Moreover, the relocation of these BIA functions to Anchorage would work a severe hardship on us and on our capacity to efficiently administer programs in Southeast Alaska.

#### IV. OBSTACLES TO BIA RESPONSIVENESS TO TRIBES.

##### A. BUREAUCRATS' CONFLICTS OF INTEREST WITH TRIBAL CONTRACTING.

1. The Problems. Day after day our Tribes come up against a natural conflict of interest built into the bureaucracy -- BIA employees are personally threatened by successful Tribal contracting because it imperils their employment and their power. If Tribes do a good job of administering some functions formerly run by the bureaucrats, those same bureaucrats fear the rest of the programs they administer will be contracted out to our Tribes and the bureaucrats will be laid off or their personal authority cut back.

The bureaucrats in charge of contracts are typically the most visible troublemakers. They liberally ignore the BIA's own rules and regulations concerning review of contracting proposals, negotiations and responses to the Tribes, and approval of contracts. Instead, to guarantee that we either cannot perform the contract at all, or that our performance outcome is at a level inferior to our capacity, these contracting officers seem to sabotage our contracts any way they can.

One recurring example of this bureaucratic sandbagging arose again this past summer. Our Tribes submitted a contract proposal in May, 1987 for activities to begin on October 1, 1987. The BIA had sixty days to review and respond. Despite the fact that the regulations require the contracting officers to inform us of any problems with our proposal, they failed to do so. We were given no indication of what issues needed to be refined, what deficiencies there were in the proposal, what adjustments had to be made, and most importantly, whether it would be approved. Finally, on the day immediately prior to the new fiscal year, we were presented with a long laundry list of demands for changes and alterations that had to be made before approval could be given. There can be no rational explanation for this last minute timing other than sabotage. It renders useless our efforts to properly plan and administer. It foments a crisis management practice that directly reduces program quality and delivery. It erodes the morale of our employees and stirs up understandable dissatisfaction among the intended beneficiaries of the contracted programs.

The regular program bureaucrats are equally involved in sabotaging Tribal contracting efforts, although their efforts are more easily concealed. These program officers regularly withhold information from us, as you already know from your own experience with them. Let me assure you, the difficulties you have in obtaining information from the Bureau probably pale in comparison to the hardship we experience getting the representatives of U.S. Government at the Agency and Area Office levels to provide us with accurate and timely information about our own programs and our own resources.

Program officials only irregularly respond to our requests, typically with incomplete or inaccurate details. They usually refuse to consult or inform us in advance of decisions that will impact us. And often when they do present us with opportunity for input, it is a sham, because the options are already limited or the decisions already formed in advance. The reason behind this sandbagging is that if we only knew more about these programs we probably would present an unavoidable proposal to contract them out from under the BIA's control. Their strategy seems to be -- keep the Tribes in the dark and wrap Indian programs in great mysteries, and then the Tribes won't dare propose to run the programs themselves.

2. The Solutions. We must develop increased Congressional and Tribal contracting oversight powers, personnel disciplinary controls, and internal monitoring mechanisms.

Contracting oversight should include provisions establishing precise, step-by-step timeframes governing contracting officers' decisions or nondecisions and permitting Tribes like ours to appeal those decisions or nondecisions and gain immediate

resolution. It should also include regular reviews by Congress of the BIA's responses to all contracting proposals made by Tribes, as defined by the Tribes.

Personnel disciplinary controls should provide an internal management means for supervising officials to reprimand, suspend without pay, or terminate, those program and contracting officials who violate the rules and regulations or otherwise flagrantly disregard the policies favoring Tribal contracting and self-determination. While such controls would remain internal to the BIA, an effective means for Tribes to file complaints must be established which would provide ironclad guarantees that complainants' and their contracting proposals would not be discriminated against in any way.

An internal monitoring mechanism should be developed to provide a regular means of adjustment by the BIA of its response performance to contracting proposals. It should adhere to objective criteria in its reviews and should work to facilitate quick adjustments at the local level on a case by case basis. An important feature of such a program would involve an ombudsmen officials who reports to the Congress in this area, on a model similar to that employed by the State of Alaska's Ombudsman program of reporting to the state legislature.

#### B. MULTIPLE LAYERS OF BUREAUCRACY.

1. The Problems. There are too many layers of bureaucracy, too many levels of authority over which we at the Tribal level must climb in order to get action or approval. You are quite familiar with this complaint, because it has become the time-weary groan of Indian Country. While conceptually familiar to you, it is a day-in, day-out headache for us.

We constantly have to wait. The multiple layers of bureaucracy are simply not needed to do the job. Instead, they provide all sorts of opportunities for bureaucrats to sabotage our contracting initiatives as I've described above. When we try to get straight answers about our contracting proposals, the bureaucrat at the front line simply blames the people in another office across the hallway or the people "upstairs" that has to clear the issue. When we go to the people in another office across the hallway or the people "upstairs", they pass the buck back to the first bureaucrat. After we've exhausted them, or they us, the buck is passed to the Area Office, or to Central Office, who typically, after much delay and doubletalk, pass the buck unresolved to the Area or Agency Office levels. All of this wastes considerable volumes of energies we need to apply productively to meeting the critical needs of our communities which seem always to be at crisis proportions.

The multiple layers of administrative structures also encourage bureaucrats to waste valuable program time and money flexing their individual clout, and, perhaps most unsettling, to wage war against

other bureaucrats in that entrenched game called "bureaucratic in-fighting" in which the only long term losers are the Tribes. This in-fighting thrives in an atmosphere of personnel insecurity, confusing and overlapping lines of authority, and multiple layers of decisionmaking checkpoints. The petty feuds played out between bored or turf-hungry bureaucrats works to hamstring Tribal efforts to increase and streamline the delivery of services to our people.

These layers of bureaucracy also seem to serve to excite the desire of bureaucrats to climb the career ladders. Individual promotions and advancements appear to be driven by internal power struggles instead of by objective measurements of quality or quantity of services rendered. As a result, junior officials appear reluctant to take a stand or to act decisively for fear of alienating supervisors who hold career advancement power over them. The impact of all this on our Tribes is significant -- no one is willing to make a decision of substance until the Secretary acts, and that office's heirarchy consumes valuable time deciding matters that could be more efficiently and properly handled at much lower levels.

2. The Solutions. The concepts behind the current proposal for a Department of Indian Affairs must be given serious consideration. Nothing short of drastic and comprehensive change can begin to turn back the years of neglect and mismanagement that have allowed the BIA to fester into such an acute mess.

On our local level, sixteen of the nineteen member Tribes of our Central Council have voted to ask that the BIA's Southeast Agency Office be abolished.

#### C. DISREGARD OF THE INDIAN PRIORITY SYSTEM.

1. The Problems. As described above, sixteen of the nineteen member Tribes of our Central Council formally proposed in May, 1987 that the BIA's Southeast Agency Office be abolished. We did so under the provisions of the Indian Priority System (IPS), a process designed to ensure meaningful Tribal involvement in federal decisionmaking affecting Tribes. The IPS is not based in statute or in published regulations. Instead, it is loosely based upon provisions in what is called the "BIA Manual." Our proposal to abolish the Agency Office, and the reasons underpinning it, were cavalierly rejected by the BIA. Although we've appealed the Area Office decision, it was denied on the grounds that the BIA needs this extra layer of bureaucracy.

2. The Solutions. The Indian Priority System must be reviewed and updated to conform it to the policies enumerated in the Indian Self-Determination Act. Regulations should be published which would govern IPS and strengthen its mechanisms for effective Tribal control and meaningful input.

V. CONCLUSION.

On behalf of our Council and all of the Tlingit & Haida people, I again thank you for this opportunity to discuss the problems of the BIA from our perspective. I would be happy to answer any questions you might have.

I would also ask permission to submit for the record the following documents as appendices to my written testimony:

- A. May 28, 1987 Letter from Edward K. Thomas, President, Central Council of the Tlingit & Haida Indians of Alaska, to Area Director Lestenkoff, regarding Indian Priority System proposal to discontinue the Agency Office.
- B. July 17, 1987 Letter from Edward K. Thomas, President, Central Council of the Tlingit & Haida Indians of Alaska, to Area Director Lestenkoff, appealing denial of Indian Priority System proposal to discontinue the Agency Office.
- C. September 21, 1987 Letter from David C. Crosby, Esq., counsel for Central Council of the Tlingit & Haida Indians of Alaska, to Assistant Secretary Swimmer through Area Director Lestenkoff, regarding appeal of Indian Priority System Decision for Southeast Alaska Agency FY89.
- D. October 2, 1987 Memorandum from Area Director, Juneau Area Office; Subject: Transmittal of Formal Appeal of Area Director's Decision, Central Council of the Tlingit & Haida Indians of Alaska, FY-89 IPS Decision.

THOMASED.TST  
PAM/0077/5904

May 28, 1987

Mr. Jake Lestenkof  
Area Director  
Bureau of Indian Affairs  
P.O. Box 3-8000  
Juneau, AK 99802

Dear Jake:

During the week of May 8, 1987, I attended an Indian Priority System (IPS) meeting in Wrangell where the majority of the tribes of Southeast Alaska met to set priorities for the fiscal year '89 funding year. At this meeting, the Southeast Alaska tribes overwhelmingly passed motions to discontinue operations of Southeast Agency and distribute the money equitably to tribal contractors for purpose of providing better services to the needy people of our region.

It was very clear that the tribes recognize the duplication in the Bureau of Indian Affairs by utilizing both the Agency and Area Offices for the purposes of review of proposals, oversight of the administration of contracts, and technical assistance necessary to keep the contract going. Furthermore, the increasing cost of administering programs by tribes makes it necessary to increase budgets modestly so that the services to tribal members are not diminished due to inflationary factors.

This letter is requesting that you assist Southeast Alaska tribes in the process of modifying Public Law 93-638 regulations to accommodate application review and monitoring processes by going straight to the Area Offices and bypassing the Agency office.

I am sure that if you were to closely analyze what we have done, you'll find that it fits very neatly into your BIA re-organizational plan. As you know, tribes currently have the option of bypassing the Agency office or Area Office in any of these processes under the current law; however it is my opinion that it would be much more clear and cleaner to function if there were not references to the Agency office in regulations.



Jake Lestenkof

- 2 -

May 28, 1987

If there is any way you can assist in implementing our desires here in Southeast Alaska, it would be very much appreciated.

Should you have any questions or concerns about what we are attempting, please do not hesitate to contact us at any time.

Sincerely,

Edward K. Thomas  
President

EKT:ld

July 17, 1987

Mr. Jacob Lestenkof  
Area Director  
Bureau of Indian Affairs  
P.O. Box 3-8000  
Juneau, AK 99802

Dear Mr. Lestenkof:

The Central Council of Tlingit and Haida Indian Tribes of Alaska appeals the decision of the Bureau of Indian Affairs JAO as transmitted in your letter of June 19, 1987, with respect to the proposed budget for FY89 prepared in Wrangell through the Indian Priority System (IPS).

We respectfully appeal this action, which overrides the decisions which were reached individually and collectively, by the tribes in attendance at the IPS meeting in May 1987.

It is our opinion that the tribes when they reached their consensus were acting in full faith to best utilize available funds. It is also our opinion that these negative budget exercises detract from the intent of the IPS process as a tribal prerogative. The Bureau management philosophy of having three layers of oversight by the Central office, the Area office, and Agency office is very duplicative and wasteful. It would seem proper during this time of limited funding for the Bureau to adopt the tribes' budget decision in its entirety.

You indicate that were the Area Office to "assume these functions for any agency, the same amount of funds would have to be withdrawn from the agency's base to cover these costs." We don't believe additional funding would be required since the functions are already a part of the job descriptions of some area office employees.

Further, we believe Area money and effectiveness are being diluted through the reorganization process. In other words, the reorganization is requiring staff time and administration money that would otherwise be available for more positive contract management purposes.

Mr. Jacob Lestenkof

- 2 -

July 17, 1987

We request technical assistance in the further implementation of this appeal process.

Thank you very much.

Sincerely,

Edward K. Thomas  
President

EKT/vh

530.4

WILLIAM T. COUNCIL  
DAVID C. CROSBY

LAW OFFICE OF  
COUNCIL & CROSBY  
A PROFESSIONAL CORPORATION  
424 NORTH FRANKLIN STREET  
JUNEAU, ALASKA 99801

(907) 586-1786

September 21, 1987

HAND DELIVERED

The Honorable Ross Swimmer  
Assistant Secretary  
United States Department of the Interior  
Washington, D. C.

Through:

Mr. Jake Lestenkof  
Area Director  
Bureau of Indian Affairs  
Department of the Interior  
P. O. Box 3-8000  
Juneau, Alaska 99802

RECEIVED  
SEP 21 1987

BUREAU OF INDIAN AFFAIRS  
OFFICE OF THE AREA DIRECTOR

Re: Appeal of Indian Priority System  
Decision for Southeast Alaska Agency  
FY 89

Dear Mr. Lestenkof:

This letter will supplement the letter of Edward K. Thomas, President of the Central Council, Tlingit & Haida Indian Tribes of Alaska, dated July 17, 1987. That letter appealed your decision of June 19, 1987, rejecting the recommendation of the Southeast Agency tribal representatives that the Southeast Agency level of supervision be eliminated. This letter also constitutes a formal request for extension of time in which to supplement the appeal record. The reasons for this request are set forth below.

This matter was referred to our office on August 17, 1987. I immediately requested and received a thirty-day extension of time to file an appeal statement. This request was made initially to you, and was referred to Carmel Roberts, Superintendent of the Southeast Agency.

On September 8, 1987, I met briefly with Ms. Roberts, who supplied me copies of the BIA Manual dealing with the Indian Priority System and the original of the IPS FY 1989 record, which I was invited to view at the Agency. After a

The Honorable Ross Swimmer  
September 21, 1987  
Page - 2 -

brief review of these documents, I requested that the Agency supply me with photocopies of the IPS FY 1989 file, and also provide me with budget summary sheets for the preceding five years showing a breakdown of appropriations and expenditures for the Southeast Agency. Ms. Roberts referred me to Pat McGee, who indicated that it would take approximately a week to complete the copying and locate the records I had requested. I indicated that this was acceptable, and, at the request of Ms. Roberts, confirmed my request in writing on September 10, 1987.

On Wednesday, September 16, 1987, I received copies of the IPS FY 1989 file from Ms. McGee, together a message that the other documents I had requested were not ready at that time. I spoke to Ms. McGee by telephone on September 16, 1987, and indicated to her that it was not critical that I receive these documents immediately, provided the Agency would extend my time to submit an appeal statement on behalf of the Central Council.

I did not receive additional records from Ms. McGee until Friday, September 18, 1987. These records did not supply the information that I had requested, and consisted of IPS computer printouts going back to 1984. Ms. McGee did not respond to my inquiry regarding an extension of time to file the appeal statement.

By the time I received the IPS planning documents from Ms. McGee it was too late to confer with key Central Council personnel, many of whom were in Sitka to attend the Sealaska Corporation annual elections. Consequently, I called Ms. Roberts to request a further extension of time. Ms. Roberts being out of the office, I was referred to acting Area Director George Walters. Mr. Walters listened to my request, conferred with Southeast Agency staff, and shortly called back to advise me that Ms. Roberts had left instructions that no extension of time should be granted. He indicated that I could take the matter up with you on September 21, 1987, the date on which the appeal statement was due in your office.

On September 21, 1987, I requested an extension of time in which to file the appeal statement from you. You indicated that you would follow the staff recommendation, but that if the appeal papers were filed in your office by the close of business on September 21, 1987, the record could always be supplemented.

Although the IPS process is subject to BIA appeal procedures, there are few standards applicable to such

The Honorable Ross Swimmer  
 September 21, 1987  
 Page - 3 -

appeals. The issue is, at least under the present state of the law, more economic and political than legal. The position of the Central Council can be stated succinctly enough: The Southeast Agency may have served an important role at a time when all services were delivered directly by the BIA. Now, however, most of the services formerly provided by the Southeast Agency are contracted to the Central Council and other Southeast Agency tribal organizations. These tribal entities, of course, must provide the direct supervision that at one time was provided by the Southeast Agency. In most instances, these tribal agencies have direct access to Juneau Area Office staff. In short, the Central Council views the Southeast Agency as an unnecessary administrative luxury in a time of declining federal budgets, and quite reasonably would like to see scarce federal funds delivered to services rather than duplicative administrative efforts.

While it is easy to state the Central Council's position, "proof" entails nothing less than an historical analysis of the BIA's organization and budgets for the Juneau Area Office and Southeast Agency. I had hoped that the materials requested by me on September 8, 1987, would provide at least the basis for asking further informed questions. Not only were the materials supplied something other than what I had requested, they were supplied so close to the appeal deadline that I had neither the time to supplement my own investigation with BIA personnel, nor to confer with my clients.

Ed Thomas is out of town until September 28, 1987. I am recommending to Mr. Thomas that we retain a paralegal to do an extensive review and analysis of the organization and budgets for the Juneau Area Office and the Southeast Agency. I anticipate that such an extensive review will take approximately thirty to sixty days, assuming full cooperation from the Area Office and the Southeast Agency. The Central Council requests that you hold the appeal in abeyance pending completion of this review. Consistent with Mr. Thomas's letter of July 17, and 25 C.F.R. Section 2.10(a), the Central Council requests assistance in the form of making available to our paralegal the personnel who understand the organization and budgets in question and who are able to retrieve the documents necessary to support the Central Council's position.

Pursuant to our conversation of September 21, 1987, I understand that submission of this supplemental statement to your office before the close of business on September 21, 1987, will satisfy the timeliness requirement for the

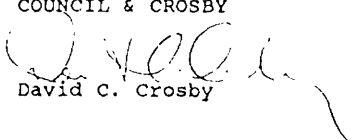
The Honorable Ross Swimmer  
September 21, 1987  
Page - 4 -

Central Council's appeal and that the record may be thereafter supplemented. I fully realize that the Central Council's request to eliminate an entire level of the BIA administrative bureaucracy has national implications that are both political and fiscal in nature. I hope you will agree that the decision should not be made on anything less than a complete record compiled with the full cooperation of the Bureau.

Thank you for your cooperation.

Sincerely yours,

COUNCIL & CROSBY

  
David C. Crosby

cc: Edward K. Thomas

UNITED STATES GOVERNMENT

## memorandum

DATE: OCT 2 1987

REPLY TO: Area Director, Juneau Area

BUREAU OF INDIAN AFFAIRS

JUNEAU AREA OFFICE

SUBJECT: Transmittal of Formal Appeal of Area Director's Decision, Central Council of the Tlingit &amp; Haida Indians of Alaska (CCTHIA), FY-89 IPS Decision

TO: Assistant Secretary for Indian Affairs, Mail Drop 4640 MIB

This constitutes my transmittal of the formal appeal by the CCTHIA from my decision concerning IPS funding levels for certain accounts of the Southeast Alaska Agency for FY-89. This appeal has been filed pursuant to 25 CFR, Part 2. The CCTHIA is presently represented in this matter by legal counsel, Mr. David C. Crosby of the Law Office of Council & Crosby, Juneau, Alaska.

Attached you will find a packet of documents relative to this appeal. You should immediately note that Mr. Crosby, in a letter to you dated September 21, has requested a sixty day extension to the time permitted for filing a more complete appeal package. This request had earlier been made verbally to my office, and was denied because an extension had been granted earlier and no compelling justifications were presented to support a continued extension.

My decision, which is the subject of this appeal, was communicated to all Southeast Alaska tribes by letter of June 19 (copy attached). My decision was reached after a very careful review of the issues in question, and after a public meeting on the matter, to which all Southeast Alaska tribes were invited (16 of 19 were actually represented). Further, I allowed an additional ten days after that meeting during which tribes and other interested parties were afforded an opportunity to comment further. There presently are no documents or other information known to this office indicating that any other tribes in Southeast have joined the CCTHIA in this appeal, or that any of these tribes agree or disagree, generally or specifically, with the position taken by the CCTHIA. The appeal documents filed by the CCTHIA contain no information or arguments which would now cause me to alter my decision, or recommend that you other than fully uphold it.

In its simplest expression, the issue in this case is clear: whether the IPS policy/process affords participating tribes the unchallengeable right to submit annual funding proposals which will effectively eliminate those resources necessary for the Bureau to meet mandated accountability and oversight responsibilities, and specifically where these responsibilities are by their nature not contractible under Public Law 93-638 or other authorities.

As I noted in my formal decision to the tribes in June, law and policy require the Bureau, as a government agency, to perform certain functions relating to oversight, accountability for funds, planning, and advocacy on

RECD CC-THITA

6 OCT 87 2:22

LAW/HALC

TO	ASSISTANT SECRETARY FOR INDIAN AFFAIRS
X	AREA DIRECTOR, JUNEAU AREA
	IPS
X	DAVID C. CROSBY
X	FINANCIAL COUNSEL

OPTIONAL FORM NO. 10  
REV. 1-80  
GSA FPMR (41 CFR) 101-11.6  
5010-108



behalf of tribes. These, along with trust responsibilities, cannot be contracted to non-government entities, including to tribes under Public Law 93-638. It is the policy in the Juneau Area to make the maximum amount of dollar resources available for direct program services. To accomplish this, we have attempted to organizationally structure the Bureau in Alaska to reduce to an absolute minimum the costs of administration. This goal is a major rationale for the statewide reorganization proposal currently being reviewed at the Department level; and which proposal stresses centralization for many service and administrative functions. However, after a great deal of analysis, we are left at the strong belief that there are some Bureau functions that must remain regionally oriented if they are to be at all effectively accomplished. These functions include primarily IPS planning, budget execution, regional advocacy, and governmental support services to tribes as tribes. To best accomplish these requirements, we have proposed retention of our five agencies, each to be staffed with a Superintendent, a Tribal Operations specialist, and a supporting secretary.

The results of the tribal IPS process in Southeast Alaska, if sustained, would permit the retention of no regional staff. For the reasons generally stated above, I could not in good faith support such a result; nor do I believe I can responsibly permit this to occur by failing to exercise those decision-making authorities available to me under prevailing IPS policies/procedures. Accordingly, I cannot now do other than strongly urge that you allow my decision in this matter to stand, including the retention of the funding levels from the accounts which I have identified as minimally necessary to support maintenance of the Southeast Agency for FY-89 and beyond.

Should you have any questions, or if I can provide any additional documentation, please contact my office.



Jake Lestenkof

Attachments

Mr. THOMAS. The comments were made earlier this morning, if you go through and do what they did in Alaska, turn the education system over to the State, it will work. Well, it works so long as the State will supplement those programs, but as soon as the State runs short of money, as they did in the State of Alaska, the burden is put back on the individual people, and they have to develop a tax base. And in Alaska they are trying to develop a tax base where there is none.

The unemployment is still from 60 to 80 percent depending on which community you are looking at. In larger communities it is a little bit smaller. But if you are talking about education working to educate, the system is not working under the State system. The Alaska native dropout is the highest in the states. The people who graduate and go into post-secondary training cannot compete with the non-natives from the urban areas and there are a lot of other things that are happening whereby teachers go into rural communities only to get a job in the State system and move on to the urban areas.

There is no continuity in the State education system. I don't want to elaborate on that because of time. But I want to state this is just one example of how things can be misconceived by one point of view. So I am here to share with you our point of view.

One of the most important things that we are trying to do that is similar to what is being suggested by the Bureau is we are trying to close down our agency office, so the funds can go into the programs, to meeting our tribe's need. As we went through this process, the area office director said he couldn't go along with it, but he would compromise. His compromising said they would cut six of the nine positions, and that would save us \$24,000 out of \$258,000 that could have been reprogrammed.

That is not an equitable distribution as we planned it. If we had been able to cut the \$258,000 overhead from the area office and put it into programs, that certainly would have eliminated a lot of the problems we are confronted with right now.

#### ALASKA AREA OFFICE

Mr. YATES. What about the services the area office renders to you?

Mr. THOMAS. Which ones are those?

Mr. YATES. That is what I am asking you.

Mr. THOMAS. There isn't any.

Mr. YATES. Why do they have the area office then?

Mr. THOMAS. I don't know. That is what I am trying to find out. I think that we looked at other Federal programs we have administered, and I have been involved with administering Federal programs for 13 years, so I know there are other programs we get directly from Washington D.C. that does not have all those layers of bureaucracy and run better.

We have been charged with the responsibility if we do not live up to our goals and objectives, we would not get the funding. I think that is the way we really need to do that. We have been in Alaska in Juneau. We have been administering programs since 1968. It wasn't until after 1975 they got into setting up their over-

sight, as they call it, so others can get involved in contracting. We have seen this grow from a staff of about two to nine, to nine staff members just in a very short period of time, just to try to find out something that they can do.

Right now an example of what is happening in the reorganization scheme by the Bureau, approved by the Assistant Secretary, is to reorganize the office at a budget of \$81.5 million simply to move from one office in Juneau to another office in Anchorage. By moving to Anchorage they can be more centralized and provide services to all of the regions of Alaska much more equitably if they are in Anchorage.

Well, we live in Juneau, in the same town as which the area office is in now and we get less information than many of the people in other regions do and a lot slower. So a matter of physical location really does not make that much difference in administering these kinds of programs.

As a matter of fact, I think we can administer them much better if we did not have the layers of bureaucracy. One person can be responsible. We have been doing it long enough somebody should know how we do it by now, and we have annual audits done by an outside auditor every year, not only required by the government, it is required by our tribe.

I think that I agree there needs to be a serious trimming in the budgets of the administration of the Bureau of Indian Affairs and I feel that many of these programs can be improved if we followed existing law. Right now there are no consequences where people are not processing our applications on time. There are no consequences for people holding back the tribal administrative fund, the indirect costs.

There are no consequences for people providing bad information when it gets involved in a dispute that we might have with the government. I think that we can all get into a much better posture if we didn't have so many places to hide that and that is what we are doing right now in the Bureau. I feel very strongly that if we trimmed back maybe just the agency this year, we will be glad to serve as a demonstration in southeast Alaska if you want to try it out and see if it works or not.

I would be in favor in cutting back the total area office and disseminating those funds under contract. As far as going to the next step of trying to see where we are going to be further on down the line involving Indian tribes and tribal elected leaders, I agree with that concept. However, I feel the amount that I saw in the paper of \$500,000 might not be large enough to involve all elected tribal officials in a working environment.

I think you have to really work at it. You can't do it kind of through long distance like we have had to do. I think we have seen that when the Bureau tries to do something, we at the tribal level take the brunt of whatever they are trying to do that may be innovative or not innovative. As stated earlier, the appropriations process has pretty much stayed the same at least as long as I have been President.

We have had the same amount of money, but yet our programs have been cut every year all the way from 9 percent to 15 percent. I don't know where the money is going. I looked at the budget. I

tried to follow it the best I could from the national level right down to where I get it, and it somehow gets lost between the national level and our budget, but we have been trimmed every year, and our administrative costs have been cut back.

Last year I cut back our administrative budget, not under pressure by anybody from the Bureau, by 19 percent and that is 19 percent of hard dollars cut back simply because I felt we at the tribal level were made more conscious of where our money is going.

So I think there can be some progress made in the short term by doing what we are supposed to under regulations cutting back some of these layers of bureaucracy like we are proposing in the Juneau area. I think, finally, we need to come to grips with what was said by Mr. Swimmer or some of these others in setting up separate things. I don't totally agree with these.

I feel often times when you set something up new you lose a lot of what is necessary by the people in the interim and I don't believe in total reorganizations of that nature. I want to thank you for the time.

Mr. YATES. We appreciate your coming down here.

#### BIA'S INITIATIVES AND THE WARM SPRINGS TRIBE

Mr. JACKSON. Thank you, Mr. Chairman, Mr. Regula.

My name is Zane Jackson. I am Chairman of the Tribal Council of Confederated Tribes of Warm Springs in Oregon.

Mr. YATES. I should ask you your experiences with BIA. Would you go along with your colleagues about eliminating the area offices?

Mr. JACKSON. Not entirely, Mr. Chairman. We get along well with the Bureau at both the Agency and area level. We have a working relationship that goes back quite some time and we are able to work with them. We view those as a resource to help our reservation.

I don't know if you read the papers or not but we had some bad fires this year in September. Our forestry department there we are quite proud of what they have done for us. They took that as something that they wanted to really protect us on. Not only that, but the Department of Forestry has trained a group of young people from our reservation. We call those the hot shot crew. They are engaged in firefighting and they are up for hire for different areas. I think they have been to Arizona. I think they have been to Alaska, but they are gaining a reputation as being a unit that is one they can depend on for being there.

Mr. YATES. I take it from your testimony you like things as they are.

Mr. JACKSON. In certain respects. Our problems are more with the people that run the Bureau itself. I look at the Bureau as those that have been in there working for a living. That is the BIA, Bureau of Indian Affairs. The Interior Department, I think they are the ones that are giving us the problems, especially this administration.

Mr. YATES. In what way?

Mr. JACKSON. Well, there are a lot of initiatives that we have had to try to find out what they meant to us and what they would

mean to us in the future. The Mellon Bank proposal was one dealing with our trust funds. We did not know anything about it. We asked Mr. Swimmer at a meeting for information. He promised he would give it to us. We never got that. We can get the specifics if you want. We have records showing that we asked for pertinent information but never got it.

We offered to help if we could in trying to set up a system that would work better. We had experiences with the accounting of that department that were not good but they were not that bad. I think they could fix them. But the investment portion of that program worked rather well, in fact real well. They were above the average as far as we can tell for other investors that we worked with. So those are some of the problems.

I think what I heard this morning was on block grants or whatever you want to call it that is kind of scary with this Administration because I heard Mr. Swimmer say that eventually through block grants the tribes would wind up being the trustee for their own assets. That is scary. He also mentioned that there are periods of time in the 1950s when we had termination in effect that terminated several tribes in the Northwest. They have since that time scattered. Their people are poor. They have no leaders. Now they are being restored which is good but that 30, 35, 40 years has done a lot of harm to those people.

If that was a bad system, when we became our own trustee, isn't that the same thing as termination? The federal trust relationship with the tribe would be severed. That is what I look at. It is just scary.

Mr. YATES. But you would be your own bosses.

Mr. JACKSON. We are our own boss in one sense. We have a trust relationship. The Federal Government holds our land in trust so it is safe from people coming in there and buying it up to exploit our reservation. We have tribal ownership of our land which is over 600,000 acres in Central Oregon, of which about 98 percent is tribal-owned. So we have something there that we hold dear to ourselves. We want to protect that.

[The prepared statement of the Confederated Tribes of the Warm Springs Reservation of Oregon follow:]



TESTIMONY OF THE CONFEDERATED TRIBES  
OF THE WARM SPRINGS RESERVATION OF OREGON  
BEFORE THE HOUSE INTERIOR APPROPRIATIONS SUBCOMMITTEE

Washington, D.C.

October 27, 1987

Mr. Chairman, Members of the Committee:

My name is Zane Jackson, and I am the Chairman of the Tribal Council of The Confederated Tribes of the Warm Springs Reservation of Oregon.

We appreciate the concern of the Subcommittee regarding the functioning of the Bureau of Indian Affairs. Our tribe has maintained an excellent working relationship with Bureau employees, particularly at the field level. There are many dedicated employees in the BIA who have great concern for Indian people. We view the Bureau as the agency primarily responsible for carrying out the trust responsibility of the United States and also as a resource to assist tribes in carrying out tribal initiatives.

Like all large organizations which work together, tribes and the BIA have their differences. However, we do our best to work with the Bureau and its many dedicated employees at the local level. We believe the Bureau itself, especially at the local level where the impacts of BIA

deficiencies manifest themselves, should be engaged in the dialogue on how to resolve problems within the BIA. The Warm Springs Tribes feel that they have had a long and successful history of cooperation with the Bureau, and we are confident that approached in the proper manner, led by the proper people, and guided by Congress, the BIA can, where necessary, be reformed from within.

Although there are problems within the Bureau of Indian Affairs, we believe the primary focus of the Committee should be on the persons now directing that agency. The programs currently being proposed and instituted by Assistant Secretary Swimmer constitute a far greater threat to Indian tribes and Congressional policies than structural problems in the BIA. The current Assistant Secretary is attempting to change the fundamental trust relationship between the Federal Government and Indian tribes. Dismantling the Bureau of Indian Affairs and creating a new organization will not cure the problem if top-level administrators are bent on destroying the trust relationship. The Secretary of the Interior, in failing to give sufficient guidance and oversight to his Assistant Secretary, has also been remiss in his trust obligations.

There are several points that the Warm Springs Tribes would like to make to this Committee.

First, we believe that the structure of the Bureau of Indian Affairs is basically adequate and that a methodical evolutionary process should be used in addressing

operational problems. Radical restructuring proposals will only add instability and could diminish, rather than strengthen, the trust responsibility.

Second, we believe that the necessary mechanisms are already in place to provide for greater tribal participation in arriving at their own destinies. One of the chief mechanisms is the 638 contract. The Bureau has already contracted many of its functions to Indian tribes, and proposed amendments to the 638 contracting process now pending in Congress will facilitate an even greater shift in program operation to Indian tribes. The second mechanism is the tribal consultation process through which tribes exercise a direct participation in the formulation of programs and policies to serve them. Unfortunately, Mr. Swimmer's record on the use of the consultation process is abysmal, not only with Indian tribes, but with the very capable BIA personnel at the area and local level with whom we deal on a day-to-day basis and who best understand our problems.

Third, the real crisis in Indian Affairs over the past three years has been the drastic and radical change in leadership within the Department. We certainly don't want this leadership to be overseeing any radical changes in the Bureau or a new department. We believe that radical changes at this point would play into the hands of those wishing to dismantle the trust relationship.

Finally, we believe that you should rely upon the elected representatives of Indian tribes in determining



"Indian" views of matters. Although individual Indians and intertribal organizations are certainly free and encouraged to speak their minds, they do not and cannot speak for individual tribal councils. Self-determination means that individual tribes and their recognized governments should speak for the best interests of their individual tribes.

I will now detail some of the more specific problems involving the Bureau of Indian Affairs that we believe Congress should address.

#### TRUST FUND INVESTMENT SERVICES

The Assistant Secretary has proposed radical changes in Indian trust fund management. These trust funds are the lifeblood of Indian tribes, providing money for tribal services and government operations. The Assistant Secretary in his unilateral decision to reorganize all trust fund management services has dismantled an existing Bureau organization that in general had performed quite well with regard to the investment of Indian trust funds. He has done this with virtually no meaningful consultation with Indian tribes. This is one example of a radical change to address a perceived problem in the Bureau of Indian Affairs that will almost certainly be to the tribes' detriment.

#### BIA BUDGETING AND ACCOUNTING PRACTICES

BIA budgeting and accounting practices, particularly as they relate to tribes, are terrible. It is often impossible

for tribes to find out how much money is actually being expended for their benefit by the Bureau and how the money is being spent. In the development of the BIA's budget, tribes are at the lowest and most-removed level, and tribal input through the Indian priority system is almost always tampered with or abandoned by the BIA so it can provide for its own needs. Monies are shifted around within the Bureau with virtually no accountability to tribes or Congress. Somehow this must be changed so that there is true accountability to the tribes and the Congress as to exactly where the appropriated funds are being spent. That might clear up many problems within the BIA without eliminating the BIA.

#### SOLICITOR'S OFFICE

While there are many excellent professionals in the Solicitor's Office, our tribe has experienced major problems during recent years in obtaining services and participation of the Solicitor's Office in matters affecting our tribe. For example, the Warm Springs Tribes have been negotiating for quite some time on a serious but amicable basis with the State of Oregon over the imposition of gasoline taxes on our reservation. In meetings with state officials, including the State Attorney General's Office, the Regional Solicitor's Office in Portland has been denied permission to have any member of their office participate in any such meetings because of a lack of travel funds. This denial was made on that basis even when the Solicitor's representative could

have traveled the fifty miles to the meeting at no cost to the government in the same car with the BIA representative who attended the meeting. The inability of the Solicitor's Office representatives to travel has even seriously impeded the very sensitive negotiations now taking place between the State of Oregon, the Federal Government and the Warm Springs Tribes with regard to the quantification of the Tribes' water rights.

While a reasonable and comprehensive long-term solution to an improved tribal-federal relationship is difficult to promptly develop, the Warm Springs Tribes welcome this start. While we are not certain that just moving boxes around on a federal organization chart will improve how we operate with the U.S. Government, we also have a certain amount of skepticism that a few good people at the top of Interior would be able to change that either. It could be a combination of both. It will take considerable thought, but for the long term, it is good that the Congress and the tribes are beginning to take a look at it. We believe that a good first step would be field hearings that would allow for the participation of more tribal governments and give more time for individual tribes to develop recommendations for improvements in the BIA.

In the short term, the BIA's full fiscal accountability to the tribes would be most helpful. Perhaps this could be accomplished by having the BIA agencies report to their tribes the detailed amounts of funds that are coming to the

Agency and how they are spent. Such a report could be done quarterly so that tribes may track just where the BIA's local funds are going. Further, if these reports could also include area and central office budgets so that the totals could be tracked back to Congressionally appropriated amounts, tribes may gain some insight into the Bureau's expenditures on programs that are supposed to serve them.

Thank you for the opportunity to testify.



November 5, 1987

The Honorable Sidney Yates, Chairman  
 Appropriations Subcommittee for the Interior  
 and Related Agencies  
 B-308 Rayburn House Office Building  
 U.S. House of Representatives  
 Washington, D.C. 20515

Dear Chairman Yates:

On the behalf of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, I am submitting this letter expressing our additional views on the statements-written and oral - of Interior Secretary Don Hodel and his Assistant Secretary for Indian Affairs Ross Swimmer for inclusion in the record of the Subcommittee's October 27, 1987 oversight hearing on the status of the Tribal - Federal relationship.

With respect to Secretary Hodel's short written statement, it was disappointing, but probably to be expected, that he gives his full support - really free rein - to the Assistant Secretary for Indian Affairs that we consider to be the single most destructive individual to confront Indian Tribes since the 1950s, Ross O. Swimmer. Mr. Hodel then cites four of Mr. Swimmer's "exciting and promising" FY 1988 initiatives, including mandatory workfare, the simplistic and actually inequitable flat rate for awarding 638 contract support funds, the questionable attempt to rush the turning over to a private sector entity Indian and Tribal trust funds without answering Tribes' concerns, and the forcing of Tribes to take over B.I.A. schools upon the threat of otherwise dumping the schools upon anybody else who might take them. He claims that these ill conceived initiatives failed, in part, due to an "impossible" lack of consensus among the Tribes, when in fact the Tribes achieved virtual consensus in their opposition to the initiatives. Finally, after blaming Tribal "fear and resistance" for the rejection of Mr. Swimmer's initiatives (as if it never occurred to him that the nature of the initiatives themselves might be to blame), he states that the Tribes, the Administration and others "must find new ways to work together", ignoring the fact that it has been his Assistant Secretary deliberately working alone to force-feed the insulting and destructive initiatives to the Tribes. It is an unfortunate but all too true reflection of the Interior Department's current leadership that, in their own opinion, they have been unquestionably right in their Indian affairs undertakings, and that the reason things are not better is the fault of the Tribes.

For his part, Assistant Secretary Swimmer uses his testimony to suggest what he has been seeking for years - the termination of the Bureau of Indian Affairs. Although he correctly notes several reasons why there should, in fact, be a Bureau of Indian Affairs, including accountability, identifiable Indian program expenditures, and a strong voice for Indian affairs within competing demands for Federal services (he fails to include a strong protection of the government's trust responsibility), he is eager to suggest that its task is impossible. He states that the B.I.A. has too many obligations to be able to carry out any one of them properly, and that the inability to achieve any consensus between the Tribes, the Administration, and the Congress just further hinders the situation. In fact, he excuses his shortcomings on this lack of consensus, stating that, with such a lack of consensus, "how much of the fault can really be laid on the management of the Bureau?" He pays no heed to the many occasions in the past when the Bureau, the Congress and the Tribes have all worked in concert, and he makes no mention of the fact that outrageous proposals by Bureau management itself could be a cause of the discord. Perhaps what he means by "consensus" is the acquiescence of Tribes and Congress to his dictated initiatives, and that should such occur, he could claim an open road to success. The pitiful truth is that Mr. Swimmer has made little or no effort to fashion any consensus, and acts as if he almost relishes the controversy he generates. But when these "bold" and "creative" initiatives run into difficulty, it is a lack of consensus that he claims is responsible.

His suggestion to divide up the trust activities and parcel them out to other federal agencies almost guarantees their virtual disappearance. One perhaps telling example of how Indian activities might fare on their own in other agencies and departments is the Department of Agriculture, which presently administers \$90 million worth of Indian related activities and only has an ignored and ineffective "Indian desk" to report on, coordinate and advocate for the Tribes. "Indian desks" throughout other federal locations could only hasten the elimination of any federal recognition of the trust responsibility, which Mr. Swimmer himself has said he foresees.

Mr. Swimmer would then block-grant the balance of non-trust funds to Tribes, regardless of whether the Tribes were prepared or desirous to receive funding in such a manner. Along with the block-grant would be a release of the Bureau from the which Mr. Swimmer considers to be non-trust activities, which include obligations and rights secured to the Tribes by their treaties with the Federal government. With that, the process for rapid de facto termination would be in place. The concept and observance of the trust responsibility would be splintered and greatly reduced, and the Federal government would supplant its treaty obligations with a tenuous promise of block grants.

This is very similar to the thoroughly repudiated concept put forward by the Presidential Commission on Indian Reservation

Economies in 1984. At that time, the terminationist attitude of Mr. Swimmer, the Co-Chairman of the Commission, was cloaked in the guise of economic development. Now, the same person brings forward the same suggestions in the name of correcting the problems with the B.I.A. and Tribal self-determination. It is apparent to us that whenever Mr. Swimmer finds an opportunity, he will continue to try to "free" the Indian people and their governments into the mainstream of American society. It strikes us that the Indian people would be better off being free of Mr. Swimmer.

The extemporaneous comments of Secretary Hodel and Assistant Secretary Swimmer only served to underscore their failure to understand the true needs and feelings of Indian people. Ross Swimmer's statement that he "wants to set the Indian people free" strongly echoes the same words offered in the 1950s in support of termination. Mr. Hodel said that the Indian people have "sold their souls to the government", to which Mr. Swimmer added that was the "bargain they struck for the dollars they get." These are the words of people who are in the senior-most positions as Federal guardians for the Indian people, who stated that they may not do what the Tribes want, but will rather do whatever they believe is in the long term best interest of the Indian people. While "freeing" the Indian people is one of their foremost priorities, preserving our rights did not appear so. Mr. Hodel repeatedly claimed that he has to help non-Indians when they feel beset by the exercise of Indian rights. Mr. Swimmer said that he fully expects the Federal government to give up its trust responsibility over Indian property and affairs, implying the sooner the better, that the thrust of federal Indian policy has always been to eliminate the B.I.A., and that Tribes today should actively plan and work to rid themselves of their trustee.

The words and actions of Mr. Swimmer amply demonstrate his complete lack of compassion for or understanding of the Indian people. That, in combination with his arrogance and zeal that he is right in his actions, regardless of the opinions of the Tribes or the Congress, makes for a potentially devastating era in Tribal - Administration relations. Mr. Swimmer is demanding a revolution in Indian affairs, and he is more than willing to demolish Indian affairs and the Tribes in his efforts to bring it about. In so doing, he is ignoring the steady and profound evolution that Tribes have been engaged in since the early 1960s, and which will, Mr. Swimmer aside, bring Tribes into a position of greater political and economic independence at their own pace. We believe this is the way it ought to be, and look forward to continuing beyond the destructive reach of Mr. Swimmer.

Sincerely,

*Zane Jackson*

Zane Jackson

## CONGRESSIONAL AND BIA RESPONSIBILITY

Mr. YATES. Okay, sir.

Mr. PACE. Thank you, Chairman Yates.

My name is Charles Pace. I am an economist at Eastern Oregon State College working for the Shoshone-Bannock Tribes of Fort Hall Indian Reservation. We are encouraged that you are holding these hearings and we see them as an opportunity to develop new and innovative approaches.

You have heard much today about BIA distancing itself from the trust responsibility. I think a prerequisite for that is strong tribal government so that it moves in and takes over those functions. Over time the Shoshone-Bannock Tribes have enhanced their government capabilities. Just to give you a few examples, the tribes were the first in 1976 to have the Secretary approve their land use ordinance. We are now working on a comprehensive land use program reservation-wide. We are now building the foundation for regulating air quality reservation-wide that is financed by an EPA grant.

We are looking at a lot of off-reservation public policies affecting natural resources. Article 4 of the Treaty that established the Fort Hall Reservation allowed for and provided for the continuation of certain rights of reservation. The Columbia Basin is a very interesting case nationwide and the Sho-Bans are participating in that. We believe these improvements in tribal government are natural and appropriate and that Congress and BIA should nurture this process.

In terms of Congress, Congress I think basically needs to provide guidance and they need to follow up with funding. In terms of BIA, I think the main thing that needs to happen with BIA is they have to realize that we are moving into a new era and the resource programs, for example, that they promulgated years ago when tribal governments' capabilities to govern reservations were deficient, that that is no longer the case and what we are going to have is a relinquishing of that authority and control and BIA assuming more of a technical and supportive role.

I might mention one area that we found is a real need in the area of funding, and that is preventive law. It seems like BIA policies allow for legal representation only when you are embroiled in litigation or you are involved in negotiation that has a good possibility of forestalling any litigation. There is a lot of administrative stuff that happens at Fort Hall, a lot of preventive stuff. If we could get good legal advice early on in the process, we think we could avoid those problems.

The problem we have is that to do that you are going to have to divert scarce tribal resources, general fund monies, into the practice of preventive law.

Now, insufficient funding, of course, is not the only reason for problems in Indian country. I might mention antiquated federal regulation, cumbersome administrative procedures. All of these have undermined exercises of tribal sovereignty and restricted development of tribal governments. One possibility that the Alliance has suggested is the appointment of a person at the Cabinet level to deal directly with Indian tribes and we think that that merits



serious consideration. For example, I think this example came up earlier but Interior may have conflicting trust responsibilities in the area of reserved water rights. As you may know, the Shoshone-Bannock Tribes in the State of Idaho in the United States are right now negotiating in an effort to resolve those conflicts without resorting to litigation. But there is a potential conflict between BIA and Bureau of Reclamation.

We would like that to surface higher up in the process rather than have it handled internally within the Interior. It is a very serious problem in the Snake River but direct communication between tribal members and a Cabinet, or tribal leaders and a Cabinet member, I think, would better link the tribes to the Legislative and Executive Branches.

Along with that we would favor providing the Bureau with a certain amount of autonomy from Interior.

Mr. YATES. The Bureau itself or tribes?

Mr. PACE. The BIA.

Mr. YATES. What about tribes?

Mr. PACE. The idea of tribes governing themselves and providing for residents of reservation, non-Indian and Indian, is something that Shoshone-Bannock Tribes have endorsed over and over again. But when you look at all of Indian country, we come back to that point that I made before that something will come in there. If it isn't tribal government, it may be the state government. It may be no government.

I can understand what Mr. Swimmer is saying in terms of efficiency and letting people govern their own affairs, but at the same time, I am a bit skeptical because Mr. Swimmer is a banker and bankers are loathe to let anyone else—to have themselves hold the bag. I think it is premature to distance—I don't think it is realistic to think BIA can completely distance itself from its trust responsibility but as part of that earlier thing I was talking about, they are going to have to relinquish authority and control and work together with tribes.

So I see it more as a partnership rather than BIA getting out of the Indian business.

#### AREA OFFICES AND THE SHOSHONE-BANNOCK TRIBES

Mr. YATES. What do you feel about the area offices?

Mr. PACE. We have had fairly good relationships with the area office. Sometimes we go to Portland and fight and sometimes we go to Portland and talk. As far as elimination of the area officers, again that is one proposal that should be carefully evaluated. But for us to come in today and play baseball with the Bureau and bash them around, I am most uncomfortable with that.

Mr. YATES. I don't want you to bash the Bureau but I am wondering how much help you get from your area offices and what would happen if the area office weren't there and you dealt directly on the local level with Washington.

Mr. PACE. That is an intriguing possibility. I can't answer those what-if questions. It is something though that should be looked at but I don't think the Sho-Ban Tribes are by any means ready to say do away with the area office. For one thing, it cost me \$1100 to

come back here today. That is fairly expensive, Idaho to Washington. I mentioned that there is a problem with BIA relinquishing control and authority. What that has resulted in is that tribes and the Bureau have spent scarce resources fighting over turf. That is most unfortunate. That is very unproductive. It doesn't help civil servants or Indian people.

So there needs to be a clear understanding of relative roles and I think that the Congress can provide some measure of guidance there.

#### PROMOTION AND PROTECTION OF NATURAL RESOURCES

Another source of problem is that in the past the Bureau wore two hats. On the one hand they were responsible for protecting resources and on the other hand they were promoting resources. In terms of the protection of resources, it often did not reflect the interest of Indian people and in the promotion of resources, it often benefited non-Indians.

The area of administration and management of trust funds has come up today. As a tribe we are not opposed to streamlining the investment process and the collection process and disbursement. We are concerned though that whatever happens that the trust responsibility is still intact and that the tribes receive a wider range of financial services at a lower cost, generate greater returns on investment and minimize risk.

We have on several occasions recommended to the Bureau on two occasions, in particular, that they separate out the investment function. If they are going to contract with a financial institution such as Mellon, that they separate out the investment function from all the other activities and then look, once they separate out that investment function, do several things: exploit economies of scale. When you are dealing with billions of dollars there are certain economies of scale in terms of investment services that you can take advantage of. They also should separate counseling from the execution of trades so that you don't set up an incentive for portfolio shuffling. Have one institution do counseling and the other institution execute trades.

In the execution of trades, we have recommended and suggested to the Bureau on two occasions that they carefully evaluate a firm's excess net capital position so that the firm can quickly make those trades before the market turns against you. All the more important in the recent past. Now, in my testimony I have gone into a lot of problems that are specific to Fort Hall.

Mr. YATES. We will read them.

Mr. PACE. Okay.

One other question that you seem to have raised today is the communication, matter of communication. We as part of the ANA project that I mentioned before set up a tribal information participation system where we basically have the capabilities to contact each household on the reservation within one day and mail them a letter explaining what the issue is and providing information for them on how they can participate. Unfortunately, ANA cut that part out of our grant. But these kind of things can be done and I think it is possible for there to be direct links between Indian lead-

ers and government and Indian leaders and Indian households, and it is just a matter of funding over a sustained period of time and getting those systems off the ground.

Mr. YATES. Thank you, sir.

[The prepared statement of Mr. Pace follows:]

TESTIMONY OF CHARLES PACE, DIRECTOR  
ECONOMIC ANALYSIS OFFICE, SHOSHONE-BANNOCK TRIBES  
BEFORE THE SUBCOMMITTEE ON INTERIOR AND RELATED AGENCIES  
OF THE HOUSE COMMITTEE ON APPROPRIATIONS  
October 27, 1987

Chairman Yates, Members of the Committee thank you for the opportunity to appear at this hearing. My name is Charles Pace. I am an Associate Professor of Economics at Eastern Oregon State College and am currently on leave, serving as Director of Economic Analysis for the Shoshone-Bannock Tribes (Tribes) of the Fort Hall Indian Reservation (Reservation) in Idaho. <sup>1/</sup>

The Tribes are encouraged that the Chairman and others in Congress are actively identifying problems and opportunities relating to the Bureau of Indian Affairs' (BIA) programs. We are hopeful that these efforts, combined with the discussion today of tribes' concerns, will give rise to innovative approaches on the part of Congress, BIA, and tribal governments to carry out the nation's trust responsibilities and fulfill the solemn promises made by the United States to Indian people. <sup>2/</sup>

The Tribes collectively comprise a single federally-recognized Indian Tribe. <sup>3/</sup> The Tribes are the successors-in-interest of Indian

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<sup>1</sup> I have been working for the Tribes since 1984 on a three-phase economic development program. We are now implementing various projects to enhance the Tribes governing capabilities and establish viable markets for goods and services produced on the Reservation.

<sup>2</sup> The failure of the United States to live up to the solemn promises made in treaties with Indian people is one of the most tragic aspects of this country's history. The Shoshone-Bannock Tribes have been plagued by this failure from the very beginning of the Tribes' relationship with the United States. The early history of the Fort Hall Indian Reservation was marked by periodic starvation as Congress repeatedly failed to appropriate funds for basic necessities. In 1870, Agent Danielson, in a letter to Commissioner Floyd-Jones, complained bitterly of the neglect of Indian people at Fort Hall:

It seems as though the government has failed in almost every particular in complying with the terms of the treaty made at Fort Bridger in July 1868.

To avoid starvation, Shoshone and Bannock people frequently left the Reservation to hunt, fish and gather in traditional areas.

<sup>3</sup> See Swim v. Bergland, Civil No. 78-4021 (D. Idaho 1981), aff'd. in part and reversed in part, 696 F.2d 712 (9th Cir. 1983).

signatories to the Fort Bridger Treaty of July 3, 1968. <sup>4/</sup> That Treaty and other Executive Orders secured the Reservation in southeastern Idaho as a permanent Tribal homeland. In addition, Article 4 of the Treaty guaranteed the continuation of a broad range of Tribal use rights on unoccupied lands outside the Reservation.

The Fort Hall Business Council is the Tribe's governing body and, as such, is obligated to protect and promote the individual and communal interests of tribal members and other Reservation residents. Over time, the Tribes have developed and enhanced their governmental capabilities. Tribal governments have generally become empowered as never before to plan for and promote orderly development of reservation communities, <sup>5/</sup> to protect the health and welfare of Reservation residents, <sup>6/</sup> and to exert increasing influence over the design and implementation of public policies impacting off-reservation resources which tribal members depend upon for subsistence, religious and cultural purposes. <sup>7/</sup>

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<sup>4</sup> 15 Stat. 673.

<sup>5</sup> Secretary Kleppe approved the Tribes' Land Use Ordinance in 1976. The Tribes are now engaged in a public review of a Draft Comprehensive Land Use Plan for the entire Reservation.

<sup>6</sup> The Tribes recently received notification from the Environmental Protection Agency of approval of a Section 105 air quality grant. This project is the first step in implementing tribal air quality regulations for the entire Reservation. It features coordination of enforcement with the State of Idaho Department of Health and Welfare and cooperation on jurisdictional disputes with the Idaho Attorney General.

<sup>7</sup> BIA must assist Indian tribes in protecting and promoting Indian interests within reservations and, more generally, throughout Indian country. The Bureau must recognize that the extent of Indian interests--and thus the extent of its trust responsibilities--are not confined by the exterior boundaries of Indian reservations. The protection of religious, cultural and subsistence values derived by tribal members from hunting, gathering and fishing both on and off-reservation requires constant vigilance on the part of Indian tribes buttressed by continuing Bureau support for the tribes' legal and technical staff.

BIA policies on funding legal assistance for the protection of natural resources are of particular concern. In the past, it has all too often been the case that the Bureau has not provided the necessary support to assist tribes in protection of reserved water rights, in preservation of hunting, fishing, and gathering rights guaranteed by treaties, and in promoting the Tribe's interest on a broad range of related issues. When important natural resources are threatened and/or eliminated, tribes have no alternative but to

The enhanced capability of tribes to govern their respective reservations and exert increasing influence off-reservation are natural and appropriate responses on the part of tribal governments to the complex demands of modern society. Congress and BIA must nurture this process. It is important for BIA personnel to not sabotage tribal governments by insisting on retaining control and authority vis-a-vis tribes. It is also essential that Congress not undermine tribal governments by failing to adequately fund BIA programs which provide technical support and assistance for tribal decision makers. Tribes should, to the greatest possible extent, be decision makers and BIA should adopt a supporting role. The conceptual roles of tribes and the federal government outlined here stands in stark contrast to the current roles of tribes vis-a-vis BIA. It is important that BIA embrace this supporting role and that Congress first provide guidance and follow up with adequate levels of funding for technical support and assistance.

If Congress fails to provide adequate levels of funding, tribal and BIA initiatives will be ineffective, support for tribal governments will be inadequate, and the role of tribal governments as decision makers will be undermined. Tribal governments and their Indian and non-Indian constituents will suffer. Erratic and inadequate levels of funding for BIA programs reflect shifting national priorities. This impairs the ability of tribes and BIA to make a sustained commitment to dealing with continuing problems. Tribes are often unable to address ongoing problems because program funding has been piecemeal.<sup>8/</sup>

However, insufficient funding is not the only barrier to establishing effective programs for Indian Country. The legacy of inadequate funding, disjointed management of tribes' affairs--particularly in the management of water--antiquated federal regulation and cumbersome administrative procedures has undermined the exercise of tribal sovereignty, restricted development of tribal

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litigate and litigation can be enormously expensive.

<sup>8</sup> Financial support for tribal attorneys is a matter of critical importance to tribes. Current BIA policies provide funding for attorneys only if tribes are embroiled in ongoing litigation or engaged in formal negotiations which are likely to forestall impending litigation. BIA is generally unwilling to fund contracts between tribes and attorneys for administrative and preventative legal assistance. The refusal to fund the practice of preventative law has strained tribal budgets, forcing tribes to choose between protecting their interests and providing for the needs of tribal members. BIA funding for tribal attorneys to practice preventative law prior to litigation will improve governance without devastating the financial position of tribes.

governmental capabilities, and prevented Indian people from achieving self-sufficiency and self-determination.

The Alliance of American Indian Leaders (Alliance) has suggested that a cabinet level position be created to provide guidance and deal directly with Indian tribes. Accordingly, BIA would function with autonomy, apart from Department of Interior (Interior). This proposal is consistent with the controversial constitutional powers of the executive branch and the special trust relationship between Congress and tribes.

At present, Interior has conflicting trust responsibilities. For example, in the area of reserved water rights, BIA and Bureau of Reclamation have potentially conflicting trust responsibilities that must be resolved by the Secretary of Interior. Direct communication between tribal leaders and a cabinet member would link tribes directly to the Executive and legislative branches of government. The merits of direct communication and understanding between tribes and the federal government are undeniable. Providing autonomy for BIA is needed now just as the historical transition was needed in Indian affairs from the War Department to Interior. Separation of BIA from Interior warrants further study as one means of securing autonomy for BIA.

In addition to conflicts arising out of the split trust responsibilities of the federal government, conflicts have often surfaced between tribes and their trustee. Many federal programs were promulgated at a time when the capabilities of tribal governments to implement comprehensive land use planning, to protect the health and welfare of reservation residents, and to influence public policies off-reservation were deficient. The types of problems posed by non-Indian development of on-reservation resources were particularly difficult for Tribes to deal with. The ability of tribal governments to govern has improved over time but BIA has been reluctant to relinquish its authority and assume a supporting role. Ensuing conflicts between tribal governments and BIA personnel have been detrimental to Indian interests.

Federal and tribal resources have been needlessly squandered fighting over "turf" rather than working as partners to identify opportunities and resolve problems. Decisions have been made and policies put in place in an atmosphere of emotionally charged ignorance rather than informed cooperation. Unproductive conflicts between tribal governments and BIA personnel must not continue. There must be a clear understanding of relative roles of tribal governments and BIA. The Tribes view these oversight hearings as an opportunity to bring these conflicts to the attention of Congress and emphasize the need for creative approaches to dealing with the institutional inertia that restricts development of Indian tribal governments.

Congress and federal agencies have expressed a clear intent to elevate the status of and deal on a government-to-government basis with affected tribes. For example, in the area of environmental protection, the Environmental Protection Agency (EPA) has put Indian tribal governments on equal footing with states in developing and exercising authority over resource protection programs. Tribes have primary enforcement responsibility in administering environmental programs within the exterior boundaries of Indian reservations. This example is indicative of the changing role of tribes vis-a-vis BIA.<sup>9/</sup>

<sup>9</sup> The following list briefly outlines the acts and the programs within each that can be assumed by the Tribes. Our intent in providing this outline is to convey the enormity of the tasks at hand and the tremendous opportunities available to the Tribes to become a fully self governing entity. With adequate federal assistance, the Tribes can, over time, realize the opportunities provided by Congress in these landmark pieces of legislation:

(1) Safe Drinking Water Act

Specific programs delegable to Indian Tribes include:

- public water supply system administration;
- underground injection control;
- wellhead protection; and
- sole source aquifer designation.

(2) Clean Water Act

Tribes can implement programs for:

- non-point source pollution control;
- wetlands protection; and
- National Pollution Discharge Elimination System.

(3) Superfund

Indian Tribes are now empowered for the first time to assume a lead role in:

- protecting their lands and resources from uncontrolled and abandoned toxic wastes;
- toxic waste cleanup - cost sharing/co-op agreements; and;
- direct nomination of hazardous waste sites for the the National Priorities List.

(4) Other Programs



Another major source of past problems in the design and implementation of resource programs in particular is that the Bureau 'wore two hats'. On the one hand, BIA was responsible for promoting development of reservation resources. This development, with occasional exceptions, has been by and for the benefit of non-Indians. At the same time, BIA was charged, as trustee, with protecting natural resources from degradation and preserving religious, cultural and subsistence values derived therefrom by tribal members. As a result of its dual role, BIA has generally failed to develop clear objectives and a comprehensive approach to resource management in a manner consistent with the goals and expectations of Indian people and their tribal governments.

One area in which BIA has recently taken the initiative is in the area of administration and management of trust funds. We generally support efforts to attain greater efficiency and accountability in the administration and management of trust funds and are hopeful that streamlining the process of receipt, collection and concentration, investment, and disbursement of trust funds will secure a wider range of financial services for the Tribes and tribal members at a lower cost, generate greater returns on investments, and minimize risks. However, pending a full, complete, and in the Tribes' view, adequate demonstration that the proposal is indeed in the best interests of the Tribes and tribal members, we have requested that the Assistant Secretary for Indian Affairs refrain from implementation of the contract.

In his January 29, 1987 letter to the Secretary of the Interior, Arnold Appenay, then Tribal Chairman, expressed dissatisfaction with

Other programs that are applicable directly to Indian Tribes include the following:

(a) Federal Insecticide, Fungicide, Rodenticide Act:

- inspection program;
- product safety;
- accident/complaint process; and
- enforcement procedures.

(b) Clean Air Act:

- prevention of significant deterioration;
- regulation of pristine areas;
- monitoring and inventory of pollution sources; and
- planning to meet National Ambient Air Quality Standards

the Bureau's failure to adequately inform and consult with affected tribes. Mr. Appenay also raised serious concerns relating to the services that would be provided, the fees to be charged, the return on investments, and the safety of trust funds. The Tribes' concerns have yet to be addressed by the Bureau and subsequent developments have intensified these concerns. <sup>10/</sup>

In addition to raising concerns with services, fees, returns, and risks, we also suggest that BIA should separate the investment function from the activities of receipt, collection and concentration, and disbursement of trust funds. If BIA is intent on contracting the administration and management of trust funds with the private sector, we believe that significant benefits for tribes and tribal members may be derived by breaking out investment services from other administrative and management functions.

We have several suggestions which relate specifically to BIA's procurement of investment services. We believe that the Bureau should separate the activities of investment counseling from the actual execution of trades. This will avoid creating incentives for moving funds solely to generate commissions. If investment counseling and the execution of trades are concentrated in a single firm, portfolio shuffling without cause may result.

As indicated above, the BIA currently manages in excess of \$1.75 billion in trust funds nationwide. When you are dealing with that kind of money you can command the services of a top investment counselor that has a broad-based understanding of financial markets and is in a position to recognize fast-breaking developments in the industry.

In the area of execution, it is important for BIA to deal only with recognized leaders in the industry. The Bureau must structure 'quality' financial services in at every stage of the investment process. Government securities necessarily make up the bulk of trust portfolios. Only a handful of firms are capable of delivering adequate levels of service in this area. Tribes need top-notch

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<sup>10</sup> For example, the resignation of J. David Barnes, Chairman of CEO of Mellon Bank Corp., following that institution's first quarter (1987) loss of over \$60 million on ill-conceived international, real estate and energy loans is most disturbing. We are very concerned--alarmed--that the Assistant Secretary for Indian Affairs, a banker by training, proposed to contract out the administration and management of over \$1.75 billion of trust funds to an institution that has, as a result of a series of strategic investment errors and management blunders, experienced a doubling of loan losses, is carrying a heavy portfolio of nonperforming assets, has soaring operating expenses, and provides an anemic return on assets of a mere .5%.

professionals that can trade on a cost-effective and timely basis. Recognized industry leaders with a demonstrated track record in executing block trading know where such assets are located and how to buy and sell them quickly.

The key consideration in selecting an institution to execute block trades in government securities on a timely basis at the lowest possible cost is the firm's excess net capital position. We stress the firm's net capital position because of the speed of execution that accompanies 'capital to position' trades. If BIA contracts with a firm that is heavily capitalized and willing to commit its substantial resources to facilitate trades, Indian tribes will receive greater returns with lesser risks associated with price movements that occur during execution.

The problems identified above are common to a number of tribes on Indian reservations across the country. The Shoshone-Bannock Tribes have additional concerns which, although they may be indicative of larger issues, are specific to our Reservation and should be brought to your attention. The Business Council of the Shoshone-Bannock Tribes has, on several occasions, insisted that issues, problems, and opportunities on the Fort Hall Indian Reservation be addressed by BIA with specificity. In the past, the Tribes have resisted attempts to 'lump' all tribes and all reservations together. Natural resource endowments, economic activity on reservations and in surrounding areas, climate, topology, demographic trends, and so on vary dramatically across reservations. These differences must be taken into account in the implementation of specific programs on a reservation-by-reservation basis.

The Fort Hall Indian Reservation is blessed with a variety of natural resources. The Snake and Blackfoot Rivers form part of the northern boundary of the Reservation. The springs in the Fort Hall Bottoms constitute the second largest recharge on the entire Snake River system, surpassed only by the recharge that occurs in the Thousand Springs area. Water quality, with certain exceptions, is excellent. The Bottoms provide important habitat for waterfowl, fish and other species of wildlife. Arable lands suitable for irrigation and dry farming produce potatoes, alfalfa, small grains and a variety of other crops. Practically irrigatable acreage on the Reservation exceeds 200,000 acres. Large tracts of land are available and used for grazing. Significant phosphate deposits can be recovered economically.

The natural resource endowment of the Reservation is no accident. Signatories to the Treaty of 1868 relinquished title to an enormous territory but retained the Fort Hall Indian Reservation in southeastern Idaho Territory--and, initially, the Camas Prairie in western Idaho--as a permanent Tribal homeland. The reservation of a permanent homeland for the Tribes included United States' promises to assist the Tribes in farming, blacksmithing, milling, education, and so on.

Today, the federal commitment to the preservation of the Tribes' permanent homeland expressed at the time the Treaty was signed continues in the area of tribal administration, justice, health, education and natural resources. Programs dealing with the Reservation's natural resources include range resources, irrigated and dry farming, protection of riparian areas, protection and enhancement of waterfowl and fisheries, erosion control, solid waste management, coordination with other federal and state agencies, and so on. Much remains to be done in these areas. We identify and briefly discuss a number of problems and opportunities below. This list is not exhaustive and the mere identification of pressing problems and discussion of opportunities is just the first step in implementing effective programs.

The Tribes need to develop a systematic, periodic inventory of range resources that includes condition and trend, utilization, proper use and habitat typing. To enable Tribal government to make informed range management decisions on the Fort Hall Indian Reservation as well as to rectify the current severe overgrazing problem, BIA should provide adequate funding and technical assistance.

The existing BIA range program suffers from lack of adequate funding and professional staffing. It cannot provide the basic inventory data on which to base professional management decision, nor does the program provide adequate funds or staff needed to carry out necessary range management functions or range improvement projects. These deficiencies have led to widespread overgrazing throughout the Reservation, particularly within areas considered to be sensitive by the Shoshone-Bannock Tribes. For example, the open range policies within the unique and productive Fort Hall Bottoms are of particular concern.

The Tribes need to upgrade the existing Fort Hall Irrigation Project to improve the efficiency of water application and protect water quality. One of the most pressing problems is the destruction of trout spawning beds caused by drainage of pesticide- and silt-laden excess canal water into one of the purest and most productive Fort Hall Bottoms streams. A promising solution to the siltation problem lies in the diversion of the excess canal water into a low meadow area. The filtering action of the newly-created wetland would eliminate sediment loading and pesticide contaminants would be removed. The creation of a significant additional waterfowl production area would be an important secondary benefit. The efficiency of the canal system in delivering water to the Reservation must be improved. Technical and financial assistance are needed to accomplish these important goals. In addition, the application of herbicides by BIA into the Fort Hall Irrigation Project to control moss and algae without tribal approval must be curtailed. There is clearly a need for increased communication and coordination between BIA and the Tribes.

There are many opportunities for increasing waterfowl and fisheries habitat in the Fort Hall Bottom, already one of the most productive wetlands in the region. Proceeds from non-Indian waterfowl and fishing permits on the Bottoms contribute a significant amount to tribal revenues. Habitat improvement projects have tremendous potential to further increase fish and waterfowl production yielding benefits to both Indians and non-Indians. The Tribes have the expertise needed to maintain the integrity of these biological resources and to plan and develop habitat improvement projects. However, the Tribes are severely constrained by inadequate funding of these projects. The Tribes' habitat enhancement programs are, in many cases, hindered by conflicting and uncoordinated Bureau programs (such as roads, range, and erosion control). The priorities of the Tribes and the Bureau are often at odds.

One of the most urgent needs on the Reservation is the protection of riparian areas from unrestricted livestock use. Uncontrolled livestock access to water resources on the Reservation has destroyed riparian vegetation, created unstable, highly erodible banks and degraded stream channels. These destabilized streams tend to meander, resulting in erosion and loss of additional land. Subsequent channel degradation eliminates essential trout holding and rearing habitat. Trout spawning beds are destroyed by sedimentation. The once abundant resident fish populations on the Reservation's interior streams have been greatly reduced. In addition, the elevated fecal coliform levels and suspended sediment levels degrade water quality. These sensitive riparian areas need to be fenced to restrict--but not eliminate--livestock use. This will require planning, public involvement and education, administration, labor and materials, maintenance, and monitoring and evaluation.

We recognize that the Tribes, the Bureau, and a number of other federal agencies will be involved in the design and implementation of the above programs. The Tribes anticipate a lead role in clarifying respective responsibilities. This has already taken place in specific areas. For example, the Tribes are currently designing and implementing a program sponsored by Bonneville Power Administration under the auspices of the Northwest Power Planning Council (Amendments to the Fish and Wildlife Program) which will restrict access of cattle to sensitive areas in the Fort Hall Bottoms. The Power Planning Council has also authorized construction of a fish hatchery which will stock cutthroat trout in the Bottoms and, potentially, on other reservations. Similarly, the Power Planning Council has accepted amendments, subject to identification of a funding source, to study the impacts of the operation of American Falls Reservoir on fish. These are examples of the type of coordinated and cooperative efforts which the Tribes are undertaking to mitigate, protect and enhance fisheries both on and off-Reservation.

The Fort Hall Indian Reservation is experiencing severe erosion problems along the Snake River, American Falls Reservoir and along several interior streams. Adequate funding is needed for erosion

control projects. This is a prime example of the failure of the BIA to perform its trust responsibility due simply to severe funding constraints relative to needs. BIA is aware of the situation and is prioritizing projects, but the current budget is inadequate to remedy these severe problems. Erosion continues each year to claim significant amounts of farmland on the Reservation. This erosion creates off-site problems, e.g., water quality and fishery impacts as well.

Similarly, current dry farming practices on the Reservation, particularly fall plowing, create erosion problems due to surface runoff. This results in the loss of millions of tons of topsoil each year. This, coupled with the erosion from overgrazing, severely degrades water quality throughout the Reservation. Model soil conservation programs sponsored by the Soil Conservation Service are available, e.g., terracing, no-till, etc. However, technical support and funding are needed to implement these programs. One promising area is the possibility of building suitable farmland practices into Bureau lease agreements with incentives and penalties as required. This will require study and funding to implement.

The Tribes interest in range utilization, irrigated agriculture and dry farming can be heavily impacted by the Bureau's policies on-Reservation as well as the management activities of other federal agencies off-Reservation. For example, lease rates established for AUMs on and off-Reservation and federal credit policies play major roles in determining the lease income of the Tribes and Tribal members.

Solid waste management has long been a concern to the Shoshone-Bannock Tribes. Adequate funding and technical assistance is needed to develop and implement a long-term, environmentally sound solution to the problem of waste disposal. The Tribes have recently performed an indepth environmental analysis of the current situation, and developed and analyzed alternatives. The Tribes have selected a preferred alternative that is both environmentally sound and that meets the needs of the Reservation. However, funding and technical assistance needed for implementation is severely limited.

Recent amendments to the Safe Drinking Water Act, Clean Water Act and Superfund empower tribes to assume primary enforcement of these programs in the same manner as states. Funding and technical assistance are needed to enable the Tribes to exercise primacy in administering these programs on the Reservation.

The Shoshone-Bannock Tribes fully intend to take on the responsibilities for administration and enforcement of environmental programs. The long-term benefits of doing so in terms of protection of environmental quality from degradation will be accompanied by enhanced governmental capabilities for the Tribes and, ultimately, the exercise of Tribal sovereignty and self-determination for Tribal members. If the promises inherent in Congress' landmark pieces of legislation are to be realized, however, the Bureau must assume a

supporting role. It must recognize the primacy of Tribal regulation and decision making and, in addition, support the Tribes with adequate financial and technical assistance.

## RESOLUTION

WHEREAS, the Shoshone-Bannock Tribes (Tribes) of the Fort Hall Indian Reservation (Reservation) in Idaho territory are a sovereign government responsible for protecting the welfare of its citizens, including Tribal members and other Reservation residents; and

WHEREAS, pursuant to the Fort Bridger Treaty of 1868 (Treaty) and several executive orders, the Tribes have established a unique and continuing relationship with their trustee, the United States government; and

WHEREAS, the Congress of the United States has designated the Secretary of the U.S. Department of Interior, and, in turn, his designee, the Assistant Secretary for Indian Affairs, as trustee obligated to carry out the trust responsibilities and fulfill the solemn promises made by the United States to Indian signatories to that Treaty; and

WHEREAS, the Tribes administer a variety of Tribal and federal programs that of necessity require daily interaction, cooperation and coordination between Tribal leaders and staff and Bureau of Indian Affairs' (BIA) personnel; and

WHEREAS, the Tribes are often frustrated in their efforts to provide effectively for their citizens by BIA's failure to embrace the principle of tribal sovereignty and adopt a supporting role in dealing with Tribal government, by BIA's failure to adopt clear goals and a comprehensive approach to fulfillment of trust responsibilities, and by BIA's failure to deal with the Tribes in a direct, straight forward manner as should a trustee with a beneficiary; and

WHEREAS, the Tribes are sometimes frustrated in such efforts by incompetency, malaise and inordinate delays on the part of BIA personnel in performance of their duties; and

WHEREAS, the distinguished Chairman of the Interior Subcommittee of the House Appropriations Committee, Mr. Sidney Yates, has expressed his indignation at the above described performance; and

WHEREAS, Chairman Yates will hold two days of oversight hearings to solicit the views of Indian tribes on the problems they encounter in dealing with the federal bureaucracy and how these problems may be alleviated both in the short- and long-term; and

WHEREAS, Chairman Yates intends to include measures in the FY 1988 appropriations bill and report to address where possible these problems in the immediate future and assist tribes in formulating long-term solutions; now

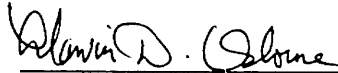


THEREFORE, BE IT RESOLVED BY THE BUSINESS COUNCIL OF THE SHOSHONE-BANNOCK TRIBES that Chairman Yates provide the Tribes an opportunity to testify before the Interior Subcommittee of the House Appropriations Committee at those hearings now tentatively scheduled to begin October 27, 1987; and

BE IT FURTHER RESOLVED that the Business Council of the Shoshone-Bannock Tribes hereby expresses their deep appreciation to the honorable Chairman Yates for his concern and commitment to Indian tribes and his willingness to include measures in the FY 1988 appropriations bill and report which, in both the short- and long-term, will improve the relationship between tribal governments and their trustee.

Authority for the foregoing resolution is found in the Indian Reorganization Act of June 18, 1934 (48 Stat., 984) as amended and under Article (a,g,r,) of the Constitution and ByLaws of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation in Idaho.

Dated this 13th day of October, 1987.



Marvin D. Osborne, Chairman  
Fort Hall Business Council

S E A L

#### CERTIFICATION

I HEREBY CERTIFY, that the foregoing resolution was passed while a quorum of the Business Council was present by a vote of 6 in favor and 1 not voting on the date this bears.



• Velda R. Auck, Tribal Secretary  
Fort Hall Business Council

PRSL-87-11458

Mr. FRANK. Thank you, Mr. Chairman.

My name is Bill Frank, Chairman of the Northwest Indian Fish Commission. I have been running it for the last 10, 15 years now.

Mr. YATES. I remember very well.

Mr. FRANK. Today I don't have a statement for you. We will have a statement as soon as we get back home. We rode the airplane all night so we wrote down a few things here.

Mr. YATES. All right.

#### FEDERAL BUREAUCRACY

Mr. FRANK. This is nothing, this fraud thing has been going on for 200 years plus. The bureaucracy and the mistrust. You heard some of the mistrust today between the government and the tribes. The tribes are full of mistrust. I will get into some of that a little bit later of who they are dealing with and not really understanding what they are saying.

You, the Congress, and the President and the OMB and the White House staff, you have created the glue that holds the BIA bureaucracy that is killing us off. Between all of you every move Indians make under a federal law has to be reported and re-reported and reported again by us and the BIA. Until we get rid of some of the bureaucracy, the glue, the overkill of paper reporting requirements, we, the Indians, don't have a chance.

The paperwork creates the opportunity for fraud by creating layer after layer in the BIA. Strip that away, streamline it and maybe we have a chance. Give us a streamlined, independent agency. Keep enough reporting to insure accountability. Accountability is very important in everything that we do for the use of funds and provisions of services.

Mr. YATES. You talked about accountability and having to report and to report and to report. Now, what does that mean? You have to report to whom on what?

Mr. FRANK. Well, I think it is contracting, Mr. Chairman, on the contracts that come down that we—whether you have duplication, whether you have just answering the contracts, the regulation and the different things that continue to come down.

Mr. YATES. They require too many reports from you?

Mr. FRANK. Yes. I think there is a better—

Mr. YATES. Do you have that same feeling?

Mr. SWIMMER. Yes.

Mr. YATES. Why don't you get rid of some of them then?

Mr. SWIMMER. Most of them are required by law. They are certainly required by regulation.

Mr. YATES. If they are required by regulation?

Mr. SWIMMER. Under the contracting laws that we have to administer, the contracts that we administer, we have a whole set of regulations that require these reports that he is talking about.

Mr. YATES. That is regulation rather than law though, isn't it?

Mr. SWIMMER. Those are based on the 638 law itself. We could do a lot to simplify that just by taking it out of the contracting mode. It is not a procurement and shouldn't be.

Mr. YATES. Why don't you give us a memorandum on that as to how you could simplify that. I think all the tribes would like that, wouldn't they?

[The information follows:]

#### TRIBAL REPORTING REQUIREMENTS

Current reporting requirements for tribal contracts include: (1) quarterly financial reports; (2) an annual report; and (3) a monthly report to the tribe's constituency on the operation of the program.

The Bureau does not consider quarterly financial reports or an annual report to be onerous burdens on contractors. If the tribes and the Congress feel that monthly reports need not be provided to the Indian constituents served by the tribal contractors, a change in regulations could be proposed which would allow the tribal governments to determine how often tribal contractors should report on the operation of the programs.

The pertinent section of law requiring reports to constituents reads as follows:

"Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary." (25 U.S.C. 450c)

The implementing regulations (25 CFR § 271.49) read as follows:

"In addition to the yearly reporting requirements given in paragraphs (a) and (b) of this section, the contractor will make available monthly, to members of the tribe(s) affected, an accounting of the amounts and the purposes for which the contract funds were expended during the previous monthly period in the following manner:

"(1) By posting a notice containing such information on or before the tenth of each month, at a conspicuous place readily accessible to members of the tribe(s) affected; or

"(2) By such other means as is mutually agreed to by the tribal contractor and the Bureau."

Mr. SWIMMER. We are proposing that right now over on the Senate committee, but we have received some opposition from tribes even there. They view it as a block grant. Some of the tribes say no, we want it to continue as a contract. We would rather do it more as a transfer of function. Most of the tribes understand that, and I think would be willing to accept it. But that is part of the premise.

Mr. YATES. Do you have that same feeling?

Mr. FRANK. Well, I think when Mr. Swimmer talks about block grants, I think some of the programs can be block grants. One of the things that I have a problem here is understanding Mr. Hodel back here and understanding Mr. Swimmer. Mr. Hodel is from our country over there. He is from the Northwest. Of course Ross is down the other way. But I have a hard time understanding what they are saying and recommending to this committee. I haven't heard the Indian people recommending anything and I am not certainly recommending anything. I don't have any details. I haven't sat down and thought this out.

Mr. YATES. But Mr. DeLaCruz recommended something and Mr. Kinley recommended something. They want changes.

Mr. FRANK. Yes. That is what I am saying.

Mr. YATES. But those are their recommendations.

Mr. FRANK. Yes. Where does that take us to?

Mr. YATES. That is what we are trying to find out.

Mr. FRANK. To me I come back to D.C. representing the fishery, representing the 20 tribes in the Northwest in fisheries matters and I come through the area office, go to the central office and

back and forth and back and forth. I think there is a better way. That is what I am saying. I think there is a better way that this United States government can—they can land on the moon. We can do all kinds of things now. But we cannot straighten this problem out.

You have heard it for years. We are all getting gray. This guy here he will be getting gray and he will still be coming back here. I mean if we cannot figure this thing out——

Mr. YATES. That is really what the testimony was this morning by both Mr. Swimmer and Mr. Hodel, is the quality, the characteristics of BIA under present operations are almost insoluble. Isn't that correct, Mr. Secretary?

Secretary HODEL. We say it is structural.

Mr. YATES. It is structural. What changes should we make?

Mr. FRANK. I see, just looking at this thing from out there, 3000 miles away, I see we have OMB that doesn't think they have a trust responsibility to the Indian people.

Mr. YATES. That is right.

Mr. FRANK. We have the OMB blaming the President and the President blaming the OMB and Interior saying OMB cut us so we have got to cut you and it just kind of falls in place like that. To me it seems that we have to have—we ought to be set up like the Feds, there is an independent agency over here somehow and be set up there where there are no Republicans or Democrats or who fighting over the Indians. The Indians are all getting fought over all the time. They are right here in this room. We are kicked around like a football.

Whenever the politicians decide they want something great, they pick on a fight with the Indians and then they abrogate a treaty or whatever the whims are of the state and then they go ahead and do that. The Indian, he is just in the seesaw back and forth. It disrupts our lives.

Mr. YATES. How do you want to change it?

Mr. FRANK. I am saying we have got to be an independent agency. I don't know the Congress of the United States——

Mr. YATES. You mean you want it out of Interior?

Mr. FRANK. If that is what it takes.

Mr. YATES. That is the only way you are going to be independent.

Mr. FRANK. If that is what it takes and it is run for the Indian people, then that is what it takes.

Mr. YATES. You take it apart. It is like Humpty Dumpty. I don't know you can ever put it together again.

Mr. FRANK. I am out in the Northwest and I come to Congress. There are two things I can go to. I can come back here to the Chairman and to this committee and present my case. I can go to the other side and present my case and get money for our programs. Hopefully that money will go straight through and get to where we are to enhance and put our life together as far as the salmon is concerned, because they are a big part of our life.

What happens is that we don't have any stability here. We don't have—there are two things I can do. I can go to court. We are trying to stay out of court. Or I can go to Congress. But when I go to the Bureau of Indian Affairs, I sit right here and the Chairman has asked the Interior if they were putting money, asking the OMB

or the President for money on their side for our programs. No. We were doing it. We come straight to Congress. But they never ask for funds on that side. That is just—where do we go to? We go to Congress, we come here and testify.

Mr. YATES. You are going to prepare a statement and tell us what you want us to do.

Mr. FRANK. Yes.

Mr. YATES. All right.

Thank you, panel, very much. We appreciate it.

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TUESDAY, OCTOBER 27, 1987.

## INDIAN AFFAIRS

### WITNESSES

MICKEY PABLO, CHAIRMAN, CONFEDERATED TRIBES OF SALISH AND KOOTENAI

DANIEL E. JORDAN, WASHINGTON, D.C., REPRESENTATIVE, HOOPA VALLEY TRIBE

ALVINO HAWKINS, SR., VICE CHAIRMAN, WHITE MOUNTAIN APACHE TRIBE

Mr. YATES. Now we have Mr. Pablo, Mr. Jordan and Mr. Hawkins. We will take a three minute break.

Mr. PABLO. Thank you, Mr. Chairman. As far as getting our natural resources inventory, we would like to thank you and your committee for making it possible for us to keep our water resources program going. Thank you for that, Mr. Chairman. We spend about one-third of our time battling with the BIA. Most of these battles are totally unnecessary and result in the expenditure of substantial tribal resources that can be better directed to more productive purposes. The battles are unnecessary because in most cases if the BIA would simply exercise common sense and judgment and sensitivity to tribal interests, there would be no need for conflict.

Mr. YATES. Give me an example.

### LAW ENFORCEMENT

Mr. PABLO. Yes, Mr. Chairman. In 1973 the tribes provided—beginning in 1973 the tribes provided law enforcement services to the Flathead Reservation through a 638 contract with BIA. The program succeeded only because the tribes had infused a lot of dollars into that program. The BIA funding had been woefully inadequate. In April of this year the tribes were made aware that BIA seeks to terminate funding for law enforcement programs, such as the Flatheads, which involve partial concurrent state and tribal jurisdiction under Public Law 280.

If the BIA succeeds in its plans to terminate this funding, it would be catastrophic to the tribe's law enforcement program. It would be tantamount to the BIA turning jurisdiction over to the State of Montana.

### TRIBAL ATTORNEYS

Second is our attorney contracts. We have an in-house legal department. Recently the BIA approved the attorney contracts but

has unilaterally added a condition which reads as follows: The duties of the attorneys do not include or permit the prosecution of any claims against the United States, unquote. By this condition the United States seeks to completely——

Mr. YATES. Why did you put that in? That is Mr. Tarr. He doesn't want any work or what? You don't want to pay any lawyers to sue the United States. Is that what that means?

Mr. TARR. That is what that language means.

Mr. PABLO. Our attorneys are paid out of tribal funds, Mr. Chairman. There is no government contracting for our attorneys. It is all tribal funds.

Mr. YATES. Will you read that again then about the attorneys? BIA has approved the attorney contracts but unilaterally added conditions and duties that—why if it is paid out of tribal funds——

Mr. SWIMMER. There is no prohibition if they use tribal funds to hire a lawyer.

Mr. YATES. Listen to what he is saying.

Mr. SWIMMER. We do back on section 81. We have to approve attorney contracts of any kind.

Mr. YATES. Right. If they are paying their lawyers, why shouldn't—why should you stop them from suing the United States?

Mr. SWIMMER. I don't think we should.

Mr. YATES. There you are. That is the second constructive thing the committee has done.

Mr. PABLO. Thank you, Mr. Chairman.

Thank you, Mr. Swimmer.

Thank you.

#### HUNTING AND FISHING ORDINANCES

Mr. Chairman, another example is recently we had a hunting and fishing ordinance, ordinance 44D which asserted tribal jurisdiction on all people and all lands within the reservation. Under the Indian Reorganization Act we had secretarial approval of our ordinance. Yet the U.S. Fish and Wildlife Service won't publish our regulation. I don't know where the problem is.

Mr. YATES. But that isn't Mr. Swimmer. That is Fish and Wildlife.

Mr. PABLO. The Department of Interior.

Mr. YATES. Do you want to answer that?

Mr. SWIMMER. We have taken up that issue. I visited with the tribe at length about the issue. I am aware of it.

Essentially Fish and Wildlife did not believe the tribe had unilateral authority to issue its own fish and game code on the reservation affecting non-Indians, unless the state concurred with the tribes.

In this instance, the State has concurred with the tribe's requirements, which are extra and over what the state would require. We are going to publish the ordinance. We have advised the tribe of this.

Mr. PABLO. Mr. Chairman, we contacted the office the other day, and at that time we didn't know where it was.

Thank you again, Mr. Swimmer.

Mr. SWIMMER. You are welcome.

Mr. PABLO. Maybe if we can look at some recommendations.

Mr. YATES. Do you get a long all right with your area office?

Mr. PABLO. Yes.

Mr. YATES. You don't want that abolished?

Mr. PABLO. That is in our recommendations not to completely abolish it.

Mr. YATES. Just to have it?

Mr. PABLO. Yes, have the area office, but have it as providing technical expertise to the field office without getting into the interpretation of policy and regulations as set down under the Bureau. We would decentralize the central office.

Mr. YATES. How do you do that?

Mr. PABLO. I don't know.

Mr. YATES. We will send Mr. Swimmer out to the field.

Mr. PABLO. We believe BIA lacks a statement.

This deficiency is responsible in part for the problem that exists today between Indian tribes and their principal trustees. The BIA's origin is——

Mr. YATES. You are not going to read your whole statement?

Mr. PABLO. I have it shortened a little bit. It will take five minutes.

Mr. YATES. I don't know that you have that long. You have others behind you chomping at the bit.

#### RECOMMENDATIONS FOR CHANGE

Mr. PABLO. We believe the Congress statutorily should define its mission. Two, should facilitate a Federal tribal partnership and advance tribal self-determination; the BIA should be decentralized with greater emphasis on field offices and less emphasis on area offices; four, Congress should adopt a Federal Indian policy statement and; five, Congress should designate BIA as lead agency for coordination of Federal programs affecting tribal governments.

[The prepared statement of Mr. Pablo follows:]

TESTIMONY OF MICHAEL T. PABLO  
CHAIRMAN OF THE TRIBAL COUNCIL OF THE  
CONFEDERATED SALISH AND KOOTENAI TRIBES  
BEFORE THE  
HOUSE APPROPRIATIONS SUBCOMMITTEE  
ON THE INTERIOR

REGARDING OVERSIGHT HEARINGS  
ON THE ORGANIZATION AND MANAGEMENT  
OF THE BUREAU OF INDIAN AFFAIRS

October 27, 1987



My name is Michael T. Pablo. I am the Chairman of the Tribal Council of the Confederated Salish and Kootenai Tribes. The Tribes are pleased to present testimony before this subcommittee on its oversight hearings on the Bureau of Indian Affairs (BIA). My oral testimony will summarize the fourteen page written testimony that the Tribes have prepared.

There is not sufficient time to list all of the BIA's transgressions in recent years against the Confederated Tribes. Nor is that the principal focus of this hearing. Suffice it to say that the Tribes spend about one-third of their time battling with the BIA. These battles are not over frivolous matters. Most involve matters of immense importance to the Tribes, some of lesser importance. Most of these battles are totally unnecessary and result in the expenditure of substantial Tribal resources that could be better directed to more productive purposes. The battles are unnecessary because, in most cases, if the BIA would simply exercise common sense and judgement and some sensitivity to Tribal interests, there would be no need for conflict. It is extremely frustrating to the Tribes to have to expend so much unnecessary energy and time fighting their principle trustee.

Allow me to provide just two brief illustrations of the day-to-day problems which the Confederated Tribes experience with the BIA.

Since 1973, the Tribes have provided law enforcement services to the Flathead Reservation through a 638 contract

with the BIA. This program has succeeded only because the Tribes have infused a lot of Tribal funds into the program. The BIA funding has been woefully inadequate. In April of this year, the Tribes were made aware that the BIA seeks to terminate funding for law enforcement programs, such as the Flatheads', which involve partial concurrent state-tribal jurisdiction under Public Law 280. If the BIA succeeds in its plans to terminate this funding, it will be catastrophic to the Tribes' law enforcement program. Termination of this funding is tantamount to the BIA turning jurisdiction over to the State of Montana.

The second and last example I will give is in regards to the Tribes' attorney contracts. The Tribes are still shaking our heads over this one. The Tribes have an in-house legal department. Recently the BIA has approved the attorney contracts, but has unilaterally added a condition which reads as follows: "The duties of the attorneys do not include or permit the prosecution of any claims against the United States." By this condition the United States seeks to completely insulate itself from being held accountable for its wrongdoings. The Tribes view this condition of the contract as unconscionable, unlawful and absurd.

The BIA lacks a coherent mission statement. This glaring deficiency is responsible, in part, for the problems that exist today between Indian tribes and their principal trustee. The BIA's origin is rooted in outdated, nineteenth century soil.

The statute creating the BIA and the position of Commissioner of Indian Affairs is 155 years old; it originally placed the BIA under the Department of War. Not much has really changed in the last 155 years. The purpose and duties of the BIA remain ill-defined.

Look at the first two sections of Title 25 of the United States Code. There is no mission statement. There are no congressional findings and policy statements. There is no mention whatsoever of the fundamental attributes of federal Indian law and policy today. No mention of fostering tribal self-determination. No mention of strengthening reservation economies. No mention of the government-to-government relationship between federal and tribal governments. Instead, one finds a bland, bureaucratic statement delegating authority from the Secretary of Interior to the Commissioner of Indian Affairs.

The BIA's bureaucratic, chain-of-command-oriented organic law illustrates the fundamental flaw in the BIA-Tribal relationship. It is an institutional flaw: the federal trustee machinery is not linked with the tribal machinery. At best, they operate on separate tracks, sometimes parallel, often at cross-purposes.

True tribal self-determination originates in Indian country -- not in Washington, D.C., or Billings, or Portland. Each tribal government is unique. Each government strives to advance self-determination and compatible economic development

through reservation-specific, tailored goals and objectives. All too often, however, these tailored-to-fit tribal plans do not mesh with the BIA's vertically-integrated bureaucracy and its generic guidelines. The result: the BIA's bureaucracy is often the principal obstacle to achievement of tribal self-determination.

The essence of the problem is the BIA official's single-minded allegiance to Title 25 of the U.S. Code and CFR, the BIA Manual, and to the BIA as an agency. The allegiance does not cross over to fostering the tribal government's reservation-specific goals and objectives. The operation of the present BIA institution itself suffocates tribal self-determination, and turns the Indian Self-Determination Act into the BIA Self-Protection Act. Corrective action is needed.

In our written testimony the Tribes have submitted five specific recommendations. At this time, I would just like to list the five recommendations. I would refer the Committee to our written testimony for an explanation and elaboration on the recommendations. The five recommendations are:

1. The Congress should statutorily define the BIA's mission.
2. By statute, the Congress should facilitate a federal-tribal partnership to advance tribal self-determination.

## BLOCK GRANTS AND CONTRACTING

Mr. YATES. I want to ask one question.

Do you favor a block grant approach, to let the tribes handle everything?

Mr. PABLO. I believe a block grant approach wouldn't be contracting under Public Law 386, would it?

Mr. YATES. Wouldn't it?

The block grant approach would not provide for contracting?

Mr. SWIMMER. It would be in lieu of contracting. It would take it out of that procurement mode and there would be a shift of funds with the developing of a budget.

Mr. YATES. All right.

Mr. DECKER. My name is Daniel Decker. The idea of a block grant has been discussed quite a bit but there are some things that haven't been brought forward with that concept.

Many times in contracting programs we are administering BIA programs, the Bureau of Indian Affairs will impose their internal policy memorandum, which is out of BIA, which is an infamous document to us in the Indian world, and they will impose those bureau-policy memoranda upon tribes, and that is not necessarily from the CFR, or regulations, to implement the regulations, and many times those memoranda requirements make it very difficult to administer programs and to improve them as far as providing services.

One of the first difficulties with contracts is they rely on the bureau's policy manual to impose those requirements on contracts, which didn't make any sense at all.

Mr. YATES. Not at all.

## WHITE MOUNTAIN APACHE TRIBE

Mr. HAWKINS. I am Alvino Hawkins, I am Vice Chairman of the White Mountain Apache Tribe of Arizona, and on behalf of the tribe's governing body, testify before this distinguished committee.

I trust that my remarks may somehow contribute to this most important task which now lies before Congress.

Before I go any further, I will have the written testimony before you tomorrow.

Mr. YATES. All right.

Mr. HAWKINS. I didn't have a chance to file it.

Mr. YATES. You can mail it in. You don't have to rush.

## AMERICAN INDIAN POLICY COMMISSION

Mr. HAWKINS. In 1977 the American Indian Policy Review Commission issued its final report to the United States Congress.

In its report the commission defined the Federal trust responsibility as:

An established legal obligation which requires the United States to protect and enhance Indian trust resources and tribal self-government, and to provide economic and social programs necessary to raise the standard of living and social well-being of the Indian people to a level comparable to the non-Indian society \* \* \* the scope of the trust responsibility extends beyond real or personal property which is held in trust.

The U.S. has the obligation to provide services, and to take other appropriate action necessary to protect tribal self government \* \* \* once a trust relationship

3. The BIA should be decentralized with greater emphasis on the field offices and less emphasis on the area offices.

4. Congress should adopt a federal Indian policy statement.

5. Congress should designate the BIA as lead agency for coordination of federal programs affecting tribal governments.

In conclusion, the Confederated Salish and Kootenai Tribes urge Congress to enact legislation to redefine the role of the BIA to bring its mission in line with contemporary federal Indian policy and tribal needs.

Thank you again for holding this hearing and providing the Tribes an opportunity to present our views and recommendations.

has been assumed, administrative action is governed by the same high duty which is imposed on the private trustee.

I would like to go further, but I have violations by BIA who has mismanaged the reservation for the benefit of the reclamation project which serves water users in the Salt River Valley.

#### FORESTRY PROGRAM

Then we will go on to our forests which are being overcut at this time, which are being mismanaged by the Bureau of Indian Affairs.

Mr. YATES. They cut your forests over your protests?

Mr. HAWKINS. Yes. We had to spend about \$25 million to go along with their timber cut. They told us or else they were going to sell our timber to a private—

Mr. YATES. Who told you that?

Mr. HAWKINS. BIA foresters plus the Secretary of the Interior, the predecessor.

Mr. YATES. Why did this happen?

Mr. SWIMMER. There was a disagreement between the tribes and the foresters of the Bureau of Indian Affairs. The foresters' professional opinion is that they need to maintain a certain level of cutting in order to provide for the sustained yield concept.

The tribe believes that is overcutting. I have listened to both sides of the argument. I have sided with the professional foresters.

Mr. YATES. Why?

Why shouldn't the tribe have the right to decide how long they should keep their resources?

Mr. SWIMMER. As long as I have the trustee responsibility, if I don't continue to listen to the foresters and do what they tell me is the right thing to do, then I have no defense against the tribe coming back in 10 years and saying, well, Mr. Secretary, you mismanaged my resources.

If I stay with what the professional foresters tell me is the right thing to do, that is the best advice I can get at this time.

Mr. YATES. Depending on how good the professional foresters are?

Mr. SWIMMER. I will give the Forest Division of the Bureau high marks. They require professional expertise, they are some of the best people we have working out there, and I think the people in the Northwest would agree with that.

Mr. HAWKINS. I totally disagree with you there.

Mr. YATES. Why don't you call in—if I may suggest this, does it make sense to call in professional foresters from the Forest Service and ask them to review it?

Mr. SWIMMER. They operate under the same principles.

Mr. RYAN. We had a meeting with Senator DeConcini on this issue some months ago and it is a very complicated issue involving royalty and management, sustained yield, management practices, and the diameter size of the timber resources. Essentially, there are differing opinions about what the levels of management intensity should be with respect to managing the forests. Whether or not the forests should be managed in a way to make a timber company

profitable or whether or not the forests should be managed as a productive forest asset, and that is where the royalty issue arises.

Our foresters believe that the forest is an asset and that the forest should be managed profitably. Another point of view is that the forests should be managed in such a way the timber company is profitable, and those are not necessarily the same types of management. That is essentially the way it comes down and there are disagreements about it. Our forestry people believe that our trust responsibility is to manage the forests as an asset rather than to manage the forests in a way their company can be profitable which may mean cutting timber in such a way we are not properly managing the forests.

Mr. HAWKINS. Mr. Chairman, I would like to have the test to us on what they are saying over here, the Assistant Secretary and—

Mr. YATES. I am not going to be able to decide this. This is something that you have to decide—

Mr. HAWKINS. We have hired some experts to retract what they are saying, and we have found out what they have given us are erroneous figures. We could cut half of what they predict, and we believe—

Mr. YATES. And still be profitable?

Mr. HAWKINS. Yes, we are going to be hurt economically due to overcutting, due to mismanagement of BIA. We will be hurting in the forests that employees—due to mismanagement of the BIA we stand to lose some employees at our sawmill on our reservation and we are at this time trying to find ways to alleviate that unemployment and other economic development we have come across. We believe they are overcutting the forests just for the benefit of the Salt Water River Association.

They want to have runoff and plus at this time we have protested year after year their burning our forests again. They tell us that is what they called broadcast burning. Right now my whole reservation is on fire. We have protested.

We told BIA people personally down there, could you find another source or method that could, you know, let's do away with it. We are burning our own future timber stands but they still persist on controlled burning on our reservation. But I do have some, what I want to talk a—maybe I will go down to my—

Mr. YATES. We will read your report.

Mr. HAWKINS. We have tribal participation—professional and technical assistance, preference in contracting, then down to—I will start with one, if that is all right with you, Mr. Chairman?

Mr. YATES. Sure.

#### RECOMMENDATIONS FOR CHANGE

Mr. HAWKINS. One, insure that the majority of funds appropriated by Congress for Indian programs actually reach the Indian tribes and are not absorbed by the bureaucracy.

Two, coordinate the various Federal agency programs more effectively by consolidating their activities in one department.

Three, remove existing and potential conflicts of interest by the Bureau within the Department of Interior and comprehensively



review and study restructuring of the Bureau, and if necessary, create separate department or administration of Indian Affairs.

Four, provide for more direct input by Indian tribes into the policy making and budget making processes and thereby provide more autonomy at the local level.

Five, provide a process by which the activities of the Bureau can be continually elevated and upgraded.

My conclusion: Congress has now before it an opportunity to bring about realization of true Indian self-determination. This can be accomplished by reforming a Federal bureaucracy which has lost sight of its purpose and has become an end unto itself.

Only when the Bureau realizes that it exists solely to further the goal of Indian self-determination and not to serve itself, only then will Indian people be truly able to determine their destiny and their future place in American society.

The status quo cannot be allowed to continue indefinitely. It is the desire of Indian people across the country that the fundamental changes necessary to insure the proper functioning of the Bureau of Indian Affairs be made as quickly and as effectively as possible. It is with a hope that the future of the Indian America is as bright as the future of other Americans, that we place our trust in Congress.

Thank you very much.

[The statement of Mr. Hawkins follows:]



EXECUTIVE OFFICES

# White Mountain Apache Tribe



Alvino Hawkins, Sr.  
Vice-Chairman

## STATEMENT

ALVINO HAWKINS

VICE CHAIRMAN, WHITE MOUNTAIN APACHE TRIBE,  
FORT APACHE INDIAN RESERVATION, WHITERIVER, ARIZONA

## BEFORE THE

SUBCOMMITTEE ON INTERIOR AND RELATED AGENCIES  
COMMITTEE ON APPROPRIATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

OCTOBER 30, 1987

## SUMMARY OF PROBLEMS REQUIRING A RESTRUCTURING OF THE BUREAU OF INDIAN AFFAIRS

## INTRODUCTION

Mr. Chairman, on behalf of the White Mountain Apache Tribe of Arizona, and on behalf of the Tribe's governing body, please accept my sincere appreciation for the opportunity to testify before this distinguished Committee. I trust that my remarks may somehow contribute to this most important task which now lies before Congress.

In 1977 the American Indian Policy Review Commission issued its final report to the United States Congress. In its report the Commission defined the Federal Trust Responsibility as:

"An established legal obligation which requires the United States to protect and enhance Indian trust resources and tribal self-government, and to provide economic and social programs necessary to raise the standard of living and social well being of the Indian people to a level comparable to the non-Indian society...the scope of the trust responsibility extends beyond real or personal property which is held in trust. The U.S. has the obligation to provide services, and to take other appropriate action necessary to protect tribal self-government...once a trust relationship has been assumed, administrative action is governed by the same high duty which is imposed on the private trustee."

The trust obligation of the United States of America to my Tribe is now and has been systematically violated by Secretary Hodel, his predecessors and subordinates.

SPECIFIC AND ONGOING VIOLATIONS OF  
THE TRUST OBLIGATION OWING  
TO THE WHITE MOUNTAIN APACHE TRIBE

I can speak in specific terms in regard to the violations of the trust obligation by Secretary Hodel and successive Secretaries of the Interior. Although Secretary Hodel and his predecessors are principal agents of the United States Trustee, purportedly required by law to act on behalf of the White Mountain Apache Tribe, they have, nevertheless, intentionally violated their obligation to my Tribe.

The Salt River and numerous tributaries of that stream rise on the Fort Apache Indian Reservation. The Salt River and its tributaries should be managed for the benefit of the Tribe and its economic development; nevertheless, Secretary Hodel is today, as have predecessors in the past, suppressing the use of Salt River water on the Fort Apache Indian Reservation to the end that the water runs off and away from our Reservation for the benefit of the Salt River Federal Reclamation Project operated by Secretary Hodel pursuant to a contract with the Salt River Valley Water Users' Association.

It is a prime example of the unconscionable and illegal conflict of interest that permeates all aspects of Secretary Hodel's administration of Indian Affairs. The Secretary is today creating poverty on our Reservation to supply water for the non-Indian communities downstream; that is an undeniable fact. Equally important is the fact that the Secretaries of Interior have committed all of the Salt River water--except for the tiny quantities used by my ancestors in the 1870's--for the benefit of the non-Indian community and the Lower Valley of the Salt River. To increase the flow of Salt River off and away from our Reservation to the greatest extent possible, the Secretaries of the Interior after closing the Roosevelt Dam, a major component of the Salt River Federal Reclamation Project, permitted non-Indian livestock to enter upon the Reservation and to destroy our grazing lands. In 1900 the carrying capacity of our Reservation was 41,000 head of cattle. By mid-1920, the carrying capacity of our Reservation was 17,500 head. As a result, a great deal of water has run off our Reservation that could have been used for the purpose of creating and maintaining a viable livestock industry. Our livestock industry has never recovered from the planned destruction of our grazing lands and the carrying capacity of our Reservation remains at 17,500 head with disastrous consequences to our economy.

The destruction of our grazing lands and the manipulation of our Reservation to produce large quantities of water for Salt River

Federal Reclamation Project is but a part of the crime being committed against my people by Secretary Hodel.

Our investigations reveal that our forests from the mid-1960's have been mismanaged by successive Secretaries of the Interior to produce the maximum quantities of Salt River runoff. In that year, based upon recommendations of the Bureau of Indian Affairs and forced upon my Tribe, the Bureau of Indian Affairs required us to increase the annual allowable harvest of timber on our Reservation to 93,000,000 board feet annually. That was approximately twice the harvest of timber that would be permitted under the Congressional sustained-yield mandate, very properly imposed by Congress. The Bureau of Indian Affairs intentionally violated that sustained-yield mandate to enhance the flow of Salt River water away from the Reservation and in so doing destroyed our forests. A part of that crime against my people was that the Bureau of Indian Affairs to increase the flow of water from our Reservation demanded that we either increase the annual allowable harvest to twice that allowed by the sustained yield mandate or the Bureau of Indian Affairs would intentionally sell that timber off the Reservation to non-Indian sawmills. As a result, we paid out of our own pocket \$27,000,000 to increase the size of our sawmill production.

Never at any time were we told by the Bureau of Indian Affairs that we were cutting our forests in excess of net growth. Never at any time were we told by the Bureau of Indian Affairs that our forests would be destroyed as they are being destroyed today. We are now trying to rectify the disaster brought upon us by the Bureau of Indian Affairs to produce water for the Salt River Valley Water Users' Association.

My Tribe is today endeavoring to find sources of logs off the Reservation to the end that we will not suffer the planned economic disaster forced upon us by the Bureau of Indian Affairs. We find now that the Bureau of Indian Affairs set our annual allowable cut without any regard to economic consequences. We find, moreover, that the Bureau of Indian Affairs intended without our knowledge to convert our forests from a sawlog forest to a pulpwood forest and thereby increase the quantity of water running away from our Reservation. These are matters that cry out for action by the Congress in the restructuring of the Bureau of Indian Affairs.

#### TRIBAL PARTICIPATION

These and other problems support the argument that the organizational structure of the Bureau and its underlying philosophy concerning the delivery of Indian programs must be changed to provide for a more efficient management. One of the crucial factors which must be present in any effort to restructure the Bureau of Indian Affairs is Indian involvement in the decision making. None of the Bureaus' problems can be adequately addressed

without a complete and sensitive understanding of the needs of Indian countries expressed by Indian people. Although changes are needed, it should be emphasized that Indian people do not wish to institute any changes which would threaten the existence of Indian tribes as a distinct people nor their special relationship with the United States.

#### FRAGMENTED SERVICES

Although the Bureau is the primary agent for carrying out federal trust responsibilities, it is not the federal government's exclusive agent in this realm. The trust responsibility extends to the federal government as a whole. Various federal agencies have programs relating to Indians. Many of the agencies provide only sporadic and piecemeal service to the Tribes. There is an overall lack of coordination in the delivery of these agency programs and it would be beneficial to consolidate program efforts under one federal agency dealing with Indian programs.

#### PROFESSIONAL AND TECHNICAL ASSISTANCE

If Indian tribes are to succeed in their quest for true self-determination, they must be provided with the professional and technical expertise necessary to compete in modern society. Far too often the Tribes have been discouraged by Bureau officials from determining their own needs for assistance. An obvious solution would be to allow the Indian people to determine their needs by utilizing their own experts. The Bureau should encourage and not discourage the development of skilled Indian technicians capable of managing reservation affairs. The Tribes must develop a core group of technical and professional people dedicated to solving the problems of Indian America. The Tribes must not be forced to continually rely on Bureau of Indian Affairs personnel for technical assistance. The Tribes can develop their own professional and technical expertise by competing for this expertise on the open market with funds supplied through the Bureau.

#### PREFERENCE IN CONTRACTING

The Bureau and other federal agencies have failed properly to implement Indian preference statutes. Indian preference statutes are designed to promote economic growth on reservations through the development of Indian enterprises and a qualified labor force. Federal agencies have repeatedly awarded contracts on Indian reservations to so-called Indian enterprises which are in reality nothing more than fronts for non-Indian enterprises. Bureau and other federal agency personnel must be educated to the realities of Indian preference and the policies underlying the regulations and statutes. Regulations implementing the statutes need to be revised

to eliminate unnecessary agency discretion and require vigorous enforcement.

#### RECOMMENDATIONS

These problems which I have outlined have been touched on only very briefly. Obviously there needs to be a reassessment of the Bureau's role in Indian affairs. In making this reassessment Congress should keep in mind that Indian people wish to control their own destiny and in doing so must have the opportunity to participate in the development and management of their own programs with assistance from the federal government only as needed and as requested from Indian tribal governments. The federal government can best contribute to this goal by cooperating with tribal governments in the resolution of the many problems facing Indian America in a professional and efficient manner. However, any changes in the organization of the Bureau of Indian Affairs must be made without any erosion of the trust relationship existing between the federal government and Indian tribes. Indian people have never and will never surrender their right to self-government, and the federal government must never expect to govern those who have not given their consent to be governed. Primary among the goals of any Bureau restructuring should be the following:

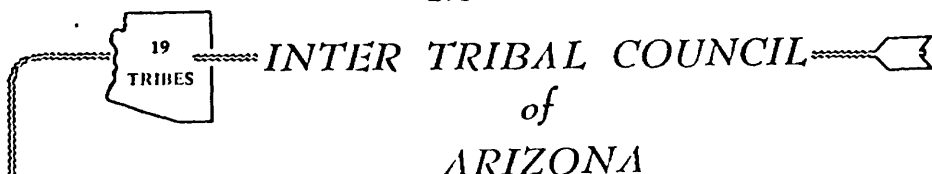
1. Ensure that the funds appropriated by Congress for Indian programs actually reach the Indian tribes and are not absorbed by the bureaucracy.
2. Coordinate the various federal agency programs more effectively by consolidating their activities in one department.
3. Remove existing and potential conflicts of interest by the Bureau within the Department of Interior and comprehensively review and study restructuring of the Bureau, and if necessary create a separate department to administer Indian Affairs.
4. Provide for more direct input by Indian tribes into the policy making and budget making processes and thereby provide more autonomy at the local level.
5. Provide a process by which the activities of the Bureau can be continually evaluated and upgraded.

#### CONCLUSION

Congress has now before it an opportunity to bring about a realization of true Indian self-determination. This can be accomplished by reforming a federal bureaucracy which has lost sight of its purpose and has become an end unto itself. Only when the Bureau realizes that it exists solely to further the goal of

Indian self-determination and not to serve itself, only then will Indian people be truly able to determine their destiny and their future place in American society.

The status quo cannot be allowed to continue indefinitely. It is the desire of Indian people across the country that the fundamental changes necessary to ensure the proper functioning of the Bureau of Indian Affairs be made as quickly and as effectively as possible. It is with a hope that the future of Indian Americans is as bright as the future of other Americans and we place our trust in Congress to make that possible.



# INTER TRIBAL COUNCIL of ARIZONA

October 23, 1987

MEMBER TRIBES  
 AK CHINE COMMUNITY  
 CAMP VERDE YAVAPAI APACHE  
 INDIAN COMMUNITY  
 COCOPIA TRIBE  
 COLORADO RIVER INDIAN TRIBES  
 FORT MCDOWELL YAVAPAI TRIBE  
 FORT MOHAVE TRIBE  
 GILA RIVER INDIAN COMMUNITY  
 HAVASUPAI TRIBE  
 HONI TRIBE  
 HUALAPAI TRIBE  
 KUMAR PAUTE TRIBE  
 PAPAGO TRIBE  
 PIMA TRIBE  
 PUEBLO TRIBE  
 QUICHU TRIBE  
 SALT RIVER PIMA MARICOPA  
 INDIAN COMMUNITY  
 SAN CARLOS APACHE TRIBE  
 TONTO APACHE TRIBE  
 WHITE MOUNTAIN APACHE TRIBE  
 YAVAPAI PINE SCOTT INDIAN TRIBE

Sidney R. Yates, Chairman  
 Appropriations Subcommittee on  
 Interior and Related Agencies  
 B-308 Rayburn House Office Building  
 Washington, D.C. 20515

Dear Congressman Yates,

Enclosed for your information is the testimony of the White Mountain Apache Tribe regarding the Bureau of Indian Affairs to be presented on Tuesday, October 27, 1987, at a hearing of the Appropriations Subcommittee on Interior and Related Agencies. The Inter Tribal Council of Arizona wholeheartedly supports the testimony.

As you know, Indian tribes have consistently voiced their concern regarding the general management and the delivery of services provided by the Bureau of Indian Affairs. As a result of a recent series of news articles, national attention is once again being focused on the performance of federal agencies, including the Bureau of Indian Affairs, resulting in the call for Congressional hearings.

At a meeting of the Inter Tribal Council of Arizona held on October 23, 1987, the Council took action to support the testimony of the White Mountain Apache Tribe. Additionally, the Council took action to make the following recommendations to Congress:

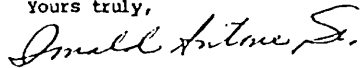
- 1) that Congress develop policies to directly fund programs with Indian tribes, thereby reducing the administrative costs of the Bureau of Indian Affairs.
- 2) that site visits to various Indian tribes within Arizona be conducted to enable Congressional delegates to better understand the needs of the Indian people.
- 3) that hearings be conducted within Arizona and that Congress work jointly with the Arizona tribal governments to review federal agencies operations and make recommendations, if necessary, regarding restructuring the Bureau of Indian Affairs to better serve the needs of Indian people.

124 West Thomas Road • Suite 201 • Phoenix, Arizona 85013 • (602) 248-0071



We appreciate your continued support in Indian issues. Feel free to contact me if you have any questions.

Yours truly,

A handwritten signature in cursive script, reading "Donald Antone, Sr.".

Donald Antone  
Governor, Gila River  
Indian Community  
President, Inter Tribal  
Council of Arizona -

TUESDAY, OCTOBER 27, 1987.

## INDIAN AFFAIRS

### WITNESSES

SUZAN HARJO, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

SAM DELORIA, DIRECTOR, AMERICAN INDIAN LAW CENTER.

REID CHAMBERS, FORMER ASSOCIATE SOLICITOR, SOLICITOR'S OFFICE IN CHARGE OF INDIAN AFFAIRS

Mr. YATES. You have heard the testimony of the Secretary, the testimony of Mr. Swimmer.

I should identify for the record, Ms. Harjo. You are what at the NCAI, executive director?

Ms. HARJO. Yes, I am.

Mr. YATES. Mr. Deloria, who is Professor of Law——

Mr. DELORIA. Director of the American Indian Law Center. I quit teaching in about 1974. You have to show up in class all the time.

Mr. YATES. We have Mr. Reid Chambers, formerly in the Solicitor's Office in charge of Indian Affairs, Associate Solicitor. He is now engaged in private practice.

We are glad to have all of you here.

We welcome your testimony.

### REPRESENTATION OF INDIAN PEOPLE

Ms. HARJO. Thank you. Everyone has identified the basic problem which is that Indians don't own what we should and we don't control what we own. The allegation made by Mr. Swimmer and Secretary Hodel that the people talking here represent only 10 percent of the Indian tribes is ridiculous.

Most tribes have called for Ross Swimmer's resignation, most tribes have called for rejection of Ross Swimmer's initiatives which Congress has gone along with and called for themselves, most tribes have called for consultations on further initiatives. That has not been forthcoming, and the real question regarding representation is who does Mr. Swimmer represent, and how is that representation carried out?

The answer from our membership, some 150 Indian Governments, is that he does not represent us, does not represent our best interests and does not represent any Indians very well.

### IDENTIFICATION OF THE TRUST CORPUS

The Administration's testimony is its own best example of why Indians are just marking time and fearful of doing anything until this Administration leaves town. Mr. Swimmer wants a definition of the trust responsibility to identify the trust corpus.

I find that quite disturbing. What does the trust go to, is what he is asking. The trust should go to the beneficiaries rather than to a catalogue of programs or resources, and he wants a deadline for determination of BIA management.

This reminds me of Griffin Bell when he was attorney general, asking what is the trust corpus? Why aren't we representing only land and resources issues?

I understand that it is a difficulty and if it is too hard for people to figure it out or to do anything about it, I think they should just go home and let some Indian people try to figure it out and people in Congress try to figure it out.

I was disturbed also by the exchange with Mr. Real Bird and I wish all Interior officials were as vigorous in defense of or as advocates of Indian interests as they are investigations, and punitive actions against Indian peoples.

#### NUCLEAR WASTE POLICY ACT

The Department of Interior has lacked vigor in implementation of the Nuclear Waste Policy Act in designating tribes as affected parties under the Act. Since its enactment in 1982, only three tribes have been designated as affected. That means they do not—the others who have petitioned are not eligible for monies, that would allow them to represent their own interests.

The Department of Interior has abdicated its responsibility regarding environmental protection and emergency preparedness. As we see here and from the article in the New York Times, the emphasis is on media offensive and new management and disinformation in Indian Country rather than on representation of our interests. We have had the juris side of the trust and I think what we are hearing here today is that we need the other side of the trust, the protective side of the trust, the part of the trust that will set us free.

I found the cry to set the Indian free interesting, and I think we have to listen very carefully to distinguish what they are saying from what we are saying. I remember Phillip Deere, a Stamp Dance leader, used to talk about the Muscogee Treaty and how the river, the water was secure to the Muscogee people from bank to bank, and he said what we didn't understand is they meant the bank of the river to the Bank of America. And we have to be very careful when we are listening to this talk of block grants setting the Indians free, that we mean what they mean and they mean what we mean.

#### DEMONSTRATION PROJECTS

If we are to have some demonstration programs as some tribes have called for here, the Lummi Tribe, for example, then we can see how a tribe would handle its money if it were free of the kinds of restrictions that need to be imposed.

Some of the things that would have to go along with that would be multi-year grants and an ability to mix and match within a total amount of money according to tribal priorities. They would have to go along with that.

The proportion of administrative and management monies previously used by the Bureau of Indian Affairs central office agency and area office—it would require really funding which I hope the Congress will one day come to see that Indian tribes should have a double year funding cycle with forward funding at the beginning of each year.

I would urge right now the Appropriations Committees look to those tribes who want these kinds of demonstration programs as an

interim measure and perhaps a long-term measure and to make sure those funding agreements are separately negotiated on a nation to nation basis and let's see how that works. I think that is possible to do right now.

Also what is possible to do right now is to have both the Solicitor's Office in Interior and the Justice Department come out with a declaration of representation any time it represents an Indian tribe or purports to so that it let's the court know at any point who it is representing and if it is not representing the tribe, if Justice, for example, is representing Interior, then it must pay for Indian counsel for the tribe.

I think that is something that we have a model for, for conflict of interest cases and we should broaden the concept of conflict of interest and encourage that type of independent counsel and that might resolve some of the problems that have been pointed to today.

We don't need to decide at this time the trust or who is the boss issue versus self-determination or who is the boss issue now. What we need to do is get Indian people on a par with the dominant population as to housing, health, education, resource management and so forth, and then perhaps call that question. Right now it does not need to be called.

We know there must be change, there must be improvement. It all comes down really to what would the Indian design and what would Congress guarantee from that design? Would we get an independent agency that has Mr. Swimmer at its head? And that would be problematic in and of itself. How do we guarantee that the Indian people would have someone that they felt compatible with? That is one question.

Would this Congress and this Administration require that all Federal offices file an Indian impact statement prior to them taking any action? I think that would be important to such an independent agency. Would Congress guarantee subpoena power for this new entity?

Congress can't even right now let Indian tribes keep going with the only economic development measure that has ever worked, and that is under the tribal governmental act and I know the Appropriations Committee can't do much about that at this stage but the Ways and Means Committee has taken out after Indian tribes and in this we are sympathetic with the Interior Department.

The one good thing they have done recently is being rejected by the Congress, and I think that is problematic, too. I do want to make just a couple of factual corrections.

Mr. Ragsdale mentioned earlier that the R.L. Larsen account allegations surfaced in 1980, I believe he said, or at least in this decade, and I just wanted to point out for the record that allegations surfaced in 1975 and were called to the attention by Indians in Oklahoma in the Anadarko area, all the tribes to the American Indian Policy Review Commission.

I hope that we hear the other side of that story for this record. I think it is a very important story and one that was glossed over today and probably the Arizona Republic was more on track than the response that was given today, and that might provide its best example of why Mr. Ragsdale's resignation was called for by the

tribes in the Anadarko area and to support the general comment made by one of the tribal leaders, he was, of course, promoted. That was his way of being removed. He was promoted to have responsibility regarding more Indians.

#### ANADARKO PROJECT

I would like this committee to ask the question perhaps now about the Anadarko pilot where Mr. Ragsdale helped design a system that failed to load one file and where the checks for oil and gas leasing royalties did not jibe with the statements. Therefore, no checks were sent out for the entire month of September in the Anadarko area and to Navajo. I think just with the Interior's inability to get data processing right on a very simple kind of program and to hold up checks because they forgot to load the system properly leads to the kind of frustration that has brought this hearing about and brought out the allegations in the Arizona Republic.

Mr. YATES. Suzan, I am going to have to vote, so save your peroration until I get back.

[Recess.]

Mr. YATES. All right. Had you finished, Suzan, or were you about to?

Ms. HARJO. I am finished, absolutely.

Mr. YATES. Now we have Sam Deloria, with whom I have been discussing Indian affairs for 15 years.

Mr. DELORIA. Thank you, Mr. Chairman.

#### TESTIMONY ON STATUS OF INDIAN AFFAIRS

The first time I remember dealing with this particular problem of where the Bureau of Indian Affairs should be located in the government was in 1966 or 1967 when John Gardner, the Secretary of HEW, came to a meeting in Kansas City and announced the Johnson Administration had decided to move the Bureau to HEW and asked if there were any questions. The first question was, what will this do to the trust responsibility, and Secretary Gardner said, "Nothing, no change."

The second question was, what will this do to tribal sovereignty, and Secretary Gardner said, "No change."

The third question was, what will this do to the treaties, and Secretary Gardner said, "No change."

The fourth question was, if it is not going to change anything, then why are you moving it? Secretary Gardner stomped off the stage and to this day I don't think wants to hear the word Indians again. So this is not the first time that this has come up.

As I understand it, Mr. Chairman, this is an examination of a lot of the issues that have come out of the Arizona Republic articles, but specifically directed at the question of whether BIA should be an independent agency or should be moved around the government some place.

Mr. YATES. Or what should be done with BIA.

Mr. DELORIA. Okay. I understand.

Somebody said today that one of the reactions of the Bureau to an employee who is not doing well is to promote him two grades and transfer him to Washington, and sometimes some of the pro-

posals that have been made today are to double the Bureau's budget and promote it to the cabinet. I don't know that that would solve any of the problems that we are dealing with.

This administration has had a peculiar response to the job of running the Bureau of Indian Affairs, which we have heard for the last seven years and have heard again today, and that is that it is very difficult to do, therefore, they don't want to do it any more. They have used that as excuses to close down schools and get out of education, and now they want to use that as an excuse to make some major changes in the Bureau.

Sometime after your first election to Congress, if you had gone back to Chicago and said, "Gee, they want us to make a lot of tough decisions and I don't think I really want to make them," they would have elected somebody else. So maybe the solution is to find new people to run the Interior Department.

There are, I think, three important issues involved here. One is the management or the administration of the trust responsibility. The second is the delivery of services. The third is adjusting the power distribution between the tribes and Federal Government. I think that it is very important to understand—and I think the Secretary seriously misspoke this morning when he said that the conflict of interest that the department has or that the government has is between the responsibility to Indians and the claims of other citizens or organization to benefits from the Federal Government. That is not, Mr. Chairman, a conflict of interest in any sense of the term. It may be a conflict of emotions on the part of particular administrators, but it is not a conflict of interest.

#### TRUST RESPONSIBILITY QUESTIONS

The nature of the responsibility to Indian beneficiaries of the trust is a totally different question from the responsibility or the benefits that may be available to people who feel that they fall within the scope of a Federal statute. To call that a conflict of interest is to elevate the nature of the interest of the non-Indians who are competing with the Indians.

There will always be, as long as there is a trust relationship, there will always be non-Indians on the other side who are affected by the fulfillment of the trust responsibility. There is always going to be somebody complaining. I don't think there has been a Secretary of the Interior who has not had non-Indians come in and say, "Don't be so good to the Indians. Don't do anything for the Indians." That is part of their job. But to see that as a conflict of interest is to seriously misunderstand the nature of the trust responsibility, so as to raise really serious questions about whether anybody in that department understands what they are doing.

The only thing that could be called in any stretch of the imagination a real conflict of interest is when there is a conflicting claim over the ownership of property, such as if a Federal department claims the same land that an Indian tribe claims or claims the same water or claims the same property, that is a conflict of interest.

Mr. YATES. Or between two tribes.

Mr. DELORIA. Or between two tribes. But a claim, for example—and we ran into this in, for example, the Carter Administration when they had a lot of concerns about whether to represent the tribes in the Maine Lands claim case. They felt they had a conflict of interest because of the private interest that would have been effected if the land claim had been successful. To call that a conflict of interest is to allow a bureaucrat to decide that the national interest is somehow embodied in the private interest of private people who are opposed to the Indians, and I don't see any place in the law that says they can do that.

There will always be a conflict of interest. All we are talking about in any of this discussion is where it is going to be, where the game is going to be played. If you take it out of Interior, make the Bureau of Indian Affairs an independent agency of any kind, then sometimes the battles will all be fought in the White House and OMB where they are more political and less likely to be judged on the merits. That takes the Indian advocates, if we are in an administration where there are Indian advocates, and I don't see this administration as being one—it takes the Indian advocates out of the flow of information and the best way to prevent these conflicts is to find out what is going on in other agencies as soon as possible, to cut off the problems before they become so political and get so much momentum that they are strictly political issues and have to be resolved politically.

That is the basic argument why I feel it is, if not a serious mistake, at least something we have to think very carefully about if we further isolate the Indian interest.

Mr. Chambers will talk about that a little bit more.

One thing that could be done wherever the representative of the trust responsibility is located is for there to be clarifying legislation which clearly imposes on all Federal agencies a form of the trust responsibility in this respect. All Federal agencies share in the trust responsibility in the sense that if they take an action which is deleterious to Indian interests, they expose the United States to liability.

If we had a procedure whereby we could determine as early as possible what these agencies are doing and the Indians had an administrative right to take part in the decision-making process, a lot of these problems would disappear because at the bottom I think a lot of them are simply coordination problems. We don't find out things are going on until too late and then it is a political issue to be resolved.

So I think some kind of clarifying legislation which says to all Federal agencies, whether it is a Defense Department or whoever it is, you share in the trust responsibility in the sense that you cannot affect these interests because they are trust interests, I think that would be very helpful.

One of the things we heard all day, and we have heard almost palpable frustration and mistrust of this administration by the tribal witnesses, in my 25 years in this business, I have never heard government witnesses show such absolute contempt for the abilities of Indian people in a hearing or in any public forum. It is shocking to me.

People say we keep losing and they feel that that means that there is a conflict of interest in Interior. But if you look at the record of the last 25 or 30 years, we didn't lose in the Interior Department all the time because we had advocates in the Interior Department. We had people who would fight, find out what was going on and exercise their procedural rights to be a part of that process and fight on behalf of the Indian. Of course you lose if you don't show up for the game. You lose nine to nothing. It is called a default. If you don't fight, sure you lose.

On the delivery side of services, Mr. Chairman, the Bureau certainly has counterpart sections of the Bureau of Indian Affairs that have counterparts throughout the government—education, welfare, et cetera, et cetera. In the various studies that I have done personally and have witnessed over the last 25 years, if you isolate the Indian interest of the government into one building, one mass, you may develop some expertise about the unique needs of Indians at best, but you pay an enormous price in the isolation from the professional expertise of the subject matter itself—education, health, whatever it is.

Mr. YATES. Suppose you put that in that building.

Mr. DELORIA. I think the best way to deal with this substantive problem, how to improve welfare administration, how to improve other kinds of administrative things, and most of the Arizona Republic articles dealt with management problems. They don't deal with policy problems. They dealt with an agency that can't figure out how to buy a computer system.

I think the way to deal with those management problems is greater use of technical expertise throughout the government, greater use of memoranda of understanding and agreements drawing on expertise from other agencies in the government and a concentrated training program for BIA employees. Because what we need is not more isolation in this government; we need more contact with the agencies that have the experience.

We need to draw on their resources more, not only because they have technical expertise, but because we as citizens of this country, our governments and tribal governments are entitled to assistance from all Federal agencies, not just the Bureau of Indian Affairs. If we isolate into one independent agency, we are back in a situation where Indian needs compete with other Indian needs in the budget process, and there isn't enough money to go around, as you know.

I want to get money from U.S.G.S. to do these inventories and satellite photographs and things. I want to get money from these other agencies because that is the only way tribal governments are going to get the things done that they have to get done.

We do not need more isolation professionally. We need more expertise. That is what all those articles were about, is not that the Bureau didn't know enough about Indians but the Bureau didn't know enough about management.

#### TRAINING INDIAN EMPLOYEES

Mr. YATES. Let me read a paragraph from Mr. Swimmer's statement, page 6. "The Bureau of Indian Affairs and the IHS are subject to Indian preferences in hiring and promotion of employees. I



fully subscribe to the intent of Indian preferences and feel that the fact that 83 percent of BIA employees are Indians is proof of our sincere attempts at compliance, but it should be examined in context of changed conditions. Less than one half of 1 percent of the population of the United States meets the requirements to be extended Indian preference in Federal hiring.

"I have been told that of the working age population, only 47,000 Indians have completed college. The BIA, the IHS, national Indian organizations, some committees of Congress and hundreds of tribal governments are all competing to obtain the best of a very small work force, and of course not all Indians are interested in working for either the Federal Government or tribal governments. Congress has allowed tribal contractors operating programs with Federal funds to waive Indian preference. At a minimum, I think we have to review the categories of employment where we currently have or are projecting a shortage and be granted waiver authority at the Federal level."

Now, you said they ought to be trained. There ought to be training for these kinds of employees.

Mr. DELORIA. I think everybody in the Bureau ought to have training available to them, not just the Indians.

Mr. YATES. How would you do it, Sam?

Mr. DELORIA. Mr. Chairman, the Civil Service Commission has training programs, in-service training programs for BIA people. I am talking about training that so, for example, the experts in other areas of the government could be made available to train BIA people.

What is the problem with paying the royalties? The problem is setting up a bunch of individual files and getting checks out on time. We have the Social Security Administration who gets how many millions of checks out more or less on time every month.

Mr. YATES. Yes, but their computers work.

Mr. DELORIA. Maybe they have to borrow somebody from Social Security who knows how to buy a system and borrow somebody who knows how to set up individual files. The FBI seems to have a lot of individual files they keep track of better than we want them to sometimes. A lot of people keep files. That shouldn't be a problem.

Mr. YATES. Ask Mr. Real Bird.

#### NEW ARRANGEMENTS WITH THE BUREAU

Mr. DELORIA. Mr. Chairman, I think in closing, because this has been a long day for everybody, especially you, I would like to subscribe enthusiastically to Suzan's recommendation: What we really need is a period of experimentation and flexibility so that we can work out new arrangements. We tend to see things in Indian affairs as a series of events when it is really a process.

Mr. YATES. I think this is true. But what are the suggestions as to new arrangements and experiments? Where are they coming from?

Mr. DELORIA. You have heard a lot today. I think what we need is for individual tribes to work out their own arrangements with the Bureau, in consultation with whoever else in the government

needs to be involved in it so that what works, everybody should know about; what doesn't work, we go back and adjust.

The 638 legislation allows the Secretary to waive all Federal procurement regulations to make this thing work. He can waive the regulation. That 638 has not been approached as creatively as it should have been. There is plenty of authority now to work out these arrangements but unfortunately this administration has taken a very hostile attitude towards tribes.

I think the Secretary's remarks today were totally uncalled for, attacking the credibility of the people who are here, and that is the kind of attitude that makes it difficult to work with him. There is plenty of legal authority to work out experiments and to see what works a little bit better, and I think that is certainly a direction worth going.

I think we need to go back and ransack all of the experiments throughout the Federal Government of the last 20 years. We can try an approach based on regional development commissions which didn't work too well, but might be adaptable to the Indian situation because we are always dealing with a multi-agency situation. We are not just dealing with BIA funding, and I think we have to recognize that.

Mr. YATES. I have been summoned to vote. Do you want me to vote and come back, or take about six minutes?

Mr. CHAMBERS. I will not take more than six minutes, Mr. Chairman.

Let me put my watch out here to make sure I don't do so. I will be brief. I guess I am the last witness.

Mr. YATES. I am sorry about the vote, because I do respect your expertise and I would have liked to have heard you out.

#### CONFLICT OF INTEREST

Mr. CHAMBERS. Thank you, and thank you for allowing me to testify.

In my prepared testimony, basically I tried to sketch out the administration of the conflict of interest when I was associate solicitor. I thought when you were reading this morning from President Nixon's message about the Indian Trust Council authority that was my charge from solicitor Fazell, that was my charge from Solicitor Austin to be the advocate for Indian interests and legal rights within the Department of Interior. That was the charge that Tom Fredericks, my successor, had from the Carter Administration. I tried to lay out the record as I recalled it from my own files in that testimony.

I felt we won more than we lost of conflict of interest questions within the Interior Department when I was in there. And that makes me skeptical of whether moving the BIA and the solicitor's office Indian Division out of Interior is a good idea. I say that makes me skeptical; it doesn't make me absolutely persuaded it is a terrible idea but I think you lose two or three things.

First of all, we were the chicken in what would you call it, the fox coop. I mean the foxes were there. We could find out what the foxes were doing. That is what Sam was talking about. It was much easier for me to find out what the Bureau of Reclamation was up

to or the Park Service or the Land Management Bureau than it was for me to fight something the Corps of Engineers was doing that was in a different department or the Agriculture Department, the Forest Service, much, much easier. And there were some policemen in the fox coop: The Secretary, the solicitor. They tended to watch after the foxes and sometimes I could get some of the foxes joining me in going after other foxes. It was something you could do. You could make alliances in there on particular issues. So that was an advantage.

I think also if Indians were outside of the Interior Department, and particularly if Indian interests were not going to be represented in cases in the Justice Department but a separate agency was set up to do that, then you get the Justice Department doing what—I forget whether it was Secretary Hodel or Secretary Swimmer was saying this morning, but then you get the Justice Department representing the non-Indian water interests. I don't want that.

I am not speaking today on behalf of clients. I really put this testimony together as a former government official for you, sir. So I don't—but I mean we represent clients in water cases. The Justice Department doesn't do a perfect job in those cases by any means, but it tilts towards the Indian side a lot more than towards the private water user's side. I think that is something we could lose and these are hot political cases usually, very hot sometimes, and again there is a professionalism in the Justice Department that is greater than in other cabinet departments in terms of resisting political pressure, and so I think the only—I am not a proponent one way or the other for a structure.

I think there is something to be said for the structure of taking all the Indian programs, moving it into one department, but I think if you do that you do lose some advantages that you have under the present structure, and my thought honestly, and I guess I am more confirmed in it after hearing the Secretary's testimony this morning, is that really what is needed is a different approach. It is not a problem of structure.

I mean, the structure worked reasonably well in protecting Indian rights in the 1970s. It worked well in Republican administrations. I served as associate solicitor under President Nixon and President Ford. It worked well in the Carter Administration. It worked well at the end of the Johnson Administration—relatively well.

#### TRUST RESPONSIBILITY

I think what the problem is, is there is frankly a different philosophy in this administration about what the trust responsibility is. I do not, and my solicitors did not, see the trust responsibility as conflicting with self-determination. President Nixon's message did not see them as conflicting. President Reagan's message did not see them as conflicting. It reaffirmed the government-to-government relationship.

Self-determination, Mr. Chairman, is at the core, is the heart and the soul of the trust responsibility because when it was set up, I mean the early part of our Republic, and when it was enshrined in

Chief Justice Marshall's decision dealing with the Cherokees, it wasn't designed, I submit, as an exercise to protect incompetent babies from making mistakes. It was set up as a protection for Indian land and Indian natural resources for property rights that could not be alienated, and the purpose of the restraint against alienation was so that the Indian tribes, the Cherokee tribe, Mr. Swimmer's tribe, could function as a distinct political society forever.

There wasn't any limit on time in those treaties. This wasn't a relationship that was supposed to wither away. The whole concept of the trust responsibility is for Indian tribes to function as distinct governments. Of course, they should make the decisions; of course, they should make their own laws and be ruled with them. The Bureau should be helping in that.

There is no conflict between the trust responsibility and between that function. I mean one could certainly posit cases where Indians want to lease their valuable coal for a dollar a year or something, but those are extreme cases. That is not the garden variety case that comes up. I mean the whole concept, I think the problem with the current administration is how many cases, for example, has the solicitor's office brought in the last seven years where the United States initiates a suit as a plaintiff on behalf of Indian interests against non-Indian interests?

Mr. YATES. Can you give me a list of those, Mr. Tarr?

Mr. TARR. Sure.

[The information follows:]

ACTIONS BY U.S. FOR INDIANS

As requested, following is a list of cases in which the United States has brought suit as a plaintiff on behalf of an individual Indian or Tribe during this Administration--January 1981. It does not include administrative actions in which the Department ruled in favor of the Indians. See Insert 40A. This list was generated from information provided to us by the Department of Justice.

1. U.S. v. John W. Atterberry, filed 9-23-82 in the Northern District of Oklahoma.
2. U.S. v. George F. Tunnard, Jr., filed 10-22-81 in the District of New Mexico.
3. U.S. OBO Laura Jenny Zheka v. Joseph E. Mountford and Norma Mountford, filed on 3-18-81 in the Northern District of Oklahoma.
4. U.S., ex rel, Robert S. Youngdeer v. John Young, et al., filed 4-16-86 in the Western District of North Carolina.
5. U.S., et al v. Harry E. Eakin, et al., filed 6-2-87 in the Northern District of Indiana.
6. U.S. OBO Toues - Martinez Band v. Imp and Coachella, filed 12-28-82 in the Southern District of California.
7. U.S. OBO Pueblo of Acoma et al. v. Bluewater-Toltec, filed 12-22-82 in the District of New Mexico.
8. U.S. v. State of California, filed 6-25-81 in the Southern District of California.
9. U.S. v. Gila River Water Commissioner, filed 1-3-84 in the District of Arizona.
10. U.S. OBO San Juan, Santa Clara and San Ildefonso Pueblos v. Jemez Mountain Electric Corp., filed 12-23-82 in the District of New Mexico.
11. U.S. OBO Nambe, Pojoaque, Santa Clara, San Juan et al. v. Gas Company of New Mexico, filed 12-23-82 in the District of New Mexico.
12. U.S. OBO Isleta, Sandia, San Felipe, et al v. Gas Company of New Mexico, filed 12-30-82 in the District of New Mexico.
13. U.S. OBO Acoma, Isleta, Jemez, Laguna, Picuris, et al. v. Mountain States Telephone and Telegraph Co., filed 12-29-82 in the District of New Mexico.
14. U.S. OBO Sandia Pueblo v. The Middle Rio Grande Condervancy District, filed 12-29-82 in the District of New Mexico.

15. U.S. v. Earl Platt, filed 6-12-85 in the District of Arizona.
16. U.S. OBO Choctaw/Chickasaw Nations of Oklahoma v. Troy W. Holder, filed 3-17-81 in the Eastern District of Oklahoma.
17. U.S. OBO Lucy S. Casey v. State of Alaska, filed 6-30-81 in the District of Alaska.
18. U.S. OBO Kickapoo Tribe of Kansas v. Brown County, et al., filed 12-30-82 in the District of Kansas.
19. U.S. v. J.W. Ellis, filed 9-30-82 in the Eastern District of Oklahoma.
20. U.S. v. Christine Barrone, et al., filed 2-23-81 in the District of New Mexico.
21. U.S. OBO Covelo Indian Community v. Mendocino County and State of California, filed 12-30-82 in the Northern District of California.
22. U.S. v. Black Lumber Company, et al., filed 3-25-86 in the District of Montana.
23. U.S. OBO Moronga Band of Mission Indians v. City of Banning, filed 2-24-82 in the Southern District of California.
24. U.S. v. City of Lawton, filed 2-9-82 in the Western District of Oklahoma.
25. U.S. OBO Isleta Pueblo v. Atchison, Topeka and Santa Fe Railway, filed 2-13-81 in the District of New Mexico.
26. U.S. OBO Pueblos of Jemez, Santa Ana & Zia v. Tom Abousleman and Paul Adams, et al., filed 6-27-83 in the District of New Mexico.
27. U.S. v. Cecil A. Wiley, et al., filed 3-23-83 in the District of Montana.
28. U.S. v. Northern States Power Co., et al., filed 12-31-82 in the District of Minnesota.
29. U.S. OBO Pueblo of Taos v. The City of Taos and El Salto Mutual Domestic Water Consumers, etc., filed 9-25-87 in the District of New Mexico.
30. U.S. OBO Swinomish Indian Reservation v. Cascada Natural Gas Corp., filed 12-2-82 in the Western District of Washington.
31. U.S. OBO Ray Silva, DBA RS Construction, et al. v. Robert Goebel, et al., filed 6-15-81 in the District of Idaho. 4

Mr. CHAMBERS. They are administering a lot of them we referred over or that associate solicitor Fredericks referred over, a lot of water cases have gone over. We used to bring a couple dozen new ones a year. I mean, they were cases to protect Indians against taxation, against state jurisdiction. That is the heart of the government-to-government relationship: Indian tribes are supposed to be free from state jurisdictions so that they can exercise their own culture and their own society.

There were cases to protect fishing rights. I mean, when I was associate solicitor, in looking back at my cases there were three or four cases. One was the Boldt case, which the Chairman remembers well, and that was brought by a prior administration, but the point was that this was a long continued bipartisan policy. It is easy to be a trustee; it is hard politically, but there was a road map to do it and this wasn't 100 years that someone had to get away from, as the Secretary said this morning.

Mr. YATES. I have got to go vote, but I would be glad to listen to you some more.

Mr. CHAMBERS. I will stay, then, Mr. Chairman.

[The statement of Mr. Chambers follows:]

Testimony of  
Reid Peyton Chambers

BEFORE THE  
HOUSE OF REPRESENTATIVES  
COMMITTEE ON APPROPRIATIONS  
SUBCOMMITTEE ON INTERIOR  
AND RELATED AGENCIES

October 27, 1987



Mr. Chairman and members of the Committee, my name is Reid Peyton Chambers, and I am a partner in the law firm of Sonosky, Chambers & Sachse, Suite 1000, 1250 Eye Street, N.W. Washington, D.C. 20005. I am pleased and honored to discuss the proposal to move the Bureau of Indian Affairs (BIA) and the Indian Division of the Solicitor's office outside the Interior Department. A proposal of this sort could also include giving the Bureau authority to litigate in court, rather than referring cases to the Justice Department for litigation.

As you know, Mr. Chairman, I served as Associate Solicitor for Indian Affairs at the Interior Department between 1973 and 1976. And, of course, I have observed the Executive Branch's handling of Indian policy both before and since my government service..

1. The present structure

First, let me discuss defects in the present structure. The Interior Department is a power broker between the various interest groups in the western United States. Since BIA is within the Department, the Secretary of the Interior also serves as a principal fiduciary for Indian rights to natural resources. These rights are usually held in trust for

Indian tribes or individual Indians by the United States. And of course Indian rights to resources such as land, water, timber, minerals and rights to hunt and fish frequently conflict with claims of other Interior agencies -- national parks, fish and wildlife refuges, the public lands, public water projects and the like.

Where controversies between Indian rights and other public projects are presented, special obligations of trust should influence and control the Secretary's decision. If the Secretary of the Interior decides to build a dam which may injure fish resources, or to take public lands within a national park or protected wildlife refuge, that is a straight public policy decision. Private interests may support or oppose the policy, but ultimately the Secretary is simply a policy maker in reaching this decision. But when Indians are involved, the Secretary is a trustee for invaluable Indian property interests. When the Secretary subordinates Indian rights to his conflicting public policy responsibilities, a breach of trust occurs, at least where there is a reasonable and legitimate support for the Indian position. This is because a trustee should subordinate his own interests to those of his trust beneficiary.

When the Secretary rules against Indian rights in this kind of situation, the United States is guilty of a

prohibited conflict of interest. The Supreme Court unfortunately ruled in the Pyramid Lake case that the Secretary may sometimes have the power to override a reasonable and legitimate Indian position. However, this kind of action is morally odious, subjects the United States to legal liability, and ought to be avoided by any conscientious public official.

2. Functioning of the present structure

A. During the 1970s

The question before the Committee is whether moving the legal and political representation of Indian interests and rights outside of the Interior Department would avoid these kinds of conflicts of interest and thereby improve the protection of Indian rights. In addressing this question, I think it is important to emphasize that Indians do not always lose when there is a conflict of interest. In fact, I think that the present structure protected Indian rights reasonably well during the 1970s -- in three Administrations under Presidents Nixon, Ford and Carter -- and also in the last years of the Johnson Administration. In this period, Presidents were personally supportive of Indian interests or not hostile to them. They appointed Secretaries of the Interior like Stewart Udall, Rogers Morton, Cecil Andrus and others (as well as lesser policy makers, such as the Solicitor

and Assistant Secretaries), who were frequently supportive of Indian rights. Very importantly, during the Nixon and Ford Administrations at least, there were officials within the White House -- chiefly Brad Patterson, Ted Marrs and Bobbie Kilberg -- who were specifically charged by the President with the responsibility as an expediter for Indian rights. Indian tribal leaders could go to these officials and secure effective action. I should emphasize that vigorous tribal leadership in this regard has always been an essential attribute of successful protection of Indian rights, every bit as important as having Indian advocates within government.

The mandate to federal staff officials with Indian responsibilities during these years was generally to be an advocate for Indian interests and to support Indian rights. During this period, the Bureau of Indian Affairs became led for the first time by Commissioners and then Assistant Secretaries who were in fact Indians; indeed, the entire BIA bureaucracy was transformed from one with predominantly white employees to one that now has over 90% Indian employees.

It is hard of course to quantify the improvement in the protection of Indian rights during this period. There are not reliable statistics. During the time I was Associate Solicitor, there was certainly a dramatic increase in the number of lawsuits that were filed by the United States as

trustee for Indian interests against states and private parties. In those three years (1973-1976), we more than doubled the cases brought by the Justice Department protecting Indian rights. This was done as a result of strong and successful tribal pressure upon the Department from the outside as well as because of the work of advocates within the Government. In most cases before the federal courts, at least at the appellate and Supreme Court levels, the Government also filed friend of the court briefs on behalf of Indian interests. Things became so active that the Department of Justice set up a separate Indian litigating section simply to prosecute those cases. This basic trend continued through the Carter Administration.

There was, for example, a dramatic increase in the number of cases filed by the United States to protect Indian hunting and fishing rights. You will recall the "Boldt decision" protecting off-reservation fishing rights in the State of Washington. Similar cases were brought by the United States in Minnesota and Michigan. The Government also filed cases to protect Crow hunting and fishing rights in Montana and to protect the interests of small tribes in Wisconsin. These were "hot," political cases. Governors, Congressman and Senators on occasion met with the Secretary of the Interior or the Solicitor and remonstrated with them about these cases.

The cases nonetheless were prosecuted and were invariably successful in protecting the treaty rights involved.

The same is true of cases to protect Indian water rights, although many of the cases we brought more than a decade ago are still ongoing and have not been as uniformly successful. For example, the Government had been for decades throttling Pyramid Lake in Nevada, virtually drying it up with a federal reclamation project supplying non-Indian users. This was a vicious and longstanding conflict of interest. In the early 1970s, Government policy was entirely reversed, in large part because of successful litigation brought against the Government by the Pyramid Lake Paiute Tribe. The Government brought suit on behalf of the Pyramid Lake Paiute Tribe against those non-Indian water users. It began to limit water use by the project, and was even sued by the non-Indian irrigators. There are many chapters to this ongoing Pyramid Lake saga, and there have been some losses in the cases, but it is not been through want of litigating zeal on the part of the Justice or Interior Departments.

The Government also vigorously prosecuted the Pueblo water rights cases on the Rio Grande, the Papago ground water case in Arizona, cases in Colorado and Montana arguing that federal courts rather than state courts are the appropriate

forum for Indian water rights, the reopening of Arizona vs California on the Colorado River, and a number of hearings before the Federal Power Commission (now the Federal Energy Resources Commission) asserting Indian water rights as against federally licensed hydroelectric projects. These cases also have been strongly resisted by political interests within those states and in many cases by the state congressional delegations and political leaders. Sometimes, they conflicted with other federal projects such as reclamation projects or fish and wildlife reserves. But the determination was made by the Executive Branch to present these cases in the courts and to prosecute them resolutely in the 1970s.

The same is true of land cases. One case brought despite the Government's conflict of interest was the Government's support for a claim by the Walker River Tribe in Nevada against Southern Pacific Railroad, urging that Southern Pacific's right-of-way was invalid even though it had been approved by a Secretary of the Interior and even though the railroad line was used by the Navy Department to supply munitions. The United States also resolved land claims of the Salt River and Colorado River Tribes against the Bureau of Land Management, and then brought suit against various permittees of the Bureau to quiet the Tribes' title.

Within the Department of the Interior, while I was Associate Solicitor and afterwards, the BIA and Indian Division of the Solicitors Office also did constant battle with other department agencies over department projects that conflicted with Indian rights. We were successful sometimes, and unsuccessful other times. For example, we persuaded the Solicitor to hold that the Colville and Spokane Tribes in the State of Washington had hunting, fishing and jurisdictional rights within Lake Roosevelt, despite opposition by the National Park Service, Fish and Wildlife Service and Bureau of Reclamation. We persuaded the Secretary of the Interior that a boundary dispute between the Mohave Tribe in Arizona and the Bureau of Land Management should be resolved in favor of the Tribe. Similarly, lands in California were determined to be owned by the Chemehuevi Tribe rather than by the Fish and Wildlife Service.

There were also some bitter losses. We were for example unsuccessful in attempting to have the Solicitor rule that the Quechan Tribe owned lands in California that were claimed by BLM, in large part because the water rights to those lands would have interfered with federal reclamation contracts. However, in the Carter Administration, the Solicitor reversed this decision and the Tribe is now treated as owning the lands (subject however to a suit brought against the Government by non-Indian water districts). And I felt



recurrently unable to protect Indian water rights that conflicted with the construction of the Central Arizona and Central Utah projects by the Bureau of Reclamation.

B. During the 1980s

Protection of controversial Indian rights has been very different in the last seven years. Very few cases protecting Indian rights have been referred by the Interior Department to the Department of Justice. The special Justice section to litigate Indian rights cases still functions, but it is prosecuting cases that were referred to it in the 1970s, mostly Indian water cases. The Reagan Administration has either been passive or hostile to Indian interests where conflicts have come up.

The problem is not, I think, a problem of structure. There is a difference in executive will and executive policy. Secretaries of the Interior have not been as supportive of Indian interests and they have not generally appointed lower officials who see their role as one of advocating or championing Indian rights. Very importantly, there is no expediter in the White House to champion Indian interests within the Executive Branch.

If Indian administration was moved outside the Interior Department, whatever agency results would still be part of the Executive Branch. The Interior Department would still be responsible for agencies and programs that conflict with Indian rights. So would agencies like the Army Corps of Engineers and the Forest Service of the Agriculture Department -- both of which are outside Interior now, and both of which are often adversaries of Indian trust rights.

In short, the conflict of interest will not disappear however the management of Indian affairs is organized. I question whether restructuring the administration of Indian Affairs can supply executive vigor and fidelity to the trust responsibility where it has been lacking. What is needed is renewed executive commitment to the advocacy and protection of Indian rights as a trustee. Executive officials need to be appointed who are faithful to that role, and the White House needs to establish an Indian desk with real authority.

### 3. Possible alternatives to the present structure

If BIA and the Indian Division are moved outside Interior, they must either be moved into another cabinet agency or become an independent agency (like the Environmental Protection Agency). The new entity might also be given, as noted, authority to litigate independent of the Justice

Department. If such a move is made, consideration should be given to taking all Indian functions within the federal government -- BIA, Indian Health Service, Indian Housing, Indian litigation, Indian Education, and the like, and consolidating them into a single federal agency. My guess is that this agency would still not be large enough in terms of prestige or budget to be effective as an independent voice within the federal bureaucracy, but I can not be sure of that.

Very careful thought should be given, however, to whether Indian rights will be better protected if this kind of change is made. As I have discussed, other agencies (including the Interior Department) would then have within them only agencies that have claims and policies that conflict with Indian rights. I doubt that the Indian agency will be more successful battling those claims and policies than under the present structure. At least during the 1970s, I found it easier to fight conflicts within Interior than with other Departments like Agriculture and the Army. If the fox was in the chicken coop, at least we chickens could keep an eye on him, find out what he was up to, and appeal to the Secretary and Solicitor to thwart him.

I would also be hesitant about moving Indian litigation outside the Justice Department. As I have discussed, many of the Indian rights cases brought in the 1970s offended

important political interests within states and sometimes their congressional delegations. In my experience, the Justice Department is generally more professional in resisting pressure about unpopular cases than other cabinet departments such as Interior or HHS.

A lack of executive will and support has been the problem for Indian rights in the 1980s. This does not necessarily guide what the problems will be in the 1990s or early in the next century. There will, I fear, always be opponents of the vigorous protection of Indian rights. They must be met and battle must be joined with them -- whether they be in the Executive, in the states or even in Congress. It is not a task that will cease. And I am presently unpersuaded that a structural change within the federal bureaucracy will make this battle any easier.

If any change is justified, I suspect its justification lies elsewhere than in avoiding the conflict of interest or even improving protection of Indian legal rights. It seems likely to me that the most critical single problem facing Indian people today is the need for serious and sustained economic development. Recent decades have witnessed a number of third world countries doing better in this task than has the United States with its Indian reservation populations. A second problem of great importance is in the area of

management -- for example, the effective delivery of services, the efficient operation of tribal governments, and maximizing the economic yield of trust resources such as oil and gas, other minerals and timber. The Bureau of Indian Affairs, I believe, has done a better job advocating Indian legal rights than in either of these vital areas. I certainly cannot say whether any change in government organization will improve the way in which these problems are addressed, but I do believe that these -- not the conflict of interest -- are the major Indian rights issues of the 1990s and beyond.

Mr. Chairman, thank you for the opportunity to present this testimony. I would be happy to answer any questions, and to work with you and the Committee on this important issue.

[Recess.]

# TRUST RESPONSIBILITY AND LEASING

Mr. YATES. Let me ask a question about the trust responsibility. MMS is now proposing regulations. As part of that, I don't know whether you ever encountered NTL-5.

Mr. CHAMBERS. That is the gas regulation, isn't it?

Mr. YATES. Yes.

Mr. CHAMBERS. I am vaguely familiar with it.

Mr. YATES. In 1977, leases provided for royalties to be paid at the highest ceiling price, and those leases were in existence in 1982 when prices began to fall. The royalties that began to be paid by the gas companies from then on were the market price, based on the market price rather than the ceiling price.

MMS took the position beginning, I guess, in 1983, 1982-1983, they gave assurances to the gas companies, memos went out saying that they recognized that the ceiling price is too high and they would adjust it downwards. Is that a violation in your judgment? And, of course, these royalties were going to Indian people and going to the Federal Government. Of course, there is no trusteeship responsibility to the Federal Government; there is to the Indian people.

Mr. CHAMBERS. That is the problem, Mr. Chairman. I think the problem, as I say, I am peripherally familiar with, I know just generally about it, so I don't have a firm opinion, and I am not going to make a firm opinion on something I don't know enough about.

Mr. YATES. And you don't get a fee for.

Mr. CHAMBERS. I give lots of opinions when I don't get a fee, Mr. Chairman.

Mr. YATES. I am not saying you shouldn't.

Mr. CHAMBERS. I certainly shouldn't for this.

Mr. YATES. I mean, shouldn't get a fee.

Mr. CHAMBERS. No, I think—I don't want to give an off-the-cuff opinion. I think there is this problem in the department. I think it was there when I was there and it exists now.

What did the Secretary say this morning? There are 50 million, 52 million acres of Indian trust land and something like 700 million of other Federal lands they administer. They tend to look on their mineral responsibilities historically as a public land type responsibility, and that is a hard thing to crack.

I mean, you may remember the northern Cheyenne coal leases. They were a terrible deal, and one of my, I guess accomplishments—

Mr. YATES. The Peabody?

Mr. CHAMBERS. The Peabody deals. One half, two thirds of the reservation had been tied up in leases at 17 cents a ton when the market was more than 30. The answer we got when we asked the BIA, they approved those leases in the first place, they said that is what they are going for on the public land, 17½ cents a ton. It is one thing if they want to lease lands at below the market to avoid exploitation. That is a perfectly proper decision. I think the problem is in the Interior Department for years and years the Indian tail gets wagged along with the public lands' dog on these things.

The idea is if that is the right standard on the public lands, that should be the right standard for the Indian leases. I don't know enough about NTL-5 to say that is what happened here. It rings a discordant bell in my mind about this type of thing happening in the department.

Now, that is quite honestly an argument for taking Indians out of the Interior Department because it gets them away from that public lands leasing mentality that has dogged the department. It is a lot of times industry-run on things like leasing minerals and if you get standards industry run for public lands, that is a permissible policy decision. It is not a permissible decision for a trustee. A trustee's decision should be different.

I don't know if that is what happened here. But that is what I would worry about.

Mr. YATES. That is the question. I wondered whether it was a question of the trust responsibility to take the side, as I construe it, of the gas company as opposed to the Indians.

Mr. CHAMBERS. If that is what happened, it would be a clear violation of the trust responsibility.

Mr. YATES. They say it is only fair not to pay royalties on the basis of a price structure that is no longer in existence.

Mr. CHAMBERS. That is foolish. You have got a contract. If you got a contract with the company, the company pays. I suppose the danger is, what if the company comes in and says "We won't produce any more"? That may be a breach of contract. You then sue them, I think.

I don't know, the Solicitor said they had some suits against oil and gas companies this morning. Maybe that is one of them. I just don't know the facts of what has happened here.

If they have a contract, then the company made a bad contract. We have to go forward. The conflict of interest arises when there is a public program like the Bureau of Reclamation that has water rights that are public water rights or public lands have, if you have a boundary dispute between the Fort Yuma tribe and the BLM about where the boundary is, that is a conflict of interest because you have a public agency on the one hand and Indian on the other hand that has a property claim. The industry is pushing politically for relief and the Secretary, as a trustee, should resist.

#### BIA RESPONSIBILITIES/DUTIES

Mr. YATES. What do you want to do with the BIA? You testified for half an hour as to the fact that the BIA isn't as sympathetic as it should be in its attitude towards administration of Indian affairs. Mr. Swimmer and the Secretary both said the BIA is unmanageable in its present situation. The BIA's problems are insoluble in the present situation and Mr. Swimmer's statement talks about all the things that they have to do, a tremendous number of things they have to do in order to deal with this problem.

That being so, do you still want the BIA to be in its present form except for experiments that nobody knows about?

Mr. REGULA?

Mr. REGULA. I think I would add a caveat. They said it is unmanageable under the present regulatory and statutory—

Mr. YATES. Did I pose it properly? How would you pose it, Mr. Swimmer?

Let's let him pose it.

Mr. REGULA. All right.

Mr. YATES. Let me read the statement. You pose it in the statement.

Mr. SWIMMER. It is in the statement.

Mr. YATES. They know it. You know what Mr. Swimmer has to do. All the duties and activities. He says they can't deal with it.

Mr. SWIMMER. The duties and responsibilities are very complex. I think, even given all those complexities, it can be managed. I don't think that is where we want to go. I don't think managing those things, doing the accounting, doing the things the *Republic* talks about here, are going to change the quality of life on that reservation until people get involved in determining what that quality of life is going to be, until the tribes themselves get involved in making those decisions.

If you give me a program and say I need to have so many law enforcement officers out there, I can do that.

Mr. YATES. Are you saying the tribes do not now have a decision to make there?

Mr. SWIMMER. Yes, I am saying they should.

Mr. YATES. But they don't now?

Mr. SWIMMER. We determine what the programs are. We appropriate money, and then we send them out to the reservation and they get to nickel and dime around the program. They are not developing what might be needed on that reservation.

Mr. YATES. Local self-government?

Mr. SWIMMER. That is right.

Mr. YATES. Do you want to reply to that? That is the BIA at the present time?

Mr. DELORIA. Have you ever heard of re-education camps, Mr. Chairman?

Mr. YATES. I have heard of them, but they have another name usually. It is gulag.

Mr. DELORIA. I don't think the nature of the problem requires the type of response the administration is asking for. I think these can be worked out. If the administration wants to make a dramatic new change in direction and give the tribes more responsibility, we have had a whole afternoon of tribes very specifically asking for more responsibility. I think they should get the transcript of this hearing and sit down and start working with the tribes that are here whose credibility they attacked today, but they should sit down and work with the tribes that are here on the specific things that they asked for to loosen up the reporting requirements and to deal with the 638 problems.

Mr. Chairman, five or six years ago there was an experimental program to require one report from the tribe to the lead Federal agency for all Federal programs. It would have dramatically simplified all this reporting and paperwork done on an experimental basis, and it was dropped. There is all kinds of management things that can be done within the context of tribes making their own decisions and determining their own destiny.



## BUDGET PROCESS CHANGES PROPOSED

We could do some things with the budget process. One of the problems with the budget process is you can't trace a dollar past the area office. No matter how much iodine you put on it, you lose it at the area office because of the way the budget is structured. We could have an alternative structure that is tribe specific, that isn't going to mess with the way OMB wants it.

Mr. YATES. But then you lose it.

Mr. DELORIA. You can't find where it goes because it gets to the area. It is practically impossible and Joe Dela Cruz is still here. Maybe it is not impossible, but they can make it impossible to find out how much money is spent at a particular tribe, at a particular reservation, which is one of the reasons that these people have been saying to you all day they want to be able to plan 10 year in advance.

But you can't plan ten years in advance if the nature of your discussion with the Federal people is 8 years in advance because of the budget cycle. But if we had an alternative planning system so that the tribes that are here today and all the other tribes around the country who didn't have the money to come in here could be having discussions with federal people about ten and 15-year plans, then the nature of the conversation between the tribe and the federal official would not be whether something is going to be in the budget, but when it is going to be in the budget and that would make all the difference in the world. Then they could really plan.

Mr. YATES. Well, it was asserted, and I think Mr. Swimmer agreed with it that only 10 percent of the BIA dollar gets—10 cents on the BIA dollar gets down to the tribe. Did I misread what you said?

Mr. SWIMMER. No, but it has been misquoted and misunderstood in the past. It is not that 10 cents on the dollar gets to the reservation, but I said 10 cents of the value actually gets to the reservation. In other words, by the time we send it, sifted through 200 or more federally funded programs the tribes have to respond to with all of their administrative overhead, they are not getting the full value of the dollar.

Mr. YATES. What about Sam's assertion that you cannot trace a BIA dollar past the area level?

Mr. SWIMMER. It is not true. Sam knows it. We can trace it. We can give you tribal budgets. Depending on the detail you want, I would have to believe we could trace it.

Mr. YATES. What are you saying, Sam?

Mr. DELORIA. For once this is not an attack on this particular Administration. It is simply a comment on the nature of the budget process. Tribes have an opportunity to participate in making up the Federal budget pursuant to the Indian Reorganization Act at the very beginning of the process when it is least significant and influential.

But as the numbers come up the system, they get put into larger piles, put into larger pots.

Mr. SWIMMER. Exactly. At a certain time in our process, we close the system, and we have to then develop the final budget that becomes the President's budget that comes to Congress. Then we open it up again when the hearings are held in the spring, and we all come forth and present it.

That is when the tribes say, "Well, gee, I would ask for this money over here and I don't see it anymore."

Mr. YATES. And the tribes don't know until the spring as to what they are going to get?

Mr. SWIMMER. I would agree with that.

Mr. DELORIA. In defense of any Administration, when you have two hours one Friday afternoon to make a budget decision you can't call 500 tribal chairman and consult with them. It is that simple. Either they are cutting money out or they are putting money in. You simply have to make the decision.

That is a defect in the present budget system that is uncontrollable. You simply can't have a communication.

Mr. SWIMMER. It is uncontrollable at all levels. We don't even know what we have this year, and it is in the present year. I understand that, because we are in a continuing resolution. All we can do is tell the tribes you may have 11 percent to spend, but Gramm-Rudman may take eight of that.

Ms. HARJO. But you do not have to sneak in all these initiatives during December on the eve of the presentation of the budget in January that then gets everyone all upset. The tribes are angry because you didn't consult with the tribes on those things.

BIA management and the people who have to run these programs are upset because they don't know what they are going to have to manage or run and you turn program managers at the tribal level into crisis managers, and that was not part of any process. That was done in December for a budget submitted in January, based on no consultation at all.

Mr. SWIMMER. It had no budget impact.

Mr. REGULA. But you appear here.

Ms. HARJO. Right, and you all were good enough to reject those initiatives.

Mr. REGULA. The system worked. They make a suggestion, innovative perhaps, perhaps not. Ultimately we make the policy and everybody has their opportunity to sit where you are and tell us what should or should not be done with the President's budget.

Ms. HARJO. But they are required by law to do it before they submit it to OMB and before they submit to Congress and they have never done that—not just this Administration; no Administration has done that.

Mr. YATES. Also with respect to what Mr. Swimmer is saying, it isn't only the Indians that doesn't know what they are getting. No agency in Government knows, because of the hurdles in the budgeting process and our appropriations bills because of the Budget Act.

Mr. CHAMBERS. What Suzan is saying here is the Indian Reorganization Act that Congress passed does require the BIA to submit those budget estimates to the tribes. You can change the law, but Indian tribes are different in this respect. It may be different for—

Mr. REGULA. Suppose they do submit it? What happens then? Given the fact they are under the gun to get the thing out, they

are trying to do 89,000, I assume. You have a window of six weeks, maybe, before you can send it over to OMB?

Ms. RICHARDSON. It went there September first.

Mr. SWIMMER. You can't effectively consult. You can send that out, but you can't effectively consult until the hearing process.

Mr. YATES. We have had a long, long day. I think some of it has been constructive. As a matter of fact, maybe all of it has been constructive. We have certainly given the opportunity to explore it. I want to thank Mr. Swimmer, and I want to thank in absentia Secretary Hodel for coming here today and answering the committee's questions.

I want to thank all the witnesses who came in themselves to testify. I would hope that we find some way of easing Mr. Swimmer's frustration with the condition of the process. Perhaps we can simplify it in some way, and I would appreciate any suggestion you make.

I don't think these expert witnesses agree with you—I don't know. I haven't asked you the question, have I, as to whether or not you agree with Mr. Swimmer about providing something in the nature of a block grant, assuming it isn't cut. You haven't commented on that.

Mr. DELORIA. It is out of context. It is impossible to comment on it because you would have to ask about 200 other questions before it is a meaningful suggestion. So I don't have any comment.

#### TRIBAL REPRESENTATION

Mr. YATES. I don't think we did that, did we?

Mr. SWIMMER. Mr. Chairman, I would like to address two issues that came up. Because the press is here, I don't think they can go without challenge.

One is that the Secretary stated that the tribes' representatives have no credibility; that is absolutely false. Sam knows it is false. He is mischaracterizing the Secretary's statements. The Secretary said the tribes represented in this room today are approximately 10 percent of the Indian population in this country.

We know the two largest tribes in the country are not represented. We are not suggesting the views would be any different. They might be all the same, but we are saying in the consultative process you can not very well say that any group of people testifying at a hearing such as this can speak for Indian country. The Secretary was not questioning the credibility of any witness that spoke today. On the contrary, he has a great deal of respect for those witnesses that appeared today, as I do. I appreciate what they said and for the most part felt like we had some agreement.

#### BIA DEPUTY OF ADMINISTRATION

The other thing is that Mr. Ragsdale was not brought to Washington as a promotion to move him out of the area office. He was brought to Washington as a promotion in order to assist me in a very important situation as a deputy for the administration of the Bureau of Indian Affairs.

He is one of the few people that I felt was qualified to handle that job. I sincerely hated to lose him at the Anadarko office be-

cause I felt he was doing a fine job there, and most of the tribes in that area thought he was also. It is not unusual that I would have a request from a tribal leader from all 12 of my areas at any one time to remove the area director and from all the tribes at any one time to remove 82 superintendents.

I made a decision when I came here that I was not going to go play musical chairs, and people were going to stay in their positions and were going to do the job that we had to get done. To the chagrin of some of the folks around here, we have stayed with that. When it gets to be a position where they cannot be effective, then we would find a position where they could be effective. But that is not a case that happens very often.

Mr. Ragsdale, in my opinion, is very well qualified to do what he is doing or he wouldn't be here, and I don't have room in Washington, with the staff I have, to bring people here that are not qualified. He also wanted to make a statement on the R.L. Larson account in reference to, I think, Ms. Harjo's statement.

Mr. RAGSDALE. I have talked to Ms. Harjo outside during the break. I did not intend to gloss over the R.L. Larson account and what the Inspector General found. I was responding to the question: Was R.L. Larson a slush fund? The Inspector General determined that it was not. The committee may very well want to review that report.

I have never said that we did not need to make some improvements and there weren't deficiencies in the system. During that time when the Secretary was reviewing the R.L. Larson account, as well as during Congressman Synar's hearing, I met with surveys and investigations staff, and you may want to check with your own investigators concerning their discussions with me.

Also the General Accounting Office was on site at Anadarko for a long period of time. With regard to the payment system that my office piloted to try to move royalty payments faster than they were moving at that time, I am very proud of the effort that the Bureau of Indian Affairs did take in that regard.

I know the system is not perfect. With regard to the problem of making the payment at Navajo, we did receive the payment from MMS as of Wednesday or Thursday of last week. We do have a problem in the programming because we have changed the program to put out those checks in response to the Navajo class action suit to simplify the payment, and it has caused a problem and we haven't been able to make the payments yet.

Thank you.

Mr. YATES. Okay.

Mr. SWIMMER. Thank you, Mr. Chairman.

Mr. YATES. We still haven't covered a lot of the things that were present in the *Arizona Republic* statements, crime on the reservations, law enforcement. We haven't covered the question of Indian health. I am sure that requires a great deal of consideration. We haven't covered the question of Indian housing.

Would you like to submit for the record any comments you want to make on these articles, Mr. Swimmer?

Mr. SWIMMER. I would be pleased to.

[The information follows:]

**Additional Information Submitted by the Bureau of Indian Affairs**

The following is provided in response to certain allegations made by The Arizona Republic on the conduct of programs under the jurisdiction of the Bureau of Indian Affairs. Items discussed during the hearing are not reiterated in this section.

**Headline:** "Indians are Sold Out by U.S."

The newspaper alleges that some BIA officials have diverted Indians' royalty payments into slush funds.

**Response:** This allegation was raised by the Oklahoma Indian Mineral Owners and was investigated by the Office of the Inspector General (IG). The pertinent portion of the IG's report is provided as Attachment No. 1.

**Headline:** "Agencies Let Oil-Rich Indians Wallow in Poverty"

**Frances Begay:** The newspaper indicates that this individual is an owner of an oil and gas well, but cannot get money owed.

**Response:** The individual's full name is Frances Begay Bluff. She has an inherited interest in three allotments. One of the allotments has no mineral leases; another had a lease which expired in 1979; and, the third is under lease to Union Oil of California. Ms. Bluff's inherited interest is 3/28 from her mother, 1/7 from her father, and 1/6 from her brother. Ms. Bluff is on the automatic payment system in Shiprock, NM. Since June 5 of this year, she has received payments of almost \$4,000. In response to a request from the Navajo Area Office, MMS is now auditing the active lease. The audit is scheduled for completion in January 1988.

**Roger Bosin:** The newspaper indicates that this individual is unable to make car payments or to pay for a home.

**Response:** The MMS audited Mr. Bosin's royalty interest during 1986 for the audit period of January 1980 through December 1985. Audit results were transmitted to the BIA on December 3, 1986. The audit identified \$1,866.97 in underpaid royalties. That amount was distributed to BIA on July 15, 1987, and was subsequently disbursed by BIA to the royalty owners, including Mr. Bosin.

The MMS personnel have received a number of verbal inquiries from Mr. Bosin concerning his lease account and the lease account of his wife. The MMS has been responsive to all of Mr. Bosin's inquiries.

**Beatrice Kopaddy:** The newspaper indicates that she was charged \$80,000 when she was supposedly owed \$64,000.

**Response:** At a 1986 MMS/BIA outreach meeting with Indian allottees in the Anadarko Area, Mrs. Saupitty (Kopaddy) requested a review of her lease for timeliness of payments. The BIA asked MMS to proceed with the review. The results of MMS's review were presented in a December 12, 1986, memorandum to the Anadarko Agency Superintendent and to affected allottees. The review revealed that Ms. Saupitty's royalty payments were timely and had been paid for the lease.

The \$80,000 and \$64,000 amounts stated in the news article represent estimated payment balances for different months; i.e., advance royalty payments which were

distributed to BIA for disbursement to Ms. Saupitty and other royalty interest holders. Ms. Saupitty is not owed \$64,000 as the article claims, nor are BIA and MMS trying to collect \$80,000 from her.

On December 17, 1986, members of MMS's Office of External Affairs met with Ms. Saupitty and explained the circumstances concerning her lease. The MMS also met with other allottees with an interest in the lease and explained the situation.

**Headline: "Agency Gropes Its Way Into the Computer Age"**

The newspaper states that: (1) the computer system fails so frequently that work must be redone and that data prove inaccurate; (2) the BIA purchased a \$17 million hodgepodge minicomputer system; (3) the Bureau circumvented a Presidential directive in obtaining the Amdahl computer system; (4) the Bureau allowed administrators and managers to select their own systems which proved incompatible; and (5) the agency is spending \$1 million on a "black box."

**Response:** (1) There is no documentation to indicate that BIA computer downtime exceeds that of other comparable installations. The accuracy of the data is dependent upon the accuracy of the person encoding such data; it is not a function of the ADP system. In an automated environment, however, it is easier to correct such operator errors than using a manual system.

(2) The "hodgepodge" acquisition was a standard set of Burroughs 900 series mini-computers. These computers are in use and currently process in excess of 3.5 million records dealing with leases, ownership, individual Indian monies, and other data. While GAO reports in the early 1980's found numerous problems with the Bureau's system, significant progress has been made through the ADP Improvement Task Force (established in 1983).

(3) No Presidential directive was circumvented in acquiring the Amdahl computers. Federal regulations require that: "A procurement solicitation to acquire ADP equipment by purchase or lease shall not be initiated until it is first determined and appropriately documented that the requirement cannot be economically and efficiently met by utilizing excess Government-owned or leased ADP equipment lists published by GSA." The Amdahl V8 is not obsolete by the GSA definition. Amdahl's are currently in use at the Veterans Administration, the Geological Survey, the Department of Energy, the Social Security Administration, the Department of Transportation, and half-a-dozen Department of Defense installations.

(4) The Bureau does not allow offices to select minicomputers. The AADIX contracted selected Bureau minicomputers which were all Burroughs B1900 models. There are identical configurations in each of the Bureau's six Information Management Centers.

(5) In the computer industry, protocol converters are sometimes referred to as "black boxes." These devices are commonly used and are proven technology, useful in integrating systems with different protocols. In FY 1988, the BIA will use approximately ten of these devices at a per unit cost of \$5,000.

**Headline: "They're Draining Him Dry"**

The newspaper states that Press Primeaux's land has been drained of more than \$2 million by rigs located on adjacent non-Indian lands; that the Bureau refused to lease his land; and, that agency officials tried to extort \$900 from Mr. Primeaux.

Response: Forty acres of land owned by Mrs. Primeaux (now deceased) and a Ms. Butler were leased for oil and gas purposes in 1983. The lease expired without having been drilled.

Adjoining that land on the south, a well was completed, but the Primeaux tract was not within reach of the well because of the 20-acre spacing limitation requirement of the Red Fork formation. Another well drilled to the southeast was also out of reach for the same reason.

Mr. Primeaux was advised that if he wanted a special sale conducted, rather than awaiting the next regularly scheduled sale, he would have to bear the expense. The Primeaux tract was included in the next regularly scheduled sale, but received no bids.

Drainage determination requires a detailed subsurface geologic and engineering analysis of the reservoir. A drainage review was conducted on this property in 1986 which revealed that the drainage radius fell short of the Primeaux land. The drainage radius was 343 feet; the well was 467 feet from the property.

Headline: "BIA Turns Tribes' Resources Against Them"

The newspaper states that the Department has mishandled coal leases and that tribes have billions of dollars worth of coal resources which could pull them out of poverty.

Response: The U.S. coal industry is presently in a massive oversupply situation. Tribes have billions of dollars worth of coal which could pull them out of poverty. Western surface coal mines are no longer producing at capacity and market analysis indicates that this condition will persist for many years to come. Although Indian lands contain abundant coal resources, there is no economic basis for an already depressed coal industry to develop additional mines to further contribute to the oversupply.

Coal royalties on a cents per ton basis were the standard for royalty payments on leases entered into in the 1950's and 1960's. At that time the royalty rates were between 2% and 4% of the selling price of coal. Western coal, at that time, averaged approximately \$7 per ton from both Federal and Indian lands.

The Federal Coal Leasing Amendments Act of 1976 changed the cents per ton royalty basis and required that all Federal and Indian coal royalties for surface mines be 12-1/2 percent of the selling price on new leases. It further required that old leases be renegotiated to the new level at the end of the primary term of the lease or at the next renegotiation time for the lease.

Headline: "New Homes Just as Shoddy as Old"

Most of this article deals with programs of the Department of Housing and Urban Development. The portion dealing with the Bureau's Housing Improvement Program states that GAO reports have detailed problems going back to 1970 of substandard work, high costs, and assistance not being provided to the most needy.

Response: All but one of the referenced GAO reports were audits of 638 tribal contracts prior to the redirection of the Housing program in the mid-1980's. The most recent GAO report issued in August 1987 was based on data collected prior to full implementation of the new directives now in place. The recent GAO review

of selected applications did not reveal any instances where applicants who were not included on the priority list were more needy than those who were on the list. A model contract, HIP selection criteria, and application form have been developed for the housing program to help ensure maximum housing benefits are realized from available funding.

**Headline:** "Reservations a Refuge for Criminals"

The newspaper states that: (1) politicizing of the police force has resulted in officers running errands; (2) tribal and BIA police are not qualified; (3) crimes are not solved because of jurisdictional issues; and (4) drug smugglers on reservations do not have to fear losing their assets.

**Response:** (1) Due to the isolation of many Indian people on reservations and the lack of private and public transportation, police officers, as a community service, will frequently transport patients to an IHS clinic or deliver medicine. Patrol officers are encouraged to do such work if it does not interfere with law enforcement responsibilities.

(2) All BIA police officers are required to pass either a state police academy or to complete the Basic Police Training Program at the Indian Police Academy. Extensive new training programs have been developed and are being presented in every area of law enforcement from drug investigation to operation of detention facilities. In addition, each Police Officer is required to receive 40 hours of in-service training each year. Much of the training is being given by the FBI, DEA, and post schools. Tribal officers under a 638 contracted program must meet the same standards of qualification and training. A copy of the training syllabus is included as Attachment No. 2.

(3) The complex distribution of jurisdictional responsibilities on Indian reservations does complicate law enforcement. That problem could be "solved" from a law enforcement point of view by having all jurisdiction in one government. Important national policy considerations, however, preclude simple solutions. Assigning all jurisdiction to the state would deprive tribes of powers of self-government, while assigning criminal jurisdiction over everyone on the reservation to tribes would subject non-Indians to tribal governments in which they are unable to participate. Giving the federal government exclusive jurisdiction would infringe on the sovereignty interests of both the state and the tribes. The current distribution is the result of attempts by the courts and Congress to accommodate the competing interests. These difficulties have been alleviated on many reservations by cross-deputization agreements among the various governments. Such agreements permit law enforcement officials to arrest anyone they have cause to believe has committed a crime and leaves the problem of sorting out jurisdiction to the prosecutors and the courts.

(4) While there is some doubt about whether property that is held in trust is subject to seizure because of its use in illegal drug trafficking, there is no question that on Indian reservations the federal government may seize the drugs, the proceeds from any drug transactions, and any vehicles used for drug transactions.

**Headline:** "Issue of Identity: Many Seeking Tribal Status"

The newspaper states that in the past decade 118 groups have applied for federal recognition, only five of which have met BIA requirements to be granted tribal



status, and that seven groups denied administrative recognition have been granted federal recognition through legislation.

**Response:** Since 1978, 103 groups have applied for federal recognition. Of this number, however, only 47 groups have submitted documented petitions demonstrating how they meet the seven mandatory criteria contained in 25 CFR 83. Twenty-six of these petitions have been processed, and five remain to be processed of which one is currently under active consideration. Of the 26 petitions which have been processed, seven groups have been acknowledged; 11 groups have been denied acknowledgment. Proposed findings have been completed for three other groups: one is proposed to be acknowledged; two are proposed to be denied acknowledgment. Four have been resolved outside the process.

In the past ten years, three groups have gained acknowledgment through the legislative process. One group was a terminated tribe which only Congress had the power to restore to tribal status. The other two were not denied acknowledgment by the BIA, as the petitions had not been processed at the time they were granted legislative recognition.

**Headline:** "Tribes' Hope is Education, but Schools Often 'Terrible'"

The article states that: (1) BIA overstated the number of higher education students and their achievements; (2) in 1984, seventeen percent of those receiving higher education scholarships did not meet BIA's minimum standards; (3) overestimates of projected enrollment have led to schools being constructed with more space than necessary; (4) excess space in Bureau schools totals 40 percent of capacity; (5) there is a large backlog of repair projects; (6) cooperative schools double counted students thereby inflating federal aid; (7) BIA schools inflate their enrollment to obtain additional funds; (8) due to an accounting error public schools lost \$5.8 million in Johnson-O'Malley funding; (9) the Bureau has not issued an education annual report in nine years; and (10) the Bureau has "dumped" 39,000 students on the public school system during the past two years.

**Response:** (1) The inflated number of graduates funded by special higher education scholarships was derived from annual reports submitted by the contractors, American Indian Scholarships, Inc. (AIS), and the American Indian Law Center in 1985. Modifications to the contract documents have been made requiring the contractor to maintain adequate program records and verification of the data has been achieved through on-site visits.

(2) Part 40 of the Code of Federal Regulations provides little guidance on program operations, other than to limit eligibility for grants to those of one-quarter or more Indian blood who reside on or near reservations (the blood quantum restriction has been overturned by the courts). Other guidance is contained in the Bureau of Indian Affairs Manual. The Bureau has published proposed regulations in an effort to strengthen the program and to address the court decision on blood quantum. Both the House and Senate have proposed bill language for FY 1988 which would block implementation of these regulations.

(3) As BIA school boundaries overlap the boundaries of public school districts, estimating school enrollment is generally accomplished by a community survey to determine where parents will send their children. Other factors considered include proposed new housing developments and birth rates. So long as parents are able to choose between public schools, Bureau day schools and boarding schools, estimates of future enrollments will continue to be somewhat unreliable.

(4) There are no firm figures on space utilization in Bureau schools as the criteria for measuring utilization have not been developed. For instance, a certain amount of space is required for hallways and restrooms. This space may be technically "unused," but it is required nonetheless. At the high school level, special purpose rooms such as science laboratories are required, but the rooms may not be used every hour of every day. The Office of Indian Education Programs and the Office of Construction Management are currently working on standards which would provide a system through which meaningful comparisons of space utilization could be made.

(5) There is a backlog of facility improvement and repair work required on Bureau schools. The cost to repair those deficiencies determined to be of a critical nature (S-1), was estimated at \$3,300,000 in 1987. During FY 1987, \$1,028,000 was spent to correct the S-1 deficiencies. More than \$33 million was obligated in fiscal year 1987 to address the non-critical facilities deficiencies. Most of the remaining S-1 deficiencies identified in FY 1987 will be corrected in FY 1988.

(6) The counting of children enrolled in Bureau schools as eligible for federal Impact Aid was done by the public school districts, not by the Bureau of Indian Affairs. The Department of Education has issued regulations which will prohibit such double counting in the future.

(7) Based on existing regulations, funding under the Indian Student Equalization Formula is based on enrollment during a "count week" in late September of each year. Audits are conducted at schools showing significant differences from the prior year. In FY 1985, such audits resulted in decreased funding for seven schools and increased funding for one school. As teachers are hired for an entire school year based on projected enrollments, schools could face substantial financial problems if funding were decreased during the school year as student enrollment decreased.

(8) There was no "accounting error" in the Johnson-O'Malley program. There were unexpended balances in excess of \$5 million; however, these funds were under contract to tribal contractors. Appropriations Committee staff were informally advised that, absent bill language, these funds were unavailable for redistribution to other contractors.

(9) Annual reports on Indian Education were submitted for fiscal years 1980, 1981, 1982, and a combined report was issued for 1983-84. The report for 1985-1986 will be submitted to Congress in the near future.

(10) In fiscal year 1985, the average daily membership (ADM) in Bureau and contract schools was 41,991 students; in fiscal year 1987, the ADM was 39,911. This is a difference of 2,080 students rather than 39,000 cited by the newspaper. As all states are required to provide a free public education for all children in the state, transfers of students from Bureau to public school districts cannot be described as "dumping."

**Headline:** "Child Molesters Attracted to Jobs at Indian Schools"

The article states that the Bureau has failed to complete background checks on teachers which would have shown past histories of sex crimes.

**Response:** The education personnel system requires that pre-employment inquiries be made to previous employers, law enforcement agencies, and educational

institutions for verification of information provided on the job application form and to determine if the applicant has a satisfactory work record and is of good character.

Prior to enactment of Public Law 95-561, all personnel actions were processed by the Area Offices. That legislation directed that education agency offices and schools assume responsibility for hiring teachers. This decentralized system has resulted in most screening being conducted either by form letter or by telephone inquiries, and the thoroughness of the background investigation may vary from one education agency to another. The recent cases have served to highlight the importance of thorough background investigations of all persons working with children.

As it is unlikely that any screening system will be 100 percent successful in identifying every potential child abuser, the Bureau has initiated training in the schools, in conjunction with the Child Protection Teams, in an effort to provide early detection of potential abuse and to establish school policies and procedures to deal with individuals suspected of abusing students.

**Headline:** "Buildings Slump, Along with Hope, at Many Farms"

The newspaper states that: (1) poor site selection has led to settling of the building which ultimately resulted in condemnation of the structures; (2) six students were raped during the last school year; (3) 119 students dropped out of Many Farms during the 1986-87 school year; (4) some teachers routinely show movies and others charged students admission; and (5) a Navajo parent made an improper cash payment to a BIA security guard.

**Response:** (1) The Many Farms site was selected at a community meeting from three sites that the Navajo tribe was willing to make available from their land base. Site engineering studies were conducted which indicated that the location was a poor choice because of potential settling problems. The engineering report provided a detailed construction method to provide special foundations for the building. The builders, however, ignored the report's recommendations.

(2) Records indicate that three rape cases were reported. As none of the alleged rapists were Bureau employees, the information was turned over to the Criminal Investigator to collect evidence which was then provided to the U.S. Attorney's Office. One case has been accepted by the U.S. Attorney's Office and the other two are still being investigated. None of the rapes occurred on the Many Farms campus.

(3) Of the 97 (not 119) students who did not complete the school year at Many Farms, 13 students graduated after the first semester and a number of the others were bussed to Rough Rock Public Schools because of the facility problems at Many Farms.

(4) Movies are shown at the school and are generally related to subject matter being taught. Videos have been shown, usually by student organizations, for a fee in order to raise money for student activities. The proceeds have been deposited in the student club account.

(5) A proposed agreement was written on April 27, 1987 to deal with a number of incidents involving one student. Part of the agreement was a \$200 cash payment to a school security guard. When this matter came to the attention of the Chinle

Agency in May 1987, a memorandum was sent to the Principal at Many Farms directing immediate investigation and corrective action. The money that had been paid was returned.

**Headline:** "BIA's Handling of Gear, Money is 'God-Awful'"

The newspaper states that: (1) the BIA cannot account for the money it spends; (2) the Bureau has generally ignored over 1,000 audit reports; (3) the procurement system is rife with mismanagement; (4) one BIA office purchased gift certificates to keep from having to return funds to the Treasury; (5) four laundry service contracts were awarded to a company that was fronted by Indians, but run by non-Indians; (6) seven contracts to thin forests were awarded to non-Indians; (7) 25 contracts were awarded under the Buy Indian Act to a firm using the certification of another business; (8) 73 Buy Indian contracts were improperly awarded; and (9) the BIA does not keep an accurate inventory of government checks.

**Response:** (1) The Bureau accounts for all the funds, appropriated and other, and meets the standard reporting requirements of the Department of the Interior, Treasury, and the General Accounting Office.

In 1982, GAO found that the Bureau's accounting system did not meet standards for system documentation. Subsequent to that finding, the Bureau established a review team to catalogue deficiencies and prepare the requirements for system redesign which would meet the GAO standards. The redesign has not been implemented due to the Department of the Interior's decision to move all bureaus to a standard accounting system. This system will be implemented in the Bureau of Indian Affairs in 1989-90.

(2) On February 14, 1986, the Inspector General sent the Assistant Secretary - Indian Affairs a summary and analysis of audit reports that had been issued since 1967. The cover memorandum indicated the purpose of the document: to provide a history of the IG's work on BIA programs and to provide the new Assistant Secretary with an overview of long-standing problem areas. As opposed to "1,000 studies," the IG reviewed 261 audit reports over an 18-year period containing "one thousand findings." The memorandum contained exhibits which identified problem areas by program and a list of factors which the IG believed may have contributed to the situation. No recommendations were included with the memorandum and there was nothing stating that the Bureau ignored audit reports.

As of October 20, 1987, the BIA had only five overdue IG audits, containing 36 recommendations, which remain to be resolved with the IG as to the validity of the findings and/or proposed corrective action plans.

(3) These allegations are taken from an IG audit which was conducted in FY 1984. There have been, and continue to be, problems in contracting which the Bureau is addressing. In FY 1987, \$200,000 was committed to providing additional training to contracting personnel and the central office has established administrative review teams which make on-site visits to area offices to review all administrative activities, including contracting.

(4) The purchase orders were issued in July and August 1981 using Johnson-O'Malley funds. The total amount in question was \$23,500. Of this amount, purchase orders totalling \$9,500 were cancelled prior to the IG audit and \$4,380 was refunded to the Bureau by vendors and returned to the Treasury. The remaining \$9,620 in gift certificates were used to support student skating trips and food

for field trips. This issue came to light after the Navajo Area Contracting Officer asked the Inspector General to review the purchases.

(5) The four laundry service contracts were issued between FY 1980 and FY 1983. The contract was awarded to an Indian who leased the building and equipment for the laundry service. The local Solicitor's office issued an opinion stating that an Indian firm, in order to be certified, must own its own facilities and equipment — it cannot lease or rent equipment. The Bureau has not awarded any Buy Indian laundry contracts in the Navajo Area since the opinion.

(6) The seven contracts were awarded in 1981 and 1982 for a total of \$155,755. The contract award was made to an Indian and the IG's audit so states. The Indian was, however, fronting for a non-Indian firm. Both the Indian and the non-Indian firm have been debarred from BIA contracting. Again, this situation was brought to the IG's attention by a Bureau contracting officer.

(7) Seven of the 25 contracts were awarded by the Anadarko Area Office and 18 were awarded by Facilities Engineering in Albuquerque. The firm that had been certified as a Buy Indian contractor changed its name and so notified Facilities Engineering. Facilities Engineering failed to recheck the firm to ensure that it still met the criteria for Buy Indian contracting. It did not meet the criteria as a second non-Indian had been brought into the firm. Facilities picked up the problem during a site visit and corrected the situation by rescinding the certification.

(8) The audit found 73 contracts awarded to firms not fully Indian or to firms that subcontracted all or most of the work to non-Indian firms. In response to the audit, the Bureau issued guidelines reaffirming the requirement for 100 percent Indian ownership and has issued directives concerning the percentage of work that can be subcontracted based upon the type of work to be performed.

(9) With the establishment of the Trust Fund Accounting Office in 1986, the Bureau began a physical inventory of blank checks. Each disbursing location provides a monthly report which is compared to the check disbursement report. An inventory is maintained which tracks exactly how many checks are at each disbursing location. All of the old card check stock has been destroyed and the Bureau now uses paper checks.

**Headline: "Billions Fail to Ignite Tribal Economies"**

The article states that: (1) \$30 billion has been provided to develop self-sustaining reservation economies in the last decade; (2) BIA personnel are under-qualified to provide business assistance; and (3) the BIA has created the majority of obstacles to reservation economic development.

**Response:** (1) \$30 billion represents federal funds from all sources for all programs spent to benefit Indian tribes over the past decade. The most significant expenditures for economic development projects on reservations were the Office of Economic Opportunity, the Administration for Native Americans, and the Department of Labor. Over the past ten years approximately \$200 million has been made available directly for economic development through the BIA from the revolving loan fund, the loan guaranty program and the business economic development grant program. Other Bureau programs which can impact tribal economies include adult vocational training and direct employment.

(2) In recognition of the fact that it is difficult to hire civil service staff with broad-based business knowledge, the Bureau had proposed contracting with private firms to provide assistance to the tribes in the areas of business development and the development and presentation of loan packages. Funds requested for this purpose in fiscal year 1988 have been denied by the Congress.

(3) Contradicting the words in the article, the newspaper published a graph from the report of the Presidential Commission on Indian Reservation Economies which shows that "excessive BIA regulation" and "BIA operational difficulties" rank thirteenth and fourteenth out of the 15 leading reasons why businesses don't locate on reservations.

Excerpts from IG Audit (C-IA-BIA-52-85)

#### ALLEGED SLUSH FUND

During the April 8, 1985, Subcommittee hearings, a representative of the Oklahoma Indian Mineral Owners Association made reference to a "\$28 million slush fund" at the Anadarko Area Office entitled "R.L. Larson." The following pages present the results of our review of transactions involving the R.L. Larson Account and the Indian Moneys, Proceeds of Labor (IMPL) trust fund. Our review of these activities did not disclose any evidence of a \$28 million slush fund within the Anadarko area.

#### R. L. Larson Account

The Anadarko Area Office established the R.L. Larson account as a special deposit account for accumulating various administrative fees that were to be eventually deposited to the U.S. Treasury. The R.L. Larson account was centralized at the Anadarko Area Office until 1979, when it was decentralized at the Anadarko, Concho, and Shawnee Agencies. The Pawnee Agency did not use an R.L. Larson account because it submitted administrative fees to the U.S. Treasury when collected.

We analyzed the activity in the R.L. Larson accounts for the period August 1964 through July 1985 to determine if, in fact, the R.L. Larson accounts were used as a slush fund. Even though there were deposits and withdrawals from these accounts that were not related to administrative fees, we are of the opinion that the R.L. Larson accounts were not used as a slush fund. This opinion does not apply to the following periods because account ledger cards could not be located:

February 26, 1968, to April 9, 1973  
February 10, 1976, to April 20, 1977  
May 18, 1977, to June 21, 1978

We identified 31 transactions totaling \$420,840 that were not related to administrative fees and therefore, should not have been processed through R.L. Larson accounts. Twenty-nine of these transactions totaling \$351,870 may have been legitimate deposits to other special deposit accounts. We were unable to make a positive determination because deposit transaction

documentations could not be located. The other two transactions should never have been deposited to R.L. Larson or other special deposit accounts. These two transactions totaling \$68,970 were inadvertently deposited in the R.L. Larson account in May and September 1977 instead of the account for the Wichita, Caddo, and Delaware Tribes of Oklahoma. When the Anadarko Area Office became aware of these mistakes in July 1978, the \$68,970 plus \$4,979 in interest was transferred to the Tribes' account. For all 31 transactions, the \$420,840 was eventually transferred to the Tribes.

For the periods reviewed, the balances of the R.L. Larson accounts never exceeded \$197,015, which was at May 17, 1977.

#### Indian Moneys, Proceeds of Labor

Representatives of the Oklahoma Indian Minerals Owners' Association may have been referring to the IMPL trust fund when they mentioned a slush fund. IMPL was sometimes referred to as the "Superintendent's slush fund."

The IMPL trust fund was established by legislation in 1883 (22 STAT.582,590) to provide Federal management of revenues from the sales of Indian reservation products (e.g., handicrafts). However, subsequent legislation changed the sources of IMPL's revenue considerably. In 1926, amending legislation (44 STAT.560) was passed to include all miscellaneous revenue derived, not only from reservations, but also from agencies and schools.

Subsequent to July 1, 1930, tribal funds were segregated from other funds in IMPL. As a result, miscellaneous revenues from Indian reservations were deposited in separate tribal trust fund accounts, and revenues of agencies and schools remained in the IMPL accounts. IMPL expenditures were made at the discretion of BIA for the benefit of the Indian tribes, agencies, and schools on whose behalf the moneys were collected.

IMPL distributions. The fiscal year 1982 appropriations Act (Public Law 97-100) authorized BIA to expend IMPL for any purpose for which funds are appropriated under the subheading "Operation of Indian Programs." This Act further stated that on September 30, 1982, all unobligated IMPL funds were to be deposited into miscellaneous receipts of the U.S. Treasury. At this date, IMPL was to be abolished.



Tribes and individual Indians took exception to this use of IMPL because a portion of the IMPL balances represented special deposit account interest, which belonged to them. Public Law 97-257, dated September 10, 1982, changed Public Law 97-100 by authorizing the distribution of unobligated IMPL balances at September 30, 1982, to Tribes and individual Indians. At this date, the IMPL balances were to be placed in escrow accounts and invested. BIA was to determine by September 30, 1985, the extent to which funds held in such escrow accounts represent income from the investment of special deposits relating to specific Tribes and individual Indians. At that time, interest earned on invested escrow amounts was to be distributed with the escrow principal.

The unobligated IMPL balances at September 30, 1982, that were escrowed were:

Anadarko Area Office	\$192,562
Anadarko Agency	254,270
Concho Agency	4,738
Pawnee Agency	10,562
Shawnee Agency	76,795
Horton Agency	<u>15,988</u>
Total	<u>\$554,915</u>

All \$362,353 in the agency IMPL accounts were to be distributed to Tribes and individual Indians. The entire \$192,562 in the Area Office IMPL accounts was to be deposited into miscellaneous receipts of the U.S. Treasury, since interest on special deposit accounts was not deposited in these IMPL accounts.

The regulations for distributing the IMPL escrow accounts were published in the Federal Register on October 21, 1983, (25 Code of Federal Regulations (CFR) 114). By February 1985, the Anadarko Area Office had determined the distribution of the IMPL escrow accounts and notified the Tribes and individual Indians. The Anadarko, Pawnee, Shawnee, and Horton Agencies published general notices and sent letters to Tribes and individual Indians detailing the amounts of the individual distributions. The Concho Agency only published general notices explaining the IMPL escrow distribution, which was in accordance with 25 CFR 114.5(b).

Using the criteria published in 25 CFR 114.5, the Anadarko Area office determined that \$486,128 in IMPL escrow principal and interest should be distributed. By September 27, 1985, the Anadarko Area Office was to distribute \$373,424 to Tribes and individual Indians. (Since our fieldwork was completed on September 13, 1985, we did not verify this distribution.) The difference of \$112,704 was not to be distributed because Tribes and individual Indians had not submitted a claim or refused to sign a waiver of claims against the Government (\$100,590) or were not to receive a distribution since their shares were less than \$10 each (\$12,114). The waiver of claims was required by Public Law 97-257 while the \$10 minimum distribution is in accordance with 25 CFR 114.5(a)(6).

The following summarizes the IMPL escrow distribution:

	<u>IMPL Escrow Balances</u>	<u>Distributed Amount</u>	<u>Undistributed Amount</u>
Horton Agency	\$ 21,436	\$ 19,378	\$ 2,058
Anadarko Agency	341,129	275,172	65,957
Concho Agency	6,357	1,970	4,387
Pawnee Agency	14,171	8,204	5,967
Shawnee Agency	<u>103,035</u>	<u>68,700</u>	<u>34,335</u>
Total	<u>\$486,128</u>	<u>\$373,424</u>	<u>\$112,704</u>

At August 31, 1985, the balance of the Anadarko Area Office IMPL accounts totaled \$214,668. This amount represented the most current balances at the time our fieldwork was completed.

We did not attempt to determine the reasonableness of the IMPL escrow account distributions. This would require analysis of all special deposit accounts transactions since 1966 (the date special deposit accounts started earning interest for IMPL). Some of the records to perform such an analysis no longer exist.

Annual balances. For fiscal years 1980 through 1982, the yearend IMPL balances were:

<u>Account</u>	<u>1980</u>	<u>1981</u>	<u>1982</u> <sup>2/</sup>
Anadarko Area Office <sup>1/</sup>	\$310,465	\$ 786,842	\$330,239
Anadarko Agency	345,837	306,145	-0-
Concho Agency	23,364	6,577	-0-
Shavnee Agency	58,436	65,008	-0-
Pawnee Agency	18,946	19,286	2,800
Horton Agency	16,399	18,393	-0-
<b>Total</b>	<b>\$773,447</b>	<b>\$1,202,251</b>	<b>\$333,039</b>

<sup>1/</sup> Area Office accounts included accounts located at Chilocco, Riverside, Concho, and Fort Sill Indian Schools. The above amounts include obligations that were not expended at yearend.

<sup>2/</sup> Unobligated amounts in Agency accounts had been transferred to IMPL escrow accounts.

Sources of funds. The sources of IMPL funds were special deposit account interest, IMPL interest, and fees for various BIA goods and services such as:

- Sales of official records to the general public
- Rental of school facilities
- Room, board, and space
- Gym rentals
- Surface and mineral leases on Government-owned lands
- Lost book payments
- Freight damages
- Janitorial services
- Damages to Government property
- Water, sewer facilities, and garbage disposal
- Fire protection
- Quarters rentals
- Duplication services
- Feed and livestock

As of April 1, 1981, interest earned on special deposit accounts was credited to the respective special deposit accounts rather than to IMPL accounts.

Expenditures. During fiscal year 1982, Area and Agency Offices expended \$930,469 from IMPL. The amounts and categories of expenditures were:

BIA payroll	\$257,153
BIA training	1,311
Security and maintenance	15,235
General Services Administration purchases	8,671
Technical assistance	12,716
Administration	16,903
Contracts with Indian Tribes	538,945
Other expenditures (includes travel)	<u>79,535</u>
Total	<u>\$930,469</u>

All of these types of expenditures were within the appropriation subheading "Operation of Indian programs" and were allowable per Public Law 97-100. However, the Area exceeded its approved IMPL budget of \$928,270 by \$2,199.

We analyzed all IMPL expenditures throughout the Anadarko Area from October 1, 1981, through December 3, 1984, to determine if they were proper. We noted three instances of improper expenditures. One of these is the above mentioned situation where expenditures exceeded the budgeted amounts by \$2,199. Another improper use of IMPL funds occurred on December 1, 1981, when the Shawnee Agency expended \$869 from its IMPL fund to cover a per capita payment to a Kickapoo tribal member. The expenditure was not included in the approved program plan as required by 25 CFR 113.6. The \$869 was repaid on January 19, 1982. The third improper expenditure occurred on December 3, 1984, when \$51,440 was expended from the Chilocco Indian School IMPL fund to cover an erroneous oil and gas royalty disbursement at the Concho Agency. According to 25 CFR 113.6(a), IMPL funds may be used only for the benefit of the agency or school for which such funds were collected and in accordance with an approved program plan. Since Concho operations did not benefit the Chilocco Indian School, the \$51,440 disbursement was not proper. Concho Agency IMPL funds were not available to cover this disbursement because all of these funds were frozen in the IMPL escrow account. All but \$9,453 of the \$51,440 has been repaid to IMPL.

Even though IMPL expenditures are processed through BIA's centralized finance operation in Albuquerque, New Mexico, we are of the opinion that controls are lax. Otherwise, IMPL expenditures would not have exceeded the approved budget amounts, expenditures not in the program plan would not have been paid, and Chilocco funds would not have been expended for Concho activities.

DAD/OEA/MS 651

DEC. 12 1986

## Memorandum

To: Superintendent, Anadarko Agency  
Bureau of Indian Affairs

From: Chief, Office of External Affairs

Subject: Desk Review of Indian Lease 14-202-206-60359, (607-060359-0)  
for Mr. Roger Bosin

At the meeting the Office of External Affairs (OEA) held with the Oklahoma Indian Minerals Owners Association on July 15, 1986, Mr. Roger Bosin requested that this office review his lease account. Mr. Bosin advised us that the well on his lease was completed in September 1981 and noted that the first payment of \$1,600 was not received until March 1984. Mr. Bosin further stated that the Minerals Management Service (MMS) had rejected the royalty payments on this lease on three occasions. Mr. Bosin asked OEA to investigate the reason for the late payment and whether late payment interest was paid during the period September 1981 through March 1984.

Following our July 15, 1986, meeting the OEA learned that the Royalty Compliance Division had selected this lease for an audit. The audit was completed in November 1986. A copy of the audit report was forwarded to the Bureau of Indian Affairs Office of Energy and Minerals Resources on November 14, 1986.

In summary, the audit disclosed that gas royalties were underpaid to participating Indian leases in the communitization agreement. It was determined that Lease No. 607-060359 was underpaid by \$1,866.97. A demand letter was sent for payment of the additional royalties on October 1, 1986.

Regarding Mr. Bosin's concerns about the completion of the well and the first royalty payment, attached is a summary showing pertinent information relative to his questions and other data regarding this lease and the communitization agreement.

If you have any questions regarding this matter please telephone Bill Trujillo (FTS 326-3350).

ORIG SGD DON C JONES

Vernon B. Ingraham

cc: Royalty Management Coordinator, BIA  
Division of Energy and Mineral Resources

RE: Roger Bosin Lease No. 14-202-206-60359 (607-060359-0)

Lease is included in communitization agreement (CA) SCRI-28

Communitization Agreement approved 7-1-81

Acreage in 632.980 Acres

35 leases participate in CA

Lease 607-60359-0 has 97.450 acres in the CA and is allocated 15.3954% of production.

The Well was spudded on 9-12-81

The initial test was run on 8-26-82 and tested 345,000 CF Gas/day

Well was completed on 10-4-82 (well shut-in awaiting pipeline)

First sales 1-28-83

Five companies who reported and paid royalties on production in 1983, and who were billed for late payments are as follows:

	<u>Phillips</u>	<u>Craig</u>	<u>Hudson</u>	<u>Harper</u>	<u>Santa Fe</u>
Date of	4-25-85	8-01-85	2-17-84	2-17-84	2-17-84
Payment	\$278.37	195.16	126.36	5,716.73	812.38
Payment	15 months	23 months	10 months	12 months	12 months
Period	1-83/3-84	1-83/11-84	1-83/10-83	1-83/12-83	1-83/12-83

Payment Period	Bill for Late Payment	Bill for Late Payment	Bill for Late Payment	Bill for Late Payment
\$47.59	\$37.04	.07 10-16-85	\$409.03	
10-16-85	2-12-86	.47 12-18-85	3-27-84	

DAD/OEA/MS 651

## Memorandum

DEC. 12 1985

To: Superintendent, Anadarko Agency  
Bureau of Indian Affairs

From: Chief, Office of External Affairs

Subject: Review of Royalties for Lease No 14-20-206-33822

This memorandum responds to a request for a desk review which we received on July 15, 1986. Ms. Beatrice Kopaddy requested a review of royalty payments for Lease No. 14-20-206-33882 as she believed there was a problem with late payment and late reporting. As an example, Ms. Kopaddy stated that she had received her March 1986 payment in June 1986.

Our review revealed that royalty payments have been distributed in the third month following the month of production. This is because the payor, Kirby, has made an estimated payment, thereby gaining an extra month in which to report actual quantities and values. This estimated payment procedure is permitted by Minerals Management Service (MMS) for those cases where the payor has difficulty reporting and paying on a timely basis.

The allottees who received royalties from leases for which estimated payments have been made do not suffer a delay in receipt of income, since the estimated payment is distributed to them. In this case, estimated payments have been as follows:

- o \$55,501.43 received by MMS December 29, 1983, and distributed to the Bureau of Indian Affairs (BIA) on January 18, 1984.
- o an additional \$24,498.57 received by MMS March 1, 1985, and distributed to BIA on April 17, 1985, bringing the estimated payment balance to \$80,000.
- o a reduction of \$16,000, reported to BIA as an offset to royalties otherwise distributed on September 18, 1985, reducing the estimated payment balance to \$64,000.

The initial estimated payment of \$55,501.43 was an estimate of royalties due for the sales month of November 1983. This payment was distributed to BIA on



January 18, 1984, in lieu of actual royalties due on November sales. Kirby reported the actual one month later. Royalties of \$56,300.64, due on November sales, were then distributed on February 17, 1984, one month after the estimated payment was distributed.

Attachment No. 1 shows the \$55,501.43 estimated payment which is underlined and identified by Transaction Code 03. Similarly, Attachment No. 2 shows where the estimated payment was increased to \$80,000; i.e., the previous \$55,501.43 estimated payment was reduced to a zero balance and a new estimated payment of \$80,000 was reported. Again, those transactions are underlined and identified by Transaction Code 03. Attachment No. 3 shows the \$16,000 reduction in the estimated payment which is underlined and identified by Transaction Code 03.

Since January 1984, when the initial estimated payment was distributed, royalties on actual sales have been regularly reported and paid by Kirby. Such reports and payment are due at the end of the second month after the sales month. Thus, royalties on March 1986 sales would be due by the last day of May 1986 and would be distributed to the BIA in June 1986. Distributions have generally been consistent over the past three years, occurring in the middle of the third month after the month of sale.

In summary, estimated payments offset the effect of receiving royalties one month later than the normal receipt date. If estimated payments are less than actual royalties owed, as was the case for November 1983 sales, then the payor is billed late payment interest on the difference between the estimated payment and actual royalties owed. Attachment No. 4 shows instances where late payment interest has been billed for Lease No. 14-20-206-33822.

If you have any questions, please call Don Jones at FTS 326-3191.

ORIG SGD DON C JONES

Vernon B. Ingraham

Attachments

cc: Area Director, Anadarko Area Office  
Royalty Management Coordinator, BIA,  
Division of Energy and Mineral Resources

Attachment No. 1

REPORT ID: SRR100MR  
 RUN DATE : 11/24/88  
 RUN TIME : 18:53:40

UNITED STATES DEPARTMENT OF THE INTERIOR  
 MINERALS MANAGEMENT SERVICE  
 TOYALTY MANAGEMENT PROGRAM  
 STATE AND TRIBAL SUPPORT SYSTEM

PAGE NUMBER : 18  
 REQUEST NBR : 387  
 REPORTED ON : RMP  
 REQUESTED BY : RMP

## ROYALTY DETAIL HISTORY ANALYSIS REPORT

LEASE: 807-033822-0  
 REVENUE SOURCE: 001  
 SALES MONTH/YEAR: 10/83

PROD	PAYOR	SEL	REPORT	RECEIPT	TRAN	ADJ	SALES	SALES	ROYALTY	ROYALTY	UNIT	QUAL	DOCUMENT	LINE
CODE	NUM	ARR	FM/YY	DATE	CODE	RSN	QUANTITY	VALUE	QUANTITY	VALUE	PRICE	MEAS	NUMBER	NUM
TOTAL								508,018.61		52,448.78				

SALES MONTH/YEAR: 11/83

04	33680	001	12/83	12/29/83	03	00				55,501.43			0000	00102307	000110
04	33680	001	01/84	01/31/84	01	00	846.27	5,577.97	108.28	897.25	8.43	1011	00108125	000212	
04	33680	001	01/84	01/31/84	01	00	38,281.97	275,478.42	4,782.75	24,459.55	7.20	1011	00108125	000109	
04	33680	001	01/84	01/31/84	36	00	38,126.24	281,917.88	2,934.62	21,142.84	7.20	1011	00105125	000213	
04	33680	001	02/85	03/01/85	01	01	24,322.40	189,211.40	4,864.48	37,842.28	7.77	1017	00143429	008107	
04	33680	001	02/85	03/01/85	01	01	23,912.75	172,297.75	4,782.75	34,459.55	7.20	1011	00143429	008104	
04	33680	001	02/85	03/01/85	01	01	841.40	3,486.25	108.28	897.25	8.43	1011	00143429	008105	
04	33680	001	02/85	03/01/85	36	01	14,672.10	105,719.20	2,934.62	21,142.84	7.20	1011	00143429	008106	
04	33680	001	02/85	03/01/85	36	01	14,593.90	112,781.20	2,918.70	22,756.24	7.79	1017	00143429	008108	
TOTALS FOR PAYOR 33680							78,044.13	584,661.67	7,783.18	116,099.95					

TOTALS FOR SALES MONTH 11/83 LEASE 807-033822-0 R/S 001

PRODUCT 04	78,044.13	584,661.67	7,783.18	116,099.95
TOTAL		584,661.67		116,099.95

SALES MONTH/YEAR: 12/83

04	33680	001	02/84	02/29/84	01	00	753.98	4,895.99	94.25	812.00	6.49	1017	00107809	000208
04	33680	001	02/84	02/29/84	01	00	33,302.26	247,227.71	4,162.78	30,903.48	7.42	1017	00107809	000109
04	33680	001	02/84	02/29/84	36	00	34,056.24	252,825.08	2,854.22	18,961.88	7.42	1017	00107809	000301
04	33680	001	02/85	03/01/85	01	01	471.25	3,060.00	94.25	612.00	6.49	1017	00143429	008101
04	33680	001	02/85	03/01/85	01	01	21,285.15	169,617.75	4,297.03	33,923.55	7.98	1017	00143429	008102

332

REPORT ID: SAR10088  
 RUN DATE : 11/24/88  
 RUN TIME : 16:03:40

UNITED STATES DEPARTMENT OF THE INTERIOR  
 MINERALS MANAGEMENT SERVICE  
 ROYALTY MANAGEMENT PROGRAM  
 STATE AND TRIBAL SUPPORT SYSTEM

PAGE NUMBER : 21  
 REQUEST NBR : 387  
 REPORTED ON : RMP  
 REQUESTED BY : RMP

## ROYALTY DETAIL HISTORY ANALYSIS REPORT

LEASE: 607-033822-0  
 REVENUE SOURCE: 001  
 SALES MONTH/YEAR: 11/84

PROD	PAYOR	SEL	REPORT	RECEIPT	TRAN	ADJ	SALES	SALES	ROYALTY	ROYALTY	UNIT	QUAL	DOCUMENT	LINE
CODE	NUM	ARR	MM/YY	DATE	CODE	RSN	QUANTITY	VALUE	QUANTITY	VALUE	PRICE	MEAS	NUMBER	NUM
04	33690	001	01/85	01/31/85	01	00	24,696.10	176,964.40	4,939.62	35,992.88	7.16	1018	00140269	000209
04	33690	001	01/85	01/31/85	36	00	14,818.95	106,153.65	2,983.79	21,330.73	7.16	1018	00140269	000403
TOTALS FOR PAYOR 33690							39,517.05	283,118.05	7,903.41	56,623.61				
TOTALS FOR SALES MONTH 11/84 LEASE 607-033822-0 R/S 001														
PRODUCT 04							39,517.05	283,118.05	7,903.41	56,623.61				
TOTAL								283,118.05		56,623.61				

SALES MONTH/YEAR: 12/84

04	33690	001	02/85	02/01/85	01	00	30,978.98	226,559.45	6,195.71	45,711.89	7.27	1013	00143429	000301
04	33690	001	02/85	02/01/85	36	00	16,587.05	127,193.05	3,717.41	27,438.61	7.38	1013	00143429	000408
TOTALS FOR PAYOR 33690							49,565.90	353,752.50	9,913.12	73,150.50				
TOTALS FOR SALES MONTH 12/84 LEASE 607-033822-0 R/S 001														
PRODUCT 04							49,565.90	353,752.50	9,913.12	73,150.50				
TOTAL								353,752.50		73,150.50				

SALES MONTH/YEAR: 01/85

04	33690	001	02/85	03/01/85	03	22				95,501.43-			0000	00143429	000605
04	33690	001	02/85	03/01/85	03	00				80,000.00			0000	00143429	000511
04	33690	001	03/85	03/28/85	01	00	33,346.88	226,848.00	6,669.31	45,369.80	6.80	1013	00145161	000304	
04	33690	001	03/85	03/28/85	14	00			6,669.31	3,046.85			0000	00145161	000610
04	33690	001	03/85	03/28/85	14	00			4,001.54	1,828.09			0000	00145161	000707
04	33690	001	03/85	03/28/85	36	00	20,007.70	136,107.85	4,001.54	27,721.87	6.80	1013	00145161	000502	
TOTALS FOR PAYOR 33690							53,354.25	362,956.85	21,341.70	101,964.88					

Attachment No. 1

REPORT ID: SAN100MR  
 RUN DATE : 11/24/88  
 RUN TIME : 18:53:40

UNITED STATES DEPARTMENT OF THE INTERIOR  
 MINERALS MANAGEMENT SERVICE  
 ROYALTY MANAGEMENT PROGRAM  
 STATE AND TRIBAL SUPPORT SYSTEM

PAGE NUMBER : 34  
 REQUEST FOR : 367  
 REPORTED BY : RMP  
 REQUESTED BY : RMP

## ROYALTY DETAIL HISTORY ANALYSIS REPORT

LEASE: 607-033822-0  
 REVENUE SOURCE: 001  
 SALES MONTH/YEAR: 06/85

PROD CODE	PAYOR NUM	SEL ARR	REPORT MM/YY	RECEIPT DATE	TRAN CODE	ADJ NSH	SALES QUANTITY	SALES VALUE	ROYALTY QUANTITY	ROYALTY VALUE	UNIT PRICE	QUAL NEAS	DOCUMENT NUMBER	LINE NUM
04	33690	001	06/85	06/30/85	01	00	20,309.10	137,739.90	4,061.82	27,847.96	6.78	1011	00159840	000304
04	33690	001	06/85	06/30/85	36	00	12,185.45	82,643.95	2,437.09	10,828.79	6.78	1011	00159840	000311
04	33690	001	06/85	06/30/85	14	00			6,498.81	2,989.92		0000	00159841	000207
TOTALS FOR PAYOR 33690							32,494.55	220,383.85	12,997.72	47,036.69				
TOTALS FOR SALES MONTH 06/85 LEASE 607-033822-0 R/S 001														
PRODUCT 04							32,494.55	220,383.85	12,997.72	47,036.69				
TOTAL								220,383.85		47,036.69				

SALES MONTH/YEAR: 07/85

04	33690	001	06/85	06/30/85	03	32				16,000.00-		0000	00159840	000611
04	33690	001	06/85	09/30/85	14	00			6,862.32	3,205.14		0000	00162786	000207
04	33690	001	09/85	09/30/85	01	00	21,458.67	149,188.50	4,291.73	29,837.70	6.95	1017	00162787	000304
04	33690	001	09/85	09/30/85	36	00	12,852.97	89,470.60	2,570.69	17,894.12	6.96	1017	00162787	000312
TOTALS FOR PAYOR 33690							34,311.64	238,659.10	12,724.64	34,936.96				
TOTALS FOR SALES MONTH 07/85 LEASE 607-033822-0 R/S 001														
PRODUCT 04							34,311.64	238,659.10	12,724.64	34,936.96				
TOTAL								238,659.10		34,936.96				

SALES MONTH/YEAR: 08/85

04	33690	001	10/85	10/30/85	14	00			6,896.54	3,328.95		0000	00165458	000207
04	33690	001	10/85	10/30/85	01	00	21,565.73	150,297.20	4,213.15	30,059.44	6.96	1017	00165459	000304
04	33690	001	10/85	10/30/85	36	00	12,916.94	90,137.50	2,583.39	18,027.50	6.97	1017	00165459	000311
04	33690	001	02/86	02/28/86	01	01	12,916.94	88,128.30	2,883.39	17,226.64	6.96	1017	00176316	000910

REPORT ID: ADM098001  
 RUN DATE: 07/31/86  
 RUN TIME: 15:35:15

MINERALS MANAGEMENT SERVICE  
 ROYALTY MANAGEMENT PROGRAM  
 SCHEDULE OF PRIOR DISTRIBUTIONS TO BIA  
 BIA-AMADARKO AGENCY OFFICE

REPORT PAGE: 639

FOR INFORMATIONAL PURPOSES ONLY  
 DO NOT DISBURSE FROM THIS REPORT  
 10/01/85 THRU 07/31/86

DISTRIBUTTEE: 510 BIA-AMADARKO AGENCY OFFICE  
 LEASE NUM: 607-033822-0

PAYOR NUM	DOC ID	PROD CODE	SALES M/YR	QUANTITY	UNIT VALUE	ROYALTY RATE	RENTS AND ROYALTIES	ASSESSMENTS	ALLOWANCES	NET AMOUNT	DISTRIBUTION DATE
33690	BILL 01660207		09/82	0.00	0.00	0.0000	0.00	0.27	0.00	0.27	04/17/86
33690	BILL 01660207		10/82	0.00	0.00	0.0000	0.00	0.24	0.00	0.24	04/17/86
33690	BILL 01660207		11/82	0.00	0.00	0.0000	0.00	0.39	0.00	0.39	04/17/86
33690	BILL 01660207		12/82	0.00	0.00	0.0000	0.00	0.81	0.00	0.81	04/17/86
33690	BILL 01660207		01/83	0.00	0.00	0.0000	0.00	0.46	0.00	0.46	04/17/86
33690	BILL 01660207		02/83	0.00	0.00	0.0000	0.00	0.15	0.00	0.15	04/17/86
33690	BILL 01660207		03/83	0.00	0.00	0.0000	0.00	0.28	0.00	0.28	04/17/86
33690	BILL 01660207		04/83	0.00	0.00	0.0000	0.00	0.15	0.00	0.15	04/17/86
33690	BILL 01660207		05/83	0.00	0.00	0.0000	0.00	0.19	0.00	0.19	04/17/86
33690	BILL 01660207		06/83	0.00	0.00	0.0000	0.00	0.16	0.00	0.16	04/17/86
33690	BILL 01660207		07/83	0.00	0.00	0.0000	0.00	0.17	0.00	0.17	04/17/86
33690	BILL 01660207		08/83	0.00	0.00	0.0000	0.00	0.17	0.00	0.17	04/17/86
33690	BILL 01660207		09/83	0.00	0.00	0.0000	0.00	0.17	0.00	0.17	04/17/86
33690	BILL 01660207		10/83	0.00	0.00	0.0000	0.00	0.14	0.00	0.14	04/17/86
33690	BILL 01660207		11/83	0.00	0.00	0.0000	0.00	0.13	0.00	0.13	04/17/86
33690	BILL 01660207		12/83	0.00	0.00	0.0000	0.00	0.11	0.00	0.11	04/17/86
33690	BILL 01660207		01/84	0.00	0.00	0.0000	0.00	0.02	0.00	0.02	04/17/86
33690	BILL 01660207		02/84	0.00	0.00	0.0000	0.00				
33690	BILL 01660207		03/84	0.00	0.00	0.0000	0.00				
SUBTOTAL FOR DOC BILL 01660207											
33690	BILL 04660188		05/85	0.00	0.00	0.0000	0.00	10.10	0.00	10.10	07/31/86
33690	BILL 07560159		09/82	0.00	0.00	0.0000	0.00	884.30	0.00	884.30	10/16/85
33690	BILL 07560159		10/82	0.00	0.00	0.0000	0.00	802.28	0.00	802.28	10/16/85
33690	BILL 07560159		11/82	0.00	0.00	0.0000	0.00	669.36	0.00	669.36	10/16/85
33690	BILL 07560159		12/82	0.00	0.00	0.0000	0.00	1,279.28	0.00	1,279.28	10/16/85
33690	BILL 07560159		01/83	0.00	0.25	0.0000	0.00	2,693.63	0.00	2,693.63	10/16/85
33690	BILL 07560159		02/83	0.00	0.00	0.0000	0.00	1,513.01	0.00	1,513.01	10/16/85
33690	BILL 07560159		03/83	0.00	0.00	0.0000	0.00	486.73	0.00	486.73	10/16/85
33690	BILL 07560159		04/83	0.00	0.00	0.0000	0.00	928.00	0.00	928.00	10/16/85
33690	BILL 07560159		05/83	0.00	0.00	0.0000	0.00	504.92	0.00	504.92	10/16/85
33690	BILL 07560159		06/83	0.00	0.00	0.0000	0.00	626.46	0.00	626.46	10/16/85
33690	BILL 07560159		07/83	0.00	0.00	0.0000	0.00	635.84	0.00	635.84	10/16/85
33690	BILL 07560159		08/83	0.00	0.00	0.0000	0.00	690.49	0.00	690.49	10/16/85
33690	BILL 07560159		09/83	0.00	0.00	0.0000	0.00	511.81	0.00	511.81	10/16/85
33690	BILL 07560159		10/83	0.00	0.00	0.0000	0.00	561.66	0.00	561.66	10/16/85
33690	BILL 07560159		11/83	0.00	0.00	0.0000	0.00	552.44	0.00	552.44	10/16/85
33690	BILL 07560159		12/83	0.00	0.00	0.0000	0.00	462.01	0.00	462.01	10/16/85
33690	BILL 07560159		01/84	0.00	0.00	0.0000	0.00	447.79	0.00	447.79	10/16/85
33690	BILL 07560159		02/84	0.00	0.00	0.0000	0.00	370.10	0.00	370.10	10/16/85

**ELEVEN WEEK BUREAU OF INDIAN AFFAIRS  
POLICE TRAINING PROGRAM SYLLABUS**

**TABLE OF CONTENTS**

**HISTORY OF THE FEDERAL LAW ENFORCEMENT TRAINING CENTER (inside covers)**

<b>GENERAL INFORMATION . . . . .</b>	<b>1</b>
History and Purpose of the Bureau of Indian Affairs	
Training Program . . . . .	2
Basic Indian Law Enforcement	
Training Program . . . . .	2
Purpose . . . . .	2
Qualification for Attendance . . . . .	3
Standard Daily Routine . . . . .	3
Student Evaluation . . . . .	3
Participating Organization . . . . .	4
Additional Information . . . . .	4
<b>COURSE INFORMATION - Program of Instruction . . . . .</b>	<b>5</b>
Course Descriptions and Objectives . . . . .	6
Administration . . . . .	7
Program of Instruction . . . . .	8
Examinations . . . . .	9
Graduation . . . . .	10
Health Screening and Uniform Issue . . . . .	11
Uniform Turn-in/Administration . . . . .	12
Welcome and Orientation . . . . .	13
Behavioral Science . . . . .	14
Program of Instruction . . . . .	15
Authority . . . . .	16
Communications . . . . .	17
Conflict Management . . . . .	19
Crisis Intervention . . . . .	20
Death and Dying . . . . .	21
Ethics and Conduct . . . . .	22
Handling Abnormals . . . . .	23
Interviewing Lecture/PE . . . . .	25
Stress . . . . .	26
Values . . . . .	27
Victim/Witness Awareness . . . . .	28

## TABLE OF CONTENTS (CONTINUED)

Bureau of Indian Affairs Specialized . . . . .	30
Program of Instruction . . . . .	31
Drill and Ceremonies . . . . .	32
Formal Study . . . . .	33
History of the Indian Criminal Justice System . . . . .	34
Indian Police Organization and Chain of Command . . . . .	35
Jail Operations . . . . .	36
Report Writing . . . . .	37
68 BIAM and 25 CFR . . . . .	38
Driver Training . . . . .	39
Program of Instruction . . . . .	40
Accident Investigation . . . . .	41
Defensive Driving . . . . .	44
Traffic Enforcement . . . . .	45
Transporting Prisoners/ Removal of Reluctant Suspects . . . .	46
Violator Stops . . . . .	47
Enforcement Operations . . . . .	48
Program of Instruction . . . . .	49
Appraising Crowds and Mobs . . . . .	50
Patrol Procedures . . . . .	52
Radio Communications . . . . .	55
Vehicle Search . . . . .	56
Enforcement Techniques . . . . .	57
Program of Instruction . . . . .	58
Bombs and Explosives . . . . .	59
Collection and Preservation of Evidence . . . . .	60
Crime Lab . . . . .	61
Crime Scene Search and Sketch . . . . .	63
Description and Identification . . . . .	64
Final Practical Exercise . . . . .	65
Fingerprinting . . . . .	67
Introduction to Archaeological Resource Protection . . . . .	68
Introduction to Child Abuse . . . . .	70
Introduction to Criminalistics . . . . .	72
Mock Trial . . . . .	74

## TABLE OF CONTENTS (CONTINUED)

Narcotics . . . . .	75
Officer Safety and Survival . . . . .	76
Photography . . . . .	77
Physical Security and Crime Prevention . . . . .	78
Preliminary Police Investigation . . . . .	79
Rape Investigation Orientation . . . . .	80
Violent Death . . . . .	81
 Firearms . . . . .	 82
Sequence of Instruction . . . . .	83
Program of Instruction . . . . .	84
Basic Marksmanship . . . . .	85
Combat Skeet . . . . .	86
Instinctive Reaction . . . . .	87
Judgment Pistol Shooting . . . . .	88
Off-Range Safety . . . . .	89
Practical Pistol Course . . . . .	90
Reduced Light . . . . .	91
Shotgun Advanced . . . . .	92
Shotgun Basic . . . . .	93
Shotgun/Handgun Maintenance . . . . .	94
Shotgun/Handgun Stress . . . . .	95
 Indian Country Law . . . . .	 96
Program of Instruction . . . . .	97
Civil and Criminal Process . . . . .	98
Constitutional Law/Indian Civil Rights . . . . .	99
Criminal and Civil Jurisdiction in Indian Country . . . . .	100
Federal Firearms Violations . . . . .	101
Governmental Structures . . . . .	102
Indian Country Game and Conservation Laws . . . . .	103
Indian Country Offenses and Their Elements . . . . .	104
Juvenile Delinquency/Indian Child Welfare Act . . . . .	105
Juvenile Law and Processing of Juveniles . . . . .	106



## TABLE OF CONTENTS (CONTINUED)

Legal . . . . .	107
Program of Instruction . . . . .	108
Civil Liabilities . . . . .	109
Civil Rights . . . . .	110
Constitutional Law . . . . .	111
Courtroom Testimony . . . . .	112
Detention and Arrest . . . . .	113
Evidence . . . . .	115
Federal Court Procedures . . . . .	117
Search and Seizure . . . . .	118
Self-incrimination . . . . .	120
Physical Techniques . . . . .	121
Sequence of Instruction . . . . .	122
Program of Instruction . . . . .	123
Arrest Techniques . . . . .	124
Cardiopulmonary Resuscitation . . . . .	125
Defensive Tactics . . . . .	126
First Aid and Emergency Childbirth . . . . .	128
Kubaton . . . . .	129
Off-hours Fitness Program . . . . .	130
Orientation . . . . .	131
Physical Efficiency Battery . . . . .	132
PR-24 . . . . .	133

# **BUREAU OF INDIAN AFFAIRS**

**DIVISION OF LAW ENFORCEMENT SERVICES**

**TRAINING SCHEDULE  
FY 88**

**INDIAN POLICE ACADEMY  
MARANA, ARIZONA**

**Indian Police Academy  
Federal Law Enforcement Training Center  
FY 1988**

**Training Schedule**

\*\*\*\*\*  
COURSE & CLASS NO.      DATE      APPLICATION DEADLINE  
\*\*\*\*\*

**BASIC POLICE TRAINING**

Class No. 55      January 4 - March 18      November 20, 1987

\*\*\*\*\*  
**SUPERVISORY ENFORCEMENT OFFICER TRAINING**

Class No. 24      September 14-25 (FY 87)      July 24, 1987  
Class No. 25      May 2-13      March 18, 1988  
Class No. 26      August 8-19      June 24, 1988

\*\*\*\*\*  
**POLICE COMMUNICATIONS/JAIL OPERATIONS**

Class No. 17      November 2-20      September 18, 1987  
Class No. 18      April 4-22      February 19, 1988  
Class No. 19      September 6-23      July 22, 1988

\*\*\*\*\*  
**COMMAND/MANAGEMENT (ADVANCE POLICE MANAGEMENT & ADMINISTRATION)**

Class No. 12      February 15-26      January 4, 1988

\*\*\*\*\*  
**BASIC FISH & WILDLIFE OFFICER TRAINING**

Class No. 1      To Be Announced

\*\*\*\*\*  
**BASIC CRIMINAL INVESTIGATOR TRAINING**

Class No. 1      To Be Announced

\*\*\*\*\*  
**BASIC INSTRUCTOR TRAINING PROGRAM**

Class No. 1      July 11-22      May 27, 1988

\*\*\*\*\*  
**Specialized/Advanced Law Enforcement Training Schedule**  
\*\*\*\*\*  
**PHYSICAL EFFICIENCY BATTERY (PEB) MANAGERS TRAINING**

Class No. 1      September 28 - October 2      August 31, 1987

Indian Police Academy, FY 1988 Training Schedule - Page 2

Specialized/Advanced Law Enforcement Training Schedule  
 \*\*\*\*\*  
 COURSE & CLASS NO.      DATE      APPLICATION DEADLINE  
 \*\*\*\*\*  
 CHILD ABUSE INVESTIGATION TRAINING

Class No. 2	August 24-28 (FY 87)	August 17, 1987
Class No. 3	October 19-23	September 18, 1987

\*\*\*\*\*  
 FIREARMS INSTRUCTOR TRAINING

Class No. 10	October 19-30	September 18, 1987
Class No. 11	November 30 - December 11	October 16, 1987
Class No. 12	May 9-20	March 25, 1988
Class No. 13	August 15-26	July 1, 1988

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 ARCHAEOLOGICAL RESOURCES PROTECTION ACT

Class No. 1	December 7-11	October 30, 1987
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 POLICE TACTICAL TRAINING (RESPONSE TEAM)

Class No. 3	January 11-22	November 30, 1987
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\*\*\*\*\*  
 BIA CERTIFICATION TRAINING

Class No. 1	March 7-18	January 22, 1988
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 DRUG/NARCOTICS INVESTIGATIONS TRAINING (For GS 1811 Criminal Investigators and Tribal Criminal Investigators only)

Class No. 1	September 20-24 (FY 87)	
Class No. 2	October 12-16	September 11, 1987
Class No. 3	November 9-13	October 9, 1987
Class No. 4	December 7-11	November 6, 1987

\*\*\*\*\*  
 ADVANCED DRUG/NARCOTICS INVESTIGATIONS TRAINING (For GS 1811 Criminal Investigators and Tribal Criminal Investigators only)

Class No. 1	To Be Announced	
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 POLICE OFFICERS DRUG/NARCOTICS COURSE

Class No. 1	To Be Announced	
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 WHITE COLLAR CRIME/GAMING ENFORCEMENT

Class No. 1	February 1-12	December 18, 1987
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Mr. YATES. I think perhaps it would be helpful if that were done. If there is nothing else, the committee thanks you.  
Mr. Jordan?

#### HOOPA TRIBE

Mr. JORDAN. Mr. Chairman, there is one more panel.

Mr. YATES. Mr. Jordan, we called your panel. Would you like to say something at this point?

Mr. JORDAN. Mr. Chairman, I have a brief statement. I apologize for missing the call. One thing I would like to make a point is that it seems like with the articles that have come out in the paper and the statements by Mr. Swimmer and Mr. Hodel there is a very serious lack of communication between the Administration in Washington and what is happening on reservations.

All the policies can be written in Washington, but unless some assurances can be built into the system to make sure that those policies are implemented on the ground, you don't have an environment for self-determination. What is happening in Hoopa Tribe, as Mr. Swimmer knows, our first 638 contact in 1981 was by a court order from the Ninth Circuit. The other one, law enforcement, was just short of requiring a court order on law enforcement to start regulating our own efficiency.

This is typical on the Hoopa Reservation.

Mr. YATES. Is all this in your statement?

Mr. JORDAN. No, it is not. The statement by Mr. Chambers about the Bureau's responsibility as far as what position it takes in lawsuits, we in 1982 were the sole defendants or sole plaintiffs in a lawsuit and we couldn't get the Federal Government to take an interest in our side.

Mr. YATES. What was the nature of the case?

Mr. JORDAN. It was a FERC case for the Indian FERC rights on the Klamath River and the Bureau would not participate in the process. We are presently in litigation in Federal Court in California on taxation of tribal resources. The Bureau is still not a party to that. The point is that every time on our reservation that there is an interest to be fought, it is usually from the tribe's point of view.

The Bureau always takes the position that they will control the tribe and that is their sole goal there. Self-determination on our reservation does not work. It takes court orders to make it work on our reservation. We have, and we appreciate the effort, been working on a piece of legislation for two and a half years to solve management problems there.

But two and a half years is too long to wait. This Administration can move legislation a lot faster than that. You may recall the agency moved. They moved the agency away from the Hoopa Reservation where it had been for 120 years. By the time they got the approval from this committee, it took three days to actually get trucks moving out on the reservation to haul the agency away. It takes us two and a half years to solve the management problems that are really the underlying problems on our reservation.

We would like some emphasis put on some of the solutions to our problems, not with agency moves. I think that a good review of the

agency functions right now will show that it has been a very embarrassing decision by the Administration. They have lost very valuable staff. Just a week ago they had their phones cut off because no one is processing vouchers.

It has turned the agency into shambles. It is too bad that that type of thing is allowed to happen and everyone knows what the underlying problems are, but no one is willing to put the effort that everyone is spending fighting into trying to solve the problems there.

Mr. YATES. Okay.

Mr. JORDAN. One of the problems we have, as I am sure we would seek further or more court orders from the Federal Court to try to force the Bureau into doing things that we have gotten in the past by court orders, the contracting. Unfortunately we are partners in a lawsuit that deals with the Administrative Procedures Act in Federal Court. So we can't very well file a case against the Federal Government while we are defending on the same side another lawsuit.

The Bureau has very seldom taken conflicting views from the Justice side, from the legal side in the courts and their administrative side. That has caused problems. The bottom line is that the Administration needs to focus as much on the solutions to the long-term problems as they do on trying to control tribal development on the reservation.

[The prepared statement of Mr. Jordan follows:]

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TESTIMONY OF DANIEL E. JORDAN  
WASHINGTON, D.C. LIAISON  
FOR THE HOOPA VALLEY TRIBE  
BEFORE THE HOUSE INTERIOR APPROPRIATIONS SUBCOMMITTEE  
OCTOBER 27, 1987

Good morning, Mr. Chairman. I am Daniel E. Jordan and the Washington, D.C. Liaison for the Hoopa Valley Tribe of California. In June, 1987 I completed serving 8 years on the Hoopa Valley Business Council, the duly elected Tribal government for the Hoopa Valley Indian Reservation.

The Hoopa Valley Indian Reservation consists of 89,000 acres which is primarily unallotted remote forest land in Northern California. Our reservation was established by Executive Order in 1876 in the Aboriginal territory of the Hoopa Valley Tribe.

Our reservation has been plagued by legal controversy for 30 years, generated from an action of the federal government. On a nearby Reservation, the Klamath River Reservation which is the aboriginal homeland of the Yurok Tribe., in the late 1800's, there were threats to terminate that Reservation because of a 4 Reservation limit in California. In an attempt to protect the Yurok land from non-Indian Settlement, the President in 1891 extended the boundaries of the Hoopa Reservation, thereby, establishing the Klamath River Reservation.

From the period of 1891 thru the early 1900's, individual Yurok allotments were made along the extended Reservation and today only 3,000 acres remain in unallotted Tribal status. Since the two reservations were still considered as separate, a later allotment policy for the Hoopa Reservation maintained approximately 95% as Tribal unallotted land. Individual Yurok Indians were allowed to sell large allotments up thru 1865 and in some cases even later.

In 1955, the Hoopa's began selling their timber and making per capita payments to Hoopa Tribal members. At that time some individual Yuroks claimed they also had a right to share in per capita payments from the Hoopa Reservation. In February, 1958, the Deputy Solicitor stated that the two reservations should be treated as separate and that the Yurok Indians had no rights to proceeds of the Hoopa Reservation.

In 1963 the case of Jessie Short v. United States was filed and in 1974 the Court of Claims ruled that the 1891 Executive Order allowed the Indians of the extended Reservation to share in per capita payments of the original Hoopa Reservation. Because the Yurok Tribe refuses to organize, the Claims Court has been struggling to determine who is an "Indian of the Reservation", eligible to share in the per capita payments.

It is important to note that the Court has stressed time and time again that this is a case for money and does not extend to

political, property or resource rights. However, because of policy and entitlement concerns raised by the 1974 decision, the BIA has taken an extremely liberal view of the Court's decision. The Bureau through Administrative action has authorized anyone who may be a descendant to an original allottee to exercise an individual right to the Reservation resources whether qualified or not. This was justified based on that the fact that no one could know who should be entitled. The result was predictable and today people are being allowed to hunt, fish, cut firewood for commercial sale and have access to all parts of our reservation, some of whom have little or no ties to the Reservation.

In 1978, the Commissioner of Indian Affairs adopted what has since come to be called the "Gerrard Plan." The effect of the plan was to establish Marshall law on the reservation and give every Federal employee the authority for policy making for reservation resources. Certain provisions of the plan were to strip the Hoopa Tribe of some of its sovereign powers and to attempt to organize the Yurok Tribe. While the organization attempts have long since faded, largely by a Federal Court injunction and an almost unanimous vote of the Yurok decedents not to organize, fragments of the Federal Control policy still remain today. While being officially terminated in 1982, it is not uncommon to find barriers to 93-638 contracts, management decisions regarding Reservation resources or the exercise of Tribal powers because of the Gerrard Plan. Every attempt by the Hoopa Tribe to develop reservation resources, employment opportunities and to exercise Tribal governmental authority has been stymied by this type of Federal Domination Policy.

Because of the Administrative nightmare created by inconsistent policies the Bureau in 1985 decided a solution was to move the Northern California Agency from its 120 year location in Hoopa to Redding some 150 miles to the east. Among the justifications given by the former Superintendent, Joe Christie, were to improve services to the Indian people and because of threats to federal employees from marijuana cultivation on the Hoopa Reservation.

The present day operation of the Agency tells the result of the move. They have lost their most experienced employees, even today they are still in temporary quarters, they have cost the Tribes more expense by moving away from the majority of Indian people and spend thousands of dollars driving employees back to the Reservation to do work. Many records have been misplaced and untimely payment processing is common place.

Regarding the marijuana cultivation problem, the Bureau has ignored for years Tribal concerns about unauthorized Reservation access. Because of trespass problems in 1985 the Hoopa Tribe developed an Exclusion Ordinance which was designed to prevent marijuana cultivation, illegal firewood cutting and unauthorized camping and fishing on Reservation lands. To date the Bureau has not responded to our Ordinance. The results of the Bureau's eradication



efforts have confirmed the Tribes fears. Of 21 arrests in 1986, 16 were non-Indian and 4 were non-Hoopa Indians.

The Bureau has been successful in manipulating the Legislative process to move the agency away from the Reservation, however, they have done little to change their inconsistent policies that caused the problems in the first place. On the contrary, there is now circulating a policy that would remove law enforcement funds from Reservations such as Hoopa.

One reality that is consistent on our reservation is that once a government employee leaves, usually in the wake of destructive management practices, they usually receive a promotion and are placed in a policy role over Tribal programs.

In 1983 the President established an Indian policy that reaffirmed the government-to-government relationship. Unfortunately, what is lacking is the ability to implement this as well as other policies on the ground where they can benefit Reservation Communities. It is also unfortunate that the voice of Tribal governments is only heard when it is compatible with the agenda of the federal government.

30 years of litigation and inconsistent policies have tempered attitudes and made solutions difficult, but not impossible. Long term Tribal survival is sometimes not compatible with short-term career advancements of bureaucrats. But issues like the agency move prove that things can happen when they are placed on the proper agendas.

The solution will only be found once the causes of the problems are identified.

During my time serving on our Tribal Council I have identified some of the following solutions:

1. A solution to problems on the Hoopa Reservation to support a legislative remedy to management problems.
2. Develop a system that makes federal employees accountable.
3. Require full disclosure of all information requested by tribes.
4. The Bureau of Indian Affairs is too big to implement change. Options should be developed that would be designed to reduce the size and control of the Federal Government.
5. Develop a system that would provide Tribal oversight of Federal Agency Administration.

6. More Tribal control and access should be provided over Tribal Resources.

Thank you for this opportunity to comment on the Administration of the Bureau of Indian Affairs. I will answer any questions you may have.

Mr. YATES. Okay. Thank you very much.

Mr. JORDAN. Thank you.

[The following statements were submitted for inclusion in the record:]

STATEMENT  
BY  
EDDIE JACOBS, MEMBER  
OKLAHOMA INDIAN MINERAL OWNERS ASSOCIATION  
FOR  
HOUSE APPROPRIATIONS SUB-COMMITTEE HEARING  
OCTOBER 27, 1987

Mr. Chairman, members of the House Appropriations sub-committee, my name is Eddie Jacobs, Creek Indian of the Five Civilized Tribes of Oklahoma, and as a member of the Oklahoma Indian Mineral Owners Association express my thanks for this opportunity to address Department of Interior agencies inadequacies that continue to persistently affect the individual Indian mineral owner despite numerous investigative hearings supposedly to have resolved Indian Oil and Gas Royalty problems.

Also, In behalf of the association and myself we wish to particularly express our thanks to the ARIZONA REPUBLIC news media and their recent newspaper exposition series of those Federal agencies that hold trust and statutory obligations to the Indian Mineral Owners. [ Ref. Attach. 9 ]

In addition, a brief summary of the Association of the Oklahoma Indian mineral owners: organized in November 7, 1983 due to difficulties of late payments, incorrect payments, no payments, and lack of information in regard to repeated requests to agency personnel. A protest incampment was set up at the Anadarko Area Office and today remains as a reminder of the fact that these problems still exist. [ Ref. Attach. 10 ]

Basically, the association provides assistance and insight into problems members' encounter in the administration of their royalty monies, Monthly Distribution Statements and Individual Indian Monies accounts (IIM). The membership comprises individuals from various tribes that reside within the State

of Oklahoma, Allottees, individuals with small interests and individuals who are potential heirs. The source of funding is generated from membership fees, fund-raisers, and donations. The lack of funds to obtain legal counsel and accountants subjects the association to a technical disadvantage. The reliance on the Bureau of Indian Affairs (BIA) for information is further delayed by lack of response to data requests.

The Oklahoma Indian Mineral Owners contend that before any new systems are implemented we need assurance that past improprieties will not be suppressed; that we can have confidence in the final results of audits; and that infractions be reconciled in the violations of trust responsibility by the governmental agencies.

Individual Indian Mineral Owners have not and are not being notified of information and decisions in a timely manner. Nor, are they informed of comment periods and their closing dates in regards to changes that could effect them economically. Whereas the Federal Register is the federal agencies source of notification then we at individual level should be informed where we may be adversely affected (i.e. retro-active proposal of NTL-5), and the fact that departmental agencies take for granted that no response by the Indians means they are in accord with what has been proposed.

The issues that the Oklahoma Indian Mineral Owners Association (OIMOA) have been able to submit written comments too, were wrote up under limited time. Issues such as the NTL-5, Valuation Regulation changes proposal and the contracting of Trust Fund Services were three changes that would have a great impact to Indian mineral owners financially. There must be sufficient notice given for time to be made available for comment preparation and input of individual response.

[ Ref. Attach. 1 ]

There needs to be a continuing open-line of communication, to enable the

Indian mineral owner to have an understanding of his mineral interest and financial status.

The Federal agencies response to requests and questions for pertinent documents is a time-consuming process and effort. The time-delay of agency staff response results in lack of documentation to verify inconsistent data or the mineral owner secedes in pursuing questionable accounting. [ Ref. 2,3,4,5 ]

The Blanchard Decision was supposedly done away with in November 1985 by the Department of Interior. However, there is considerable doubt, that it is still being imposed on Indian leases. There are leases that still receive the standard royalty rate of  $1/8$  or  $12\frac{1}{2}$  percent. There are division orders that show that royalty rates should be  $1/6$  or  $1/5$ , equal to  $16\frac{2}{3}$  and 20 percent. Therefore, we contend that the difference in percentage collected by Minerals Management Service (MMS) before the November 1985 date should be paid back: audits requested before that date were done using the Blanchard Decision, a decision that should never been imposed on Indian leases, it being a Oklahoma State court ruling. MMS contends those monies withheld were paid out: individual Indian mineral owners request the identification of the dollar amount deposited to their Individual Indian Monies (IIM) accounts. [ Ref. Attach. 3 ]

Windfall Profit Taxes (WPT) were erroneously collected on Indian leases in 1980 and 1981. Upon inquiry into my personal account regarding additional taxes owed to my account, the Minerals Management Service (MMS) contended those monies were credited to my account. A fact that cannot be verified in my IIM account. If the contention that WPT monies have been refunded and deposited to my account, then why are other account holders not being refunded those monies withheld by the Oil Companies, MMS, or BIA. [ Ref. Attach. 6 ]

If WPT monies were refunded to my account: the manner in which those monies

were recovered could be used as a precedence to enforce payment refunds owed other effected Indian leases.

The interest on those monies should also be assessed dating back to 1980 and 1981 when those tax amounts were withheld. I have not identified interest due on those principle amounts of the refunded monies. [ Ref. Attach. 2 ]

Interest that is being "lost" because of time-delays, is also not being able to flow with the principle and is not being credited to the proper lease.

Both MMS and BIA are responsible for time delays. MMS is responsible for the initial collection of sales which can result in delays as long as two weeks or longer. Now, the BIA is involved in delays that take up to six months and possibly longer, the interest being credited on a semi-annual basis to the IIM accounts. The interest monies supposedly being credited to IIM accounts are not identified for late-posting on Monthly Statements and semi-annual account ledgers.

Mr. Jim Parris, Albuquerque Investment Center, Indian Branch, at a recent meeting held in Anadarko, Oklahoma related that there are large interest pools accounts being maintained at the investment center with interest monies dating back to the late 1800's for tribes, and the early 1900's for individual leases. These interest-pools concern Indians throughout the United States. Mr. Parris would not venture to estimate a dollar figure. But related that an effort has been initiated to clear-out these interest pools to zero.

The mineral owner will seek a tax waiver before these monies are disbursed. The reason for the tax waiver is that the majority of the interest monies occurred past the two year statute of limitations which the Internal Revenue Service (IRS) observes. Also, that time delay occurred as a result of BIA not being diligent in their fiduciary responsibility.

An Excise Tax is being imposed by the State of Oklahoma on leases I hold

as a tribal member of one of the Five Civilized Tribes of Oklahoma. I have sought answers to my inquiries to various federal agencies as to the States authorization to collect an Excise Tax on my leases, and to date have yet to receive any response. The BIA should have no problem in verification of the tax authorization that subjects individual Indian mineral owner of the Five Civilized Tribes to this tax imposition. [ Ref. Attach. 1 ]

The BIA has the expertise of the Solicitor to seek the authorization of the excise taxation and relate the justification to the mineral owners so that the revenues that were withheld can be legally pursued by the BIA as trustee.

The Indian mineral and land owners question all monies received from imposed penalties, the MMS contends that those monies go back to the Treasury Department. However, in a recent case where penalty monies were questionable, they were paid to the Indian mineral owner based on a 1982 memorandum issued from the office of MMS Associate Director of Royalty Management. Which raises the question as to those penalty monies that have been collected and returned to the Treasury and how they can be recouped. [ Ref. Attach. 7 ]

The Indian mineral and land owners need to see consistency between MMS and the BIA with this penalty ruling.

There is further concern in the accountability of Life Estates monies that are presently credited to IIM accounts. August 11, 1987, proposed rules and regulations on Life Estates were published in the Federal Register, stating that Life Tenants would receive only 50% of lease bonuses derived from mineral leasing, and that all royalties paid as a result of production of Life Estates would remain in Individual Indian Monies (IIM) accounts at the agency level.

The Indian Mineral Owners Association of Oklahoma opposes said rules and regulations and generates a petition to that effect which will be submitted to the Chief, Branch of Titles and Research, Division of Real Estates Services, BIA.



The aforementioned issue of Penalty and Life Estates monies results in these monies placed in Suspense Accounts: late payments, land damages, disputes over valuation and other monies that can be subjected to the appeal process; monies held in these Suspense Accounts are held for indefinite limits of time. The BIA is not being aggressive in those settlements, nor diligent in pursuing efforts to see that those monies are being credited to the Indian owner.

Estimated payments are the estimates of potential production sales so a dollar figure can be attached: these estimated payments result in large overpayments and underpayments. The large overpayments paid to the individual and the recoupment policies of MMS and BIA create dire financial hardship to the individual. The mineral owner is unaware of the underpayment of the estimated payment and does not have access to data to verify that the payment difference has been corrected and properly credited to his account.

(Sanguine Case) Practices employed by BIA in communitization of leases has caused allottee serious problems. When drilling begins, all landowners having mineral rights in a section are communitized to allow all landowners in that section, not just landowners owning the drilling site, to share income from the well. Also, communitizing an oil and gas lease is to extend the life of the lease by signing before the lease expiration date. Oklahoma Law does not require drilling to be in progress for leases to be extended, only that some site work be underway.

When leases are communitized after the lease expires, the mineral owners lose out on bonus money. In the Sanguine Case, bonus money was estimated to be around \$45 million.

In Sanguine Ltd. vs Department of the Interior 736 F.2d 1416 (1984), leases on land owned by members of the Wichita, Caddo, and Delaware Tribes in the Anadarko Area, came up for renewal. The Anadarko Area Director attempted to

revise the communitization agreements to bring them in line with new lease terms. When this happened Sanguine Ltd. filed for preliminary injunction against the changes. Sanguine referenced in it's complaint 13 sections containing Indian leases, but did not name the Indian allottees. Neither the government nor the oil company advised the Indians of the lawsuit. Anadarko BIA also refused to notify the allottees and tried to prevent tribal leaders from obtaining the allottees names so that the tribal leaders might notify the allottees. When the allottee did find out and tried to intervene the BIA opposed the intervention. then, the District Court refused the Indians the right to intervene, Finally, three years later, in 1984, the Tenth Circuit Court of Appeals reversed the decision and allowed intervention. Sanguine Ltd. then appealed to the Supreme Court. The Supreme Court upheld the Tenth Circuit Courts decision to allow for intervention. The case has now been turned over to the Secretary of Interior. Instead of attempting to find a swift remedy and support the Indian land owners, the Interior Department and the BIA have chosen to initiate a longer drawn-out administrative process, and will no doubt use every means available to them to assist Sanguine Ltd., and defeat the Indian land owners.

The Monthly Statements of Oil/Gas Receipts/Disbursements would be of utmost assistance if we as mineral owners could be confident that the information is correct. I personally have experienced problems with my Statements that have not been resolved. I contend the statements to be incorrect because the wrong Royalty Rate is used to compute my interest. The Royalty Rates are not the actual rates, but computed rates. The actual Royalty Rates are identified in the lease contract and division orders. The deduction of Allowances on the Monthly Statements are combined and not identified per se. Many of our individual mineral owners are elderly and the incorrect data compounds the confusion of comprehending their royalty monies.

The MMS Systems Improvement Panel (SIP) have made recommendations to simplify and correct the Explanation of Payments. Those changes are to show the correct Royalty Rates and codes will be entered so that each Allowance can be identified. Supposedly, these changes will be initiated in the near future.

In a recent letter to Secretary Donald P. Hodel, May 8 1987 by members of the Oklahoma Indian Mineral Owners Association: the response to the association from MMS, Director, William Bettenburg and Office of External Affairs (OEA) inferred that only a few Indian mineral owners experienced problems in areas of royalty accountability. However, since I, Eddie Jacobs was referred to in numerous instances I personally responded to that letter. I pointed out the fact the association consists of individuals with variable problems, nevertheless, the complaints are related, though not identical, and all concern accountability.

In Oklahoma there are various Tribes ( The Allotted Lands in Western Oklahoma; Allotted Lands of the Five Civilized Tribes; and Osage Lands ), and each must be given consideration as to the Tribal Treaties, Acts, and court decisions they abide by. Thus each Tribal domain must be addressed separately by those Acts, Treaties, and Court decisions that have been established. [ Ref. 6 ]

#### In Conclusion:

The Federal Oil/Gas Royalty Management Act (FOGRMA) enacted in 1982, was supposedly to have been implemented by 1983. However, as we approach the closing of another year, the Indian mineral owner continues to be affected by the non-compliance of FOGRMA. Each governmental agency within the Department of the Interior (DOI) that is obligated to provide specific services and enforce the mandates of FOGRMA to the Indian, have yet to fully execute that responsibility.

The past improprieties of accountability have not been justified, nor have they been rectified. The credibility of MMS auditing has been challenged, thus the need for independent auditing for recovery of monies that are not uncovered

by their audits, and to avert problems before they begin. [ Ref. Attach. 11 ]

The Blanchard Decision was imposed despite it being a State Court decision of Oklahoma. Also, there are, other controversies such as; the NIL-5 issue, valuation regulation and Life Estate proposal changes, imposed taxation ( Excise tax, gross production), Suspense accounts, contracting of Trust Funds, and other changes we may be unaware of that have been initiated. It must be pointed out that we as individuals are usually the " last to know ". Since we are the effected recipients of proposed changes, then we should be consulted in a timely manner.

There have been policies implemented and system transitions designed with little or no success, and the problems continue to exist. Therefore, perhaps just the enforcement of FOGRMA by an Act of Congress as an initiative.

The small percentage that Indian leases constitute, and the magnitude of the problems that continue to persist in the accounting of those leases should be reason to consider the separation of Indian Leases from the Federal on-shore and off-shore operations; with a separate division maintained by the Department of the Interior's (DOI) Minerals Management Service. MMS is currently responsible for Indian Mineral revenue and has personnel knowledgeable of Indian Leases. Therefore, as persons that will be directly effected, we are opposed to the contracting of these services, because these services must be maintained under the trust responsibility of the Federal Government, and not be subjected to more " trial and error " fiascoes.

Last, but not least, the Bureau of Indian Affairs as trustee should be the forefront and advocate in behalf of the Indian: Instead they defend their positions and obligations, despite the constant problems and concerns voiced by Indian people.

It was related by various people in DOI government agencies that the more information that is " let out " the more problems that it creates. The Individual Indian mineral owner can certainly confirm that, by the discrepancies pointed out by the limited information that they receive.

If further comments and documentation are needed, please contact the undersigned.

Eddie Jacobs, Member

OKLAHOMA INDIAN MINERAL OWNERS ASSOCIATION

## Absentee Shawnee Tribe of Oklahoma

Post Office Box 1747

Shawnee, Oklahoma 74802-1747

Phone 275-4038

November 16, 1987

House Subcommittee on Interior and  
Related Affairs  
Committee on Appropriations  
United States House of Representatives  
Washington, D.C. 20510

Gentlemen:

This office received, on November 13, 1987, a copy of the Statement of the Assistant secretary, Indian Affairs, Ross O. Swimmer, presented before the Subcommittee on Interior and Related Agencies, Committee on Appropriations, House of Representatives on October 27, 1987.

As one reviews these comments, one is made aware of the various difficulties encountered by the Bureau of Indian Affairs in the conduct of its affairs, many of which are quite as Secretary Swimmer indicates, but many of which are created and sustained by the Bureau itself.

As an example, Secretary Swimmer, closes his statements by urging "true self-determination grants" which funds "would have complete autonomy" and, thereby make tribes responsible for designing programs that "respond to local needs".

Secretary Swimmer concludes his statement by stating, "It is time to give the tribes the responsibility they seek."

It is here that Secretary Swimmer's comments collide with his practices.

The five local tribes, of which we are one, served by the Shawnee Agency, BIA, have made concerted efforts to assume the tribal "responsibility" so sought after by Secretary Swimmer only to be fought at every turn by every level of the BIA from the Agency level up to and including Secretary Swimmer himself.

To illustrate this point there follows two capulized incidents:

1. The Absentee Shawnee Tribe of Oklahoma attempted to contract its share of Law Enforcement Program funds on January 16, 1987. This effort has yet to be realized. According to the BIA, "the application has been reviewed for compliance with 25 CFR 271.14 and... is sufficiently complete...but a review of the Anadarko Area Program Strategy Paper" indicates the proposal should not be awarded. Further in this BIA correspondence (dated February 11, 1987), it states, "Based on the above Anadarko Area Office policy, it is the recommendation of this office the contract application be disapproved."

House Subcommittee on Interior and  
Related Affairs  
November 16, 1987  
Page 2

The declination was appealed to the highest level, the Office of Hearings and Appeals, only to have the Hearing unilaterally dismissed by the BIA on September 25, 1987, only three days prior to the scheduled hearing date. The Tribe has formally protested this action to no avail and without response from the BIA.

The end result is that the Tribe has no contract and no apparent recourse.

2. Indian Priority System - FY '89 Budget: By the BIA's own figures, the Shawnee Agency retains a full 50% of all funds available to the Agency to provide salaries, fringe benefits, and travel to Agency personnel (\$812,431.00 of \$1,623,500.00).

The five agency tribes felt this amount was exorbitant in light of services rendered by the Agency, and so, through the Indian Priority System format, prepared an Agency budget which reduced the Agency's retained funds by only 10%. This proposal would have had a negligible effect on the Agency, yet would have injected much needed funds into programs serving Indians.

The Agency Superintendent then submitted, to the Anadarko Area Office a budget, (we feel in retaliation), which virtually locked out the Tribes as far as P.L. 93-638 contracting and granting. The Anadarko Area Office approved the Superintendent's budget over the objections of the five Tribes; the Tribes appealed the Area Director's decision to Secretary Swimmer.

In a letter dated November 2, 1987, Secretary Ross Swimmer rejected every aspect of the five Agency Tribe's FY '89 Budget in favor of a budget fattened by the Shawnee Agency Superintendent to the point of virtual exclusion of the Tribes served.

Where is Secretary Swimmer's presented stance of "true self-determination", "complete autonomy", "making self-determination truly meaningful", "responsibility...placed at the tribal level for...programs that respond to local needs", and "It is time to give the tribes the responsibility they seek", in these instances?

This Tribe has, as have others, fought to assume responsibility, to assert true self-determination, to establish and fund BIA programs that are responsive to local needs, only to have the BIA unilaterally determine what responsibility tribes should assume, how self-determination should be asserted, and what programs best serve local needs. Usually such BIA decisions are rendered by some official at the Central Office level; someone far removed from the people and from the local assessment of need.

Secretary Swimmer has attempted to divert the scrutiny of Congress through a dissertation of self-determination rhetoric not practiced by the BIA at any level.

House Subcommittee on Interior and  
Related Affairs  
November 16, 1987  
Page 3

This office would encourage the continued Congressional review of the realities of the BIA as opposed to being mollified by the rhetoric of a professional Bureaucrat.

These illustrations are not all inclusive, but serve to highlight the inconsistencies between Secretary Swimmer's words and his deeds: moreover, these situations are documented and will be made available for your review should you so desire.

Lastly, Secretary Swimmer urges that "there be only one other category in the BIA's budget -- true self-determination grants."

This tribe would urge that this NOT be allowed.

The existing language contained within P.L. 93-638 directs the Secretary to enter into contracts with Indian Tribes and organizations - the language authorizes the Secretary to enter into grants with these same entities.

This subtle verbage is critical to continued tribal development. To place discretionary authority (granting authority) into the hands of the BIA while removing contracting direction to the Secretary virtually returns us to the "Buy Indian" days when tribal development was allowed only if the BIA said so.

This office would urge that the contracting rights of Tribes as currently found in P.L. 93-638 remain unchanged.

The Absentee Shawnee Tribe appreciates your time and patience in reading this rather lengthy correspondence, and would urge your consideration of our recommendations.

Sincerely,



Kenneth Blanchard  
Governor

KB/cv



QUESTIONS SUBMITTED BY MR. AUCOIN  
REGARDING BIA'S DISCONTINUANCE OF  
VOLUNTARY TRIBAL ACCOUNTS AND DEPOSITING GRANTS AND LOANS  
IN INDIVIDUAL INDIAN MONEY ACCOUNTS

QUESTION: Could you explain the law you cite in the first two paragraphs of your directive which you interpret as not giving you the authority to manage IIM accounts?

ANSWER: Funds collected by the Bureau on behalf of tribes must be deposited into the Treasury to the credit of the tribes' receipt accounts as established under section 20 of the Permanent Appropriation Repeal Act of 1934. Later, Congress passed the Act of June 25, 1936, which exempted from the Repeal Act of 1934 the funds held in trust for individual Indians, associations of individual Indians, and Indian corporations chartered under certain sections of the Indian Reorganization Act (IRA) of 1934. These Individual Indian Moneys were to be deposited from that point forward into the Bureau of Indian Affairs Treasury account 14X6039. From the early days of the IIM accounts, the Bureau allowed those tribes meeting the requirements of the IRA to deposit funds into the IIM group of accounts. Over the years, non-IRA tribes have established IIM accounts as well. They have always been regarded as "voluntary" accounts, however. If the disbursing authority from the Treasury Department allowed the tribal funds for other purposes than those described in the Act of June 25, 1936, then we would have an option. We have unintentionally been out of compliance for several years and the situation needs to be corrected.

QUESTION: Do you have specific documentation from OMB and your Inspector General's Office which indicate that you don't have this authority?

ANSWER: According to Audit Report NO. C-IA-BIA-25-84 dated March 1986 issued by the Office of the Inspector General (see p. 33), "...the tribal IIM accounts that we reviewed...did have one similarity; they appeared to be maintained for the convenience of various tribal organizations." The Office of the Inspector then went on to state that "We are not making any recommendations relative to our findings on voluntary deposits...because BIA has already initiated Bureauwide corrective action on these deficiencies in response to our audit report of IIM operations at the Phoenix Area Office." What the report referred to was a directive from the Acting Assistant Secretary-Indian Affairs to the Phoenix Area Director instructing him to have the tribal accounts in IIM removed, which the Area Director subsequently did. The other areas did not receive the same instructions at the time, and we are attempting to rectify that situation through this action.

The FY 1987 OMB Passback included language recommending the phase out of voluntary IIM accounts and directed the Bureau to submit a plan to accomplish the recommendation.

In addition, by letter dated April 24, 1986, the Bureau advised the House Subcommittee on Interior and Related Agencies that it was taking action to address the problems of voluntary deposits.

QUESTION: What basis do you have for arriving at the conclusion that, and I quote from your October 1 directive, "Today, the majority of the tribes have adequate accounting systems and are capable of managing their own funds."?

ANSWER: Over the past several years, almost every tribe in the country has submitted and been awarded contracts and grants by the Bureau and other federal agencies, and most tribes have at least one P.L. 93-638 contract or grant currently in effect. A pre-condition for being awarded the grant or contract is that they have an accounting system reviewed and verified by an independent certified public accounting firm. Based on that information, it is apparent that every tribe that has been awarded grants and contracts under the P.L. 93-638 program has an adequate accounting system; and, in most cases, they have a bank account at a local bank where the contract or grant funds are deposited for the tribe to operate their program.

QUESTION: Even if they have that capability, do you think they can gear up for taking on this responsibility in less than sixty days?

ANSWER: We believe this timeframe is reasonable. There are two choices facing a tribe with a voluntary account in IIM: (1) move the funds to a local bank account, from which the tribe would be responsible for processing the checks disbursed; or (2) move the funds to their tribe's proceeds of labor account in the Treasury for which the Bureau would coordinate with the Treasury in disbursing checks. If the tribe chooses not to use their own bank, then the Bureau would continue processing the payment, but through the tribe's Treasury account rather than through the Individual Indian Monies (IIM) group of accounts.

QUESTION: Will you describe to me the consultations you undertook with the affected tribes on these issues?

ANSWER: There was no consultation. However, the instructions to the Area Directors in the October 1 memorandum required them to "...work closely with tribes to improve the timing and amount of funds advanced for local budgets to assure tribal funds in the Treasury remain invested as long as possible." The memorandum also stated that the tribes were to be notified in writing that their accounts would be closed and disbursed to them by December 1, 1987. This notice was to include an offer of assistance and counseling, if needed, to help them acquire commercial banking services to meet their needs. The tribes are not being forced to take their funds and open a bank account. That option is available, but, in the event that they do not have the expertise or the desire to accommodate that effort, then the tribes can always use the tribal trust fund group of accounts established for that purpose in the Treasury, and the Bureau will coordinate with the tribe in processing their disbursements.

QUESTION: Before you issued this directive to your own Area Directors, did you:

(a) Raise the problem of not having the legal authority to manage their accounts of this sort?

(b) Ask them if they could handle management of these funds on their own?

(c) Ask them if they could assume management of them by December 1?

ANSWER: (a) As indicated earlier, the problem has been discussed for several years by Bureau staff, the Inspector General and OMB. The October 1 memorandum formally addressed the illegal use of the IIM accounts for tribal funds.

(b) No. However, as stated earlier, the tribes have an option to either (1) move the funds to a local bank or (2) move the funds to the tribal Treasury account.

(c) No. However, if there is a problem with that deadline, an extension will be considered.

U.S. DEPARTMENT OF THE INTERIOR

# OFFICE OF INSPECTOR GENERAL AUDIT REPORT

REVIEW OF INDIVIDUAL INDIAN MONEY ACCOUNTS  
ADMINISTERED BY THE BUREAU OF INDIAN AFFAIRS  
(CONSOLIDATED REPORT)



This report may not be disclosed to anyone other than the auditee  
except by the Assistant Inspector General for Administration,  
Office of Inspector General, U.S. Department of the Interior,  
Washington, D.C. 20240.

MARCH 1986

DATE

#### 4. IIM ACCOUNT MAINTENANCE

We noted unauthorized (voluntary deposit) accounts and inactive accounts at all agencies. At two agencies, unnecessary work was being expended on estates' accounts. Finally, unclaimed moneys were generally ignored, funds were not transferred to appropriate Treasury accounts, and no attempt was made to locate account holders with addresses unknown.

##### Voluntary Deposits

All agencies were maintaining an inordinate number of voluntary accounts that we considered to be unauthorized. This condition was also noted at all four agencies audited by OIG's Western Region. Not only were these voluntary deposits prohibited by regulation, but also agency resources were being expended on the maintenance of these accounts, which could have been more effectively used for the maintenance of its other required IIM accounts.

Regarding voluntary deposits, 25 CFR 115.6 states: "As a general rule, voluntary deposits shall not be accepted. Indians who require banking service shall be encouraged to utilize commercial facilities. If in any case, it is determined that an exception to this prohibition should be made to avoid a substantial hardship, the facts in the case shall be considered...."

Tribal accounts were found to be the most common type of voluntary deposits. The five agencies maintained a total of 160 tribal accounts at the time of our reviews. We examined 107 of these accounts, with balances exceeding \$2.1 million, and concluded that 61 (57 percent) were voluntary in nature.

Generally, the tribal IIM accounts that we reviewed, although differing in their stated purposes, did have one similarity; they appeared to be maintained for the convenience of various tribal organizations. One account was for a tribal hat factory, while another was for a tribal golf course and a park. In another example, an account was established in 1980,

ostensibly for land acquisition. This account, with a balance of \$150,700 in February 1984, had the appearance of a savings account (very few disbursements with only one made in FY 1983). Other accounts were of a similar nature. In still another example, a tribal land account had 588 disbursements made from it during FY 1983. The operation of this account, and many others, had more the appearance of commercial checking accounts.

We did not take exception to any tribal IIM account if it was being used by BIA to disburse funds for various authorized purposes; e.g., judgment awards, Federal management of tribal real properties, etc. The use of IIM accounts for tribal operations was discussed with cognizant agency officials. They stated that many of these accounts had been in use for long periods of time and agreed that they were voluntary in nature. No justifiable reasons were given for the establishment of these accounts. We were also told that some tribal IIM accounts were started because the agency did not know what else to do with certain available funds or were started simply in response to requests by tribal officials.

In three of the five agencies, we noted adult IIM accounts which were essentially voluntary deposits. For example, an individual at one agency asked for his account to be "supervised" (presumably because of lack of capacity to manage his own funds) and subsequently made large, apparently unsupervised withdrawals totaling in excess of \$1 million. At another agency, five individuals were allowed to make voluntary deposits into IIM accounts from April 1981 to April 1983, totaling more than \$100,000.

The five agencies are currently maintaining over 37,000 IIM accounts. Any diminution of this number, by eliminating voluntary deposit accounts, could help decrease the amount of overall control that is currently required to manage these accounts.

#### Inactive Accounts

None of the agencies had periodically reviewed its IIM and special deposit accounts for inactivity. As a result, they were maintaining a significant number of inactive accounts, which required additional resources to



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

OCT 1 1987

## Memorandum

To: Area Directors

From: Assistant Secretary - Indian Affairs

Subject: Discontinuance of Depositing Grants and Loans in Individual Indian Money Account 0650

Individual Indian Money accounts were established to account for funds held in trust for individual Indians, associations of Indians, or for Indian corporations chartered under the Act of June 18, 1934 (48 Stat. 984).

The Office of the Inspector General and the Office of Management and Budget have taken exception to the Bureau allowing grants and loans made to individuals by the Bureau to be placed into the IIM accounts. There have also been reports of the Bureau improperly handling the funds, i.e., transferring funds between grantees, Bureau employees negotiating and signing contracts from such funds, etc.

To reserve the IIM accounts for the purpose for which they were intended, and to avoid mishandling of these funds, grants and loans to individuals may no longer be placed in IIM accounts. The grants and loans currently in the IIM accounts are to be disbursed to the grantee or the loan recipient if there is a current need for the funds. If there is no current need for the grant or loan, the funds must be refunded to the Bureau to the credit of the account from which the funds were originally disbursed. If the grant or loan has not been fully disbursed to the grantee or loan recipient, when the refund is recorded obligations must be established and partial or final disbursements made, as appropriate.

The obligation process will also apply to future grants and loans when it is necessary to make partial payments. In the case of grants, care must be taken to assure that only amounts chargeable to a current fiscal year be obligated for that year. If there are any questions in this regard, please contact your Area Finance Officer.

Any references in Bureau manuals allowing such funds to be placed in IIM accounts will be deleted. Issuing checks jointly to grantees and contractors is prohibited. Establishing joint bank accounts for Bureau employees/grantees is prohibited.

Grants and loans in IIM accounts must be cleared no later than October 30, 1987. A review will be made of balances in the IIM accounts on November 1 to assure that the above action is taken.



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

OCT 1 1987.

### Memorandum

To: Area Directors

From: Assistant Secretary - Indian Affairs

Subject: Discontinuance of Tribal Accounts Placed in Individual Indian Money Accounts 0613 and 0650

Funds collected by the Bureau on behalf of tribes must be deposited into the Treasury to the credit of the tribes' receipt accounts established under section 20 of the Permanent Appropriation Repeal Act, 1934. (Approved June 26, 1934, 48 Stat. 1233.)

The Act of June 25, 1934, provided that section 20 of the Permanent Appropriation Repeal Act, approved June 26, 1934, (48 Stat. 1233) shall not be applicable to funds held in trust for individual Indians, associations of individual Indians, or for Indian corporations chartered under the act of June 18, 1934 (48 Stat. 984). These individual Indian funds are maintained in accounts under 14X6039, Individual Indian Monies, BIA.

Through the years, the Bureau has allowed tribes to place funds into tribal accounts in IIM on a voluntary basis. Today, the majority of the tribes have adequate accounting systems and are capable of managing their own funds. The Office of the Inspector General and the Office of Management and Budget have taken exception to our allowing tribal accounts to be established in IIM as this was not the intent of IIM accounts.

To be responsive to the exceptions taken, and because of the tribes' ability to manage their funds, and because of the need to use the limited resources the Bureau has to properly manage those IIM accounts mandated by law, tribal accounts in IIM accounts 0613 and 0650 will be discontinued as follows:

1. Notify tribes, in writing, that their accounts will be closed and disbursed to them by IIM check by December 1, 1987.

This notice is to include an offer of assistance and counseling, if needed, to help them acquire commercial banking services to meet their needs.

In addition, tribes are to be advised of P. L. 96-153, dated December 21, 1979, which extended deposit insurance and security in the form of collateral pledges to Indian Tribal Government deposits in national banking associations and federal credit unions. Individuals should also be advised of the FDIC coverage of their funds in commercial banks.




2. In cases of substantial hardship, such as no commercial banking facilities within a reasonable distance, an exception to this prohibition may be granted. The facts of each substantial hardship case are to be submitted through the Indian Service Special Disbursing Agent, P.O. Box 1067, Albuquerque, N.M. 87103, to the Assistant Secretary - Indian Affairs, for allowance or denial of the account.

3. Tribal funds now in IIM that were originally advanced from their tribal receipt accounts in the Treasury which are in excess of current tribal needs will be refunded to the tribal receipt account.

Areas and Agencies should work closely with tribes to improve the timing and amount of funds advanced for local budgets to assure tribal funds in the Treasury remain invested as long as possible. Also, future advances are to be scheduled for electronic fund transfer from the Treasury directly to the tribes' commercial bank accounts. The practice of transferring funds from the tribal receipt account to the tribes' IIM account for disbursement is being discontinued.

4. In order to avoid investment liquidity problems, the current IIM maximum balance of \$5 million per depositor will be decreased by increments of \$2 million each month beginning October 1; i.e., maximum permissible balance on October 31 will be \$3 million; on November 30, the maximum will be \$1 million; and on December 1, the account will be closed and the remaining funds disbursed to the tribe. If an accelerated account balance reduction is desirable, please coordinate the action with the Division of Trust Funds Management, Investment Officer, at FTS 474-2976. Areas and Agencies must reconcile balances in accounts 0613 and 0650 with general ledger accounts 206.13 and 206.50 prior to closing the accounts.

Any questions concerning the contents of this memorandum may be referred to Jim Parris, Chief, Branch of Trust Fund Accounting, at FTS 474-2974.



## WITNESSES

---

	Page
Blanchard, Kenneth .....	360
Chambers, Reid .....	276
Chino, Wendell .....	76
DeLaCruz, Joe .....	76
Deloria, Sam .....	276
Ducheneaux, Wayne .....	115
Frank, Billy .....	202
Gahbow, Arthur .....	115
Harjo, Suzan .....	276
Hawkins, Alvino, Sr .....	255
Hodel, Hon. D. P. ....	1
Jackson, Zane .....	202
Jacobs, Eddie .....	350
Jordan, D. E .....	255
Jourdain, R. A .....	76
Kinley, Larry .....	76
Lunderman, Alex .....	115
Pablo, Mickey .....	255
Pace, Charles .....	202
Ragsdale, W. P .....	1
Real Bird, Richard .....	115
Ryan, Frank .....	1
Swimmer, R. O .....	1
Tarr, R. W .....	1
Thomas, Ed .....	202
Vollmann, T. A .....	1



# INDEX

	Page
<b>Bureau of Indian Affairs</b> .....	1
Statement of:	
Donald P. Hodel, Secretary of the Interior .....	2
Ross O. Swimmer, Assistant Secretary—Indian Affairs.....	5
Access to Natural Resource Information.....	59
Breach of Trust Cases.....	60
Solicitor's Southwest Regional Office.....	62
Relationship Between the Solicitor's Office and the U.S. Attorney .....	63
Solicitor's Briefing of the Secretary.....	63
Making Changes in Indian Country.....	64
Role of BIA .....	65
Accounting for Minerals Royalty Payments.....	72
Actions Against Oil Companies (Lawsuits).....	26
Atlantic Richfield Company & Murchison Brothers.....	27
Bill R. Long.....	28
Chevron U.S.A., Inc.....	28
Cotton Petroleum Corporation.....	26
F. Howard Walsh, Jr.....	27
Kanai Oil & Gas, Inc.....	26
Tricentrol US Inc.....	28
Woods Petroleum Corporation .....	27
Appeals Involving Indian Leases and Assessments Against Oil Companies .....	28
Alternative Relationships Between Indians and the BIA .....	67
Appealing the McClanahan Case .....	21
BIA's Natural Resource Data Base.....	53
BIA's Relationship to the Allottee .....	49
Block Grants and Willingness to Change.....	16
Changes in Solicitor's Office .....	34
11/25 letter to Congressman Yates .....	36
11/2 letter to Tommy D. Harris, Associate District Judge for Adair County, Oklahoma.....	40
4/3 Memorandum to all attorneys, Southwest Regional Office.....	47
4/6 Memorandum to Tim Vollmann, Associate Solicitor for Indian Affairs.....	48
Conflict of Interest .....	72
Court Appearance in the Austin Walker Case.....	49
Department of Indian Affairs and Expert Assistance.....	71
Determining Trust Responsibility.....	70
Efficient Employment of Expert Personnel .....	55
Gambling Operations.....	34
Indian Representation.....	66
Inspector General's Report on BIA Property Management.....	74
Inventories of Indian Resources .....	51

	Page
<b>Statement of—Continued</b>	
Jicarilla Decision.....	12
Legal Procedures for Leasing on Indian Land.....	23
Opening Statements.....	10
Outside Experts.....	53
Percentage of Lease Holders Committed to a Lease.....	19
Property Inventory.....	73
Property Management System.....	75
Seismic Data.....	56
Assessments of Indian Mineral Resources.....	57
Siding with the Indians or the Oil Companies.....	33
Special Relationship with Indian People.....	11
Support for Change in Indian Programs.....	14
The Austin Walker Case.....	21
The McClanahan Case.....	18
The Policy of Self-Determination.....	68
Value of Coal Resources on the Crow Reservation.....	50
Witness List: BIA and Regional Solicitor for Southwest Region, Tulsa.....	1
 <b>Hearing Part Two:</b>	
Testimony of Tribal Chairman:	
Roger Jourdain, Red Lake Band of Chippewa Indians.....	77
Joe DeLaCruz, Quinault Indian Nation.....	83
Larry G. Kinley, Lummi Business Council.....	91
Witness List: Tribal Chairman—Part One.....	76
Agreement in Indian Country.....	110
Cooperation of Agency Offices.....	104
Department of Indian Affairs (by Joe DeLaCruz).....	109
Greater Self Determination.....	113
Increase Authority in the BIA System.....	104
New Congressional Policy.....	105
Participation in the Process.....	109
Removal from the BIA.....	106
Tribal Consultation.....	108
 <b>Hearing Part Three:</b>	
Search Warrant for Confiscation of Crow Records.....	161
Testimony of Tribal Chairmen:	
Arthur Gahbow, Mille Lacs Band of Chippewa Indians.....	117
Wayne Ducheneaux, Cheyenne River Sioux Tribe.....	131
Alex Lunderman, Rosebud Sioux Tribe.....	149
BIA—Restructuring Recommendations.....	148
Richard Real Bird, Crow Tribal Council.....	191
Witness List: Tribal Chairmen—Part Two.....	115
Block Grants and the Crow Tribe.....	201
Confiscation of Crow Tribal Records.....	159
Control of Crow Tribe's Affairs.....	187
Crow National Resources and Reservation Poverty.....	157
Department's Legal Obligation.....	189
Departmental and BIA Responsiveness.....	126
Different Federal Agencies Affecting the Crow Tribe.....	159
Direct Funding of Tribes.....	115
Increased Tribal Control.....	128
Leadership and Tribal Problems.....	146
Number of BIA Processing Centers.....	125

	Page
<b>Witness List—Continued</b>	
Refusal to Contract with the Crow Tribe .....	187
Responsibilities and Funding Levels for Block Grants .....	156
Technical Assistance and Leasing .....	127
<b>Hearing Part Four:</b>	
Witness List: Tribal Chairmen—Part Three .....	202
Testimony of Tribal Chairmen:	
Edward K. Thomas, Tlingit & Haida Tribes of Alaska .....	203
5/28 letter to Jake Lestenkof, Juneau Area Director .....	210
7/17 letter to Jake Lestenkof, Juneau Area Director .....	212
9/21 letter to Ross Swimmer, Assistant Secretary—Indian Affairs .....	214
10/2 memorandum to Ross Swimmer, Assistant Secretary—Indian Affairs .....	218
Zane Jackson, Confederated Tribes of the Warm Springs Reservation .....	224
11/5 letter to Congressman Yates .....	231
Charles Pace, Shoshone-Bannock Tribes .....	238
10/13 Shoshone-Bannock resolution .....	250
Alaska Area Office .....	220
Area Offices and the Shoshone-Bannock Tribes .....	235
BIA's Initiatives and the Warm Springs Tribe .....	222
Conditions of the Tlingit and Haida People .....	202
Congressional and BIA Responsibility .....	234
Federal Bureaucracy .....	252
Promotion and Protection of Natural Resources .....	236
<b>Hearing Part Five:</b>	
Testimony of Tribal Chairmen:	
Mickey Pablo, Confederated Tribes of Salish and Kootenai .....	258
Alvino Hawkins, White Mountain Apache Tribe .....	268
10/23 letter to Congressman Yates .....	274
Witness List: Tribal Chairmen—Part Four .....	255
American Indian Policy Commission .....	264
Block Grants and Contracting .....	264
Forestry Program .....	265
Hunting and Fishing Ordinances .....	256
Law Enforcement .....	255
Recommendations for Change .....	257
Recommendations for Change .....	266
Tribal Attorneys .....	255
White Mountain Apache Tribe .....	264
<b>Hearing Part Six:</b>	
Actions by U.S. for Indians (list) .....	287
Comments by Assistant Secretary Swimmer for the record .....	311
Additional Information Submitted by the Bureau of Indian Affairs .....	311
Excerpts from IG Audit (C-IA-BIA-52-85) .....	321
12/12/86 letter to Superintendent of Anadarko Agency .....	328
12/12/86 letter to Superintendent of Anadarko Agency .....	330
Police Training Program Syllabus .....	336
Statements for Inclusion in Record:	
Eddie Jacobs, Oklahoma Indian Mineral Owners Association .....	350
Kenneth Blanchard, Absentee Shawnee Tribe of Oklahoma .....	360
Les AuCoin .....	363

	Page
Testimony of:	
Reid Peyton Chambers, Former Associate Solicitor for Indian Affairs.....	290
Daniel E. Jordan, D.C. Liaison for Hoopa Valley Tribe .....	345
Witness List: American Indian Organizations .....	276
Anadarko Project .....	279
BIA Deputy of Administration .....	309
BIA Responsibilities/Duties .....	305
Budget Process Changes Proposed .....	307
Conflict of Interest .....	284
Demonstration Projects.....	277
Hoopa Tribe.....	343
Identification at the Trust Corpus.....	276
New Arrangements with the Bureau.....	283
Nuclear Waste Policy Act.....	277
Representation of Indian People.....	276
Testimony on Status of Indian Affairs.....	279
Training Indian Employees.....	282
Tribal Representation.....	309
Trust Responsibility and Leasing.....	304
Trust Responsibility Questions.....	280
Trust Responsibility.....	285