

INDIAN TRUST FUND MANAGEMENT

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BEFORE THE
SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON THE MANAGEMENT OF INDIAN TRUST FUNDS
BY THE U.S. GOVERNMENT

AUGUST 12, 1992
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INDIAN TRUST FUND MANAGEMENT

WEDNESDAY, AUGUST 12, 1992

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to other business, at 9:35 a.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Wellstone, and Daschle.

STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. This morning the committee meets in its oversight capacity to receive testimony on the management of Indian trust funds by the U.S. Government.

The matters we address this morning have been the subject of extensive study and evaluation over the years. It is an area fraught with controversy, and one which will require our sustained attention and efforts if the problems identified by the most recent reports and studies are to be effectively resolved.

Toward that end, Vice Chairman McCain and I have written to the Secretary of the Interior, the Director of the Office of Management and Budget, and to the Assistant Secretary of Indian Affairs, making clear the intent of this committee to work with the administration in assuring a cautious, deliberate, and methodical approach to the resolution of longstanding problems.

The funds that are held in trust by the U.S. Government for the benefit of Indian tribal governments and individual Indians derived from a number of sources. These funds include those revenues derived from the management of forestry resources on Indian lands; lands that lease for grazing purposes; lands leased for mineral, oil, and gas exploration; from other rents and leases; as well as from the ownership of lands by tribal governments or Indian allottees.

The management of these Indian trust funds, pursuant to the Chief Financial Officers Act of 1990, is the responsibility of the chief financial officer of the Department of the Interior. However, I am pleased to report that the Office of Management and Budget and the Executive Office of the President has undertaken an important role in assisting the Interior Department and the affected beneficiaries in addressing trust fund management issues and the development of a long-range strategic plan to resolve outstanding problems.

This morning our hearing is organized in a manner that is designed to help the committee understand the nature and scope of

the problems that have been associated with the management of Indian trust funds in the past, to secure an understanding of what measures are being proposed to address those problems, and what we can anticipate in the future in terms of general tribal involvement in the management of Indian trust funds.

I am most gratified that the President of the United States has committed some of the highest officials of the Office of the President to this effort, and the committee looks forward to the testimony of the deputy director for management of the Office of Management and Budget.

Our first witness this morning is a Member of the U.S. House of Representatives, chairman of the Subcommittee on Environment, Energy and Natural Resources of the Committee on Government Operations who somehow, despite the many constraints on his time and that of his subcommittee, has taken upon himself a leadership role over the past several years in the persistent pursuit of a resolution to the serious problems identified by his subcommittee in its oversight capacity.

The report of his subcommittee, along with the recently published report of the General Accounting Office, assists us greatly in understanding the nature and scope of the problems associated with the management of Indian trust funds.

Before I introduce him, I want to pledge to him and to his colleagues that the members of this committee are committed to carrying forward and building upon the important work that he has done.

You have performed a great service to the Indian nations and to the Indian people, and so I call upon the Honorable Mike Synar, chairman of the Subcommittee on Environment, Energy and Natural Resources of the Committee on Government Operations, and his colleague on that committee, the Honorable Collin Peterson.

STATEMENT OF HON. COLLIN C. PETERSON, U.S. REPRESENTATIVE FROM MINNESOTA, MEMBER, HOUSE COMMITTEE ON GOVERNMENT OPERATIONS, ACCOMPANIED BY MIKE PETERSEN, CPA. RED LAKE BAND

Mr. COLLIN PETERSON. I would like to have Mike Petersen from the Red Lake Band join me if that would be all right.

The CHAIRMAN. Fine.

Gentlemen, welcome. I thank you very much for being here this morning.

Senator WELLSTONE. Mr. Chairman, I won't interrupt—just simply a warm hello to fellow Minnesotans. Glad to see both of you here and look forward to the testimony of Congressman Peterson.

Mr. COLLIN PETERSON. Thank you, Mr. Chairman and Senator Wellstone. We appreciate your calling this hearing and appreciate your letting me appear before you today.

I am Collin Peterson. I represent the Seventh District of Minnesota. On behalf of my constituents, primarily the Red Lake Band of Chippewa Indians, I'd like to relate to you some concerns about the serious lack of trust fund accountability and to express my commitment to work with you to solve this crisis.

Also, before I go any further I want to associate myself with the things that my colleague, Mr. Synar, is going to say.

I serve on the Government Operations Committee on the full committee. I do not serve on his subcommittee, but I have been involved with some of his hearings and have attended some meetings and want to commend him for all of the work that he has done on this issue.

Appearing with me at the table is Mike Petersen, who is the tribal CPA for the Red Lake Band. I'd like to make some introductory comments and then, with your permission, if Mr. Petersen could explain some specifics, I'd appreciate that. He'll tell you briefly about some of the Government's failure to account for the Red Lake tribal trust funds and the tribe's demonstrated competence to do so.

I will conclude with a recommended solution to enhance the Government's ability to fulfill its trust responsibility to the Red Lake Band and to other tribal governments.

The chairman of the Red Lake Band, Gerald F. Brun, and the tribal secretary, Bobby Whitefeather, are unable to attend and have asked me to express their regrets to you, Mr. Chairman.

The committee is very familiar with the common problems associated with the BIA record of trust fund mismanagement. Thanks to a detailed report prepared by the Subcommittee on Energy, Environment and Natural Resources of the House Government Operations Committee chaired by Congressman Synar of Oklahoma—and this committee has additional background as a result of your landmark work on the Special Committee on Investigations.

Mr. Chairman, I am also a certified public accountant and have some background in this area, and I have kind of taken a special interest in working with the tribes to resolve the trust fund problems in a way that will help promote tribal self-determination and adherence to strict fiduciary standards.

I believe that we in Congress can work with the tribes to accomplish this goal.

The unremitting tenaciousness of the Red Lake tribal leadership to get nothing more than an accurate accounting of its funds from its trustees, the United States, parallels the efforts of this committee.

The Red Lake Band has had detailed, direct experience in trust fund accounting during the last 10 years. This experience has resulted in an understanding of the BIA accounting systems and its deficiencies.

At this time, Mr. Chairman, if I could, I'd like to call on Mike Petersen for some brief explanations of their situation, and then I'll conclude when he is finished.

The CHAIRMAN. Mr. Petersen.

STATEMENT OF MIKE PETERSEN

Mr. MIKE PETERSEN. Good morning, Mr. Chairman and Senator Wellstone.

The Red Lake people have always been quite independent, as documented in their history, and very adamant about protecting their sovereignty and what they enjoy today has been the benefit of

the chiefs 100 years ago where they did not comply with the General Allotment Act, yet they retained the reservation owned in common by all members of the Red Lake Band to protect their sovereignty and their jurisdiction.

Most recently in the last 10 years they have been very concerned and have spent an inordinate amount of time that wasn't necessary in behalf of the beneficiaries of the trust. It should have been provided for and accomplished by the U.S. Government in the accounting for, investment, collection, and disbursement of their trust funds.

On January 29, 1981, the tribe passed a resolution asking for an accounting of its funds from the U.S. Government.

About 1½ months later, we received a single, plain piece of paper, hand-written, with single amounts for each of the balances of the various trust funds owned by the Red Lake Band of Chipewa Indians.

I had been recently employed by them to help them with some other accounting matters, and I was professionally astounded by the accounting, if you will, that was furnished by the U.S. Government.

The tribe passed another resolution then, upon my recommendation, requesting an accounting, financial statements prepared under generally accepted accounting principles on a quarterly basis, reflecting the receipts, disbursements, transactions of their trust funds so they could look them over and see if their moneys had been collected and accounted for and invested.

Well, the next accounting was some copies of some manual control cards that the Bureau had—another accounting system that the Bureau had.

We made another request. Then we received a copy of some automated financial statements.

Over the course of the next year we received several "accountings," none of which came close to even satisfactorily accounting for Red Lake Band's trust funds held by the U.S. Government.

Early in 1982, in a meeting with the regional audit manager from Denver, CO, for the Office of Inspector General, Department of the Interior, we made a request to him, and we made the assertion that we felt that Red Lake Band's funds were materially understated.

Their office went down to Albuquerque, NM, and in June 1982 issued a memorandum audit report that supported the tribe's assertion that their funds were understated by several hundred thousand dollars.

The Bureau promised that they would take care of that within a year and give us an accounting, and so forth and so on.

I am not here to try and recant the history of the Bureau's abject failure in trying to fulfill its fiduciary responsibilities. I'm trying to lay the foundation of what the Red Lake Band has been through in the last 11 years so you can gain an appreciation of their frustration.

In August 1983 the Red Lake Band filed a complaint in Federal District Court trying to get accounting for its funds. As part of that litigation, the Federal District Court in Minneapolis ordered the Bureau of Indian Affairs to hire its own independent CPA firm—

they issued the RFP, they hired their auditors—to audit a 16-year period of time of the Red Lake Band's funds.

That audit was completed in September 1984 and audited the financial statements from July 1, 1968, through March 31, 1984, and reflected a positive adjustment that was made in those financial statements of \$811,468.

That was then furnished to the Federal judge in October 1984, and the Deputy Assistant Secretary for Operations at that time stated to the judge that an audit is just a management tool and the Bureau—who, by their own admission, has, in history, failed to ever reconcile funds—said they needed to review the audit report for its accuracy.

The Federal judge allowed them 30 days to get back to him.

In May 1985 they had not yet got back to him, and the Federal judge ordered that all funds be transferred over to the Red Lake Band of Chippewa Indians.

The Bureau contested that. We are still in Federal District Court. That case is not resolved yet.

We're just asking the Government to perform. We're not looking for money damages—just asking them to perform.

More than 4 years after the Federal district judge allowed 30 days for the Bureau to review the audited financial statements for their accuracy, the BIA secretly transferred \$1,231,000 of certificates of deposit that were in the name of the Red Lake Band of Chippewa Indians to the pooled investments contained in the individual Indian moneys account. They didn't even have the courtesy to let the chairman know that they were doing this.

Senator WELLSTONE. Excuse me, Mr. Petersen. What was the date? When was this?

Mr. MIKE PETERSEN. November 25, 1988. Based on a recommendation of the now director of Office of Trust Fund Management, Jim Parris, faxed his recommendation to the area director for his review and approval. His approval was given the same day and faxed back the same day to Albuquerque, NM. And they transferred out of the name of the Red Lake Band \$1,231,000 of certificates of deposit that were in the name of the Red Lake Band and put them in the pooled investment account for individual Indian moneys.

Coincidentally, that's where at that time—we have been told and believe that that's where all the worthless investments that had been made by the Bureau of Indian Affairs were also transferred, because in the pooled account no individual Indian owns any one specific investment. In tribal funds they do, but not on the individual side. They are pooled.

Today the Bureau is still carrying those investments at face value, as far as I know, and have not acknowledged the losses of those investments.

When we discovered that transfer in January 1989, when we received the monthly report—which Red Lake did not put much credence in to begin with, but we kept an eye on them—that significant reduction was noticed, and we called the area director and asked him what was going on. He indicated to us that he didn't know, we'd have to talk to Jim Parris in Albuquerque, NM.

In March 1989 the tribal treasurer and myself flew down to Albuquerque to receive an explanation for this transfer. We spent three days going through the work papers of the Bureau of Indian Affairs that supported their adjustment and transfer of these funds, and we met with Mr. Parris upon conclusion of that and convinced him with additional source documentation, based on generally accepted accounting principles, that the money should be restored to the band—at least \$400,000 immediately and all of it eventually.

After another lengthy review, Jim Parris recommended to the area director in November 1989 that those funds be restored. They ultimately were restored on April 23, 1990—without any benefit of interest earnings on them, I might add. That just happened to be the day before Congressman Synar's second hearing on Indian trust funds, which was April 24.

The Red Lake Band has provided testimony to all four of Congressman Synar's hearings, and would like to acknowledge his efforts in trying to correct the problems.

We received almost \$400,000 back. We want the rest of our money back acknowledged by independent reports issued by CPA's hired by the Bureau as of March 31, 1984.

The Red Lake Band also has submitted a contract to audit its trust funds from March 31, 1984, through September 30, 1992, to calculate what is due the Red Lake Band today and have that attested to by independent CPA's hired by the tribe, so the tribe is the client. The tribe has direct access to the audit firm.

Once those funds are audited under generally accepted accounting principles, consistent reporting standards, and held to the same exacting fiduciary standards as a private trustee, the Red Lake Band is very interested in having their money placed with another custodial private financial institution that is subject to regulation of the Comptroller of the Currency and the exacting fiduciary standards and the real-world principles that every American should expect from its trustee.

I don't think it is fair to ask the Indian people to accept back an amount of money that the Government couldn't account for for the past number of years and say to them, "Well, we finally acknowledge that we collected \$1,000 for you 20 years ago, so here is your \$1,000 back."

I don't think any American should be expected to accept that.

The CHAIRMAN. Mr. Petersen.

Mr. MIKE PETERSEN. Yes?

The CHAIRMAN. You spoke of a response to your first inquiry, and that response was hand written. When was that?

Mr. MIKE PETERSEN. That was received in March 1981.

The CHAIRMAN. And approximately what was the value of the account?

Mr. MIKE PETERSEN. Totally, there was positive and negative numbers. I couldn't understand how you could overdraft the U.S. Treasury account, but there were negative balances in there. It was a little over \$3 million, I believe, net.

The CHAIRMAN. A report on a \$3 million account was handwritten?

Mr. MIKE PETERSEN. Correct, with one balance for each of the separate appropriation accounts for the trust funds. Handwritten on a single, plain piece of paper.

The CHAIRMAN. And you spoke of valueless investments that were in the books at face value. What sort of investments are we speaking of?

Mr. MIKE PETERSEN. Investments that were made by the Bureau of Indian Affairs where they thought they were buying certificates of deposit in a credit union when, in fact, they bought shares of stock. Moneys transferred to a bogus financial institution, set up by a high school dropout that was later convicted of a felony to the tune of over \$7 million in 2 months.

The CHAIRMAN. Come again?

Mr. MIKE PETERSEN. Yes; that's correct. A high school dropout, in conjunction with some other deposit broker or brokers, set up in Kansas City, MO, in Mark Twain Bank, an account called Oak Park Community Credit Union.

Now, there was an Oak Park Credit Union in Kansas City, MO, at the time. But they changed the name a little bit, set up an account in Mark Twain Bank, called up the Bureau Branch of Investments that accepted bids every Tuesday over the phone and said, "We'll give you 11.75 percent on \$2 million." No one bothered to check out the validity of the financial institution or the credibility of their FDIC number, and they wired \$2 million to this bank account in January 1984, I believe.

Evidently the person got a little bolder and within the next 2 months called them up and got another \$5 million.

I don't know how the U.S. attorney or somebody stumbled upon this, but they did. This individual had transferred out all but about \$2 million of that money.

Primarily, all of those investments, Senator, were made in the name of tribal trust accounts in the name of specific tribes. There were some of them that were pooled investments under this IM pool, but the majority of them were investments made in behalf of specific tribes for their trust accounts.

In the transcripts of the trial on this individual, the then head of the trust fund office in Albuquerque was asked, "How is it that today, of those \$5 million in losses, why are they all residing over an IIM? Why did you make the tribes whole?" In essence, the individual Indians will some day probably have to eat that loss.

The answer given was for administrative expediency—under oath. I don't know what that means, but I do know that no individual Indian receives a listing of investments on their account. They don't even get a listing of their statement. They don't even get periodic statements.

The CHAIRMAN. Even to this day?

Mr. MIKE PETERSEN. Even to this day, Senator.

Mr. Chairman, I have to go make a vote, so I would just like to conclude.

They have made a recommendation—the Red Lake Band resolution—asking for the authority to manage their own money in light of the failure of them to get accounting and decent management, and I, frankly, concur with that if we can't get to the bottom of this any other way.

Again, I want to thank you very much for letting me be with you today and for listening to Mr. Petersen.

The CHAIRMAN. I thank you very much.

Mr. PETERSEN. Mr. Wellstone, we appreciate your being here.

The CHAIRMAN. Thank you very much, Congressman.

Mr. MIKE PETERSEN. On behalf of the Red Lake Band, I'd like to extend our appreciation to Congressman Peterson who, since being elected to Congress in 1990, has been very diligent and exhaustive in his efforts to try and help the Red Lake Band and his other constituents and all tribes, in general, receive an accounting from their trustee.

The CHAIRMAN. Senator Wellstone.

Senator WELLSTONE. Just two points, Mr. Chairman.

First, I would like to thank Congressman Peterson.

Mr. Petersen, the first point is this is kind of ironic, because, as Mr. Petersen knows, we have struggled here to try and just get an appropriation of \$500,000 for potable water and to get a decent water system hooked up. At the same time, you find out that the people at Red Lake have resources invested in their name, but they don't know what is going on, they are not kept informed. It is just such a bitter irony. I guess that's my first point, which I think probably does indicate the importance of self-determination, of people having more control over their own resources.

But there is more than that, Mr. Chairman. I think Mr. Petersen did an excellent job. I think maybe the heart of the matter is accountability. I would very much like to work with you, Mr. Chairman, on the kinds of initiatives we might take here in the committee to deal with what I think is a very, very, very serious problem.

Mr. MIKE PETERSEN. I'd just like to add, Senator, that Senator Wellstone also has provided a lot of support, but we also have had another crucial matter at Red Lake of just getting adequate drinking water, which even supersedes at the present time receiving an accounting for our funds. Senator Wellstone has been exhaustive in his efforts trying to get—

Senator WELLSTONE. Well, it is back in conference committee, so we'll see what happens.

The CHAIRMAN. What is the status of the lawsuit?

Mr. MIKE PETERSEN. In May 1988, the Federal judge in St. Paul who passed away last winter ordered the Bureau of Indian Affairs to hold an evidentiary hearing in regard to the management of Red Lake trust funds. We are still waiting for the holding of that evidentiary hearing.

We were trying to get the Government to perform. It initially started because the Federal Government also has a fiduciary responsibility to manage a saw mill on the Red Lake Reservation under the 1916 Red Lake Forestry Act for the benefit of the Indian people, whose receipts and disbursements have been deposited in trust accounts over the past 60 or 70 years.

In October 1982, the Red Lake Band refused to rubberstamp a budget prepared and submitted to them by the Bureau of Indian Affairs to authorize the Bureau to expend Red Lake funds.

They ignored that resolution and continued to spend Red Lake trust funds without proper authorization, to the tune of about \$650,000, until August 1983 when the tribe entered Federal district

court and received an injunction to enjoin them from any further erosion—unauthorized erosion—of Red Lake funds.

We were just trying to get an accounting, trying to say, "Government, you really can't spend Red Lake money without Red Lake's authority." These aren't appropriated dollars. These are moneys from whatever resources have been left to the Red Lake Band by the United States.

The CHAIRMAN. I have been told that if the tribe should assume the management of the fund, that such management would be subject to the superintendence of the Comptroller of the Currency. Is that correct? How would that work?

Mr. MIKE PETERSEN. By placing it in a financial institution that is subject to the regulations of the Comptroller of the Currency. I'm not an expert in that area, but there are experts out there. It is not too tough to find a financial institution that's subject to title 12 Code of Federal Regulations and the Comptroller of the Currency.

The Bureau of Indian Affairs trust fund management has been totally unregulated, unaccounted for, by their own admission. They are not subject to the Comptroller of the Currency, Securities and Exchange Commission, Resolution Trust Corporation, Pension Benefit Guarantee Corporation. We've got a lot of regulatory bodies out there, none of which are looking into this \$2 billion bank.

The CHAIRMAN. I thank you very much, sir.

Mr. MIKE PETERSEN. Thank you.

The CHAIRMAN. We appreciate it.

Our next witness is the Director of Civil Audits, Accounting and Financial Management Division, General Accounting Office, Jeffrey C. Steinhoff, who will be accompanied by Robert Wagner, senior accountant, and Thomas H. Armstrong, assistant general counsel.

Welcome, sir.

STATEMENT OF JEFFREY C. STEINHOFF, DIRECTOR, CIVIL AUDITS, ACCOUNTING AND FINANCIAL MANAGEMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY ROBERT W. WAGNER, SENIOR ACCOUNTANT AND THOMAS H. ARMSTRONG, ASSISTANT GENERAL COUNSEL

Mr. STEINHOFF. Thank you very much.

I am pleased to be here today to discuss efforts by the Bureau of Indian Affairs to account for the Indian trust funds.

I have a detailed statement which I would request be entered into the record and will summarize my remarks.

The CHAIRMAN. Without objection, so ordered.

Mr. STEINHOFF. BIA faces serious pervasive financial management problems that go back decades. There is no shortage of audit reports and management studies which detail a litany of problems with trust fund financial management. BIA has not properly carried out its fiduciary responsibility, and thus has lost credibility with the account holders.

For years BIA has acknowledged these problems, but what has always been lacking in the past has been meaningful action that gets to the root cause of what is wrong.

Some of the problems are external to BIA, such as the need for accurate and complete land record and MMS royalty reporting, but the bulk are internal. Accounting systems are poorly designed, and oftentimes have been improperly and inconsistently implemented. Internal controls are weak, and operating practices and procedures oftentimes have not been developed, standardized, and/or properly carried out.

There have been recurrent reports of staff shortages and untrained staff. Basics, such as proper transaction processing and reconciliations, have oftentimes been lacking.

These are some of the things that have led to the inclusion of the trust fund on OMB's high-risk list.

On the positive side, there has been an ever-growing recognition of the seriousness of the problems, and efforts are underway to address them. But a lot remains to be done and the current interest in solutions must be sustained.

The ongoing effort to reconcile the trust fund accounts is a case in point of the difficult challenges BIA faces today. The magnitude of this undertaking is tremendous.

Think of trying to determine the correct balance of a personal bank account that has been active for 10, 20, 30, 40, 50, or more years, that includes many low-dollar value amounts, and that is replete with accounting errors which were not reconciled and corrected along the way. Then think about trying to determine the correct balance when many of the supporting records cannot be found. And then multiply this by 300,000 accounts.

This is just one challenge BIA faces.

Reconciling the accounts, which has received lots of focus in the past few years, has never been a solution to the problems that gave rise to the breakdown in trust fund accounting.

Once an account balance has been agreed to, it must be kept current or BIA will just be revisiting this problem over and over again.

BIA now needs to reevaluate key program objectives and how to achieve them. Now is the time to rethink the basic concepts underlying the trust funds and BIA's fiduciary role. All reasonable options should be considered.

Getting to the root cause will require the tie to other parts of Interior whose input impacts trust fund accounting, such as BLM and MMS, as well as the full participation of the Indian account holders. It is their money. BIA cannot do this job alone and should not be expected to.

It is also imperative that BIA effectively implement the concepts of the CFO Act of 1990 which mandates broad financial management reform.

Out of this must come a cohesive, strategic plan that everybody agrees to and that is doable, and people then must be held personally accountable for results.

In closing, I am most encouraged by recent actions by OMB, Interior, BIA, and the tribes to open communication lines and to work together to develop a consensus as to what is needed.

Today I sense, for the first time—and my experience in this goes back to the late 1970's—viable potential for meaningful reform; but this must be sustained and built upon, as there is a long way to go.

Mr. Chairman, this concludes my summary remarks. We would be pleased to answer any questions you may have at this time.

[Prepared statement of Mr. Steinhoff appears in appendix.]

The CHAIRMAN. Thank you very much.

In your prepared statement you indicated that there is about \$12 million in potential trust fund losses, apparently due to BIA investments over and above the insured levels in savings institutions. And you further confirm \$4 million plus interest in losses that were not federally insured.

Is anything being done to correct this?

Mr. STEINHOFF. This has been an area where BIA has moved very, very slowly. I believe it was—I think I've got the letter here—January 13 of this year we wrote a letter to Chairman Synar. The letter talked about things that I had addressed on May 20, 1991, during oversight hearings that involved the \$4 million. These were investments over and above the limits that were insured.

We are basically saying that legally the Government should make the trust funds whole here.

Recently I believe there were actions in the House to put \$4 million in BIA's appropriation for this purpose.

These are the type of things the previous witness, Mr. Petersen, was talking about. Where there have been losses in the past, there has not been a clear-cut policy for advising the account holders of a loss. They have had to oftentimes find out secondhand, which sort of diminishes any trust they have in BIA's stewardship. And then it is oftentimes a very long process to make the account whole.

These were cases where, through BIA's own fault, these monies were not properly protected.

The CHAIRMAN. Your statement also indicates that over \$1 million worth of uncashed checks dated on or before September 30, 1989, have been canceled.

Mr. STEINHOFF. Right.

The CHAIRMAN. Is any effort being made to locate the recipients? How large were these checks?

Mr. STEINHOFF. I think that they varied across the lot. I don't think we've got a listing that shows amounts by check. My gut feeling is there are probably a lot of fairly small dollar amounts, and they are probably mainly IIM accounts, but I couldn't say for sure.

A law was passed in 1989, that basically required, if a check was stale dated by over 6 months, Treasury would clear that check off the books. You would then have to reissue the check to make payment.

Let's say, for example, you are a contractor with the Defense Department and you were issued a check. You lost track of that check, and that check was, in fact, closed out when it reached the 6-month mark. You went to cash it and found it was a stale dated check. You would go back to the Defense Department and say I have a valid claim, I'd like another check, and they would reissue the check.

In BIA's case, the Bureau, as a fiduciary, has got the responsibility for going back and determining which checks have been canceled.

As of your July 2 hearing, nothing had really been done at that point in time. BIA had inquired of Treasury as to the account holders, the people whose names were on the check. But Treasury only has the check number and the date, and not the name.

BIA is now starting, I believe, to go back over its records. They have promised, I think by September 30 or some date around there, to provide a full accounting.

But what this is going to require is for BIA go through voluminous records to try to determine and match up check numbers with names and determine which checks were, in fact, canceled.

And these things become very hard because BIA has difficulty just carrying out its day-to-day responsibility—a lack of trained staff, the numbers of people, just the volume of paper and the fact that their systems aren't very efficient.

So they are fighting many, many fires, and then something like this is on their doorstep. Oftentimes they do not react very well, in part because a given problem doesn't receive a high enough priority, but also in part because they have a very difficult challenge of just doing the business day-to-day.

The CHAIRMAN. You were here when Mr. Petersen described the problems of the Red Lake Band of the Chippewa. Are you familiar with that?

Mr. STEINHOFF. I'm not familiar with all the specifics he talked about. I would say that the type of experience he related gets back to the fact that the Government has never properly carried out its fiduciary responsibility, and account holders should expect to receive a full accounting. If an account holder has a question, they should expect to be provided the documentation, the full backup, and for somebody to professionally explain to them what the story is.

I mentioned my involvement in the late 1970's and early 1980's, when GAO audited trust fund accounting. We found the type of things then we see today—a lack of accountability for the funds, a lack of clear expertise in investing, and really a lack of meeting what a fiduciary would be expected to meet as a basic minimum standard.

So while I can't address Mr. Petersen's specific case and experience, I would say the type of things that he talked about are believable under the type of system BIA has had.

The CHAIRMAN. Under the general and accepted practice of accounting, is it usual to have valueless accounts still listed on the books at face value?

Mr. STEINHOFF. No; you would go through your books and you would remove those. You would adjust the accounts.

The CHAIRMAN. Senator Daschle.

Senator DASCHLE. I have no questions at this time, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Steinhoff, because of the complexity of this matter before us, may we submit to you questions, sir?

Mr. STEINHOFF. Very fine, sir.

The CHAIRMAN. Thank you, sir.

Mr. STEINHOFF. Thank you.

The CHAIRMAN. Our next witness is the Deputy Director for Management of the Office of Management and Budget, the Executive Office of the President of the United States, Frank Hodsoll.

Mr. Hodsoll, welcome, sir.

STATEMENT OF FRANK HODSOLL, DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT OF THE UNITED STATES

Mr. HODSOLL. Thank you very much, Mr. Chairman.

The CHAIRMAN. As I indicated in my opening statement, I thank you very much for the leadership role that your office has assumed.

Mr. HODSOLL. Thank you, sir.

It is a pleasure to be here before you, and I thank you and the committee for taking the time to look into the issue of the trust funds, which is an important one, as the previous witnesses have already set out.

Let me just say, if I could, I'd like to submit my statement for the record, and I would summarize.

The CHAIRMAN. It will be made part of the record, like all testimony, sir.

Mr. HODSOLL. Thank you very much, Mr. Chairman.

I think that I would start, in summary, by saying OMB gets into these kinds of issues through our responsibilities for management. As is mentioned in my statement, we set up a system for identifying those areas that are of the highest risk to the Federal Government, and then we set up SWAT and review teams, in addition to other measures, to try to address those.

We put into the budget our request for the budget—in 1993, for example, \$2 billion specifically to address these kinds of problems.

Now, turning specifically, if I might, to the Indian trust funds. I think one of the points I should make, Mr. Chairman, is that if one looks at the 99 high-risk areas, 3 of them are associated with the BIA, and 2 of the 13 which record insufficient progress being made in recent years are in the BIA. One of those involves the trust funds.

Why has there been so little progress? In my opinion it is not because there are not good ideas out there. Jeff Steinhoff and other folks have come up with a variety of good ideas over the years.

I believe that the problem is because the parties involved, the people involved, haven't made, in effect, a compact to bring solution to these problems over time, stick with it, move forward through the forest, and arrive at a conclusion.

I underscore the word "compact," because fixing management, unlike providing budget numbers or legislation, requires time. It involves hundreds of people, their leaders, and their direction.

Therefore, my principal proposition to you, sir, today would be that we join together on a course and stick with it. I believe this must include the Congress, as well as the executive branch; OMB, as well as the Office of the Secretary of the Interior, as well as the Bureau of Indian Affairs. I believe it must include representatives of Indian communities as beneficiaries, as well as the Federal Government as trustee.

We believe that we have made a start in recent times on this. We have been meeting with the Inter-Tribal Monitoring Association, who will testify before you shortly, yesterday and the day before, as well as before. We have discovered that we agree—that is, between the administration and the Inter-Tribal Monitoring Association—on much more than we disagree. And the disagreements go more, I believe, to feasibility than to substance—feasibility and technique than to substance.

I would call your particular attention to pages 7 and 9 of my prepared testimony where I summarize the points of agreement and the points of commonality.

I think if I were to just mention a couple of those, it would be, first, that we must ensure not only reasonable reconciliation and audit of the collections, investments, and distributions of the trust funds, but that we must also, where feasible, verify that the trust funds' collections were what should have been collected under settlement agreements, leases, and permits, and that these collections were properly deposited to the appropriate tribal accounts.

Where moneys are owed, they must be paid, whether in or out. Reasonable reconciliation and audit of the collections, investments, and distributions of the trust funds are needed, and a means established for adding or subtracting from balances as adjustments are made. Without that, you have no foundation on which to go forward.

I would note, Mr. Chairman, there is a significant difference between the tribal accounts and the individual accounts. I think that we should go through and reconcile and audit each of the 2,000 tribal accounts, but we will have to come up with a different system for the individual accounts.

Indian land records have been mentioned—in particular, chain of title records and fractionated interests. If we are to solve this problem, we must deal with those, even though some of these records exist outside of BIA.

As we proceed with the matters that should be reconciled across the board, we also need to make progress now. As I point out in my written testimony, it will take us until 1994 or 1995 to do the reconciliation and audit of the tribal accounts.

In the meantime, it seems to us we must move forward with reconciliation and audit of the settlement agreements, which are relatively easy to spot, and determine whether or not they were recorded in the right amounts to the right tribes, and whether interest was accrued thereon as should have been over a period of time. Those amounts, by themselves, are 70 percent of the tribal accounts, and it seems to me we ought to start to get that done quickly.

We are also open to the idea of some pilots to look at how one might deal with other amounts coming in to the trust fund.

Finally, Mr. Chairman, we have, as I say in my prepared statement, enumerated four specific steps that we would undertake over the next months to get started. I won't repeat those here, in the interest of turning to your questions. But I would set out, I think, one last procedural point and then one last word.

The procedural point is this: Eloise Cobell of the Inter-Tribal Monitoring Association wrote me on August 10 suggesting that

there be a meeting of representatives from Congress, the executive branch and the tribes to get everyone to buy in to a long-term effort on these accounts.

We agree, Mr. Chairman, and I suggest in my testimony that perhaps you, Senator McCain, and others could help us arrange such a meeting in mid-October. We expect that we will have some fairly significant detail hopefully agreed to by that time.

Finally, I would like to say a word about the leadership of the BIA.

They and their predecessors have been beaten up over the years—in many cases, in my view, deservedly so. Let me say here on the record that Eddie Brown and Dave Matheson also deserve some credit for dealing with what is a very difficult problem. It was their efforts that were instrumental in reforming BIA accounting systems in Albuquerque, which is the SWAT team that I described in my prepared testimony that is, we think, largely fixed now. And they have cooperated fully in our SWAT team on the trust funds.

They are working hard, Mr. Chairman. They need our support. But we must all insist and not tolerate anything less than the highest standards.

Thank you, sir. I am open to questions.

[Prepared statement of Mr. Hodsoll appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Hodsoll.

In your remarks you indicated that it would be necessary to adopt a procedure or plan or system and stick to it. Are these meetings that you are now chairing involving the Interior Department, GAO, and the Indians part of the process to develop this plan?

Mr. HODSOLL. Yes, sir; let me, if I could distinguish two things.

Under appropriations language adopted by the Congress over the last 4 years, BIA—or the Office of Trust Funds Management—has been required to come up with a strategic plan. That strategic plan in the past, or the draft of it, has been significantly lacking in detail and substance.

They now have a draft that provides that kind of detail and substance; however, in our meetings with the Inter-Tribal Association in the recent days we have come to the conclusion that we need to spend the next 30 to 60 days working through with them some of those details so that we are all together when we are through.

The CHAIRMAN. Will this plan require legislation?

Mr. HODSOLL. The plan, itself, will not require legislation, Mr. Chairman, but it is probable, in my view, that when we get to issues, for example, of fractionated interests, when we get to issues of how we are going to deal with the individual accounts—which we can't possibly reconcile each and every one, ourselves—we will need legislation, sir.

The CHAIRMAN. Do you have any indication at this stage what funds would be necessary?

Mr. HODSOLL. I do not, other than the administrative funds for staffing and so on. At least at this point, we believe we have enough money in the budget to provide for these initial steps. We may need additional funds, but that remains to be determined.

The CHAIRMAN. Nearly every witness acquainted with this problem has indicated that staffing is woefully inadequate. Do you have any idea as to what would constitute adequacy?

Mr. HODSOLL. I do not, sir.

The CHAIRMAN. But would you consider the staffing to be inadequate?

Mr. HODSOLL. In terms of my personal knowledge—I would defer to others on this, but in terms of my personal knowledge, it would be my view that the training of the existing staff in the Office of Trust Fund Management needs to be improved, and we need additional people with technical expertise.

In terms of numbers of staff, I don't know, but we'd be happy to take a look at that with the Department of Interior and come back to you.

The CHAIRMAN. I appreciate this very much, Mr. Hodsoll. Senator Daschle.

Senator DASCHLE. Thank you, Mr. Chairman.

Mr. Hodsoll, could you elaborate a little bit more clearly, at least for me, the role OMB will continue to play in this process and for what period of time?

Mr. HODSOLL. Yes, sir; basically, the role that OMB is currently playing is based on an agreement between the Secretary of Interior and my boss, Dick Darman, Director of OMB, to establish a SWAT team to analyze and develop recommendations as to fixes of the problems in the Indian trust funds. That has been underway since May 1991, and we have made too little progress, I might say.

We at OMB will stick with it until we have produced recommendations on all of these matters for the Secretary and the Director. Obviously, since I am a political appointee, I am speaking for the current administration. I don't speak for the possibility of a new administration after the elections, but as far as we are concerned, we will stick with it until we have concrete recommendations, not only as to administrative measures, but also as to any legislative proposals.

Senator DASCHLE. You can probably understand one's skepticism about any reports of progress, given the record thus far. In fact, you have just alluded to your lack of progress since you were created over 1 year ago. To what do you attribute your lack of progress?

Mr. HODSOLL. Well, I think that our problem in the SWAT team, speaking specifically of that, is that we let it move along in terms of the normal administrative process of working up a strategic plan and the like, and we didn't, until much more recently, reach out to the Inter-Tribal Monitoring Association and to Members of Congress.

I will be frank—while we established the SWAT team, as I mentioned, back in May, it was largely a staff-level effort until Congressman Synar produced his report. That report was given to me. I read it. I was outraged, and I'm going to stick through with this as long as I am in office until we get to these next stages. And we have to this end started to bring in some of the other parties.

As I said at the beginning, Senator Daschle, there is no way to succeed with this if we are not all in it together. It is easy enough to design a reconciliation. That design exists. There are papers and

documents that put all that out. But there is no way to bring this to closure in the sense of having a truly improved trust fund operation if we don't have significant representation from the beneficiaries, from the relevant committees of Congress, and we are all in it together, because reforms in the past have often been blocked by one or another of those parties.

If we are serious, we have got to make an agreement—I like to call it a “compact” because the word is a little stronger than an agreement—and move it forward.

We are committed to that in the administration. My boss, Dick Darman, is committed to that.

Senator DASCHLE. You mentioned the date October 1. Could you give us some indication as to what you would view to be an appropriate set of dates in the future, should you—assuming you are going to be around for a while to come, if you could lay out the markers time-wise, what would they be?

Mr. HODSOLL. Certainly, sir.

I have this in my testimony, but let me just briefly summarize.

We believe that Arthur Andersen should proceed with phase two of its contract to reconcile the tribal accounts and systems, that the process should be completed by the end of 1994, and that audits of the reconciliation process should be completed by the end of 1995.

Arthur Andersen will testify before you later. We have talked with them. They believe this is a reasonable timetable to do the 2,000 tribal accounts, leaving individual accounts aside.

Senator DASCHLE. Could I just stop you there briefly?

Mr. HODSOLL. Yes, sir.

Senator DASCHLE. That seems like an extraordinary amount of time—3 whole years to do an audit. I guess we can ask Arthur Andersen whether that is just the requisite number of months needed for something this extensive, but is that a normal amount of time for an audit of this consequence?

Mr. HODSOLL. I am told that it is. In fact, I think you may hear from the Inter-Tribal Monitoring Association's own accountants that they think it will take longer.

You are talking about 2,000 accounts back to 1973. You are talking about inadequate records in many cases, and I gather a great difficulty in doing that year-by-year for all of the 2,000 accounts.

I had the same reaction that you did, sir, when I first heard it. My own view is that if we can do it faster and do it right, we should. But I am about to propose a piece in between that will go faster than that, whatever the facts ultimately may turn out to be.

Senator DASCHLE. Please proceed.

Mr. HODSOLL. We will ask Arthur Andersen, as a part of their general tribal account reconciliation effort, to accelerate the reconciliation of the tribal settlement funds. These, sir, comprise about 70 percent of all of the funds, but they are much easier to deal with because there are only so many settlement agreements, and you are talking about interest in relation to a yield curve in between.

So I do not have a date for this, but it would be my goal to have this done considerably earlier than 1994-95 so that one would have a base as to the 70 percent of the funds, leaving aside all the rest of the transactions for the moment.

So our second plank is to try to accelerate that.

The third piece is that we have comprised with representatives of the Indian communities a working group which will, within the next 30 days—I probably should have started with that, because that's an even shorter timeframe—develop recommendations as to the methodology and timetable of examining three to five tribal accounts with respect to the amounts paid into the trust fund.

Let me, if I could, sir—I beg your indulgence here. I'm going on at some length technically. The reconciliation and audit of the accounts will only deal with what went on in the trust fund. It will accept as a given that \$100, for example, went in on such and such a date, and it will only deal with whether or not it went into the account.

There is still the remaining question of whether or not the amounts that are due to the Indians are the right amounts due and whether they were, in fact, put into the right accounts—for the tribes I am speaking of now. That remains an unknown.

One of the reasons I am so anxious to accelerate the settlement agreements is that there you have an actual number in the settlement that says that such and such millions of dollars should have gone into such and such accounts. It is easy to do.

When you get to oil and gas leases, grazing fees, and the like, it is much more difficult.

What we propose to do with the Inter-Tribal Monitoring Association is to see if we can identify three to five tribes and, on an accelerated basis, look at how we can bring to a finality the question of whether or not the amounts going into the trust funds other than settlement agreements are the right amounts. We have started the technical discussions on that, and we hope to have, if you will, a prospectus for that exercise in 30 days.

It would be my proposal, if the committee is in agreement and other Members of Congress—because I think we need all of the various folks involved in on this—that in October we would present to you a proposal with regard to that.

Finally, we will establish by October 1 of this year two further working groups—one to make recommendations on reconciling individual accounts, and the other to make recommendations on the management of land records and fractionated heirships and interests, which are a complicating issue in all of this. We will ask these groups to report back by the end of February 1993.

So we will have some of that infrastructure in place, even though the reconciliation may take longer.

Let me just come back to the first point. We will talk, in light of your interest, Senator, with Arthur Andersen. If there is a way to do that faster on the general reconciliation, I'm certainly not in the way of that. I don't know what is required.

Senator DASCHLE. Thank you.

Just one last question. Are you going to study also land records, BLM, and the mining and mineral service accounts?

Mr. HODSOLL. Yes, sir.

Senator DASCHLE. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Hodsoll, in your presentation, in response to a letter from the chairperson of the Monitoring Association, you

suggested the involvement of this committee. I believe I can speak for the vice chairman, Senator McCain. It just happens that he and I are up for reelection right now, so mid-October would be rather difficult for our personal involvement.

Mr. HODSOLL. Make it mid-November.

The CHAIRMAN. But assuming that all is well and it turns out well, I can assure you that we will be pitching in. But in the meantime I will instruct the staff, together with Senator McCain, to begin the preliminary process to bring about this gathering.

Mr. HODSOLL. I appreciate that.

The CHAIRMAN. Thank you very much, sir.

Mr. HODSOLL. Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness represents the Arthur Andersen & Co. of Albuquerque, James Laborde.

STATEMENT OF JAMES LABORDE, PARTNER, ARTHUR ANDERSEN & CO., ALBUQUERQUE, NM, ACCOMPANIED BY GREG CHAVARIA, ENGAGEMENT MANAGER

Mr. LABORDE. Thank you, Senator.

The CHAIRMAN. We appreciate your presence, sir.

I believe you are accompanied by Mr. Greg Chavaria.

Please proceed, sir.

Mr. LABORDE. Mr. Chairman, I think, like others, I have a detailed, prepared statement, which I believe is in your hands, and I will try to summarize.

The CHAIRMAN. Without objection, it is part of the record.

Mr. LABORDE. I would like to thank this committee for inviting me to participate in your hearing today on the management of Indian funds.

I am the Arthur Andersen partner that has been assigned to the reconciliation contract work that we are presently doing for the Bureau of Indian Affairs.

This contract has been in effect since May 23, 1991, and, as you mentioned, Greg is with me as the audit manager on this particular project.

We are here today to give background information on the work that we have performed in previous years for the Bureau of Indian Affairs and, more recently, the phase 1 work performed under the reconciliation contract.

We believe that the audit work we performed for the Bureau and other audits performed by GAO and others has resulted in significant improvement efforts by the Bureau.

During phase one of the contract, we made significant progress toward accomplishing the reconciliation process, including the development of working methodology for tribal trust accounts, inventorying available records at numerous storage locations, the accumulation of statistical data, information on transaction types and volumes, and projected estimates of work that could be performed in phase 2, based on the knowledge that we gained in phase 1 of this contract.

Arthur Andersen's past experience with the Bureau gave us the ability to begin the reconciliation work almost immediately upon award of the contract.

We believe that because of our prior experience we were able to be efficient in our efforts, and we were able to assist the Bureau immediately in training the reconciliation staff.

I would now like to turn to a brief description of the work that we have performed on prior work prior to the reconciliation project.

Prior to being awarded the reconciliation contract, Arthur Andersen contracted with the Bureau to audit the trust funds for the fiscal years ending September 30, 1988, through 1990. It should be noted that these audits were financial and compliance audits of the total trust funds, not individual tribal or individual Indian money accounts, and not for periods prior to 1988.

During the performance of these services, we reported a number of recommendations and observations. These are documented in our audit opinions, compliance reports, et cetera.

Some of the more significant weaknesses that were disclosed in the reports include: a lack of consistency in accounting procedure and documentation cause certain accounting errors, multiple accounting systems used to record the same activity are not routinely reconciled, there was inadequate segregation of duties, data processing controls could not be relied upon to ensure that the data are properly processed, and certain distributions were not calculated correctly due to outdated ownership records. That was to mention a few.

Currently, the Bureau is in the process of implementing corrective actions to address these and other weaknesses and improve the efficiency of operations, as well as the accuracy of the accounting information. The Bureau is moving in the right direction with these and other efforts to improve the overall efficiency.

Now I'd like to turn to the reconciliation project.

As discussed, in May 1991 we were awarded the contract to reconcile—or reconstruct, if you please—tribal and individual Indian money accounts to source documents, as well as perform certain systems-level reconciliation work.

Our initial efforts under phase 1 of the contract for the time periods from June 1991, through December 1991, concentrated on tribal and individual Indian money reconciliation work.

The phase 1 effort was designed to determine the most efficient and effective way to approach the reconciliation work, including the development of a cost estimate to conduct the reconciliation work that would be responsive to the concerns of all parties.

The work performed in phase one produced the required results with regard to an efficient and effective approach to reconciling tribal trust accounts. As a result of the work performed, we were also able to recommend some alternative options for reconciling individual Indian money account activity as it became apparent that we could not use the same approach as the tribal trust.

The work performed during this period involved planning the approach and timing of all the work at all the sites, including: working with the Bureau to develop training manuals and to train Arthur Andersen in the operations of the Bureau; conducting inventories of available records located at various Bureau locations, as well as archives, records centers, et cetera.

We built electronic databases of available records in order to manage the large volume of documents and to allow easy access to documents needed during the reconciliation effort. We established computer systems to conduct automated reconciliation approach.

We began the reconciliation process for the first 37 tribes specified in phase 1 of the contract and found that, due to the nature of the documentation, it would be much more efficient if we reconciled all tribal accounts simultaneously.

We attempted to reconcile individual Indian money accounts using the methodology developed, and, due to several unresolved issues, including the prohibitive cost involved, it became evident that individual Indian moneys should not be reconciled using the same assumptions and scope as tribal trust.

At an assessment meeting on January 28, we reported the progress of the reconciliation effort through that time, including an overview of the approach, projected fees based on various assumptions, and listing of unresolved issues that would affect the work. I will discuss briefly some of the key issues surrounding the tribal and individual Indian money reconciliation efforts.

First, the tribal trust. The scope of the work—there is a wide range of costs associated with this effort, depending upon the scope of the work to be performed, such as: materiality considerations, what dollar limits we should we use, the benefits of testing all investment rollovers as opposed to alternative tests of those transactions, and the number of years to be reconstructed.

Another issue is the level of support. There is a need to expand the testing of revenue receipts to include the review of lease agreements, et cetera, resulting in the eventual cash receipt to the tribe.

Still another issue is information from other agencies. Other Federal agencies beyond the Bureau's control, such as MMS, collect revenues for the Bureau's trust funds.

Another is ownership records. The issue of the reliability of the ownership records used to determine the proper allocation of revenue to account holders has been discussed extensively.

Finally, the individual Indian money systems transfer. Certain tribes have raised the issue of tribal funds maintained in the individual Indian money system. This issue affects some tribes more than others, and not all agency locations funnel the funds through individual Indian money accounts and/or maintain tribal funds in IIM accounts.

After the January meeting, our efforts were directed away from the full-scale reconciliation of tribal accounts and we focused our efforts on preparing training material, training Bureau personnel on performing the reconciliation work, performing systems-level reconciliation work, and assisting in designing and documenting procedures for reconciling the finance system to the U.S. Treasury accounts.

As it relates to the individual Indian money side, there are several issues here.

First, the volume of transactions. Volumes of transactions affecting individual Indian money accounts are much higher than the volumes affecting tribal trust accounts, and the number of accounts involved has grown significantly since the inception of the fund.

Second, source document availability. Much of the needed source documents were located; however, known gaps exist for time periods that were being considered for reconciliation.

There has been a great amount of movement of the accounting records between locations over the years, making it difficult to locate specific documents—and, again, the ownership records issue.

The support for the legal allotment ownership records of the Bureau are inconsistent with the records that are used to calculate distributions. It is not determinable at this point whether or not the records used for the distributions are correct, as there is the possibility that they were not updated properly as a result of probates, et cetera.

Cost estimates for individual Indian moneys provided at the January meeting were based on rough projections of the entire population of accounts maintained by the Bureau and the scope of work requested at that time; that is, all transactions for all accounts.

Arthur Andersen made it clear at that time and previously that we do not recommend the Bureau continue to attempt this level of effort in the reconciliation of individual Indian moneys. We did recommend the Bureau consider certain procedures to address specific problems.

Subsequent to the January assessment meeting, our efforts were again redirected from the reconciliation work to other more concentrated efforts. Since the January meeting, our work has included the development of a formalized reconciliation training manual and the training of Bureau personnel in this methodology.

We prepared final reports of reconciliation work performed at the three individual Indian money phase 1 sites, including management recommendations and observations.

We are reconciling the investment subsidiary detail system to the general ledger control accounts. We are providing assistance in developing methodology and procedure manuals for reconciling finance systems balances with U.S. Treasury balances.

We are developing tribal trust account statements to be used to report reconciliation results to tribes, including pro forma interest calculations.

Finally, we are performing an operational review of the Division of Trust Fund Investment Accounting Operations for the purpose of providing specific recommendations to improve efficiency in the internal controls.

As discussed previously, we have presented these findings and other findings to the Bureau, OMB, the association, and other interested parties. There has been very little actual detailed reconciliation work on tribal and individual accounts performed since January.

We are presently awaiting the final decision regarding the scope of work to be performed in phase 2 of the contract.

Thank you very much.

[Prepared statement of Mr. Laborde appears in appendix.]

The CHAIRMAN. Thank you very much, sir.

I am certain you were here when Mr. Hodsoll of OMB testified.

Mr. LABORDE. Yes, sir.

The CHAIRMAN. He spoke of a SWAT team that was sent to Albuquerque headquarters of trust fund management. He indicated that much has been done and much has been improved.

Do you agree with that?

Mr. LABORDE. I believe that there has been much improvement, and particularly in the effort and the desire to do so.

A lot of the improvements I believe will take a longer term fix. Some of the things that can be done quickly are being done. But I would have to say there is a long way to go.

The CHAIRMAN. Senator Daschle, in his questioning of Mr. Hod-soll, inquired as to why it would take so long—1994. I suppose you are the man who can provide the answer.

Mr. LABORDE. Most likely my colleague, Mr. Chavaria, can provide the answer much better than I.

The CHAIRMAN. Fine, sir. Mr. Chavaria.

Mr. CHAVARIA. Just to give you an idea of the volume of transactions we are dealing with for tribal trust, alone, we have, as we said, created a database for the years that have been automated. We had access to the data, and we could produce some statistical information on the accounts—volume and transactions.

There are, from 1983 through 1991, in tribal trusts alone, 386,000 transactions, involving a total dollar amount, positive and negative, of \$340 billion. That's a 10-year period only.

We have made some estimates and projections back through 1973 and prior, and we also, using our methodology, have derived the amount of time that it takes to reconcile a specific transaction, and our projected estimates, based on the cost at an hourly rate that we had proposed in our contract, we projected the cost involved to be quite high. Also, there are some limitations as to how many people we can have involved in the reconciliation work at the site for efficiency and so on.

We believe that 3 years, based on the current scopes, is a reasonable timeframe.

We have recommended options for reducing this, as Jim mentioned—scoping considerations, et cetera.

Mr. LABORDE. I think maybe the proof of the pudding is that the process of reconciliation is refined to the point now that we get about 1 year done in some 80 days—maybe 90 days. So theoretically you get about 4 years in a 1-year period, or something like that.

The CHAIRMAN. The Red Lake Band of Chippewas I believe retained the services of Mr. Petersen, and he testified that they were involved in a reconciliation work of their own. Would that in any way impact upon your effort?

Mr. LABORDE. I'm not familiar with Mr. Petersen's work, and I suppose I can't answer that question.

Can you, Greg?

Mr. CHAVARIA. During the early phases of this project we did meet with the tribe and the plan was to meet with the tribes to hear their concerns prior to reconciliation efforts.

We, of course, would welcome that information, and look for specific instances, similar cases, and try to concentrate on problem areas.

I am also not familiar with the specifics of that particular case.

The CHAIRMAN. Well, Mr. Chavaria and Mr. Laborde, I thank you very much.

May we submit to you questions of some technicality? We have some staff people who are preparing some technical questions.

Mr. LABORDE. That would be fine.

The CHAIRMAN. Thank you, sir.

Our next witness is a member of the U.S. House of Representatives. He is chairman of the Subcommittee on Environment, Energy, and Natural Resources of the Committee on Government Operations.

Somehow, despite the many constraints on his time and that of his subcommittee, he has taken upon himself a leadership role over the last several years in the persistent pursuit of a resolution to the serious problems identified by the subcommittees in this capacity.

The report of his subcommittee, along with the recently published report of the General Accounting Office, assists us greatly in understanding the nature and scope of the problems associated with the management of Indian trust funds.

Before I introduce him, I would like to pledge to him and to his colleagues that the members of this committee are committed to carrying forward and building upon the important work that you have done, sir.

Now it is my great pleasure to call upon the Honorable Mike Synar, chairman of the Subcommittee on Environment, Energy, and Natural Resources.

Welcome.

STATEMENT OF HON. MIKE SYNAR, U.S. REPRESENTATIVE FROM OKLAHOMA

Mr. SYNAR. Mr. Chairman, thank you very much for those kind words of introduction.

May I just say that whatever success we have had over there is because we have tucked under your wing and followed your great leadership in this area for so many years.

On behalf of the Second District of Oklahoma, the largest native American congressional district, I would be remiss if I didn't take this opportunity to publicly thank you for all the help you have given us through the years on a variety of fronts, everywhere from health care to just the management of tribes.

This is kind of a mutual admiration society going on here, but your leadership has been invaluable for the success that we have.

Let me be very brief, because I know that you have a lot of witnesses that want to tell you their story.

It is safe to say that after the 3-year investigation we did on the Subcommittee of Environment, Energy, and Natural Resources that we have found—unanimously, I might add, both Republicans and Democrats—that we have probably one of the greatest examples of gross mismanagement in the history of this Government.

If that was not bad enough, I think what we found more disturbing was the fact that there is an inattentiveness and literally indifferent leadership down at the Bureau of Indian Affairs with respect to resolving these issues.

It is no secret that I had to bounce the BIA into my subcommittee once every 6 months over a period of 3 years in order to try to get their attention on the serious problems which are faced. I think it is safe to say that we have come to the conclusion that this is a national disgrace.

I have said before that had this occurred with the Social Security system we would literally have had a war in this country. It is just amazing that we have been able to stop that from happening in this case.

What we have found—and I think you are going to hear testimony on it this morning—is that what BIA must do is very simple: they've got to reform their organizational and structural weaknesses. Second, they've got to adopt and enforce strict priorities. Finally, they've got to adhere to the planning and implementation.

Ultimately, I think you and I know that we in Congress are going to have to provide and change the law so that our tribes and the individual account holders can have greater control over their funds, greater management flexibility, guaranteed consultation with all major BIA trust fund decisions, greater authority to force the BIA to uphold its trust responsibilities and, finally, we've got to strengthen the account-holder control over the natural resources.

That's what we've got to ultimately do.

I firmly believe that we have got to begin considering transferring the Indian trust funds from the BIA to some other fiscal agent. It is clear that we are not going to get the kind of success that you and I would expect from them.

I have drafted legislation. I think your people have looked at it in the sense of trying to work together in a joint effort. I want to commit to you today the following pledge that I have committed to the BIA: I am not going to rest until we solve this problem. It is absolutely imperative that the hundreds of tribes and hundreds of thousands of Indian account holders finally get the trust responsibility that they expected, that they should demand, and that we should deliver.

[Prepared statement of Mr. Synar appears in appendix.]

The CHAIRMAN. Mr. Chairman, I thank you very much. That's very encouraging.

Several witnesses have suggested that the Federal agencies responsible for the management of these funds should coordinate their activities. Do you believe this type of coordination is now occurring?

Mr. SYNAR. No; I do not. In fact, this SWAT team that you alluded to in the previous witness with Arthur Andersen is interesting because I met with the director over this, and that SWAT team was not down there looking at Indian trust funds, they were looking at appropriations. In other words, they weren't really down there doing the types of things that we were supposed to have them do.

What we have found is that you can demand, you can request, you can massage these various agencies to work together, but if there is indifferent leadership with respect to that it won't happen, and that's what we found down there.

I think that what we are going to have to do is probably admit to ourselves that we cannot solve this problem by just continuing the same path, that we've got to look for other ways to do it.

The CHAIRMAN. You spoke of legislation, and this committee is aware of that. For the record, would you like to give a brief description of that bill you are drafting now?

Mr. SYNAR. The bill would basically do the following things, as I mentioned in my remarks. It would give us greater control over the funds. It would give the tribes the opportunity to have input.

One of the biggest things that we have demanded is to allow the tribes to be in consultation with every one of the BIA decisions, because right now they are getting it as an afterthought of the BIA.

We would basically set priorities. We would set a strategy. We would set target dates. And we would have a comprehensive plan of action.

We would give greater authority to force the BIA for trust responsibility.

Finally, we would give individual account holders control over their natural resources, which I think is the way we should have it.

The CHAIRMAN. It seems obvious that if we are to bring BIA into the current practice of accounting, we would have to provide the necessary monies for staff and training and such. Does your measure speak of that?

Mr. SYNAR. It doesn't speak of that, but if we can afford \$12 million for Arthur Andersen and if we can afford millions and millions of dollars through contracts to try to fix this thing over the years, I think we could probably afford to turn this over and let these individual account holders and tribes do it.

You know, for those who would suggest that tribes aren't capable of doing this, or the individual account holders are not capable of handling this, my question back to them is: How could they manage it any worse than what we find at the BIA? That's the issue here.

I think that we have now come to the resolution that anybody could have handled it better.

The CHAIRMAN. I thank you very much, Mr. Chairman.

Mr. SYNAR. Thank you.

The CHAIRMAN. Thank you, sir.

Our next panel has heard a lot of testimony so far. I am pleased to call upon the Assistant Secretary of the Indian Affairs, Bureau of Indian Affairs, Department of the Interior, Eddie Brown; Commissioner of the Bureau of Indian Affairs, David Matheson; Director of the Division of Trust Fund Management, James Parris.

**STATEMENT OF EDDIE F. BROWN, ASSISTANT SECRETARY,
INDIAN AFFAIRS, BUREAU OF INDIAN AFFAIRS, DEPARTMENT
OF THE INTERIOR, ACCOMPANIED BY DAVID MATHESON, COM-
MISSIONER, BUREAU OF INDIAN AFFAIRS AND JAMES PARRIS,
DIRECTOR, DIVISION OF TRUST FUND MANAGEMENT**

Dr. BROWN. Good morning.

The CHAIRMAN. Dr. Brown, welcome, sir.

Dr. BROWN. Thank you.

Let me thank you, Mr. Chairman, and members of the committee.

I am pleased to appear before the committee to discuss our efforts to improve management of Indian trust funds.

Accompanying me today are Mr. Dave Matheson, who is the Deputy Commissioner of Indian Affairs; and Mr. Jim Parris, who is Director of the Office of Trust Funds Management.

As the committee has heard, the problems in BIA's Indian trust funds management operation have been well documented over the years, so we are not talking about something that just created a crisis yesterday, last year, or 3 years ago. We are talking about a crisis that Indian people have learned to live with that has existed over the last 20 to 25 years.

We have found serious deficiencies in how funds were accounted for and invested in the past, and there are continuing deficiencies in management, staffing, and automated systems.

I made corrections of those problems a high priority when I was appointed to this office 3 years ago. You know, I likened it, when I came aboard and was handed the trust funds issues, of being aboard a huge supertanker that was bent on hell or high water to get to a certain point. My job literally has been, over the last few years, to bring that tanker to a halt, to turn that tanker in a completely different direction, and then to refuel that tanker with some specific plans that are going to get us from point A to point B, and then to get the job done.

Now, I make no apologies for the time that it has taken, because I think the time that we have taken has laid a clear groundwork for a success and a plan.

I think it is well understood the philosophy that drove efforts in the 1980's where the BIA launched two major efforts without adequate tribal consultation to contract out its trust fund operation, and both of those efforts failed.

The philosophy that drove those efforts was that BIA should turn over the trust funds organization to a turnkey operator.

We have moved away from that philosophy, and we have shifted toward working hand in hand in a partnership with tribes to talk about a variety of options and approaches, as well as tribal governments and Congress, together, in a partnership that can lay out a course.

In attempting to reform the process, I wanted to make sure that we consulted not only with representatives of the account holders, but also with Members of Congress, the Office of Management and Budget, the General Accounting Office, and the Joint Tribal BIA Department of the Interior Task Force on Reorganization of the BIA.

Accordingly, we have also worked with the Inter-Tribal Monitoring Association on Indian trust funds for about 2 years.

An early action I took was to develop a formal memorandum of understanding with the association delineating the association's broad role in the improvement of the program, and we had also offered or arranged for grant funds to ensure that support.

Consultation included issues related to BIA management and policy directions, written agreements on many critical issues, and

using the concept paper prepared by the association in developing BIA's strategic plan for Indian trust funds management.

In addition, we have consulted with the reorganization task force regularly on the improvements effort in the trust fund area, and we have also worked diligently with OMB, the General Accounting Office, and the congressional staff during this period.

I believe that this long, deliberate consultation with Indian tribes, with Congress, with the Office of Management and Budget and the General Accounting Office has paid off in terms of the level of mutual understanding and support which is clearly necessary, as well as understanding and getting new, fresh ideas brought to the process.

I am also pleased and encouraged that the reorganization task force agrees with the overall thrust of agency efforts to date, as expressed in the resolution of March 19, 1992.

While a comprehensive fix to trust funds is a long-term effort, we also recognize that something needs to be done to the short term, or to stop the hemorrhaging while long-term improvements were underway. Therefore, we consolidated trust fund operations under a single organizational entity called the Office of Trust Funds Management to lead the effort, and we have doubled the staff allocated to that office.

We have and are implementing a number of short-term improvements to strengthen internal controls and improve systems operations as we have worked with Arthur Andersen, also, to streamline our daily operations and to provide additional information about trust funds accounting and investments.

Additionally, we have provided training to our trust fund staff, and we have published written policies in key areas.

In terms of management planning, BIA has produced a reconciliation project management plan which was published in September 1991. BIA's fiscal year 1992 short-term projects plan was published in November 1991 and widely distributed.

Our key document focusing on improving the future of BIA's strategic plan for Indian trust funds management has been drafted and is now out with interested groups for comment.

The strategic plan that we have talked about here includes additional measures to improve the day-to-day operations. That plan has been submitted in draft form. We expect the next 30 days in the discussions with OMB and all of the other interested parties to lock that up, and then we will have what we have been striving for for so long—the kind of comprehensiveness and unification that we need to move this on.

Now, I would like to thank Frank Hodsoll not only for his testimony, but also for his commitment and leadership.

I think it has been made out here several times that it is not going to take the leadership of one person or one agency that is going to correct this problem, but it will take the leadership of a variety of leaders at high administrative levels to come together and once and for all solve this problem.

Let me also add, we are not in a war here. It is not how we are going to force the Bureau to do something right. Let me assure you that the Bureau of Indian Affairs is well prepared to sit down to work with, and we are prepared to serve American Indian people

at the level of our fiduciary responsibility that should be carried out.

So I do not see a war or an enforcement. What I see is an opportunity to come together.

We will be at the table, and we would invite anyone else who has provided recommendations or ideas to join us in this effort.

Quickly, I would like to just have Dave Matheson, sitting at my right, cover just briefly the strategic plan, which would complete our statement.

The CHAIRMAN. Mr. Commissioner.

Mr. MATHESON. Thank you, Mr. Chairman.

I would like to add very briefly the following summary.

I think clearly the problem of trust fund management is bigger than just the accounting in Albuquerque. The straightforward accounting functions that are performed there are just a piece of the overall problem.

I think that the leadership of Dr. Brown and the Bureau, in general, has chartered a course that included a partnership with the tribes. I think it is commendable that the BIA would have moved in this direction during Dr. Brown's leadership.

I believe that the tribes, through the Inter-Tribal Monitoring Association and the representatives of the Task Force on Reorganization, working with me and my office and my staff, felt that we were on a pretty good track to get a handle on the larger problem, including the accounting problem in Albuquerque.

Clearly, as has been already stressed, there are other forces that come into play that are all going to have to come to the table and partner up on it.

I am pleased that the draft plan on trust funds management improvement has been developed and has gone out for comment. This, too, is with consultation with tribes, the Task Force on Reorganization, and the Monitoring Association.

The plan was developed from models by GAO. It addresses financial accounting and investment only. The other bigger issues of trust management, in general—where the monies were generated from—realty leases, forestry sales, mining permits, rights-of-way, etcetera—is going to be dealt with on a longer term basis.

But the strategic plan, itself, provides for four primary goals and key elements that are broken down into 50 action plans, each one that will be broken down into an individual action plan to be performed on the ground in the Office of Trust Funds Management.

In the area of automated systems, we have agreed in concept or in principle to work with the U.S. Geological Survey to get them to work with us in designing the kind of system that we need to manage trust funds into the long term.

We have identified the kinds of changes in organization that we need down there. We have a new structure.

I think it is very important to point out, Mr. Chairman and committee members, that when this problem was identified there was a very disjointed organizational structure in the Office of Trust Funds Management. It was not one unit. There was accounting that was done in an Accounting Division for the Bureau. There was trust funds investment in another division. And they were not headed by one director.

Now that is done. We started out with 20 people there trying to handle \$2.2 billion worth of funds—management and accounting. When the problem came to light, we increased staff. Now it will be up to 52, I believe. We are requesting another 40 people to try to get the job done, to correct the problems that are out there, and the reorganization will help.

We're looking at the internal controls, segregation of duties, separation of duties that will bring to bear the kinds of due diligence and management that will stop problems from developing in the first place.

The reconciliation I think has been pretty well handled by Mr. Hodsoll and Arthur Andersen, so I'm not going to repeat that.

I would like to say in conclusion, though, that we will continue to consult with tribes. We look forward to working with the rest of the administration, OMB, GAO, Congress, and this committee to define the future and start solving these problems on a long-term and permanent basis.

Thank you very much, Mr. Chairman.

[Prepared statement of Dr. Brown appears in appendix.]

The CHAIRMAN. I thank you very much, Mr. Matheson.

Mr. Parris, would you care to add anything?

Mr. PARRIS. No, Mr. Chairman.

The CHAIRMAN. Dr. Brown, do you have any further statement?

Dr. BROWN. No, sir.

The CHAIRMAN. Dr. Brown, I should like to point out that the intent of this hearing is not to carry out BIA bashing or to find fault, because we are here to find a solution, if such is possible.

I should like the record to note that Dr. Brown assumed the Assistant Secretaryship in 1989 and many of the problems described by witnesses occurred long before he took over the helm.

So this is not fault-finding time, sir. I can assure you of that.

But I think it is well that if we are to find a solution we should learn about what some of these problems were all about. Most of us here—in fact, few of us on this committee are accountants, and so this is worse than Greek to us, but we will try our best.

I think that if we are looking for fault, there is enough to go around for everyone, including the Congress of the United States. I think that we should have conducted greater oversight, and there we failed. We should have provided necessary funds for training and for staff, and I think we have failed there. So it is not a situation where we are going to be bashing the BIA.

One of the witnesses indicated that, as a result of investments in failed savings institutions, large sums of monies have been lost. Do you have any policy on covering this?

There is a policy nationwide in helping the citizens of the United States make up for the losses brought about by failed S&L's. Do we have one for Indians?

Dr. BROWN. Yes; let me have Jim Parris address that specifically in regards to what we have.

Mr. PARRIS. On October 16, 1991, there was a policy regarding notification and reimbursement to Indian trust account owners for any losses that were detected by account owners or by our field offices in the Bureau. That was published and sent out to all Bureau offices at that time.

We also accompanied that with actual procedures for our offices to follow in notification up the line to our office in Albuquerque and then on through the Assistant Secretary's office to the Solicitor to bring these claims to a head.

The CHAIRMAN. About how much is involved in this?

Mr. PARRIS. How much as far as losses?

The CHAIRMAN. Yes.

Mr. PARRIS. In the past we have had claims that have been submitted to the Solicitor's Office that are currently on the table of \$1.6 million. We have failed financial institutions that currently have principal amounts in previous years that have been lost or have been involved with failed financial institutions and have not yet been collected—principal amounts of \$5.2 million. And we have calculated the impact as far as interest related to that, which totals to in excess of \$737,000.

The CHAIRMAN. Are these accounts covered? Is it the policy of our Government to make whole these investments?

Mr. PARRIS. Yes; the policy that was sent out in October 1991 does indicate that it is the policy of the Bureau to resolve these losses, and that we will proceed to make them whole. We have every intent to try to make these accounts right with the account holders.

The CHAIRMAN. Do you have the policy in writing somewhere?

Mr. PARRIS. Yes.

The CHAIRMAN. May we have that for the record, sir?

Mr. PARRIS. Yes; we will submit that.

[Information supplied appears in appendix.]

The CHAIRMAN. Mr. Petersen, the accountant for the Red Lake Band of Chippewas, said—and I believe I am quoting him—that the Albuquerque Office secretly transferred certain Red Lake tribal funds into bad Indian money accounts. Do you have any comments?

Mr. PARRIS. I believe he is referring—

The CHAIRMAN. This occurred in 1988, I believe.

Mr. PARRIS. There have been instances where failed financial institutions held moneys at the time they went under. Funds were held by tribal accounts that were purchased by the individual Indian money pool in the investment program at the time to consolidate those and be able to handle them in a pooled environment where they would not impact on the tribal funds that were at risk.

The CHAIRMAN. Was this done secretly?

Mr. PARRIS. Well, it was not published anywhere that I am aware of. It was done as an internal matter in the Division of Trust Funds Management at the time in the investment office in Albuquerque.

The CHAIRMAN. Were the Indian tribes or individual beneficiaries made aware that their accounts were being transferred into bad accounts?

Mr. PARRIS. The tribes, of course, received the benefit of that transaction, of whatever activity along that line occurred. The individuals were not notified of any risk to any funds in that investment pool.

The CHAIRMAN. Have you, Mr. Secretary, studied the Synar bill?

Dr. BROWN. We have not been asked to comment on that at this point in time, so we have not thoroughly looked at it or studied it.

The CHAIRMAN. But you have looked at it?

Dr. BROWN. Yes; we are generally familiar.

The CHAIRMAN. Are you prepared to give your assessment?

Dr. BROWN. Let me say that clearly in our strategic plan and in our discussions with the tribes and so forth we are prepared to look at a variety of options of how trust funds can be managed. Is that the particular bill that you are talking about, in the management of trust funds and the options for tribes and the flexibility of tribal self-determination?

We are prepared to look at that and have, in fact, identified a number of options and have submitted some of those options that have been identified by the monitoring group to the Solicitor's Office for their comment and review in regards to what any policy change, legislation, et cetera, would be required.

At this point in our discussions, up until as late as yesterday, we are prepared to look at a number of options that would provide a wide variety for tribes to become involved in the management and operations of their trust funds.

The CHAIRMAN. Mr. Parris, you indicated that individual Indian money accounts were transferred to benefit tribal accounts; is that correct?

Mr. PARRIS. That's right.

The CHAIRMAN. Why was this done?

Mr. PARRIS. I wasn't involved with the operation directly at that time. As I recall discussions that I had with the investment managers subsequent to that, we had information that they were trying to do what was in the best interest of the trust account owners at the time, in their judgment.

I'd have to really talk to them and submit something for the record if that would be OK to clarify their intent at the time.

The CHAIRMAN. I would like to have clarification of that, because I am certain the individual account holders would like to know why their accounts were used to cover up the tribal account losses. Was this done at the jeopardy of individual accounts?

Mr. PARRIS. The idea, I believe, was that the failed financial institutions were going to be covered by FDIC and FSLIC insurance proceeds, that it would be something that would be covered rather timely. It was not expected that we would not be reimbursed for any of those failed financial institutions.

The CHAIRMAN. I would assume that the activities that were described in some detail by Mr. Petersen may have occurred before your coming on board, but how did the BIA and the Albuquerque office get scammed and conned by this high school dropout? I must assume that you have at your disposal experts or people who would have the good sense to check out an organization.

These were not \$100 accounts. They were millions of dollars. How did it happen?

Mr. PARRIS. I came in during Mr. Petersen's presentation. I wasn't—

The CHAIRMAN. He spoke of \$7 million that this criminal got hold of.

Mr. PARRIS. Are you talking about the embezzlement situation? There was a—

The CHAIRMAN. He had a bogus company. It was a telephone account with bogus numbers, with no FDIC numbers, which would seem elementary to most people, and yet the Government of the United States just deposited moneys there because he said he would give you an 11-percent return—something that seemed too good to be true and obviously wasn't true.

Mr. PARRIS. I can get you more information directly from the investment advisers that were on the situation at the time.

It is my understanding that the Mark Twain Bank in question had bid on funds that were submitted by the Bureau for investment. The bank submitted the highest bid and presented credentials. Every bank has to present balance sheets, audited financial statements to the Bureau before we are able to have anything to do with them. The broker in question had submitted all the proper paperwork. The bank was legitimate.

It was a situation in which the collateral turned out to have been diverted into securities that were not worth the value or of the nature that was allowed by law for them to put up as collateral, and this was done in a manner that hit it not only from the bank, but definitely from the Bureau of Indian Affairs, and we didn't find out about it until it was too late. The bank had failed, and the scam was discovered.

The CHAIRMAN. And it was discovered by the Office of the U.S. Attorney, wasn't it?

Mr. PARRIS. That's correct.

The CHAIRMAN. There was another description of keeping on the record, in the books, failed investments, valueless investments, at face value. Is that a practice of the office?

Mr. PARRIS. The audits that we had Arthur Andersen do for the first time on the Bureau of Indian Affairs in 1988 discovered that we were carrying these securities at full face value.

Generally accepted accounting principles obviously do not allow you to carry worthless securities at an inflated value.

The policy of the Office of Trust Fund Management is not to do that. These securities were supposed to be carried at the market value, what they are really worth, what cost we had put into them.

Everything is booked at cash value at the time that we purchase them. The securities had not been removed from the balance sheets or financial reports of the Bureau.

In the audited financial statements that Arthur Andersen prepared for 1988, 1989, and 1990 for us, these securities were reflected as failed financial institutions clearly on the balance sheet and reclassified.

They have not been removed from the balance sheets or from the financial reports of the Bureau at the cost value at this time.

The adjustments have been recommended by Arthur Andersen. We are still collecting. Some funds have, in previous years, collected additional monies. We are not carrying them as they should be according to generally accepted accounting principles.

The CHAIRMAN. Is this sloppy work, or was this deliberately done?

Mr. PARRIS. Well, it was not corrected. And it was not something that we were trying to dodge. It just was not corrected as a matter of reflection on the financial reports.

Those reports are only issued to the public in an audited financial report in which the amounts are actually corrected for any adjusting entries like these reclassification entries to bring them in accordance with GAP.

The CHAIRMAN. Have these reports been corrected now?

Mr. PARRIS. The reports by the Bureau of Indian Affairs have not been corrected. No.

The CHAIRMAN. Have not been corrected?

Mr. PARRIS. No.

The CHAIRMAN. So someone reading the report would get a wrong idea?

Mr. PARRIS. The audited reports are correct. The reports that are actually generated by the Bureau's accounting system have not been—these assets have not been taken off of them, and they are not—

The CHAIRMAN. Why not?

Mr. PARRIS. We just have not done it.

The CHAIRMAN. You mean knowingly you carry an account which has no value at face value?

Mr. PARRIS. We have—

The CHAIRMAN. Won't that give the reader of that report a wrong impression of what his account is looking like?

Mr. PARRIS. Any reader of that report is within our own office and is fully aware of the condition of those particular securities.

The CHAIRMAN. But obviously that report goes out beyond the confines of your office, doesn't it?

Mr. PARRIS. No.

The CHAIRMAN. Obviously some people got hold of it.

Mr. PARRIS. No; not on the reports that are relevant to the individual Indian moneys where these securities are residing.

The CHAIRMAN. Is there any rational reason or justification for carrying out this practice? I am not an accountant, but is that the way CPA's operate?

Mr. PARRIS. No.

The CHAIRMAN. I had better look at my accounts.

Mr. PARRIS. The procedure is not in accordance with generally accepted accounting principles. No; and it is not proper accounting.

The CHAIRMAN. Well, Dr. Brown, I would like to commend you for the effort you have made in bringing about some solution to this problem that you inherited.

Do you believe that the meetings that have been called by the Office of Management and Budget will bear fruit?

Dr. BROWN. Yes; let me say that in the last 2 days we have sat in meetings with OMB and have delighted in their leadership in and involvement and commitment to address this issue in the last 3 years. Let me tell you, that will make a difference.

We have been delighted with just the progress that has been made with the tribal representation, the Bureau, and the other Federal agencies, and I am confident that in the next 30 days we will be able to lock up and agree on a reconciliation process and to lock up the strategic plan.

The CHAIRMAN. In all of the shortcomings and strange accounting practices that have been described, do you believe that criminal action is involved?

Dr. BROWN. At this point in time—you know, you asked the question a little earlier if this was being done deliberately or if this was just sloppy work. I don't know that we would call it sloppy work, but let me just say that we have a trust fund and account that we have reviewed, we have restructured it. We have requested in the 1993 budget 40 additional positions.

We don't have enough resources and we don't have enough trained staff to do the job adequately. In our request in 1993 I think we have asked for an additional \$4.7 million to add 40 positions to take a look at our systems, to take a continued look at our audit and reconciliation.

For us to change this operation, we are clear that we are going to need additional resources.

The CHAIRMAN. You asked for 40 positions, and did OMB approve them?

Dr. BROWN. Yes; that request is up here in Congress right now as part of the administrative budget.

And let me say that those funds I consider critical for us to carry out our strategic plan and to make the kind of improvements that are going to be necessary to turn this thing around.

The CHAIRMAN. One more time, Mr. Parris. In maintaining these valueless accounts, who set that policy? Where do you get that instruction to keep it that way? Somebody must have told you to do it, unless you have decided that it is good accounting practice.

Mr. PARRIS. No; it was something that was recorded at the time by another office, not—investments and accounting were separate offices at the time that these securities were recorded in this manner. They have been reflected and corrected in the audited financial statements.

In the accounting system that we have in Albuquerque, the system is set up in a way that if we were to take those particular amounts and take them completely from the system, instead of just—what we would do would be to reclassify them as an amount due to the fund. It would not be as if we would just say it didn't happen. We would remove the value and it would go down.

The reclassification entry—we do not have an account due to account owner setup. We would have to set up the account, as I understand it. Just as a procedural manner it had not been set up to where we could reclassify it

We are well aware of the weakness in the policy and procedure that was applied at the time. We have not corrected these particular entries and set up the particular accounts that need to be there for us to reclassify them, but it is not accepted practice and we are well aware of it.

I can assure you I will not let it go without taking action here in the next 30 days.

The CHAIRMAN. If I should get all of that report, is there any asterisk or footnote to tell me that that is valueless?

Mr. PARRIS. No; there is no asterisk or anything.

The CHAIRMAN. So if I looked at it I would say that is a good investment?

Mr. PARRIS. You would see the full face value of that security. Yes, sir.

The CHAIRMAN. I thank you very much, Mr. Parris.

Mr. Secretary, I thank you very much, and Mr. Matheson. I would like to work with you to bring about some solution. I think this is tragic, outrageous, and I think we all agree on that.

Dr. BROWN. Thank you, sir.

The CHAIRMAN. And now may I call on the next panel, the executive director of the Navajo Tax Commission and member of the Navajo Nation Investment Committee, Derrick Watchman; the counsel of the Joint Task Force on the Reorganization of the Bureau of Indian Affairs of Great Falls, MT, Harold Monteau, Esq.; and the chairperson of the Inter-Tribal Monitoring Association of Browning, MT, Elouise Cobell.

May I call on Ms. Cobell first, since you are playing a very vital role in this whole procedure?

STATEMENT OF ELOUISE COBELL, CHAIRPERSON, INTER-TRIBAL MONITORING ASSOCIATION, BROWNING, MT, ACCOMPANIED BY BEN MATHIES

Ms. COBELL. Thank you, Mr. Chairman and members of the committee for the opportunity to testify today.

I am the comptroller of the Blackfeet Indian Tribe. I am also the chairperson of the Inter-Tribal Monitoring Association. But, more importantly, I am an individual Indian account holder and enrolled member of the Blackfeet Tribe.

I want to share with you—you have heard many horror stories today—the members of the Inter-Tribal Monitoring Association are made up of individual tribal comptrollers that represent their tribes. When we first met and organized 14 months ago, we came up with several horror stories that are unbelievable.

There is one story that I want to share with you. I will be very brief. But I feel that if we are going to enter into a compact with OMB, Congress, GAO, Department of Interior, and all the players finally, that we have to have this as a driving force, because it has been a driving force for me.

When I was a young person going to college, one summer I was assigned to the superintendent, Blackfeet Indian Agency, Bureau of Indian Affairs Office. It was a very dismal office that had a little, tiny, small window about this big that looked out into a hallway of rows of very, very hard benches.

Every morning my tribal people, my fellow tribal people, my tribal elders would walk into that office and sit on those hard benches begging for a few minutes of the superintendent's time so that they could maybe ask for some money out of their trust funds.

At a point in time, I could no longer tolerate the hurt and humiliation that my people were suffering. I walked into the superintendent's office one day to tell him that he needed to spend some time with the people that were sitting out on those hard benches for the entire day.

When I walked into that superintendent's office I found the superintendent sleeping. I say that because I want us to make sure

that we feel that same hurt and humiliation, and that we will never, ever let this reoccur again.

I want to talk about the progress that has been made with the Inter-Tribal Monitoring Association, the tribes.

In the beginning, the BIA fought us 100 percent, but with the help of Congressman Synar, this committee, and other committees, we were able to hold in there and not have the defeat that we were accustomed to having.

I feel that the BIA has come to recognize the need for a partnership between the BIA and tribal and individual account holders to correct the trust fund situation.

I am very encouraged about the steadily improving efforts of the Department of Interior, and most recently the Deputy Director of OMB. For once yesterday when I walked out of the meeting with the Deputy Director of OMB I felt that for once they were looking at me as a person, looking at the Indian people as people, instead of highway projects that could be cut for cost effectiveness.

I feel that what Mr. Hodsoil talked about in response to my letter of setting up a meeting in mid-October to address all of the areas of the Indian trust funds—and there are many, and they are complex—is a good idea.

Ben Mathies on the Inter-Tribal Monitoring Association staff will be talking about some of those areas to help educate the committee for those up and coming meetings.

Harold Monteau, with the Reorganization Task Force, has worked with the Inter-Tribal Monitoring Association quite closely on how to reorganize and build a better Bureau management as far as staff, and reorganization as far as the trust fund management under the supervision of the Bureau of Indian Affairs.

This brings me to Congressman Synar's bill, which I have read and I am very supportive of. Self-determination is a very important issue. For too long we have been cut off from our trust funds. We have no clout. We sit with \$2 billion in a bank, and not any of it working in Indian communities for us.

My tribe, the Blackfeet Tribe, has a national bank. You asked the questions about the Office of Comptroller of Currency and the regulations that go with that. We have that in place. But we cannot get one penny as the law exists of our judgment award funds into that bank so that we have that money working for our community. We cannot do that.

We need to look at the self-determination approach because it is a vision that I think that we should all share. We should have the opportunity to be able to apply the self-determination to the trust fund area.

I could go on with much more, but I do want to take some of my time and introduce Ben Mathies, who is working with us as a technical expert on the reconciliation portion. I think it is very important that we hear from him.

Thank you.

[Prepared statement of Ms. Cobell appears in appendix.]

The CHAIRMAN. Thank you very much.

Ms. COBELL. One last thing before—we are going to be doing hopefully five pilot tribal pilot audits that Mr. Mathies is going to be talking about, but when we get into those pilot projects I would

welcome that your committee, Mr. Chairman, hold field hearings out at one of the locations so that you can look into the findings that the audit is going to be bringing out.

Thank you.

The CHAIRMAN. Thank you.

Mr. Mathies.

STATEMENT OF BEN MATHIES, STAFF MEMBER

Mr. MATHIES. Mr. Chairman and members of the committee, the opportunity to testify today is much appreciated.

My role, in large part, has been to be of assistance to the Inter-Tribal Monitoring Association in its oversight and advisory activities respecting the Bureau of Indian Affairs and its Office of Trust Funds Management's comprehensive effort to reconcile, audit, and distribute historical statements of account to all tribal and individual Indian beneficiaries, as has been directed by Congress.

From the outset of my involvement in October 1992, it has been apparent that an already complex matter has been further complicated by the lack of common understanding of the term "reconciliation" as it appears in the pertinent legislation.

But rather than to attempt a narrative, technical clarification, it is believed to be of more benefit to us all to refer to an attached exhibit. I believe this prepared text is available, and there is an exhibit attached, to which I will refer in a moment.

To show the scope of the reconciliation process, as contracted, the limitations of the process, and the kinds of errors that can and have occurred in the total stewardship of Indian moneys, the exhibit shows that there are not less than eight error points from the point of sale or lease of natural resources held in trust to the ultimate distribution of the proceeds to the rightful owner.

I will depart from the text and make reference to the exhibit which I hold in front of me, and would talk with respect to the error points that are indicated in the left-hand margin, the first error point being at the level of the resource management itself—the technical management.

With respect to oil and gas, to illustrate that point, it would commence with the geologist, the engineers in the Bureau of Land Management, and is focused here in the royalty settlement portion, which is the responsibility of the Minerals Management Service.

We are all aware of the realty function of the area and agency offices.

The next block is mineral resource management, which is the technical portion of management of mineral resources.

Forestry management and range management—to illustrate the paper flow on which OTF both relies and participates, and the error points, I have assumed a grazing lease transaction—one that affects, on this particular reservation, tract No. 189 for 1 year for \$2,000.

At the level of the top row of boxes, there is prepared a bill of collection. It is possible to clerically misidentify the tract. If that misidentification is not discovered anywhere in the process, the monies could go to the wrong owner.

The second level is once that bill of collection has been prepared and is forwarded to the agency office, the clerical office within the agency, there is accounting information prepared upon receipt of the proceeds. This is a second error point where a clerical error can occur.

The most obvious kind is the simple transposition of owner number or transposition of tract number.

That accounting information is then forwarded to the area, and the area makes a detailed listing of all deposits made daily.

It again transcribes the information provided by the agency. It is a third error point.

That information is then encoded and becomes a part of the recordation of the collections at the Office of Trust Funds Management.

Once collected and received in the Office of Trust Funds Management, the money is placed at risk—in most instances, little risk. In some instances, not so small.

Accounting for the investments takes place there, including the recordation of the interest income, which must be identified with the original collection—the moneys held by owner. Distributions are then made of those moneys, and statements are prepared for the individual beneficiaries.

There are four error points that I have described, all within the block of the Office of Trust Funds Management.

The schematic ends with the distribution of the moneys to the tribes and individual Indians, and there is a final error point at that time.

What I have tried to illustrate on this schematic is that in the scope of the reconciliation process, largely we address only four of the eight error points, and if you can make reference to the schematic, it is readily apparent that the error points initially described are not included in the scope of the reconciliation process.

Amongst other things, the limitations of the scope of the reconciliation process provided the basis for the position taken in the ITMA's concept paper in April 1992 that the reconciliation process should be suspended and that alternative approaches to dealing with this problem be attempted to be devised.

To varying degrees, that effort has occupied much of the time of BIA, OTFM, DOI, OMB, and ITMA staff members over recent months. Largely those attempts could be characterized as fractionated. I apologize for the use of that sensitive term.

However, early in the period ITMA and OTFM began a concerted joint effort to devise more effective ways to produce and provide final accounting to the beneficiaries that would constitute a basis for final settlement of any amounts due to or from account holders.

Others with like responsibilities had also been working toward better strategies to be employed.

During the past several days, in the meetings already described, which continued to as recently as yesterday, there has been a sharing of ideas and suggested elements of a larger approach to the problems—and there are many problems that make up the whole.

From those meetings has come concurrence that there should be an intensive joint pooling of resources to further challenge and design realistic target dates, quantify the estimated cost, and evalu-

ate the expected results to produce a comprehensive work plan acceptable to all.

Our preliminary but extensive discussions over the last 2 days lead us to believe we have a high chance for success. That encouraging—to us, at least—assessment concludes my prepared remarks.

I respectfully await your questions or requests for clarification or amplification.

I thank you for your attention.

The CHAIRMAN. Thank you very much Mr. Mathies.

[Prepared statement of Mr. Mathies appear in appendix.]

The CHAIRMAN. Ms. Cobell, you spoke of pilot projects?

Ms. COBELL. Yes, it is one of our approaches that we feel that has to be undertaken. Mr. Mathies, on his diagram, has shown you that there are all the different sources—the lease documents, MMS. There are so many other areas that have to be looked into and the reconciliation portion is only covering a little, tiny section of this.

We want to do some pilot projects—maybe five pilot projects—that would go out and, for instance, maybe, as example—we don't know these tribes yet. We are developing some criteria that we feel will be very useful to determine the tribes but, for example, we heard Mr. Petersen talk. He has a lot of forestry on the Red Lake Reservation, so maybe they would be one of the pilot projects and they would be able to go from the top down on a pilot audit project.

We feel that will bring out areas in this particular area level that nobody has ever thought of and it won't be determined in the reconciliation phase. So we feel those pilot projects are very important, and they would also make us learn.

We could learn from them. That's the problem out there, as you heard today. There are so many things that are unknown.

The CHAIRMAN. I think it makes good sense, but in order to implement this project of yours do you need legislation?

Ms. COBELL. We need the support of OMB. We have to have the money to do it. We'll have to have the support of this committee, probably. If the meetings go well—and this is the first time in my life I can say that I'm going to be optimistic, but if the meetings continue to go well in the next 30 days that Mr. Hodsoll talked about as getting down and sitting down with people, the technical people like Mr. Mathies, to hammer out this particular solution, and it is agreed that these pilots should go forward, they have to have money and they have to have the support of OMB.

The CHAIRMAN. And as part of this pilot project, would you go through the ultimate such as investing in the banks of your choice?

Ms. COBELL. I believe that should be—if the Synar bill is passed, I believe that should be an option that should be considered if we are able to take our judgment money. We ought to work through our bank with our own trust funds.

The CHAIRMAN. I think that would make a significant difference in your relationship with the local community. It will make you appear like, as it should, an equal partner.

So you can be assured of this committee's help.

Ms. COBELL. Thank you.

The CHAIRMAN. We will do whatever we can.

Ms. COBELL. Mr. Chairman, if I may just say one other issue, because I live out there. I live this life every day, and I know how it exists.

That should be optional tribe by tribe that individuals have to have a cleanup of the Bureau of Indian Affairs. Harold is going to address that, but they deserve that real cleanup because it is going to take time to implement this legislation and we have to make sure that it doesn't continue to hemorrhage any more.

The CHAIRMAN. Thank you very much, Ms. Cobell.

May I now call on Mr. Monteau.

STATEMENT OF HAROLD MONTEAU, COUNSEL, JOINT TASK FORCE ON THE REORGANIZATION OF THE BUREAU OF INDIAN AFFAIRS, GREAT FALLS, MT

Mr. MONTEAU. Thank you, Senator.

As was said previously, I am an attorney in private practice in Montana working with Indian tribes, my own tribe among them. The Chippewa Cree of Rocky Boy extend greetings to you.

Elouise and Ben talked about these various phases on this chart that represent eight different stops or steps that these transactions go through that create the funds that we are talking about here.

I needn't remind everybody—but I will—that each of these steps represents people. It represents employees. It represents policies and procedures. It represents transactions. Some of them may even represent tribal-run programs, 638 programs, or self-governance programs that are handling these transactions and that actually employ the people that we are talking about when we look at this chart.

I think this chart is very significant in light of the charts that you will see in the strategic plan that outline the sort of overall scheme that the Bureau of Indian Affairs, OFTM, and ITMA are working on in order to improve the whole organization or reorganization of the trust fund management and the trust asset management aspect of the Bureau of Indian Affairs.

You were asking earlier whether you felt that there was needed some legislation in several areas. You have asked that question, I think, of several people that came and testified today.

I'm a firm believer that when push comes to shove yes, we probably will need some legislation in some of these areas in order to get the Federal Government to do the job and carry out the responsibilities that it is supposed to.

It took legislation to create the ITMA. It took legislation to create the BIA Reorganization Task Force. I do not believe those things would have occurred without the help of this committee and without the legislation that went through the Congress to more or less force the Federal Government to work with the Indian tribes in reforming the Bureau and reforming trust fund management in light of what the tribes were saying needed to be done.

I don't think that we can stress that more that the solutions to these problems that we see are going to come from Indian Country. They are not going to come out of a vacuum. They're not going to come strictly from the Bureau of Indian Affairs or the Department or even the Halls of Congress. It is the Indian tribes that will come

forward with these solutions and work with the various entities as best they can in arriving at some of the solutions.

I think that the demonstration projects that we are talking about here, some of the reforms that we are talking about, are going to lead us in that direction.

I wanted to talk a little bit about the staffing and the organization or trust fund management within the Bureau.

The proposed realignment or reorganization of the trust fund management programs I think is a good step in the right direction; however, I don't think that enough emphasis has been placed upon the field operations at this point. But I guarantee you that before we get to the end of this process that the tribes will have made known to the Bureau their feelings about what needs to happen at the tribe-agency level in terms of organization, staffing, and policies and procedures, and transactions, and also what needs to happen in terms of the area offices.

I am not convinced at this point that we have something necessary going on in the area offices that can't be carried out in a more direct manner between the agencies and the central office west in Albuquerque in terms of these transactions that contribute to the trust fund.

I can't help but think that in this day and age when we have instant communications, when we have the ability to transfer funds over the wire and over the telephones and through satellite systems, that we need that intermediary step. I may be convinced later on, but I'm not now.

I am also not convinced, too, that enough emphasis has been placed in this strategic plan on developing the capabilities at the tribe-agency level in terms of how we carry out these transactions that contribute to the trust fund.

I believe that we have to keep that focus when we talk about use of such people as Arthur Andersen, when we talk about the use of these outside agency expertise coming in and doing certain things in Albuquerque, doing certain things with the tribal accounts and the IIM accounts.

We have to keep a focus there so that when those people go away, when Arthur Andersen finishes whatever they are doing and they go away, whenever those Federal experts come in and finish whatever they are doing and go away, that we have trained people in the Bureau of Indian Affairs, especially at the tribe-agency level, that are going to be able to carry on, maintain these complicated systems that are going to be put in place, be able to use them efficiently, and that they are going to be able to keep the books balanced.

When we talked with Secretary Lujan a while back, we analogized to him, for instance, going in and having his bank reconcile his checkbook, and then him walking away satisfied that he had his checkbook reconciled, but within a few months he would probably not have a correct balance again.

We sort of used that analogy that you have to train the people to maintain this process so that we don't have a recurrence of the situation in the future.

That's only a small part of it, of course. We have to go back to the whole issue of trust asset management, the whole issue that surrounds fractionated heirship, the issues that surround probate.

Of course, fractionated heirship and probate go hand-in-hand. The ability to keep records at the tribe-agency level, at the transaction level, contributes to the problem.

We have to take a real look at developing tribal law and developing tribal courts so that the solutions to what we call the fractionated heirship problems are actually tribal solutions.

There have been many proposals—and you're going to hear more about them, I believe, this fall—in terms of what can be done at the tribe-agency level to help alleviate the problem of fractionated heirships.

Too, we have a horrendous problem in terms of probates that contribute to the errors that have been talked about at the top level there, that transaction level.

We have to look at tribes being able to carry out those probates at some time in the future.

My own personal opinion is that the ALJ process is a dinosaur and that it should be put to sleep and that it should be the tribes that are handling those.

One of the most basic authorities, I would say, for courts in a State setting is to be able to determine the heirship and determine the heirs and who gets what in terms of a deceased's estate, and the tribes should be able to do that for themselves in terms of their own individuals out there in Indian Country.

You, of course, have the situation in Oklahoma with the Five Civilized Tribes who are having to submit their probates to a State district court. They have fared no better, and I believe that even that situation is probably better addressed in terms of a tribal solution.

I want to stress that we need to really take a look at the strategic plan in terms of the line authorities that are being delineated here. There have been several people, including Jim Parris and the Assistant Secretary, that mentioned that there are plans of actions that have been developed. I think there are 50 or 70 or so that are outlined in here that specifically say, "x is going to be done and carried out by so-and-so and by a particular date."

We must be very careful with those things. If we are going to give someone responsibility to carry out those action plans, we must also give them the authority to do it, and I don't see anything in the plan at this time that really comprehensively addresses how we are going to do that, and I think we have to be careful with that.

I also am a little bit concerned about the emphasis in the plan about the involvement of the chief financial officer and the Chief Financial Officer's Act and the impact it will have on trust fund management.

At this point I don't really have a conclusion in terms of how much of the CFO Act will be directly applicable to the way that we manage Indian trust funds, but I do know that I do not want to see the CFO Act used in order to centralize the authority over trust fund management in Washington, DC.

I think the authority needs to reside at the operational level—that is, Albuquerque. Jim Parris needs the authority to carry out his job.

Just an aside—I believe that Albuquerque, itself, the central office west, needs a position that is accountable for all the operations that go on in central office west, including trust fund management. That position does not exist at this time.

The same concern—the line authority concern—goes all the way down to the agency level. You have people in the central office, you have people in the area office, and you have people in the agency offices who impact on the ability of the OFTM—the Office of Trust Fund Management—to carry out their duties. And yet the OFTM does not have an efficient manner of making these people do the job that contributes to their effort. That is a problem. We need to take a look at it.

We also need to really take a look at what we are doing in terms of current staffing.

The staffing inadequacies that are talked about I think are just probably the tip of the iceberg. We have staffing inadequacies clear down to the agency level, and I think we have some system inadequacies that go clear down to the agency level.

We need to take a look at the restructuring of the personnel that deal with trust fund management and trust fund management transactions.

We need to take a run at a really aggressive recruitment effort, because there are some good people out there in Indian country, in college, in tribal government, that can help us do the job that we need to do for trust fund management. We need to identify them and we need to find out what it is going to take to get them into the Bureau of Indian Affairs.

We need to retain them. We need to place them properly. And we need to train them properly once they come in.

I have to disagree with Congressman Synar at this point in terms of transferring funds out of the Bureau system. I have a fear that they will become even more inaccessible to the tribes were that to be done unless they were transferred to an institution of the tribal choice. I believe that would be key.

In terms of the tribes' own ability to manage their funds, or at least have a say in the management of their funds, I do believe that we cannot do that in a vacuum. We need to develop some standards, and I think we will develop those standards as we go along, to mitigate the chance that we will have losses due to uninsured investments, or we will have losses due to institution failures. But I do believe that it can work.

In closing—and I didn't mean to take so much time—I just want to reemphasize that I urge the committee, I urge Congress and the administration, to listen to what the tribes are saying out there. We have the firsthand experience with these things, and we can help with the solutions, and we will help with it.

Thank you.

[Prepared statement of Mr. Monteau appears in appendix.]

The CHAIRMAN. I thank you very much, Mr. Monteau.

May I now call on Mr. Watchman.

**STATEMENT OF DERRICK WATCHMAN, EXECUTIVE DIRECTOR,
NAVAJO TAX COMMISSION; AND MEMBER OF THE NAVAJO
NATION INVESTMENT COMMITTEE, NAVAJO NATION, WINDOW
ROCK, AZ**

Mr. WATCHMAN. Thank you, Mr. Chairman.

On behalf of President Zah, who sends his regards, we want to thank you for the opportunity of coming here today and talk about trust fund management.

My testimony has been submitted prior to my coming here, and I briefly want to just summarize some of the more salient points.

My testimony basically focuses on the Navajo Nation's trust funds and the benefits that we'd like to accrue from these trust funds.

I want to share with you some of the successes that we have with our trust fund management.

We are involved with the BIA Reorganization Task Force, the Inter-Tribal Monitoring Association, and we certainly applaud the activities of the committees in looking at the trust fund management. However, one recommendation that I want to stress here today is that the Navajo Nation proposes to withdraw all funds from the BIA trust accounts and that we do have a success record behind us to demonstrate that we do have the capability.

We don't want this action in any way to jeopardize our right in the event that there are perhaps allegations of mismanagement and other things by the Bureau.

In 1985, as a result of *Kerr McGee v. Navajo*, in this monumental tax decision, the Navajo Nation gained the right to tax activities on the Navajo Reservation. As a result, tax revenues were directly distributed to the Navajo Nation.

We accrued about \$150 million in 1987, and during that time it was recognized that we need to look at the future. So, as a result, a permanent trust fund was established. Through this permanent trust fund, we have developed a very comprehensive set of investment policies and procedures which we now abide by today.

Over the years, these funds have accumulated to over \$150 million, and this basically is over \$20 million in interest income and over \$25 million in appreciated value.

The success of this fund has demonstrated to us that we do have the capability and the resources. As a result of the mismanagement problems of BIA, we have approached BIA on several occasions.

Recently, in 1990, we went to Albuquerque and talked with the BIA officials of transferring all BIA trust management accounts from BIA to the Navajo Nation. However, the progress has been very slow, particularly because of reasons of the Judgment Funds Distribution Act, which we feel needs to be amended. Because of certain citations in title 25, United States Code, it prevents BIA from transferring the funds to the Navajo Nation.

We have been working rather diligently in trying to make these changes but, unfortunately, it has been very difficult.

One thing we want to stress here is that the main problem that has come upon us is that the Bureau has cited that we have inadequate policies and procedures; however, during 1987, in consulta-

tion with financial advisory services and other folks in the financial community, we developed a model investment policy and procedures, which is similar to what you see in the states and the counties and the cities, and it is a generally accepted investment policy and procedure.

Our accounting system is basically one that is generally accepted as a GAP type of model, and we use this, and we do have annual audits.

We have demonstrated that we do have the proper resources and we do have a growing in-house expertise and that we do have the capability of managing the trust funds. However, we have been going back and forth citing different laws and different regulations that need to be changed, but we are at a point now where we want to ask the assistance of this committee to look at fundamental changes that need to be done and, in particular, the Judgment Funds Distribution Act.

Beyond that, the Navajo Nation looks at the future. One of the main reasons for the permanent trust fund is to look at financing the government well past 2010. We are looking at the future interests of the Navajo people, and I just want to say that I appreciate this opportunity to express our concerns. Our Washington office and the staff in Arizona are willing to work to see if we can come up with some solutions.

Thank you.

[Prepared statement of Mr. Watchman appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Watchman, Mr. Cobell, Mr. Monteau, Mr. Mathies. Thank you all very much.

Our final panel consists of: the attorney for the Shii-Shi-Keyah Allottee Association of Albuquerque, Alan Taradash, Esq.; representing the Lan Mineral Services Co. of Norman, OK, Charles Red Corn and Yancey Red Corn; and representing the First Nations Development Institute, Rebecca Adamson.

May I call on Mr. Taradash.

STATEMENT OF ALAN TARADASH, ATTORNEY FOR THE SHII-SHI-KEYAH ALLOTTEE ASSOCIATION, ALBUQUERQUE, NM

Mr. TARADASH. Thank you, Mr. Chairman.

My name is Alan Taradash. If I may, by way of introduction, just indicate to the committee that I represent the Shii-Shi-Keyah Association, which is an unincorporated group of Navajo allottees that formed in 1984 for the purpose of trying to get accountability and timeliness of payment with respect to mainly oil and gas producing leases on their allotments.

The president of the Shii-Shi-Keyah Association, Irvin Chavez, was the recipient of an invitation from you, Mr. Chairman, to appear here, but because the association's members—and Irvin is typical—are basically very poor people, he was unable to get the funds to appear here, but he would have liked to.

What I am about to tell you and the committee I hope accurately reflects his sentiment and those of our members.

The letter that you sent asked us to focus on three aspects of the management of Indian trust funds: to review previous studies and reports, to examine new initiatives, and to explore tribal initia-

tives, as well as to explain how it is that the management of these trust funds has affected the people who happen to be Navajo allottees who are members of our association.

Rather than reading directly my prepared testimony, I would like to summarize it, in the interest of timeliness, Mr. Chairman.

The CHAIRMAN. All of your prepared statements are made part of the record.

Mr. TARADASH. Thank you, sir.

I also would like to ask if it would be possible to supplement that statement with some additional statements from members of the association.

The CHAIRMAN. At the end I would announce that the record will be kept open for a month.

Mr. TARADASH. Thank you.

Typical of many of the members of the Shii-Shi-Keyah Association, Navajo allottees, are people like Dorothy Blackee and Joe Bledsoe.

Dorothy Blackee is a woman who is in her early sixties, lives in northwestern New Mexico with her daughter and two grandchildren who are below the age of 6. Her royalty income in a good month is about \$85 a month. She, her daughter, and the two grandchildren survive on that \$85 a month, in addition to commodity foods.

Because they are recipients of royalties, they are not eligible for any other kind of welfare that might be available to someone in such circumstances.

She lives in a house that she built out of boards that she retrieved from wooden boxes and corrugated cardboard covered with mud.

Last October I took the Deputy Director of the Minerals Management Service and his associate director, Neven Lakewood, out to visit her in her home so they could understand why it is that accurate accounting of her funds is important. And I think it is fair to say that it took that level of effort to get the kind of care and attention to the issues surrounding her allotment and her royalties that we had not been able to get before.

By way of background, I should explain that we have been in litigation with the Secretary of the Interior since 1984 over his failure to comply with the Federal Oil and Gas Royalty Management Act.

There was a consent decree entered in March 1989 through which the Federal District Court in Albuquerque has retained Federal court superintendents to ensure compliance with the terms of the decree.

One of the things that you asked us about was to examine the kinds of studies and reports that have previously been done.

Without meaning to speak unkindly of people at Interior—and I have been representing individual allottees for the last 22 years, and I have seen a variety of people over there—it is fair to say that the kind of fraud perpetrated on the Federal District Court in Albuquerque, perpetrated on Congressman Synar's committee, and actually perpetrated on the Congress through a series of reports that occupy about 4 linear feet of shelf space in my office is similar to the so-called strategic plan that is before you.

There is an artful dodge, if you will, that is involved in what they are about.

I have to decide now, in the context of our litigation, whether to ask that the Secretary be held in contempt for defrauding the court. Less you think I exaggerate, I would observe the following:

I had occasion recently to look at an affidavit filed in 1988 in the case of the Red Lake Band of Chippewa Indians in Minnesota against the area director, Barlow. That affidavit, filed by an individual in trust fund management, purported to characterize two transactions from the Red Lake Band to the BIA for the purposes of operating a sawmill as capital contributions rather than loans.

The ostensible source documents that were sought, according to the affidavit, for evidence of the character of the transaction, whether a capital contribution or a loan, were whether there was a mortgage in place and a promissory note.

Now, any fool that is an area director that deals with the tribe under his jurisdiction knows full well where that tribe has a constitution that there is a mechanism in there for the lawful transfer of funds, and you have to take a look at what that mechanism provides.

That tribe's constitution, like most others, requires an act of the tribal council to appropriate the funds.

When I asked the secretary of the tribe whether there was such a resolution—there were two instances—he produced them within 5 minutes. There was no mention made whatever in the affidavit of the Bureau person of the existence of these resolutions.

The resolutions state that those transactions were loans, and it states the percentage rate of interest to be repaid to the Red Lake Band.

Yet, the absence of referring to those resolutions and the characterization of those transactions as capital contributions then allowed the Bureau, according to this affidavit, to not repay over \$200,000 plus interest to that tribe.

That is what I refer to as the artful dodge, and it is essentially a fraud. That's not the only example of that.

I have reviewed with you, Senator, as well as with many of the staffers here, the pitiful failings in the oil and gas accounting that Interior is engaged in. It is not inaccurate to say that the reports that are generated are relatively worthless if you are trying to determine truly what should be paid into IAM accounts or into tribal trust accounts from oil and gas revenues.

The auditing work is no better. There is a wholesale failure to truly understand how to audit Indian oil and gas leases.

I also have the privilege, Senator, of representing the Jicarilla Apache Tribe. We are engaged in audits of several major companies right now. It has been necessary to take the tribe's auditor and place him with the Minerals Management Service auditors and inform them how the audit should be done properly and supervise and insist that it be done properly.

The differential in terms of recovery of lost dollars that the tribe would otherwise not get is in the millions of dollars.

That is not atypical. Unfortunately, it is typical.

When I read through Congressman Synar's report that was released recently detailing the horrors of the trust fund accounting

and the gross mismanagement, I asked myself the question, "Is there any bank in this country where that kind of report could be done about that bank and it would be allowed to keep its doors open 1 additional day?" There is none.

It is silly to even suggest that a banker continue to operate if it were to operate as the BIA bank, in effect, has operated here.

Why then are Navajo allottees and others required to accept a substandard level of performance that involves money that is very precious and dear to them, and for many of them that they actually subsist on?

The only reason is what I referred to in our litigation, sort of the village idiot standard that the BIA has established for itself.

Once established that you have a wholesale level of incompetence, then anything you do that is a marginal improvement upon that is viewed as positive and is lauded because you have made this great stride. But that doesn't comport with real-world standards of accounting.

It is inconceivable, as you pointed out very clearly, that the BIA could carry on its books properties or securities that have a value supposedly way in excess of their current value, which I guess is zero.

Why is the Government allowed to do that with Indian money but not with other people's money?

What Navajo allottees want is the same standard and the same level of performance that any citizen would have for money that is in a trust fund.

The other friend that just—I'm missing the boat here, and I just don't understand—is why it is when there are trust accounting departments in banks throughout the country, it is necessary to indulge the BIA in their attempts to try to figure out how to do that which is already being done, and being done successfully.

I visited in 1987, 1988, and subsequently, with the two major banks in New Mexico that have trust departments that do oil and gas trust accounting and submitted back to the BIA the information that those banks could perform the role that the BIA is trying to perform, and a whole host of reasons were given as to why that was not possible. They are bureaucratic reasons.

If you were to take a look, for example, at the analytical method employed by the Bureau in trying to resolve this problem, it doesn't start from the bottom up—in other words, what is it we are trying to accomplish to account for this money? But rather, what is it from the top as an administrative matter of the Bureau that we have to change to try to do that which banks are already doing.

Once you start down that road, then the solution you come up with is anything but that which is appropriate to the problem.

That's not a mystery why it doesn't work. It doesn't work because that's an inane way to go about solving the problem.

I was talking last night with the CPA for the Red Lake Band, and I mentioned that I wondered if, back when NASA was having some problems in trying to figure out how to get to the moon, the President called the Secretary of Interior and said, "Get me your systems people from the BIA over to NASA to help figure it out?" and he laughed. The reason he laughed was not that the statement was funny; it is the unstated predicated is funny, and that is that

everybody knows that the level of competence is not there. So to even suggest that they could be of aid in trying to design a system is sill, and therefore funny.

Well, it is not funny when it involves allottee money, which is very dear and precious.

There are many tribes—Jicarilla is one of them—who are more than competent to manage their own funds. We just heard Mr. Watchman from the Navajo Nation indicate their competence.

We were able over 10 years ago to pull out all the Jicarilla funds, with the exception of just a few dollars, from BIA control. We set that fund up with private investment managers. There is a supervisor of those managers. There are four or five or six portfolios that are funded, and there are quarterly meetings with those investment managers to see how far they have come in performing according to what has been designated as their goals for that quarter, for that year, and over the longer period.

The differential in responsiveness is night and day. If those money managers do not perform, we fire them. If they do not perform satisfactorily and there is not an adequate explanation, then the consequence is immediate.

The insulation from accountability that the BIA enjoys does not permit allottees or tribes to achieve that same objective when their money is mismanaged. That fund has outperformed the marketplace. It has more than quadrupled. And it has paid out to the tribe and its members tens of millions of dollars over the same period of time.

We have demonstrated that it is a far, far, far superior system from that which the BIA is involved with.

I recognize that there are other individuals that still have to testify and the hour is growing late, but I do want to ask that the committee, when it considers what to do, doesn't view this as a BIA problem or some sort of an exotic problem but views it as what it is—the simple management of money with institutions available to manage it properly, that are accountable to the comptroller of the currency, that abide by principles of generally accepted accounting and auditing standards, and to have funds that are audited by independent CPA's performing according to those standards, and not the substandards that we have with the BIA.

There is one additional thing, if I may, Mr. Chairman, in closing.

There is a great deal that has been said about allotments, fractionated interests, and the problems that they create. There have been a couple of hearings held here in Washington. In looking over the roster of people that have testified before those committees that have held those hearings, there is a noticeable absence of the people who actually live on the land whose fractionated interests are being talked about. They can't come here.

They need for this committee or its staff to go out and visit with them in places like Werefenou, Naisee, Boonfield, and Farmington, and other places on the Navajo Reservation to find out what the problems are from their perspective, and not just what the administrative problems are from the top.

It is not different from the trust funds. There are solutions that are available, and it ought to be up to the local—whether it is allottee group or tribe—to inform the Government as to what will

work, and then to have the Government lay out the framework, the structure, to ensure that those kinds of things are done in an accountable fashion as opposed to the fashion that the Bureau has done them.

I'd like to thank you, Mr. Chairman, on behalf of the members of the Shii-Shi-Keyah Association and its president, Mr. Chavez.

[Prepared statement of Mr. Taradash appears in appendix.]

The CHAIRMAN. I thank you very much, Mr. Taradash.

Now may I call on Charles Red Corn.

**STATEMENT OF CHARLES RED CORN, LAND MINERAL SERVICES
CO., NORMAN, OK**

Mr. CHARLES RED CORN. Thank you very much for the opportunity to come and address what we believe is an important problem.

I would just like to relay to you some of the experiences that we have had in working with Indian people in the area of oil and gas, and the recovery of the revenue from those minerals.

During the past 2 years, we primarily worked with several projects, but one project, in particular, has taken up the majority of our time. It was a gentleman named Luther Namaso who was a full-blood Kickapoo gentleman who spoke only the Kickapoo language. We dealt with him through his niece as an interpreter.

He had never been married, never had children. He worked as a laborer. His life was involved in the traditional life of the Kickapoo people.

He had one principle that served him well, and he had inherited several pieces of property, and he made sure that he always hung on to those and never had to give them up. He just sort of made do and got through it as far as livelihood goes.

In 1980 two tracts of land in particular—both of them being 80-acre tracts each—were leased. One of them was leased to a gentleman named William Austin. These properties are on the edge of Shawnee, OK.

Mr. Austin drilled two good wells on each of those properties. They were extremely good wells for that area of the country. It resulted in Mr. Namaso having quite a bit of money.

The wells were drilled in 1985, and that's when the income started.

In 1989 he went to the Bureau to request his balance in his account. They gave it to him on a yellow post-it slip and he carried it around with him for a couple of months and then he went back to find his account balance again. He knew that he had not withdrawn any money and there had been some money put in there.

On the second account, his second yellow post-it slip showed what he perceived to be \$125,000 missing.

He went back subsequently. Without his knowledge, the money was put back. He never really—and I never found out exactly why it was taken out or why it was put back. I think I know why it was put back, but I never figured out why it was taken out.

At that point he became concerned and requested that his niece get some help on the question. She, through an attorney, contacted Yancey and I and we set about working on this problem.

As a matter of fact, we got in touch with some investors and accountants and started setting him up a management system for his funds that would protect him. He had enough money to protect him the rest of his life.

As a matter of procedure, we audited his oil and gas accounts. What we learned we couldn't really—we kept thinking we found some wrongdoing. We kept thinking every day we'd come up with something that would explain all of this, but we never did.

Mr. Austin, who had sold the properties to a company called Vintage Petroleum, had systematically paid Mr. Namaso half of the money that he had coming to him.

So we did a report. We documented—we compared the State of Oklahoma tax records with MMS records and concluded that there was approximately \$1 million due Mr. Namaso in interest and in principal.

We set up a meeting with the superintendent at the agency, and I had told him what was coming, and that he had the realty officer present at our meeting. So we walked in and we dug out every piece of information we could find in the courthouse on the companies.

We had a—for what it is worth, we had a stack of information about 6 inches high that we turned over to them, plus our own findings and a summary of our findings.

We were surprised when the realty officer told us that he had known about this problem for 2 years, and that there was really no reason to worry because he had ordered an audit, and in two or three years he would get the audit back and he would write them a letter and they would pay the money in, so there really wasn't a problem.

We asked about the audit, and the superintendent said he had no control over MMS and the manner or the time in which they audited.

So we went to Denver and met with a gentleman named Vern Ingraham in MMS, and he was very helpful. He started an audit that day.

However, the audit took well over 1 year, and we were—I guess part of the problem, as we saw it, was that during this audit period we were not privy to any information or to any—not allowed to be a part of it. In fact, we were specifically excluded from it.

We understand that was the policy or that there was some reason for that, I assume. In the meantime, Mr. Namaso passed away in November 1990, and we began—the executrix of his estate is Shirley Delgado, his niece who had acted as his interpreter and had helped him in his business matters—paying his daily bills.

She and her children and four of her nieces and nephews were named as heirs in an estate. The estate was somewhere in the neighborhood of \$4 million in value. These are minors—five of them are minors. Three of the youngsters just turned adults.

Mrs. Delgado—I found her to be a very intelligent lady, and I found him to be a very intelligent man. He had a language barrier. We told them from the very beginning, the very first day, that we only had to do two things, and that's to keep pursuing this and to be honest and straightforward with everyone, and we'll recover the money.

MMS did complete the audit. They did bill the companies. The companies remitted, to date, \$1,023,000.

We are in the process—well, next week it will be 3 months since the probate was completed and final, and, I guess, to be honest about it, the fellow that handles that money can't quite determine how much is in that account. We think that it is in the neighborhood of \$1.4 million.

We have now begun a system of staying in touch with them on a daily basis. We call them one day, and we tell them what time we are going to call them the next day, so they look forward to our phone calls and tell us that they're working on it.

The superintendent actually—you get the impression he is pushing people to get this thing done. It is just—and, of course, during the probate period, during this, even now we do not know how much money is in that account because it is privileged information, although these are the heirs.

We did go back and we tried to get some answers on why the lease wasn't canceled immediately when the wrongdoing was uncovered, and we didn't get any satisfactory answers, but there was a statute of limitations on the problem that was getting ready to expire, so I think it was a 6-year statute of limitations from the time the wrongdoing began.

We asked them to—we filed suit against the Federal Government in December of 1991 to protect the heirs and the family from any damages that we think they may have suffered.

After I received the letter to appear and testify, Yancey and I traveled out into some of the Indian country and to southwest Oklahoma to talk to some of the mineral owners to see what they were thinking and if there was anything they would like us to relay.

We found that none of them actually feels comfortable with the handling of their assets, or their mineral—we asked them specifically, "Do you feel that you are not being paid the right amount? Do you feel like there is money missing from what you should be receiving?" One hundred percent of them said that they had no way of knowing. They feel uncomfortable about it. They have the impression that they may not be paid as much as they should, but they don't have any way of knowing.

They also expressed a reluctance to get involved, saying that if they were to do that they thought there would be a—somehow or other their checks would be slowed down.

I don't have any way of knowing if that's true or it isn't true. I find it hard to believe that would happen. But I think it is the—where that attitude comes from is from the secrecy that has—and I'm talking about this one case—the secrecy that has been placed over all the information in this one case.

I think these other Indian people that we went out and visited with, I think that may be where their uneasiness comes from. They don't have access to the information regarding their own accounts.

I did ask one time the superintendent—he was a good friend of mine—when they first learned that the oil royalties had been paid in approximately half, I said, "Why didn't you call the Indian person and tell him about it and tell him he had some money missing in his account?" I told the superintendent I had become well

acquainted with Mr. Namaso and knew him to be an intelligent man and fair man, and I think if the superintendent would have called him and explained this to him, I think he would have understood and he would have tried to work with him.

We think we have a fairly decent knowledge of how the Bureau works at the agency level. We are certainly not informed about how it works at the level in Washington, but at the level at the agency level we have been able to have this estate probated and finished in 1½ years. That's a pretty good time for probate.

We are still having difficulty, though, in just getting the check written. After 3 months, we expected that to happen. He will always say, "It will be next week."

It is interesting. The probate judge would tell us he wanted to get his probate order out in 30 days, and it took him 7 months.

We stand to meet with them. We feel, as individuals, you get the impression they are trying to accomplish these things.

The CHAIRMAN. Mr. Red Corn.

Mr. CHARLES RED CORN. Yes.

The CHAIRMAN. How much longer will this—

Mr. CHARLES RED CORN. I am through. Yancey will give his statement.

The CHAIRMAN. I have been sitting here since 9 a.m., and at 1 p.m. I am presiding at another hearing. It is now 12:45, and I know that the staff told you 5 minutes, but I have tried to accommodate all of you. Mr. Red Corn, you spoke for 20 minutes. Ms. Adamson is still waiting, so Mr. Yancey Red Corn?

Mr. YANCEY RED CORN. No; we can just—

Mr. CHARLES RED CORN. Could we just say that we have sued and we are working on having this lease canceled for good reason.

The CHAIRMAN. Yes, sir.

[Prepared statement of Mr. Charles and Yancey Red Corn appears in appendix.]

The CHAIRMAN. Ms. Adamson.

STATEMENT OF REBECCA ADAMSON, FIRST NATIONS DEVELOPMENT INSTITUTE, FALMOUTH, VA

Ms. ADAMSON. Thank you, Senator.

I would like to thank you for the opportunity to testify before your committee. We were here in 1986 on this same issue, and just to start my whole conversation is that I want to express that we desperately, desperately need your leadership to solve this problem of the BIA's mismanagement of Indian trust funds.

I happen to concur with Mr. Taradash. We have been working with trust funds for 9 years now, and I do not think it is brain surgery. I think it can be solved. I think there are plenty of institutions out there that work on a day-to-day operation with cash management, accounting systems, investment advisers—all performing adequate services within any sort of fiduciary standard. I think we ought to turn to them and get it out of the BIA.

First Nations was created in 1979 for the purpose of assisting tribes to control their economic future. Obviously, tribal control and self-determination over their assets is monumental in any economic future.

It is through our work with tribes at the grassroots level that we became aware of the issues and concerns over BIA management and control of Indian trust funds. In particular, our work goes back to 1983 through 1985 when we worked with the Saginaw Chippewa Tribe to create an out-of-trust fund investment model. The only way they had any control over their moneys was to take it out of the BIA.

This work with the Saginaw became the impetus for the statutory language that currently requires the audit and reconciliation of Indian accounts through Congressman Yates' committee. It was also the impetus for the ad hoc group that is now today formally known as the Inter-Tribal Monitoring Association, which has been the official watchdog group forever on top of this issue.

In addition, that early work was the basis of the conceptual and technical development of the trust fund demonstration models that both First Nations and ITMA are recommending to the committee.

My testimony today will be brief. I will cover three topics. I will highlight investment fund management practices—in particular, the 1983 Price Waterhouse review of the management of the Indian trust funds. I'll share some of First Nations' work and our research findings nationally on the surveys we did with tribes. Last, I'll focus on the needs and rights of tribes as beneficiaries and particular recommendations and corrective measures to be undertaken.

First Nations' work with Saginaw Chippewa to create a model of tribally controlled and investment trust funds covered a little over 2 years, from 1983 to 1985. However, our work in the record goes back even further.

As far back as 1946, the Menominee Tribe was suing the Federal Government to secure proper protections and accounting over their funds. In 1966, the Southern Ute. In 1970, Western Shoshone. In 1973, Pomo. In 1975, Cheyenne Arapaho. In 1980, Navajo.

The BIA cannot make the trust fund problem go away by ignoring it.

As we began to research this issue, we uncovered 18 Government studies in the past 6 years. This averages three studies a year on this particular problem. Senator, we do not believe we need another study.

There are basically five main recommendations that came out of the 1983 Price Waterhouse review. We recommend that they be implemented immediately.

They are: That the BIA develop and implement an ongoing process for individual Indians and tribes to participate in the formulation of their investment objectives; that tribes and individual Indians for the current time be offered options for making proportional assignments of their funds. They can look at short-term and medium-term investments for the time being, and that they can be expanded as we go into the future.

Recommendation No. 3 is that we recommend the Bureau engage with outside investment advisory services.

No. 4 is that the Bureau of Indian Affairs engage with outside financial services to enhance the trust fund reporting and monitoring.

I serve as a trustee of a mutual fund in the Washington area. I have a fiduciary responsibility for over four portfolios. In four of the portfolios I oversee, it totals \$5 billion. We have over half a million shareholders or discrete accounts that we manage.

One of the primary controls we exert as fiduciaries is to segregate the functions; therefore, I repeat that I think the functions that should be segregated and contracted out are investment advisers, custodial, cash management services, and the administrative external accounting operations.

By segregating these through separate and distinct contracts, we have achieved a series of checks and balances within the mutual fund industry that I think warrants replication in this particular case.

One of the problems besides lack of tribal input—in the beginning the other problem we had with the past contracts that were to be let with the Mellon and Security Pacific institutions was this lack of functional segregation.

The final recommendation was to establish an oversight committee of private and public sector representatives to provide oversight of the outside contracting, to have an external auditor reporting to this oversight committee, and to provide the final checks and balances over the overall trust fund management.

In 1990, First Nations, at the request of Congressman Synar, convened an ad hoc group of advisers. It included tribal leaders, lawyers, and investment experts such as Elouise Cobell, Nathan Hart, who is a licensed securities broker and currently commissioner of the Oklahoma Indian Affairs, and Sam Good Hope, Esq. This was the beginning of the task force now known as ITMA.

I believe that ITMA has addressed very thoroughly their current efforts to enhance the BIA's monitoring and accounting, and I think they are going to continue to do this.

I think, in addition, they serve as an example of what we can expand and build upon for the full oversight committee.

I don't think that this will ever be corrected until we have an oversight committee that is really monitoring the entire operations, and it cannot rest with one, single CEO down in Albuquerque.

But, in addition to the Price Waterhouse recommendations, it has become apparent from our work with tribes that different demonstration models need to be provided so that tribes can create the means for controlling and participating in the investments of their funds.

First Nations has developed three such models. Essentially, they would be out-of-trust, such as the Saginaw Chippewa's; in-trust, and there are a variety of tribes currently trying to direct their investment objectives within trust; and 638, whereby a tribe could contract for financial services and set their investment objectives through the 638 model.

Again, all we are really asking for is the same protection and fiduciary standards for our tribal assets that are provided the general public. Basically, these protections—and I'll repeat from my last testimony—are: one, prevent the management of assets by irresponsible or incapable personnel; two, prevent the use of substandard accounting and unsound methods of computing asset value or

earnings; three, ensure the full disclosure of accurate and timely information and financial statements; four, prevent changes in the character and practices of the asset managers without input and consent from the tribes as beneficiaries.

In 1986 and 1987, First Nations conducted extensive research on almost 100 reservations. In our survey, only about five tribes reported that they had ever received any sort of financial report from the Bureau of Indian Affairs on their trust funds.

The other results of the survey cited a lack of local control, limited expertise, and no access to qualified technical assistance. Again, they cited poor or inadequate financial information as barriers to them in the ability to utilize and benefit from their trust funds.

We recommend that this committee go out into the field and hold further hearings and listen yourself to the stories that you will hear.

Tribes and individuals are very frustrated by the lack of involvement that they have had within the Bureau of Indian Affairs. As far back as August 1985, in discussion with the investment branch of the BIA in Albuquerque, we were told the BIA did not provide any technical advice to tribes desiring to form investment plans. Further, the BIA did not have any expertise necessary.

They did have investment coordinators, but these people usually had other responsibilities.

There was an unspoken conclusion that the system was inadequate because no demands were made of it. In large part, this was because tribes did not have the expertise to question it anyway.

Conversely, at an Oklahoma Indian Business Development Conference, several tribal representatives confronted the BIA. Some of the issues they related were: not being informed of any changes in the payment schedules or interest payments, lack of personnel in both the area and the agency office where they could even ask questions.

The seriousness of the trust funds of American Indians and the realization of the economic potential of our resources is at stake. Indian trust funds represent a legacy for tribes and individual Indians. Under current law, if a class action suit was brought, the BIA would be required to audit and reconcile these accounts by a certain time.

First Nations recommends that a settlement process at individual and tribal options should be implemented without any statute of limitations to allow tribes and individuals to conduct their own accounting should they choose.

Furthermore, we recommend the creation of a trust fund court of claims to remedy wrongs committed over the past 20 to 30 years, and included in these recommendations should be the authority for the class action suit and should be established grounds for jurisdiction.

The authority to manage trust fund moneys called for in the recommended legislation already exists. Assistance in creative options have proven that tribes are capable of taking control of their trust funds.

In closing, I was going to share a success story, which was the Saginaw Chippewa Tribes, but for the sake of your time they have prepared separate testimony and they outline the tremendous suc-

cess they have had for the tribe and the tribal members, themselves, having taken their money out of trust.

Thank you.

[Prepared statement of Ms. Adamson appears in Appendix.]

The CHAIRMAN. I thank you very much, Ms. Adamson.

I would like to announce that the record will be kept open for 30 days. Those of you who wish to submit supplemental testimony or additional documents, please feel free to do so.

This committee has been aware of the existence of this problem. We know that it has been with us for nearly 70 years. We know that there has been abuse, there has been mismanagement. For example, we know that individual accounts where the individual is not able to be located—these accounts have been cancelled and the amounts placed not in the trust fund, but in the General Treasury. These are moneys that belong to Indians. They amount to at least \$25 million a year, and this has been going on for years.

We believe that this problem may also exist with tribal accounts, because of the strange bookkeeping. I am certain records have been mislaid and millions have been lost.

So the question should arise: Why have we waited this long? What I am about to say is not in defense of the activities of this committee, but an explanation.

I have been chairman of this committee for 5½ years. It may interest you to know that this committee has held more hours of hearings, has considered more bills, and has passed more bills than any other committee in the Congress of the United States. Our success record exceeds that of any other committee.

I have spent more time in Indian country last year, for example, than in my beloved State of Hawaii, which is something a politician never does—especially if he is running for reelection.

And so I want you to know that, because the agenda of Indian country is so horrendous and huge, that we have had to set a priority list.

We are now going to tackle this matter, and I can assure you that the full resources of this committee will be utilized, and we will resolve this matter one way or the other. If it doesn't, some heads will roll.

So, with that, I thank all of you for participating in this hearing. We thank you for your advice and your counsel and, most specifically, for some of the horror stories, because my colleagues will be made aware of them.

With that, the hearing is adjourned.

[Whereupon, at 12:57 p.m., the committee adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF ELOUISE C. COBELL, CHAIRMAN, INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS

Mr. Chairman and members of the Committee, I appreciate the opportunity to testify today. I also would like to thank the Committee for all of the support it has provided to Indian people in our effort to improve the management of our trust funds. My name is Eloise Cobell. I am a member of the Blackfeet Tribe and chairman of the Intertribal Monitoring Association on Indian Trust Funds ("ITMA"), an organization composed of Indian tribes and allottee associations that have funds managed by the BIA Office of Trust Funds Management. We established the Association 14 months ago to ensure that the account holders had significant input into the trust fund clean-up effort.

Someone said that the theme of this hearing is "Indian trust funds—past, present and future." The members of ITMA, in their capacities as tribal comptrollers and individual account holders, (many of us are both) know first-hand about the abuses of the past that Congressman Synar and GAO described because we were the victims of this abuse. We were the ones who tried to find out our account balances from the BIA, only to be told it would take six or eight months just to tell us how much money we had in our accounts. We are the ones who found the BIA making gross errors in our accounts but could not get them to take action when those errors involved underpayments to our tribes. We were the ones who had money unilaterally taken from our accounts by the BIA when it determined it had overpaid us. We were the ones who received checks in the mail without any information on what they were for.

But what sticks most in my memory, and which cannot be quantified by a GAO report, is the horrible humiliation of Indian people that was built into the system. During summer off from college, I worked for the BIA superintendent at the Blackfeet agency. In the room outside the Superintendent's office was a very small window that looked out into the hallway of the building. In the hallway were rows of narrow hard wooden benches. Each morning, tribal members would begin filling those benches and would sit there all day waiting for the Superintendent to come to the window and give them a few minutes of time so they could beg him to release some of their own money from their trust fund accounts. The memory of these old people having to go through this humiliating process just to get access to their own money has been in the front of my mind as we have worked on this trust fund issue. We are determined that this kind of treatment will never be repeated.

Over the past 14 months, ITMA has, in coordination with the BIA, begun a number of activities to insure this never happens again. In the beginning, the BIA fought us every step of the way and we would have been defeated except for the enormous support we received from this Committee, Congressman Synar and other Congressional committees. But the BIA has now come to recognize the need for a partnership between the BIA and the tribal and IIM account holders in order to correct the trust fund situation. As a result, a real and productive partnership has begun to develop. This panel will discuss the initiatives underway to correct the errors of the past. The initiatives fall into three broad categories. Ben Mathies will discuss the effort to reconcile and audit the BIA accounts so that the errors of the past can be identified and so that account holders can be repaid any money they lost because of BIA errors. Harold Monteau of the Reorganization Task Force will discuss the efforts to improve the operation of the BIA's management of the trust fund program so it will work better in the future. Chairman Gregg

Bourland will discuss the initiatives being considered to give tribes greater control over their trust fund accounts so they can help to promote-Indian economic opportunity.

Our efforts in all of these areas are just beginning, are still fragile and will require enormous work, cooperation, and support from the Congress, the BIA, OMB, the tribes and the account holders. A steadily improving working relationship with first the BIA, other parties within the Department of the Interior, and most recently the Deputy Director and staff of OMB has been encouraging. It is not an exaggeration to say that we have moved from a relationship of guarded mistrust to one of increasing recognition and acceptance of our mutual responsibility and interest in providing the historical accounting, appropriate settlement, where required, and providing the quality services in the future to which the beneficiaries are clearly entitled. However, we are optimistic that we are on the right track and are off to a positive start. What makes us optimistic is the vision that is guiding us in this effort and which we hope will be adopted by this Committee in its efforts. The vision is really very simple—that the principle of self-determination must be the guiding principle for trust funds just as it is for all other Federal Indian programs. Even though these are our own funds, for too long they were managed for the convenience of the bureaucracy. The tribal and Indian account holders were perceived as a nuisance to be brushed off. As a result we have been completely alienated from our money. As long as we remain effectively cut-off from the management of our funds, that management will never be done right. Nor will we ever achieve the economic power and opportunity that should be available to someone with over \$2 billion in the bank.

What happens when a "clean-up" fails to recognize the primacy of self-determination is demonstrated by the results of the effort to clean-up the management of Indian minerals. Those doing the clean-up were so infatuated with computer systems and processes, that they completely ignored the customers—the Indian people. As a result, ten years and half a billion dollars later, the Indian people are no better off now than they were before the clean-up began.

Therefore, we are insisting that in every action the Federal government takes in the trust fund area, the fundamental question they must ask is how will this step help tribes and Indian people have greater control over their trust funds. In some areas, the application of the self-determination principle is straightforward. For example, tribes must be given greater authority to manage or direct the management of their own trust funds,—the objective of Congressman Synar's proposed legislation. For many IIM account holders, the trust fund system is nothing more than a cumbersome process that takes six steps and several months to get a lease payment to them from their lessee who lives a mile down the road. For them self-determination means reducing the layers of bureaucracy that alienate them from their money. For all account holders, self-determination means obtaining accurate and timely information on their accounts, since without information, it is impossible for us to have any control over our accounts.

In sum, the effort to clean up trust funds management cannot be simply that of building a better bureaucracy, because we know what that produces. Instead, it requires a fundamental review of the purposes and functions of the trust fund program and a reconstruction of that program based on the principles of self-determination. Only this kind of comprehensive effort can insure that the horrors and humiliations of the past will never reoccur.

One of the initiatives that Ben Mathies will be discussing is the role of pilot tribal audits in the over-all reconciliation and auditing process mandated by Congress. When this process is started may we suggest that this Committee hold a field hearing at one of the locations. This would give the Committee an opportunity to learn from the findings first hand.

In conclusion, I would like to thank this Committee for its concern on cleaning up the trust fund for the Indian people.

PREPARED STATEMENT OF HAROLD A. MONTEAU, MEMBER, CHIPPEWA CREE TRIBE

Good morning Mr. Chairman and Members of the Committee. My name is Harold A. Monteau. I am a member of the Chippewa Cree Tribe of the Rocky Boy's Reservation, Montana. I am an attorney in private practice in Great Falls, Montana. I am also a Tribal Representative on the Joint Tribal/BIA/DOI Task Force on the Reorganization of the Bureau of Indian Affairs. I also serve as the Coordinator for the Tribal side of the Task Force. I am here today on behalf of the Task Force. The Tribal Cochairman of the Task Force, Wendell Chino, President of the Mescalero Apache Nation and I have been assigned by the Task Force to coordinate efforts with the Intertribal Monitoring Association (ITMA) on Indian Trust Funds Management.

Senator, the Joint Task Force on Reorganization of the BIA and especially the Tribal Representatives on the Task Force have supported the efforts and the concepts set forth by the ITMA on the Indian Trust Funds. The Reorganization Task Force has given great deference to the analysis, problem identification and concepts developed by the ITMA in its effort to participate as a partner with the BIA in resolving the issues and problems regarding the Bureau's Management of Indian Trust Funds.

A central theme of the Reorganization Task Force has been that true reform of the manner in which the Department of the Interior and the BIA carry out their Trust responsibility can only take place if conducted in partnership with the Tribes. This theme recognizes that the Trib-

al agenda for self determination is inextricably intertwined with the administrative responsibilities and trust responsibility activities of the Bureau of Indian Affairs.

It is with this understanding that the Joint Task Force voted to support the concepts developed by the ITMA and BIA Office of the Trust Fund Management, as we understood them on June 25, 1992, at the Reorganization Task Force Meeting in Green Bay, Wisconsin. It was the understanding of the Task Force at that time that two draft Strategic Plans existed. One had been developed by the Office of Trust Fund Management and the ITMA and the other had been developed at the Assistant Secretary's office and the Deputy Commissioner's office. We understood that the two drafts had some philosophical differences which were going to be resolved, as best they could, through a joint drafting effort on the part of the ITMA, the Office of Trust Funds Management, the Assistant Secretary's office and the Deputy Commissioner's office. It is not my understanding that such a joint effort has occurred.

Mr. Chairman, it has been the method of operation of the Reorganization Task Force to develop all initiatives for reform of the BIA in a true working partnership with the Bureau personnel and departmental personnel. This partnership methodology has proven successful in the development and implementation by the Task Force and the BIA of the new Tribal Budget system. Several other initiatives, including, but not limited to Economic Development, Indian Gaming, Federal Finance System Implementation, Delegations of Authority and BIA Records Management have utilized this unique partnership methodology. We would hope that this same method is going to be utilized in resolving the problems identified in the Bureau's Management of Indian Trust Funds and resolving issues of the management of trust assets that contribute to the trust fund.

Mr. Chairman, there is a new attitude developing in Indian Country. Simply stated, it is a can do and will do attitude on the part of the Tribes. The Bureau of Indian Affairs, Department of the Interior and, indeed, the United States Congress, must listen when the Tribes say the solution to these problems will be formulated in Indian Country.

Previously, I had mentioned that the two drafts of the strategic plan for Indian Trust Funds Management had some basic philosophical differences. One of those differences is the emphasis in the Assistant Secretary's plan on the use of "outside" resources to perform the reconciliation process which will be key to an acceptable accounting of both the Tribal and Individual accounts. It does not seem logical to propose to carry out such a complex and costly task in a manner which does not develop BIA and Tribal capabilities so that the chance of these problems arising again can be mitigated. It does not seem logical to have someone come in and balance the books, put complicated systems in place and then walk away with the expertise to maintain the books and operate the system. It makes better sense to carry out a process in which the BIA and the Tribes, in a true partnership arrangement, jointly develop the capability in managing Indian Trust Funds and in managing the trust asset transactions that contribute to the trust fund.

Senator, as you may know, the Reorganization Task Force in the coming year or years will be working with the Department of the Interior and the BIA to carry out an examination and reformation of the operational procedures and policies of the BIA. These policies and procedures are found in the organic documents by which the BIA operated. Basically, these include the Bureau of Indian Affairs Manual (BIAM), the Code of Federal Regulations (CFR) and the United States Code (USC). These are also accompanied by certain types of internal publications that are issued as policy directives, addenda to delegations of authority and Departmental Manual publications.

The work of the Intertribal Monitoring Association greatly contributes to the Reorganization Task Forces's efforts. This includes our effort to reform and reorganize the manner in which the BIA carries out its operational responsibilities and its management of trust assets of Indian Tribal Governments and Individual Indians.

We ask your continued support for our efforts and we thank you for your support to date. We, as Tribal Representatives, realize it is a fact that we will find resistance to our efforts to reform and reorganize the BIA as our work threatens the security of the empires that had been built in the Bureau. We ask you to send a loud and clear message to the BIA and the Department that in the area of Trust Funds Management in particular and in all aspects of Trust responsibility, that Tribes can be and will be a true and equal partner in the development of solutions.

Statement of Jeffrey C. Steinhoff
Director, Civil Audits
Accounting and Financial Management Division

We are pleased to be here today to discuss the Bureau of Indian Affairs' (BIA) management of the Indian Trust Funds. You requested that I address the nature of BIA's past problems, the present status of its trust fund operations, and specific actions the Bureau might take to improve future trust fund operations. My testimony today will cover these three areas. First, I will discuss some of the long-standing weaknesses that have plagued BIA's management of the trust funds. Next, I will highlight the status of BIA's efforts to reconcile the trust fund accounts, including the problems that have been identified and possible alternative approaches. Finally, I will discuss the status of BIA's efforts to develop a comprehensive strategic plan for trust fund financial management improvement, which include implementing the Chief Financial Officers (CFO) Act of 1990 (Public Law 101-576).

In summary, BIA has had difficulty in fulfilling its fiduciary responsibility to ensure that proper control and accountability are maintained over each trust fund account. Over the years, countless audit reports and internal studies have detailed a litany of problems in BIA's control and oversight of these accounts. BIA's record has been so poor that the Office of Management and Budget (OMB) has placed trust fund accounting on its high-risk list.

Most of the trust fund management problems are internal to BIA's Office of Trust Funds Management (OTFM). They include poorly designed accounting systems, weak internal controls, and untrained staff. These weaknesses have prevented BIA from reconciling trust fund accounts and providing periodic statements to account holders. However, some problems which impact trust fund accounting are external. For instance, important issues involving fractionated land ownership records are managed by another BIA office, the Office of Trust and Economic Development. Also, Bureau of Land Management (BLM) Indian lease management practices and Minerals Management Service (MMS) collections and reporting of Indian oil and gas royalties are managed by other Interior Department organizations. These issues cannot be addressed by OTFM or BIA alone.

BIA has recognized the seriousness of its problems and has initiated some corrective actions. However, recent GAO testimonies and our June 1992 report¹ have indicated limited progress in fixing what is wrong. BIA is now working on a long-term strategic plan, and OMB and the Interior Department CFO have directed high level attention at improving trust fund management. A lot remains to be done, and although the current interest in solving these problems is most encouraging, it must be sustained.

¹Financial Management: BIA Has Made Limited Progress in Reconciling Trust Accounts and Developing a Strategic Plan (GAO/AFMD-92-38, June 18, 1992).

In testimony earlier this year, we said that, in order to effectively address long-term trust fund management problems, Interior Department and BIA management need to rethink the way trust fund operations are conducted. This means first reexamining goals, roles, policies and procedures, organization, staffing, and financial management systems. Next, based on the results of this examination, BIA needs to develop a comprehensive strategic plan for addressing every facet of the trust fund operation, including interfaces between other systems and operations that impact trust fund accounting. The CFO Act provides a framework that BIA can use for improving trust fund financial management.

BACKGROUND

The Secretary of the Interior is directed by law to manage Tribal and Individual Indian Monies Trust Funds. BIA, through its Office of Trust Funds Management, is responsible for carrying out the government's fiduciary responsibility of ensuring that proper control and accountability are maintained over each trust account. The Office of Trust Funds Management, located in Albuquerque, New Mexico, oversees trust fund operations at BIA's 12 area offices and 93 agency offices.

At the end of fiscal year 1991, OTFM was responsible for overseeing maintenance of about 2,000 tribal and 291,000 Individual Indian Money accounts with reported balances of \$1.5 billion and

\$440 million, respectively. Trust fund balances have accumulated in part from payments of claims, oil and gas royalties, land use agreements, and investment income. In fiscal year 1991, reported receipts totaled almost \$400 million, and disbursements ran about \$367 million.

OTFM uses several automated systems to oversee, manage, and account for the Indian trust funds. Two of the systems, the Finance System (general ledger) and the Individual Indian Monies subsystem (subsidiary ledger), are used to account for tribal and individual Indian monies. In May 1991, BIA issued a contract for a public accounting firm to reconcile tribal and individual Indian trust accounts with supporting documentation. Since then, BIA's efforts to reconcile its trust accounts by using source documents to reconstruct and verify account balances have been monitored by representatives of tribes and individual Indian account holders who comprise the Intertribal Monitoring Association. The Association is working with BIA to oversee trust fund account reconciliations and develop a strategic plan for strengthening trust fund accounting in the future.

Before discussing the status of BIA's reconciliation project and strategic planning, I will briefly review some of the problems that have affected BIA's trust funds management over the past several years.

LONG-STANDING FINANCIAL MANAGEMENT PROBLEMS

For many years, BIA has had serious financial management problems. These problems permeate almost every one of its principal accounting systems. Tribes and individual Indians have long been concerned about the accuracy of BIA's accounting for trust receipts and disbursements and the effectiveness of BIA's investment practices. BIA has often been criticized for erroneous allocations of receipts and payments to account holders and for failure to consistently invest trust fund balances and pay interest.

In 1982, we reported¹ that BIA's appropriation and trust fund accounting systems needed major improvements. At that time, we found that the information produced by BIA's accounting systems was unreliable, trust accounts had not been reconciled with the general ledger to ensure correct balances, and controls over cash receipts and disbursements were inadequate. Since 1982, numerous audits by the Interior Department's Inspector General and two public accounting firms have identified similar accounting problems and weak internal controls throughout BIA.

Reports on the results of BIA's trust funds financial statement audits for fiscal years 1988, 1989, and 1990 contained

¹Major Improvements Needed in the Bureau of Indian Affairs' Accounting System (GAO/APMD-82-71, Sept. 8, 1982).

qualified opinions due to an inability to confirm cash balances, major inadequacies in accounting records and related systems, and accounting errors. The auditor's 1990 report highlighted 8 material accounting system and internal control weaknesses and provided a status report on 67 open recommendations from the fiscal year 1988 and 1989 audits. For example, the auditor's report continued to document the lack of written policies and procedures and inconsistent accounting practices bureauwide that caused numerous accounting errors. The auditor's report also stated that BIA's financial systems did not provide accurate data and recommended that BIA submit timely reports to Indian and tribal account holders.

Since 1983, the first year such reports were legally mandated, the Secretary of the Interior, in the Department's annual report to the President and the Congress under the Federal Managers' Financial Integrity Act (FMFIA), cited trust fund accounting as a material weakness. In October 1989, OMB designated BIA in its entirety as a high-risk area. In his 1990 FMFIA report, the Secretary again characterized the entire Bureau as a material internal control weakness. Some of the concerns reported at that time included a lack of general ledger control over accounts, inaccurate data, a lack of accounting systems documentation, and inadequate management of the Indian trust funds. In June 1991, OMB added specific weaknesses in BIA's trust fund operations to the high-risk list because of their continuing uncorrected status. The

Secretary's most recent FMFIA report, dated December 1991, showed that most of these weaknesses were still uncorrected.

Areas of concern, which are receiving increased congressional interest, involve trust fund losses and unpaid interest. In May 1991, BIA provided a schedule to the House Committee on Government Operations, Subcommittee on Environment, Energy and Natural Resources disclosing a total of over \$12 million in potential trust fund losses and amounts owed to tribes and individual Indians. Since then, BIA has not completed action to recover losses and pay account holders for amounts owed. Examples of unpaid amounts include:

- as much as \$9 million, plus interest, owed for losses at certain failed financial institutions, some dating back to 1984, where BIA invested trust fund monies beyond insured levels. In January 1992,³ we reported to the Chairman of the House Committee on Government Operations, Subcommittee on Energy, Environment and Natural Resources that we had confirmed that \$4 million, plus interest, in losses were not federally insured.

- an estimated over \$1 million in uncashed trust fund checks, dated on, or before, September 30, 1989, that were canceled

³Letter to the Chairman, Subcommittee on Environment, Energy and Natural Resources, Committee on Government Operations, House of Representatives (GAO/AFMD-92-36R, January 13, 1992).

in October 1990 as a result of the provisions of Public Law 100-86, Title X of the Competitive Equality Banking Act of 1987. BIA is responsible for restoring these funds to each account holder.

-- an estimated \$1 million in unpaid oil and gas royalty interest dating back to 1985. According to BIA's Office of Trust Funds Management, on June 23, 1992, over \$446,000 was distributed to account holders at four agencies under the jurisdiction of the Anadarko Area Office. BIA expects to begin distributing the remaining unpaid interest by the end of December 1992.

Subsequent to our April testimony and June 1992 report, both the House and Senate Appropriations Committees' Reports on BIA's fiscal year 1993 appropriations recognized the need for BIA to reimburse Indian account holders for certain losses. Both Committees' reports requested BIA to identify the amount of these losses so that the Congress could make funds available for this purpose.

While most of the Office of Trust Funds Management's problems, such as those discussed above, are internal, others are external. External problems, which were discussed at this Committee's July 2, 1992, hearing, include the impact of fractionated interests, the BLM Indian lease management practices, and MMS collections and

reporting of Indian oil and gas royalties, which cannot be addressed by BIA alone.

STATUS OF BIA'S EFFORTS

TO RECONCILE THE TRUST ACCOUNTS

Over the years, two of the difficult issues facing BIA have been the accuracy of the Indian trust fund accounts and BIA's failure to provide account holders with periodic statements. In the 1987 Supplemental Appropriations Act Conference Report, the Appropriations Committees stated their intent that BIA was to reconcile and audit all trust fund accounts in order to meet the demands of Indian account holders for accurate account balances. The Congress continued to call for a reconciliation and audit of these accounts in BIA's 1989, 1990, and 1991 appropriations acts.

In May 1991, BIA awarded a contract for reconciling the Indian trust fund accounts. This work entails using source documents to reconstruct trust account transactions so that account holders are provided as accurate an accounting as possible. After the contract was awarded, BIA and its contractor gathered and organized thousands of boxes of accounting records, developed a methodology to reconstruct and reconcile the accounts, and provided an estimate of the level of effort and cost to complete various segments of the reconciliation work.

The contractor's assessment indicated that the reconciliation effort would be very difficult and that many accounts, particularly the Individual Indian Money accounts, could not be fully reconciled due to missing records, poorly documented accounting transactions, and the volume of data to be reviewed. Further, the contractor's cost estimates for completing the reconciliation work confirmed our earlier assertion that reconstructing accounts would be costly, even after factoring in some cost-saving measures.

The projected cost to reconstruct accounting transactions for approximately 2,000 tribal accounts that BIA maintained from 1983 through 1991 was over \$3 million. This figure did not include the \$1.7 million expended through January 15, 1992, to collect and organize accounting documents; purchase equipment, computer hardware, and software; and develop procedures for the reconciliation project. The contractor's initial cost estimate for reconciling the 291,000 accounts maintained in the Individual Indian Money subsystem ranged from \$211 million to nearly \$400 million. Subsequently, a scope reduction decreased the estimate to between \$180 million and \$281 million. The reported balance of these accounts was \$440 million as of September 30, 1991.

After receiving the contractor's assessment, BIA halted the reconciliation of the Individual Indian Money accounts and decided to use its own staff, aided by the reconciliation contractor, to complete the tribal reconciliations. Currently, the Interior

Department, OMB, BIA, and the Intertribal Monitoring Association are revisiting the decision to use BIA staff to perform the tribal reconciliation and reconsidering using the contractor to complete this work.

BIA's ongoing efforts to reconcile the trust fund accounts is a challenge of tremendous magnitude. It can be compared to trying to determine the correct balance for about 300,000 personal bank accounts that have been active for 10 to 50 years or more, using a system that historically has been replete with accounting errors, which were not reconciled and corrected along the way, and involving a high volume of small dollar value transactions with incomplete supporting records. For instance, at three agency offices where BIA tried to reconcile the trust accounts, 30 percent of the transactions were less than \$1--nickels, dimes, quarters, and even fractions of a penny; another 27 percent were for \$1 to \$9; and an additional 23 percent were for \$10 to \$49.

In our June 1992 report, we recommended that BIA seek alternatives to the current reconciliation project and develop a proposal for reaching a satisfactory resolution of the trust fund account balances with account holders. In developing this proposal, we suggested that BIA consider the following alternatives:

- limiting contractor reconciliation efforts for tribal trust fund accounts to periods for which adequate records are available;
- accepting audited balances from tribes;
- negotiating agreements with individual Indians on balances reported on their account statements; and/or
- requesting legislated settlements on all, or selected accounts, based on the results of the other alternatives.

Account reconciliation is just one of the many challenges BIA faces. As we stated in our June 1992 report, even if BIA were able to reconcile all accounts and reach agreement with the account holders on their balances, new discrepancies could arise unless long-standing problems with BIA's trust fund accounting systems are corrected. These unreconciled accounts are only a symptom and not a cause of BIA's trust fund financial management problems. In the long term, BIA has to deal with the root cause of its problems.

STRATEGIC PLAN NEEDED TO GUIDE
FUTURE TRUST FUND MANAGEMENT

BIA's trust fund management problems and needed corrective actions are well documented and fully acknowledged by BIA and the

Interior Department. All parties agree that major change is needed, along with tangible results. However, while BIA has initiated various corrective actions from time-to-time, the same problems continue to arise.

In our May 1991 testimony⁴ before the House Committee on Government Operations, Subcommittee on Environment, Energy and Natural Resources, we discussed the need for BIA to develop an overall strategic plan for improving trust fund financial management. Our April 1992 testimony⁵ before the House Committee on Appropriations, Subcommittee on Interior and Related Agencies, our June 1992 report, and our July 1992 testimony⁶ before this Committee, reiterated the importance of a strategic plan. The lack of a clear long-range vision has impeded BIA's progress in the past.

Given the magnitude and pervasiveness of BIA's trust fund management problems, comprehensive planning will be critical to effective corrective action. Once a comprehensive approach for improving trust fund management is agreed upon, a strategic plan would serve to document the overall approach, as well as the

⁴Bureau of Indian Affairs' Efforts to Reconcile, Audit, and Manage the Indian Trust Funds (GAO/T-AFMD-91-6, May 20, 1991).

⁵Financial Management: BIA Has Made Limited Progress in Reconciling Indian Trust Fund Accounts and Developing a Strategic Plan (GAO/T-AFMD-92-6, April 2, 1992).

⁶Financial Management: Problems Affecting BIA Trust Fund Financial Management (GAO/T-AFMD-92-12, July 2, 1992).

specific actions to be taken. In addition, it is important that the plan document target dates and name the managers who will be held responsible for meeting them.

Over the past 15 months, we have made a number of suggestions and recommendations for improving trust fund management. For example, in our June 1992 report, we recommended that BIA take the following actions.

- Assess the mission of the Office of Trust Funds Management and conduct a comprehensive review of the entire trust fund operation, including those trust-related activities outside the control and responsibility of the Office of Trust Funds Management, in order to determine how and by whom Indian trust funds can best be managed.
- Prepare an organization and staffing analysis to determine appropriate roles, responsibilities, authorities, and training and supervisory needs as a basis for sound trust fund management.
- Review current systems as a basis for determining whether systems modifications will most efficiently bring about needed improvements, or whether alternatives should be considered, including cross-servicing arrangements,

contracting for ADP services, or new systems design and development.

IMPLEMENTING THE CHIEF FINANCIAL OFFICERS ACT

In our recent report and testimonies, we have pointed out that the CFO Act provides a useful framework for guiding future trust fund management initiatives and helping BIA address its long-standing trust fund management problems. The objectives of the act are to ensure that both Interior and BIA have (1) an adequate financial management organization structure, (2) a cadre of qualified and trained accounting professionals to carry out the broad authorities envisioned by the act, (3) modern, integrated accounting, budget, and financial systems, (4) strong internal controls, (5) audited financial statements that can pass the test of relevance and usefulness established in the act, (6) financial information on costs and performance measures which tie to financial reports, as well as program operations, and (7) annual reports prepared by the CFO that present the results of BIA's financial operations. To ensure that these objectives are accomplished, it is important that the Interior CFO work with BIA management to effectively implement the act.

In closing, while much remains to be done, we have seen some progress since the establishment of the Office of Trust Funds Management in 1989. One important development has been better

relations and improved communication with the Intertribal Monitoring Association, tribes, and individual Indians. Today, there is also high-level attention directed at improving management of the Indian trust funds by senior leadership at OMB, the Interior CFO, and BIA top management. Sustained aggressive action from the administration and the continued support and oversight by the Congress are needed to solve these pervasive problems that have built up over decades.

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Mr. Chairman, this concludes my remarks. I would be happy to answer any questions you or Members of the Committee may have at this time.

June 1992

**FINANCIAL
MANAGEMENT**

**BIA Has Made Limited
Progress in Reconciling
Trust Accounts and
Developing a Strategic
Plan**



GAO

United States
General Accounting Office
Washington, D.C. 20548

Accounting and Financial
Management Division

B-247216

June 18, 1992

The Honorable Sidney Yates
Chairman
The Honorable Ralph Regula
Ranking Minority Member
Subcommittee on Interior and Related Agencies
Committee on Appropriations
House of Representatives

The Honorable Mike Synar
Chairman
The Honorable William F. Clinger
Ranking Minority Member
Subcommittee on Environment,
Energy and Natural Resources
Committee on Government Operations
House of Representatives

In response to your requests, this report updates the Bureau of Indian Affairs' (BIA) efforts to reconcile and audit the Indian trust fund accounts and develop a strategic financial management plan for correcting its long-standing trust fund financial management problems.

Results in Brief

In May 1991, BIA awarded a contract for reconciliation of the Indian trust fund accounts, which entails using source documents to reconstruct trust account transactions so that account holders are provided as accurate an accounting as possible. Since then, BIA and its contractor have gathered and organized thousands of boxes of accounting records, developed a methodology to reconstruct and reconcile the accounts, and estimated the level of effort and cost to complete various segments of the reconciliation work. The assessment results indicate that the reconciliation effort will be very difficult and that many accounts cannot be fully reconciled due to missing records, poorly documented accounting transactions, and the volume of data to be reviewed. Further, the contractor's cost estimates for completing the reconciliation work confirms our earlier assertion that reconstructing accounts would be costly, even after factoring in some cost-saving measures.

The projected cost to reconstruct accounting transactions for approximately 2,000 tribal accounts BIA maintained from 1983 through 1991 is over \$3 million. This amount is in addition to the \$1.7 million

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expended through January 15, 1992, to collect and organize accounting documents; purchase equipment, computer hardware, and software; and develop procedures for the reconciliation project. The initial cost estimate for reconciling the 291,000 accounts maintained in the Individual Indian Money subsystem ranged from \$211 million to nearly \$400 million. Subsequently, a scope reduction decreased the estimate to between \$180 million and \$281 million. The reported balance of these accounts was \$440 million as of September 30, 1991. Because many accounts are not reconcilable, alternative approaches to reach agreement on account balances will be necessary.

Even if BIA were able to reconcile all accounts and reach agreement with the account holders on their balances, new discrepancies could arise unless long-standing problems with BIA's trust fund accounting systems are corrected. The unreconciled accounts are only a symptom and not a cause of BIA's trust fund financial management problems. As we stated in our testimony last year, in the long term, BIA has to deal with the root cause of its problems or it will continue to revisit the issue of unreconciled accounts. In this regard, both the Chairman of the Subcommittee on Environment, Energy and Natural Resources, House Committee on Government Operations, in May 1991, and the Conference Report on the fiscal year 1992 appropriations directed BIA to develop a strategic plan for improving trust fund financial management, including an acceptable approach for keeping the accounts accurate in the future. Although BIA has developed a number of short-term plans, it has yet to develop a truly comprehensive strategic plan. The requirements of the Chief Financial Officers (CFO) Act of 1990, Public Law 101-576, provide a framework that BIA can use to help solve its long-standing financial management problems. However, as of March 1992, BIA had not determined how the act's implementation would affect trust fund operations.

Background

The Secretary of the Interior is directed by law to manage Tribal and Individual Indian Monies Trust Funds. BIA is responsible for ensuring that these funds, which belong to the tribes and individual Indians, are properly managed. Indian account balances have accumulated in the trust funds from (1) the payments of claims, (2) oil, gas, and minerals royalties, (3) income from land use agreements, (4) investment income, and (5) other sources.

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At the end of fiscal year 1991, BIA reported that the Indian trust funds included about 2,000 tribal and over 291,000 Individual Indian Money accounts with reported balances of \$1.5 billion and \$440 million, respectively. Trust fund receipts for fiscal year 1991 totaled almost \$400 million, and disbursements to account holders ran about \$367 million. BIA's Office of Trust Funds Management, located in Albuquerque, New Mexico, is responsible for ensuring that trust fund management and accounting are carried out properly. It oversees trust fund operations at BIA's 12 area offices and 93 agency offices.

In 1982, we reported¹ that BIA's appropriation and trust fund accounting systems needed major improvements. Since then, the Interior Department's Inspector General and public accounting firms hired by BIA have identified numerous accounting and internal control weaknesses. In October 1989, because BIA, as a whole, had not corrected its numerous, long-standing financial management problems, the Office of Management and Budget (OMB) designated the Bureau as a high-risk area. In June 1991, OMB designated BIA's trust funds operations as high risk, also because of long-standing, uncorrected weaknesses.

During 1991, we briefed your subcommittees' staffs several times on BIA's progress in reconciling and auditing the Indian trust fund accounts. On April 11, 1991, we testified before the House Committee on Appropriations, Subcommittee on Interior and Related Agencies, on BIA's efforts to reconcile, audit, and manage these accounts. We stated that if records needed to support account reconstruction were not readily available, it would be futile to attempt to fully reconcile the accounts because the cost of such an effort would be excessive and results would be limited due to missing records. We also discussed BIA's overall financial management problems and how implementation of the CFO Act could help correct them.

In May 1991, we raised many of the same issues in testimony before House Committee on Government Operations, Subcommittee on Environment, Energy and Natural Resources, and discussed the need for BIA to develop a strategic plan to correct its long-standing financial management problems. The Conference Report for fiscal year 1992 appropriations directed BIA to complete a strategic plan for future tribal trust and Individual Indian Money fund management. In addition, the House Committee on

¹Major Improvements Needed in the Bureau of Indian Affairs' Accounting System (GAO/AFMD-82-71, September 8, 1982).

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Appropriations asked BIA, as part of this planning effort, to consider alternatives to the way the Bureau currently operates, including whether portions of trust funds management could be performed more efficiently under contract or by the tribes themselves rather than by BIA. On April 2, 1992, we testified before the House Subcommittee on Interior and Related Agencies on the matters discussed in this report.

On April 1, 1992, the House Committee on Government Operations issued a report, "Misplaced Trust: The Bureau of Indian Affairs' Mismanagement of the Indian Trust Fund," which describes decades of neglect in managing the Indian Trust Funds.

Objectives, Scope, and Methodology

The objectives of our review were to assess (1) BIA's progress in reconciling tribal and Individual Indian Money accounts and (2) BIA's efforts to develop a strategic plan for improving its trust fund operations.

To assess BIA's progress in reconciling tribal and Individual Indian Money accounts, we obtained and reviewed BIA's reconciliation project management plan. We also reviewed the contractor's plans for organizing, staffing, and implementing the reconciliation work, met with the contractor to discuss these plans, attended several meetings with BIA officials and the contractor to discuss work plan implementation, and monitored the contractor's progress in implementing the plan. In addition, we obtained the views of the Intertribal Monitoring Association, which represents a number of tribal account holders. To assess BIA's efforts to develop a strategic plan for improved financial management, we reviewed BIA's draft planning documents and discussed these plans with BIA officials.

Our work was conducted between July 1991 and March 1992 at BIA's headquarters in Washington, D.C.; BIA's Office of Trust Funds Management in Albuquerque, New Mexico; and at three agency offices—Uintah and Ouray in Utah, Fort Peck in Montana, and Olympic Peninsula in Washington. These locations were chosen because the contractor performed its initial assessment work at these three agency offices. Our review was performed in accordance with generally accepted government auditing standards. The Assistant Secretary for Indian Affairs provided written comments on a draft of this report. These comments and our evaluation of them is presented in appendix I.

BIA Is Unable To Reconcile All Accounts

Since the trust fund reconciliation contract was awarded in May 1991, BIA and its contractor have determined that a full reconciliation of all tribal and Individual Indian Money accounts is neither possible nor cost-effective due to missing records, commingled tribal and individual Indian accounting records, poorly documented accounting transactions, and the volume of data to be reviewed. As a result, BIA's contractor has proposed performing all possible reconciliations of tribal accounts in one rather than two phases, as previously planned, beginning with transactions for fiscal year 1990. Individual Indian Money accounts will not be reconciled at this time.

Originally, BIA's trust fund reconciliation project was divided into two phases, each of which included the same two processes: (1) reconciliation, which entails using source documents to reconstruct trust account transactions so that account holders are provided as accurate an accounting as possible and (2) independent audit and certification of the reconciled balances. Phase I was to cover over 600 tribal accounts belonging to 37 of the 254 tribes and 17,000 Individual Indian Money accounts maintained at three of its agency offices—Uintah and Ouray, Fort Peck, and Olympic Peninsula. After Phase I was completed, Phase II would cover the remaining 1,500 tribal and 274,000 Individual Indian Money accounts. This approach would not have allowed many tribal accounts to be fully reconciled until all Individual Indian Money subsystem accounts, which include some tribal accounts, were also reconciled.

As agreed, the contractor, with BIA assistance, has located and organized trust fund accounting records, developed a methodology to reconstruct the accounts, and provided an assessment of the level of effort and cost to complete the various segments of reconciliation work. The assessment results indicate that the reconciliation effort will be very difficult and perhaps impossible for many accounts because of the problems described above. As of January 15, 1992, BIA had spent about \$1.7 million on the reconciliation project. As of March 9, 1992, BIA's contractor had reconstructed or reconciled fiscal year 1990 transactions for all but 276 of 2,010 tribal accounts. This work is not yet complete because some fiscal year 1990 records are missing.

Problems That Impede Successful Project Completion

Anticipating the previously reported records availability problems, BIA included a cost containment measure in the Phase I reconciliation contract. This measure required the contractor to provide an assessment of the level of effort and cost required to complete Phase I after 2 to 4 weeks' work. However, the assessment period lasted longer than originally

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envisioned—from July 1991 through January 1992, or 7 months—due to (1) the massive volume of records that needed to be gathered, organized, and analyzed and (2) the addition of some work steps during the assessment period, such as tracking receipt and deposit of funds to determine if interest were lost and determining the accuracy of land and mineral ownership records. As of January 1992, BIA's contractor had identified approximately 69,000 boxes of BIA accounting records and determined that about 17,000 of these boxes contained at least some documents pertaining to trust fund accounting. Yet even after this massive effort, records gaps still exist. In addition, a number of other problems and concerns were identified by BIA, the contractor, the Intertribal Monitoring Association, and others during the assessment period. The following are some examples.

- Questions exist about the accuracy of land and mineral ownership records upon which income distributions are based.
- Fractionated interests due to heirships complicate accounting and reconciliation efforts and will continue to do so because of the increasing number of accounts BIA is required to maintain. As discussed in our February 1992 report,³ maintaining these accounts, some with transactions involving only a fraction of a penny, is not cost-effective.
- Documentation for Special Deposit accounts⁴ has been poorly maintained at the agency offices and records of some transactions are illegible or missing.
- Data on oil and gas royalty collections from Interior's Minerals Management Service (MMS) (which is responsible for collecting and distributing Indian oil and gas revenues to BIA and ensuring their accuracy) are not reliable because of accounting and reporting problems dating back to at least 1982. We have documented these problems in two recent reports⁵ as well as in our current BIA work.
- Agency offices use inconsistent procedures, records, and methods to calculate and distribute revenue to account holders. As a result, each method must be separately verified.

³Indian Programs: Profile of Land Ownership at 12 Reservations (GAO/CEID-92-96-BR, February 10, 1992).

⁴Special Deposit accounts are accounts established to temporarily hold (1) revenue receipts that involve multiple owners, such as oil and gas royalties, pending calculation and distribution processes or (2) specific receipts, such as advance deposits on timber sales.

⁵Minerals Management Service: Improvements Planned for Automated Royalty Management System (GAO/IMTEC-90-65, July 27, 1990) and Mineral Revenues: Shortcomings in Onshore Federal Oil and Gas Production Verification (GAO/CEID-90-99, June 26, 1990).

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BIA's Integrated Records Management System, the system used to maintain Indian land ownership and Individual Indian Money account information, operates at six locations. Over time, subtle changes to programs and coding schemes have made the information at these locations inconsistent. In addition, the land ownership data were never validated when they were transferred from a manual card system, according to BIA officials.

Estimates Indicate Efforts Will Be Costly

The contractor's cost estimates for completing the reconciliation work confirm our April 1991 assertion that reconstructing accounts would be costly, even after factoring in some cost-saving measures. For example, initial cost estimates to reconcile all 291,000 individual Indians' accounts ranged from \$211 million to nearly \$400 million, based on contractor cost estimates for completing work at the three agency offices. Subsequently, a scope reduction decreased the estimate to between \$180 million and \$281 million. The reported balance of these accounts was \$440 million as of September 30, 1991. Since then, the contractor and BIA have proposed that these accounts not be reconciled under the current contract due to missing records, undocumented transactions, and high costs.

In addition, BIA's contractor recently presented cost estimates on various reconciliation scope options, one of which indicates a cost of more than \$3 million to reconcile tribal trust accounts for fiscal years 1983 through 1991. However, this approach excludes tribal funds accounted for in BIA's Individual Indian Money subsystem. If tribal funds accounted for in the subsystem were included in this estimate, the cost would rise an additional \$1.3 million.

In some cases, the cost of reconstructing accounts exceeds their value. For example, at the three agency offices included in Phase I, about 80 percent of the Individual Indian Money account transactions are less than \$50. The contractor's average hourly rate is \$38.75, and it is reasonable to expect that much more than 1 hour would be required to reconstruct each account back 10 or more years. Through January 15, 1992, \$1.7 million had been expended on the contract to collect and organize accounting documents; purchase equipment, computer hardware, and software; and develop procedures for the reconciliation project.

As stated in our April 2, 1992, testimony, given the assessment results, BIA and its reconciliation contractor have concluded that a full reconciliation, especially for Individual Indian Money accounts, is neither possible nor cost-effective. However, determining the feasibility of a full reconciliation

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effort was an important first step in reaching agreement on account balances.

Alternatives to Trust Fund Account Reconciliation

Because many accounts are not reconcilable, alternative approaches to reach agreement on account balances will be necessary. BIA and the tribes acknowledge that alternatives may provide acceptable results. The following alternatives could be considered.

- BIA could reconcile those tribal trust fund accounts for time periods where adequate records are available.
- For tribes that have had reliable accounting systems and audited financial statements for several years, BIA could agree to use tribal account balances maintained by the tribes, or it could use balances maintained by the tribes as a basis for a negotiated settlement.
- For Individual Indian Money accounts, BIA could send account statements to account holders and ask them to confirm or dispute the balances. BIA could then attempt to reach agreement or a settlement with account holders who disagree with BIA's balance.
- Tribes have suggested making funds available to them to conduct reconciliations and audits of their funds maintained in BIA's accounts.
- Finally, BIA could ask the Congress for a legislated settlement for all, or selected accounts, depending on the success of the other approaches.

It is important that BIA promptly reach agreement on trust fund account balances so that it can devote full attention to broad financial management reforms that are critical to improving BIA's trust fund operations.

Strategic Plan Needed To Guide Future Trust Fund Management

After BIA reconciles the trust fund accounts, or reaches agreement on account balances using other alternatives, new discrepancies could arise if BIA does not improve the methods it uses to account for Indian trust funds. The unreconciled accounts are only a symptom, and not a cause of BIA's trust fund financial management problems. As we stated in our testimony last year, in the long term, BIA has to deal with the root cause of its problems or it will continue to revisit the issue of unreconciled accounts. BIA's trust fund financial statement audits for fiscal years 1988 through 1990, have continued to reveal serious financial management problems, such as (1) the inability to determine cash balances, (2) numerous internal control weaknesses, (3) accounting systems which have not maintained and reported accurate trust fund data, and (4) inadequate staffing, training, and supervision.

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During BIA's May 20, 1991, testimony before the Subcommittee on Environment, Energy and Natural Resources, the Assistant Secretary for Indian Affairs agreed to prepare a plan, coordinate it with the tribes, and submit it to the Subcommittee. BIA has developed a framework document and has taken some actions to improve trust fund accounting. However, BIA has not yet developed a truly comprehensive plan for improving trust fund management. Such a plan is vital to developing a cohesive strategy for the kind of comprehensive change needed to address the long-standing problems at BIA.

We stated in our May 1991 testimony that BIA had developed piecemeal corrective action plans that were not tied into an overall plan for conducting trust fund business. Since our testimony, BIA has continued to develop short-term plans to correct individual aspects of its current operations. In July 1991, BIA's Washington, D.C., headquarters developed a draft interim financial improvement plan which cataloged a number of short-term actions to address known problems without first analyzing the Bureau's mission, goals, and objectives to determine the most appropriate way to organize, staff, and operate the trust funds. Although the interim plan recognized that long-term solutions were necessary, the Intertribal Monitoring Association did not endorse it because the plan only focused on short-term fixes and did not adequately address long-term solutions for improving trust fund management.

In November 1991, BIA's Albuquerque, New Mexico, Office of Trust Fund Management developed a short-term improvement plan to guide trust fund improvements to be undertaken during fiscal year 1992. Like the interim plan, the short-term plan has no priorities assigned to the various plan segments and does not tie into a comprehensive or strategic approach to solving trust fund financial management problems.

Both the headquarters and the Albuquerque plans do not adequately consider fundamental problems in BIA's current trust accounting operation. For example, the plans do not address the following.

- The continued fractionated ownership interests, which result in the need to maintain an increasing number of small accounts.
- Staffing and training deficiencies reported by BIA's auditors. Despite efforts underway to reorganize the Office of Trust Funds Management, the plan is not supported by a staffing and organization study.

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- Lack of coordination among various BIA offices which has led to unanticipated interruptions in operations and a failure of area offices to fully support needed reconciliations.
- Improvements needed to correct BIA's long-standing accounting system design and internal control weaknesses to ensure trust fund account balances will be accurately maintained in the future.
- Improvements needed in Minerals Management Service Indian oil and gas royalty payments to BIA.

Implementing the Chief Financial Officers Act

As discussed in our May 20, 1991, testimony, the CFO Act provides a framework that BIA can use to help address its financial management problems. The act's objectives are to ensure that both Interior and BIA have (1) an adequate financial management organization structure, (2) a cadre of qualified and trained accounting professionals to carry out the broad authorities envisioned by the act, (3) modern, integrated accounting, budget, and financial systems, (4) strong internal controls, (5) audited financial statements that can pass the test of relevance and usefulness established in the act, (6) financial information on costs and performance measures which tie to financial reports, as well as program operations, and (7) annual reports prepared by the CFO that present the results of BIA's financial operations.

We have encouraged BIA management to address the CFO Act requirements for its financial management structure and staffing qualifications at the area and agency offices, as well as at the headquarters level. We have also suggested that BIA discuss the need for a trust fund CFO organization with its reorganization task force. BIA officials told us that they are taking steps to begin implementation of these requirements in BIA's administrative operations, but as of March 1992 they had not yet considered how they will apply them to trust fund management.

Alternatives for Long-Term Trust Fund Management

An important part of strategic planning is considering alternatives to current management and operations. In our May 20, 1991, testimony, we discussed a number of options that BIA could consider for handling trust fund financial management, including contracting with a third party for certain account maintenance services, leasing an accounting system that BIA would operate itself, entering into a cross-servicing arrangement for accounting services with another federal agency, or transferring trust fund accounting and investment activities to another federal agency.

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We also testified that as BIA begins to think about key program objectives and how to achieve them, it needs to consider various options for managing and overseeing the trust fund program. Indian representatives have also suggested various options that would allow tribes greater participation in how their funds are managed and invested.

Conclusions

BIA's more recent efforts have demonstrated that a complete reconciliation of the Indian Trust Fund accounts would be unreasonably expensive and, for many accounts, impossible. After spending 7 months and over \$1.7 million to gather and organize account information and revise the reconciliation methodology, BIA's contractor is still working to reconcile the fiscal year 1990 tribal account transactions. Missing records continue to be a problem.

BIA has not developed a strategic plan for improving its trust fund management. Such a plan is an important first step in improving BIA's financial management operations.

Recommendations

We recommend that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to seek alternatives to the current reconciliation project and develop a proposal for reaching a satisfactory resolution of the trust fund account balances with account holders. In developing this proposal, the Assistant Secretary for Indian Affairs should consider the following alternatives:

- limiting contractor reconstruction efforts for tribal trust fund accounts to periods for which adequate records are available;
- accepting audited balances from tribes;
- negotiating agreements with individual Indians on balances reported on their account statements; and/or
- requesting legislated settlements on all, or selected accounts, based on the results of the other alternatives.

In our May 1991 and April 1992 testimonies, we recommended that BIA develop a strategic financial management plan for improving Indian trust fund operations. In this regard, we further recommend that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to take the following actions.

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- Assess the mission of the Office of Trust Funds Management and conduct a comprehensive review of the entire trust fund operation, including those trust-related activities outside the control and responsibility of the Office of Trust Funds Management, in order to determine how and by whom Indian trust funds can best be managed
- Prepare an organization and staffing analysis to determine appropriate roles, responsibilities, authorities, and training and supervisory needs as a basis for sound trust fund management.
- Review current systems as a basis for determining whether systems modifications will most efficiently bring about needed improvements or whether alternatives should be considered, including cross-servicing arrangements, contracting for ADF services, or new systems design and development.

Agency Comments and Our Evaluation


In commenting on a draft of this report, the Assistant Secretary for Indian Affairs concurred with the thrust of our findings, conclusions, and recommendations regarding BIA's efforts to reconcile the Indian trust fund accounts. However, the Assistant Secretary took exception to certain points discussed in the report.

Specifically, the Assistant Secretary stated that (1) the enormity of the reconciliation project's estimated costs is the paramount factor in deciding how to proceed with the trust fund account reconciliations and that costs are driven largely by the number of Indian allotment interests and (2) GAO inappropriately discounted the consultative process between BIA and the Intertribal Monitoring Association. We disagree with BIA on both of these issues. Regarding the first issue, while the quantity and availability of records is a major factor affecting cost, it is not the only major factor. Other factors such as commingled accounting records, inconsistent accounting processes and procedures, and questionable land ownership data also increase the cost. With respect to the second issue, our description of what occurred is accurate. These and other points as well as our evaluation of them are discussed more fully in appendix I.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we will not distribute it until 30 days from its date. At that time, we will send copies of the report to the Secretary of the Interior, the Department's Assistant Secretary for Indian Affairs, the Director of the Office of Management and Budget, and other interested parties.

Please contact me at (202) 276-9454 if you or your staffs have any questions concerning this report. Major contributors to this report are listed in appendix II.




Jeffrey C. Steinhoff
Director, Civil Audits

Appendix 1


Comments From the Assistant Secretary for Indian Affairs

Note: GAO comments supplementing those in the report text appear at the end of this appendix



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20248



MAR 30 1992

U.S. General Accounting Office
 Jeffrey C. Steinhoff
 Director, Civil Audits
 Accounting & Financial Management Division
 444 G. St., NW Room 6009
 Washington, D.C. 20546

Dear Mr. Steinhoff:

We thank you for the opportunity to comment in writing on the U.S. General Accounting Office (GAO) draft report, "BIA Has Made Little Progress in Reconciling Trust Accounts and Developing a Strategic Plan" (GAO/AFMD-92-38, Draft, March 1992).

We concur with the general thrust of your findings, conclusions, and recommendations regarding the account reconciliation effort, but as explained orally to your staff, do not necessarily agree with the specific assertions made as to why a full reconciliation is not practicable. Quite simply, the enormity of the estimated costs to accomplish the task has become the paramount factor in any decision about where to go with reconciliation of trust fund accounts held for Tribal and individual Indian monies (IIM). These costs are driven not so much by the quality and availability of records, but rather by the sheer volume of them. This is especially a problem for the IIM accounts. Current estimates are that the reconciliation effort would involve scrutiny of possibly 17,000 boxes of documents. This volume is driven in large measure by the very large number of allotment interests as described in GAO's recent report, "Profile of Land Ownership at 12 Reservations" (GAO/RCED-92-96BR).

We take issue with the statement on pages 2 - 3 that "new discrepancies are likely to arise because BIA has done little to improve the methods it uses to account for Indian trust funds." As detailed in our oral comments, in the last two years reorganization, additional staffing, training, integration of investment systems, and strengthened internal accounting procedures have led to improved accounting practices. This is evidenced clearly by the few problems surfaced by the reconciliation contractor in reviewing fiscal year 1990 accounting transactions. We do agree that substantial additional improvements in the accounting area are warranted and indeed necessary. These will include better internal control processes and improved accounting and records systems.

Celebrating the United States Constitution

See comment 1

Now on page 2

See comment 2

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 Indian Affairs

See comment 3

We cannot comment on your assertions about the data reliability from the Minerals Management Service's (MMS) oil and gas royalty accounting and reporting, but expect MMS, if given the opportunity, will wish to respond fully.

In regard to reconciliations of past accounting, we should also point out that cost effectiveness will be a basic consideration for any decisions on how to pursue individual Tribal reconciliation and audits. The Department will be sensitive to the costs involved where individual Tribal efforts may cumulatively cost significantly more than the present contractual or an inhouse approach. Specific information will need to be developed about the relative costs of any alternative approaches to reconciliation and audits of Tribal accounts. Your recommendations on approaches to the IRM reconciliation are generally in line with our thoughts.

See comment 4


With regard to the strategic plan, let me simply say that in our view GAO's presentation does a disservice to the intensive work of the Inter-Tribal Monitoring Association on Indian Trust Funds (the Association) and us, discounting the consultative process we have developed over the past ten months. As you know, the trust fund improvement effort commenced under a heavy cloud of suspicion on the part of Tribal representatives. To ameliorate that distrust we initiated, and the Congress and the GAO encouraged--in fact insisted--that BIA consult closely with the Association in setting the foundation for trust fund improvement efforts. This effort began in June 1991, intensifying through January 1992 to the present. GAO representatives are well aware of the pace of events in establishing an environment of mutual trust among Departmental and Association representatives--a process that continues today. In fact, GAO representatives participated in and contributed to that process. While time-consuming and resulting in "limited progress" to date, this was necessary to lay the foundation for future improvement efforts. In fact, we believe such consultation is the "first step" necessary to improve BIA's trust fund operations. Tribal representatives have insisted that they be included in the strategic plan development process and are preparing a concept paper for consideration in that process. We actively have sought their involvement and agreed in a Memorandum of Understanding with the Association to take their concept paper into consideration in preparing the strategic plan. Copies of that agreement have been furnished to all interested parties. GAO representatives know that the Association's concept paper on the future of trust funds, a key to the strategic planning effort, has not yet been completed. We also would remind you that BIA produced an initial draft of a plan which dealt with both long and short term strategies in July 1991, and GAO representatives argued that BIA should take additional time to assure Tribal input and a comprehensive strategic approach. The consultative process has been valuable to date because this effort led BIA and the Association to conclude that improvements extending beyond trust funds accounting and investment issues were necessary to a comprehensive fix.

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The Association is nearing completion of its concept paper and we have made progress in identifying resources to assist in preparation of the strategic plan. Based on these factors, we anticipate that the strategic plan can be prepared in appropriate consultation with the Association and completed by early summer. We certainly agree that the strategic plan is needed.

Finally, we agree that Trust Funds Management is inadequately addressed in BIA's plan for implementation of the Chief Financial Officers Act of 1990. We will remedy that problem and resubmit the plan for Departmental approval.

Sincerely,



Ernest L. Brown
Assistant Secretary, Indian Affairs

Appendix I
Comments From the Assistant Secretary for
Indian Affairs

The following are GAO's comments on the Assistant Secretary for Indian Affairs' letter dated March 30, 1992.

GAO Comments

1. As our report points out, we identified various factors that would hinder a full reconciliation of trust fund accounts in addition to the volume of data that must be reviewed. These include missing records, commingled tribal and individual Indian accounting records, poorly documented accounting transactions, and unreliable revenue distributions of oil and gas royalties. All of these factors increase both the complexity and, ultimately, the cost of this project.

2. While BIA has taken some actions to improve trust fund operations, it has yet to address fundamental systems and control weaknesses that will ensure accurate trust fund accounting. We have modified our report language to indicate that new discrepancies could arise unless long-standing problems with BIA's trust fund accounting systems are corrected. With regard to staffing, as of March 19, 1992, BIA had yet to fill 14 of 51 additional trust fund management positions approved by the Congress 2 years ago. Also, although BIA has provided reconciliation training during the past year, BIA staff are not yet performing account reconciliations on a regular basis. While it is true that BIA's contractor identified few problems involving fiscal year 1990 transactions, the contractor's reconciliations were limited to tribal accounts and did not include Individual Indian Money accounts because of numerous problems which prevented their reconciliation. These problems are discussed in our report.

3. Various audit reports and studies have identified problems with the reliability of Minerals Management Service data. As stated in our recommendation, BIA should consider trust fund related activities outside its control in developing its strategic plan. The MMS oil and gas royalty payments to the trust funds is one of these activities.

4. We disagree. Our report accurately describes BIA's planning efforts through the close of our review in March 1992. BIA did not begin working with the Association on the strategic plan until requested to do so by Chairman Synar during the May 20, 1991, hearing. Subsequently, the House Committee on Appropriations June 19, 1991, report on the Department of the Interior and Related Agencies 1992 Appropriations Bill stipulated that BIA work with the Association in completing a strategic plan. In addition, the Appropriations Committees in their Conference Report on

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the Department of the Interior and Related Agencies fiscal year 1992 appropriations also required BIA to work with the Intertribal Monitoring Association in completing a strategic plan. Finally, BIA's July 1991 draft plan did not address long-term solutions but rather stated that long-term strategies would be provided in the future.

Appendix II**Major Contributors to This Report**

**Accounting and
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Division,
Washington, D.C.****Gayle L. Condon, Assistant Director
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FILE COPIES

Statement of
Frank Kofsole
 Deputy Director for Management
 Office of Management and Budget
 Senate Select Committee on Indian Affairs
 August 11, 1992

Thank you for inviting me to testify today. I welcome the Committee's involvement in the management of Indian trust funds.

At the Committee's request, I will speak to two issues:

- o the office of Management and Budget's (OMB) role in the resolution of problems associated with the management of Indian trust funds; and
- o the Administration's recommended approach for more effective management of Indian trust funds.

OMB ROLE

OMB's involvement with the management of Indian trust funds is a part of the Administration's overall effort to correct areas of high risk or management failure.

In June of 1989, in the wake of the then breaking HUD scandal, OMB's Director, Dick Darman, asked the Deputy Secretaries of the Cabinet Departments and the larger non-Cabinet agencies personally to review their most recent reports under the Federal Managers' Financial Integrity Act (FMFIA), assess the vulnerability of their programs and operations, and identify the areas of highest risk. I made the same request of the smaller agencies.

Agency responses, received in July 1989, were the basis for initial OMB/agency agreements on the areas of highest risk to the Federal Government. These agreements were confirmed in writing in the fall of 1989 and first publicly announced by the Chairman of the Senate Committee on Governmental Affairs in December 1989. OMB then began the practice of publishing the "High Risk List" in the President's 1992 and 1993 budgets. The President requested \$2 billion in specific funding in FY 1993 to correct 99 areas of risk.

Since 1989, agencies have corrected 28 high risk areas. In that same period, OMB has added 19 new Areas to the List. Overall, the agencies are doing reasonably well.

- o In 30 of the 92 areas that were on the High Risk List throughout 1991, significant progress has been made.
- o In 48 of the areas, active efforts are underway.
- o In 13 of the areas, OMB has reservations about the adequacy of agency plans and/or progress.

At the start of 1991, OMB had reservations about the adequacy of agency plans and progress in 23 high risk areas. By the end of 1991, that number had been reduced to 13. It should be noted, however, that two of these 13 areas involve the Bureau of Indian Affairs.

In order to make concrete progress in specific High Risk areas, the Administration has initiated since 1989 34 joint agency-OMB SWAT and review teams. These teams have to date addressed management problems in 21 agencies. SWAT and review teams are special, joint agency-OMB efforts to correct long-standing weaknesses in selected High Risk areas. SWAT teams are generally short-term in nature; review teams are generally longer term.

There are currently 20 such efforts underway; 14 teams have completed their work. Examples of resulting savings displayed in the President's FY 1993 budget include such matters as the legislative package to curb abuses involving Medicare Durable Medical Equipment. The package should result in savings of nearly \$1 billion over five years.

HIGH RISK AREAS INVOLVING INDIAN PROGRAMS

Three of the items on the current High Risk List involve the Bureau of Indian Affairs (financial systems and controls, BIA school facilities and dam safety, and management of Indian trust funds). Another High Risk area concerns management of the Indian Health Service at the Department of Health and Human Services.

While we have made progress in correcting the inadequacies of BIA financial systems and controls, progress has been inadequate in connection with BIA school facilities and dam safety and the subject of today's hearing -- management of Indian trust funds.

BIA Accounting Systems

In December 1990, the Secretary of Interior and the Director of OMB established a SWAT team to address the problems associated with BIA's accounting for appropriated funds. The Department of Interior's Inspector General had reported a possible \$95 million accounting discrepancy. A review of BIA's accounting operation in Albuquerque, New Mexico, found severe and wide-ranging problems with funds accountability and financial systems management. The SWAT team discovered that over 500,000 financial adjustments had been made in FY 1990 alone, and that over 12,000 individuals potentially had access to the system.

Secretary Lujan, in April 1991, announced the formation of a high level Management Improvement Oversight Committee to oversee BIA management improvements and report periodically to the Secretary and the Director of OMB. At the same time, the Secretary approved the formation of an interagency team of experts to implement the needed financial management improvements in Albuquerque. The team was recruited, on detail, from other Interior components and the Department of Defense. As a result, in October 1991, BIA was able to convert successfully to the Departmental accounting system.

Because of the increased controls in this Departmental system, and improvements made in operating procedures, adjustments of entries have been reduced from 500,000 to 6,000 per year; and the number of people authorized to make adjustments, reduced from 800 to 10 individuals. OMB continues to join with the Department of Interior in assuring strong oversight of management improvements.

Trust Funds

The Secretary of Interior and the Director of OMB initiated a second BIA SWAT Team in May 1991 to address financial problems associated with the \$2 billion in Indian Trust Funds. The BIA's management of these funds -- including accounting, investing and financial reporting -- has been the subject of serious criticism for many years by Interior's Inspector General, the General Accounting Office, and the Congress.

The litany of management problems that have been reported includes:

- o failure to reconcile or audit the 300,000 trust fund accounts;
- o erroneous allocations of receipts, erroneous payments to account holders, and failure consistently to invest trust fund balances;

- o lack of credible accounting data; and
- o lack of proper oversight and management.

In the May 1991 announcement of this effort, we stated that the DOI/OMB SWAT team would work with the BIA and the Inter-tribal Monitoring Association for Indian Trust Funds to manage the reconciliation and audit of Indian trust accounts, and produce an interim improvement strategy that would include bringing accounting and investment practices up to government-wide standards.

The SWAT team's first assignment was to get on top of the project to reconcile tribal and individual Indian trust fund accounts. As you know, BIA appropriations language, from 1988 through 1992, required BIA to reconcile and audit tribal and individual Indian accounts as accurately as possible to the earliest possible date.

The Administration attaches great importance to full compliance with these statutory requirements. We see resolution of the past problems as critical to the Federal Government's proper performance of its fiduciary responsibilities with respect to the Indian beneficiaries of the trust fund arrangements.

Phase I of the reconciliation contract with Arthur Andersen & Co., which began in July 1991, was designed as a "scoping" effort to determine the feasibility, cost and best approach to account reconciliations. In October 1991, Arthur Andersen reported that the reconciliation project, as initially conceived, would be very expensive due to the large volume of source documents, the poor organization and condition of BIA files, and the need manually to handle and automate tens of thousands of boxes of financial records.

Based on this preliminary report, we instructed Arthur Andersen to undertake additional scoping and testing work, and report back in early 1992 on the results. In January 1992, Arthur Andersen reported that reconciliation of tribal accounts could be conducted at an estimated cost of \$5 to \$15 million. We found this estimated cost to be generally reasonable, given the volume of transactions and the number of years to be reconciled.

For individual account reconciliation, however, Arthur Andersen estimated costs of \$108 to \$281 million, depending on the approach used. This amount is far greater than we think reasonable.

It is important to note that these Arthur Andersen estimates for individual accounts do not include testing of land ownership records; distribution percentages from income earnings; or

underlying income documentation for forestry, minerals, grazing, and other income sources.

CURRENT STATUS OF TRUST FUNDS RECONCILIATION

The Department of Interior, BIA and OMB have wrestled for over six months with how to proceed with reconciliation and how to approach related problems with respect to land records management and fractionated heirship of Indian lands.

During this same time frame, Congressman Synar released a report on trust funds titled Misplaced Trust: The Bureau of Indian Affairs' Mismanagement of the Indian Trust Fund. Congressman Synar's report comprehensively presented the past and current deplorable state of trust funds management and BIA's inability, until recently, to implement corrective action.

The history seems to be clear: promises were continually made and plans were continually developed, but not enough happened to make real progress.

A NEW APPROACH

I am here today to tell you that the Administration, like the Committee and the Indian communities, wants results, and we intend to get them -- through an incremental and open process.

We have consulted, within the Administration -- among the Bureau of Indian Affairs, the Office of the Secretary of Interior and OMB. We have consulted with representatives of the Indian communities. We have consulted with Congressman Synar and his staff whose report on Indian Trust Funds was so devastating. We hope that this hearing will open the door to a continuing dialogue with you, Mr. Chairman, and with your Committee.

We conclude that we must proceed now with reforms that, on the one hand, fulfill our Federal duty as trustees and, on the other, gain the confidence of the tribes and individual Indians that their interests, as beneficiaries, will be secured.

The long history here is a sorry one -- a combination of lack of management and inattention. There is no other single Federal program that has three High Risk areas. Successive Executive Branches share primary responsibility, but successive Congresses must share secondary responsibility. The Indian communities also share some measure of responsibility; they must join with us in seeking the general, rather than the specific, good. Many of the problems of Indian Trust Funds are fairly

easily solvable if we -- all of us -- care enough in fact to solve them.

We believe we have made some beginning progress over the past year:

- o We have implemented reform of the BIA accounting system in Albuquerque. This should provide for proper accounting for the almost \$1.6 billion in appropriated funds that the BIA receives each year. But we must not let those reforms wash away, like sand castles at the onslaught of the next wave. We must, all of us, insist on training, competence and accountability. The Albuquerque accounting systems will also be critical in the future to Trust Fund reform.
- o We have, we believe, established a relationship with the Inter-Tribal Monitoring Association. They have reached out to us, and we to them. We met just yesterday, and the day before, to discuss our mutual efforts of reform. I am impressed by the leadership and technical understanding of Elouise Cobell, Dan Press, Ben Mathies and their colleagues.
- o We must move forward on these matters together. The Federal Government must be satisfied that it is meeting its fiduciary obligations in the reconciliation and audit of trust fund accounts. At the same time, the Indian communities, as beneficiaries, must be satisfied that their trustee is in fact protecting their interests in the Trust Fund.
- o I believe we have achieved a common approach to the general framework for reform, even if not to all the details and the timing of reform. But the areas still being discussed -- and they are being discussed -- appear to relate more to feasibility and technique than to core substance.
- o We have developed, as requested by Congressmen Yates, and Synar, a draft of a Strategic Plan. Unlike previous drafts, it is concrete, with dates for accomplishment. We are currently working through the details of the Plan with representatives of the Indian communities.
- o Finally, and most important, I believe we have agreement between the Administration and representatives of the Indian communities on the principal objectives of Indian Trust Fund reform:

- We must ensure not only reasonable reconciliation and audit of the collections, investments and distributions of the Trust funds. We must also ensure reasonable verification, where feasible, that (1) the Trust Fund's collections were what should have been collected under settlement agreements, leases and permits and (2) these collections were properly deposited to the appropriate tribal accounts.
- Where monies are owed, they must be paid -- whether in or out.
- Reasonable reconciliation and audit of the collections, investments and distributions of the Trust Funds are needed and a means established for adding or subtracting from balances as adjustments are made. It is expected that the reconciliation and audit will go back to 1973 for tribal income accounts. The reconciliation and audit of judgments will go back to the date of their origination.
- There is a significant difference between the 2,000 tribal accounts aggregating \$1.5 billion and the 289,000 individual accounts aggregating \$440 million (as of September 1991). Arthur Andersen has estimated the cost of reconciling (not auditing) the tribal accounts at \$5-15 million, whereas the cost of reconciling the individual accounts would total \$108-\$281 million. We agree that the tribal accounts must be individually reconciled and audited, but the individual accounts will require a different methodology.
- Indian land records, in particular chain-of-title records, and fractionated interests must be addressed. There is currently a 6-12 month backlog in title and ownership examination, verification and reporting. We need to know who owns what and who is entitled to what. We also need to solve the burgeoning problem of increasingly minute interests.
- As trustee, the Federal Government must proceed with all of these matters. However, we must also provide hope of concrete progress in the near term. Therefore, as we proceed with those matters that must be dealt with across-the-board, we need also to audit a few tribal accounts with finality -- both as to account deposits and withdrawals and as to the correctness of the

amounts deposited. The purpose will be to test how this might best be done.

- We specifically need to pursue the reconciliation and audit of judgment award accounts. The accounts represent 70 percent of the Dollars held on behalf of the tribes.
- We agree that BIA's Office of Federal Trust Fund Management must be adequately staffed with well trained and well motivated people.
- Finally, we agree that the bank related functions of the Trust Fund need to be addressed. It may well be that there should be fundamental changes in organizational principle as we approach the year 2000, more than 150 years since the Trust Fund's establishment. But these issues should be addressed after we have completed the other tasks I have suggested. Our eventual conclusions on the Trust Fund delivery system will be informed by these other efforts.

All of which brings me, Mr. Chairman, to where we go from here.

- o Arthur Andersen will proceed with Phase II of its contract to reconcile tribal accounts. They will do this by year rather than by tribe. Work will start in September of this year and be targeted for completion by the end of 1994. Arthur Andersen will also complete reconciliation of Trust Fund systems by December 1994. BIA will contract separately from the current Arthur Andersen contract for an independent audit of the reconciliation work (with audits of this reconciliation process to be completed by the end of 1995).
- o We will ask Arthur Andersen, as a part of their general tribal account reconciliation effort, to accelerate reconciliation of tribal settlement funds. We will also try to have this effort audited prior to 1994-95. In this way, the tribes can see expedited progress with regard to the bulk of their funds.
- o We have comprised, with representatives of Indian communities, a working group which will, within the next 30 days, develop recommendations as to the methodology and timetable for examining 3-5 tribal accounts with respect to the amounts paid into the Trust Fund from settlement agreements, royalties, realty, mineral resource management, forestry management and range management.

The scope of this effort will depend on feasibility. For settlement agreements, the scope will include the correctness of both amounts paid in and the allocation of those amounts to particular tribal accounts. For oil and gas revenues, the scope will likely include only the correctness of allocation to particular tribal accounts. The scope for the other sources of income remains to be determined.

- o We will establish, with the participation of representatives of Indian communities, by October 1 of this year two further working groups: (1) to make recommendations on reconciling individual accounts; and (2) to make recommendations on the management of land records and fractionated heirships and interests. We will ask these groups to report back by the end of February 1993.

* * * * *

In conclusion, Mr. Chairman, we have made some significant progress in achieving an acceptable plan for addressing the problems currently inherent in Indian Trust Fund management. There is, I believe, an evolving commonality of approach -- among the Administration and representatives of the Indian communities.

But this evolving commonality of approach will be still born if those concerned in Congress do not join us in the effort. Glouise Cobell mentioned in her letter to me of August 10 "holding a meeting of representatives from Congress, the Executive Branch and the Tribes to get everyone to "buy in" to this long term effort." We agree. Perhaps you, Mr. Chairman, and Senator McCain, would, with congressman Synar's collaboration, arrange such a meeting in mid-October. We will hopefully then be in a position to all join in a long term effort that will work.

We cannot, Mr. Chairman, allow the Indian Trust Fund problems to continue to fester. It is not fair to the Indian tribes and individuals whose resources we profess to hold in trust. It is not fair to Americans generally who have the right to expect better of their Government. What has gone on in BIA trust fund management must stop; so, parenthetically, must many other BIA practices that constitute bad management.

The Administration has reached out to the Indian communities. We now reach out to you and your colleagues in Congress, Mr. Chairman. With a common effort, we can succeed. Let us join together to do so.

Thank you for inviting me to testify today. I will be happy to answer any questions.

Statement of**James L. LaBorde****Partner, Arthur Andersen & Co.****before the****Senate Select Committee on Indian Affairs****August 12, 1992**

Thank you, Chairman Inouye and Committee members, for inviting me to participate in your hearing today on management of Indian trust funds. I am the Arthur Andersen & Co. partner serving the Bureau of Indian Affairs (Bureau) under a contract for reconciliation of Indian trust funds managed by the Bureau. This contract has been in effect since May 23, 1991. With me is Greg Chavaria, the audit manager who spends the majority of his time working on the trust funds reconciliation project.

We are here today to give some background information on work we have performed in previous years for the Bureau and more recently, the Phase I work performed under the reconciliation contract. We believe that the audit work we have performed for the Bureau and other audits performed by the GAO, OIG and others has resulted in significant improvement efforts by the Bureau, such as the reconciliation project. During Phase I of the contract we made significant progress toward accomplishing the reconciliation of Tribal and Individual Indian Moneys (IIM) trust fund accounts, including the development of a working methodology for tribal trust accounts, inventories of available records at numerous record storage locations, accumulation and reporting of statistical information of transaction types and volumes, and projected estimates of work that could be performed in Phase II based on the knowledge gained during the Phase I of the reconciliation project.

Arthur Andersen & Co.'s past experience with the Bureau gave us the ability to begin the reconciliation within a very short time frame after the award of the contract. We believe that because of the experience we brought to the engagement, we were able to be efficient in our efforts, and we were able to assist the Bureau immediately in training the reconciliation engagement team.

I would like to begin by giving you a brief description of the work we had performed for the Bureau prior to the reconciliation project.

Previous Audit Work Performed

Prior to being awarded the trust funds reconciliation contract, Arthur Andersen & Co. contracted with the Bureau to audit the trust funds for the fiscal years ended September 30, 1988 -1990. It should be noted that these audits were financial and compliance audits of the total trust funds; not individual tribal or IIM trust accounts and not for periods prior to 1988.

During the performance of our services, we made a number of observations and recommendations and reported these to the Bureau. These observations and recommendations have been documented in our audit opinions, compliance reports and reports on internal controls and accounting policies and procedures submitted at completion of each year's audit. Because of the material weaknesses in internal controls identified, as well as the inability to verify certain account balances, our audit opinions were heavily qualified. Some of the more significant weaknesses disclosed in these reports include:

- A lack of consistency in accounting procedures and documentation Bureau-wide causes certain accounting errors in the Indian Trust Funds. Standardized, documented policies and procedures have not been instituted for some significant Bureau-wide accounting procedures, while some

others are seriously out-of-date. This results in the Bureau's inability to ensure that the transactions are properly conducted, recorded and reported.

- Multiple accounting systems used to record the same activity are not routinely reconciled
- Inadequate segregation of duties
- Records management is inconsistent across the Bureau and is inadequate to ensure the proper filing and storing of Indian Trust Fund records to support trust financial activity
- Internal financial statements not being prepared in accordance with GAAP
- Data processing controls could not be relied upon to ensure that data are properly processed
- Certain IIM distributions were not calculated correctly due to outdated ownership records
- The U.S. Treasury cannot provide an independent verification of cash balances. In addition, the Bureau invests in overnight deposits based upon a combination of daily automated and manually calculated balances that are determined in a manner that allows, in some instances, differences between invested balances and balances available for investment to go undetected until after the investments have been placed with Treasury.

Currently the Bureau is in the process of implementing corrective actions to address these and other weaknesses and to improve the efficiency of the Bureau operations as well as the accuracy of accounting information. The Bureau has initiated efforts such as:

- Initiating the reconciliation effort discussed previously that will include the reconciliation of long outstanding system variations between the IIM detail system and the Finance System (general ledger)
- Working with Arthur Andersen & Co. to develop automated procedures to reconcile cash balances with the U.S. Treasury on a regular basis. Although Treasury will not provide verification of cash balances, the Bureau is able to reconcile cash activity to that reported by Treasury.
- Working with Arthur Andersen & Co. in conducting an operational review of the Investment accounting function in order to improve the efficiency of accounting operations, as well as improve controls.

The Bureau is moving in the right direction with these and other similar effort to improve overall efficiency, in an effort to become more responsive to Indian tribes and individuals.

Reconciliation Efforts

As discussed previously, in May 1991 we were awarded a contract by the Bureau to "reconcile" (or reconstruct) Tribal and Individual Indian Money Accounts, to source documents, as well as perform certain system level reconciliation work (Finance System to the MoneyMax and IRMS Systems) Our initial efforts under Phase I of the contract for the time periods from June 1991 through December 1991 concentrated on Tribal and IIM reconciliation work. During this time we had several planning and assessment meetings with the Bureau, the Association and others such as the GAO, OMB and tribal representatives. During these meetings we discussed several options for scopes of work to be performed, and methodologies for accomplishing the required tasks. The Phase I effort was designed to determine the most efficient and effective way to approach the reconciliation work, including the development of a cost estimate to conduct the reconciliation work, that would be responsive to the concerns of all parties.

The work performed in Phase I produced the required results with regard to the development of an efficient and effective approach to reconciling tribal trust accounts. As a result of the work performed we were also able to recommend some alternative options for reconciliation of IIM account activity, as it became evident that an approach similar to that of tribal accounts would not be practicable. The work performed during this time period involved:

- Planning the approach and timing of the work at all sites, including working with the Bureau to develop training materials, and train Arthur Andersen staff on the operations of the Bureau, system transaction flows and accounting documentation.
- Conducting inventories of available records located at various Bureau locations as well as archives, record centers, etc. Inventories conducted and listings obtained from record centers involved an estimated 69,000 boxes that possibly contained tribal records. Through a detailed review of the inventories we narrowed the population to approximately 17,000 boxes containing tribal documents.
- We built electronic databases of available records in order to manage the large volumes of documents and to allow easy access to documents needed during the reconciliation effort. Using the computer systems established at each reconciliation location we are able to manipulate the database to assist in locating needed documents.
- We established computer systems at Albuquerque and the 3 IIM sites in order to conduct the automated reconciliation approach utilizing automated databases of accountholder statements and electronic image technology for permanent storage of documents and reconciliation results.
- We began the reconciliation process for the first 37 tribes specified in Phase I of the contract and we found that due to the nature of the documentation, that it would be much more efficient to reconcile all tribal accounts simultaneously. We reported this to the Bureau, Association and others at the first assessment meeting in October, and began reconciling accounts using the improved methodology.
- We attempted to reconcile IIM accounts using the methodology developed, and due to several unresolved issues including the prohibitive cost involved, it became evident that IIM should not be reconciled using the same assumptions and scopes as tribal trust. At the October assessment meeting we recommended that a different approach for IIM be considered primarily due to the cost involved, as well as other issues that will effect the reliability of the results, such as ownership records. As a result, IIM was scaled back in October, although we continued accumulating information for further assessment through concentrated efforts on specific areas of work reported on in January.

January 28, 1992 Assessment Meeting

At the Assessment meeting of January 28, we reported the progress of the reconciliation efforts through that time, including an overview of the approach, projected fees based on varying assumptions, and listings of unresolved issues that would effect the scope of work. I will discuss briefly, some of the key issues and concerns surrounding the Tribal and IIM reconciliation efforts discussed during this and previous meetings.

Tribal Trust

Scope of work- There is a wide range of costs associated with this effort dependent upon the scope of the work to be performed. Scoping considerations include:

- Materiality considerations of certain transactions (i.e. \$ cut off)

- The benefit of testing all investment rollovers as opposed to alternative tests of these transactions
- The number of years to be reconstructed

Level of support- There is a need to expand the testing of revenue receipts (scoping is also a consideration) to include the review of lease agreements, etc. resulting in the eventual cash receipt to the tribe.

Information from other agencies- Other federal agencies beyond the Bureau's control, such as MMS, collect revenues for the Bureau's trust funds.

Ownership Records- The issue of the reliability of the ownership records used to determine the proper allocation of revenue to account holders has been discussed extensively. This issue is not as significant a concern for Tribal Trust, as tribes' interests in an allotments do not change nearly as often as individuals' interests.

IIM System Transfers- Certain tribes have raised the issue of tribal funds maintained in the IIM system. This issue affects some tribes more than others, as not all agency locations funnel funds through IIM accounts and/or maintain tribal funds in IIM accounts. In January we suggested these be approached by concentrating testing on large revenue sources at each location rather than focusing on specific IIM accounts. Scopes should also be considered based on the relative dollar volume of transactions flowing through IIM accounts for tribes.

After the January meeting, our efforts were directed away from full scale reconciliation of tribal accounts, and we focused our efforts on preparing training materials, training Bureau personnel on performing reconciliation work, performing system level reconciliation work (MoneyMax vs. Finance), assisting in designing and documenting procedures for reconciling the Finance System to U.S. Treasury accounts.

IIM

Volume of Transactions- Volumes of transactions affecting IIM accounts are much higher than volumes affecting Tribal Trust accounts, and the number of accounts involved have grown exponentially since the inception of the fund.

Source Document Availability- Much of the needed source documents were located, however known gaps exist for the time periods that were being considered for reconciliation. There has also been a great amount of movement of accounting records between locations over the years making it difficult to locate specific documents.

Ownership Records- The support for the legal allotment ownership records of the Bureau are inconsistent with the records used to calculate distributions. It is not determinable at this point whether or not the records used for the distributions are correct, as there is the possibility they were not updated properly as a result of probates, etc.

Estimates provided at the January meeting were based on rough projections of the entire population of accounts maintained by the Bureau and the scope of work requested at that time (all transactions for all accounts). Arthur Andersen & Co. made it clear at that time, and previously, that we **do not recommend the Bureau continue to attempt this level of effort to reconcile IIM**. We did recommend the Bureau consider the following alternative limited procedures to address specific problem areas in IIM.

- Perform System reconciliations to resolve long outstanding variances (IRMS to Finance)
- Reconcile the Finance System to U.S. Treasury records

- Reconcile and distribute remaining balances in special deposit accounts
- Perform operational reviews of IIM operations and standardize processes and documentation

Remainder of Phase I

Subsequent to the January 28, 1992 assessment meeting our efforts were redirected from reconciliation of tribal and IIM accounts to other more concentrated efforts. Since the January meeting our work has included:

- The development of a formalized training manual, including all aspects of the reconciliation methodology developed. Final copies of the training manual were delivered on July 31.
- The training of four Bureau accounting personnel and five temporary Bureau clerks in the reconciliation methodology developed. Bureau staff have been performing actual reconciliation work as part of their training since January on a very limited basis.
- Prepared final reports of reconciliation work performed at the three IIM Phase I sites, including management recommendations based on observations. Final reports were delivered on July 31.
- Reconciliation of the investment subsidiary detail system (MoneyMax) to the general ledger control accounts (Finance System).
- Providing assistance in developing methodology and procedures manuals for reconciling Finance System balances with U.S. Treasury balances
- Developing of tribal trust account statements to be used to report reconciliation results to tribes, including pro-forma interest calculations.
- Performing an operational review of the Division of Trust Funds Investment accounting operations for the purpose of providing specific recommendations to improve the efficiency of operations as well as improve internal control procedures.

Future Reconciliation Effort

As discussed previously we have presented these and other findings to the Bureau, OMB, the Association and other interested parties for consideration. There has been very little actual detailed reconciliation work on tribal and individual accounts performed since January. We are presently waiting for a final decision regarding the scope of work to be performed in Phase II of the contract.

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STATEMENT of
 HONORABLE MIKE SYNAR

THE BUREAU OF INDIAN AFFAIRS' MANAGEMENT
 OF THE INDIAN TRUST FUND

August 12, 1992

Mr. Chairman, thank you for the opportunity to be here today to address the Select Committee on Indian Affairs on the Bureau of Indian Affairs' (BIA) management of Indian Trust Funds.

In April of this year, the Committee on Government Operations completed a three year investigation of the Bureau of Indian Affairs' (BIA) management of the \$2 billion Indian Trust Fund.

The Indian Trust Fund is more than balance sheets and accounting procedures. These monies are crucial to the daily operations of Native American tribes and a source of income to tens of thousands of Native Americans.

Sadly, however, the Bureau of Indian Affairs (BIA) has failed to fulfill its fiduciary duties to the beneficiaries of the Indian Trust Fund. The Committee on Government Affairs' report -- approved unanimously by the Subcommittee and Full Committee -- outlines these and other problems and makes recommendations to improve the management of the Indian Trust Fund and thereby improve the protection of the account holders.

The Bureau of Indian Affairs (BIA) has failed to fulfill its fiduciary duties to the beneficiaries of the Indian Trust Fund. The Bureau's management of the Indian Trust Fund has been grossly inadequate in numerous important respects. The Bureau has failed to accurately account for Trust Fund monies. Indeed, it cannot even provide account holders with meaningful periodic statements on their account balances. It cannot consistently and prudently invest trust funds and pay interest to account holders. It does not have consistent written policies or procedures that cover all of its trust fund accounting practices. Under the management of the Bureau of Indian Affairs, the Indian Trust Fund is equivalent to a

bank that doesn't know how much money it has.

BIA Problems Are Not New

Financial management problems in the Bureau of Indian Affairs' management of the Indian Trust Fund have been neglected for decades. There is a continuing crisis in the management of the Bureau of Indian Affairs that can only be cured by radical changes in leadership, organization, accountability and communication by the Bureau of Indian Affairs and the Department of the Interior.

The real losers in the mismanagement of the Indian Trust Fund are the Tribes and the individual Indian account holders. These account holders are being misrepresented by the federal government. Yet victims of this nonfeasance have had no recourse except to the very agency that responsible for their predicament.

As during one of our Subcommittee sessions, had this type of mismanagement taken place in any other trust arrangements such as social security, there would be war. Instead, some of those most responsible for the recent failures within the management of the Indian Trust Fund received cash awards from the Department of the Interior for management excellence.

The scope and severity of the gross mismanagement by the BIA headquarters staff is made worse by the inattentive and indifferent leadership within the Bureau of Indian Affairs and the Department of the Interior. This type of trust fund mismanagement would never be tolerated in other, similar trust activities. That it has taken place in the administration of the federal government's sacred trust for Native Americans can only be described as a national disgrace.

The trust of the Congress, the taxpayers -- and most importantly -- the tribes and Individual Indian Money account holders has been misplaced in the Bureau of Indian Affairs. BIA has failed in the performance of its duties to us all.

Subcommittee Investigation

In the spring of 1989, the Environment, Energy and Natural Resources Subcommittee initiated an investigation of problems associated with the Bureau of Indian Affairs' management of the Indian Trust Fund.

The Investigation was prompted by frustration over BIA's failure to adequately respond to previous Committee reviews and recommendations for corrective action, and by large number of complaints about the Bureau's efforts to procure financial management services for management and administration of the Indian Trust Fund. The Subcommittee was assisted in the investigation by the General Accounting Office (GAO).

The purpose of the Subcommittee investigation was to review and evaluate the Bureau's efforts to correct chronic management deficiencies that have plagued the Trust Fund program as well as its efforts to implement repeated Congressional directives designed to provide a full and accurate accounting of the individual Indian and tribal account funds.

On October 26, 1989, April 24, 1990, September 25, 1990 and May 20, 1991, the Environment, Energy and Natural Resources Subcommittee held public hearings to review the problems surrounding BIA's management of the \$2 billion Indian Trust Fund. Evidence gathered and testimony presented to the Subcommittee during this on-going investigation demonstrate that despite clear guidance on its fiduciary duties contained in treaties, law and court decisions, the BIA's indifferent supervision and control of the Indian trust funds has consistently resulted in a failure to exercise its responsibility and any reasonable expectations of the tribal and individual account holders, Congress and taxpayers.

Few of these BIA management problems are new. For example, in 1828 -- just four years after its creation -- H.R. Schoolcraft described the Bureau's financial management as follows:

The derangements in the fiscal affairs of the Indian department are in the extreme. One would think that appropriations had been handled with a pitchfork...there is a screw loose in the public machinery somewhere.¹

One hundred sixty-three years later, Schoolcraft's assessment of the BIA's financial management still rings true. BIA's administration of the Indian Trust Fund continues to make the accounts look as though they had been handled with a pitchfork. Undoubtedly, there is a screw loose in the public machinery at the Bureau. Indeed, while mismanagement of the Indian Trust Fund has been reported for more than a century, there is no evidence that either the Bureau or the Department of Interior has undertaken any sustained or comprehensive effort to resolve glaring deficiencies.

Today, BIA has serious financial management problems permeating almost every aspect of its five trust principal accounting systems, as well as, other systems which provide financial information to those systems including the Mineral Management Service's royalty management systems. While tribes, individual Indians and Congress have long been concerned about the accuracy of BIA's accounting for trust receipts and disbursements, the Bureau and the Interior Department have simply failed to undertake effective, corrective actions.

For example, in 1982 the General Accounting Office (GAO) reported that BIA's

¹Schoolcraft, Personal memoirs, at 319, reprinted in *The Office of Indian Affairs, Service Monographs of the United States Government no. 48*, Institute for Government Research, The Johns Hopkins Press, 1927, at 27.

appropriation and trust fund accounting systems needed major improvements. At that time GAO found that the information produced by BIA's accounting system was unreliable; that trust accounts had not been reconciled with the agency's general ledger to ensure correct account balances; and that controls over cash receipts and disbursements were inadequate.

These 1982 findings were not new. Essentially, the same findings were embodied in the GAO's 1928, 1952 and 1955 Audits of the Indian Trust Fund:

...deficiencies include disbursements of individual Indian moneys without adequate support, deficiencies in accounting for cash and bonds and in the computation and distribution of interest income, and other weaknesses in internal procedures.²

At the Subcommittee's May 20, 1991 oversight hearing, the General Accounting Office provided the following summary of the long-term problems in the Bureau of Indian Affairs' administration and management of the \$2 billion Indian Trust Fund:

- (1) Inadequate systems for accounting for and reporting trust fund balances;
- (2) Inadequate controls over receipts and disbursements; (3) Absence of periodic, timely reconciliations to assure accuracy of accounts; (4) Inability to determine accurate cash balances; (5) Failure to consistently and prudently invest trust funds and/or pay interest to account holders; (6) Inability to prepare and supply account holders with meaningful periodic statements of their account balances; (7) Absence of consistent, written policies and procedures for trust fund management and accounting; and, (8) Inadequate staffing, supervision and training.

Just since 1982, more than thirty audits have been performed by the Office of Inspector General (OIG) of the Department of the Interior and public accounting firms hired by BIA.³ Each of these reports have noted serious accounting and financial management problems and weak internal controls throughout BIA. Following is a summary of the OIG findings:

Individual Indian Money Accounts The BIA does not have a centralized managerial operation with responsibility and control over all aspects of the individual Indian money operation. Many BIA agency offices did not reconcile their account balances

²U.S. General Accounting Office, Administration of Individual Indian Moneys by Bureau of Indian Affairs, B-114868, November, 1955, at 1.

³See, for example: Office of Inspector General, Final Audit Report on Selected Aspects of Indian Trust Fund Activities, Bureau of Indian Affairs, Report No. 89-117, September 29, 1989; Price-Waterhouse, Task Reports, 1983 and 1984; Arthur Andersen & Co., Tribal and Individual Indian Monies Trust Funds, Report of Independent Auditors, Financial Statements as of September 30, 1989 and 1988; May 11, 1990.

with BIA's control account balances, did not meet their trust responsibilities relating to funds held in supervised accounts, and made significant errors in computing interest payable on IIMs. The BIA agency offices have numerous accounting errors and other internal control weaknesses.

Oil and Gas Royalty Payments Royalties were not distributed to Indian mineral owners in a timely manner. Interest earned on oil and gas revenues deposited in special accounts and U.S. Treasury accounts were not distributed to tribes and individual Indians. Oil and gas collections were not deposited on time.

Judgment Award Funds Improper accounting entries and inadequate internal controls resulted in over-disbursements of judgment award funds and negative account balances. Permanent investment accounts were reduced below authorized levels. Funds were not distributed to IIM account holders.

Leasing and Realty Operations Agricultural lands remained unleased for extended periods, and leases were not reissued in a timely manner. Fair market rental rates and grazing fees were not charged. Delinquent rents were not collected, and interest was not collected on late rental payments. Rents were not properly allocated to landowners and concerns about the accuracy of land ownership records were raised, particularly in relation to handling of estate transactions.

Extensive as they may seem, the Inspector General reports present a *short* list of the financial management and accounting failures of BIA. Indeed, these difficulties are symptomatic of the chronic problems of BIA management -- problems magnified by an accounting system that cannot tell the tribes and individual Indians or IIM account holders how much money they have in their accounts.

In 1982, Congress passed the Federal Managers' Financial Integrity Act (FMFLA)⁴ directing each executive agency to review and evaluate its systems of management and accounting controls in order to enhance the integrity and effectiveness of government operations. In its first report under FMFLA in 1983, and for each year thereafter, the Department of the Interior has reported serious, longstanding financial management problems at BIA. In fact, in its 1990 FMFLA report, the Department of the Interior characterized the entire Bureau as a material internal control weakness.

In its most recent FMFLA report, the Department again cited the BIA for inadequate management of Trust Funds:

The Bureau's management of Individual Indian Monies (IIM) and Tribal trust funds is inadequate to properly maintain and administer the \$2 billion fund for which it has

⁴31 U.S.C. §§ 1105, 1113, Public Law 97-452, 96 Stat. 2467.

responsibility. The BIA's management of Tribal and Individual Indian Trust Funds lacks effective management/internal controls, reliable systems, and management information. Tribal and individual accounts lack credibility and have never been reconciled in the entire history of the trust fund.

Despite its candor in outlining the complete absence of effective financial management and control at the BIA, the FMFLA report supplies little evidence that the Bureau has actively pursued corrective actions of previously identified material internal control weaknesses. In its December 17, 1990 audit report, the Office of Inspector General (OIG) raised serious concerns about the Bureau of Indian Affairs' compliance with the Act. The OIG evaluated actions taken by the Bureau: 1) to correct previously reported material internal control weaknesses; 2) to assess component risk; and 3) to document actions to correct weaknesses identified by current control evaluations. The OIG found that:

...the management control evaluation process implemented by the Bureau did not fully comply with the requirements of the Act. Specifically, we found that the Bureau had not effectively corrected 11 previously reported weaknesses that were deleted from its corrective action tracking system, updated the component inventory, conducted adequate risk assessments, conducted evaluations or tests in accordance with guidelines, and maintained an effective tracking system to verify that corrective actions were completed. Accordingly, there was no assurance that all weaknesses were identified or that control systems were operating as intended.

The most recent FMFLA report provides little evidence that actions completed in 1991 corrected previously identified material internal control weaknesses and the planned action cited in the report for 1992 would not correct all of the fundamental control weaknesses, which include longstanding financial management deficiencies.

In 1983, the accounting firm of Price Waterhouse reported to BIA that its accounting systems and control procedures were inadequate. Among the deficiencies noted, Price Waterhouse found that:

Many control systems lack clear assignment of responsibility or are not properly assigned. For example, control to assure that reconciliations between agency and accounting system records are performed and that [unreconciled] items are identified and corrected on a timely basis has not been clearly defined.

The Arthur Andersen & Co.'s Fiscal Year 1988 and 1989 financial audits of the trust funds confirmed the historic weaknesses of BIA's accounting controls. Indeed, those reports found that the "accounting systems and internal control procedures utilized by the Bureau suffer from a wide variety of procedural weaknesses and other problems...some of these weaknesses are so pervasive and fundamental as to render the accounting systems unreliable." As a result of these problems, Arthur Andersen was unable to confirm cash balances for individual or tribal accounts, highlighted major inadequacies in accounting

records and related systems, and found numerous accounting errors during its audit. Moreover, the report identified 16 material accounting system and internal control weaknesses that Arthur Andersen & Co. said required immediate attention.

In 1989, in response to the long-term nature of BIA's mismanagement of the Indian Trust Fund and BIA's other persistent management failures and deficiencies, the President's Office of Management and Budget (OMB) identified BIA as a "high risk" agency requiring priority attention. At that time, OMB directed the BIA to prepare a strategic plan for corrective action on these problems. At the Subcommittee's May 20, 1991 oversight hearing, the Assistant Secretary of the Interior for Indian Affairs confirmed that the Bureau had not complied with the OMB directive. The President's Budget for Fiscal Year 1993 expressed "reservations about the adequacy of progress and/or plans." The President's Fiscal Year 1993 Budget proposal requests an additional 40 full-time employees for the Office of Trust Management and an additional appropriation of \$5 million "to enhance management oversight, improve accounting and investment services and establish a cadre of systems experts to work on identified long range improvements to trust fund operations, systems and clientele services.

A Tinder Box Waiting for a Spark

Historically, BIA has performed virtually all trust management functions in-house. These functions include the receipt, control, investment, and disbursement of trust funds.

As noted earlier, scores of reviews of the Bureau's management since 1982 confirm that BIA's financial management system has failed to provide adequate accounting and other information needed for proper control over the trust fund investment program. For example, the Bureau does not -- and cannot -- conduct periodic or timely reconciliations of the approximately 300,000 accounts in the Indian Trust Fund to assure they are accurate. The Bureau does not -- and cannot -- provide account holders with accurate periodic statements of account balances. These deficiencies have been exacerbated by the fact there has been virtually no oversight of Trust Fund administration from BIA headquarters.⁵

The following exchange between Chairman Synar and Department of the Interior Inspector General James R. Richards during the Subcommittee's May 20, 1991 hearing illustrates the dilemma of dealing with these BIA problems:

Mr. SYNAR. Mr. Richards, what is Congress to do [about these continuing problems]?

Mr. RICHARDS. I am not a Congressman and I am not Chairman of the Subcommittee, but I would be tearing my hair out, I think.

⁵October 26, 1989 hearing at 42.

Mr. SYNAR. The Subcommittee is holding its fourth hearing since October of 1989, on the Bureau's mismanagement of the Indian Trust Fund. I know you are well aware we have worked hard and long to force the Bureau to clean up its act.

After all this time and inaction by BIA, are you convinced that the Bureau is truly receptive to doing the things that must be done to get this house in order?

Mr. RICHARDS. I think it is. Let me tell you why I say that. The Bureau is a multifaceted monster. It is an organizational nightmare.

Mr. SYNAR. That may be the understatement of the year.

Mr. RICHARDS. I have been familiar with the Bureau of Indian Affairs and Indian programs for 30 years, having grown up in the West and worked for a Western Senator and worked with the Department of Interior.

I think the Bureau of Indian Affairs will not change until there is some political consensus in that it must change. It is the favorite... target of everyone who is shocked by its ineptitude and its insensitivity.

Yet, when we try to restructure it either from a Congressional sense or from an Executive Branch sense, there are always naysayers and there never develops a political sense for positive change.

Mr. SYNAR. But there is political consensus that we [must] have a basic accounting for the tribes and individuals?

Mr. RICHARDS. No question about that.

Mr. SYNAR. You don't need change to do that?

Mr. RICHARDS. No question about that. The BIA is a tinder box simply waiting for a spark.⁶

Despite decades of criticism about these manifest management deficiencies, the BIA has failed to take adequate measures to correct its shortcomings or to implement the advice of its own experts.

Scores of reports over the years by the Interior Department's Inspector General, the U.S. General Accounting Office, the Office of Management and Budget and others have documented significant, habitual problems in BIA's ability to fully and accurately account

⁶May 20, 1991 hearing at 82.

for Trust Fund monies, to properly discharge its fiduciary responsibilities, and to prudently manage the trust funds.

During the Subcommittee's four oversight hearings on this subject, Subcommittee members expressed serious concern over the Bureau's inexcusable slowness in resolving the persistent management deficiencies that have plagued the Trust Fund program. Now, over two years after the Subcommittee's first oversight hearing, our continuing review suggests that only marginal progress has been made by the Bureau of Indian Affairs in recognizing and correcting these problems.

Our Committee has been particularly troubled by BIA's efforts -- undertaken only grudgingly -- to implement repeated Congressional directives designed to provide a full and accurate accounting of the individual and tribal account funds. Over the course of the Environment, Energy and Natural Resources Subcommittee's three-year investigation, only minimal progress on this effort has been made, and BIA continues to move at a snail's pace. The Committee was equally concerned over the BIA's failure to implement numerous Inspector General recommendations regarding establishment of a trust fund loss policy; failure to prepare and implement a strategic management plan as urged by the Office of Management and Budget, the Comptroller General of the United States, the House Committee on Appropriations, and the Subcommittee; its failure to comply with the Brooks Act, governing acquisition of automatic data processing equipment and services; and, its failure to implement past recommendations of the Committee on Government Operations. In short, the Bureau of Indian Affairs has repeatedly failed to take any resolute, corrective action to reform its longstanding financial management problems.

Additionally, the Bureau wasted more than two years and as much as \$1 million of taxpayer money attempting -- inappropriately and unsuccessfully -- to "privatize" its financial management responsibilities over the Indian Trust Fund. In fact, despite the contractor's repeated failures to deliver anything of value in return for substantial monthly payments for services, the Bureau never even bothered to demand performance by the contractor. Moreover, the Bureau persisted in its attempts to transfer financial management services for the Indian Trust to a commercial bank even after Congress had directed it not to do so -- five times. And in its ultimate affront to Congress and the account holders of the Indian Trust Fund, the Bureau gave a \$5,000 cash award for "management excellence" to the headquarters employee who helped design and oversee this privatization fiasco.

The Bureau has repeatedly ignored directives to undertake needed management reform measures. For example, in September 1989, the Inspector General of the Department of the Interior recommended that the Bureau establish written procedures that describe when the Bureau is liable for losses of Indian trust funds and how Indian account holders will be reimbursed in those cases for which the Bureau is liable and to prepare and implement a Bureau procedure that recognizes investment losses of trust funds and ensures that reimbursement of the losses plus interest will be made, where appropriate, within a reasonable time after sustaining the losses. Two and one half years later, little has been

done. Although a loss policy statement was distributed sometime after October 16, 1991, it fails to make anyone at the Bureau of Indian Affairs accountable for its implementation or enforcement. Significantly, this so-called loss policy developed by the Bureau – apparently without the assistance and concurrence of the Office of Solicitor at the Department of the Interior – misstates the federal government's legal and ethical responsibility to pay interest on Individual Indian Money accounts that are invested. This so-called loss policy confuses examples in which the fiduciary – the Bureau of Indian Affairs – is clearly responsible to repay interest earned in instances in which IIM account proceeds are either not invested or under-invested. Moreover, no account holders, who suffered losses which were discovered prior to BIA's recent effort to audit and reconcile tribal and IIM accounts, have been notified of losses as a result of the policy and no funds have been requested from Congress for reimbursements and no reimbursements for losses resulting from Bureau errors have been made. This so-called loss "policy" is superficial at best, and is unlikely to correct well-documented deficiencies and long overdue reforms.

The Bureau has been slow to implement other reform directives. For example, in October 1989, the President's Office of Management and Budget identified the Bureau of Indian Affairs' management of the Indian Trust Fund as a "high risk" activity and directed the Department "to identify its weaknesses in the Department's budget and operating plans to assure that appropriate resources were allocated to correct the problems."⁷ In other words, the Bureau needed to amend its plans for correcting longstanding financial management deficiencies in BIA's management of the Indian Trust Fund. At the Subcommittee's May 20, 1991 hearing, the Bureau stated that it had not developed a comprehensive plan to correct all control weaknesses. In fact, there still is no plan.

On May 6, 1991, the Comptroller General of the United States General Accounting Office (GAO) wrote Secretary of the Interior Manuel Lujan, Jr. and the Bureau directing the Department and BIA to prepare a written statement of actions to be taken to complete to correct the management deficiencies plaguing the Bureau; to develop plans and timetables for completing the audit and reconciliation of Indian trust accounts; and to develop policies and procedures to ensure that Indian trust fund balances remain accurate after the accounts are reconciled. Under federal law the Department of the Interior was obligated to respond to the Comptroller General recommendations by July 7, 1991. It failed to do so. In fact, the BIA has utterly failed to adequately address any of the Comptroller General's recommendations.⁸

⁷Letter from Executive Associate Director, Office of Management and Budget to Under Secretary of the Interior, October 4, 1989, attachment B. See also: Secretary of the Interior, Annual Statement and Report, Federal Managers' Financial Integrity Act, December 21, 1989, at 2.

⁸U.S. General Accounting Office, BIA Has Made Limited Progress in Reconciling Trust Accounts and Developing a Strategic Plan, GAO/AFMD-92-38, June 18, 1992.

Finally, at the Subcommittee's May 20, 1991 oversight hearing, Chairman Synar asked the Bureau about progress on a BIA strategic plan as well as the Bureau's efforts to implement the Committee on Government Operations' July 1985 report addressing the persistent problems in implementing a comprehensive program to assure fair and timely payment of Indian oil and gas royalty payments -- management and accounting problems related to those confronting the Indian trust funds. The Bureau reported at that time -- six years later -- that no such plan exists. In fact, the Bureau admitted that no interest from royalty income has been distributed to an account holder since 1985. Indeed, most of the problems noted by the Committee's 1985 report persist unabated.

The Subcommittee's review of the Bureau's various management improvement initiatives revealed that comprehensive corrective actions were rarely undertaken and almost never carried through to a successful conclusion. Instead, the Bureau has routinely compiled running inventories of projects and initiatives without even attempting to knit these efforts together into a cohesive framework. Although the Bureau is chronically behind schedule -- even on self-imposed deadlines -- it rarely bothers to justify or even explain its delays in implementing corrective actions. Indeed, the only thing that seems to stimulate a flurry of activity at the Bureau is an impending appearance by the Assistant Secretary of Indian Affairs before a Congressional Committee. Afterward, all reform activities appear to suspend until shortly before the next oversight session.

As a result of this dismal history of inaction and incompetence, there is no assurance that the Bureau actually desires to, or will, make any substantial advancement toward rectifying the basic financial management failures brought to their attention. Despite a decade of *initiatives*, the Bureau's headquarters leadership and accountability continue to be woefully inadequate. Although many significant problems continue to be cited by the Inspector General, GAO, OMB, by independent accounting firms and the Subcommittee on Environment, Energy and Natural Resources, the Bureau's top officials remain quick to promise, but slow to perform. Only marginal and grudging progress has been made by the Bureau since the Subcommittee began its oversight efforts in 1989. As a result, on the whole, the Subcommittee is unable to report a positive picture of the Bureau's headquarters' concern over the management of this program.

This absence of interest and attention by the Bureau's top officials also undermines the ability of many dedicated, hardworking Bureau employees -- especially at area and agency offices -- to effect improvements in service to Indian Trust Fund account holders. It is apparent that top officials at the Bureau of Indian Affairs have utterly failed to grasp the human impact of its financial management of the Indian Trust Fund. The Indian Trust Fund is more than balance sheets and accounting procedures. These monies are crucial to the daily operations of Native American tribes and a source of income to tens of thousands of Native Americans.

To the extent the Bureau has made any progress in this area, it appears that the Subcommittee's continuing oversight hearings have been virtually the only reason. It can only be hoped that the Committee on Government Operations' report and recommendations and this Committee's interest will have a still greater effect on the Bureau of Indian Affairs' management of the Indian Trust Funds.

STATEMENT OF DR. EDDIE F. BROWN, ASSISTANT SECRETARY - INDIAN AFFAIRS, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, AT AN OVERSIGHT HEARING BEFORE THE UNITED STATES SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON THE "INDIAN TRUST FUNDS MANAGEMENT PROGRAM".

August 12, 1992

Good morning Mr. Chairman, and Members of the Committee. I am pleased to be here to discuss our efforts to improve the management of Indian trust funds. I have with me today, Mr. Dave Matheson, Deputy Commissioner of Indian Affairs, Mr. Jim Parris, Director, Office of Trust Funds Management, and key staff from Headquarters and the Trust Funds Office.

Indian trust funds total \$2 billion dollars and 291,000 individual accounts. The Committee is aware of the attention brought to the Bureau of Indian Affairs' (BIA) management of the Trust Fund over the past few years. As reported by a variety of oversight groups, we found serious deficiencies in how funds were accounted for and invested in the past. There are continuing deficiencies in management, staffing, and automated systems. Decades of inattention and neglect contributed to the growth of these problems.

When I took this office in 1989, I said that reform of the trust fund would be a critical priority with me. It has been and still is. I would like to be moving faster to improve trust funds management permanently, but correction will take time. I am confident that with the continued support of the Indian community and the Congress, our joint efforts to effect comprehensive and lasting improvement to BIA's management of Indian trust funds can be fully realized within the next five years.

I view the trust fund management issue as having three aspects. First, we must Resolve the Past. Second, we must Stabilize Current Operations. Third, we must Improve the Future. In the category of Resolving the Past, I will address consultation and

the reconciliation project. To Stabilize Current Operations we have a number of shorter term improvement efforts which we believe will strengthen the financial integrity of trust fund operations. Under the heading, Improving the Future, BIA has drafted a Strategic Plan for Indian Trust Funds Management which details our improvement plans for long term, comprehensive improvements to Indian Trust Funds Management. The Plan is under review within the Administration and should be finalized over the next few weeks.

RESOLVING THE PAST

Consultation

One of the early criticisms of the BIA has been that actions were taken without consulting with Indian tribes and others whose accounts were affected by what we do. As you are aware, the BIA had launched two unsuccessful efforts in the 1980's to contract out its trust funds operation.

In attempting to reform the process, I wanted to make sure that we consulted not only with the representatives of the account holder, but also with members of the Congress, the Office of Management and Budget (OMB), the General Accounting Office, (GAO) and the Joint Tribal/BIA/DOI Task Force on Reorganization of the BIA.

We began working with the group that represented Indian trust account owners that later evolved into the InterTribal Monitoring Association (Association) on Indian Trust Funds about two years ago, and have continued a very close working relationship with them. On June 18, 1991, a Memorandum of Understanding (MOU) was signed between the Association on Indian Trust Funds and my office delineating the Association's role in the improvement program, including preparation of a concept paper by the Association on the future direction of Indian trust funds. We

also arranged grant funds to defray certain allowable Association expenses in FY 1991 and FY 1992.

Consultation with the Association included obtaining and considering Association views on BIA management and policy decisions and the reconciliation efforts. We took into consideration the concept paper prepared by the Association in developing BIA's Strategic Plan for Indian Trust Funds Management. In addition, we have consulted with the Reorganization Task Force regularly on improvement efforts in the trust funds area.

I believe the long, deliberate consultation to discuss trust fund management with Indian tribes, Congress, OMB, and GAO has paid off in terms of the level of mutual understanding and the fresh ideas brought to the process. I am also pleased and encouraged that the Joint Tribal/BIA/DOI Task Force on BIA Reorganization agrees with the thrust of agency efforts to date, as expressed in their resolution of March 19, 1992.

Reconciliation -- Phase 1.

A well publicized element of BIA's Trust Funds Management Improvement Program is the effort to reconstruct the tribal and IIM accounts to the earliest date practicable. This is being accomplished through a major reconciliation, audit, and certification program that is expected to take several years.

Reconciliation -- Phase 1 was initiated in May 1991, when BIA signed a contract with Arthur Andersen & Company (Contractor) to accomplish reconciliations of trust fund accounts belonging to tribes and individual Indians. Phase 1 was designed as a "scoping" effort to determine the feasibility, cost, and best approach for account reconciliations. We learned much about the task of reconciliation - its enormity; its costliness; and that it's going to take time to get the job done.

In Phase 1, BIA and the Contractor initiated work on the 37 accounts of tribes who own 87 percent of the funds in the tribal trust fund, and also began work at three BIA agencies that administer 17,000 of the 289,000 IIM accounts. Records were inventoried and accumulated, reconciliation procedures developed and tested, automation hardware acquired and reconciliation software designed and tested. By mid-September 1991, the Contractor and BIA representatives completed field visits and nine entrance conferences for account holders at Agency offices involved in Phase 1. Orientation and training regarding the Reconciliation Project was completed for the Contractor staff, representatives of the Association, tribal coordinators, and the BIA staff. The research and development effort was to continue through May 1992, when, based on Phase 1 results, the contract Phase II decision would be made on how to proceed with reconciling the balance of the trust fund accounts.

However, in October 1991, early in Phase 1, the contractor reported that the reconciliation project as conceived, particularly the IIM portion, would be extremely expensive due to the large volume of source documents, to the poor organization and bad condition of BIA files, and to the need to manually handle and automate tens of thousands of boxes of financial records. In January 1992, the Contractor provided an assessment indicating that reconciliation of tribal accounts would cost an estimated \$5 to 15 million, and that an IIM account reconciliation estimate ranged from \$108 to 281 million, depending on approach, scope, and other factors.

Additionally, valid concerns were raised and the point made that proper accountability for trust funds goes beyond accounting, investing and disbursing of trust income and awards. The integrity of the income stream and its proper distribution is dependent on the various systems and personnel managing the trust assets. This includes complexities created by the rapidly

expanding fractionation of ownership interests, potential deficiencies in BIA support systems for ownership records and distribution such as the Integrated Records Management System, BLM issues related to lease inspection, and questions about the MMS's Indian oil and gas royalty collection systems. We acknowledge and are committed to the idea that a comprehensive solution to trust funds management must include plans to address these elements.

Consultation and work has continued among the BIA, OMB, the Contractor, and tribal representatives to scope the size, complexity, and approach for reconciliation and reconstruction of Indian trust fund accounts.

Reconciliation -- Phase II: Current Reconciliation Approach

In completing the reconciliation of tribal and IIM accounts, we intend to proceed with reconciliation of tribal accounts and the various systems supporting accounting and investment activities. Concurrently, we also plan to pursue a number of "scoping" exercises to examine means to verify the reconciliation effort. For instance, we will consider in-depth reviews of five tribes, to include testing source documentation back to ownership and distribution records, apart from the year to year reconciliation. A satisfactory approach for IIM accounts has not yet surfaced and further information is needed.

Tribal Judgment and Income Accounts. The reconciliation of tribal accounts will be undertaken in two concurrent efforts: (1) the first effort will be the reconstruction of tribal settlement funds, which account for 70 percent of the \$1.5 billion, or about \$1.1 billion in tribal funds; and (2) the second effort will involve the reconstruction of tribal income funds, which constitute the remaining 30 percent or \$0.4 billion. This two-prong approach for tribal account reconciliation is being utilized because it will allow the effort to be separated

into more manageable segments and likely allow for the majority of tribal funds (specifically judgment/settlement funds) to be reconciled quicker than income funds. Reconciliation will be performed for judgment/settlement funds on an annual basis back to the earliest practicable date (i.e., the earliest date for which records are available) as far back as 1973.

The project will be conducted by teams from the Contractor working with the existing teams of BIA staff. As BIA acquires personnel, and work and schedule permits, the BIA may phase down the Contractor involvement to reduce costs. Both the reconciliation of tribal judgment/settlement funds and income funds will begin working backwards on an annual basis, initially concentrating on periods from 1983 back through to 1973 in the BIA Manual records. The project includes all tribal Special Deposit accounts. Reconciliation of BIA records to external systems (particularly of the Finance System to the Treasury) will be performed under the Contract.

IIM Reconciliations. We will form a small Study Team composed of seven to nine experts from BIA, the Contractor, other Interior bureaus and other sources to perform an operational review of IIM trust funds management. The team will recommend an approach for reconciliation and/or resolution of the IIM reconciliation effort. For example, the procedures for reconciling IIM account differences and balancing account totals would need to be structured. The team will seek information at and down to the Agency Office level. The team will be chartered to examine the full range of IIM reconciliation issues, including records availability, ownership and distribution information, Agency accounting status and practices, underlying records, systems, and processes, etc. We expect the team's report and recommendations by February 1993.

System Reconciliations. Work will continue to reconcile trust fund accounting records with Counterpart Department of the

Treasury records. Work has been initiated and will continue to reconcile various internal subsidiary accounting records with the accompanying general ledger accounts, and with the several trust funds accounting and investment subsystems currently in use. BIA has required regional (Area and Agency Offices) to perform daily and monthly reconciliations of accounts. These continuing reconciliations are being accomplished, reinforced by strong performance elements in managerial performance standards.

A joint BIA/Contractor team will be formed to focus on and perform system reconciliation work among the Finance System, the IIM subsidiary system and Treasury records in a centralized setting in Albuquerque. We have set the following goals for this effort:

- BIA will reconcile and clear all variances between BIA's investment systems and the Finance System by December 1992;
- BIA will reconcile the Finance System general ledger balances to the U.S. Treasury tribal trust fund and IIM account balances by December 1993;
- BIA will reconcile and clear all variances between the IRMS IIM subsidiary accounting system and the Finance System by December 1994.

Strong internal controls will be installed to ensure continuing reconciliation once systems are reconciled.

STABILIZING CURRENT OPERATIONS

Early on we recognized that a comprehensive fix to trust fund problems was a long term effort. We also recognized that something needed to be done in the short term to "stop the hemorrhaging" while long term improvements were underway.

Following are examples of important improvements implemented or underway to correct immediate critical operational problems.

Management and Organization. Trust Funds Management was established as a top priority for the Office of the Assistant Secretary - Indian Affairs, the top level DOI/OMB oversight structure, and the BIA Management Improvement Oversight Committee.

Most trust fund management activities were centralized in a separate directorate, the Office of Trust Funds Management. A dedicated Reconciliation Project staff within the Office of Trust Funds Management was established to administer that project. A total of 18 new staff have been hired, bringing staffing within the Office of Trust Funds Management to 44 of 51 authorized personnel. Recruitment continues to fill authorized staff positions. We also recently proposed to Congress a realignment of the Office of Trust Funds Management which will strengthen the quality assurance and automated systems functions within the Office. Our FY 1993 budget request identifies a need for 40 additional Full-Time Equivalent (FTE) positions for the Office.

BIA trained BIA Area accounting staffs on monthly reconciliations of current IIM accounting transactions, and the Office of Trust Funds Management developed and held a training course in late 1992 for approximately 40 Area/Agency field staff. Course coverage included tribal trust funds, IIM accounts, investments, and trust funds management systems.

We will also be developing and distributing desk operating procedures, conducting operational reviews, and providing additional training to the trust funds staff, both in Albuquerque and other field sites.

BIA's "Reconciliation Project Management Plan" was published in September 1991. BIA's FY 1992 "Short Term Projects" was

published in November 1991 and widely distributed in January 1992. The approach for development of BIA's Strategic Plan was adapted from a model presented by representatives of the GAO, and is reflected in BIA's "Strategic Planning Framework". The "Strategic Plan for Indian Trust Funds Management" has been drafted and is being reviewed within the Administration.

Quarterly status reports have been provided congressional oversight and appropriations committees, and congressional staff have been briefed periodically concerning the reconciliation and trust funds management improvement project.

Accounting/Investment. BIA's "Policies Regarding Notification and Reimbursement to Indian Trust Fund Account Holders for Losses Attributable to Bureau Errors" was published in October 1991.

BIA improved deposit reporting, implementing new telefax procedures to allow more timely accounting/investment of deposits of checks and cash by Area/Agency Offices.

BIA has initiated the Trust Disbursement Project in Anadarko Area to respond to allottee and litigation complaints that the Department was not complying with requirements of the Federal Oil and Gas Royalty Management Act of 1982. Specifically, oil and gas disbursements to allottee recipients will be accompanied by an Explanation of Payments covering check disbursement.

Systems. Data entry efficiencies were introduced for investment systems through an automated interface that provides single entry into the various investment-related data bases -- INFO, Finance System, MoneyMax, EASYTRIEVE, and Certificate of Deposit-related bid/sort information.

BIA completed Phase 1 of the Standard Form (SF) 1081 Reconciliation Project which automates comparison between BIA's Royalty Distribution Reporting System and the MMS's royalty

payment information being submitted on manual and automated SF 1081's, and enhances interest distribution. Phase II, incorporating improved management reports is scheduled for implementation in December 1992.

IMPROVING THE FUTURE

In addition to standardizing operations, however, we must bring lasting, comprehensive improvements to all phases of trust funds management. BIA's comprehensive plan for improvement of trust funds management is embodied in the draft "Strategic Plan for Indian Trust Funds Management".

An important point to make is that this Strategic Plan, or Phase I, addresses trust fund management in terms of trust financial accounting and investment, acknowledging the need to deal with the related non-trust fund systems within BIA, BLM, and MMS. This approach was worked out and agreed to with Indian representatives, including the Association. BIA has agreed to address other aspects of "trust management" -- ownership records, distribution calculations, fractionated interest, BLM and MMS involvement -- in a second strategic plan, as a part of what we refer to as the "Phase II" effort. This effort commenced in mid-May, and we have been actively working with representatives of the Indian community on this effort.

With regard to the draft "Strategic Plan for Indian Trust Funds Management", let me touch on how we approached developing the Plan, its approach, and its contents. The Strategic Plan approach and model was adapted from examples provided by the GAO. We coordinated and published a document which set out the strategic planning process, BIA's "Strategic Planning Framework". This helped set the agenda for development of the Strategic Plan.

I would also add that both the Association and the Joint Tribal/BIA/DOI Task Force on Reorganization of the BIA have been

active participants in the process of developing the Framework and the Strategic Plan.

As the initial step in the strategic planning process, BIA examined the mission, organization, and staffing of the Office of Trust Funds Management. Following the mission, organization and staffing analysis, the strategic planning process we adopted centered management and our Indian client's focus on four fundamental strategic questions:

1. Direction: Where is Indian Trust Funds Management going?
2. Strategies: How will BIA get there?
3. Action Plans Budget: What is BIA's blueprint for action?
4. Accountability: How will achievement of the Direction be known?

We then used seven planning steps to facilitate answers to the four questions.

"Direction" was addressed by obtaining the commitment of key groups for the strategic planning process; by scanning the internal and external environments; and by articulating BIA's strategic direction for trust funds management in a series of goals. Next, "Strategies", or approaches to address each goal, were developed from a wide range of possible approaches or actions. This effort resulted in the following strategic agenda.

Strategic Goal 1: Collect, account for, invest, distribute and provide information on trust funds in an accurate and timely manner.

Strategic Goal 2. Resolve past accounting distribution problems as they affect tribes and individual account holders.

TESTIMONY OF
BEN W. MATHIES, STAFF MEMBER
INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
THE MANAGEMENT OF INDIAN TRUST FUNDS
August 12, 1992

Mr. Chairman and Members of the Committee, the opportunity to testify today is much appreciated. My role, in large part, has been to be of assistance to the Intertribal Monitoring Association (ITMA) in its oversight and advisory activities respecting the Bureau of Indian Affairs (BIA), and its Office of Trust Funds Management's comprehensive effort to reconcile, audit and distribute historical statements of account to all Tribal and Individual Indian Beneficiaries as directed by Congress. From the outset of my involvement, in October, 1992, it has been apparent that an already complex matter has been further complicated by the lack of common understanding of the term "Reconciliation" as it appears in the pertinent legislation. Rather than to attempt a narrative technical clarification it is believed to be of more benefit to us all to refer to the attached Exhibit to show the scope of the reconciliation process as contracted, the limitations of the process, and the kinds of errors that can and have occurred in the total stewardship of Indian monies. The exhibit shows that there are not less than eight error points from the point of sale or lease of natural

Testimony of Ben W. Mathies, Staff Member
Intertribal Monitoring Association on Indian Trust Funds
Senate Select Committee on Indian Affairs
August 12, 1992
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resources held in trust to the ultimate distribution of the proceeds to the rightful owner.

<DEPART FROM TEXT TO TRACE ONE SUCH TRANSACTION FROM LEASE TO DISTRIBUTION>

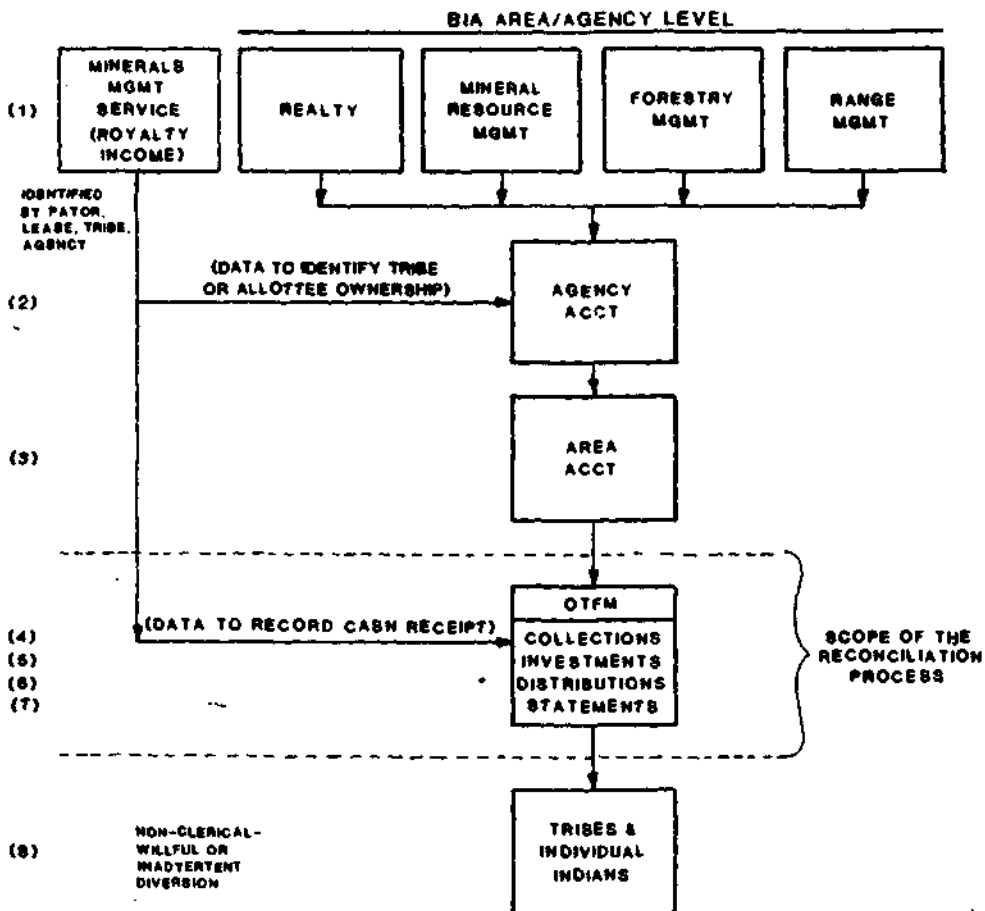
The exhibit also shows the error points covered by the initial process design and performance. It also shows the error points that are not covered. And there, in the limitation of the scope of the process, lies the basis for ITMA'S suggestion in its April, 1992 concept paper that the reconciliation process be suspended and that an attempt be made to find alternative approaches. To varying degrees that effort has occupied much of the time of BIA, OTFM, DOI, OMB and ITMA staff members over recent months. Largely, those attempts could be characterized as fractionated. Please pardon the use of that word here. However, early in the period ITMA and OTFM began a concerted joint effort to devise more effective ways to produce and provide final accounting to the beneficiaries that would constitute a basis for final settlement of any amounts due to, or from, account holders. Others, with like responsibilities, had also been working toward better strategies to be employed. During the past several days,

Testimony of Ben W. Mathies, Staff Member
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in meetings involving DOI, BIA, OMB, GAO, AA & Co. and ITMA people, that continued as recently as yesterday, there has been a sharing of ideas and suggested elements of a larger approach to the problems, and there are many that make up the whole.

From those meetings has come concurrence that there should be an intensive joint pooling of resources to further challenge, design, reduce to work tasks, assign realistic target dates, quantify estimated costs, and evaluate expected results to produce a comprehensive work plan acceptable to all. Our preliminary but extensive discussions over the last two days lead us to believe we have a high chance for success. That encouraging, to us at least, assessment concludes my prepared remarks. I respectfully invite your questions or requests for clarification or amplification. I thank you for your attention.

CHART OF RECONCILIATION PROJECT
ACCOUNTING ERROR POINTS
AUGUST 7, 1992



NOTE: RECONCILIATION PROCESS IN THE MAIN, DEALS ONLY WITH CLERICAL ERRORS AND OMISSIONS AT ERROR POINTS 4 THROUGH 7.

Testimony of the Navajo Nation
Presented by Derrick Watchman, Executive Director
of the Navajo Tax Commission and Member,
Navajo Nation Investment Committee

My name is Derrick Watchman and I am the Director of the Navajo Tax Commission and a member of the Navajo Nation Investment Committee. I am here to present testimony on the Indian trust funds. I want to focus my testimony on the experience of the Navajo Nation with respect to tribal monies we hold in trust for the benefit of the Navajo people. I want to share our success in managing this money. And, to show that Indian tribes are capable of handling their own resources. We are ready to assume the roll of trustee. To achieve that goal certain restrictions should be relaxed, if not removed altogether, to allow tribes to manage and invest their own funds.

INTERTRIBAL MONITORING ASSOCIATION

The Navajo Nation is a member of the Intertribal Monitoring Association (ITMA) on Tribal Trust Funds. This group was formed by representatives of several tribes concerned about the management of the Indian trust funds. Its main task was to monitor the progress of the BIA in the implementation of a contract with Arthur Anderson for the reconciliation of the trust accounts. This reconciliation effort was to piece together a history of the accounts back to the earliest date. After one year of the Arthur Anderson contract, the ITMA recommended that the contract be terminated until other underlying issues were

addressed. It was the feeling of the ITMA that unless more far-reaching solutions were attempted, a reconciliation of the trust accounts would be like putting a band aid on a broken arm. Before a meaningful reconciliation can take place, Congress, the tribes and the Department of Interior need to take a look at the systemic deficiencies which gave rise to the problem in the first place. Problems inherent in the fractionated heirship and minerals leasing programs needed to be addressed in order to allow for an auditable reconciliation.

The ITMA, in addition to recommending a termination of the Arthur Anderson contract, also developed a concept paper in which several policy recommendations were made. One such recommendation was that Congress enact legislation that would give tribes greater control and flexibility in regard to management of their trust funds. The legislation would enable tribes to have varying levels of participation in the management and investment of their trust accounts, either in the form of more direct input into the investments or complete and total control.

NAVAJO NATION MANAGEMENT OF NAVAJO INVESTMENTS

The Navajo Nation would like to pursue taking over complete management and control of Navajo investments. We think our experience with the funds we currently manage shows that we are capable of handling our own investments. We certainly can do no worse than the BIA!

Prior to 1985, our monies were managed primarily by the Bureau of Indian Affairs. The Navajo Nation had very little say

in the investment activities of the Bureau. Similarly, reporting and accounting records were very sporadic thereby causing us to "guess" the values of our investment portfolios. We therefore chose to change this system of management because we recognized we could increase our returns, have better liquidity and access to the funds, if we assumed the management responsibility from the BIA.

In 1985, the Navajo Nation received over \$150 million dollars as a result of the Kerr McGee v. Navajo tax decision which upheld our taxing authority without requiring Secretarial approval. Realizing that we could not foresee the future in terms of financial resources, we created a "Permanent Trust Fund." This fund was the initial beginning of managing our own investments.

In the development of the permanent trust fund, we invested in local institutions through the purchases of certificates of deposits, short-term annuities, and other short-term assets. After much discussion we recognized that our investment strategies and practices were not conducive to the intent of the permanent fund -- to accumulate wealth so that the proceeds can be used to supplement the tribe's finances after the year 2010. Through the assistance of financial advisors and our growing in-house expertise, we developed the "Navajo Nation Investment Policies and Procedures," which now governs all Navajo Nation invested assets.

Our Investment Policies are very similar to state, city and county policies in that Funds Categories are established. There

are prohibitions on certain investments like real property. We try to achieve a maximum rate of return given the risk levels, and we try to maintain a certain amount of liquidity. The policies are enforced by the Nation's Investment Committee and all final decisions are made by the Budget and Finance Committee of the Navajo Nation Council.

As a result of our independent investment program, the Navajo Nation realized a number of benefits. Not only were we able to place the monies in securities of our choice, we were able to deposit large sums of money into local banks in our economic area. These deposits yielded returns in that we were then able to leverage loans from these banks for the benefit of the Navajo people. We also have been able to increase our returns by over 5% as compared to the returns achieved by the Bureau, and with the same level of risk.

ATTEMPTS TOWARD TRANSFER OF BIA TRUST ACCOUNTS TO NAVAJO NATION

We started serious discussions with the Bureau of Indian Affairs in 1990 regarding the possibility of withdrawing the remainder of our tribal funds from the BIA's trust supervision. On deposit with the BIA are Navajo Nation funds received in settlement of claims in Dockets 69 and 299, 256-69 and 377-70 and 588-83L before the United States Claims Court. The Indian Tribal Judgment Funds Use or Distribution Act as codified in 25 U.S.C. §§ 1401 - 1408 governs all tribal judgment fund distributions.

We have made very little headway with the BIA because of their interpretation of settlement act language, and their own investment and financial procedures. They have not been

cooperative in helping us to identify possible restrictions which may preclude the transfer of our funds from the trust accounts to tribal accounts.

We have learned from our own research that in order to withdraw the Navajo tribal funds from the trust accounts, we will need enabling legislation. According to the Judgment Fund Distribution Act, a tribe is only authorized to instruct the BIA to invest specified sums in specified areas. The funds may not be immediately disbursed for direct tribal investment.

RECOMMENDATION

The Navajo Nation would like to propose that the Indian Tribal Judgment Funds Distribution Act be modified to allow for the payment of judgment funds directly to the affected tribes, so that they can manage and control their own investments. At Navajo, we certainly have the resources and capability to do just that - manage our own resources. Secondly, we would like to propose that Indian tribes be given options in how they can organize those funds. We would like to pursue mechanisms to allow tribes to access trust accounts, general accounts, and other financial resources in order to have better record keeping, quick transfer to tribe's own bank, and to invest in assets pursuant to tribal investment policies.

We at the Navajo Nation believe that with the expertise we have acquired and the safeguards and mechanisms we have established, the time has come for us to assert direct control so we may maximize our revenue and savings for our people.

We are more than happy to work with the Committee to discuss ways to achieve direct tribal control and to rightfully take our place as trustee for our own funds and in turn our own destiny.

Executive Summary

In 1989, the Inspector General of the Department of Interior issued a report which cited numerous deficiencies in the management, accounting and disbursement of the funds held in trust for Indian tribes and individual Indians. As a result of that report, the House Government Operations Committee, Subcommittee on Environment, Energy & Natural Resources held a series of hearings to further investigate this reported mismanagement. The Subcommittee issued a report recently which restated the findings of Bureau mismanagement.

As a result of the reports concerning the mismanagement of the funds held in trust by the Bureau of Indian Affairs, the Navajo Nation proposes to withdraw any and all Navajo tribal funds from the BIA trust accounts. This action would in no way jeopardize our right to sue for recovery of funds in the event it is determined that Navajo funds were lost due to Bureau mismanagement prior to the withdrawal.

We hope that our success with the management of funds currently under our control will show that we are more than capable of protecting and controlling our own resources. In 1987, the Navajo Nation developed an investment policy and created an investment system for monies which we held in trust for the Navajo people. These funds, totalling approximately \$125 million are under the exclusive management and control of the Navajo Nation. The Nation has structured an investment portfolio with the assistance of several leading money management and investment firms. Through a series of investments, the Navajo Nation has realized over \$20 million in interest income over a 5 year period. This money is then used to reinvest in the longer term accounts and for some of the current program operations.

The investment plan of the Navajo Nation has safeguards in place to protect the funds under our management and control. In fact, with the assistance of financial advisory services, the investment plan is modeled after those used by most state pension funds, city and county investment programs and the like. Our accounting system is basically a modified accrual budget based system and conforms to generally accepted accounting principles. These safeguards were put in place to reduce the risk of loss and to minimize the risk of mismanagement and fraud.

Certain restrictions exist which will need to be removed before we can withdraw our funds from the trust accounts managed by the Bureau of Indian Affairs. Legislation will need to be introduced to amend the Judgment Funds Distribution Act in order to allow the transfer of tribal monies from the federal trust. We would like to work with this Committee to develop legislation which would allow us to transfer Navajo tribal trust funds from the BIA to the Navajo Nation and which confirms the Navajo Nation as trustee.

Select Committee on Indian Affairs
Testimony by Charles H. Red Corn & Yancey G. Red Corn
August 12, 1992

My name is Charles H. Red Corn and this is Yancey G. Red Corn. We are both members of the Osage Tribe. Yancey is also a member of the Caddo Tribe. I live at 1827 Rollingstone Drive, Norman, Oklahoma and Yancey lives at 801 Biloxi Drive, Norman, Oklahoma.

We wish to thank the Committee for allowing us this opportunity to address an important issue.

For the past fifteen years I have worked as an oil and gas consultant to several Indian people. Sometimes my work in oil and gas is full-time and sometimes my oil and gas work is part-time. I have also performed some work for various tribes and for the Bureau of Indian Affairs.

During the past two years Yancey and I have worked together on several problems concerning federally restricted oil and gas matters. However, one case in particular has consumed the majority of our time during those two years, that being the Namaso-Delgado case. We believe this case represents an accurate picture of several problems in the trustee relationship the federal government has with the Indian People.

For purposes of clarity and brevity our presentation will be in two parts. Part One will address the question of collection and disbursement of oil and gas royalty monies. Part Two will address some problems we believe exist in the cancellation of oil and gas mining leases when cancellation is warranted.

PART ONE, Collection of Royalty Monies.

Mr. Luther Namaso was a full-blood member of the Kickapoo Tribe. Mr. Namaso never married and had no children. He lived with his full sister Mrs. Phyllis Kestoki and her two daughters until his death in November, 1990 at the age of sixty-four. Mr. Namaso spoke only the Kickapoo language and we dealt with him through his niece Mrs. Shirley Delgado as his interpreter.

In 1980 the Bureau of Indian Affairs approved Oil and Gas Mining Lease 3947 covering an eighty acre tract near Shawnee, Oklahoma. Mr. Namaso was to sole owner of the royalty interest in the tract.

In December, 1985 oil and gas production began on the Namaso lease. The two wells on the Namaso lease were the two most productive wells in the field resulting in Mr. Namaso becoming relatively wealthy.

In 1989 Mr. Namaso requested his account balance from the local BIA Agency. He received this balance on a yellow post-it paper because he was not accustomed to computer printouts. He kept the yellow post-it for two months and returned to the BIA to again

request his account balance. He had not drawn any funds from the account yet the balance was \$125,000 less than before. It was at that point that Mr. Namaso's attorney asked me to assist Mr. Namaso. The \$125,000 was subsequently put back into his IIM Account.

As a matter of procedure we audited as best we could Mr. Namaso's oil and gas accounts. We learned that the operator had a rather creative reporting system that resulted in one half of the correct amount of royalties being paid.

We computed the amount of money that we estimated was due Mr. Namaso. We estimated principal and interest due was approximately \$1,000,000 and it turns out we were very close.

We also learned the operator had constructed a by-pass pipe around the gas meter and had been asked by Bureau of Land Management to remove the by-pass pipe and they had removed it.

We also learned that the Operator had created a marketing company and were selling the oil and gas to themselves at a lower price than other purchasers were receiving in the area.

On August 7, 1990 we met with the Superintendent and the Realty Officer of the Shawnee Agency of the BIA. At that meeting we requested by letter that the BIA collect the missing royalty monies, collect interest on the royalty monies, determine the amount of revenue missing because of the by-pass piping and collect that amount plus interest, collect revenue shortfall due to the non-arms length sales to themselves, cancel Lease No. 3947 and to name Ramsey Property Management, Inc. as operator of the lease on behalf of Mr. Namaso.

We were surprised by the response of the Realty Officer. He informed us that he had known about the missing revenues for over two years. He informed us that there was no reason for alarm because he had requested an audit and that in two or three years the audit would be complete and he would at that time write a letter to the operator and the operator would pay the requested amount. He further stated that if the operator did not at that time have sufficient funds to pay Mr. Namaso and the BIA that he would request it from the insurance company that held the bond for the operator.

We asked why the misdealings were ignored for two years when they were discovered. The Realty Officer stated again that all would be well when the audit was completed in two or three years. The Superintendent pointed out that they had no control over how and when the Mineral Management Service conducted audits.

We traveled to Denver on August 24, 1990 and met with representatives of the Mineral Management Service. A Mr. Vern Ingraham of MMS began an audit that day and stated that MMS would treat the audit as a priority. Even as a priority the audit took

seventeen months to complete and in January 1992 the MMS sent out the first demand letters for payment. As of this date in August, 1992 over \$1,023,000 has been collected.

During the seventeen month audit period Mr. Namaso and later his heirs were not allowed to view any information concerning the operations of the properties and the progress of the audit.

Another set of problems arose following the death of Mr. Namaso on November 19, 1990. His estate was probated in accordance with his Last Will and Testament. He left his entire estate to his sister Mrs. Phyllis Kestoki, his niece Shirley Delgado and eight grand nieces and nephews. The Department of the Interior judge who probated the estate appeared to us to be fair and capable. However, he told the heirs that he would issue an Order in the case within 30 days of the final hearing that was held in August, 1991. The order was not issued until late in March 19, 1992. He stated that he was simply understaffed and we have no reason to question that statement.

The estate was final on May 19, 1992 following a 30 day waiting period. It is now a week short of three months since the estate was final and Mrs. Delgado has received only a partial payment on the funds in the estate account. However, most of the funds remain in the IIM Estate account. There is an administrative decision to be made on the distribution of the \$1,023,000 collected from the lease operator. We believe that is the property of Mrs. Delgado as residual heir to the estate because the oil and gas were produced prior to Mr. Namaso's death. However, there appears to be no good reason for not paying the other funds in the estate other than an inability to determine how much is in the accounts.

Mrs. Delgado has a management plan for her funds and would like to implement that plan. However, to date she still does not know the amount of funds in the estate account. She estimates it is in the neighborhood of \$1,400,000.

While interviewing other Indian mineral owners in preparing briefly for this testimony each of them expressed fear that if they were to speak up against the BIA that their royalty checks would be delayed and they in some way would be punished. I have no way knowing whether such things happen or not, but their concern seemed real. I suspect that these negative attitudes could be changed a great deal if the secrecy concerning their individual funds would be relaxed.

I spoke with many Indian people during the past few days and did not meet one Indian who was comfortable with his or her knowledge of the management of their properties. Each of them stated they were probably being stolen from but they had no way of knowing one way or another.

In early December, 1991 Mrs. Delgado filed a suit against the federal government for damages resulting from the governments

failure to cancel subject lease. Had we not pushed for a fast audit the statute of limitations that would have expired and left her no recourse for recovering damages.

It appears that it would have been a healthy situation had the BIA employees reported the underpayments to Mr. Namaso when they first learned of them. This would have been a reasonable response from a Trustee and would more than likely have avoided the suit filed by Mrs. Delgado against the federal government.

I became well acquainted with Mr. Namaso during the latter part of his life. He was a very intelligent person and I am certain he would have understood and would have been patient and worked with the federal employees to straighten out any problems had he been informed of such problems.

It also seems that throughout this entire ordeal the secrecy with which Indian people were treated has succeeded only in creating suspicion and mistrust on the part of the Indians.

PART TWO, Lease Cancellation

Based on our work on the Namaso Lease it appears there are several violations of the lease agreement as well as violations of the 1937 Act and the 1982 Act pertaining to the management of Indian mineral properties.

It seems that the procedure for canceling leases does not conform to the lease agreement nor to the appropriate law.

As we understand it when an operator has been found to be in violation of the lease agreement the BIA or the MMS will send a demand letter asking for payment within thirty days. If the operator pays the correct amount within the thirty day period the problem is considered to be cured. It would seem that this encourages dishonesty in operations.

If an unethical operator is able to conceal his misdealings long enough for the statute of limitations to expire then the Indian Mineral owner has no recourse for recovering damages.

In a letter dated March 5, 1992 the position of the federal government on cancellation of the Namaso lease seemed to be based on whether or not the operator had engaged in "bad faith dealings." The letter appears to indicate that only if the lessee is found to have engaged in "bad faith dealings" will cancellation of the lease be warranted.

The 1937 Act states a lease will be canceled by the Secretary of the Interior upon the application of the lessor for good cause, or if the Secretary of the Interior determines either the terms of the lease have been violated or that any of the regulations have been violated. Clear violations of the Namaso lease have been documented.

The Royalty Management Act of 1982, as we understand it, was not intended to weaken the 1937 Act. Rather, the 1982 Act was intended to strengthen the 1937 Act.

In addition, Paragraph 6 of the subject lease agreement gives the Secretary the right to cancel lease when the lease has been violated.

We believe the Namaso Lease should be canceled. There are clear violations and the terms of the lease as well as the two relevant Acts seem to us to support cancellation.

TESTIMONY ON BEHALF OF THE SHII SHI KEYAH ASSOCIATION
PRESENTED BY ALAN R. TARADASH.
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC
AUGUST 12, 1992

Mr. Chairman and distinguished Senators, on behalf of the Shii Shi Keyah Association I want to thank you for the opportunity to present our views and, indeed, our experiences in the trust and accounting practices of the Department of Interior as the entity that acts as trustee over our Individual Indian Money Accounts (IIM). That experience has been one of great dissatisfaction and one which we respectfully seek your help on to get us out from under. We only ask that our funds be deposited in and managed by real bankers with real trust departments, and real accounting systems which are annually audited in accordance with generally accepted accounting and auditing principles. We ask that our funds be managed by a local banking institution regulated by the Comptroller of the Currency with the same safeguards and protection available to any other citizen that has a trust account at a bank.

The gross derelictions of duty that have been the admitted norm at the Bureau of Indian Affairs (BIA) have ironically grown to be the shield behind which the BIA is entitled to continue its ineptitude. There is not one bank in the entire United States that would be allowed to keep its doors open if it had the track record of the BIA in its handling of trust funds and trust property. Please do not force us to have to accept what is not acceptable for all others in this country. If the BIA as a banker is not capable enough to handle your money, to act as a trustee for your children, then please do not force us to accept them as our banker, as our trustee for our funds. If there is to be a double standard we at least ought to be entitled to the higher standard.

It has been exhaustively established that the BIA has never even reconciled the trust fund accounts in the entire history of the trust fund stretching out over a hundred years. The Secretary has also admitted that he has no uniform systems of accounting as well as other deficiencies which this Committee is all too familiar with. Please treat this as it would be in the real world of banking and help us get our money (while there is still some left to account for) out of the BIA's hands and into those of a private trustee, appropriately bonded and regulated by the Comptroller of the Currency. Do not allow the "BIA Bank" to continue another day if, knowing what you know now, you wouldn't leave your mother's or your children's money in it. We are entitled to no less a standard

Not only would our money be safer, more accurately accounted for, more accessible, but it would also be less expensive to manage. The BIA is currently going through an elaborate charade and finesse to, at best, try to approximate what real banks have been doing successfully for a long time. There is no reason that makes any sense to ask that we wait another day with our money still in the "BIA Bank" while this bureaucratic gamesmanship is played out. We have seen this cruel hoax of incompetence combined with the bureaucratic gamesmanship at the Minerals Management Service for the last ten years. The same incompetent systems people that designed the MMS disaster are now at the BIA helm generating the same kind of transparently worthless plans and reports for the BIA on trust funds as they did at MMS. There is no need, no justification imaginable to allow this ruse to continue. The repeated insistence on the supposed complexity of the task is not persuasive. A simple analysis of what is involved reveals it is only what banks already do and do quite nicely at that. Do not waste time and the government's money to keep the "BIA Bank" alive.

The BIA was not created as a problem solving entity. The BIA's track record of performance speaks loudly for its ability and incompetence. The fact that the BIA is not an analytical institution is not a mystery. It was not created and designed to solve problems. Rather it was created to control Indian Tribes and Indian people. It was not intended to be accountable to the Tribes and people it controlled (and now presumably serves). By design, BIA employees were insulated from accountability to the Tribes and people within its jurisdiction. It is no wonder then that BIA control over Tribal or allottee trust funds results in a loss of control by Tribes or allottees over even the worst kind of fiduciary breaches. This does not happen where Tribes are able to utilize real world banks.

There are some Tribes which have been able to take their funds and set up comprehensive and well conceived investment plans supervised by expert investment advisors and managers. The last ten year average rate of return from such investments by a Tribe that I am privileged to represent is astounding when compared to the BIA performance. Measures are built in by design to insure that different funds that the Tribe has set up have different investment strategies, risk tolerance, etc. Quarterly meetings with the Supervisor of the money managers and the Tribal Council are in stark contrast to what Tribes go through in trying to get accurate information about their investments from the BIA. If an investment manager is unable to meet the goals established for his portfolio he is subject to being fired instantly----and some have. Compare that to a Tribe's ability to affect the "BIA Bank" if the Tribe or allottees are dissatisfied with the investment performance.

It is beyond honest intellectual dispute that the "BIA Bank" should be closed down immediately. Each Tribe or allottee should have the right to utilize the best available banking or investment facilities that best suits their needs within certain standards of trust responsibility, bonding, and superintendence that the Comptroller of the Currency might establish consistent with Congressionally mandated principles of self determination and the preservation of the sovereignty of Tribes. Unlike the Interior dogma which insists that there be a global or universal "solution" applicable to all Tribes and allottees, reason suggests that local needs and different fact situations may likely require different solutions, perhaps with different financial institutions. Independent CPAs functioning under generally accepted principles of accounting and auditing, annually auditing all such Tribal or allottee accounts in accordance with any additional standards determined to be appropriate by the Comptroller of the Currency will provide the quality control and assurances that this Committee and the Congress as a whole would feel comfortable with.

In closing please permit to again thank this Committee and its Chairman for affording us the opportunity to provide you with our views and our experiences. If it would be acceptable we would like to supplement this testimony with some more detailed written testimony that specifically addresses in greater detail the question raised in Chairman Inouye's July 29, 1992 letter to Mr. Ervin Chavez, President of the Shii Shi Keyah Association.

PREPARED STATEMENT OF REBECCA ADAMSON

On behalf of First Nations Development Institute, I would like to take this opportunity to thank you for holding these crucial hearings and for the opportunity to present testimony before your committee.

First Nations was created in 1979 for the purpose of using small-scale economic and enterprise development techniques to enhance tribal services and operations. FNDI's objective is to decrease tribes' almost total dependency upon federal funds and to build business and development capacity that is culturally appropriate, into the reservation. It is through our work with tribes at the grassroots level that we became aware of the tribe's concerns over BIA management and control of their trust funds, and thus became the impetus for the ad-hoc group that is formally known today as the Intertribal Monitoring Association (ITMA).

My testimony today will highlight FNDI's work in this area, and briefly describe the trust models that we developed, that are currently the basis for the demonstration models included in the legislation that is being supported by the ITMA. I will also highlight the 1983 Price Waterhouse (PW) Review of the management of Indian Trust funds at the request of the Bureau of Indian Affairs (BIA), and lastly my testimony will focus on the needs and rights of Indian Tribes, and the need for BIA recognition of its fiduciary responsibility to Individual Indians and Tribes as the third largest owner of lands and other natural resources, and to protect these resources through proper asset management inherent in the trust relationship that Indians have with the Federal Government.

Trust funds represent, in most cases, the largest asset of a tribe and individual Indian yet remarkably, an asset which they have relatively no control and no benefit from the income the asset produces. The BIA acts as the trustee for these funds on behalf of Individual Indians and Tribes. The U.S. Government through its' agent, the BIA, has a fiduciary responsibility to these people, which is of the "highest, most exacting standards" solidified in case law. This means timely and accurate accounting and recording of income and interest to these accounts, and that the BIA must go above and beyond what private trustees have to do in order to secure for their beneficiaries the rights they are entitled to. The BIA has not even reached the level of private trustees. I also maintain, that if the BIA was the trustee for the Rockefeller Family, that it would be fired, and sued for breach of trust responsibility by now.

There are laws currently on the books, that protect beneficiaries from:

1. management of assets by irresponsible or incapable personnel;
2. prevent the use of substandard accounting, and unsound methods of computing asset value or earnings;
3. ensure the full disclosure of accurate and timely information and financial statements;
4. prevent changes in the character and practices of the asset managers without input and consent of the investor/beneficiary.

Indian people would like these same assurances over the management of their assets, be it timber, water, money or land.

First Nations' work on the development of a reservation based model of management of trust and judgement funds started with the Saginaw Chippewa Tribe in 1984. However, our work goes back even further than that. By doing research into the issue we uncovered numerous government studies directed at the problem. The Price-Waterhouse study, which we immediately made available to tribes, our follow up analysis, and our work with Saginaw formed the basis of our recommendations for policy reform. Two of the main recommendations of the study are: 1) the BIA should develop and implement an on-going process to enable individual indians and tribes to participate in the formulation of investment objectives for the Indian trust fund; 2) offer tribes and individuals the option of making proportional assignments of funds among alternative portfolios based on their investment objectives. These should include two portfolios, a short-term or high liquidity funds containing marketable or market-based treasury securities and a medium-term diversified portfolio designed to achieve the highest expected return available under current conditions; 3) engage in Investment Advisory Service; 4) enhance Trust Fund reporting and Monitoring; and 5) the BIA should establish a formal oversight committee for monitoring trust fund accounts with representation from both the public and private sectors. The last two recommendations were the reasons that FNDI worked to establish the then ad-hoc committee, which is now the ITMA. In 1990, First Nations at the request of Congressman Synar, convened an ad hoc group of advisors, including Sam Goodhope, Nathan Hart and Elouise Cobell, to discuss First Nations recommendations on Trust Fund Management. This was the beginning of the task force now known as the ITMA, and a follow up to one of the recommendations of the PW study. I believe that the ITMA will address their current efforts to enhance monitoring, and outline any difficulties they have had with the BA in formulating their recommendations. I would like to state

at this point that while monitoring and systems enhancement is important, I believe it is crucial from an asset management point to begin to look at models for trust funds management that already exist and other alternatives that could be developed.

FNDI developed three different tribal models, all of which are outlined as demonstration models being supported by the ITMA: 1) a tribe managing and directing investments while the funds remained in trust with the BA; 2) a tribe taking funds out of trust; and 3) contracting under P.L. 93-638 for the management of the trust. Again these models were all developed out of our field work on the reservations such as Saginaw, and the Cherokee Nation.

FNDI also conducted research on trust fund management on almost 100 reservations. In our survey, tribal leaders identified barriers to trust fund management: 1) a lack of local control; 2) a limited pool of expertise and quality technical assistance; and 3) poor or inadequate information as barriers to reservation development. The BIA systematically contributes to every one of these barriers. Tribes and Individuals are frustrated by the lack of involvement and inadequate information. Our previous research into the issue of BIA's management of trust funds showed that the needs of the tribes and individual Indians remain unmet and their legal rights remain ignored. This is still the current status quo. As far back as August, 1985 in discussions with the Investment Branch of the BIA in Albuquerque, we were told that the BIA did not provide technical advise to tribes desiring to form investment plans. Further, the BIA did not have the expertise necessary to provide such assistance. They did have investment coordinators located at many area offices but, in any case, this person had other responsibilities and only devoted a portion of their time to the investment coordinator role. The investment branch personnel candidly noted that only very few of the tribes, in particular those with substantial resources, had the requisite knowledge to develop investment objectives. There was an unspoken conclusion that the system was adequate because no demands were made of it. In a large part, this is because tribes did not have the expertise to question it anyway.

Conversely, at an Oklahoma Indian Business Development conference, several tribal representatives confronted several tribal representatives confronted the BIA about issues related to trust fund investment. These included: 1) not being informed about changes in payment schedules for tribal trust fund interest payments; and 2) a lack of personnel in both the area and agency offices that could answer questions pertaining to trust fund investments, this includes lack of knowledge of lease payments, and proper auditing of payments to interest holders of

fractionated Indian lands.

The seriousness of the trust funds of American Indians, and the realization of economic potential of our resources is at stake. Indian trust funds represent a legacy for tribes and individual Indians. Indeed, it is not an overstatement to observe that trust funds represent the residual value of all the land, water, and natural resources which were appropriated from the tribes as the United States expanded from coast to coast. The trust fund investment program then can be characterized as an effort to manage this important legacy. As of today, there has still been no indepth auditing on a national level of these trust accounts. You have already heard Arthur Anderson and Company state that with huge amounts of source documents missing, only limited auditing can be accomplished. Under current law, if a class action suit was brought, The BIA would be required to audit and reconcile these accounts by a time certain. This is a basic responsibility of the trust relationship. FNDI also recommends that a settlement process, at Individual and Tribal option should be implemented, without any statute of limitations, to allow tribes and individuals to conduct their own accounting, should they choose. Further, FNDI recommends the creation of a Trust Fund Court of Claims to remedy wrongs committed over the past 20 to 30 years. Included in the recommendation, should be the authority for class action suits by beneficiary tribes and individual Indians and to establish the grounds for jurisdiction.

The authority to manage trust monies called for in the recommended legislation already exist. With proper technical assistance, and creative options, it has been proven that tribes are capable of taking control of their economic destinies. I believe the same holds true for Individual Indians. First Nations' has proven that when needs are met and rights are upheld, success follows. Let me share a story of one tribe.

It took the Saginaw two years of organizing, testifying before Congress, and political networking to obtain the special legislation whereby control over a \$10 million land claims settlement belonged to the tribe. During this time, and in coordination with these activities, FNDI worked to develop and implement an investment plan for the \$10 million judgement award. The tribe's investment plan had several different stages. Initially, FNDI, in conjunction with the Tribal Council, held community workshops on the advantages of investing the Saginaw settlement award. A comprehensive survey was conducted to identify the community's social and economic needs and to assess their priority form program development.

Preliminary research on commercial, industrial, agricultural, and

economic opportunities for economic growth was compiled. Financial experts and Trust advisors who could help design a plan and make recommendations on the use and investment of the funds were identified. Training from FNDI prepared the Saginaw Tribal Council and key tribal staff for the selection of a financial advisor.

Equitable and reciprocal relationships with local financial institutions were negotiated and by July 1986, FNDI completed the Saginaw Chippewa Tribal Trust Fund Investment Plan. As a direct result of placing these funds locally, the tribe worked out an arrangement with a local bank to provide 10% mortgages for tribal members for new housing units financed and constructed on the reservation. With local control of over their assets, the beneficiaries can use this to leverage a substantial financial relationship with their local banks. Under current provisions of the Community reinvestment Act, banks are required to invest into their local communities. This would certainly enhance reservation banking relationships.

For the record, I submit a copy of our summary of the Price Waterhouse recommendations.

Senator Inouye, again, thank you for this opportunity to share with you our recommendations regarding the management of Indian trust funds. I am prepared to answer any questions the Committee has at this time.



The Saginaw Chippewa Indian Tribe Of Michigan

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TESTIMONY OF THE SAGINAW CHIPPEWA INDIAN TRIBE OF MI REGARDING TRIBAL CONTROL OF JUDGEMENT FUNDS A CASE STUDY

The Saginaw Chippewa Tribe has been successfully managing its ten million dollar judgement fund since 1986 when Congress enacted PL 99-346 and awarded the Tribe control over its settlement monies. Since that time, the Tribe has matured in its management of the fund, progressing from using two outside investment managers operating under the review and direction of the Tribe, to assuming total control of the fund's management. A brief review of the fund's history and its benefits for the Tribe may help to illustrate the importance of tribal control of these monies.

In 1983 a \$16 million land claims settlement (Treaty of 1819) was distributed, on a per capita basis, to the 891 members and 3,200 descendants of the Tribe. This distribution was pursuant to a plan prepared by the Bureau of Indian Affairs and approved by Congress. The members and descendants received an average per capita payment of \$3,600 each. Such a policy and plan resulted in no lasting economic benefit to the tribal government or its members. People went out and purchased a few appliances, made a down payment on a new car, paid off a few bills, and the money was gone. This money did not contribute to the generation of employment for tribal members, nor did it contribute to the creation of a tribal economic base. The only real benefactors were the non-Indian merchants.

In the latter part of 1983, the BIA submitted an identical distribution plan to the Saginaw Chippewa Tribal Council. The plan involved a per capita distribution to the members and descendants of the Tribe, for a final \$10 million award based on the aggregation of three land claims settlements (Treaties of 1805, 1807, and 1817). This time the Tribal Council opposed the BIA distribution plan, opting instead to preserve the fund by investing it for the long-term socioeconomic development of the Tribe. The consequence of these diverging viewpoints resulted in the Tribe submitting their own distribution plan to Congress.

On June 25, 1984 the "Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgement Funds Act" was introduced in both the House and Senate. The proposed bill provided for the Tribe to establish a "Principal Investment Fund", whereby 100% of the funds awarded as compensation for lands ceded under the Treaties of 1805,

1807, and 1817 would be made available for tribally determined investments and economic development. The bill also provided that the Bureau of Indian Affairs would be relieved of their "trust" responsibility over the funds, thereby having no authority to approve or disapprove of how the Tribe invested the funds or how the Tribe programmed the use of the income derived from the investments. Two years later, after considerable effort of the part of tribal leaders, staff, lobbyists, and members of the Michigan Congressional Delegation, the bill was passed in both the House and Senate and signed into law by President Reagan on June 30, 1986 (Public Law 99-346).

Some of the constraints imposed on the Tribe by Congress in P.L. 99-346 include:

- a. That the Tribe can never dissipate the Principal Investment Fund by way of per capita payments, the Fund can only be used for investment or economic development;
- b. That the Tribe cannot expend more than 90% of the interest income generated from the Fund annually, to insure the growth of the Fund;
- c. That the Tribe could not expend any income generated from the Fund until 18 months after the Revised Constitution was adopted in November 4, 1986 - or until May 4, 1988. This allowed adequate time for the Tribe to conduct its updated enrollment program that enabled qualified descendants of the Tribe to become members (and thereby beneficiaries) of any programs or services developed from the Fund income.

While the legislation was being lobbied through Congress, the Tribal Council and staff were also engaged in developing an investment strategy and in selecting investment advisors who would be contracted to manage the fund. To this end, the Tribe involved the expertise of First Nations Financial Project (FNFP) in preparing the Tribal Council and key staff for the selection of qualified financial investment advisors and in defining the philosophical parameters of an investment plan that would meet the socioeconomic needs of the Tribe. First Nations Financial Project (FNFP) is an Indian directed and staffed non-profit organization devoted to assisting tribes with economic self-sufficiency projects. A \$25,000 grant from the C.S. Mott Foundation, Flint, Michigan was secured to fund the training and selection process devised by FNFP and the Tribe.

As a result of this very lengthy and deliberate process, in February of 1987 the Tribal Council selected two investment management firms, each of which were responsible for the management of half of the fund, or about \$5 million. This was a monumental effort and accomplishment for the Saginaw Chippewa Tribe, frankly because P.L. 99-346 sets an historical precedent in allowing the Tribe to preserve its last and only resource by investing the

judgement funds as opposed to distributing the money on a per capita basis.

Some of the primary objectives developed by the Tribal Council for the use of the income generated from the Investment Fund were:

- a. **Land Acquisition** - as noted earlier, the Tribal land base is grossly insufficient to meet the Tribe's growth needs for future housing, community and economic development.
- b. **Economic Development** - another major portion of the Fund income will be reserved either as working capital to initiate Tribal enterprises, or to leverage outside capital for joint-ventures and infrastructure development.
- c. **Social Development** - in spite of declining federal dollars, the Tribal Council still has a governmental responsibility to provide for the health, safety and welfare of its members. The third major portion of the Fund income will be programmed to replace the declining federal dollars, so that the social and health needs of the Tribe can be maintained.

The important consideration to remember is that even though the investment fund provides the foundation for the establishment of an economic base for the Tribe and provides a stable source of revenue to the tribal government, it does not provide the Tribe with all of the income it needs to meet its current and future needs. For example, the Investment Fund generates an average income of between \$850,000 and \$900,000 annually, but the Tribe's current operating budget is about \$3 million. This does not take into account the various unmet needs of the community. Other sources of income can and need to be derived from the exercise of the Tribe's sovereign powers to provide the essential governmental services needed to insure and promote the health, safety and welfare of the project.

Given the above constraints imposed by Congress and the primary objectives determined by the Tribal Council, the original investment managers created strategies for investing the one half of the Fund they were each entrusted with and to manage the investments once made. Each operated under the same set of guidelines including the fact that any investment strategy employed could not risk the principal of the Fund and that Fund performance must at least be equal to the current three year Treasury note yield. After a year of operation, the Tribal Council, acting on the advice of its investment advisor (a staff member of the Council of Energy Resource Tribes-CERT) fired both managers because they failed to live up to the terms of their agreements. At that point, the Tribe hired one new manager and decided to act as caretaker of the other investment fund balance as an interim measure. Since that time, the Tribe has assumed total control of its Investment Fund and manages it with the advice of its CERT investment advisor and the Tribe's Finance Committee. The Tribe's management of its own trust funds has consistently out performed the BIA's Trust Fund Division in its

management of all Indian trust funds and has realized a greater rate of return on its investments by averaging between 8.5% and 9.0% annually.

An example of the use to which a portion of the Tribe's Judgement Fund is put is shown below for the periods FY'91 and FY'92 (through June 30, 1992). The majority of the remainder of the Fund for each period was used to retire a debt for per capita elder payments (which was another requirement of the Act).

PROGRAM	FY 1991 SUPPORT	FY 1992 THRU 6/30/92 SUPPORT
HEAD START	\$ 87,366.71	\$ 60,871.02
TRIBAL CLERK	63,520.05	25,177.60
LEGAL SERVICES	25,098.94	103,235.60
EDUCATION	164,659.35	115,222.61
PLANNING ACCOUNT	33,524.52	34,276.42
LAW ENFORCEMENT	19,050.74	
EMERGENCY FUNDS	28,000.00	
JUVENILE JUSTICE	14,618.78	
SOCIAL SERVICES	6,514.21	4,025.85
SUBSTANCE ABUSE	31,979.16	23,754.72
TRIBAL OBSERVER		11,223.58
AT-LARGE ASSISTANCE		1,526.10
TOTALS	\$474,332.46	\$379,313.50

There have been a number of intangible benefits as well since the Tribe gained control of its Judgement Fund. Tribal members have benefitted from a home ownership program which, indirectly, is a result of the Tribe's deposit of Fund revenues in local banks. This has contributed to increased self esteem and pride among members. In addition, the Tribe itself has increased its stature in the local community as it continues to demonstrate the ability to successfully manage a multi-million dollar investment fund.

The Tribe is continuing to invest in its future for the benefit of its youth and their descendants. The impact of the Judgement Fund upon the Tribe has been tremendous and was the beginning of a major growth and expansion phase that the Tribe continues to experience. Properly managed and invested, tribal control of their judgement funds not only results in direct control of their financial resources, but in control of their future as well.

**Price-Waterhouse
In-Depth Review of Indian Trust Funds
for the
Bureau of Indian Affairs, U.S. Department of the Interior:
Summary, Issues, and Comments**

**by
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Price Waterhouse In-Depth Review
of Indian Trust Funds for the
Bureau of Indian Affairs, US Department of the Interior:
Summary, Issues and Comments

I. Introduction

In 1983, Price Waterhouse (PW) conducted an in-depth review of the management of Indian trust funds at the request of the Bureau of Indian Affairs (BIA). The reports submitted in December 1983 and January 1984 covered five tasks: (1) review trust fund legislative authorization and management systems documentation; (2) document trust fund management procedures and operations; (3) analyze investment portfolio management; (4) analyze cash management and accounting procedures; and (5) summarize recommendations. Tasks (1) and (2) are essentially descriptions of the context, procedures and operations under which the Indian trust funds are managed and form the base for the analyses investment portfolio management, and cash management and accounting procedures in task reports (3) and (4). Recommendations, including estimated timetables for implementation, derived from these analyses complete the report.

As requested by First Nations Financial Project, the report which follows summarizes the major recommendations of the PW study and the rationale behind each, concentrating on investment portfolio management, cash management and accounting. Issues raised from

these recommendations are set out and comments made for further exploration. The objective of this summary and comments on issues is to evaluate the recommendations in the context of expanding benefits to the tribes from the trust funds, either directly or indirectly. This summary and comments could be used both to solicit input from the tribes and to support or suggest changes in BIA management of the trust funds so as to increase benefits and involvement of the tribes. A GANTT chart prepared by PW is attached at the end of this report which lists recommendations, implementing body and estimated timetables for implementation. The complete PW studies should be consulted for specific details on the management, procedures and operations.

Apparently, some recommendations have already been adopted by the BIA and others are under active consideration. Requests for Proposals (RFPs) using private sector services for certain investment, cash management and management information functions are currently being drafted. To the extent information is available, actions taken or being considered are noted below.

As of August 31, 1983, the latest date for which figures were available for the PW study, the BIA managed Indian trust funds totaling \$1,607,690,526 in five trust funds. (See Table 1)

Two hundred and fifty-four tribes have an interest in the Tribal Trust Fund, but because some tribes have multiple accounts, the fund contains 1,500 separate accounts. The size of tribal

holdings varies greatly with 28 tribes having accounts over \$10 million totaling \$866.4 million. In other words, 11% of the tribes hold about 75% of the Tribal Trust Fund monies.

TABLE 1
Trust Funds Balances
(as of 8/31/83)

<u>Fund*</u>	<u>Balance</u>
Tribal Trust Fund	1,148,100,000
Individual Indian Monies (IIM)	436,700,000
Indian Proceeds of Labor (IMPL)	17,822,606
Contributed Funds	688,926
Alaska Native Escrow Fund (ANEF)	<u>4,378,994</u>
TOTAL	1,607,690,526

Source: PW Task III Report

The IIM fund is primarily a demand deposit fund for individuals and tribes, which was designed to provide banking services for legally incompetent Indian adults and Indian minors without legal guardians, but now also contains disbursing accounts for tribal operations and for some tribal enterprises. The fund is comprised of approximately 250,000 accounts.

The Indian Proceeds of Labor (IMPL) fund was scheduled to cease to exist and funds were to be disbursed by September 30, 1985 according to legislation enacted by Congress. Therefore, this

*In November 1983, the Branch of Investments in the Central Office, Albuquerque, accepted responsibility for two additional trust funds under PL 98-146: (1) \$5.8 million earned from tribal power projects and (2) \$10.5 million from tribal irrigation projects.

fund is no longer relevant for discussion in this paper.

The Contributed Funds, the smallest and least active of the trust funds, are managed in trust until distribution is made to named beneficiaries. In instances of ambiguity with regard to named beneficiaries, funds remain in trust until judicial or legislative action is taken.

The Alaska Native Escrow Fund (ANEF) was established to invest land use revenues from lands claimed by Alaskan native corporations under the Alaska National Interest Land Conservation Act. Distributions are made from the ANEF as land claims are settled.

This paragraph will
 The PW study and this report concentrate on the two largest funds, the Tribal Fund and the IIM, which have the most activity, and are expected for the foreseeable future to be held in trust by the BIA for the tribes.

The BIA administers the Indian trust funds under the general authority found in the Act of June 24, 1938, 25 USCA 162a, wherein the Secretary of the Interior (or his designate) can deposit tribal or other Indian trust funds in banks where these deposits are federally insured or are collateralized by securities that are unconditionally guaranteed as to principal and interest by the United States. Also, both tribal and trust funds may be invested in public debt obligations of the United States or in bonds, notes

or other obligations which are unconditionally guaranteed by the United States. This list was expanded by the US Claims Court decision in Manchester Band of Pomo Indians v. United States, in 1973, by Congressional action (12 USCA Section 2157), and by the US Claims Court in Cheyenne-Arapaho Tribes of Oklahoma v. United States in 1975, to include authority to invest pursuant to Acts of Congress which authorize generally the investment of funds held in trust by the United States in designated securities. While no exhaustive list has been compiled, these later authorized investments include Tennessee Valley Authority, Federal Home Loan Banks, Government National Mortgage Association, Federal National Mortgage Association, and Federal Housing Administration obligations, among others.

Under authorizing statutes and subsequent case law, the BIA as trustee has broad latitude concerning denomination offering price, yield, maturity and underlying security supporting the payment of debt service. The PW report discussed in some detail the characteristics of the securities in which the BIA invests, and the process by which investments are made in different types of investments.

II. Investment Portfolio Management

Price Waterhouse makes the following five major recommendations with respect to investment portfolio management. These are contained in the report "Task III: Investment Portfolio

Management" dated December 24, 1983.

- A. Develop and implement an ongoing process which will assist tribes and individuals to formulate investment objectives.

PW suggests that participation by tribes and individual Indians in the setting of investment objectives for funds held in trust for them by the BIA is consistent with the current US Government policy of Indian self-determination. The existing statutes that govern formation and investment of Indian trust funds provide an opportunity for Indian participation with the BIA in setting investment objectives. The current legal and procedural framework for participation is outlined below.

It is interesting to note that at the time of the PW study, the BIA did not have a published statement of investment objectives. In order to establish criteria for measuring BIA investment performance, PW assumed the following as the BIA investment objectives: "To maximize portfolio wealth while meeting the immediate liquidity requirements of the beneficiaries, all subject to the constraints imposed by investment authorizations."

Tribal Trust Funds. The major source of Tribal Trust Funds is judgment monies. When judgments are rendered, the Treasury makes funds available to the BIA for investment. These funds do not become available for tribes or individuals until

Congress approves a plan for disposition of funds which is submitted by the Secretary of the Interior.

The Tribe has the responsibility to make a proposal to the Secretary of the Interior for disposition of the funds which can specify investment objectives. The BIA Office of Indian Services reviews the proposal and then, in accordance with 25 USC I403, (1) holds a hearing of record, (2) provides legal and financial expertise to the Tribe, and (3) ascertains that at least 20% of the award is used for "common tribal needs" such as education and economic development programs (a 100% payout is allowed where no tribal governing body exists). The BIA can insist that investment objectives consistent with current and projected trust fund investment authorizations be articulated in the plan. The plan must be submitted to Congress for review by the Department of the Interior within one year (unless a 180 day extension is granted). After approval by Congress, the BIA is able to approve changes to investment objectives as necessary to take into consideration current market conditions and tribal requirements.

Investment of revenues from tribal investments can be used at the discretion of the Secretary of the Interior through the tribal budgeting process and is not subject to Congressional review. This is one area where the BIA could develop, with tribal participation, investment objectives for use of funds.

IIM Funds and the Smaller Trust Funds. The BIA has discretion to set investment objectives for the IIM as long as these objectives can be achieved under current authorizing legislation and related case law. The Bureau has similar discretion with respect to the smaller trust funds.

Organizational Structure. PW believes that an organizational structure already exists which could allow tribes to communicate investment objectives to the BIA. The Branch of Investments has an investment coordinator assigned to each area officer who reports to the area director. Some agency offices also have investment coordinators. The specific role of investment coordinators is to inform the Branch of Investments of tribal cash requests and discuss the impact of proposed tribal budgets on the trust funds.

The investment coordinators could also work with the tribes to develop comprehensive investment objectives, and on a regular basis, assist in revising these objectives to meet current conditions. The IIM officer in the agencies could fulfill the same function for individuals.

What is required according to PW is that a specific process be implemented to assist in developing investment objectives that uses the existing infrastructure. PW suggests also that expecting individuals and tribes to articulate investment objectives in the financial language used by economists or

investments portfolio managers to describe security transactions is unrealistic. For this reason, PW proposes that BIA initially design two portfolios which would meet specific investment objectives. These objectives would be communicated to the tribes and individuals through the investment coordinators and the Agency IIM officers. The tribes and individuals could then choose to assign portions of their funds held for them to the portfolios which most closely approximate their investment objectives. (Recommendations with respect to these portfolios are discussed in more detail below).

In discussions with representatives of First Nations Financial Project, the Investment Branch of the BIA in Albuquerque in August 1985 indicated that the BIA did not then provide advice as to what investment plans would be acceptable, nor provide assistance in developing plans. Furthermore, in many instances, investment coordinators had other responsibilities and only devoted a portion of their time to the investment coordinator role. Also, the investment branch personnel noted that only a few of the tribes, in particular those with substantial resources, had the requisite knowledge base to develop investment objectives.

PW recognized the need for training of BIA field personnel and educating trust fund beneficiaries in the objective setting process, noting significant time and effort would be required to implement new procedures.

Whether or not the portfolio options suggested by PW are adopted, there appears to be a clear need to improve the BIA's ability to provide assistance to tribes in establishing investment objectives. This would seem to require a definite commitment by the BIA to work with tribes in this area, and that a specific program be developed. In order for an effective program to be developed, a number of issues will need to be addressed, including the following, and will probably require a study to assess needs and develop the program.

o How much assistance is needed by tribes and individuals? What form should this assistance take? Workshops or regularly scheduled meetings, for example?

o Is the existing structure of investment coordinators and IIM officers appropriate? Or should other alternatives be considered, such as creating a specialized staff to assist tribes or using investment advisor consultants? If outside investment management advisory services are used for portfolio investment (see recommendation below), could they have a role in assisting tribes establish investment objectives?

o How much training will be required for investment coordinators and how will this training be implemented?

o What will be the cost of providing the program? What

resources are available for training and for additional personnel if necessary?

o How extensive a program is needed? To all tribes or only some?

- B. Offer tribes and individuals the option of making proportional assignments of funds among alternative portfolios based on their investment objectives.

PW cites several benefits to this approach. The beneficiaries can meet a wide variety of risk-return objectives by splitting trust funds among portfolios. Using a limited number of portfolio alternatives, tribes and individuals are provided with a way to achieve custom tailored objectives. By offering portfolio alternatives, the BIA gains flexibility to adjust to changing market conditions.

Offering two portfolios initially is being recommended by PW: (1) a short-term or high liquidity fund containing marketable or market-based treasury securities; and (2) a medium-term diversified portfolio designed to achieve the highest expected return available under current conditions, in other words, a wealth maximization portfolio. No change in authorized investments is recommended.

Using two funds would require that BIA manage two portfolios

for the Tribal Trust Fund, assuming funds are pooled (see discussion of pooling below), two for the IIM funds and one for each of the remaining portfolios which are basically being held pending future distribution.

The Branch of Investments now must consider liquidity requirements for about 1500 Tribal Trust Fund accounts. By using two funds with specific objectives, the BIA can greatly reduce the level of effort needed to obtain instructions from individual tribes as major blocks of securities are redeemed. In August 1985, the Branch of Investments indicated that obtaining timely instructions from tribes and individuals in a timely fashion was a continuing problem.

As tribes and individuals become more experienced with allocating funds between the portfolios, BIA may be requested to offer other portfolio alternatives. Assuming shared objectives by a sufficiently large number of tribes and individuals, other portfolios could be created. At some point, PW suggests that legislative changes might be proposed in order to pursue other desirable alternatives, possibly including portfolios that fulfill economic development objectives. The number of portfolio alternatives will necessarily be constrained by BIA budget and staffing considerations.

The Investment Division of the BIA indicated in August 1985

that the two portfolio proposal was under active consideration, and the annual report addressed the issue of pooling the Tribal Trust Fund accounts. A legal memorandum contained in the PW study suggests that pooling would be acceptable under existing legislation and case law, but would be strengthened were the Secretary of the Interior to promulgate regulations specifically giving clear notice to beneficiaries of the practice and their rights and interests under the statute. IIM Funds are currently being pooled.

Presently, the Tribal trust fund is invested so that each tribe has a distinct portfolio to meet its cash needs. Sufficient short-term investments must be maintained for each tribe to accommodate planned cash requirements and contingencies. If pooled investments were used, sufficient liquidity for known cash needs would still be required, but cash reserves to meet contingencies could be substantially reduced and returns could potentially be increased as a result.

The idea of providing alternative investment choices to meet varying investment objectives appears sound. First, it enhances the possibility of increasing returns under varying market conditions. Second, it provides a way for tribal participation in choosing investment objectives. Third, it increases BIA flexibility in making investments by lessening the need to numerous obtain investment authorizations and manage investments for a large number of individual tribal

accounts. It also provides a framework for establishing portfolios with other investment objectives and could be a viable way to introduce investment in securities currently not authorized.

C. Establish a formal oversight committee with representation from both the public and the private sectors.

The objectives of the investment oversight committee would be to provide an independent evaluation of trust fund performance on a regular basis and make recommendations regarding portfolio strategies and management of the Indian trust funds. If outside investment advisory services are used (see recommendations below), the oversight committee would be responsible for choosing firms to provide these services.

PW suggests that the oversight committee include financial community participants and include private sector representatives. The rationale for the oversight committee is that it would provide significant incentives for the BIA to manage the investment process with the same level of efficiency found in the private sector. The need to interact with the committee will require that the BIA operating units, in particular the Branch of Investments (also known as the Investment Division), Finance and Accounting, produce timely accounting and accurate reporting of cash positions, deployment of assets and fund performance reports. In

addition, the committee could also be a source of research and market information for the BIA operating units. Also, the committee in its oversight function will be able to assure the BIA Assistant Secretary that the Branch of Investments is complying with agreed upon policies for trust fund management of alternate portfolios.

The oversight committee will perform a useful function by bringing additional expertise to the management of Indian funds and provide a needed outside perspective on BIA performance. The BIA Investment Division indicated support this proposal in August 1985. Obtaining private sector representation appears to be particularly valuable. Although not articulated by PW, the committee could usefully include Indian representatives who would be, in principle, best able to articulate the investment concerns of the tribes.

D. Engage an Investment Advisory Service.

The objectives which could be met by using an outside advisory service, according to PW, include assuring that BIA has access to the services of experienced portfolio managers who may not be available in the future within the government. Also, an investment advisory service can provide continuity to investment strategies, current capital markets research and bank screening services. This recommendation is made on the assumption that the alternate investment portfolios are

offered and that the Tribal Trust Fund is pooled (see recommendations above).

At present, no external financial advisory, trading or brokerage services are used. In order to use outside advisory services the tribal trust fund will need to be pooled so as to reduce the costs of using outside services by allowing consolidation of reporting and monitoring for the 1500 accounts. This will also improve both internal reporting of distribution of assets among different security investments and external reporting of portfolio status to tribes and individuals.

Discretionary management, i.e. where the firm is authorized to manage money on behalf of the BIA, does not appear to be possible without new authorizing legislation since the BIA in that instance would not be explicitly authorizing each transaction or taking possession of securities. No legislative change would be required to use investment advisory services since using these services would not have any impact on the procedures for execution of securities transactions.

Investment Performance. Using investment advisory services will not guarantee superior performance to that achieved by the BIA in recent years. Using available data, PW assessed BIA performance relating estimated returns (income and capital appreciation) and risks assumed (variability of expected

returns). In both areas, BIA's performance has been superior, exceeding returns to privately managed funds with similar investment authorization during the 1976-1982 period.

PW could not clearly determine whether this success resulted from strategic design or the ability of the portfolio manager to take advantages of the federal subsidies implicit in pricing of FDIC and FSLIC insured certificates of deposit (CDs). The returns on CDs reflect elements of bank default risk, when, in fact, because the CDs are insured, they are risk-free investments. This subsidy is currently under attack by various financial institution regulators and may not be available long-term. PW also notes that there is not guarantee that the strategy in 1983 of investing primarily in highly liquid short-term assets would achieve the same investment performance relative to other strategies when capital markets return to traditional pricing behavior which has occurred in the past year.

Professional outside management will be superior to BIA management only if their forecasts of future interest rates are superior, their ability to identify and take advantage of market pricing inefficiencies exceeds that of BIA, and their methods for diversifying a portfolio provide greater reductions in unsystematic risk than can be achieved by BIA.

Because of this, PW recommends outside advisor services, not

because of potential for improved returns, but to provide: (1) continuity, advice, and training with regard to investment strategy; (2) current research and information regarding the major capital markets to the BIA's portfolio managers; (3) incentive to maintain periodic investment performance reporting that is comparable to reporting in use by the investment industry; and (4) bank screening services.

The cost of providing this service would be .001 percent to .075 percent of assets under management depending upon the level of supporting services needed, such as special accounting reports (see following recommendation).

E. Enhance Trust Fund Reporting and Monitoring.

As the portfolio management recommendations are implemented, enhanced reporting to beneficiaries and senior management within BIA will be required, so that reporting is performed on a more timely basis and includes deployment of assets at current market value. PW specifically suggests that BIA adopt report formats and reporting frequencies comparable to those used at financial institutions that manage funds in excess of \$1 billion.

Assuming that the alternate portfolios and pooling are adopted, PW proposes a set of six reports that would be consistent with normal reporting for accounts managed totaling

over \$1 billion; a transaction report, project maturities report, deployment of assets report, account distribution report, monthly summary report, and sources and uses of funds report.

In addition, PW advocates that the portfolio management (security selection) function be separated from the execution function so that the portfolio management remains the responsibility of the Chief of the Investments Branch while the transaction execution function is performed by less senior specialists. Also recommended is that a formal research and portfolio monitoring function be established. With formation of the investment oversight committee and the advisory services already mentioned, the BIA investment process would then have a functional organization similar to that used by large public and major private sector investment management organizations, namely separate functional units for:

- o security selection (portfolio management)
- o oversight of portfolio performance
- o investment research and performance monitoring
- o accounting for trust fund cash movements.

Table 2 summarizes the current organizational structure of the BIA Branch of Investments and Table 3 that proposed by PW.

The proposed reporting and organizational changes seen

TABLE 2
CURRENT FUNCTIONAL ORGANIZATION CHIEF OF THE BIA BRANCH OF INVESTMENT

FUNCTIONS	PERSONNEL			
Investment Oversight	Government Accounting Office Office of the Inspector General; Department of the Interior			

Investment Management	Supervisory Financial Analyst			

Support	<u>Data Processing Support</u>	<u>Accounting Support</u>	<u>Professional Support and Research</u>	<u>Administrative Support</u>
	Office of Administration; Bureau of Indian Affairs	Office of Administration; Bureau of Indian Affairs	1 - Financial Economist GS-13 3 - Financial Analysts GS-12	1 - Trust fund Specialist GS-9 2 - Accounting Assistants GS-5 and GS-4 1 - Secretary GS-5 2 - Clerk GS-3 & GS-4

TABLE 3
PROPOSED ORGANIZATION OF BIA BRANCH OF INVESTMENTS WITH SUPPORT FROM OUTSIDE MONEY MANAGEMENT FIRM

FUNCTIONS	PERSONNEL			
Investment Oversight	Formal Committee Overseeing Investments			

Investment Management		Trust Fund Manager (Member of Committee)		Outside Investment Manager

Support	<u>Administrative Support</u>		<u>Professional Support</u>	<u>Accounting Support</u>
	2 Secretaries 1 - Research Investment Analysts	1 - Security/Trader Transaction Specialist	1 - Senior Tribal Liaison Officer	1 - Senior Accountant 2 - Junior Accounting Specialist 4 - Clerks & Accounting Specialists

appropriate. Cash management officers and trust fund accounting officer positions were created in 1985 as a result of PW recommendations (see below for further discussion of cash management and accounting recommendations).

F. Comments on Investment Portfolio Management

PW has presented a number of sound recommendations with respect to Investment Portfolio Management. Essentially, the recommendations are aimed at providing the tribes and individuals with an opportunity to participate through a process of setting investment objectives in the context of two portfolios, initially with different objectives. PW noted that this involvement would require training for BIA personnel, tribes and individuals. If this proposal is adopted, using the existing BIA structure, further work will be required to assess training needs and establish a working, ongoing program to involve tribes and individuals in setting investment objectives.

Using two funds with different investment objectives gives the tribes and individuals a choice which was previously not available. These funds would be invested in instruments that are currently authorized. In other words, the risk to the funds is not increased in any significant way and may be reduced through diversification by investing in securities with more varied maturities. If tribes at some time in the

future wish to add additional portfolio options which allow investment in other securities, legislative change could be pursued. For example, the list of authorized investments could be expanded to include high quality securities such as AAA rated corporate bonds, banker's acceptances, commercial paper and eurodollar CDs, which would increase returns in exchange for some additional risk. This would, however, mean that, in fact, the US guarantee of principal, through allowing investment only in US government insured, guaranteed or collateralized investments, would no longer be complete and could change the nature of the trust relationship.

One investment which is secure might be explored now and would appear to be acceptable under current authorizing legislation. The US government guarantees 90% of many loans made to tribes. If the guaranteed portion of these loans could be purchased, these would be an appropriate investment for tribal trust funds and would help to create a market for these loans. This could increase the willingness of lenders to make Indian loans. What is not clear at present is whether or not such loans could be purchased and, if so, whether the terms would be appropriate for investment in tribal trust funds.

PW is also recommending that private sector expertise be brought to the process of BIA investment, specifically suggesting that an oversight committee be established with

private sector financial community participation, and that private sector investment advisory services be used to provide input to BIA on investment. Both ideas are appropriate and serve to make BIA's investment management process more like that of major financial institutions. This seems both useful and necessary given that over \$1 billion in funds are managed. These proposals bring additional expertise to BIA, but essentially maintain responsibility for investment with the BIA. While not mentioned by PW, Indian participation on the oversight committee would be clearly appropriate.

PW's recommendations regarding reporting and monitoring are also sound, and essential for management of funds totaling over \$1 billion. Importantly, improved reporting is necessary to enable tribes to understand the investment process and make decisions on investment objectives.

III. Cash Management, Accounting System and Control Related Issues

In addition to investment management of Indian trust funds, the BIA has responsibility for cash management, which involves the mobilization and effective use of liquid assets (cash), and for accounting for trust fund assets and implementing adequate controls, which concerns the recordkeeping and safekeeping of assets. While the BIA performs many of the cash management and accounting duties, the Department of the Interior (DOI), Treasury and the General Accounting Office (GAO) also provide key support services to the BIA.

Details of cash management, accounting and control procedures and the roles of the BIA and other agencies' personnel, are described fully in PW's Task II report dated September 26, 1983. Findings and recommendations based on analyses of these procedures is the subject of the Task IV report dated December 29, 1983. The key findings and conclusions are summarized below. Because this Task IV report contains a comprehensive, yet concise, statement of conclusions and recommendations, it is being included to a substantial extent in the following summary.

A. Cash Management: Conclusions and Recommendations

1. Conclusions

Many specific cash management information requirements are not

being met. Cash management information needs relate to current and future data (e.g., current bank balances and cash flow projections) while accounting information is historical in nature. Thus, systems supporting BIA's accounting requirements are not designed to support its cash management information requirements, nor would it be practical to modify those systems to provide the data required to enhance the Bureau's cash management function. In fact, many money management organizations commonly rely on services outside of their own accounting system to supply such key information needs as daily cash deposits or daily bank balances.

The Treasury does not provide necessary cash management information to the BIA on a timely basis. The Treasury (which BIA uses as its "bank" provides information designed to support typical governmental accounting requirements for appropriations and encumbrances. However, BIA's information needs relating to the management of trust funds are not adequately addressed by the Treasury's system.

In the cases of other large investment organizations (both public and private), the primary sources for cash management information include banks and other organizations providing cash management related services. Many organizations tap these information sources not through their own accounting system but rather through external information sources offered by banks and other vendors. Thus, there are significant

opportunities for BIA to utilize external services.

Measurable improvements in the management of cash (e.g., accelerating the inflow of cash for investment) can be affected through the use of such services.

Alternative means to improve cash management were considered by PW. From an array of available services, combinations of specific services were selected and evaluated based on the following criteria:

- o Opportunities and constraints of Federal and Treasury statutes and regulations;
- o Potential incremental benefits, such as additional earnings, available to the beneficiaries of the funds;
- o Potential incremental costs of the services, which would be borne by BIA to obtain the benefits on behalf of the fund beneficiaries;
- o Ease of implementing the services in a timely fashion.

A key conclusion reached through this analysis is that external services provide incremental savings net of the related costs and that, among the array of service options considered, those employing higher levels of external services appear to offer greater net benefits. Of the three options

considered, that using the most external services generated almost \$1.2 million in benefits annually; the option using somewhat fewer services resulted in over \$600,000 in benefits; and the third option using local depositories and a deposit reporting service contributed over \$200,000 in benefits each year.

2. Recommendations: Cash Management Action Plan

The three cash management options were presented in this report ranging from most sophisticated and most highly dependent on banks and other private sector providers (option 1) to that offering the least change from the current structure (option 3). It is possible, however, to progress from option 3, to option 2, to option 1 with incremental benefits achieved from each successive step. This approach also provides a means of assessing progress at each step before expending additional funds and efforts. Accordingly, the following sequence of cash management improvement activities are recommended by PW:

- a. Implement a deposit reporting service to provide the investments branch with more daily information of all local deposit activities. This would involve the procurement of services from a commercial vendor and would not involve the installation of software on BIA's computers.

b. Modify cash deposit procedures as follows:

- 1) Set up local depositories at those agencies currently lacking local deposit capabilities.
- 2) Set up BIA trust fund concentration accounts in a major commercial bank (outside of the US Treasury).
- 3) Utilize a balance reporting service from the commercial bank selected for the concentration accounts.

The three sub-steps listed above could be phased in by including several agencies initially and then expanding beyond the initial group to all agencies. This arrangement, combined with the deposit reporting service (step 1 above), would facilitate the more rapid deposit and movement of cash. The acceleration of receipts into concentration accounts would allow the cash to be invested more rapidly and at higher interest rates. This would increase interest income to the trust funds. Use of a concentration bank was under active consideration in 1985. The BIA met with private sector bankers in New York, Chicago, San Francisco and Washington, DC. Subsequently, an RFI was issued to which 60 banks responded. These responses are being evaluated to determine whether use of a concentration bank would be feasible and useful.

PW believes that, in establishing such a commercial banking relationship, the BIA should consider the use of a "money center" bank - that is, a major bank capable of offering the full array of services which may be eventually required.

c. Shift BIA disbursement activities away from the US Treasury to the concentration bank selected in step 2 above. Under this arrangement, checks would be drawn on the concentration bank, and the trust funds would obtain the benefit of the disbursement float associated with approximately three quarters of a billion dollars of annual disbursement activities. This would increase interest income to the trust funds.

The implementation of these and other cash management improvements would be facilitated by clearly establishing responsibility for coordination of all BIA trust fund related cash management activities in one individual. Such an individual would be concerned with the procurement and monitoring of external cash management services and with the coordination of Bureau personnel involved (e.g., agency personnel reporting daily deposits). Logically, such an individual would report to the Investments Branch of the Bureau. This post was created in 1985.

B. Accounting and Control: Conclusions and Recommendations

1. Conclusions

PW believes that there appear to be significant deficiencies in BIA's current accounting system which impair the Bureau's ability to meet its financial reporting and control responsibilities. The Central Accounting System does not provide timely account balances by tribe or provide the information necessary for interest calculations. Therefore, the Branch of Finance and Accounting has implemented various supplementary manual and automated systems to meet those other accounting information needs. There is a lack of integration among these systems and the Accounting System resulting in duplicative data entry efforts and time-consuming, difficult reconciliation efforts. Furthermore, because the Central Accounting System does not fully support the needs of the Investment Branch, investment accounting data are maintained by several other independent systems. These systems also lack integration with each other and with the Bureau's Accounting System.

Accounting for individual Indians' monies is currently performed by the Agency offices. The lack of standardized and centralized support of the IIM accounting function is an area of risk to BIA, since there appears to be little oversight of the Agencies to assure the integrity of their accounting for IIM activity.

Inappropriate and unclear assignment of responsibilities were noted during our review of current BIA procedures.

Enhancements to controls are necessary to protect BIA in its fiduciary role. These include controls to assure that:

- o reconciliations are performed by parties independent of the related records;

- o appropriate segregation of duties is enforced; and

- o errors are detected and corrected.

A general conclusion reached through the review of the control area is that the accounting and control issues are serious and in need of immediate attention. The absence of certain control activities and elements of information causes concern as to the ability of BIA to effectively meet its responsibilities as a trustee.

Lack of a Clearly Defined "Chief Accounting Officer" of the BIA Trust Function

While there are many individuals within the Bureau with responsibilities for some portion of the Trust funds, there appears to be no one individual responsible for the coordination and oversight of all BIA trust fund related accounting activities. Unlike most other trust funds, banks

or other fiduciaries, the Bureau's structure mixes the tasks of accounting for BIA's appropriated funds and the trust funds and leaves the trust without the unifying role of a chief accounting officer for all trust related accounting activities.

Key financial management responsibilities generally assigned to a chief accounting officer include the following:

- o development of organization-wide accounting policies related to the trust function;

- o oversight of the accounting for all trust related transactions;

- o integration of all elements of the accounting systems to assure integrity of accounting information, ease of operation and accessibility of data; and

- o coordination of the functions being performed by internal and external groups in reviewing financial information and controls.

Under the structure in place when the PW study was made, many key functions appear to receive insufficient attention because they were not clearly defined as the responsibility of any one financial official.

2. Recommendations: Accounting and Control System Action Plan

PW recommends that the BIA should undertake accounting and control system improvements in two major areas. These are:

- o policies and procedures
- o automated systems

With respect to policies and procedures, the BIA should:

- a. More clearly define responsibilities of key trust fund financial management officials. In this context, one individual, a chief accounting officer of the trust funds, should be clearly designated as responsible for the integrity and effective operation of all aspects of the accounting system relating to the trust funds. This individual should report either to senior management of the Finance and Accounting Branch or directly to the Assistant Secretary. Among his initial actions should be a move to establish more frequent and timely reconciliations of key systems, with appropriate reviews by independent parties, and to ensure the appropriate assignment of accounting and control-related activities. He should also undertake the improvements necessary to produce periodic (quarterly or monthly) financial statements for each of the trusts to provide better visibility of trust fund resources and investment performance. This individual should be responsible for implementation of the

major improvements to trust fund accounting, reporting and auditing recommended in this report. This post was created in 1985.

b. Prepare an up-to-date accounting policies and procedures manual for both the Financial and Accounting Branch and Agency offices.

c. Segregate the tasks of investment management and security custody. This would involve shifting the security custody function away from the Investments Branch to another element of the BIA or to a commercial bank or the US Treasury.

d. Establish on-going financial audit functions. This would ideally involve both the establishment of an internal audit group and arrangements for a timely annual audit by an outside party (either governmental or private sector).

With respect to accounting systems issues, the Bureau should:

a. Implement a trust accounting system. Such a system, which would account for the assets and liabilities of the five trust funds separately from the appropriation related activities of the BIA, could be run through an external service organization which would provide terminal access from the BIA's offices in Albuquerque (both Investment Branch and Finance and Accounting). In accounting terminology, a trust accounting

system would fulfill both the general ledger/financial reporting and investment accounting/valuation functions. An effective trust accounting system should provide up-to-date information on each of the trust funds and provide means of accessing data by trust fund, by tribe, by agency, by portfolio, and by account classification (e.g., T-Bills, CDs, aggregate IIM balances, etc.).

Such a system would not only serve trust fund accounting needs but most investment management information needs as well. For example, systems of this type, which are commercially available, typically account for each investment in the portfolio, mark the portfolio to market (for valuation purposes), provide schedules of maturities, etc.

Ultimately, a fully implemented trust accounting system could replace the trust fund use of five existing BIA systems used for trust accounting and investment management. Such a unified system would not only provide better and more timely information, but it would also eliminate the current redundant data entry required by the five non-integrated systems.

b. Implement a Bureau wide system to account, at the individual account level, for Individual Indian Monies.

Ideally, such a system should provide central access to individual Indian accounts and potentially even allow central application of receipts (such as receipts from the Minerals

Management Service in DOI) which should be applied to a large number of individual accounts. This system should be linked to the trust accounting system mentioned above and designed to provide frequent and easy reconciliation between agency balances and the sum of Individual Indian Monies associated with those agencies.

While such a system could be implemented on the Bureau's data processing hardware, an alternative which might be implemented more quickly would involve purchasing this service from a commercial bank. This would probably involve the use of a Pension Trust Accounting System from a major commercial bank. Such a system would facilitate terminal entry of data into the system and allow terminal or telephone access to a central account file to obtain balances on individual accounts prior to issuing disbursements. One advantage of such a system is that it would provide central visibility to individual account balances and account activity at the agency level.

c. Implement an improved system for tracking expected income. Most leases or contracts establish due dates and payment procedures (wire, mail, etc.). Effective management of trust assets dictates the need for a system to ensure the timely receipt of payments due. In August 1985, a cash flow accounting system was being created which would enable the Investment Division to better know how much each tribe would receive and when, which would enable better investment

planning and help tribes to be able to make decisions on the use and timing of disbursements.

d. Conduct an audit and establish an ongoing financial audit function. In addition to implementing new systems and procedures, PW believes the BIA should undertake an effort to better assess the quality of existing financial data. In this regard, an audit of the balance sheet of each of the five trust funds would serve as an important first step in determining the accuracy of existing data. Upon the completion of such an effort, the BIA would be better equipped to plan data conversion activities related to the implementation of a new system. In addition, an on-going financial audit function should be established. This would include both the establishment of an internal audit group and arrangements for timely audits by an outside party (either governmental or private sector).

3. Summary

PW believes that the two areas of activity discussed above (cash management and accounting and control systems) could be addressed either individually or in parallel. There are clear arguments, albeit different arguments, for addressing each area. A key factor to be considered by the BIA in addressing these areas is the internal resources required to deal with each. While attention to the cash management area could yield

additional income relatively quickly, the apparent weaknesses in the accounting and control systems suggest that if the BIA had to choose between the two areas, its efforts might best be spent first in the accounting and control area. Additionally, because of weaknesses in existing systems and because no independent audit of the trusts has been performed for some time, an audit of each trust fund balance sheet should be initiated.

In implementing the proposed recommendations, PW suggests that three primary principles be employed in addressing the individual areas of concern.

First, immediate priority should be directed to improving controls over current systems and activities. Control improvements such as (1) better segregation of duties; (2) more timely reconciliations between systems performed or reviewed by parties other than those maintaining subsidiary records (e.g., individual IIM accounts or individual investment records); and (3) production of timely periodic financial statements of trust fund activities could be implemented without costly changes to existing systems.

Second, the nature of the systems required for trust fund accounting are highly dissimilar to those used to account for BIA's appropriated funds, or, in fact, those typically used by other government agencies. However, although different types

of systems are required, such systems are commercially available. In general, the required systems are those designed to serve the financial services industry (banks, trust fund managers, pension funds, etc.).

Third, the Bureau should recognize that implementing computer-based systems within an organization as complex as the Bureau is a difficult challenge. The Bureau is a "layered" organization (central office to agencies); geographically dispersed and often in remote sites; and related to and interactive with a complex network of tribes and individuals. As such, the purchase of processing services from external providers (banks or data processing service organization) will probably provide the most timely and cost effective system solutions and enhance the likelihood of a successful solution.

C. Comments

PW makes strong recommendations for improvements in cash management and accounting and controls. The cash management proposals can increase net returns to the tribes at no basic increase in risk. The accounting and control recommendations are consistent with the need to have timely, accurate accounting for managing funds of over \$1 billion. Improved accounting and control, including audits, will improve information available to the tribes and individuals, and hence

facilitate their decision-making with respect to budgeting, disbursements and investment objectives. This will also allow better oversight of BIA investments activities overall.

TIME IN MONTHS
 0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20

branch of investments

- Establish alternative portfolios that are consistent objectives for Indian trust funds.
- Allow trustee and beneficiaries to make periodic investments in Indian trust funds.
- Amend portfolio allocations to meet tribal and individual requirements, providing that a minimum level of subscriptions can be utilized.
- Manage portfolios initially, using a passive diversification strategy.
- Adopt immunization and active portfolio strategies as the need arises and economic forecasts become available.
- Fund the tribal trust fund for investment projects.
- Obtain external investment management services under an advisory arrangement.
- Establish Investment Policy Committee. Coordinate with trustee advice letter committee.
- Report portfolio management function first investment execution function.
- Establish formal research and portfolio monitoring function.
- Use authoritative sources for investment research and consistent with an investment advisory firm.
- Enhance trust fund performance reporting.
- Investigate methods to offer implicit transaction services and other investment objectives and existing trust funds.

State office

- Provide assistance through investment management services and existing investment objectives and existing trust funds.

Agency office

- Perform activities to implement in selecting among alternative portfolios.

Finance and Accounting

- Provide data to support policy development, report and other portfolio reports.

TESTIMONY OF JAKE LESTENKOF

My name is Jake Lestenkof. I am the Trust Administrator of the Aleutian & Pribilof Islands Restitution Trust.

The Aleutian & Pribilof Islands Restitution Trust is a trust that was organized pursuant to Pub. L. 100-383, 102 Stat. 911, 50 U.S.C. app. 1989c et seq., the "Aleutian & Pribilof Islands Restitution Act." In this Act, Congress provided for the creation of the Aleutian & Pribilof Islands Restitution Trust in order to administer \$5 million to be appropriated for the purposes of (1) benefiting the war-time Aleut residents of Attu and their descendants; (2) benefiting the six surviving affected Aleut villages; and (3) benefiting those Aleuts who "are deserving, but will not benefit directly" from expenditures on behalf of the previous two categories of beneficiaries. This Trust was created as part a scheme to compensate those Aleuts who had suffered by being removed from their homes and relocated to southeastern Alaska during World War II.

The money that Congress appropriated for the Trust, and for related purposes, was designated by Congress as the "Aleutian and Pribilof Islands Restitution Fund." Under Section 203 of the Aleutian & Pribilof Islands Restitution Act, 50 U.S.C. app. 1989c-2, the Secretary of the Interior was required to report to Congress "not later than 60 days after the end of each fiscal year on the financial condition of the fund and the results of operations of the fund during the preceding fiscal year and on the expected

financial condition and operations of the fund during the current fiscal year." Subsection (c) of Section 203 further states that "amounts in the Fund shall be invested in accordance with Section 9702 of Title 31, United States Code." This section of the law requires the Secretary to invest the Trust's money in government obligations and to earn an interest rate of at least 5% per annum.

Since becoming Trust Administrator, I have endeavored to learn exactly what the BIA has done with the Restitution Trust's \$5 million since the day that it was appropriated. The information which I have received to date is incomplete. However, several things appear clear.

First, it appears that the BIA did not invest the Trust's money in any manner for a period of time after the money was appropriated.

Second, it appears that at no time has the Trust's money been invested in government obligations as required by the Aleutian & Pribilof Islands Restitution Act. Communications with the BIA to date indicate that when the Trust's money finally was invested, it was invested in CD's.

Third, after the Trust's money was invested by the BIA, it may not have earned the legally required 5% annual rate of return.

In an effort to find out the particulars of what has been done with the Trust's money, I and the Trust's attorney have corresponded with the Bureau of Indian Affairs on several occasions. While the Bureau personnel in Juneau have been very

cooperative in attempting to locate information, the information has been difficult to obtain. To this day, we are not certain of the first date on which the Secretary should have invested the Trust's money. Still further, we do not have any detailed accounting of the interest rates that were earned by the BIA after the money was finally invested.

We have also requested the BIA to provide us with copies of the reports which the Secretary was required to submit to Congress not later than 60 days after the end of each fiscal year. To date, however, no one at the BIA has been able to locate any such reports and we suspect that such reports may never have been made.

In sum, the Trust has reason to believe that its monies were not well managed during the period between their appropriation and the present. Although we suspect that the Trust has a claim for mismanagement of its monies, we cannot at present quantify the amount of that claim because we have been unable as yet to receive a detailed accounting of exactly where our money was on every day after its appropriation, nor have we been able to receive a detailed accounting of the return that was earned by our money after it was invested.

Finally, we note that our ability to obtain the information which we need to calculate the amount of money that we might be owed because of mismanagement of our funds, is greatly hampered by our inability to obtain the annual reports which were required by Congress. In our view, the BIA either has not made the reports to Congress that are required by law or is unable to locate and provide us with copies of those reports. Either possibility is very disturbing to us.

TESTIMONY OF
RICK NORDWALL
FOR THE UNITED STATES SENATE SELECT COMMITTEE ON
INDIAN AFFAIRS
HEARING ON THE INDIAN TRUST FUND MANAGEMENT

My name is Rick Nordwall. I am Pawnee Indian and an Associate from the Denver office of Pryor, McClendon, Counts & Co., an investment banking firm. I have worked for Indian Tribes and National Indian organizations for twelve years. My market emphasis is underwriting Tribal projects and securing Tribal funds to be managed. Pryor McClendon Counts is a full-service investment banking and brokerage firm providing a complete range of services to the investor and the Institutional and Corporate client. Our firm is a major participant as a financial advisor or managing underwriter for all types of municipalities throughout the United States, establishing ourselves as one of the leading investment banking firms in the industry today.

The Bureau of Indian Affairs (BIA) role of Trustee for Tribal trust funds has been compromised by the inadequacy of the systems used over the years. The extent of the inadequacy has been aptly documented by the hearings before the Environment, Energy, and Natural Resources Subcommittee of the Committee on Government Operations House of Representatives. Their report entitled "Misplaced Trust: The Bureau of Indian Affairs' mismanagement of the Indian Trust Funds" details the problems. Rather than detail the BIA's inadequacies, I will focus on solutions.

The Trust fund controversy has two primary elements:

- Collection and accounting for Trust funds generated by mineral leases, royalty payments, timber and grazing leases etc.
- Management and portfolio design for Trust Funds for Tribes and individuals Indian Trust funds

Submitted by Rick Nordwall, Associate with Pryor McClendon Counts & Co. 1625 Broadway, Suite 2170, Denver Colorado 80202 tel. (303) 592-5480 fax (303) 592-5483

My primary discussion will focus on the second element of the Trust fund controversy, Management and portfolio design for Trust funds for Tribes. Tribal funds which are under the Office of Trust Management of the Bureau of Indian Affairs represent the Indian Tribes best hope for breaking the cycle of poverty which has engulfed Indian Country since reservations were imposed. In any discussion of Trust funds, the concept that these funds are Tribal property and not the property of the federal government nor the property of the BIA must be kept first and foremost. Much of the governments analysis and the BIA strategic plan while acknowledging Tribal ownership, loses sight of this primary principal in the discussions of delegation of authority, BIA history, BIA policies and procedures.

The management restrictions placed on these funds are from an earlier era. The placing of the tribal funds under the management of the BIA began during the treaty making period during the 19th century. The restrictions were two-fold:

- Trustee and manager of Tribal funds held by the federal government for Indian Tribes was designated to the Secretary of the Interior.
- Trust funds were required to be invested in restricted investment instruments

At that point in time, Tribes needed the management by the BIA. Now, in 1992, more than 150 years later, many Tribes have developed a high level of sophistication and are more than capable in deciding how their Tribal funds should be managed. In deed many Tribes have developed a sophistication which exceeds those of its BIA guardian. The current restrictions of trust fund management has in many cases become an outdated obstacle for tribes. At the same time, other Tribes may prefer to not be responsible for the investment of their funds. Alternatives need to exist which allow Tribes to either remove or keep their funds under BIA management. The options should range from having the Tribe manage their funds and retain (if desired) the "Trust" status of those funds or establishing an independent National Indian Investment Board to replace the BIA's management of Tribal trust funds. The Board would have a majority of Tribal representatives with BIA representation as well. The Board would direct the investments of the Tribal trust funds. The Board will function similarly to pension fund boards. The Board could develop fiduciary standards which will protect tribal trust funds when they are deposited in local banks. The Tribal trust funds will be comprised of liquid assets, governments and other securities placed in custodial accounts held in Trust by

the banks. The Trust status protects the Tribal assets from bank creditors if the bank fails. The Board would monitor each banks credit rating to protect the Tribal interests.

Placement of Tribal trust funds in various local financial institutions, willing to work with tribes, can create capital for reservation businesses and increase the tribes political influence in the region. Money is power. For the tribes to be denied access to their funds and the power that comes with it goes against reason. Tribes MUST have an option and the opportunity to decide how and where their own money should be invested. For the tribes to have NO option is to allow the heavy hand of misguided paternalism to retard the economic growth of impoverished first Americans. The tribes should be the decision maker, not the BIA.

An immediate issue now is how to design the current trust management system and the collection systems for trust funds so they benefit the Tribe. The BIA proposed system set out in their current "Strategic Plan" needs more Tribal emphasis and access. The Tribes need to be not merely advisory, but integrated into the system. The "Strategic Plan" anticipates expenditures to be made for outside consultants and added staff. The consultants will train BIA staff. Rather than building the BIA's capability the emphasis should be on building Tribal capability. One of the BIA's main goals is to increase the capability of Tribes. Here is the perfect opportunity to put that goal into action. The purpose of a Trust fund is to benefit the beneficiaries not the Trustee. It is Tribal money and the Tribe benefits or loses as a result of the management of the funds. The reason problems went on for so long was because the Tribes were not allowed a role in the management of the funds.

Tribes should review the investments the BIA has selected to meet their individual needs. Managers of funds are frequently reviewed to compare their performance to various benchmarks in the industry. These benchmarks are a gauge by which investors are able to determine their manager's level of performance compared to the market. These evaluations are commonplace in the financial markets, but apparently not in the BIA. The evaluation of the portfolio will need to take into account the tribes individual investment objectives as detailed in their Investment policy statement. The policy statement guides the investment and sets the Tribes investment objectives so far as preservation of capital, generation of income and rate of return levels. The Tribes regulatory requirements and legal requirements will be detailed in the policy statement. The portfolio should reflect the interest rate risk and

reinvestment risk the tribe is comfortable with. The Tribes need a portfolio which takes into account their cash needs and cash flows. The time horizon of the investments need to match the Tribes investment goals. These are basic principles which are used to maximize the Tribes return given their level of risk and other requirements. Currently none of these basic investment elements are factored into each Tribes investments by the BIA.

In the private sector an Investment Trust fund employees compensation depends on how well the fund operates and their rate of return given the level of risk. Private funds that operated as the BIA has would be terminated by their clients and put out of business by the Securities and Exchange Commission. The BIA employees have been paid no matter what has happened to the Tribal trust funds. This is certainly not the case in the private sector. Tribes would have been better served by the private sector than the government bureaucracy which can't tell them the amount of money in their account. Investment restrictions are imposed on Pension funds and other funds so the securities purchased protect the principal. The restrictions control the risk factor. It would be a simple matter to impose these restrictions on outside private Tribal fund managers. The system needs to be modified to allow tribes to decide how their money will be managed while maintaining the "federal Trust" status of the funds.

The models for tribal control of their investments are as close as next door. Corporate and state pension funds, state, county, and municipal and political subdivisions and numerous others operate investment programs. Each of these have restrictions similar to the legislative restrictions tribes operate under, (25 USC section 162). These funds use a variety of investment management approaches. Tribes have a broad array from which to chose from. The Tribes have to be cautious but by examining the alternatives, they will find the right approach for their particular situation. For example; counties in Colorado and California operate funds which smaller entities such as school districts keep their funds. The schools can either leave their money in the County fund for the County to invest and benefit from cost saving that come from investing larger amounts of money, or the schools can withdraw their money and invest it themselves.

There is no question the investment approach of corporate, state and municipal pension funds are effective, they have worked in the past and the approach will work for Indian Tribes. The investment approaches are varied and have been around longer than the BIA. These

investment entities have conserved and generated much of this countries wealth and tribal investment entities can do the same for reservations. This idea is neither new nor untested. It is time to move out of the 19th century and into the present financial markets. The Tribes are forever, the BIA should not be.

Pryor McClendon Counts recommends the following:

IMMEDIATE

- 1) That the committee conducts field hearings to compare the experience of Tribes whose funds are NOT managed by the BIA to those whose funds are managed entirely managed by the BIA.
- 2) Demonstration projects be implemented with an outside investment advisory firm retained to design tribal portfolios. The funds would retain their trust status. The investment advisory fee would be paid by the BIA. The rate of return and services provide by the private firms would be compared to the services and rate of return generated by the BIA in similar accounts.

The funds needs to be small enough so the tribes account is important to them. The fund needs to be of sufficient size (\$200 million) and experience (5 years) in order for the Tribe to have confidence in the funds. The firms staff needs to have experience in working with tribal staff so they will understand the Tribes unique needs and be able to convey the investment concepts the Tribal portfolio is based upon. The funds need to be specialized in institutional asset management with specific experience in the public sector. These qualifiers match general tribal needs.

- 3) Minority firms have performed well in the past few years. Their performance is such that states and counties are allocating more and more of their business to minority managers. Minority firms relate well to Indian tribes, because the minority firms and Tribes have similiar experiences. Minority firms should be allocated a substantial portion of the contracts awarded by the BIA.

PRYOR McCLENDON COUNTS & CO

4) The demonstration projects should be directed to full service small Investment banking firms which offers underwriting capability, trading desks and investment advising. These firms will be able to assess the market, provide Tribal access to the nations financial markets and provide the Tribes with sound advice whatever their financial needs.

LONG-TERM

Examine the feasibility of a National Indian Investment board. Obtain Tribal majority approval of an entity. The goal is to insure the Tribes self-sufficiency over time.

DANIEL K. INOUE, HAWAII, CHAIRMAN
 JOHN McCLELLAN, ARIZONA, VICE CHAIRMAN

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United States Senate

SELECT COMMITTEE ON INDIAN AFFAIRS
 WASHINGTON, DC 20510-8450

October 27, 1992

Mr. D. Michael Petersen, CPA
 ‡ Red Lake Band of Chippewa Indians
 Red Lake, Minnesota 56671

Dear Mr. Petersen:

Thank you for your letter of September 11, 1992, returning the corrected transcript of your testimony before this Committee at our hearing on Indian trust fund management on August 12, 1992.

We will be pleased to add to the record the single page, hand-written accounting provided to the Red Lake Band in response to the 1981 Tribal Resolution, and the listing of tribes and individuals whose trust funds were transferred to Oak Park Community Credit Union by BIA in 1984. We will retain in the Committee records the excerpts from the deposition of Mr. John Vale in connection with the case of USA v. Mark Twain Bank - Kansas City (Civil No. 84-0380-CV-W-9). I believe your testimony adequately covers the point for which you are offering this excerpt.

I appreciate your participation in the hearing on this matter and I look forward to working with you and the other interested parties in seeking a solution to the trust management problem.

Sincerely,

DANIEL K. INOUE
 Chairman

RED LAKE BAND of CHIPPEWA INDIANS



Red Lake, MN 56671

Phone 218 679 3341 • Fax 218 679 3378

DIVISION

September 11, 1992

The Honorable Daniel K. Inouye, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

At the request of Gerald F. Brun, Chairman of the Red Lake Tribal Council, I am transmitting the following additional information to be included with the written testimony previously submitted to your Committee, in conjunction with the hearing held on August 12, 1992.

1. Copy of the accounting for Red Lake Trust Funds contained on a single, plain piece of paper, hand-written, received in response to a Tribal resolution in 1981.
2. Copy of the listing of tribes and individuals whose trust funds in the total amount of \$7,750,205.63 were transferred to Oak Park Community Credit Union by BIA in 1984. This was a bogus financial institution set up by Michael Begnaud, who was later convicted. (Information researched and obtained by Veronica E. Tiller, PhD.)
3. Copies of certain pages from the deposition of John Vale, which was taken in 1985 as part of the BIA's attempt to recover the worthless investments in Oak Park Community Credit Union, where he uses the term "administrative expediency" to describe BIA's justification for transferring all losses to the individual Indian Trust Funds accounts. (Information researched and obtained by Veronica E. Tiller, PhD.)

I have also enclosed the corrected transcript of my testimony before the your Committee's hearing on August 12, 1992, with corrections marked in contrasting color as instructed.

Red Lake Enterprises: Red Lake Sawmill, Red Lake Fishing Industry,
Red Lake Bingo, Red Lake Builders, Chippewa Trading Post-Red Lake & Ponemah

TRIBAL COUNCIL
Organized April 18, 1918
Reserve Constitutions & By-Laws
January 8, 1988

OFFICERS

GERALD F. BRUN, Chairman
BOBBY WHITEHEAD, Secretary
JAMES STRONG, Treasurer

DISTRICT REPRESENTATIVES

ROMAN STALEY, JR.
JANAN COOK
LORNA J. LARSONEN
PRESTON GRAYSON
LAWRENCE BUREAU
ALLEN ENGLISH, JR.
HOWE STILLINGS, JR.
C. EDWARD HARGO

ADVISORY COUNCIL

THIRTEENTH CHIEFS


CHIEF TALKING PEOPLES

May-deer-gye-ne-ah
Nah-gan-ge-wah-ah
Muh-ge-wah-ah
A-wah-mo-to-ge-ah
Nah-ay-ah-muh
Nah-wah-to-ge-ah

The Honorable Daniel K. Inouye
September 11, 1992
Page Two

On behalf of the Red Lake Band of Chippewa Indians, I thank you for the opportunity to present oral and written testimony to the Select Committee on Indian Affairs. If your Committee requires additional information, or has questions on the material submitted, please contact me at your earliest convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Michael Petersen".

D. Michael Petersen, CPA

Summary of Trust Funds
ending Dec. 28, 1981

14X7284	Proc. of Labor	Doubt check	Other figure	79,572.04 ✓
7784	Interest			- 0 -
14X7285	Proc. of Labor (Sawmill)	operating	Capital	220,123.53
7785	Int			- 0 -
14X7389	R.L. Forest	4% fund, ad of May 18, 1976.		7,275.81 ✓
7889	Int			- 0 -
14X9202-2600	Receipt of Award	Dec. 189		8,325.82 ✓
9702-2600		"		7,817.99 ✓
9202-2612	Exec. Prog.	" 189		75,060.67 ✓
9702-	"	" "		41,673.12 ✓
9202-2614	Com. Dev. Prog.	" 189		107,388.78 ✓
9702-	"	" 189		74,906.62 ✓
9202-2617	Small Bus.	" 189		53,880.17 ✓
9702-	"	" "		37,832.39 ✓
9202-2619	Loan Program	" 189		107,388.79 ✓
9702-	"	" "		4,901.67 ✓
9202-2622	Financial Coun. Prog.	" "		27,869.06 ✓
9702-	"	" "		19,699.20 ✓
9247-2600	Receipt of Award	Dec. 15-72		1,200,000.00 ✓
9747-2600		" "		1,854.88 ✓
7284		79,572		
9202-2612		3,000		2,075,570.51
9202-2617		6,000		60-691 313

TRIBE	TRIBE-NAME	PURCHASE DATE	MATURITY DATE	AMOUNT	REG NUMBER
01	INDIVIDUAL INDIAN MONEY	01/26/84	07/29/85	5,000,000.00	840636
433	TURTLE MOUNTAIN	03/01/84	08/28/84	94,000.00	840894
460	BLACKHILLS-SIOUX NATION	02/07/84	02/16/85	89,000.00	840556
308	TOMAWANDA	03/27/84	09/25/84	94,000.00	841270
124	YAKIMA WA	03/01/84	08/28/84	94,205.63	840896
165	WATH SPRINGS WA	03/13/84	09/11/84	94,000.00	841034
203	FLATHEAD RES SALISH KOOTENAI	03/13/84	09/11/84	94,000.00	841032
240	INDIAN IRRIGATION SYSTEM	03/20/84	09/18/84	94,000.00	841160
347	SISSETON VANPETON	03/27/84	09/23/84	94,000.00	841271
409	CHIPPEVA RED LAKE	03/20/84	09/18/84	94,000.00	841162
431	LAC-COURTE GREVILLE WI	03/20/84	09/18/84	94,000.00	841168
473	KEVEENAW BAY INDIAN COMMUNITY MI	03/13/84	09/11/84	94,000.00	841042
491	OTTAWA-CHIPPEVA ET AL	03/01/84	08/28/84	94,000.00	840898
373	HOOPA-YUKON	02/16/84	02/16/85	89,000.00	840389
384	AGUA CALIENTE CA	03/13/84	09/11/84	94,000.00	841046
603	COLORADO RIVER AE	01/26/84	01/29/85	89,000.00	840407
408	HOPI AZ	03/13/84	03/16/85	89,000.00	841061
613	CAMP FORT MC DOWELL AZ	03/13/84	03/16/85	89,000.00	841063
614	GILA RIVER	02/16/84	02/16/85	89,000.00	840388
648	INDIAN POWER SYSTEM	03/20/84	09/18/84	94,000.00	841151
682	ULMONT & OURAY UT	03/01/84	03/05/85	89,000.00	840913
701	JICARILLA APACHE NM	01/26/84	01/29/85	89,000.00	840408
702	MESCALERO NM	03/01/84	08/28/84	94,000.00	840903
706	JEMEE NR	02/16/84	02/16/85	89,000.00	840387
707	LAGUNA NM	01/26/84	01/29/85	89,000.00	840409
720	ZIA NM	03/01/84	03/05/85	89,000.00	840914
730	SOUTHERN-UTIE CO	02/16/84	02/16/85	89,000.00	840381

CLERK U.S. DISTRICT COURT
 Exhibits:
 P 6
 D

Case No. 84-0380-CV-4-9

OAK PARK COMMUNITY CU.
KANSAS CITY MO

TRIBE	TRIBE-NAME	PURCHASE DATE	MATURITY DATE	AMOUNT	SEC NUMBER
751	UTE-MOUNTAIN-UTE.CO	02/09/84	02/14/85	89,000.03	840559
780	HAVAJO NN AZ & UT	02/14/84	02/14/85	89,200.03	840590
905	CHEROKEE-NATION.OK	03/13/84	09/10/86	52,335.49	841056
		03/13/84	09/17/84	41,664.51	841053
				96,000.00	
930	OSAGE NATION	03/01/84	08/28/86	96,000.03	840939
			BANK TOTAL	7,750,205.62	

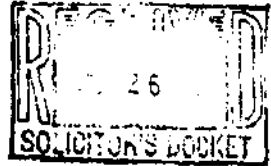
THE FOLLOWING DOCUMENTS WERE SUBMITTED TO
THE SELECT COMMITTEE ON INDIAN AFFAIRS
FOR INCLUSION IN THE HEARING RECORD

- * Letter of June 24, 1991, from James J. Engel, Deputy General Counsel, National Credit Union Administration, to Charles Hughes, Acting Associate Solicitor, Division of Indian Affairs, Office of the Solicitor, Department of the Interior, regarding insurability of BIA Indian trust fund investments.
- * Letter of January 3, 1992, from Roger A. Hood, Assistant General Counsel, Federal Deposit Insurance Corporation, to Charles Hughes, Acting Associate Solicitor, Division of Indian Affairs, Office of the Solicitor, Department of the Interior, regarding insurability of BIA Indian trust fund investments.
- * BIA summary of claims against BIA as of August 27, 1991. As of August 27, 1991, BIA listed claims of almost \$7.6 million. These figures do not include (1) oil and gas interest income that has been accruing since November 1985 but has not been distributed to account holders, (2) the \$1 million (plus) that went to Treasury as a result of the limited payability provisions of the Competitive Equality Banking Act of 1987 P.L. 100-86), and (3) additional claims against BIA.
- * Decision of the Comptroller General dated April 15, 1991, regarding the limited payability provisions of the Competitive Equality Banking Act of 1987 (B-239249). The decision is directed to a matter involving the Department of the Air Force but is relevant to an analysis of any claims under the Act.
- * Status report and schedule of the Office of Trust Fund Management's Short-Term Projects. Project 2D. deals with the status of the undistributed oil and gas interest and project 2E. deals with the cancellation of IIM Treasury checks under the limited payability provisions of the Competitive Banking Act of 1987.
- * Memorandum from the Deputy Commissioner - Indian Affairs, for approval of the Assistant Secretary - Indian Affairs, Department of the Interior, dated October 16, 1991, setting forth policies regarding notification and reimbursement to Indian trust fund account holders for losses attributable to errors on the part of BIA or other Department of the Interior surface management agencies.
- * Decision of the Comptroller General dated March 25, 1991, regarding non-liability of the BIA for loss of interest, even from losses resulting from the BIA's failure to manage IIM investments properly.



NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20455

June 24, 1991



Charles Hughes
Acting Associate Solicitor
Division of Indian Affairs
Office of the Solicitor
United States Department of the Interior
Washington, DC 20240

RE: Center Place Savings Credit Union
Financial Services Credit Union
Eionic Federal Credit Union
(Your Letter of February 13, 1991)

Dear Mr. Hughes:

This letter serves as the response of the National Credit Union Administration ("NCUA") to your letter. In that letter you requested a reconsideration of National Credit Union Share Insurance Fund ("NCUSIF") insurability of certain investments by the Bureau of Indian Affairs ("BIA") in Center Place Savings Credit Union ("Center Place"), Financial Services Credit Union ("Financial Services") and Eionic Federal Credit Union ("Eionic"). It is your position that the investments BIA made in these liquidated credit unions were fully insured by the NCUSIF. It remains the position of the NCUA that the investments BIA made in these liquidated credit unions were not fully insured by the NCUSIF. The NCUA Board made this determination in 1985 with regard to Center Place, Financial Services and Eionic.

Background

Eionic

Eionic was placed into liquidation by the NCUA on June 6, 1984. At that time BIA had \$5,186,263.47 on deposit at

Charles Hughes

June 24, 1991

Page 3

Zionic in Individual Indian Monies ("IIM") and \$5,881,724.91 in tribal trust funds. On July 17, 1984, the NCUA Department of Insurance informed BIA that since no tribal investment exceeded \$100,000, the BIA tribal trust fund account was entirely NCUSIF insured. However, the same letter informed the BIA that the remaining IIM account, which was invested on a pool basis, did not qualify for more than \$100,000 share insurance coverage. The Solicitor of the Department of Interior, Frank K. Richardson, appealed the Department of Insurance decision on March 12, 1985. The NCUA Board denied the appeal of the Department of Interior on September 5, 1985. In deciding the appeal, the Board also expressly determined that the Zionic decision was also applicable to IIM insurability in other instances, namely the Center Place and Financial Services liquidations. Mr. Richardson was notified of the denial by letter from Rosemary Brady, NCUA Board Secretary, dated September 9, 1985 (enclosed). The position of the NCUA regarding IIM accounts was explained in a letter to Donald Paul Hodel, Secretary of the Interior, from Robert M. Fenner, NCUA General Counsel, dated December 4, 1985 (the "December 4, 1985 letter") (enclosed), which was quoted in your above-referenced request letter.

As of February 28, 1991, \$3,047,968.57 in IIM funds have been returned to the BIA in pro rata distributions to uninsured shareholders. Another \$49,562.41 is available for distribution to uninsured shareholders, which includes parties other than BIA. The charter of Zionic has not yet been cancelled.

Center Place

Center Place was placed into liquidation by the NCUA on July 8, 1988. At that time BIA had \$3,000,000.00 on deposit at Center Place in IIM accounts. The Director, Office of Trust Responsibilities, BIA, sent a Western Union Mailgram to Allen Carver, Region IV Director, on July 30, 1988, to protest any disposition of Center Place assets without notice to the BIA. James J. Engel, then an NCUA Assistant General Counsel, responded to the Director, Office of Trust Responsibilities, by letter dated August 2, 1988 (enclosed), stating that the NCUA Board's decision in Zionic would apply to BIA IIM funds in Center Place. On July 28, 1988, Tim Vollman, Associate Solicitor, Division of Indian Affairs, sent a letter protesting denial of NCUSIF share insurance coverage of

Charles Hughes
 June 24, 1991
 Page 3

the BIA IIM account at Center Place to Charles W. Filson, Director, NCUA Office of Programs, and Tom Buckman, Director, NCUA Department of Insurance. This July 25, 1985, letter references the Sibonic appeal letter of March 12, 1988, but does not request an appeal regarding Center Place. Mr. Engel responded to Mr. Wellman by enclosing a copy of the NCUA August 2, 1985, letter to the Director, Office of Trust Responsibilities, and informing him that the NCUA Board was considering the matter on September 5, 1985. No further correspondence was received from the BIA regarding Center Place.

NCUSIF has returned \$2,272,093.30 in IIM funds to BIA in pro rata distributions to uninsured shareholders. The Center

Place charter was cancelled on August 17, 1989, and no funds remain to be distributed.

Financial Services

Financial Services was placed into liquidation by NCUA on October 31, 1984. At that time, BIA had \$1,560,000.00 in IIM funds and \$440,000.00 in tribal trust funds. As you state in your February 13, 1991 letter, on November 21, 1984, the Department of Insurance notified BIA that the BIA tribal trust fund account was entirely NCUSIF insured, but that the pooled IIM funds account did not qualify for more than \$100,000 share insurance coverage.

NCUSIF returned \$1,438,270.80 in IIM funds to BIA in pro rata distributions to uninsured shareholders. The Financial Services charter was cancelled on May 15, 1986, and no funds remain to be distributed.

Analysis

The position of the NCUA, as stated in NCUA's December 4, 1985 letter to Interior Secretary Hodel, has not changed:

[W]e believe that BIA investments of IIM funds in credit unions are not fully insured The NCUA's position is essentially threefold. First, Federal share insurance for credit union accounts applies only to accounts of members (those within the credit union's field of membership) and public

Charles Hughes

June 24, 1991

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units. Individual Indians are neither and therefore do not separately qualify for share insurance. Second, we question whether the BIA has the authority to invest any trust funds in credit unions. Public unit share insurance applies only to "lawfully invested" funds. Third, even if individual Indians could separately qualify for share insurance, the state of BIA's recordkeeping is such that it would be impossible to determine the amount of insurance to which each would be entitled. December 4, 1985 letter, p.1.

NCUA continues to support the reasoning in the December 4, 1985 letter. However, for your information, each of these three points, with updated citations and discussion where needed, are expanded in this letter.

Share Insurance and Public Units

In determining insurability, the NCUSIF considers the public unit itself, not the beneficiary. The regulation applicable to BIA accounts states: "[e]ach official custodian of funds of the United States lawfully investing the same in a federally-insured credit union shall be separately insured up to \$100,000." 12 C.F.R. §745.10(a)(1). As for tribal funds accounts, the applicable regulation reads: "Each official custodian of tribal funds of any Indian tribe (as defined in Section 3(c) of the Indian Financing Act of 1974) or agency thereof lawfully investing the same in a federally-insured credit union shall be separately insured up to \$100,000." 12 C.F.R. §745.10(a)(8). The Appendix to Part 745 of the NCUA Rules and Regulations clarifies this position:

For insurance purposes, the official custodian of funds belonging to a public unit, rather than the public unit itself, is insured as the accountholder. All funds belonging to a public unit and invested by the same custodian in an insured credit union are added together and insured to the \$100,000 maximum, regardless of the number of accounts involved and regardless of whether the funds are invested in accounts located in or outside the state. 12 C.F.R. Part 745, Appendix E, Public Unit Accounts.

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 June 24, 1991
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A specific example pertinent to BIA accounts is included as Example 8 to Appendix E to Part 745 of the NCUA Rules and Regulations.

Question: A, the custodian of Indian tribal funds, lawfully invests \$1,000,000 in an account in an insured credit union on behalf of 15 different tribes; the records of the credit union show that no tribe's interest exceeds \$100,000. A, as official custodian, also invests \$1,000,000 in the same credit union on behalf of 100 individual Indians, who are not members; each Indian's interest is \$10,000. What is the insurance coverage?

Answer: Because each tribe is considered a separate public unit, the custodian of each tribe, even though the same person, is entitled to separate insurance for each tribe (§745.10(a)(5)). Since the credit union's records indicate that no tribe has more than \$100,000 in the account, the \$1,000,000 would be fully insured as 15 separate tribal accounts. If any one tribe had more than \$100,000 interest in the funds, it would be insured only to \$100,000 and any excess would be uninsured. However, the \$1,000,000 invested on behalf of the individual Indians would not be insured since the individual Indians are neither public units nor, in the example, members of the credit union. If A is the custodian of the funds in his capacity as an official of a governmental body that qualified as a public unit, then the account would be insured for \$100,000 leaving \$900,000 uninsured. 12 C.F.R. Part 745, Appendix E, Example 8.

The NCUA recently codified its policy concerning the payment of share insurance and appeals of share insurance denials. Final Rule, 55 Fed. Reg. 5584 (February 16, 1990). As the regulation states, if the Liquidating Agent of a liquidating NCUSIF insured credit union determines that all or a portion of an account holder's account is uninsured, the account holder shall be so notified in writing and provided with a certificate of claim in the amount of the uninsured account to enable the account holder to share in the proceeds of the liquidation of the credit union. 12 C.F.R. §745.201(b).

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 June 24, 1991
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Furthermore, NCUA Rules and Regulations now explicitly permit an appeal for denial of insurance coverage to be filed only within 60 days after issuance of the initial determination of uninsurability. 12 C.F.R. §748.202(a). A reasonable limitation on the filing of insurance claims was enforced by the NCUA even before the promulgation of the regulation provided for in the Financial Institutions Reform, Recovery and Enforcement Act of 1989. 12 U.S.C. §1787(b)(6). Even though a 60 day limit was not strictly applicable in all instances (e.g., the Zionie appeal was made almost 8 months after BIA was notified of the denial of insurance coverage in 1984), certainly raising an appeal almost 6 years later in the case of Center Place and over 6 years later in the case of Financial Services, after both credit unions have been fully liquidated and their charters cancelled, is far too late under any administrative practice. In any event, as the NCUA Board denied the insurability of the BIA IIM accounts in Zionie, Center Place and Financial Services on September 5, 1985, the issue has already been decided.

Legality of BIA Investments in Credit Unions

At the time of NCUA's original denial of these insurance claims, the authority for BIA investment of IIM funds in credit unions was not authorized pursuant to statute. Since the December 4, 1985 letter, Section 162a of Title 25 of the United States Code has not been amended to permit investment of BIA IIM funds in credit unions. 25 U.S.C. §162a. For public unit accounts, the pertinent section of the Federal Credit Union Act reads:

- (2) (A) Notwithstanding any limitation in this Act or in any other provision of law relating to the amount of insurance available for the account of any one depositor or member, in the case of a depositor or member who is --
- (i) an officer, employee, or agent of the United States having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this title;
 - (v) an officer, employee, or agent of any Indian tribe (as defined in Section 3(c) of the Indian Fi-

Charles Hughes
 June 24, 1991
 Page 7

nancing Act of 1974) or agency thereof having official custody of tribal funds and lawfully investing the same in a credit union insured in accordance with this title; his account shall be insured in an amount not to exceed \$100,000 per account. 12 U.S.C. §1787(k)(2)(A).

It continues to be our position that BIA had no legal authority to invest pooled IIM in credit unions and, therefore, BIA did not lawfully invest such funds in the credit unions and such funds remain uninsured.

Recordkeeping

NCUA Rules and Regulations require that the account records of a credit union disclose the existence of any relationship which may provide a basis for additional insurance. 12 C.F.R. §745.2(s)(2). Arguably, the BIA IIM accounts did disclose some relationship. However, NCUA also requires that the details of the relationship and the interest of the other parties in the account must be ascertainable either from the credit union's records or the records of a member maintained in good faith and in the regular course of business. *Id.* The BIA, which was not a member in any of the credit unions in issue, was never able to produce such documentation to the satisfaction of the NCUA, and still is not able to produce such documentation, nor has it made an attempt to supply the NCUA with such documentation. Furthermore, as stated in the December 4, 1985 letter, BIA was shown to be incapable of making such a showing at the time its claims for NCUSIF insurance were made.

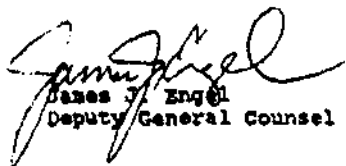
As the regulations state, if this showing is not adequately made, and the interests in the trust are incapable of determination, "payment by the Board to the trustee with respect to all such trust interests shall not exceed the basic insured amount of \$100,000." 12 C.F.R. §745.2(d)(1-2).

Our legal position with regard to NCUSIF insurance is reasonable and consistent with the Federal Credit Union Act, congressional intent and NCUA Rules and Regulations. Furthermore, as the NCUA Board extended its denial of NCUSIF insurance coverage of BIA IIM accounts in *Zionic to Center*

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Page 6

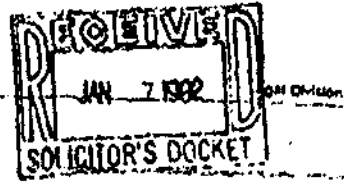
Placo and Financial Services in 1985, there are no grounds for BIA to appeal that determination to the NCUA Board. We trust that you understand our position.

Sincerely,


James J. Engel
Deputy General Counsel

Enclosures
GC/NEC:sg
SSIC 3000
91-0223A

FDIC
Federal Deposit Insurance Corporation
Washington, D.C. 20429



January 3, 1992

Charles Hughes
Acting Associate Solicitor
Office of the Solicitor
Department of the Interior
Washington, D.C. 20240

Dear Mr. Hughes:

This letter pertains to deposit insurance determinations made by the Federal Savings and Loan Insurance Corporation (the "FSLIC") for accounts held by the Bureau of Indian Affairs (the "BIA") at Mainland Savings and Loan ("Mainland") and Sun Savings and Loan ("Sun") on the behalf of several tribes and various irrigation and power systems. I apologize for the delay in responding to the petition on this matter which your office submitted to the FDIC on December 27, 1990.

The petition argues that the FSLIC erred in determining that funds in the BIA accounts were uninsured. The FDIC may not consider these arguments on their merits, however, due to the fact that the BIA did not file requests for reconsideration within 60 days from the date of the original determinations as required by 12 C.F.R. §564.1(d)(3). The initial insurance determinations by the FSLIC were dated December 6, 1988 and February 28, 1989 for Mainland and Sun respectively. The BIA was informed that requests for reconsideration must be filed within 60 days from the dates of the initial determinations. The BIA did not comply with this. A request for reconsideration was not filed until the petition of December 27, 1990 was submitted almost two years after the initial determinations were made.

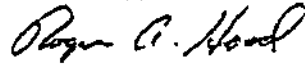
Under Section 403 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (the "FIRREA"), the FDIC, as the successor agency to the FSLIC, is obliged to apply the insurance regulations of the FSLIC for the accounts of all savings associations that were put into receivership prior to the enactment of the FIRREA. Both Mainland and Sun fall into this category.

The FSLIC insurance regulations provide that if an account holder does not file a request for reconsideration within 60 days, any objection to the original determination by the account holder is waived. 12 C.F.R. §564.1(d)(3)(iv). The

regulations further provide that failure by an accountholder to file a request for reconsideration shall constitute a failure to exhaust its administrative remedies and, due to such failure, the initial insurance determination shall be deemed to have been accepted by the accountholder. 22-C.F.R. §564.1(d)(5)(b)(iii). According to the regulations, this means that the accountholder is precluded from seeking judicial review of the FSLIC's insurance determination. 12 C.F.R. §564.1(d)(5).

I must therefore conclude that there is no basis for the FDIC to reconsider the original insurance determinations made by the FSLIC for the BJA accounts with Mainland and Sun. Once again, please pardon any inconvenience that might have been caused by the delay between the original dispatch of your petition and our response to it.

Sincerely,



Roger A. Hood
Assistant General Counsel

cc: Mr. David Moran
Department of the Interior

BUREAU OF INDIAN AFFAIRS
OFFICE OF TRUST FUNDS MANAGEMENT
INDIAN TRUST FUNDS
CLAIMS REPORT
AS OF AUGUST 27, 1991

SUMMARY OF CLAIMS CATEGORIES

CATEGORY 1. Claims Filed With the Solicitor's Office	\$ 1,570,275.21
CATEGORY 2. Losses Involving Financial Institutions	\$ 6,022,889.80
	<hr/>
TOTAL BOTH CATEGORIES	<u>\$ 7,593,165.01</u>

Sources of data: DOI Office of the Solicitor
BIA Office of Trust Funds Management

BUREAU OF INDIAN AFFAIRS
OFFICE OF TRUST FUNDS MANAGEMENT
INDIAN TRUST FUNDS

CATEGORY #1: CLAIMS FILED WITH THE SOLICITOR'S OFFICE

Area	Fund	Account Owner	Amount	Description	Date Loss Occurred	Age Days
1 Albuquerque	Tribal	Taos Pueblo	\$250,350.00	Per Capita distribution overpayment in 1986 & 1989. Tribe has requested overpayment be removed. Field Solicitor's opinion requested 7/25/90.	07-02-90	438
2 Billings	IDM	Ardia Robinson	\$ 24,500.00	Claim filed with the DOI Board of Indian Appeals for funds restricted by the Superintendent of Fort Peck Agency, Poplar, MT.	05-18-83	3008
3 Eastern	Tribal	Penobscot Nation	\$570,000.00	Claim filed with U.S. Claims Court for loss of principal and interest from the permanent portion of the Maine Indian Claims Settlement Act.	10-24-90	612
4 Minneapolis	Tribal	Red Lake	\$687,000.00	Claim #388-82L, Mismanagement of Funds. Case in final stages of Settlement.	07-83	2290
5 Munkogot	IDM	Josephine Bowen Estate	\$ 1,823.15	Royalty Payments disbursed after Acct. Owner's death. Checks cashed by Niece. Solicitor assisting BIA in collecting from Niece.	07-21-87	1612
6 Sacramento	IDM	Larry Olinger	\$ 36,602.06	Plaintiff in this action alleges breach of trust on the part of the B.I.A. for allowing the IRS to collect taxes imposed on interest from leasehold-revenue investments. Discovery is in progress.	01-09-89	689

TOTAL FOR CATEGORY #1: \$1,570,275.21

BUREAU OF INDIAN AFFAIRS
 OFFICE OF TRUST FUNDS MANAGEMENT
 INDIAN TRUST FUNDS

CATEGORY #2. LOSSES INVOLVING FINANCIAL INSTITUTIONS

Area	Fund	Account Owner	Amount	Description	Date Loss Occurred	Age Days
I Investment Losses due to failed financial institutions, insurance determinations, and fraud.						
			\$6,022,889.80	See Attachment A	Verous	

Total for Category #2. \$6,022,889.80

BUREAU OF INDIAN AFFAIRS
OFFICE OF TRUST FUNDS MANAGEMENT
DIVISION OF TRUST FUNDS INVESTMENTS

ATTACHMENT A
PAGE: 1 OF 8
AUGUST 1991

BIA NAME #	DATE CLOSED	BALANCE AT TIME OF CLOSURE			COLLECTIONS SINCE CLOSURE			UNCOLLECTED BALANCE AT DATE OF CLOSURE							
		PRINCIPAL	ACCRUED INTEREST	TOTAL DUE	PRINCIPAL	INTEREST	TOTAL	PRINCIPAL	INTEREST	TOTAL					
CREDIT UNIONS															
240 ZIONIC FCU, BRIDGEVIEW, MD	03/22/84	5,086,263.47	0.00	5,086,263.47	2,048,496.70	0.00	2,048,496.70	5,037,766.77	0.00	3,037,766.77	1				
123 PRINCIPAL SVCS, BERKELEY, MD	01/31/84	2,809,000.00	227,444.47	2,227,444.47	1,978,270.80	0.00	1,978,270.80	21,729.20	227,444.47	249,173.67	2				
141 CENTER PLACE, BERKELEY, MD	07/02/85	3,080,000.00	7,166.67	3,007,166.67	2,372,893.30	0.00	2,372,893.30	627,906.70	7,166.67	635,073.37	3				
509 ILLUM, SAN FRANCISCO, CA		1,178,008.00	132,502.35	1,310,502.55	1,178,000.00	0.00	1,178,000.00	0.00	132,502.55	132,502.55	4				
501 HOME PARK CORP, EC, MD	06/27/84	7,750,205.68	349,561.46	8,099,767.06	6,252,453.13	0.00	6,252,453.13	1,497,752.47	349,561.46	1,647,313.93	5				
SUB TOTAL		19,046,669.87	716,675.15	19,731,144.22	13,829,313.93	0.00	13,829,313.93	5,185,135.14	716,675.15	5,901,809.29					
SAVINGS & LOANS															
598 SUB SVCS, SAN DIEGO, CA	07/18/86	926,000.00	19,760.74	945,760.74	908,397.39	0.00	908,397.39	17,602.61	19,760.74	37,363.35	6				
146 PRINCIPAL SVCS, HOUSTON, TX	04/04/86	191,000.00		191,000.00	108,814.52	0.00	108,814.52	82,185.48	0.00	82,185.48	7				
472 LIBERTY FED., RAYSON, MN	10/07/88	1,052,401.70	89,573.49	1,141,975.19	3,052,481.70	88,062.81	3,140,544.51	0.00	1,510.68	1,510.68	8				
SUB TOTAL		2,169,401.70	109,334.23	2,278,735.93	2,069,613.61	88,062.81	2,157,676.42	99,788.09	21,271.42	121,059.51					
GRAND TOTAL		21,165,978.77	826,009.38	22,009,888.15	15,898,927.54	88,062.81	15,986,990.35	5,284,943.23	737,946.57	4,022,889.80					

*The interest in this column represents interest calculated to date of closure.

FOOTNOTES

1. ZIONIC. No interest accruals calculated at time of closure due to many variable interest rates. Twenty-eight (28) Certificates of Deposit (CD's) involved. No dividends declared by institution in the first quarter of 1984. Seven liquidation payments received totalling \$2,048,496.70, but no other immediate liquidation payments likely.
 2. FINANCIAL. Most recent liquidation payment made on 5-17-86. National Credit Union Association indicates this was last payment.
 3. CENTER PLACE. Involuntary liquidation on 7-8-85. Most recent payment of \$49,319.59 received 6-6-89.
 4. ILWU. Credit Union did not close. Board of Directors chose not to declare dividends. Only principal amount was returned to BIA.
 5. OAK PARK. All recoveries have been through court action.
 6. SUN SAVINGS. Most recent payment of \$13,489.00 received 3-8-91. Doubtful of any further liquidation of assets.
 7. MAINLAND. Most recent payment of \$10,207.77 received 3-8-91. Doubtful of any further liquidation of assets.
 8. LIBERTY. Most recent payment of \$104.66 received 7-25-91. Pending further liquidation.
- ** All Credit Union accounts listed are being reviewed by the Field Solicitors Office.



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Department of the Air Force--Claims on Checks
Subject to Limited Payability Provisions of
Competitive Equality Banking Act of 1987

File: B-239249

Date: April 15, 1991

DIGEST

1. An agency may, in issuing replacement checks for pre-effective date checks canceled under the provisions of Public Law 100-86, charge the original appropriation that supported the obligation to the extent funds remain available.
2. Availability of funds is subject to the new account closing procedures enacted in the National Defense Authorization Act, Fiscal Year 1991. Pub. L. No. 101-510.

DECISION

This is in response to a request for an advance decision from the Department of the Air Force (Department) on the proper funding for payment of valid claims presented on checks issued prior to October 1, 1989 and thus subject to cancellation under the provisions of Public Law 100-86, § 1003, 101 Stat. 658 (1987).

BACKGROUND

The Competitive Equality Banking Act of 1987, Public Law 100-86, § 1006, 101 Stat. 659 (1987), amended 31 U.S.C. § 3328 and created a new section 3334 to establish time limits on the payability of government checks. The new section 3334 provides that:

"(b) Checks issued before effective date.--(1) Not later than 18 months after the effective date of this section, the Secretary shall identify and cancel all Treasury checks issued before such effective date that have not been paid in accordance with section 3328 of this title.

"(2) The proceeds from checks cancelled pursuant to paragraph (1) shall be applied to eliminate the balances in accounts that represent uncollectible accounts receivable and other costs associated with the payment of checks and check claims by the Department of the Treasury on behalf of all payment

certifying agencies. Any remaining proceeds shall be deposited to the miscellaneous receipts of the Treasury.

(c) **No effect on underlying obligation.**--Nothing in this section shall be construed to affect the underlying obligation of the United States, or any agency thereof, for which a Treasury check, was issued."

The Department is concerned about how to properly fund claims for payment of the underlying obligation to potential payees of pre-effective date canceled checks. The Department suggests that since the 1987 Act entitles Treasury to the proceeds from cancellation of pre-effective date checks, the underlying obligation to the payee can be legally satisfied by charging the original appropriation.

The Treasury's implementing regulations provide that after October 1, 1990, Treasury will no longer settle claims on unnegotiated checks issued prior to the effective date of the Act.^{1/} Treasury Financial Manual, Bulletin No. 90-03. The regulation also states that if such claims are presented to the agency responsible for the underlying obligation after October 1, 1990, "[d]ecisions as to the payee's entitlement and the source of funds for settlement are the agency's responsibility." *Id.* Treasury officials have told us, informally, that they have been advising all agencies that their interpretation of the Act requires agencies to seek supplemental appropriations to pay any claims on pre-effective date canceled checks submitted for payment. We conclude that the original appropriation may be charged to the extent funds are available. The availability of funds is subject to the new account closing provisions contained in the National Defense Authorization Act, Fiscal Year 1991, Pub. L. 101-510, §§ 1405, 1406, 104 Stat. 1675 (1990).

ANALYSIS

Based on our examination of the statute and its history, we conclude that an agency may, in issuing a replacement check for canceled pre-effective date checks, charge the original

^{1/} According to section 1006 of the Act, the amendments made by the Act were to become effective 6 months after the date of enactment or on such later date as the Secretary of the Treasury prescribed by regulation. On February 8, 1988, the Treasury set October 1, 1989 as the effective date. 53 Fed. Reg. 10366.

appropriation that supported the obligation to the extent funds remain available in that appropriation.

First, the statutory language is unequivocal in stating that the underlying obligation of the United States for which a Treasury check was issued remains unaffected. 31 U.S.C. § 3334(c); see also H.R. Rep. No. 261, 100th Cong., 1st Sess. 188 (1987); 132 Cong. Rec. E300-301 (daily ed. Feb. 6, 1986) (statement by Rep. Wylie introducing original limited payability bill). Thus, the obligation of the government to pay and the entitlement of the payees remains unchanged.

Second, although the specific moneys backing the checks are, by law, diverted for another use, only those moneys are shifted. The underlying obligations for which the checks were issued remain valid.^{2/} Thus, should claims be submitted under those obligations, the original appropriations charged may be used to support the replacement checks.^{3/} Of course, in the event that the original appropriation contains insufficient funds to cover check claims presented, an agency would have no choice but to seek an appropriation to liquidate the underlying obligation.

The recently passed National Defense Authorization Act for fiscal year 1991 (Authorization Act) provides new procedures for closing expired accounts. Pub. L. No. 101-510, § 1405, 104 Stat. 1485, 1675 (1990). These account closure provisions affect the availability of obligated and unobligated balances to support replacement checks liquidating the old obligations in fixed accounts.^{4/}

^{2/} We note that the provision which states that the underlying obligation of the United States remains unaffected preserves a claim for payment but does not resurrect claims that are otherwise unenforceable.

^{3/} In your letter you express concern that issuing a replacement check might be considered double payment of an obligation. Since the original check was cancelled by operation of law, and the issuance of a replacement check is required (assuming the original obligation is still enforceable), certifying and disbursing officers are not making double payment. To avoid the appearance of double payment, it should be noted in the accounts that the first check was cancelled and issuance of the second check was required by Public Law 100-86.

^{4/} Fixed accounts are appropriation or fund accounts with balances that are available for a definite period of time.

In brief, the Authorization Act contains rules for closing all appropriation accounts (for both defense and civilian agencies) after certain time periods. What follows is a brief discussion summarizing the new rules regarding the availability of fiscal year accounts for payment of all pre-effective date (October 1, 1989) check claims.

For fiscal years 1989 and 1990, obligated and unobligated account balances are carried in expired accounts for 5 fiscal years until September 30, 1994 and 1995, respectively. Payment of old balances that are canceled after the 5-year period may be paid from current appropriations made for the same general purpose subject to a limitation of 1 percent of the annual appropriation for the account prescribed by 31 U.S.C. § 1553(b)(2). Specifically:

--For annual accounts, the limitation is 1 percent of the annual appropriation for the account, not total budgetary resources.

--For multiple year accounts, the limitation of 1 percent applies to all the appropriations that have not yet expired for obligational purposes.

Thus, if a valid check issued in fiscal year 1989 is presented for payment it may be charged to the fiscal year 1989 appropriation expired account up until September 30, 1994 to the extent funds are available in that account. Thereafter, the claim may be paid from a current appropriation available for that same purpose up to the 1 percent limitation.

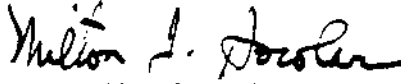
For checks issued in fiscal year 1988 and earlier, the complicated transition rules for the new account closing procedures apply. In this regard, OMB Circular No. A-34, Part XI as added by OMB Bulletin No. 91-07, January 17, 1991, gives specific guidance on pre-1988 account availability. In summary, however, we note that amounts transferred to "M" accounts before September 30, 1990 remain available for obligation adjustment disbursement until September 30, 1993. Thereafter, all obligated balances in "M" accounts are canceled. Payments on claims that come due after September 30, 1993 may be made from unexpired/current appropriations available for the same purpose so long as no more than 1 percent of the unexpired appropriation or the unexpired balance of the original appropriation, whichever is less, is used to pay canceled balances.

Any balances in the "M" accounts that were more than 5 years old (accounts that expired at the end of fiscal year 1983 and prior) were canceled and withdrawn on March 6, 1991 under the transition provision of the new account closing procedures. Any obligated balances that have been in the "M" account for

more than 5 years must be canceled at the end of September 30 of each following year. This applies to accounts that expired at the end of fiscal years 1984 through 1988. For example, for accounts that expired at the end of fiscal years 1984 and 1985, obligated balances must be canceled at the end of September 30, 1991, and September 30, 1992, respectively. Any obligations related to these canceled balances may be paid from unexpired/current appropriations, subject to the limitations stated above.

All unobligated balances in the merged surplus authority were canceled on December 5, 1990. Thus, all unobligated balances that expired at the end of fiscal year 1988 or prior fiscal years no longer exist and cannot be considered as available funds.

Again, OMB Circular No. A-34, Part XI, as added by OMB Bulletin No. 91-07, should be consulted for detailed guidance on account closure. We note that older obligations, related to canceled accounts that cannot be paid with current unexpired appropriations because the above mentioned limitations have been exceeded, would require specific legislative authority (*i.e.*, reappropriations or supplemental appropriations) from the Congress.

for 
 Comptroller General
 of the United States

OFFICE OF TRUST FUNDS MANAGEMENT FISCAL YEAR 1992 SHORT TERM PROJECTS					
PROJECT TITLE	INITIAL TARGET	REVISED TARGET	COMPLETE	PROJECT MANAGER	STATUS
1. Provide IIM Forward Reconciliation Training	04/10/92		04/10/92	Gray	Training completed and handbooks provided.
2A. Alternative Investment Services	09/30/92			Kellerup	Draft letter prepared. Seeking IMA & field input.
2B. Recalculate IIM Interest Factor	04/30/92	09/30/92		Childs/Ramirez	Awaiting data review by field.
2C. Evaluate Method for calculation and overnighter distribution of interest	04/30/92	deferred		Gray	No tech. staff to initiate and monitor.
2D. One-time distribution Oil & Gas Royalty Interest	03/30/92	06/15/92		Childs	Contract awarded, work completed for Anadarko on 6/23/92. Six other Areas on schedule.
2E. Reclaim canceled IIM Checks from Treasury	07/31/92	open		Gray	Scope of task being evaluated, consideration being given to assign to BA contractor.
3A. Migrate IIM program application from @1900 to A10	12/31/92			Childs/Socks	Eight Areas completed, Muskogee in process. Aberdeen, Billings, and Anadarko Areas have delayed because of lease distribution issues.
3B. GL/IIM Interface	09/30/92			Childs	Phase I completed, GL/IIM in operation. Phase II, IIM/GI on schedule.
3C. 1081 Reconciliation: Phase I Phase II	03/31/92	12/31/92	01/31/92	Childs	Completed The Program is 75 percent complete.
3D. OIA printing and mailing Project	07/31/92	12/31/92		Ramirez/Socks	Anadarko and Muskogee complete, other sites scheduled.
3E. Enhanced Investment System	07/31/92	09/30/92		Kellerup	Phase II, Contract Mod. submitted for additional time and funds to CD in April, not signed.
4A. Investment Advisory Group	06/30/92	09/30/92		Kellerup	Need additional staff time required to finalize proposal.
4B. Quarterly Newsletter	01/30/92		01/30/92	Weller	First and second issues published. Issue quarterly.
4C. Develop Management Monitoring Tools	06/30/92	06/31/92		Childs	Procurement request made 4/92 to AAD for project workbench software. Not yet ordered or delivered.
4D. Review policies CFRs	on-going			Farmer	This is not a project but on-going operations. This will not be listed after '92.
4E. Workload Analysis/field Evaluation	09/30/92	12/31/92		Reed	Need additional staff to initiate and monitor.
4F. Update Area IF Accountant PD	04/30/92	07/31/92		Reed	PD submitted for classification 6/26/92.
4G. Develop Recruitment Plan	06/30/92	09/30/92		Reed	On schedule.
4H. Annual Training Plan	02/29/92	09/30/92		Reed	On schedule.
4I. Train Area TF Accountants	11/18/91		11/18/91	Yeps	Completed.

4J. Training Investment Coordinators	06/30/92	12/31/92		Cellerup	Bureauwide training is being planned. In the interim on-site training is conducted on Tribal/Area request. Six sessions provided to date.
4K. Implement TQM	on-going			Parris Quality Council	Continuing.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 16 1991

Memorandum

To: Assistant Secretary - Indian Affairs

From: Deputy Commissioner - Indian Affairs *David B. Matheson*

Subject: Policies Regarding Notification and Reimbursement to Indian Trust Fund Account Holders for Losses Attributable to Bureau Errors

I request your approval of a new policy relating to notification and reimbursement to Indian trust fund account holders for losses attributable to errors on the part of Bureau of Indian Affairs (BIA) or other Department of the Interior (DOI) surface management agencies.

As you know, a loss policy has been under review for some time. A breakthrough on release of this policy occurred late in July, when at a meeting on the Reconciliation Project representatives of the BIA, Arthur Andersen & Co, the Department, the Inter-Tribal Monitoring Association on Indian Trust Funds, and the General Accounting Office fashioned agreements to a number of unresolved issues impacting notification and loss reimbursement for trust fund account holders.

Comments on this policy have been received, considered, and as appropriate incorporated into the document from a number of interested external groups. This includes the Inter-Tribal Monitoring Association on Indian Trust Funds, the Office of Management and Budget, and the General Accounting Office. It is my conclusion that we are now ready to release BIA's new policy on notification and losses.

Attachment 1 has been prepared to highlight the major features of the new policy. Upon your approval these policies (plus the appropriate BIA promulgation language) will be published in the BIA Manual and distributed BIA-wide. I am told that this

process will entail about three weeks from the date of your approval. Upon your signature, I will direct the appropriate staff to incorporate the loss and notification policy into the BIA Manual.

I recommend that you indicate your concurrence by signing at the designated point on this memorandum.

Attachment


APPROVED _____ DATE _____

Assistant Secretary - Indian Affairs

**POLICIES REGARDING NOTIFICATION AND REIMBURSEMENT TO INDIAN
TRUST FUND ACCOUNT HOLDERS FOR
LOSSES ATTRIBUTABLE TO BUREAU ERRORS**

Policy Statements.

Notification. It is the policy of the Bureau of Indian Affairs (BIA) to notify Tribal, Alaska Native and individual Indian trust fund account holders of losses to their respective accounts attributable to BIA or other federal government agency errors.

Reimbursement. It is the policy of the BIA to reimburse Tribal, Alaska Native and individual Indian trust fund account holders for losses to their respective accounts attributable to BIA or other federal government agency errors as provided in the implementing framework described below.

Definition of Trust Funds Loss.

A trust funds loss is defined as, in the case of Tribal and Alaska Native Corporation accounts, an amount (principal and/or interest) that has been lost as a result of an error by the Bureau of Indian Affairs or another federal government agency. In the case of Individual Indian Monies (IIM) account holders, a trust funds loss is defined as an amount (principal but not interest) that has been lost as a result of an error by the BIA or another government agency. Because the law regarding the investment of IIM does not require the payment of interest on IIM accounts, the BIA is not liable to IIM account owners for loss of interest. See Attachment 1, Comptroller General Decision Number B-243029, dated March 25, 1991.

The loss may result from any one of the following:

1. Mathematical mistakes;
2. Mistakes in the application of accounting principles;
3. Oversight of facts that existed at the time the transactions were recorded by the relevant Bureau accounting office;
4. Misuse of facts that existed at the time the transactions were recorded by the relevant Bureau accounting office;
5. A change from an accounting principle that is not generally accepted to one that is generally accepted.

Notification and Loss Documentation Procedures.

When it is determined that a tribal or IIM account holder has or may have incurred a loss of funds held in trust by the BIA, the BIA's Office of Trust Funds Management in Albuquerque, New Mexico must be notified within 24 hours by telephone or telefax of the identification of the loss by the relevant Agency or Area Office. Similarly, in the case of a loss determined to have occurred within the immediate operations of the Office of Trust Funds Management, the relevant Area or Agency Office will be notified within 24 hours by telephone or telefax of the loss, by the Office of Trust Funds Management. The Office of Trust Funds Management will follow the relevant procedures detailed below in notifying the cognizant Agency or Area Office.

Notification and loss documentation procedures are equally applicable in the event a possible loss is identified or originated by a tribal or IIM account holder. However, in the event of a telephonic or written contact regarding a possible loss originated by an account holder, the servicing Area or Agency Office will arrange a meeting or personal contact with the affected account holder to develop the specifics and necessary documentation of the possible loss.

The relevant Area Accounting Office shall, for tribal losses as defined above that cannot be corrected within the month the loss occurred, be required to compute the interest (earned or unearned) related to the loss and submit both the principal and interest amounts to the Office of Trust Funds Management as described below. The Office of Trust Funds Management is available to provide specific guidance to the relevant Area or Agency accounting staff regarding the calculation of lost interest, including the definition of pertinent rates and time periods to be used.

For IIM account holder losses, the relevant Area Accounting Office shall submit the principal amount to the Office of Trust Funds Management as described below.

The cognizant Agency or Area Office, must, as soon as possible but not later than 10 working days of the discovery (1) forward a written notice of the basic facts surrounding the matter with a status of the action being taken to gather the relevant documentation and projected time frames for accumulation of that data, or alternatively, (2) forward copies of all relevant documentation supporting the computation of the loss, and related background information, to:

Chief, Policy, Analysis & Evaluation
Office of Trust Funds Management
505 Marquette, N.W., Suite 700
Albuquerque, New Mexico 87103

The Office of Trust Funds Management will review the documentation, and, as soon as possible but not later than 10 working days of receipt of the documentation, forward to the originating Area Office a written notice of concurrence with the classification of the computed amount as a loss, or alternatively, what action is being taken and the estimated time frames that the action will require. If, however, the Office of Trust Funds Management determines the amounts to not be properly identified as a loss, that Office will forward, in writing, the reasons for non-acceptance of the loss classification. This communication will also include instructions as to the proper accounting treatment and disposition of the transaction.

The cognizant Area Office is then responsible for written notification to the relevant Agency Office of the determination by the Office of Trust Funds Management, with copies to the Office of Trust Funds Management.

As soon as possible, but not later than 10 working days of receipt of written notification by the Office of Trust Funds Management of concurrence with the loss classification and amount, the originating Area or Agency Office must notify the account holder in writing, and furnish a copy to the Office of Trust Funds Management. The notification should include: (1) the amount (if known), (2) any relevant background information explaining the circumstances and facts concerning how the loss occurred, (3) any action being taken to reimburse the loss; and (4) the name, telephone number and office location where an account owner may make inquiries.

Reimbursement of Losses.

Comptroller General of the United States procedures authorizing the use of appropriated funds, where available, shall be utilized where applicable to reimburse tribal and IIM account owner(s) for losses.

Every effort will be made to reimburse account holders within a reasonable period of time, consistent with available funds.

The Office of Trust Funds Management will prepare an annual estimate of loss reimbursement requirements for the ensuing budget year and forward that estimate by May 1 (with an update of the estimate furnished on August 1) each year to the BIA's Division of Program Development and Implementation for consideration in formulation of BIA's annual budgets.

Trust fund losses will be reported in writing by the Office of Trust Funds Management to the Deputy Commissioner of Indian Affairs and the Division of Program Development and Implementation monthly, and also summarized and submitted to the Deputy Commissioner of Indian Affairs and the Division of Program Development and Implementation in a Fiscal Year Report of Verified Trust Fund Losses for each fiscal year, by December 31 each year.

Responsibilities.

It is the responsibility of all BIA line and staff officials to execute this policy in carrying out the BIA's Indian trust responsibilities to Tribes, Alaska Natives and individual Indian members.

Variation from these procedures and time frames will be permitted only in extenuating circumstances or unique situations involving, for example, a requirement for additional policy research and review at the Department of the Interior level, receipt of documents, or legal review by the Department's Office of the Solicitor. Those instances must be documented by the Office of Trust Funds Management, which will keep an annotated log of all reported losses and their ultimate disposition. Such variations shall be documented and submitted to the Director, Office of Trust Funds Management.

Noncompliance with the procedures set forth in this policy shall be identified and reported to this Office for appropriate action.

APR 16 1991



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Liability of Bureau of Indian Affairs for
Interest on Individual Indian Monies

File: B-243029

Date: March 25, 1991

DIGEST

Because the law regarding the investment of Individual Indian Monies (IIM) does not require the payment of interest on IIM accounts, the Bureau of Indian Affairs (Bureau) is not liable to IIM account owners for loss of interest, even that resulting from the Bureau's failure to manage IIM investments properly. The Bureau and tribal representatives should seek legislative settlement of any such claims.

DECISION

The Acting Deputy Commissioner of Indian Affairs has requested an advance decision on the propriety of paying individual Indian Monies (IIM) account owners interest income that would have accrued to their accounts but did not because of the Bureau's management of those accounts. In 1938, the Bureau, acting under authority of 25 U.S.C. § 162a (section 162a),^{1/} initiated its practice of investing IIM funds. Bureau management and accounting practices, however, may have resulted on occasion in IIM account owners losing interest income. Nevertheless, judicial precedent is unequivocal that because section 162a does not require the payment of interest on IIM accounts, the government is not liable to account owners for any loss of interest.

^{1/} Section 162a authorizes the Secretary of the Interior to deposit funds held in trust for the benefit of individual Indians, as well as tribal funds, in banks that will pay a reasonable rate of interest on the deposit, and, if he deems it to be in the best interest of the Indians, to invest such funds in any public-debt obligations of the United States and in bonds, notes or other obligations that are unconditionally guaranteed by the United States.

BACKGROUND

In 1989, the Bureau, trustee of Indian funds held by the United States,^{2/} determined that it could manage the funds more efficiently and at less cost to the government by procuring certain financial services from the private sector. See B-236146, Mar. 13, 1990. The Congress has instructed the Bureau to reconcile all Indian accounts before transferring any funds to a private bank. Pub. L. No. 101-512, 104 Stat. 1915, 1929-30 (1990); Pub. L. No. 101-121, 103 Stat. 701, 714 (1989). See also B-236146, Mar. 20, 1990. Representatives of a number of Indian tribes have suggested that the Bureau, as part of the reconciliation effort, should calculate and identify on financial statements for each IIM account the interest that IIM account owners may have lost over the years as a result of the Bureau's management and accounting practices.

According to the Bureau's Office of Trust Funds Management, the Bureau, at the end of fiscal year 1990, maintained approximately 288,000 IIM accounts. Office of Trust Funds Management, "Investment of Indian Trust Funds, Fiscal Year 1990" 3. IIM accounts were originally intended for legally incompetent adults and minors without guardians. Department of Interior, Office of Inspector General Report No. 89-117, "Selected Aspects of Indian Trust Fund Activities, Bureau of Indian Affairs" 21 (Sept. 29, 1989). Today, the Bureau also maintains IIM accounts for adults receiving income from a trust resource, such as oil and gas royalties. (For example, the Minerals Management Service, after collecting oil and gas royalties, pays the Bureau, who deposits the amount in the appropriate IIM account.) Office of Trust Funds Management report at 4. The Inspector General has described the Bureau's IIM operation as a "large quasi-banking system." Inspector General report at 7.

According to Bureau officials, the Bureau, in 1936, decided that all IIM funds would be invested and directed its Agency Offices to do so in a manner consistent with section 162a. Since 1966, the Bureau's Branch of Investment in Albuquerque has pooled all IIM accounts for investment purposes. The Bureau allocates interest earned on the investment pool to individual accounts. See generally, Office of Trust Funds

^{2/} The Secretary of the Interior, responsible for the management of Indian affairs (see 43 U.S.C. § 1457; 25 U.S.C. §§ 1a, 2), has delegated authority for management of Indian trust funds to the Assistant Secretary for Indian Affairs, who carries out this responsibility through the Bureau.

Management report, supra; Inspector General report, supra. Tribal representatives suggest that there are many instances where the Bureau has failed, either because of neglect or by decision, to invest some IIM funds, and has deprived account owners of the possibility of cumulative earnings on interest income by failing to record interest income properly or to credit an account owner with interest earned. For example, the Bureau has not calculated interest on oil and gas royalties since November 1985, although such funds are invested as part of the IIM pool of funds; the Bureau awaits the development and implementation of a system that will allow accurate calculation and distribution of such interest. Meanwhile, account owners lose the opportunity to invest this interest.

The Inspector General recently concluded that because of inaccurate financial records, poor accounting processes, and inadequate management and controls, the Bureau's investment decisions are not credible, and criticized the Bureau for failure to recognize investment losses, among other things. The Inspector General discussed one instance where the Bureau lost at least \$3.9 million in IIM principal as a result of investing in financial institutions that failed. Inspector General report at 12. The Inspector General computed interest of \$3.8 million that would have been earned on the unrecovered funds as of April 30, 1989. Id. The Inspector General mentioned other instances of losses of funds and unearned interest income as well. He pointed out that "sometimes the Bureau was responsible for the losses . . . , and other times the losses were beyond the Bureau's control." Id. at 14. The Inspector General noted that in situations such as this, the Department's Solicitor has determined that the Bureau is not liable for lost interest; the Inspector General, citing the Bureau's fiduciary responsibility, concluded that "decisions must be made regarding the Bureau's liability." Id.

Arthur Andersen and Company, in its May 1990 report of its audit of Indian trust funds, noted instances of misposting of receipts and untimely interest distributions, and found, also, that the Bureau has not identified the ultimate account owners of some IIM balances. Arthur Andersen & Co., "Tribal and Individual Indian Monies Trust Funds; Financial Statements as of September 30, 1989 and 1988" 8, 15 (May 11, 1990).

Neither the Bureau, tribal representatives nor IIM account owners are in a position at this time to calculate with any degree of certainty estimated loss of interest, or even to identify, for example, those accounts or parts of accounts that were not invested, over what period of time the Bureau may have failed to invest particular IIM funds, or when interest income may not have been posted properly. Nevertheless, in response to the tribes' queries, the Bureau

has agreed to instruct the accountants undertaking the reconciliation to calculate possible lost interest, see the Bureau's Request for Proposals, part 1, para. 8, Dec. 20, 1990; the success of this effort will depend, of course, on the existence and availability of account records and other historical evidence.

The Bureau's Acting Deputy Commissioner, in the meantime, asks whether the Bureau, as a general matter, is liable to IIM account owners for lost interest, and, if so, how the Bureau should properly record such liability. He notes that in a 1986 decision, we concluded that the United States is not liable for interest on IIM accounts. 65 Comp. Gen. 533, 540 (1986).

DISCUSSION

Liability for Loss of Interest

Federal courts have long held that the United States is not liable for interest unless it has consented to the payment of interest. In a 1986 decision, the Supreme Court explained the derivation of the rule. Library of Congress v. Shaw, 478 U.S. 310, 314-17 (1986). English common-law courts viewed interest as a penalty separate from damages on the substantive claim, and thus created a separate cause of action for the recovery of interest. Because under United States law, the federal government, as sovereign, is immune from suit in the absence of its consent. American courts, adopting the English common law view concerning the recovery of interest, concluded that a claimant against the government cannot recover interest unless the government has waived its immunity from suit in this regard. Id. "[A]bsent a statute expressly providing for the payment of interest, separate from a general waiver of immunity to suit, the United States is immune from an award of interest as damages." White Mountain Apache Tribe of Arizona v. United States, 20 Cl. Ct. 371, 379 (1990). Courts construe waivers of sovereign immunity strictly in favor of the United States:

"[T]here can be no consent by implication or by use of ambiguous language. Nor can an intent on the part of the framers of a statute . . . to permit the recovery of interest suffice where the intent is not translated into affirmative statutory . . . terms."

United States v. New York Rayon Importing Co., 329 U.S. 654, 659 (1947).

Judicial precedent is unrelenting in its application of this rule to IIM funds. Courts have consistently held that section 162a does not constitute a waiver of sovereign

immunity because, quite simply, it does not require the payment of interest. See, e.g., Rogers v. United States, 877 F.2d 1550, 1556 (Fed. Cir. 1989) ("There is no contract, treaty or Act of Congress . . . that expressly, or even by implication, provides for the payment of interest. . . ."); United States v. Gila River Pima - Maricopa Indian Community, 586 F.2d 209, 216 (Ct. Cl. 1978) ("no statute exists requiring interest to be paid on 'Individual Indian Money' (IIM) accounts. . . ."); White Mountain Apache Tribe of Arizona, 20 Cl. Ct. at 384 ("The statute does not expressly mandate . . . payment of interest . . .").

With regard to IIM accounts, section 162a states:

"the Secretary is . . . authorized . . . to deposit in banks . . . the funds held in trust for the benefit of individual Indians: Provided, that no individual Indian money shall be deposited in any bank until the bank shall have agreed to pay interest thereon at a reasonable rate . . . : Provided further, that the Secretary . . . , if he deems it advisable and for the best interest of the Indians, may invest the trust funds of any . . . individual Indian in any public-debt obligations of the United States and in any bonds, notes, or other obligations which are unconditionally guaranteed . . . by the United States." (Emphasis added.)

Compare with 25 U.S.C. § 161a, as originally enacted, which constituted a waiver of immunity with regard to tribal funds: "All funds . . . held in trust by the United States . . . to the credit of Indian tribes . . . shall bear interest at the rate of 4 per centum per annum." (Emphasis added.)^{3/} See, e.g., Cheyenne-Arapaho Tribes of Indians of Oklahoma v. United States, 512 F.2d 1390 (Ct. Cl. 1975); Manchester Band of Pomo Indians v. United States, 363 F. Supp. 1238, 1243-48 (N.D. Ca. 1973).

In White Mountain Apache Tribe of Arizona, the Claims Court examined judicial precedent and found no way around the rule against payment of interest. Ten years earlier, the court noted, the Court of Claims had suggested that the Bureau's obligation under section 162a, if any, to invest IIM funds in a productive manner had not been addressed fully, and thus deserved further consideration. Navajo Tribe of Indians v.

^{3/} Section 161a was revised in 1984 to require the Secretary of the Treasury, at the request of the Secretary of the Interior, to invest tribal funds in public debt securities bearing interest at rates determined by the Treasury Secretary.

United States, 624 F.2d 981, 994-95 (Ct. Cl. 1980). After reviewing decisions following Navajo Tribe, the court in White Mountain Apache Tribe concluded that while section 162a does not direct the payment of interest, it does "waive the government's immunity to suit." White Mountain Apache Tribe of Arizona at 382-83, citing Mitchell v. United States, 664 F.2d 265, 274 (Ct. Cl. 1981). The court said that section 162a "establishes and circumscribes the Secretary of the Interior's authority to invest funds," and that "[e]xercise of that authority within the parameters established by [section 162a] calls for the production of money;" nevertheless, the court found, the case law interpreting section 162a "fails to come to grips with the impediment to recovery," i.e., that "[t]he statute does not expressly mandate [the] payment of interest." White Mountain Apache Tribe of Arizona at 384. The court concluded, "(g)iven the substantial jurisprudence from the Supreme Court and the Court of Claims insisting that the proponent of interest as damages demonstrate the sovereign's express waiver of immunity [section 162a] cannot be construed as an express waiver." Id. Regardless of whatever duty might be imposed by section 162a on the Bureau, interest, as lost investment yield, is the measure of any breach of that duty, and the case law is unequivocal that a "waiver of immunity to pay interest must be separate from the waiver of immunity enabling a suit for damages." Id.

We addressed this issue in our decision at 65 Comp. Gen. 533. In that case, the Bureau had improperly withdrawn funds from the IIM account of Ms. Linda Slockish. Ms. Slockish asked that the Bureau, in addition to refunding the amount withdrawn, pay her interest that would have accrued from the date of withdrawal to the date of refund had the monies remained in her account and been invested. Although we concluded that the Bureau, in withdrawing the money from the account, had breached its trust responsibilities to Ms. Slockish, we held, nonetheless, that the Bureau did not owe her interest. Id. at 539. We stated:

"In view of the longstanding practice of both the courts and this Office not to award interest unless it is clearly authorized by treaty, statutes or contracts, we will follow the rulings of the United States Claims Court. In this regard, we deem it crucial that the United States is not specifically required to pay interest on IIM accounts."

Id. at 540. We noted that it makes no difference whether interest is characterized as "damages, loss, earned increment, just compensation, discount, offset, penalty or any other term." Id. at 539-40.

After a thorough and considered analysis of section 162a and case law interpreting it, we find no basis upon which to modify our 1986 conclusion. Federal courts have made clear that the failure of Indians' claims for interest on IIM funds lies in the wording of section 162a, *i.e.*, section 162a does not require the payment of interest. As the Court of Claims explained in a 1975 decision, an award of interest against the government cannot be made, "[n]o matter how high the purpose or how benevolent the motive, . . . unless the requirements of the no-interest rule have been met." United States v. Mescalero Apache Tribe, 518 F.2d 1309, 1323 (Ct. Cl. 1975). Thus, in the absence of a judicial remedy, the Bureau and tribal representatives should seek legislative settlement of any claims arising from the reconciliation effort. The statutory impediment can be redressed only by the Congress through the legislative process.

Recording Interest Liability

The Bureau should not record as an obligation of the United States any interest liability until the Congress has agreed to accept such liability. We have no objection however, to the Bureau requiring the accountants undertaking the reconciliation to calculate possible lost interest and to identify it, for informational purposes, on the financial statements they prepare to report their findings to the Bureau and the account owners.

Milton J. Fowler
 Acting Comptroller General
 of the United States