THE INTERIOR DEPARTMENT'S FAILURE TO CORRECT SERIOUS PROBLEMS IN THE MANAGEMENT OF THE INDIAN TRUST FUNDS

HEARING

BEFORE THE

ENVIRONMENT, ENERGY, AND NATURAL RESOURCES SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

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THE INTERIOR DEPARTMENT'S FAILURE TO CORRECT SERIOUS PROBLEMS IN THE MANAGEMENT OF THE INDIAN TRUST FUNDS

MONDAY, SEPTEMBER 26, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENVIRONMENT, ENERGY,
AND NATURAL RESOURCES,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 11 a.m., in room 2247, Rayburn House Office Building, Hon. Mike Synar (chairman of the subcommittee) presiding.

Present: Representatives Synar and Clinger.

Staff present: Sandra Z. Harris, staff director; Elisabeth Campbell, clerk; and Charli Coon, minority professional staff member.

Mr. SYNAR. The subcommittee will come to order.

The subcommittee meets today for the fifth time since 1989 to review the Interior Department's management of $2.1 billion held in trust accounts for native American tribes and individuals. More specifically, we are going to explore in detail what steps the Department has, or has not, taken to correct the serious management and accounting problems that have plagued this program for decades.

We are going to discuss the Department's unwillingness to include tribal and other account-holder representatives in their planning and deliberations on trust fund activities, despite repeated congressional directives to do so. We are going to discuss the Secretary's failure to meet his basic fiduciary obligations to the tribal and individual Indian account holders.

Over the years, the GAO, the inspector general, and outside accounting firms have issued scores of critical audit reports on the deficiencies in this program. We will be releasing yet another GAO audit report today. These problems, and the Department's refusal to correct them, were the subject of a scathing report unanimously adopted by the full House Government Operations Committee in 1992. The Department's inability to properly account for the trust fund accounts has landed this program on the Office of Management and Budget's high-risk list for almost a decade.

Indeed, the more than 300,000 trust fund accounts have never been reconciled or audited, leading one Treasury Department official to remark to GAO that with respect to this program, "The Bureau of Indian Affairs is like a company that's gone bankrupt, and then had a fire."

GAO, the inspector general, OMB, and many of us in Congress have tried for years to get the leadership of the Department to take the unglamorous but crucial steps necessary to correct the many trust fund problems that cut across three separate Bureaus within Interior.

Thankfully, progress has been made by the Office of Trust Fund Management. However, that office is responsible for only one part of the trust fund cycle, and the Director of the OTFM has no authority to correct numerous other problems, such as those at the Bureau of Indian Affairs field office level or within other Bureaus of the Department.

Time and again we have emphasized that only a comprehensive strategic action plan addressing all trust fund functions within the Department and sustained high-level Department leadership will fix these problems. Time and again, we have been ignored or have been presented instead with limited or ill-conceived initiatives. I am sorry to say that even the new administration has proposed what amounts to putting a band-aid on a patient that is bleeding to death.

I have the honor of representing a district which is rich in Indian history. It has been my privilege over the years to work with tribes and individual Indians on a variety of programs and problems, including this one, that affect their daily lives. Consequently, I know firsthand that there are real human beings at the other end of this bureaucratic nightmare, many of whom depend upon their trust funds to meet their daily needs, a fact that the Department all too often forgets or simply ignores.

But one doesn't have to be from Indian country to find totally unacceptable the Department's neglect of these long standing trust fund problems. Purely from a government management and accountability standpoint, this situation is intolerable. Moreover, the Department's continued failure to take necessary corrective action subjects the Secretary to potentially significant liability for breach of his fiduciary responsibilities.

After years of battling the Department's inertia, Congressman Richardson and I, along with Senator Inouye, have proposed legislative solutions to these problems. Our bills would statutorily establish a special trustee to oversee all trust fund functions throughout the Department, facilitate greater tribal management of those funds, and require the Secretary to invest and pay interest on individual Indian money trust funds.

These proposals enjoy the strong bipartisan support of many other Members, and I intend to do everything in my power to help ensure enactment of this legislation before Congress adjourns this year.

At this point, I ask unanimous consent that the record be open for other statements by Mr. Richardson, Mr. Thomas, as well as any of the members of the subcommittee.

[The prepared statements of Hon. Bill Richardson and Hon. Craig Thomas follow:]

STATEMENT OF REPRESENTATIVE BILL RICHARDSON

COMMITTEE ON GOVERNMENT OPERATIONS
SUBCOMMITTEE ON ENVIRONMENT, ENERGY, AND NATURAL RESOURCES

OVERSIGHT HEARING ON
AMERICAN INDIAN TRUST FUND MISMANAGEMENT

September 26, 1994

I want to thank my good friend, Chairman Mike Synar for allowing me to submit testimony on the continuing problems with the Department of Interior's management of American Indian trust funds.

I serve as Chairman of the Natural Resources Subcommittee on Native American Affairs and have much to thank Mike Synar for. In yesterday's Washington Post, columnist David Broder, referring to Mike's too short congressional career said, "... Synar quickly earned a reputation as a workhorse who was ready to take on the toughest issues a congressman from a conservative, rural district could tackle." Indian trust fund management is a perfect example. Mike has been a pit bull on this issue. He has spent years investigating and exploring all the aspects of the Department of Interior's management of Indian allotted lands and the revenues derived from them. The report his Subcommittee issued in 1992, Misplaced Trust: The Bureau of Indian Affairs' Mismanagement of the Indian Trust Fund details a sad laundry list of problems including the incredible fact that the Secretary of Interior, who is the fiduciary responsible for these trust funds cannot even give an accurate accounting to the account holders. The 1992 report did not stop there, it came up with several workable solutions to the problems. Several General Accounting Office (GAO) reports have also recommended solutions. Unfortunately, we sit here 2 years later and little has changed. My Subcommittee has depended on the work of this Subcommittee, and H.R. 1846 authored by Mike Synar, during consideration of pending legislation.

Today, the General Accounting Office releases yet another report on the Indian trust fund problems. This report, like so many other reports about trust fund management claims that the problems can be fixed if only the Department of Interior would make the management commitment to do so. You and I know it will not be easy to clean up all the problems which exist. But the piecemeal approach the Department consistently takes will NEVER solve the problem. There must be an overall strategic plan. It must address all the problems and the Secretary must commit the needed resources to implement it.

In August I introduced H.R. 4833 as a complementary bill to H.R. 1846. This was done after numerous meetings with tribes, GAO, the Department, this Subcommittee, the Interior Appropriations Subcommittee and even the Senate were held. H.R. 4833 establishes a Special Trustee within the Department of Interior who would answer directly to the Secretary. The Special Trustee would develop the needed strategic plan to address all trust fund issues. This person would have the authority and ability to coordinate among the major agencies of the Bureau of Indian Affairs, Bureau of Land Management, and

Mineral Management Service to ensure that Indian allotted lands were handled properly and in compliance with fiduciary standards.

The GAO report, Focused Leadership and Comprehensive Planning Can Improve Interior's Management of Indian Trust Funds, which will be presented here today supports the Special Trustee concept. The report also supports much of what is in the legislation currently pending before the Subcommittee of Native American Affairs. I realize the Department is hesitant to support this concept. Unfortunately, the Department does not have an alternative to suggest.

We are now in the waning days of the 103rd Congress, but I plan to push the American Indian trust fund reform legislation as far as I can. I believe, once correctly implemented the Department will agree with its purpose.

Thank you again for the opportunity to work with you on this important matter and for allowing me to be a part of this morning's hearing.

CRAIG THOMAS
WYOMING, AT LARGE

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STATEMENT OF CONGRESSMAN CRAIG THOMAS
RANKING REPUBLICAN MEMBER
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT, ENERGY, AND NATURAL RESOURCES
SEPTEMBER 26, 1994

I appreciate Chairman Synar enabling me to submit a statement this morning. As a member of the Committee on Government Operations, and as the Ranking Republican on the Subcommittee on Native American Affairs, I am keenly interested in the issue of Indian Trust Funds and the galling failure of the Department and the BIA to live up to their responsibilities. Unfortunately, previous commitments back in Wyoming prevent me from appearing in person today.

I have participated in a number of hearings over the last several years on this subject. We have had two hearings on trust fund management -- or, more properly, mismanagement -- in the Native American Affairs Subcommittee this Congress, and I was a member of Chairman Synar's subcommittee in the last Congress. Then, as now, I fully support efforts to untangle this mess.

Since the Government Operations Committee released its report, "Misplaced Trust: The Bureau of Indian Affairs' Mismanagement of the Indian Trust Fund", I have seen precious little change in this sad state of affairs. Instead, I have seen promised deadlines come and go; I have seen promises to reform go unfulfilled. Despite statements made in the early days of the Clinton administration, two years later neither the Department nor the BIA has brought us one step closer to resolving the trust fund problem. All we have seen is a continuation of the BIA's one unchallenged specialty: inertia.

We have seen the pattern repeated over and over. The Department and BIA promise to act, fail to, we are forced to introduce legislation to deal with the issue, and then when passage of the legislation seems imminent they come to us and ask for more time, quote, "because we're working on the problem, really we are," unquote, or they offer their own, watered-down, legislative proposal in the hope of heading ours off.

We have seen this happen with FAP and 638 reform, and with the trust fund issue we consider today. The gentleman from Oklahoma introduced his trust fund bill -- H.R. 1846 -- on April 22, 1993. The BIA had until September 27 -- when my subcommittee held an oversight hearing focused on the bill -- to fully review it and provide us with its comments on it. Instead, at that hearing the BIA provided only superficial comments and indicated in written testimony that it would, quote, "supplement [its] comments in a fuller report to be submitted in the future," unquote. In fact, Assistant Secretary Deer stated that the Bureau had reviewed both S. 925 and H.R. 1846, and would provide us with detail comments, quote, "in a matter of days," unquote.

Well, the subcommittee held a hearing on August 11, 1994, to consider both H.R. 1846 and H.R. 4833, 318 days after we were promised some action by the Bureau, later, and those promised comments had yet to arrive. Moreover, once Chairman Richardson introduced his bill and scheduled the August hearing, true to form the BIA suddenly had an alternative to the two bills.

Once again, in my opinion, they offered us far too little far too late. I urged the subcommittee to reject more delay and more stonewalling, to reject the BIA alternative, and move forward in the very near future with either of the bills. Last Friday I joined with Congressmen Richardson, Williams, and others in signing a letter to Chairman Miller of the Natural Resources Committee strongly urging him to take up one of the bills in full committee so that we can pass a bill out of the House this session.

I am sure that this morning we will hear more of the same excuses and promises, more requests to just give it a little more time, from the Department that we have been hearing for the last six years. But, Mr. Chairman, shame on us, shame on this Congress, if we delay any further.

The Department told us in August, and I am sure will repeat this morning, that they have everything under control. Well, Mr. Chairman, my response to that is an explicative which decorum prevents me from using here but which I will paraphrase: cow manure! I have read the GAO's September 1994 draft report (GAO/AIMD-94-185) on this subject, and would like to quote several of the passages from that agency's conclusion:

> [M]any of the [Department's] initiatives are in the early stages and a number of them will not be completed for several years. Further, the Secretary's 6-Point Trust Funds and Trust Asset Management Reform Plan, issued in June 1994, does not provide the comprehensive approach needed to address the full range of trust fund and asset management problems that Interior continues to face.

* * *

> A sustained commitment will be needed to carry through on needed improvements. In the past, Interior has not demonstrated the leadership or management commitment needed and many previous corrective action ef-

> forts have failed outright or resulted in only incremental improvements. Interior must comprehensively examine its mission and the way it does business to determine how and by whom Indian trust funds can best be managed. . . .

I couldn't have said it better myself.

Mr. Chairman, the Department needs to pull itself out of denial, pull itself out of its fantasy world, and come to grips with reality. It is clear that they are incapable of doing it themselves. I sincerely hope that we can do it for them, and will do everything I can to move a bill before Congress adjourns.

Mr. SYNAR. Our first panel this morning is George Stalcup, Associate Director, Financial Integrity Issues, Accounting and Information Management Division of the U.S. General Accounting Office; Gayle Condon, Assistant Director, joining him; and William Laurie, regional audit manager, Denver Regional Office.

As you know, the policy of the subcommittee, in order not to prejudice past or future witnesses, it to swear all our panelists in. Do you have any objection to being sworn in?

If not, will you raise your right hand.

[Witnesses sworn.]

Mr. SYNAR. Let me say right off the top, if I could, that I want to specially thank you, Gayle, and others—including Tom Armstrong from your Office of General Counsel—for what has been a labor of love for many, many years. And I personally appreciate the fact that you all have given us so much advice and counsel on how to pursue this and get these problems fixed.

Your entire testimony will be made a part of the record at this time. We would ask you to summarize, in 5 or so minutes; then we can get into some specific questions about this issue.

STATEMENT OF GEORGE H. STALCUP, ASSOCIATE DIRECTOR, FINANCIAL INTEGRITY ISSUES, ACCOUNTING AND INFORMATION MANAGEMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY GAYLE CONDON, ASSISTANT DIRECTOR, AIMD, AND WILLIAM F. LAURIE, AUDIT MANAGER, DENVER REGIONAL OFFICE

Mr. STALCUP. Thank you very much, Mr. Chairman. We appreciate the opportunity to be here today to discuss our work on the Department of the Interior's management of Indian trust funds. I will briefly summarize the information contained in our report on trust fund management improvement options which is being released today. I will also provide an update on BIA's efforts to reconcile Indian trust fund accounts and to develop a trust fund loss policy and restore lost funds to account balance holders.

Interior's longstanding Indian trust fund management problems have been well documented. They include an inability to accurately account for land ownerships and natural resource assets and their associated revenues, the lack of sound trust fund internal controls, policies and procedures, inadequate accounting systems, and inconsistent investment practices. Problems permeate every facet of the trust fund business cycle and have prevented BIA from presenting individual Indians and tribes with an accurate accounting of their funds and paying interest due to them.

Now, I want to point out today that Interior has a number of management and system improvement initiatives underway or planned which, if effectively implemented, could help to improve aspects of its trust fund management. But progress has been slow, and many of these initiatives will not be completed for several years. We believe that Interior needs to consider a number of other options, which are detailed in our report, that could help make additional improvements.

In the past, Interior has not demonstrated the leadership or management commitment needed to carry through on investment efforts, and many previous corrective actions have failed outright or resulted in only incremental improvements. Interior still lacks a comprehensive strategic plan for trust fund management. The Department needs to reevaluate key program objectives and rethink the basic concept underlying the Secretary's fiduciary responsibility and the wishes of tribes and Indians under self-determination initiatives.

Pending trust fund reform legislation would establish an Office of special trustee for American Indians. It calls for a special trustee with management experience and trust fund expertise and would provide the special trustee with overall responsibility for Indian trust programs, including developing a comprehensive strategic plan, oversight of all reform efforts and coordinating the development of systems, policies, and procedures across the Department. We believe this would help.

Turning to the reconciliation effort, in April we reported on BIA's first effort to reconcile trust fund accounts, which began in May 1991. The objective of this effort was to reconstruct transactions and account balances by going to source documents. After the effort began, BIA found that it could not locate all needed documents and decided not to proceed at that time with reconciliation of individual Indian money accounts.

In April 1994, a work group reported that it was considering other alternatives for IIM account reconciliations, but the group has not met since that time. For tribes, BIA is currently attempting to reconcile accounts for the 20-year period from 1992 back to 1973. Since our April status report on the reconciliation, BIA has continued its work but encountered some additional problems.

For example, when planning an effort to verify Indian royalty accounting data it received from MMS, BIA found that MMS retains supporting documentation for only 6 years and, as a result, reconciling MMS transactions for the entire 20-year period will be impossible.

Further, missing records continue to be a problem throughout the reconciliation. As we have said previously, unreconciled accounts are only a symptom and not a cause of BIA's trust fund management problems. BIA must deal with the root causes. Otherwise, even if it is able to reconcile current account balances, it will continue to have to deal with the issue of account balances in the future.

There is another area where BIA made clear progress. In June 1994, BIA finalized its Indian fund trust fund account loss policy. It defined trust fund losses, including the failure to invest tribal and individual funds and pay interest. We had expressed our concerns on earlier attempts to draft a policy, and BIA has now addressed those concerns. BIA has also made progress in restoring lost funds to trust account holders, reducing amounts owed from about $11 million in 1992 to $4 million. This includes most of the $2 million of account holder losses related to the Treasury's mass cancellation of uncashed checks.

In summary, Mr. Chairman, Interior has initiatives planned or underway to address some of its longstanding trust fund management problems, and there are additional options that could help make other needed improvements. However, Interior's track record on past attempts for corrective action is not good. Interior needs a comprehensive plan, focused leadership, and a management commitment if it is to carry through on needed improvements.

This concludes my statement. We will be glad to answer any questions the subcommittee may have.

[The prepared statement of Mr. Stalcup follows:]

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to be here today to discuss our work on the Department of the Interior's management of the Indian trust funds. My statement today summarizes information contained in our report[1] on trust fund management improvement options, which is being released today. I will also provide an update on the Bureau of Indian Affairs' (BIA) efforts to (1) reconcile Indian trust fund accounts and (2) develop a trust fund loss policy and restore lost funds to account holders.

Interior's long-standing Indian trust fund management problems, which permeate all facets of the trust fund business cycle, include (1) the lack of accurate, up-to-date ownership information to ensure that revenue is distributed to the correct account holder, (2) inadequate management of natural resource assets to ensure that all earned revenues are collected, (3) weaknesses in trust fund management systems, policies and procedures, and internal controls, including the lack of periodic trust account reconciliations to ensure the accuracy of trust fund balances, and (4) the failure to consistently and prudently invest trust funds and pay interest to account holders.

Interior has management and systems improvement initiatives planned or under way which, if effectively implemented, could help to

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[1]Financial Management: Focused Leadership and Comprehensive Planning Can Improve Interior's Management of Indian Trust Funds (GAO/AIMD-94-185, September 22, 1994).

improve its management of the Indian trust funds. However, progress has been slow and many of these initiatives will not be completed for several years. In addition, as detailed in our report, we identified six primary options that could help Interior make additional improvements. They include (1) eliminating backlogs in land title and beneficial ownership determinations and recordkeeping, (2) expanding or undertaking new initiatives with the Departments of Agriculture and Energy for support services, (3) providing training and technical assistance to tribes who wish to assume responsibility for managing their natural resources under self-determination initiatives, (4) obtaining reliable trust fund accounting and subsidiary systems and contracting for banking services, (5) contracting for investment advisors and a custodian to settle trades, safeguard securities, and track investments, and (6) establishing index investment fund options for tribes.

In the past, Interior has not demonstrated the leadership or management commitment needed to accomplish planned improvements and many previous corrective actions have failed outright or resulted in only incremental improvements. In addition, Interior still lacks a comprehensive strategic plan for trust fund management, as recommended in our June 1992 report.[2] We stated that Interior needed to reevaluate key program objectives and rethink the basic concept underlying trust fund management, including the Secretary's

[2]Financial Management: BIA Has Made Limited Progress in Reconciling Trust Accounts and Developing a Strategic Plan (GAO/AFMD-92-38, June 18, 1992).

fiduciary responsibility and the wishes of tribes and Indians under self-determination initiatives. For example, to support a goal of helping tribes and Indians to become self-sufficient, a strategic plan would need to be directed at providing necessary financial and technical assistance and training to help tribes and Indians assume greater responsibility for managing their natural resource and financial assets.

Pending trust fund reform legislation (H.R. 4833) would establish an Office of Special Trustee for American Indians in the Department of the Interior. The Special Trustee, who is to have expertise and experience in trust management-related operations, would be responsible for (1) preparing, in consultation with tribes and appropriate Indian organizations, a comprehensive strategic plan for all phases of the trust management business cycle to ensure proper and efficient discharge of the Secretary's trust responsibilities to tribes and individual Indians, (2) providing oversight of all reform efforts within BIA, the Bureau of Land Management (BLM), and the Minerals Management Service (MMS) related to the Secretary's trust responsibilities, and (3) coordinating the development of systems and policies and procedures of BIA, BLM, and MMS related to the discharge of the Secretary's trust responsibilities. Interior does not currently have a single manager or office with overall responsibility for Indian trust programs.

STATUS OF THE TRUST FUND RECONCILIATION PROJECT

As we reported in April 1994,[3] BIA undertook its first effort to reconcile the Indian trust fund accounts in May 1991. The objective of this effort was to identify, to the extent practical, correct account balances for tribal and individual Indian accounts by using source documents to reconstruct trust account transactions to give account holders as accurate an accounting as possible.

In March 1992, BIA decided not to proceed with reconciliations of Individual Indian Money (IIM) accounts, based on its contractor's report that reconciliations of these accounts were not feasible due to the lack of supporting documentation and the level of effort and associated cost to review millions of transaction documents. In January 1993, BIA created a Work Group to study settlement or other alternatives to IIM account reconciliations. In April 1994, the IIM Work Group was finalizing a proposed IIM account reconciliation discussion paper for comment by tribes and Indians. However, the Work Group has not met since that time and an IIM reconciliation discussion document has not been completed. According to the Work Group leader, the Group hopes to hold a meeting in the fall of 1994, with a number of Indian groups and the InterTribal Monitoring Association (ITMA), to review the draft IIM reconciliation options paper.

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[3]BIA Trust Fund Reconciliations (GAO/AIMD-94-110R, April 25, 1994).

BIA is currently reconciling tribal accounts for the 20-year period from 1992 back to 1973 and is performing reconciliations between its various trust fund accounting systems and between its general ledger system and Treasury balances.

Changes in the reconciliation status since our April 1994 report include:

-- BIA is conducting pilot reconciliations for five tribes[4] before proceeding with reconciliation work for all tribes. BIA has completed field reconciliation work for all five tribes and has issued preliminary reports for four of them. We have reviewed preliminary reports prepared for three of the five tribes. These reports describe (1) problems in completing reconciliations due to missing records, (2) weaknesses in internal controls, and (3) noncompliance with laws and regulations. The reports also include recommendations for corrective actions. BIA has requested source documents in order to begin reconciliation work for the remaining tribes. However, we believe that it is important for BIA to carefully consider the lessons learned from the five tribes' pilot reconciliations, particularly with regard to the limitations on these

[4]The five tribes agreeing to participate in the pilot reconciliation procedures are (1) the Assiniboine and Sioux Tribes of Fort Peck, Montana; (2) the Confederated Salish-Kootenai of Flathead, (3) the Confederated Tribes of the Yakama Nation, Washington; (4) the Hopi Tribe of Arizona; and (5) the Three Affiliated Tribes of Fort Berthold, North Dakota.

reconciliation efforts due to missing records, before determining whether or how to proceed with reconciliations of the remaining tribes' accounts.

-- During the week of August 22, 1994, BIA began efforts to develop a reconciliation approach to determine whether MMS Indian oil and gas royalty accounting data and payments transferred to BIA were reliable. BIA has expanded the scope of this work and prepared a contract modification to include royalty payments for hard minerals, such as coal. The work is to include a review of MMS procedures and documents in order to evaluate the feasibility and level of effort needed to perform detailed work on MMS receipts and recommend test procedures. However, BIA's reconciliation contractor has determined that MMS requires supporting documentation to be retained for only 6 years. As a result, transactions prior to 1988 cannot be reconstructed.

-- BIA selected fiscal year 1990 as a pilot year for testing procedures for reconciling its trust fund general ledger systems data to Treasury data. The pilot, which began in January 1994, has not been completed due to complications associated with (1) BIA's practice of consolidating BIA general operating funds and other non-trust related funds with tribal and IIM funds for Treasury reporting purposes and (2) the number of missing records.

As we stated in our June 1992 report, the unreconciled accounts are only a symptom, and not a cause of BIA's trust fund financial management problems. BIA will need to deal with the root cause of its problems or it will continue to lack assurance that account balances are accurate. For example, BIA needs to maintain adequate supporting documentation, including leases and other contractual agreements, to ensure that all earned revenues are collected, and it also needs to maintain accurate, up-to-date ownership records to ensure that revenues are posted to the correct account.

STATUS OF BIA'S EFFORTS TO DEVELOP TRUST FUND LOSS POLICY AND RESTORE LOST FUNDS TO ACCOUNT HOLDERS

In January 1992[5] and January 1994[6], we reported that BIA's attempts to draft a trust fund loss policy did not fully address (1) the need for systems and procedures to prevent and detect losses and the need to instruct BIA staff on how to resolve them if they did occur, (2) what constitutes sufficient documentation to establish the existence of a loss, and (3) interest that was earned but not credited to the appropriate account.

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[5]BIA Reconciliation Monitoring (GAO/AFMD-92-36R, January 13, 1992).

[6]BIA's Trust Fund Loss Policy (GAO/AIMD-94-59R, January 14, 1994).

In May 1994, BIA finalized its Indian Trust Fund Account Loss Policy. The Policy responds to our earlier concerns by defining trust fund losses, including the failure to invest tribal and IIM funds and pay interest, and by providing for (1) daily reviews of account activity and source documents to identify needed adjustments and corrections, (2) submission of supporting documentation to the Office of Trust Funds Management (OTFM) for review and determination of a loss, (3) written notification to account holders of OTFM determination that a loss has occurred within 60 days of identification of any losses, errors, or overpayments, (4) maintenance of detailed case files, and (5) preparation of monthly, quarterly, and annual reports on trust fund losses.

BIA has also made progress in restoring lost funds to trust account holders. In 1992, BIA owed account holders about $11 million in trust fund account losses, including losses of principal and interest related to failed financial institutions, claims, and cancelled Treasury checks. Since that time, BIA has received $6 million in appropriations to repay losses to account holders and it has made $1 million in adjustments related to the cancelled Treasury checks, leaving a balance of $4 million to be repaid from future appropriations.

BIA has resolved most of the $2 million in potential account holder claims related to Treasury's mass cancellation of uncashed checks

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under the limited payability provision of Public Law 100-86, the Competitive Equality Banking Act of 1987. BIA has repaid about $846 thousand to tribal and IIM account holders. BIA also made $1 million in adjustments. Further, because available documentation was not sufficient to identify all affected account holders, BIA has established a $500,000 fund for any future claims for reimbursements due to cancelled checks.

In summary, Interior has initiatives planned or under way to address some of the long-standing trust fund management problems, and there are additional options that could help it make other needed improvements. However, Interior's track record on past attempts for corrective action has not been good. Interior needs a comprehensive plan, focused leadership, and management commitment if it is to carry through on needed improvements.

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Mr. Chairman, this concludes my statement. I would be glad to answer any questions that you or the Subcommittee Members might have.

(917329)

Mr. SYNAR. Thank you. Thank you very much.

Let's start with some basics for the record. At the end of fiscal year 1993, BIA reported a total of $2.1 billion in the trust funds, and that total is comprised of about $1.7 billion in roughly 1,800 tribal accounts and $390 million in about 337,000 individual Indian money accounts. Is that correct?

Mr. STALCUP. That's correct.

Mr. SYNAR. Now, even though a reconciliation effort was started in 1991, under what I would say was extreme pressure by us in Congress, as of today, am I correct that not a single account, tribal or IIM, has ever been fully reconciled in the history of this program?

Mr. STALCUP. That's correct.

Mr. SYNAR. All right.

The Department's June 13, 1994, trust fund reform plan, the so-called six-point plan, states that there are 2,000 tribal accounts and 327,000 IIM accounts. Now, how did GAO come up with their numbers of 1,800 tribal accounts and 337,000 IIM accounts? Did you get that from BIA?

Mr. STALCUP. We did, but I would like Mr. Laurie to expound on that a little bit.

Mr. LAURIE. The tribal dollar amounts and the number of accounts of the tribes, that came from the Office of Trust Fund Management. The remaining accounts—337,000 IIM accounts—were derived by us getting the raw data and then using that data to come up with these particular figures.

Mr. SYNAR. But the point is that nobody at the Department can punch a button and give us those numbers. You had to do that yourself.

Mr. LAURIE. We had to do that ourselves. It took us a period of time to accomplish.

Mr. SYNAR. Now, of those 337,000 IIM accounts, are all of those active accounts with real, live account holders and good addresses and all the other right information?

Mr. LAURIE. Of the 337,000 accounts, about one-third represent accounts with no addresses—they are closed accounts where the checks have been returned. So in that sense, they are not current.

Mr. SYNAR. Let's focus for a second, if we could, on the Secretary's fiduciary duties to the account holders. As trustee, the Secretary is obligated to accurately account for all trust funds; isn't that true?

Mr. STALCUP. That's correct.

Mr. SYNAR. As trustee, the Secretary is responsible for properly maintaining official Indian land title and beneficial ownership records and for properly managing their natural resource assets; is that true?

Mr. STALCUP. Yes.

Mr. SYNAR. And as trustee, the Secretary is obligated to prudently and properly invest the funds and, to maximize, within the authority of the law, the benefits to the trust account holders; is that true?

Mr. STALCUP. That is correct.

Mr. SYNAR. Now, bottom line: as trustee, isn't the Secretary required at all times to act in the best interests of the account holders?

Mr. STALCUP. Yes.

Mr. SYNAR. The Secretary's duties have generally been delegated to three different Bureaus. One is the Bureau of Indian Affairs, one is the Bureau of Land Management, the third is the Minerals Management Service. And each of them plays a different role in the business cycle, right?

Mr. STALCUP. That's correct.

Mr. SYNAR. OK. Just for the record, isn't it well established in the law that the Secretary's trust duties which require the exercise of judgment and discretion, such as decisions on how to invest the trust funds, may not be delegated to an outside party like a bank. Isn't that true?

Mr. STALCUP. That is true.

Mr. SYNAR. All right.

Now, over a period of the decades, literally scores of reviews of the trust fund program have been conducted by you all at GAO, by the Department's own inspector general, by outside accounting firms, by OMB. Those reports have all found significant and pervasive problems in virtually every facet of the trust fund program. Is that a pretty good summary of the history of those reports?

Mr. STALCUP. Many of these problems have been reported over the years, yes.

Mr. SYNAR. All right. Now what we have done with you all, among other things, is ask you to go back and look at what actions the Department has taken in response to the committee's 1992 report and our recommendations and, further, to review any new options for the trust fund improvements. You have basically come back here today to report to us that the same fundamental problems which have been identified time and time again still exist. Is that correct?

Mr. STALCUP. That's correct.

Mr. SYNAR. You have again pointed out two key weaknesses. One is that despite repeated directives to do so, the Department has not developed a comprehensive strategic corrective action plan which covers the trust fund problems throughout the Department; and they still are not focusing sustained, high-level leadership attention on these problems. Is that correct?

Mr. STALCUP. That's correct.

Mr. SYNAR. So it is evident to everyone that the problems aren't getting the sustained leadership attention they need.

What about the strategic plan? In response to our previous badgering, in the early 1990's the Department actually started work on what they called the framework for developing a strategic plan. What happened to that effort?

Mr. STALCUP. I would like Gayle kindly to respond. She has some information on that effort.

Mr. SYNAR. Gayle.

Ms. CONDON. There were several attempts to draft a strategic plan, starting with the framework. None of those ever resulted in a finalized strategic plan. The last attempt was by the OTFM Director. He had finalized a draft in January 1993. No action was taken on that. That particular part of the strategic plan only dealt with the OTFM functions, and there was no effort at the Department to develop the portion of the strategic plan for the function outside of OTFM.

Mr. SYNAR. So it just plain died?

Ms. CONDON. Yes.

Mr. SYNAR. All right. Mr. Stalcup, in your testimony you stated that—let me quote it, "Interior's long-standing Indian trust fund management problems permeate all facets of the trust fund business cycle." Your report then goes on and details the problems at some length. Let's walk through some of those.

Your testimony identifies "the lack of accurate, up-to-date ownership information to ensure that revenue is distributed to the correct account holder" and "inadequate management of natural resources assets to ensure that all earned revenues are collected." In fact, that summarizes a lot of different problems, so let's go through them.

First, there are serious backlogs in land title ownership determinations—and they are actually increasing, because funding for the program has not kept up with the workload; is that right?

Mr. STALCUP. That is correct.

Mr. SYNAR. What kind of resources are they going to need?

Mr. STALCUP. We estimate that the Department would probably need to double its current capacity for a period of about 2 years in order to work that backlog down.

Mr. SYNAR. What about the BIA's failure to adequately inspect and enforce Indian leases? Is that still a problem?

Mr. STALCUP. There are still problems with BIA's pre-leasing and BIA's lease inspection and enforcement.

Mr. SYNAR. All right.

In fact, weren't you told that the BIA's Billings, MT, area office had a backlog of about 300 appraisals and weren't you told by that tribe that the BIA had done some appraisals without even visiting the land in question?

Ms. CONDON. That is right.

Mr. STALCUP. Again, Gayle has had this conversation.

Ms. CONDON. Well, Bill Laurie specifically spoke to the tribe, but that is what they said.

Mr. SYNAR. So that——

Ms. CONDON. They are doing the appraisals from the desk in the agency office, in some cases, rather than going out to the land. And the tribe's concern is that that could impact their ability to get fair market value on the leases.

Mr. SYNAR. It would be a little bit of a problem if you haven't even looked at the land.

Gayle, tell me about the weaknesses in the BIA's forest management development data being incomplete, imprecise, and out of date.

Ms. CONDON. Under self-determination, after the old forest management plan was developed, BIA was to develop a forest management plan in conjunction with the tribes because many tribes are conservation oriented and they are not out to market all their timber; they want to plant for regrowth and so forth. And, again, due to lack of resources, BIA has not been able to effectively work through the timber management planning with all of the tribes.

Mr. SYNAR. Now, the Mineral Management Services also has not been enforcing the regulations governing Indian mineral royalties, are they?

Ms. CONDON. That is the concern we heard from the tribes, yes.

Mr. SYNAR. You reported that none of the Bureaus—BIA, BLM, or MMS—have adequate systems to manage those resources, didn't you?

Ms. CONDON. Yes.

Mr. SYNAR. And both minerals and energy development are vital to the social and economic development of the tribes; isn't that correct?

Ms. CONDON. Correct.

Mr. SYNAR. All right.

Well, if the BIA and BLM and MMS aren't doing these things right, do most of these tribes, or do any of the individual Indian allottees, have the expertise or capability of doing it?

Ms. CONDON. A few of them do. A lot of them don't. And they are going to need help if they are to do this.

Mr. SYNAR. So the key here is to get the Secretary to exercise his trust responsibility.

Ms. CONDON. Exactly.

Mr. SYNAR. And help the account holders to do it.

You also report that "the BIA continues to have serious trust fund accounting, control and system weaknesses." Now, in all fairness, BIA has made some limited progress in that area; have they not?

Ms. CONDON. That's right.

Mr. SYNAR. For example, the Office of Trust Fund Management [OTFM] is contracting for an interim trust accounting system, correct?

Ms. CONDON. That's right, for the general ledger and investment transactions.

Mr. SYNAR. Now, what is the status on that? What was the target date for that?

Ms. CONDON. September 30. And I believe they just announced the award of a contract within the last few days. They can give you the date. We know they recently awarded a contract.

Mr. SYNAR. We have known for a long time there was a need for extra staffing at OTFM, and Jim Parris, the Director of OTFM, developed a plan to add about 49 new positions. How long did it take him to get that staff plan approved by headquarters?

Ms. CONDON. Two years.

Mr. SYNAR. So we are already running late in getting those key people on board, and they don't even have them all hired, do they?

Ms. CONDON. No. The goal is 20 positions by the end of this fiscal year; and the remaining 23 or so, next fiscal year.

Mr. SYNAR. Now, one of the key trust fund accounting problems you point out in your report is that:

> * * * the BIA has not yet addressed improper accounting practices by its field office staff or their failure to maintain leases and other contractual documents to support billing and collection functions and trust fund account reconciliations.

That problem is not new, either, is it?

Ms. CONDON. No.

Mr. SYNAR. In fact, you have previously pointed that out to the Department, have you not?

Ms. CONDON. Yes, we have.

Mr. SYNAR. And as a result, the Department is now saying that they are putting written policies and procedures in place for the area offices. Everyone was basically going off on their own prior to that; is that right?

Ms. CONDON. Essentially, yes.

Mr. SYNAR. What is the story here? I mean, kind of walk me through what happened.

Ms. CONDON. On the development of policies and procedures?

Mr. SYNAR. Right.

Ms. CONDON. For the field offices?

A couple of years ago, in response to our June 1992 report, OTFM took some action to contract for field office policies and procedures. Those efforts were slow in coming because the contract either was terminated or it expired and was not renewed.

It appears that this time they have been able to develop some IIM accounting procedures, some desk procedures to kind of standardize the field accounting practices, and they plan to implement those next year. That is only a portion of the policies and procedures that they need to develop.

Mr. SYNAR. So they won't be effective even if those new guidelines——

Ms. CONDON. I haven't seen them, so I don't know if they address only how to process transaction documents to OTFM or if they address things like the need to maintain the lease documents and update the ownership data. I don't know how comprehensive they are.

Mr. SYNAR. So it may not fix the whole problem then.

Ms. CONDON. That's right.

Mr. SYNAR. You also point out that the BIA's field staff who perform these trust fund accounting, report to their respective area and agency offices who are not trained financial managers. They do not report to Jim Parris, who is the director of the OTFM. You called that a "major control weakness." Now, why is that such a problem?

Ms. CONDON. Because if you don't have centralized accountability and standardized instructions and oversight over an accounting operations, the inconsistencies can result in any number of problems and inaccuracies.

Mr. SYNAR. But, if no one person or office is accountable for all of BIA's trust fund operations, you were probably as surprised as I was when we got the Department's June 13 document, that says:

> The Office of Trust Funds Management has been charged with overseeing the Indian trust funds program nationally and ensuring that the Federal trust responsibility of the Secretary is appropriately carried out consistent with law, policies and procedures.

That's not correct, is it?

Ms. CONDON. No. Mr. Parris doesn't have line authority over those other operations.

Mr. SYNAR. Now, is Mr. Parris or OTFM responsible for overseeing the whole trust fund nationally?

Ms. CONDON. No, sir, he is not.

Mr. SYNAR. They have no authority over area or agency office people, do they?

Ms. CONDON. That's correct.

Mr. SYNAR. And certainly they have no authority over anyone at BLM or MMS, correct?

Ms. CONDON. Correct.

Mr. SYNAR. You pointed out that the BIA has not always consistently and prudently invested trust funds and paid interest to account holders. Once again, this is not a new problem, is it?

Ms. CONDON. No, sir.

Mr. SYNAR. In fact, you have reviewed this before and the committee addressed it in our 1992 report, did we not?

Ms. CONDON. That's correct.

Mr. SYNAR. OK. Why don't you outline for us what the Department has done to develop a so-called loss policy for trust fund accounts.

Ms. CONDON. They have looked at a number of suggestions we made to them in January 1994, and we believe at this point—and it has taken a couple of years, Mr. Chairman, but we believe at this point they have developed an adequate loss policy. It addresses our former concerns that they have some kind of an internal mechanism for periodic review to identify losses, that they don't put the burden of identification on the account holders; and they have established a periodic review process.

They have planned to maintain history files, case history files on the losses. They have specific criteria for the kind of documentation on a loss that has to be forwarded to OTFM for final determination, and they have very specific timeframes in which these notifications and criteria are to flow up to OTFM and back out to the account holders.

Mr. SYNAR. And they will be notifying account holders of those losses in the future?

Ms. CONDON. According to the policy, if you count the time periods and notifications up the line and out to the account holder, it would be within 60 days of identification and verification of a loss.

Mr. SYNAR. That is really the conclusion we want to get to?

Ms. CONDON. Yes, it is.

Mr. SYNAR. Now, before I leave this line of questioning, isn't the bottom line here that they have failed to give the sustained high-level leadership attention that's required in this area?

Ms. CONDON. That is what we have observed.

Mr. SYNAR. Now, what about the comprehensive strategic plan you have recommended today and in the past, and, I might add, which Congress has repeatedly directed the Department to develop. In the early 1990's, the Department actually did start work on at least what they called the framework, as we said earlier, of an overall strategic plan. It was seriously deficient and widely criticized, but at least they started the effort. It has died, as we said earlier. Is there any effort being made to craft a new plan?

Ms. CONDON. Not that we're aware of.

Mr. SYNAR. All right.

All right. We have had these repeated audit findings, spanning decades, that document pervasive management and accounting problems throughout the whole trust fund program at Interior, and we have a department that simply refuses to do what is needed to correct them. That being the case, let me ask you this simple question.

As of today, is the Secretary meeting his fiduciary duties to the trust fund account holders? For example, as of today, can the Secretary of the Interior accurately account for the trust funds and ensure the balances are correct?

Ms. CONDON. No, sir.

Mr. SYNAR. As of today, can the Secretary show that he is meeting his fiduciary responsibility to properly manage Indian natural resource assets?

Ms. CONDON. There are problems in managing the natural resources, yes, sir.

Mr. SYNAR. He is not meeting them.

Ms. CONDON. No. They aren't addressed.

Mr. SYNAR. As of today, can the Secretary show that he is meeting his fiduciary obligation to prudently and properly invest the trust funds to maximize the return on their funds within the authority provided?

Ms. CONDON. They have made some improvements, Mr. Chairman; but I think the limitation here is that the account holders want more than one option, and there has been no provision for more than the one option in the government securities or the collateralized accounts. And that's one of the things the pending reform legislation would address through the demo programs.

Mr. SYNAR. Can the Secretary ensure that he has done the best job that he can possibly do?

Ms. CONDON. If the best job would be addressing account holder concerns to provide additional investment opportunities, no, that hasn't been addressed.

Mr. SYNAR. Let's turn to one of my favorite subjects, the trust fund reconciliation effort.

The Department strenuously resisted any effort to reconcile the trust accounts until Congress forced them to start that work. At our insistence and the account holders', in May 1991 the Department started the reconciliation project. In fact, for 6 consecutive years, Congress has prohibited the Department from transferring management of the trust funds to any third party unless they reconcile, audit and certify the accounts. First, we are not talking about reconciliation here of all the transactions in the tribal accounts over the past 170 years, right?

Ms. CONDON. Right.

Mr. SYNAR. OK. Just a 20-year period?

Ms. CONDON. That's correct.

Mr. SYNAR. From 1973 to 1992 is the timeframe?

Ms. CONDON. Yes.

Mr. SYNAR. All right. And the Department is not actually starting to reconcile all the 1,800 tribal accounts, right?

Ms. CONDON. That's correct.

Mr. SYNAR. It is just starting with the five tribes as a pilot project, correct?

[Witness nods.]

Mr. SYNAR. Now, at the Department's June 13, 1994 briefing for congressional staff, GAO, and some tribal representatives, where they laid out their six-point plan, Interior reported what I am sure they hoped would look like substantial progress. But so far, they have only looked at noninvestment transactions for the tribes; is that correct, Mr. Stalcup?

Mr. STALCUP. That's correct, yes.

Mr. SYNAR. And reconciliation of the investment transactions was reported only as "under way." Where are they, in reality, on reconciliation of the investment transactions for the five tribes?

Mr. STALCUP. Well, again, Gayle can probably elaborate more, but it is safe to say they are in the very early stages.

Mr. SYNAR. Is that——

Ms. CONDON. That's correct.

Mr. SYNAR. Now, they have reported to us that they are finding a very low rate of error in their reconciliation of these noninvestment transactions. Should we take a lot of comfort that this low error rate is going to hold for the investment transactions?

Ms. CONDON. We understand that the investment transactions are far more difficult and the error rate would very likely be higher. But, Mr. Chairman, they are not going to do detailed transaction reconciliations of these investment accounts. They are going to do yield analyses and tests and match the systems balances, so we may never know what the error rate would be for the investment transactions.

Mr. SYNAR. Now, even this limited reconciliation effort for the five tribes hasn't been trouble free. Your testimony noted the problems because of missing records, weaknesses in internal controls, and noncompliance with laws and regulations. Does that mean that even for this limited 20-year period, we will not end up with accurate account balances for the five tribes' accounts?

Ms. CONDON. There is no way, with the missing data, that they will be able to assure the account balances are accurate.

Mr. SYNAR. So we could have a big problem here even after we go through the exercise.

Ms. CONDON. It will result in a need to settle many of these accounts.

Mr. SYNAR. Now, Congress' directive to the Department requires that the accounts be reconciled and audited, which is being done by Arthur Andersen; and we required that a separate independent entity "certify" the reconciliation and audit work, and the certification contractor is Coopers & Lybrand. Now, Ms. Condon, let me first ask you, is it your understanding that last year Arthur Andersen tried to persuade the Department to get rid of Coopers & Lybrand——

Ms. CONDON. Well, we——

Mr. SYNAR [continuing]. And the certification contract?

Ms. CONDON. We understood there was a problem there, and the Department did consider canceling the contract.

Mr. SYNAR. Because Arthur Andersen didn't want them looking over their shoulder, did they?

Ms. CONDON. Well, I don't want to speak to Arthur Andersen's motive, but it is true that Arthur Andersen was not happy with the concurrent review of their work.

Mr. SYNAR. Well, that's what we understand and some of us raised a lot of hell about it. So Coopers & Lybrand is still on board.

Let me ask you this. Isn't it true that Coopers & Lybrand will not be certifying the accuracy of the account balances when all this is done, that they will just be certifying that Arthur Andersen did what their contract called for?

Ms. CONDON. That's correct.

Mr. SYNAR. Your testimony notes that in March 1992, the Department decided that it would not proceed with reconciliations on any of the 337,000 IIM accounts, primarily because so many critical source documents were missing, and the cost of reviewing the millions of documents that were available would be cost prohibitive. So they did nothing for the rest of 1992.

Then, in January 1993, the BIA created a work group to look at other options, such as global settlement, on the IIM accounts. Isn't it true that that work group didn't even meet until March 1993, and April?

Ms. CONDON. That's correct.

Mr. SYNAR. They didn't meet between March 1993 and April 1994?

Ms. CONDON. They met again shortly before the appropriation hearing last spring.

Mr. SYNAR. You report that in April 1994, when they did finally meet, the working group was finalizing a proposed IIM discussion paper for comment. Is that correct?

Ms. CONDON. Yes.

Mr. SYNAR. Now, the Department wants us to believe that they are really moving on this part of their six-point reform plan. Has that so-called work group even met since April?

Ms. CONDON. No, sir.

Mr. SYNAR. Did that discussion paper ever go out to the account holders or the tribes for comment?

Ms. CONDON. No, sir. And two of the work group members that we spoke with hadn't seen it, either.

Mr. SYNAR. They apparently indicated to you that they hope—hope, mind you—to hold a meeting this fall with the ITMA and other groups.

Well, this is the fall, as of Sunday, if I remember correctly. To your knowledge, have they scheduled such a meeting?

Ms. CONDON. No, sir.

Mr. SYNAR. I would say it's a safe bet that the Department can develop all the plans and proposals that it wants, but if the account holders haven't even been at the table, it hasn't been developed, has it?

Ms. CONDON. That's the way the account holders view it.

Mr. SYNAR. It is not likely that they are going to buy into it, either.

Ms. CONDON. No, sir. They haven't in the past.

Mr. SYNAR. Would you blame them?

Ms. CONDON. They have a high level of concern about how these procedures are developed, because their money is involved. And yes, I guess I'd be concerned if it were my money, also.

Mr. SYNAR. Could you briefly explain how the trust fund-related problems at BLM and MMS affect the effort both in terms of reconciling past transactions as well as keeping them straight in the future?

Ms. CONDON. Yes.

With regard to BLM, the lease inspections involve verification of production on the leases. If that verification isn't done, it impairs the assurance that the payment is for the right amount. And if the royalty payment systems don't have the kind of controls in there that would ensure that all the proper regulations are applied to ensure that they receive all the revenues that are earned on those leases, then the trust fund accounts may not get all the money that was earned from those leases.

Mr. SYNAR. Again, in light of these problems, are we ever going to get a settlement in terms of getting hundreds of thousands of account holders to agree to a stated balance?

Ms. CONDON. There are likely to be some problems in reaching an agreement.

Mr. SYNAR. Now, Mr. Stalcup, we have a number of specific questions for you on the Department's six-point plan and your recommendations for a comprehensive corrective action plan. I will submit those to you for the record.

[The information referred to can be found in the appendix.]

Mr. SYNAR. For now, though, let me ask you to take a minute or two to answer this question.

Mr. STALCUP. Sure.

Mr. SYNAR. Does the Department's six-point plan and everything else they propose constitute a strategic action plan? And if not, why not?

Mr. STALCUP. No, we don't think it does. There are a number of elements that are not addressed in that six-point plan.

Mr. SYNAR. Pull that microphone just a little bit closer.

Mr. STALCUP. I'm sorry.

We don't think it is that comprehensive a plan and we think it fails to address several issues, which include the need for something like what is called for under the proposed legislation in terms of an Office of Special Trustee. The demonstration programs that are provided for under that legislation, as well as some aspects of IIM interests again, which Gayle could probably expound on a little bit.

Ms. CONDON. It doesn't address things like the backlog and ownership recordkeeping. If you don't know who the owners of the accounts are, it is hard to tell that the money is going to the right account. This is pretty fundamental.

Mr. SYNAR. What about the field office problem?

Ms. CONDON. It doesn't address the field office accounting weaknesses, no, sir.

Mr. SYNAR. So if one looks at this six-point plan, it falls way short of what we had intended and what people have been recommending over the years; isn't that correct?

Ms. CONDON. Yes, sir.

Mr. SYNAR. Can you fix the problems with this six-point plan; is there any way to fix the program using this six-point plan?

Ms. CONDON. You need a more comprehensive plan. It doesn't include actions or an approach to solving enough of the problems.

Mr. SYNAR. You don't solve the problem with this?

Ms. CONDON. It is, again, a partial treatment, like some of the plans in the past.

Mr. SYNAR. I have a few final questions.

Isn't it true the Appropriations Committee, as well as our own committee, have repeatedly directed the Interior Department to develop its corrective action plans in full consultation with the Intertribal Monitoring Association and other account holder representatives?

Ms. CONDON. Yes, sir.

Mr. SYNAR. Now, Ms. Condon, you have worked very closely on this issue for a long time, and you frequently talk to the ITMA and tribal leaders and you know what's going on. In your opinion, is the Department meeting those directives to fully consult with these account holders as they develop proposals?

Ms. CONDON. No. By their own admission, they haven't always consulted with the account holders.

Mr. SYNAR. Have the account holders expressed frustration to GAO about this lack of consultation?

Ms. CONDON. Yes, they have.

Mr. SYNAR. Let's take one instance we know of: the IIM reconciliation work group. That's the group that is going to try to figure out what to do with the 337,000 IIM accounts and whether they can be reconciled or whether Interior should just try to settle them. We understand that working group is in the Solicitor's Office, right?

Ms. CONDON. That's correct.

Mr. SYNAR. And no one from the outside, no one representing the account holders, has been a participant in that group, correct?

Ms. CONDON. Not so far.

Mr. SYNAR. Let me ask you this: When a bunch of lawyers in the Solicitor's Office sit down to talk about what Interior should do with the IIM trust fund accounts, who is their client, Interior or the account holders?

Ms. CONDON. They are both the clients. Both the Government and the account holders are the clients at the Interior.

Mr. SYNAR. They have a duty to represent both?

Ms. CONDON. Yes.

Mr. SYNAR. Well, it seems to me that since the Secretary is the fiduciary with certain absolute obligations to act in the best interests of the account holders, that it's the account holders who are the client. Am I right?

Ms. CONDON. It is still a difficult issue because the government attorney still has to represent both. When the results of a solicitor determination would get to the Secretary's level, he would be responsible for making the decision as to how he could best carry that out in terms of resolving the situation with the account holders.

Mr. SYNAR. The account holders are of equal importance as the Department's interests—is that correct?

Ms. CONDON. Yes, they are equal.

Mr. SYNAR. But, in this case, the lawyers don't even have their clients, the account holders, in the room. And when they are representing the Department's interests, they are going to try to limit their liability for mismanagement of the accounts, which is exactly the opposite of their duty to make the account holders whole. So it seems to me they have a conflict of interest trying to represent both clients.

Ms. CONDON. And—yes, that historically has been the problem. They have to weigh both sides.

Mr. SYNAR. That is a big problem.

Ms. CONDON. But the Secretary, as the fiduciary, would make the final decision on any settlement or how that was going to be worked out.

Mr. SYNAR. If the lawyers had to choose—let's say they have a conflict of interest, and they have to choose, they should choose the account holders because the Secretary would obviously represent the Department.

Ms. CONDON. Right. The Secretary would represent the Department. And the Secretary would hear from his attorneys, and he could choose to hear from an independent attorney on the Indian side and then make his final decision. That would be the Secretary's option.

Mr. SYNAR. Let me move to another matter.

I think you all have seen a copy of the June 20, 1994, document entitled "Streamlining Plan Proposal for the Re-engineering of the Bureau of Indian Affairs in Accordance with the National Performance Review." Now, I can't help but note that this proposal calls for consolidating all Federal Indian programs within a single Cabinet-level Department of Indian Affairs.

But leaving that aside, it also calls for a pretty significant reorganization, especially in terms of decentralization of staff out to the field level. Now, you've reviewed this proposal, have you not, Ms. Condon?

Ms. CONDON. Yes.

Mr. SYNAR. Is this plan, and its proposal for massive decentralization, consistent with the way things need to be done regarding the trust fund matter?

Ms. CONDON. Not in our view, Mr. Chairman. In our view, with limited resources, lack of policies and procedures, and very inadequate internal controls, you would need to go the opposite direction and centralize and standardize the processes.

Mr. SYNAR. Do you see any indication in this plan that they're considering the special problems in trust fund management?

Ms. CONDON. The plan isn't that specific to be able to tell what it intends with regard to trust fund management. So I guess that's something you could ask the Department witnesses. Looking at what I said just a moment ago, about the direction it is going, I think it would work against solving the problems we've been discussing here today.

Mr. SYNAR. As you know, the Intertribal Monitoring Association was established to monitor the trust fund reform activities and to help the Department and us here in Congress to work our way through these problems. Now, they represent the tribes and account holders, and they have received some financial assistance from Interior. But last week we were informed by the Department that, in their view, the ITMA must be chartered as a formal advisory committee under the Federal Advisory Committee Act, or FACA.

GAO's lawyers looked at that issue the last time Interior raised it. What is the view of your attorneys with regard to that?

Ms. CONDON. This is another area that could get murky, Mr. Chairman. One could view it as the Indians being the beneficiaries of the trust and therefore not needing a FACA; and Interior hasn't always required a FACA for its dealings with the Indian groups.

But perhaps to avoid revisiting this problem or reaching a stalemate, one option would be for Congress to decide to legislate an exemption for the Indians from a FACA arrangement.

Mr. SYNAR. So is that what you would recommend, to exempt them?

Ms. CONDON. I think it certainly would resolve the issue.

Mr. SYNAR. Believe it or not, that's what I think we're going to try to do.

Let me finish where I started by saying thank you to all three of you and the other people at GAO who have worked on this over the years. You have done a tremendous service. You have been a credit not only to the GAO, but to these sometimes faceless account holders who are depending upon us to straighten this mess out. So on behalf of them, let me take this opportunity to thank you. Also, you may want to stay around and see how the Department answers some of these questions we have asked.

Ms. CONDON. Thank you.

Mr. STALCUP. Thank you very much.

Mr. LAURIE. Thank you.

Mr. SYNAR. Our second panel this morning is Gregg Bourland, chairman of the Cheyenne River Sioux Tribe, who will be representing the Intertribal Monitoring Association—ITMA; he will be accompanied by Mr. Daniel Press, counsel for the ITMA; and Rebecca Adamson, president of the First Nations Development Institute, Fredericksburg, VA, and she will be accompanied by Jerry Reynolds, coordinator, information services.

Do any of you have an objection to being sworn in?

Raise your right hand.

[Witnesses sworn.]

STATEMENT OF GREGG L. BOURLAND, CHAIRMAN, CHEYENNE RIVER SIOUX TRIBE, FOR THE INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS [ITMA], BROWNING, MT, ACCOMPANIED BY DANIEL PRESS, COUNSEL FOR ITMA

Mr. SYNAR. Welcome. Let me begin, if I could, with you, Mr. Bourland. And we look forward to your testimony. The entire testimony will be made a part of the record, and we would ask you to kind of summarize here in about 5 minutes, if you could.

Mr. BOURLAND. OK, real good.

I would like to begin by addressing you in an honorable way and introduce myself properly. My name is Wanbli Awankankapi, which in our Lakota language means "Eagles Watch Over Him." My English name, of course, is Gregg Bourland. I am the tribal chairman for the Cheyenne River Sioux Tribe which represents the Minneconjou, the Siha Sapa, the Oohenumpa, and the Itazipco, a band of the Lakota Nation, of the great Sioux Nation.

I speak to you today not only as the leader of my tribe but as also the representative of ITMA, the Intertribal Monitoring Association on Trust Funds. And additionally, I speak to you as the largest account holder that you have to deal with, and that is the great Sioux Nation. We are the account holder that began to be reconciled, and then Arthur Andersen and everyone just kind of disappeared and we have never found out what happened. But that's another story.

I think that it's pretty obvious that the problems that have been described by the GAO earlier—we all know what those problems are. We know those problems exist. But I think it is more important to understand that ITMA's role has been one of an overseer throughout this entire process. We have run through, to be real frank with you, Congressman Synar, a lot of hell over the past few years in trying to arrive at a solution; and we believe that that solution is the legislation that you have introduced. But we have been literally put through the mill.

To give you an example, the last time I was in Washington, DC—I came to the District this summer to what I believed was going to be a roundtable discussion, very open, formal or maybe informal dialog regarding how do we all arrive at a common solution to the trust fund problem—I left this great city very disillusioned and very, very upset. I might say, very mad.

I think that you'll find in my written testimony a lot of that anger still exists. It not only exists with me as a representative of the great Sioux Nation—and having served with ITMA for 4 years on the board of directors—but it exists amongst the many, many—as you had indicated, faceless account holders out there. As you had indicated, these are real human beings. These are people out there that have families to feed and have concerns. They are tribes that have governments to operate, and yet they are being treated like second-class citizens. And it is really, really upsetting that this is happening in the United States in this day and age.

I have indicated many times before, if this were a banking situation, some people would be in very serious trouble, if not in jail, right now. There is no American in the United States that would put up with this kind of activity at their local bank. There is no one group of people that would ever allow themselves to be treated in this manner. And yet, because of the trust system, the way that we are treated as people, the Indian people have had to—had to go through this.

But I believe there are some solutions. The special trustee solution is a very, very good solution, and it is very workable. But it is very important to understand that that special trustee be empowered, and I say "empowered" with the greatest amount of authority possible so that it is not—it doesn't wind up becoming some weak office under the Bureau of Indian Affairs. If that were to become the case, then it would be a meaningless position.

There also has to be greater tribal control. I believe the legislation which you have introduced addresses that, and the ITMA is very proud to have taken that position throughout the years. The tribes need greater tribal control. This can be achieved through, naturally, the self-determination process that is currently in place within the government. But I believe also, too, that one of the solutions to the IIM accounts—and I have always said it is very, very simple; the people out there know what the problems are. The people on the reservations, when you walk into the local IIM office, or the financial offices, those people know what the problems are and those people aren't being listened to.

Those people come to my office; they talk to me. I come to the District; I try to talk to the Department. The Department doesn't want to hear what those people back home have to say, nor do they want to hear what I have to say.

Essentially, if the legislation does not succeed, then we, as tribes, have no choice but to take it a step further, and that's to litigate. There will be the unpleasant task of having to sue the Department. I hope that the Department understands what happens when that happens. What will happen is a very long, lengthy and costly—and believe me, the Department, I don't know if they have got the resources to—to see what is going to happen when that comes out. But it is going to cost them a lot of money, and so hopefully, that can be avoided.

I would also like to personally thank you, Congressman Synar. We are going to miss you in Indian country. You have been—as my testimony indicates, you have been a tremendously strong warrior. You have not been afraid to speak up for us. I might even suggest that when the special trustee is created—and this may be a little out of context here, but it would be my recommendation to all my fellow tribal leaders that you be the special trustee, because we need somebody that is going to be willing to stand in there. And you probably wouldn't take the job. I wouldn't blame you if you didn't.

Mr. SYNAR. I can see Bruce Babbitt having nightmares for the rest of his career.

Mr. BOURLAND. That's exactly right. But while the Department of Interior may have nightmares, the rest of Indian country could sleep easy at night knowing that there was a friend watching over their trust funds.

Thank you very much.

Mr. SYNAR. Thank you very much for those nice compliments. I appreciate that.

[The prepared statement of Mr. Bourland follows:]

**TESTIMONY BEFORE
THE COMMITTEE ON GOVERNMENT OPERATIONS,
SUBCOMMITTEE ON ENVIRONMENT ENERGY AND NATURAL RESOURCES**

SUBMITTED BY

**GREGG J. BOURLAND, CHAIRMAN
CHEYENNE RIVER SIOUX TRIBE**

**ON BEHALF OF THE
INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS**

ITMA is pleased to have this opportunity to testify again before this Committee on the issue of Indian trust funds. ITMA has been looking forward to this hearing with great anticipation. The only thing we regret is that more ITMA representatives could not be here. However, ITMA is holding its annual membership meeting today and tomorrow so our members are 2000 miles away. At this very moment, a hundred tribal representatives are gathering to discuss the future of Indian trust funds. This extensive Tribal participation demonstrates the degree of interest Indian country has in this issue and disproves once and for all the efforts by the Interior Department to discredit ITMA by questioning whether we really represent Indian country.

Before we begin the substance of our testimony, I would like to use this opportunity to thank you on behalf of ITMA and the many Indians and tribes we represent for your devoted and continued efforts to improve the management of Indian trust funds. Without your persistent and strong advocacy, we never would have seen the improvement that has occurred, even if that is less than all of us desire. Also, without your strong support, ITMA would have been brushed off by the Department and the account holders would never have any role in the management of their own funds. Elouise Cobell, the ITMA Chair, asked me to convey her regrets that she could not be here and to express her personal thanks and gratitude for all you have done.

I know that protocol on the Hill requires that staff be seen but not mentioned, working behind the scenes. But I would also like to use this opportunity to publicly thank your staff director, Sandy Harris, for all of the time, effort, and compassion she has devoted to this issue, as has Kathy Johnson, staff to the Interior Appropriations Committee, Marie Howard, staff to the Subcommittee on Native American Affairs, Pat Zell of the Senate Committee on Indian Affairs, and GAO staffers Gayle Condon and Tom Armstrong. Sandy's favorite expression, when someone has done worthwhile work, is that there is a special place in heaven for that person. We at ITMA believe there is a very special place for Sandy and the other staff who have refused to quit despite the strong resistance by the Administration to real trust fund reform.

Now on to the substance of our testimony. As you know, Mr. Chairman, the effort to improve Indian trust fund management prior to January 20, 1993, was slow and agonizing. When President Clinton named Bruce Babbitt as Secretary of the Interior, we assumed that account holders and tribes would finally have a friend who would want to work closely with tribes and who would bring an enlightened as well as self-determination-focused approach to the trust fund issues.

Secretary Babbitt assigned responsibility for the trust fund issue primarily to his Counselor, John Duffy, and the Assistant Secretary for PMB, Bonnie Cohen and their assistants. Nineteen months ago, when they first assumed their positions, they knew virtually nothing about Indians, much less Indian trust funds. They had no background on the history of Indian policy -- such as the discredited termination policy of the 1950's, or what the on-going fight for self-determination really entails. As a result, these new Interior appointees have had to learn on the run, while also dealing with the numerous other high profile and complex issues Secretary Babbitt has taken on.

Now, 19 months later, the Interior Department personnel or Staff consider themselves to be such experts that they had no qualms about developing their trust fund policy behind closed doors -- without any involvement of the tribal account holders. In fact, they have turned "reinventing government" on its head. Instead of treating the account holders as their "customers," they have treated us as if we were the enemy.

The Interior Department personnel or Staff hold themselves to be such experts that they saw no need to make any changes in their proposed trust fund reform plan, even though every single tribe that commented on their proposed trust fund reform plan strongly opposed it.

The Interior Department personnel or Staff had no qualms about developing an IIM reconciliation approach without any involvement of the account holders, even though Congress told them more than once to involve the tribes in the development of the IIM reconciliation.

The Interior Department personnel or Staff apparently feel comfortable opposing self-determination legislative provisions developed by you, Congressman Richardson, and Senator Inouye after three years of consultation with the account holders and replacing it with a policy that gives the Tribes just two options -- termination or paternalism; that is, the Tribe either has to take its money out of trust completely or have no say whatsoever in how its own money is managed.

The Interior Department personnel or Staff believe that they know so much that they think its okay to demand the right to censor the material ITMA sends to the tribes and Congress.

The Interior Department personnel or Staff can apparently afford to regularly ignore Congressional instructions contained in appropriations bills. For example, on June 13th the House Interior Appropriations Subcommittee asked the Department for a report within 60 days on how it will achieve improvements in and coordination of all trust fund activities throughout the Department. As of this morning, 100 days later, the Department has neither submitted the report nor even had the courtesy to communicate with the Committee about it.

As a recent newspaper article attached to our testimony makes clear, the Interior Department personnel or Staff largely excluded the Assistant Secretary for Indian Affairs from the development of the trust fund policy, even though she is the only person among the political appointees who actually knows anything about Indian issues.

When ITMA disagreed with their proposed policies, rather than wasting time arguing on the merits, the Department tried to undermine ITMA by claiming we were not legitimate representatives of the Tribes -- even though we have over 30 member Tribes and have been designated by the Reorganization Taskforce and NCAI as their eyes and ears on trust funds. On the bright side, this does show that the Department is capable of learning; in a short 19 months they learned one of the oldest bureaucratic tricks in the books -- when a Tribal organization has the audacity to disagree with the Department, challenge the organization's legitimacy rather than address the concerns on the merits.

Mr. Duffy, Ms. Cohen and Staff sat at a roundtable called by three House Committee Chairmen on June 13, 1994 to help us all learn about the special trustee concept, and acted in a manner that was arrogant and insulting to other tribal leaders and myself. Apparently, the Interior Department is so knowledgeable they do not have to listen when highly regarded professionals talk about how they have been solving these kinds of problems for their entire careers or when Tribal leaders talk about their concerns.

A few months, or at most a year or two from now, these officials will leave the Department and return to their former careers, where they will not have to spend a minute thinking about Indian issues, much less live with the consequences of their decisions for many generations, as we must. Yet during their brief window of participation in the area of Indian affairs, they have no qualms about imposing disastrous policies over the objections of EVERYONE who has devoted years to this issue -- the tribes, the Congress, GAO, and the private financial experts. There is not a single involved party outside the Department who agrees with their approach.

I could go on and on with this litany. Under separate cover, I have sent to the Committee copies of the numerous letters ITMA wrote to the Administration over the past 18 months asking for nothing more than an opportunity to become partners with the Department in the development of policies on the future management of our money. Those letters comprise a pile two inches thick. In addition, we have tried every back channel we could think of to persuade the Department just to open its doors and let the account holders be involved. It has all been in vain.

Whoever would have believed that the terms that would be associated with Secretary Babbitt's Indian policy would include "backroom policy-making", "refusal to consult with tribes", "undermining Tribal organizations", "paternalism," "termination", "censorship", and "insulting treatment of tribal leaders". If I closed my eyes I would think we were back in the 1950's, not the 1990's under a President and Secretary who have made such glorious pronouncements regarding Indians.

A review of this Administration's track record in implementing the recommendations contained in this Committee's 1992 ***Misplaced Trust*** Report (the ***Report***) is equally depressing. We are pleased that there has been some real progress since 1992. OTFM now has added two highly qualified persons to their management team -- the Deputy Director and the Investment Chief. This Spring, the Department finally approved the OTFM reorganization plan that was first submitted in the Summer of 1991. This permitted OTFM to begin hiring the qualified staff that is desperately needed, as was pointed out in "***Misplaced Trust***". OTFM has also advertised for a private sector firm to lease it a new financial management system -- again a need pointed out in "***Misplaced Trust***".

However, the Department has failed to comply with the three most critical and overriding recommendations in the *Report*. First, for every recommendation, the *Report* states that the Department shall implement that recommendation "in close consultation with the tribal and individual Indian money account holders' representatives." As indicated earlier in my testimony, this Administration has gone to great lengths to completely exclude the account holders' representatives from any involvement in the management improvement process.

Secondly, the *Report* states that "to achieve substantive improvements, the Bureau of Indian Affairs must replace its piecemeal, and often unaccountable management-by-initiative style with a comprehensive financial management plan." The prior administration began developing a strategic plan. While far from perfect, it was a good beginning. Most importantly, it set out the long-term goals for Indian trust funds; namely, the development of a comprehensive and capable trust fund management system. That plan was in final draft status in January of 1993. It has not been touched by anyone in the Department since.

Instead, this Administration has regressed to the piecemeal management-by-initiative so strongly criticized in the *Report*. Because they bring no background and because they have not initiated a comprehensive planning process, the Department's approach is nothing more than grasping at isolated ideas that happened to wander onto their radar screen. As succinctly stated by Assistant Secretary Deer in the news article I mentioned earlier, "One day there's a Blue Ribbon panel and the next day there's not."

In over a year and a half, they have neither set out their long-term goals, nor done any work on a comprehensive strategic plan for getting there. At the Department's June 13, 1994 briefing on its trust fund reform plan, John Duffy was asked directly about the Department's long-term plan for trust funds. His answer was to the effect that the Department is focusing on immediate steps now and is not presently addressing long-term issues. Thus, we are back in the kind of *ad hoc* "improvements" with respect to trust funds that, as the *Report* correctly concludes, have gotten the Department into so much trouble and wasted so much of the taxpayers' dollars in the past.

Third, the *Report* recommends that tribes be given "greater control and flexibility in the management of their trust funds, without eliminating the trust responsibility" (p. 64). This Administration has turned this recommendation inside out. Its apparent position is that tribes should have no control or flexibility in managing their funds unless they are willing to permit the Department to terminate the trust status of those funds. It has vociferously opposed the provisions in your bill and Congressman Richardson's bill that would give Tribes options for greater control without eliminating the trust responsibility.

It is ironic that the one recommendation the Department has embraced is the one that has since proven to be unworkable. The Department has latched onto the *Report's* recommendation that if the BIA cannot clean up the accounting systems in 6 to 9 months, the Congress should consider appointing the Federal Reserve as a fiscal agent. Since 1992, both GAO and tribal studies have concluded that the Federal Reserve has neither the capability nor the desire to perform this role. GAO, ITMA, the Reorganization Task Force, NCAI and several Congressional Committees have concluded, given this reality, that the only viable way to get an effective fiscal agent in place is through the appointment of a special trustee to oversee trust fund matters within the Department.

Despite this, the Department has refused to let go of its romance with the Federal Reserve option. This is because the Department has indicated that its real goal is to get the trust fund program out of the Department. Quite simply, it is looking to dump trust funds on the Federal reserve or any other entity it can find, so it does not have to live up to its responsibility.

This "dumping" approach has been shown to be unworkable by the GAO study and is opposed by all tribes and tribal organizations that have commented. Despite this, we have no assurance that the Department has ever backed off from this objective. At the June 13th briefing, Mr. Duffy was asked whether the Department still had the long-term goal of transferring the trust funds program out of the Department. He did not answer the question. I hope that you will ask it and hope that you will get an answer.

In sum, the Department has refused to do the hard, unglamorous, nitty-gritty work involved in rolling up its sleeves and implementing the comprehensive reform that the *Report* advocated. Instead, this Administration is looking for simplistic solutions designed to reduce its responsibilities and costs. In the meantime, Indian account holders continue to lose money, because there still is no accounts receivable system, no annual audit, no adequate training of staff at the agency level, and on and on.

The cause of all of these failings is that the Department just does not understand. The Babbitt Interior Department thinks tribal involvement means developing policies behind closed doors and then sending it out to the tribes for comments (in an unreasonably short time frame), which comments the Department then completely ignores. They do not understand that this kind of so-called tribal involvement was discredited 20 years ago and replaced with the recognition that tribal involvement means tribes must be sitting at the table as part of the team when the policy is first being developed.

This Administration's only objective is to find ways to have the BIA do as little trust fund management as possible and to avoid digging deeply into the past mismanagement. They do not understand that under basic principles of trust law, a trustee must use his or her full capability to manage the trust and to uncover all past wrongdoing. They stand to incur the greatest liability if they hunker down at the expense of the beneficiary.

It appears to us that this Administration is seeking a magical solution to the Indian trust fund problems that will get it out of the trust fund business. They do not understand that every prior effort to find magical solutions to Indian problems has failed and that the only approach to getting the BIA out of any area that has succeeded is self-determination. This Administration does not understand that since its inception self-determination has meant and must mean that tribes are to be given a range of options, because each tribe is different -- with different capabilities and different goals.

The Department opposes the special trustee approach without being able to provide any alternative that will produce the concerted and focused effort that is needed to correct the department-wide trust mismanagement. Unlike GAO, experts who have served as special trustees, several Committees of Congress and ITMA, the Department does not understand that the only way to solve the complex and deeply imbedded trust fund problems is to concentrate authority and responsibility in one individual. When Department officials were asked who has overall responsibility for cleaning up trust funds Department-wide, their answer was, "the tri-agency coordinating committee composed of BIA, BLM and MMS." One does not even have to be an expert to know that committees do not administer anything. Nor is it surprising that the Department has failed to produce a comprehensive long-term plan for trust funds since responsibility for that task has apparently been assigned to no one except a committee that meets once a month.

The reason this Administration does not understand all of these critical issues is that the people in charge are amateurs in the area of Indian matters. It is ultimately the Secretary of Interior's fault for putting responsibility for such a complex and sensitive issue as Indian trust funds in the hands of people who have no background in, or sensitivity to, Indian issues or trust fund issues. This is not intended as a personal attack on any individuals. However, it is our money that is at stake, so it is necessary to speak frankly.

The Afro-American community would never tolerate this Administration giving responsibility for the civil rights program to officials who had no civil rights background. We are no longer going to tolerate having our trust fund policy developed by people who are in an on-the-job training program. That violates the very concept of a trustee's responsibility.

If this testimony seems angry, it is because we are tired of being ignored, insulted, and patronized by people who are appointed by a President who told me and three hundred other tribal leaders on the White House lawn that "Together we can open the greatest era of cooperation, understanding and respect among our people ever." This message has not made it to the Interior Department.

We are also angry because there is so much work that needs to be done, yet we have spent the last year going backwards. But in addition to understanding our anger, Congress needs to understand the root causes of the problem in order to know what the solution must be. It is clear that the situation we face is not one of reasonable persons disagreeing about reasonable policies. Rather, the situation in the Department has become unworkable, such that Congress must remove authority over the future of trust funds from those in the Interior Department who are presently in charge. Fortunately, that means nothing more than enacting the Synar/Richardson/Inouye bill, which, as discussed below, will give tribes greater control over their funds and put overall trust fund responsibility in the Department in the hands of a special trustee.

For all of the reasons set out above, ITMA has concluded that the effort to improve Indian trust funds must move from the Executive Branch to the Congress, since the Department is incapable and unwilling to do what is right and necessary. Both Congress and the account holders have a responsibility to take forceful action at this time.

Congress needs to pass the Synar/Richardson/Inouye bill as reported out, including the full range of self-determination options and the creation of a special trustee. The self-determination options would enable Tribes to get out of the paternalistic grip this Administration is seeking to impose. Its approach, as you know as the author, is consistent with the self-determination approach used in every piece of legislation for the past 20 years -- giving Tribes a range of options to assume more control over their programs while enabling them to maintain the trust relationship with the Federal government.

The special trustee is needed to concentrate power in a single place and to provide the sense of urgency that is missing in the Department. Also, the special trustee will bring the expertise in trust fund management, that as I have pointed out, is sorely missing at the Secretary's level. Given the Administration's opposition to the special trustee, we urge Congress to give that position the authority it will need to overcome the resistance the trustee is likely to face from those in the Department who have made the past 20 months such a disaster.

As pointed out in a book called "*Inside Jobs*", an expose of the S&L scandal, the BIA's mismanagement of trust funds was exposed at the same time as the S&L scandal. Today, after being made a highest priority by two Administrations, the S&L problems are largely behind us. Yet there has been virtually no progress on cleaning up the BIA mismanagement. It is time to let the public know that this Administration has been party to a "Redwater" coverup that is much more serious than "Whitewater."

In addition to being wrong, the Administration's opposition to the legislation is extremely short-sighted. There are a number of Tribes out there that are planning to sue the Secretary for gross breach of trust if no progress is made within the next few months. ITMA continues to believe that legislation is the best approach. We hope the Secretary will quickly come to realize that the Synar/Richardson/Inouye bill is preferable to having a court-appointed special master directing the Interior Department's trust functions.

It is unfortunate that the Secretary's advisors have put him in this situation. But they have consistently forgotten the single most important point -- it is our money, not theirs. It is now time to move ahead -- with their cooperation or, if necessary, over their objections.

I would like to close on a personal note. Congressman Synar, you have been a warrior in the great tradition of the Sioux Nation. You have fearlessly ridden into battle regardless of the size of the enemy forces; you have fought bravely and honorably for those whose needed help; you refused to turn tail and run; you have spoken bluntly and truthfully; and you have remained loyal to your friends and causes regardless of the personal consequences to you. (It is ironic that you stood shoulder-to-shoulder with President Clinton despite the consequences, while his own appointees have worked behind your back to undermine your trust fund reform efforts.)

The Indian people will sorely miss you here in Congress. But at least in regard to trust funds, you can go in peace because you have completed your responsibilities and it is time for the torch to pass on to others anyway. Your oversight efforts highlighted the problems and your proposed legislation sets out the framework for solving those problems. You made the account holders aware of the problems and helped them to unify into an effective force to insure the legislation is properly implemented; or, if the Department blocks enactment of the legislation, the tribes have the knowledge and cohesiveness to get the Federal courts to solve the problems.

So we conclude by saying thank you and offering you our prayers for success in the future. Whatever endeavor you undertake, those involved will be blessed by the addition of a great warrior to their cause.

"AMERICA'S INDIAN NEWSPAPER"

Indian Country TODAY

Tribes ready to sue over trust funds

Deer disagrees with Interior's stand

By Bunty Anquoe
Today Washington Bureau

WASHINGTON — The Interior Department, long under fire for its management of the $2 billion Indian trust fund, may be facing a lawsuit.

Some tribes are seriously considering suing the federal government because, they say, the department's recently unveiled plans to reform longstanding BIA mismanagement of the trust funds are too vague, problematic and were drawn completely without tribal consultation.

The department has also announced its intent to introduce its own legislation to enact reforms this week, although both the House and Senate have pending bills to correct anagement problems.

Elouise Cobell, spokeswoman for the Intertribal Monitoring Association, an Indian oversight group, said tribal governments were not included in department reform plans.

"We're looking more toward a lawsuit," she said. "They've totally excluded us. The department is making a statement to Indian people that they feel we're not competent people to help with this problem. I'm totally upset with their attitude. We have no idea what will be in the legislation."

Ms. Cobell said the Interior Department's upper echelons, not the BIA, are responsible for the direction the administration has taken.

"The department has ignored our partnership in this issue," she said, adding that a new bill, introduced so late in the legislative year, would only encumber reform progress.

Instead of commenting on existing legislation introduced last year by Rep. Mike Synar, D-Okla., the department is planning to submit its own trust funds reform bill based on a draft reform plan.

The BIA has long been under fire for mismanagement of the $2.1 billion trust fund which includes $1.7 billion in 2,000 tribal accounts and about $390 million for nearly 327,000 tribal and individual Indian money (IIM) accounts.

In 1993, receipts from income resources totaled about $870 million and disbursements totaled over $526 million.

Funds held in trust include pay-

Please see Trust Funds/A2

AGE ONE

Trust Funds: Deer likes existing bill

FROM A1

ments required by treaty or judgments and income earned from agriculture, timber, mineral and oil and gas leases.

The federal government, through the BIA, has a trust responsibility to ensure the proper control over and accounting for each account.

The BIA has had legal authority to invest the trust funds since 1918 and has long been blasted by lawmakers and tribal leaders for mismanagement of the tribal and individual trust funds.

The Interior Secretary is the primary trustee of the funds held by the federal government for tribes and individuals. Daily management, investment and accounting responsibilities are handled by the BIA Office of Trust Funds Management in Albuquerque, as well as BIA area and agency offices.

Gregg Bourland, chairman of the Cheyenne River Sioux Tribe, said he is disappointed with the plan because Interior Secretary Bruce Babbitt promised tribal leaders that trust funds management reform would be a high priority of his administration.

"We've been waiting patiently and the end-result is an ill-thought-out and ill-prepared proposal," he said. "It looks like someone just threw this together. What's really disappointing is that tribes were completely left out of the loop."

Deer, Interior Split

Ada Deer, assistant secretary for Indian affairs, split with the department's line and told *Indian Country Today* that she agrees that existing bills would be the best choice for action.

"I think we should work with the efforts that are already underway," she said. "My basic thrust is to look at a situation, assess it and work with it and I'm not sure new legislation is the most appropriate way to work with this."

She said the department's plans for its own bill originated with John Duffy, counsel to Interior Secretary Bruce Babbitt.

"Ask John Duffy, this was his idea," she said. "We're trying to solve the problems and we have many people involved in that. (The department plan) was something that was developed for discussion with Mr. Duffy."

Mr. Duffy would not discuss the trust fund issue with *Indian Country Today* and referred inquiries to Ms. Deer.

Ms. Cobell said the department has been "micro-managing" reform plans.

"If they continue on this line, there's no way we can work together," she said. "I thought that this administration would be easier to work with than past administrations, but it's really worse."

The Plan

The Interior Department's draft long-term plan to overhaul trust funds management would:

- Complete the reconciliation of tribal trust funds;
- Provide more staffing to the Office of Trust Funds Management;
- "Acquire sound, proven, commercially available" investment and accounting services to help transfer trust fund management to "skilled investment professionals;"
- Authorize tribes control of trust funds and transfer government investment to the private sector under the supervision of a "Blue Ribbon Board."

- Work toward resolution of the Individual Indian Money accounts;
- Encourage more direct tribal management of natural resources on trust lands.

Ms. Deer said it's important to note that these planks have not been finalized and are still under discussion.

"One day there's a Blue Ribbon panel and the next day there's not," she said of the department's reform plan process. "There has not been a decision about trust funds per se, about whether or not keep portions in the bill or to take portions out."

She also said it's important to understand that management problems "have been many years in the making" and will take some time to correct. "But we're making progress," she added.

> 'If they continue on this line, there's no way we can work together. I thought that this administration would be easier to work with than the past administrations, but it's really worse.'
>
> — Elouise Cobell
> Intertribal Monitoring Association spokeswoman

Ms. Cobell particularly questioned the so-called "Blue Ribbon" panel to supervise the transfer of trust fund responsibility to the private sector.

"We're opposed to the Blue Ribbon panel," she said. "What would it do? Who will be on it? We're afraid all they've done is create another bureaucracy. It may just be a back-door approach to slough everything off to a big bank again."

The Intertribal Monitoring Association and the BIA Reorganization Task Force is on record opposing the transfer of significant decisionmaking trust fund responsibility to the private sector.

Ms. Deer told *Indian Country Today* even she didn't know who would be a part of the "Blue Ribbon" panel or how members would be selected.

The department's proposal does not offer any information.

The Intertribal Monitoring Association suggested a "special master," similar to that created by the federal government to clean-up the recent savings and loan debacle, to help resolve trust funds reconciliation by centralizing authority and responsibility for all trust fund matters.

According to the department's draft plan, the "Blue Ribbon" panel was chosen instead.

"The special master idea has been put aside and the Blue Ribbon panel set forth," Ms. Deer said.

Harriet Brown, assistant to Ms. Deer, said a copy of the department's plan has been sent to all tribes.

Ms. Cobell said it's difficult to comment on specifics of the department's proposal because it is too sketchy.

"Rather than providing a good sense of where the department is going, it is really nothing more than some random ideas," she said. "As far as long-term direction, they do not have a plan together."

Synar Blasts Interior Plan

The Synar bill was crafted with much tribal input and should not be cast aside, Ms. Cobell said.

This bill, introduced last year, is designed to give tribes greater control over their trust funds without losing the trust status of those funds and would explore, through demonstration projects, new management alternatives.

His bill would:

- Require the Interior Secretary to invest and pay interest on individual funds held in trust just as it is required for the tribal trust funds;
- Authorize demonstration projects on alternative management approaches;
- Clarify the trust responsibility of the United States;
- Establish a training and recruitment program to assist tribes in obtaining expertise in trust fund management;
- Require a periodic accounting of trust funds to account-holders.

"I am immensely disheartened by the lack of meaningful progress on reform and by inadequate understanding of and attention to these deficiencies from some high-level department officials," Rep. Synar said. "I was especially dismayed to hear that the department has now apparently decided to develop its own substitute legislative proposal."

The congressman, who is chairman of the House subcommittee on government operations, has been a vocal critic of the BIA's handling of Indian trust funds, particularly the lack of tribal consultation.

"It seems obvious that the department and the bureau still are not initiating adequate and appropriate consultation with the Intertribal Monitoring Association," he said. "I'm frustrated to learn it is a continuing problem under the current administration. It simply is inexcusable that those most directly affected by the program and (the department's) actions must constantly struggle to gain admittance to the department's innermost circle of key decision-makers."

Rep. Synar said the Interior Department's plan is far too vague and took offense that the administration did not consult with him or Sen. Daniel Inouye, D-Hawaii, chairman of the Senate Indian Affairs Committee.

Deer

"(We) have been waiting since last fall for the department to submit official comments on our bill...," he said. "For whatever reason, the department has chosen not to participate in that normal process of Inspector General and independent accounting firms have identified serious management problems that permeate every aspect of BIA management of the funds.

"Too many months have already passed without meaningful engagement by the department on these problems," Rep. Synar said. "In my view, it would be an unforgivable abrogation of our mutual responsibilities to the accountholders if we do not come together now to enact reforms this year."

Ms. Cobell said the dwindling number of legislative days makes the enactment of the department's proposal, especially since tribes would not have adequate time to comment on it.

"Tribes won't agree to something they're not involved in," she said. "The department's missing the boat. We need legislation enacted this year. The tribes must be sitting at the table as the ideas are developed. It is our money and the department's longstanding mismanagement that are at issue. If we are not full partners, the process has no credibility."

The Washington Post

SATURDAY, SEPTEMBER 17, 1994

D.C. Loses Control of Foster Care

Judge to Name Receiver For Large Segment Of Troubled System

By Toni Locy
Washington Post Staff Writer

A federal judge took control of a large segment of the District's foster care system yesterday and warned that if the Commission of Social Services continues to fail to comply with court orders, he will consider imprisoning officials.

U.S. District Judge Thomas F. Hogan said he will appoint a receiver to oversee the foster care system's so-called corrective action area, which affects at least 500 children in emergency, temporary facilities, in crowded foster homes and who have been awaiting adoption for long periods.

"There is no basis for that to be delayed," Hogan said, referring to the department's failure to make improvements. "That is an area that directly affects children at issue in this case. . . . It is an area that needs immediate resolution as far as children are concerned."

Hogan was prepared to appoint seven receivers to oversee everything from staffing and reviews of children's deaths to department policies and procedures, but an eleventh-hour settlement was reached late Thursday night by the District and lawyers for the American Civil Liberties Union.

Though he approved the agreement, Hogan called the department's willingness to negotiate "a deathbed conversion with the sword of Damocles hanging over their heads." The sword of Damocles is an expression referring to the threat of danger.

The agreement, Hogan said, relinquishes broad power to the court-appointed monitor, the Center for the Study of Social Policy. The monitor will have authority to ensure that the District complies with strict, almost daily deadlines to complete plans by year's end to improve staffing and its policies and procedures, to reduce the backlog of children in protective services and to finish work on establishing a procedure for reviewing deaths of children in its care.

The judge also gave both sides a week to make a deal on the area of resource development, which would include recruiting more foster parents and increasing services, such as education and mental health and drug treatment.

The litigation that led to Hogan's order and the settlement began in 1989, when the ACLU filed the so-called LaShawn A. case over the conditions of the city's child welfare system. Two years later, a trial was held. Hogan found that the conditions were "horrific" and that the District was liable. The city and the ACLU entered negotiations, and a consent decree was signed, outlining an assortment of improvements to be made.

Although Hogan rejected a request by the ACLU to hold the District in contempt of court for failing to honor the consent decree,

Judge May Jail Officials Who Don't Obey Orders in Foster Care Case

he said he will if the department fails to meet the deadlines imposed under the new agreement.

"It should be made well aware, throughout the agency and at other agencies that have to work with [the Social Services Commission] . . . that if these matters are willfully ignored . . . that the District faces contempt. And, I don't think fines are effective. There are other, more punitive measures that can be taken," Hogan said.

Among those measures, he said, is the possibility of imprisoning officials who fail to honor court orders.

Acknowledging the District's distaste for court intervention in a city agency, Hogan said, "The court doesn't take these steps lightly." He said he does not believe judges should appoint administrators to run city government. "But sometimes there's no choice."

Hogan's decision to appoint a receiver marks the second time in less than a month that a judge has seized control of a District agency's operations.

On Aug. 18, D.C. Superior Court Judge Steffen W. Graae ordered Mayor Sharon Pratt Kelly to turn over management of the city's public housing department to a receiver. In making his ruling, Graae said he had concluded the District government was incapable of improving services at the agency.

Clarice Walker, commissioner of social services, said she was disappointed with Hogan's decision about foster care.

"I am disappointed because I continue to believe that we will continue to work on that category and have the capacity to do the right thing by children," she said.

Walker admitted that the so-called corrective action area is "one of the biggest and one of the most troubled ones" in the agency.

But she said children spend extraordinarily long periods of time in temporary facilities because the department cannot find places to put them.

There are not, she said, enough foster parents to go around.

"That's our constant struggle," Walker said.

She said the solutions are not easy.

"It's not so simple as saying, 'Oh, these poor children. This agency isn't doing what it's supposed to do,' " Walker said.

It takes money and more people willing to serve as foster parents, she said.

But ACLU lawyer Christopher Dunn said the department has had time to do what it promised in 1991 to do. In many instances, Dunn said, the department is two years behind. "It's not enough to promise to do more," he said.

But Arlene Robinson, a city lawyer, said the ACLU's insistence on holding the District in contempt was an effort "to punish us. We are just too close to complying to the terms of the original agreement."

Hogan, however, disagreed.

He said the District's eleventh-hour overture to negotiate to avoid a contempt citation is all too familiar and part of a pattern he said he has seen in this and other cases.

Mr. SYNAR. Ms. Adamson, welcome.

STATEMENT OF REBECCA ADAMSON, PRESIDENT, FIRST NATIONS DEVELOPMENT INSTITUTE, FREDERICKSBURG, VA, ACCOMPANIED BY JERRY REYNOLDS, COORDINATOR, INFORMATION SERVICES

Ms. ADAMSON. Thank you.

I am really going to keep my remarks very short, hopefully under 3 minutes. The only new remarks I have to add since the First Nations Development Institute has been working on this issue since 1983; and over the past 11 years, I think that what you have drafted, Mr. Synar, is probably close to the perfect bill, and we support that completely.

The new thing to add is along with Chairman Bourland, I would like to express my deep appreciation at your leadership and your expertise in just the champion you have been for Indian people from on behalf of the tribal leaders, myself, all of us. Thank you very much. In the next 3 minutes, I am going to try to highlight and get right to the point of 11 years of frustration.

Ms. ADAMSON. I am going to talk about three key recommendations on trust responsibility, five specific ones on land held in trust and four more to the trust fund accounting.

You may remember First Nations has been before you many times. We started in 1979. We take no Federal money. And we have grown over the past 15 years to about a $12 million grantmaking program for culturally appropriate development.

It is through our work with the tribes at grassroots level and with the Chippewa Tribe in Michigan that we became aware of the tribes' concern over BIA management in control of their trust funds. Much of our work is cited in the GAO report. Our recommendations have been repeated and are incorporated fully in that report and in our more detailed written recommendations.

We feel the goal is to empower or enable tribes to use, control, and manage their resources for their maximum benefits. This means that BIA must have a system that enables tribes and individuals to become qualified participants in the management of their trust moneys and the trust resources.

The three recommendations we make regarding the trust responsibility and the management of trust resources are: one, a formal oversight committee with tribal, public, and private sector representation must be established; two, on-site technical assistance to help tribes develop localized accounting systems must be provided; and, three, the technical and financial assistance to help tribes develop sound investment plans must be provided.

Obviously, you touched upon the ownership records. It is crucial that adequate land records are a critical ingredient in managing these scarce resources. And this means the resolution of fractionation. The resolution of fractionated lands would probably pay for the corrections of the system.

I have outlined several factors in the written testimony on land fractionation, but, briefly, the cost and the administrative expenses include probating wills, managing individual allotments, determining heirship interests, income distribution, and negotiating land sales.

The BIA land reform policy must provide educational and technical assistance to land owners, and they must revamp their budget priorities to meet the staffing needs in the area of realty and probate to adequately address the backlogs that this committee highlighted, the technical assistance needs, and data requirements.

We would like to note that the BIA heirship task force was created in 1992. It told the GAO that they planned to get comments from tribes and Indian allottees in the fall of 1994. At that time the BIA planned to propose legislation to reduce fractionation by January 1995.

Recently, the BIA personnel told First Nations' staff that the BIA heirship task force was now defunct. Yet earlier this month, I met with the BIA and OMB staff to discuss the BIA plan to consult on yet another plan.

When asked if former BIA heirship task force members would take part in the upcoming land conference that is going into its fourth year, we were told that—the response was for us to take part in no way could reflect recommendations made by the administration were not prepared to make any recommendations to date.

We want to know when and how is the BIA planning to consult with Indian tribes and individuals on the legislative recommendations that impact their land resources and their trust funds. We would recommend a statutory requirement that the BIA formally consult with tribes. A process such as that legislated for Indian education policies in the 25 U.S. Code, 2010 and 2001(g)(3) would be an appropriate process.

Under this statute, the BIA holds quarterly regional meetings to discuss any policy or regulation changes contemplated by the Bureau. The formal agenda is sent to the tribes. This type of consultation has been proven successful since about 1986, and we request that it be mandated to continue, particularly with the trust funds and the land.

We also note that the Indian Land Consolidation Act was passed in 1983. So far, to date, no rules or regulations have been promulgated, and no funding has been appropriated under the law, although the law authorizes certain activities that would correct in particular the ownership titles and the ownership records which have been the major stumbling problems to trust funds.

Our fifth recommendation is that to implement a proactive policy on trust fund management and trust resource management increased staffing in probate and realty offices is required. In these times of budget reductions, this may be an uphill battle. But the documentation clearly shows that if the staff is not available now to assist with these efforts, the number of owners per tract will continue to increase. This increase will increase administrative costs.

This is a crisis situation that demands more than a Band-Aid approach. Staffing levels at most BIA agencies are operating at an all-time low. With most staff time devoted to income distribution and lease negotiation, there is little left to clean up the data base mess.

I would be remiss not to make a point that there has been some progress made under this administration—not near enough. In particular, since the committee will hear from the Bureau of Indian

Affairs on the individual Indian moneys accounts, I won't go into detail on it, but I would like to offer two other things of note.

The Office of Trust Fund Management in Albuquerque sent a directive to all superintendents instructing them to send all the leases that were $500 or more to OTFM. This action has been met with resistance and argument. It is our understanding that this type of global reconciliation action was not to occur before the completion of the five reconciliation models. This type of activity appears to be costly, time-consuming, and without justification.

Furthermore, the IIM work group charged with addressing reconciliation of the accounts is not involved in Indian organizations or individuals at all. You have heard that as a probably constant repeating theme.

The process would be more efficient if it were localized. Local personnel can recreate the data base on available files and process trust fund information both for tribal and individual accounts. The Price Waterhouse study recommended simplified trust fund reports to tribes and individuals as well as the presence of available regional investment coordinators. These recommendations have gone by the wayside and abandoned totally from what we can see under OTFM.

In summary, I would just like to, again, thank Congressman Synar and Richardson, and their bill is as close to perfect as anything we have ever seen. I would only add that we strongly, strongly hope that you will get it through this session in Congress. And I thank you very much.

Mr. SYNAR. Thank you.

[The prepared statement of Ms. Adamson follows:]

STATEMENT OF REBECCA ADAMSON, PRESIDENT, FIRST NATIONS DEVELOPMENT INSTITUTE BEFORE THE SUBCOMMITTEE ON ENVIRONMENT, ENERGY AND NATURAL RESOURCES OF THE COMMITTEE ON GOVERNMENT OPERATIONS, UNITED STATES HOUSE OF REPRESENTATIVES TO DISCUSS THE MANAGEMENT OF INDIAN TRUST FUNDS.

Good morning Mr. Chairman and members of the Committee. My name is Rebecca Adamson, and I am President of First Nations Development Institute (FNDI). I am honored to be here today to discuss the status of Indian trust fund management by the Department of the Interior.

First Nations was created in 1979 to enhance tribal services and operations by using small-scale economic and enterprise development techniques. FNDI's objective is to decrease tribes almost total dependency upon federal funds and to build business and development capacity that is culturally appropriate on the reservation.

It is through our work with tribes at the grassroots level that we became aware of the tribes' concerns over the BIA management and control of their trust funds. The two reports discussed here today identify the problems with the Department of Interior's management of these funds.

We are prepared to talk about the lack of the integrated accounting systems, the lack of technical assistance provided to the tribes, the lack of adequate staffing, and the lack of tribal involvement in the management process. We are also prepared to give an example of a success story. However, before we get into a detailed discussion of these issues, I would like to make some general observations about the Department's overall poor performance.

FNDI, and the tribes we work with, are extremely frustrated with the Department's lack of tribal consultation and apparent disregard of their trust responsibility of Indian trust funds. Many of the administrative problems outlined in these reports are addressed in the two bills introduced by Congressmen Synar and Richardson. FNDI strongly supports these bills. The Department apparently does not. It believes that the only answer to solving these complex problems that the federal government created is to allow tribes to take their money out of trust and terminate the government's trust responsibility for those funds.

The Department has been unwilling to compromise on any of the issues addressed in these bills. Obviously,, we find this unwillingness frustrating in view of the President's, Secretary Babbitt's and Assistant Secretary Ada Deer's strong support in April of the government-to-government relationship and assuring tribal leaders that this administration has a new commitment to tribal consultation and Indian affairs. This commitment and support is not there when the Secretary's staff clearly does not understand the history and legal issues involved with Indian affairs. It's position on this legislation is naive and is an embarrassment to the President and the Secretary.

I would now like to address the specific issues raised in the Government Operations Committee's report entitled "Misplaced Trust: The Bureau of Indian Affairs Mismanagement of the Indian Trust Fund," and the GAO Report, "Focused Leadership and Comprehensive Planning Can Improve Interior's Management of Indian Trust Funds."

TRUST RESPONSIBILITY IN RELATION TO MANAGEMENT OF TRUST RESOURCES

Past and present Administrations have set forth various policies regarding Indian Affairs which emphasized the twin goals of tribal economic self-sufficiency and tribal governments self-reliance. These initiatives seek to empower or enable tribes to use, control, and manage their resources for their maximum benefits.

Recently, there has been much discussion and activity regarding the trustee/beneficiary relationship as it pertains to the BIA management of Indian trust funds. This relationship can generally be described as one in which tribes are treated as wards or incompetents, with the BIA acting as the guardian of Indian trust monies. This relationship is characterized by investment of trust monies with little or no participation on the part of Tribes or individuals. This deplorable process has been thoroughly documented in recent congressional hearings and GAO reports on BIA management of Indian trust funds.

Not only does this type of relationship undermine the policy of self-determination, but it clearly violates the principle objectives of the BIA as prescribed in the Bureau of Indian Affairs Manual. The Manual states:

> The principle objectives of the Bureau are to actively encourage and train Indian and Alaska Native people to manage their own affairs under the trust relationship to the Federal government; to facilitate with maximum involvement of Indian and Alaska Native people, full development of their human and natural resource potential; to mobilize all public and private aids to the advancement of Indian and Alaska native people for use by them; and to utilize the skill and capabilities of Indian and Alaska native people in the direction and management of programs for their benefit.

If these objectives were applied in the management of Indian trust monies, the BIA would have a system that would enable tribes and individuals to become qualified participants in the management of their trust monies and resources. Such a system would include the following:

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- A formal oversight committee, with tribal, public, and private sector representation to oversee and coordinate reforms relating to the management of Indian trust monies;

- On-site technical assistance to help tribes develop localized accounting systems; and

- Technical and financial assistance to help tribes develop sound investment plans and find qualified investment and accounting firms.

The federal government has a choice. The BIA can work with tribes to establish a process that will allow tribes to become actively involved in the management of their trust monies. Or, the BIA can continue to give lip service to the policy of self-determination.

LAND FRACTIONATION

There are significant administrative expenses related to fractionated lands. These expenses include:

- probating wills,

- managing individual allotments,

- determining heirship interests,

- negotiating land sales and lease agreements, and

- income distribution.

To resolve the problem of fractionation, the BIA, at all levels, must have a clear understanding of it's trust responsibilities regarding the management of tribal and individual land. Serious attention must be given to the fulfillment of this trust responsibility. To continue to oversee the division of land on paper, as has been the practice of the Trustee since the passage of the Allotment Act, is a clear violation of the fiduciaries' responsibility to manage tribal and individual assets for their highest and best use.

Not only has fractionation devalued the land, it also removes Indian landowners further from the use and control of their resources. A clear BIA policy must be established that resolves fractionation and empowers landowners rather than keeping them in the dark. New administrative actions and programs must then be put in place to implement the policy.

A new BIA land reform policy must include:

- Education and technical assistance for land owners so they can take advantage of existing means of land consolidation; and
- Revamping of budget priorities within the BIA to meet the staffing needs in the areas of realty and probate to adequately address backlogs, technical assistance needs, and data requirements.

We note that the BIA Heirship Task force created in 1992 told the GAO that they planned to get comments from tribes and Indian allottees in the fall of 1994. At that time, the BIA then planned to propose legislation to reduce fractionation in January 1995.

Recently BIA personnel told FNDI staff that the BIA Heirship Task Force was now defunct. When asked if former BIA Heirship Task Force members would take part in an upcoming land conference to respond to questions regarding the "Legislative Recommendations of the Bureau of Indian Affairs Heirship Task Force" (which was issued in December of 1993), the response was "these recommendations are not the official position of the Department."

Earlier this month I met with BIA and OMB staff to discuss the BIA's plan to consult on yet another plan. The BIA proposed drafting a policy and taking it to Indian country for comment. We recommended using the information already developed by the Task Force and other tribes, or working with tribal representatives to develop the plan. The BIA said they did not have the time to do that. We want to know when and how is the BIA planning to consult with Indian Tribes and individuals on legislative recommendations that impact their land resources?

We recommend a statutory requirement that the BIA formally consult with tribes and beneficiaries on matters that impact their land and trust funds. A process such as that legislated for Indian education policies in 25 U.S.C. 2010 and 2001(g)(3) would be an appropriate process. Under these statutes, the BIA holds quarterly regional meetings to discuss any policy or regulation changes contemplated by the BIA. A formal agenda sent to tribes before the meetings prepares them for the discussion items. This consultation has been in place since about 1986 and has proven to be very successful.

Land Ownership Data

Accurate land records are a critical ingredient in managing trust resources and resolving fractionation. A sound management plan must include the following:

- A single computerized land ownership record and payment dispersal system at the local level;

- The ability to access data locally to evaluate and implement plans to address fractionated titles;
- The ability to prepare timely certified title status reports for mortgages, probates, appraisals, and land transactions;
- The ability to give owners a meaningful accounting of their lands (including income derived and allotment from which it is derived), to assist in land consolidation and estate planning;
- The ability to combine land records within a tract if they are owned by the same individual, rather than carry these interests on separate ownership records;
- A system that has a high degree of accuracy, accountability, accessibility; and
- Necessary staffing to microfilm, catalogue, archive, and maintain local land records.

GAO stated that

> Although BIA needs to have accurate and complete land ownership records to properly distribute revenues, audits and studies have shown continuing problems with such land records. In 1991, during the initial phase of the trust fund reconciliation project, BIA conducted an informal poll of its five Area Land Titles and Records Offices and found that backlogs in updating land records existed at four of the five locations.

The BIA has developed what appears to be a successful dBASE IV computer model that keeps tract of leases, bills, collections, payments, owner interests and owner payments. This model is at the Standing Rock Reservation. Last year the agency staff collected and distributed to land owners nearly $800,000. The time required was reduced from the normal three months on the BIA's Burroughs computer system to three weeks. Furthermore, the staff was able to reconcile collections with deposits, payments with bills, and payments with distributions. They also have back-up files containing a history of all transactions.

GAO also points out the problems and expense of issuing checks for very small amounts.

> In addition, because land interests are so fractionated, a lot of small dollar amounts result. For instance, at three BIA offices, where BIA tried to reconcile the trust fund accounts, 30 percent of the transactions were for less than $1.00 - nickels, dimes, quarters, and even fractions of a penny; another 27 percent were for $1.00

to $9.00; and an additional 23 percent were for $10 to $49.00.

There is no consistent policy within the BIA that limits the amount of check disbursements. With many of the amounts noted above, the cost of issuing the check is more than the check amount. We would suggest that before checks are issued they must be above a certain practical limit. If not, the amounts would be held on deposit for the respective account holder.

The number of land records and checks issued could be greatly reduced if interests and interest income owned by the same person within an individual tract were combined. A case in point is allotment #1296 on the Umatilla Reservation. Owners A,B,C, and D all own more than one interest on this allotment, but each interest is carried separately and income checks are issued for each interest.

We would also like to point out that the BIA claims to be seeking system improvements to include provision of important mapping services to reservations. Mapping services are currently being provided by Geographic Data Service Center (GDSC). The Service Center provides automated maps of federal Indian land using its Geographic Information System (GIS).

The GDSC actively services some 100 tribes, yet Interior sanctioned a 27% budget reduction of $430,000 for FY 1995. This will greatly curtail the Service Center's mapping services to current and new tribal clients. This cut also undermines the implementation of the Integrated Resources Planning Act of 1994, the Indian Forest Management Planning Act of 1993, and the Indian Agricultural Planning Act of 1993 which rely on the GDSC for data services. This cut will further delay the interfacing of GIS mapping data with LRIS ownership information; an interface that is critical if land owner consolidation of fractionated interests are to proceed at an effective level.

EDUCATION WORKSHOPS

In order to proceed with consolidation efforts, individual land owners need to be educated about, and assisted with, estate planning options such as will-writing, joint tenancy, partitioning, negotiated sale, and gift conveyances. All these options are workable depending on the individual circumstances, yet none have been actively promoted by most BIA agencies.

Education workshops need to be sponsored regularly by each BIA agency for the tribal communities they serve. This education must be supported by staff who can provide technical advice to land owners when they request assistance with will-writing, land exchanges, gift deeds, etc. We suggest that these workshops be designed by both tribal and BIA staff and that tribal representation include individual land owners.

PROBATE AND REALTY STAFFING NEEDS

To implement a proactive policy on fractionation staffing will need to increase. In these times of budget reductions this may be an uphill battle, BUT the documentation clearly shows that if the staff is not available now to assist with consolidation efforts, the number of owners per tract will continue to increase. This increase will increase administrative costs. This is a crisis situation that demands more than a band-aid approach. Staffing levels at most BIA agencies are operating at a low, with most staff time devoted to income distribution and lease negotiations. There is little time left for estate planning. A staffing increase in the areas of Probate and Realty can certainly be justified in light of recent documentation in hearings and studies.

LEGISLATION

The Indian Land Consolidation Act, (P.L. 97-459) passed in 1983 and amended in 1984 (P.L. 98-608) has the biggest impact on Indian land ownership. There is an escheat provision that has pitted tribe against individual land owner on many reservations. This provision has been declared unconstitutional in U.S. District Court in Youpee Vs. Babbitt. The Department is appealing the decision.

The law says that interests that are 2% or less of a tract cannot be inherited but are passed to the tribe. Exceptions are:

- if the land has earned $100 in the five years preceding the owners death, or

- if the owner of these interests wills them to another co-owner.

This amounted to an uncompensated taking of property without prior notification.

The heir has the burden to prove that a 2% interest can earn more than $100 per year. This poses difficulty for the heir since legal assistance, time, and money is required. In addition, lack of data that shows land values and income derived puts heirs at a loss. There are examples of interests escheating to tribes that have not produced $100 per year but are valued in the thousands of dollars. For example, a fractionated interest includes ponderosa pine that is typically harvested every 40 years. In 1960 ponderosa pine timber was worth $25 per 1000 board feet upon harvest. In 1990, this same timber was worth about $400. In 2020, the same timber will be worth a projected $1000. Appraised and potential land values must be considered when lands become eligible for escheat, not earned income alone.

Other Concerns about the law:

- No rules and regulations have been promulgated. The absence of rules and regulations has contributed to the inconsistency in notification and education available to tribes and individual land owners regarding this law.

- No funding has been appropriated under the law. Although the law authorizes activities, such as the development of land consolidation plans to remedy fractionation, there is no money for this purpose.

- Currently, land consolidation under the law means a tribe acquiring a parcel of land and putting it into trust. The definition of land consolidation should be expanded to include a reservation-wide plan that addresses the needs of the tribal community. For example, land consolidation plans need to include designations for homesite, wildlife, individual ownership, economic development, cultural use, et cetera depending on the needs of the entire tribal community, not a select few.

- Funding should be provided to assist tribes and individual land owners in purchasing undivided interests. A low interest, revolving loan fund or a grant program might seem like an expensive option, but in fact, this will allow savings on administrative costs as lands are consolidated.

- Inheritance codes need to be developed that will prevent land that has been consolidated from once again becoming fractionated.

- Options other than escheat need to be offered to the individual land owner in managing 2% interests.

The BIA Heirship Task Force, which is charged with the responsibility of formulating legislative recommendations on the heirship problems, has not invited any tribal participation. In formulating legislative initiatives, we recommend that the Task Force consult with Tribes, individual Indian allottees, and Indian associations whose constituencies are impacted by fractionation.

TRUST FUND ACCOUNTING

There clearly has been a great deal of progress made in the BIA's effort to reconcile tribal and individual Indian Money (IIM) accounts. Since the Committee will hear from the BIA on those efforts, we will not spend a great deal of time here. We would like to point out some of the remaining problems we see.

The Office of Trust Fund Management (OTFM) in Albuquerque sent a directive to all superintendents, instructing them to send all leases that were $500 or more to the OTFM. This action has been met with resistance and question. It is our understanding that this type of global reconciliation action was not to occur before the completion of the five reconciliation models. This type of activity appears to be costly, time-consuming, and without justification. Furthermore, the IIM Workgroup charged with the responsibility of addressing reconciliation of the IIM Accounts is not involving Indian organizations or individuals.

The process would be more efficient if it were localized. Each tribe/agency needs to work on a model for the present then for reconciliation purposes. Local personnel can recreate data based on available files and process trust fund information both for tribal and individual accounts. This task is too big for OTFM and Arthur Anderson because reconciliation requires local knowledge that neither OTFM or Anderson have.

Models for trust fund management and income distribution should also be developed locally. OTFM could perform the audit function. A program has been developed at Standing Rock that is run on PC's at the agency and was developed with agency and tribal personnel. This model keeps track of leases, bills, collections, payments, owner interests, and owner payments. Last year the agency staff collected and distributed to land owners nearly $800,000. Arvel Hale, a private consultant who has worked with the Standing Rock Project for about two years, offers the following observations:

- The design and control of both the manual and automated systems must be at the agency level. We simply do not have the luxury of taking six months to get approvals from central office to solve simple local problems. Many of our most important program modules were developed in less than one to two days.

- The automated system must be flexible and easily modified to meet the unique needs of the local tribal or agency realty staff. The system needs to be adapted to facilitate the work, not the work having to be constantly being adjusted to fit the system.

- Standardization of data files should be confined to their area of use. Data used exclusively at an agency should be standard for the agency. Data shared between the agency and area should be standard for the agency and area. Likewise, data shared between the agency, the area and central office should meet nation standards.

- The system should have a modular design.

- Modules should be developed to save time and improve accuracy. they should be designed to perform tasks. If a task takes one week to do, then design a module to do the task in a day.

- Design databases so that data will be entered once and then used many times.

- Do not enter nor store data that you are not going to use. It is too expensive.

- Do not destroy data that is part of an audit trail. Keep a record of all processes to facilitate audits. With file compression, backing up data is very inexpensive.

- System design must be dynamic. It is never done. The quest for a "better way" should never be hampered by those who want to settle into a comfortable rut.

- People should be regarded as the "most valuable resource". The electronic system must be designed to facilitate their work.

- The people who design the electronic system must be the same as who use it.

The Price-Waterhouse study recommended simplified trust fund reports to tribes and individuals, as well as the presence and availability of regional investment coordinators. These recommendations seem to have been abandoned by OTFM.

An accounts receivable system must be available at the agency level. Checks should identify allotments from which income is derived.

SUMMARY

The legislation introduced by Congressmen Synar and Richardson will greatly improve the coordination and management of Indian trust funds in the Department of the Interior. We are pleased with the draft bill the staff circulated for comment. We strongly support this bill and hope it will become law during this session.

This concludes my statement. Thank you again for allowing me this opportunity to comment on these important issues.

Mr. SYNAR. Thank you both. You both would agree that the Secretary at least has the same fiduciary responsibility as a private trustee—among other things, to accurately account for trust funds, to prudently and properly invest the funds, and to maximize returns; is that correct?

Mr. BOURLAND. Yes, sir.

Mr. SYNAR. Do you also believe that his fiduciary responsibilities actually go beyond that imposed on a private trustee?

Mr. BOURLAND. I believe so. Yes, it would.

Mr. SYNAR. And the Secretary's responsibility is even greater than a private trustee, would you not agree?

Mr. BOURLAND. Yes, definitely.

Ms. ADAMSON. I believe so. Absolutely.

Mr. SYNAR. That is because of treaties, statutes and court decisions and other things?

Ms. ADAMSON. Any other citizen could change their asset manager. If we were Rockefeller, we would definitely have changed our asset manager by now. And we are not allowed to do that. He would have to be held to much higher standards.

Mr. SYNAR. That is what Ada Deer told you in a letter sent to Tribal leaders in January 1994, isn't it?

We have had four previous hearings, and you have heard GAO and this morning. Is there any way you would conclude, based upon what you have seen, that the Secretary is currently meeting his fiduciary responsibility to the account holders?

Ms. ADAMSON. No.

Mr. BOURLAND. No.

Mr. SYNAR. We're trying to move forward on programs to facilitate greater tribal management of funds, and we are working closely with both of your groups in that effort. But even if we're successful, do you agree that there will probably never be a time when the Secretary of Interior will completely be out of the trust fund business?

Ms. ADAMSON. No.

Mr. BOURLAND. I agree with that. Tribes as a whole, they see that there is almost a sacred or at least a special relationship when it comes to trusts. That was one of the commitments that was made. Yes.

Mr. SYNAR. Some of the smaller tribes may not ever have the capability and will need to rest on that, won't they?

Mr. BOURLAND. That may be true. Right.

Mr. SYNAR. So the Department has got to fix these problems, because they are always going to be a trustee in some capacity, are they not?

Ms. ADAMSON. Absolutely.

Mr. BOURLAND. That's true. And, historically, a lot of these problems have been created by the Department. Fractionated interest is a problem that—and I tell you again if they would stop and listen to the Indian out there on the street, the guy on the reservation, then they would know why this—why does the Indian fractionate his land? We do it on purpose. To them it is a problem. We do it on purpose.

I will do it. I will take my land and I will bust it up a million ways if I can. And that is simply because, over the years, the Bureau forced bad fees on a reservation. That was a trust violation. They allowed land to be taken away from Indians through having to pay taxes. We lost millions of acres in the great Sioux Nation.

So, naturally, the Indian is going to protect his land. He is going to tear out—or will it out to a thousand relatives if he can. He is going to take a tract of land of maybe 600 acres and bust it up 100 ways. That is the Bureau's problem at that point to then have to maintain it.

But the Indian himself is doing it for a reason, and that's where they are not listening. They are not going back to the historical record of how they have violated that trust to that Indian, and now they are going to have to pay the price.

Mr. SYNAR. We provided you both—go ahead, Ms. Adamson.

Ms. ADAMSON. Conceptually, Mr. Synar, the Department of Interior is in a schizophrenic role. Tribal people, we probably own 5 percent of the United States land; the single largest private landowner collectively, and yet we are the poorest group of people in these United States.

There is absolutely no reason that we should be land rich and dirt poor, so to say. It has to do with the way that the Bureau is our asset manager. It is a Federal agency on the one hand and asset manager on the other. And that trust responsibility really is the fundamental basis for that asset management, which is not taking place. It will never get away from the trust responsibility, being an asset manager.

Mr. SYNAR. You have had about a week to look at the GAO's latest report. Do you agree with the findings in there, by and large?

Ms. ADAMSON. Yes.

Mr. BOURLAND. ITMA definitely agrees with the GAO report.

Mr. SYNAR. Do you agree that Interior needs to develop a comprehensive strategic plan and that the Secretary's six-point plan does not constitute that kind of plan?

Mr. BOURLAND. Yes, the six-point plan is not a comprehensive plan. It might have been a little bit more of a comprehensive plan had they taken the time to sit down with us.

Mr. SYNAR. I am going to get into that in a second. This is not the first time that GAO has said that the development of a strategic plan is essential. And, the inspector general recommended it. Congress has directed the Department to do it. OMB has directed the Department to prepare one. Can you explain for us—maybe you know something we don't know. Why do you think they refuse to do it?

Mr. BOURLAND. Well, I think that problem goes back to the fact that in Lakota we have a saying. It's called "nuga wanica." "Nuga" means your ears, and "nuga wanica" means they have no ears. They simply do not want to listen.

And that is the biggest problem, when you have a department that does not want to listen. And this is not slighting Secretary Babbitt in the least bit, because the good Secretary is very busy. But there are people within the Department over the years that have made this an ongoing problem. And that is the biggest reason. They will not listen.

When ITMA was established, there was good faith there that ITMA would be the eyes and the ears for Indian country and would make our reports, which we do, back to Indian country. And we would also be able to make the concerns of Indian country to the Department, to the Bureau, and that they would listen to the concerns because we are the grassroots people and that they would put our concerns to paper or to policy.

That has not happened. I don't really know when it's going to happen. Perhaps Congress needs to clean their ears out—the ears of the Department, not Congress.

Mr. SYNAR. Do you agree with the GAO Interior is never going to fix these problems until they have sustained, focused leadership at the top?

Mr. BOURLAND. Yes, I definitely agree with that.

Mr. SYNAR. What do you think it is going to take for us to get that kind of leadership?

Mr. BOURLAND. I think it is going to have to be mandated by Congress.

Mr. SYNAR. The legislation that Mr. Richardson and I have which literally would force them to change.

Mr. BOURLAND. Legislation when it becomes law. Then if they break the law they know what penalties they have to face.

Ms. ADAMSON. In addition is the oversight committee. There absolutely has to be an objective third party oversight on this. It will not be sustained without that.

Mr. SYNAR. What are your long-term goals for the trust funds? And would the GAO recommendations, if implemented, fix the problems at the Interior to where your goals could be possible?

Ms. ADAMSON. I guess, in speaking to the long-term goals, we have been providing since 1983 a series of tribal investment workshops. And the long-term goal would be that tribes have and be provided the right to set their investment objectives in motion, that they have access to their trust funds if they so desire, but they definitely have access to setting their own investment objectives and directing the deposits in a way that would benefit their social and economic programs.

Mr. SYNAR. Is that pretty well the same——

Mr. BOURLAND. Yes, I agree. There has to be greater management flexibility among the tribes in not only investment but I would also say day-to-day activities. Additionally, those objectives have to be greater reaching.

For example, let me give you—again, I am going to take you back to a reservation and a grassroots example.

The Bureau of Indian Affairs is responsible for leasing tribal and tribal member lands. And in the leasing of allotted lands, an individual Indian's lands, an Indian might have 2,000 acres of grasslands. The Bureau of Indian Affairs is responsible for leasing that out. In most cases they lease that out. They put it into a range unit. It might be a combination of other tribal members and tribal lands all mixed in. They take that big range unit, and they lease it out.

Yet, take a look at the record out there. Those lands are being underleased, undermarketed. You can have land adjacent to that that is non-Indian-deeded land and that land will lease for two, three, sometimes four times as much as the lands leased for the individual Indian.

Hence, Indian land is cheap. There is a big fight all the time over leasing Indian land because everybody wants to lease it. It's cheap grass. There is good profit margin in it.

So the problems are wide-ranging. They are broad. It is more—it's a lot more involved than them just mismanaging the records, the accounting. There is a whole broad spectrum of mismanaged trust. And it is that Indian out there that owns that 2,000 acres of land. He takes that lease check and feeds his family each and every year. And, in fact, he is so used to being whipped down he doesn't even realize that he is probably underpaid on that lease.

If he were to be getting market value, he could feed his family twice as well. He could clothe them twice as well. He could afford the things of life that his non-Indian neighbor affords. And yet, through that trust system, the Bureau sets the price for his land. So, again, you know——

Mr. SYNAR. Let me suggest to you that there is some good news here. You think you have been screwed; I am white, a non-native American. In grazing, mining, and timber they are doing the same thing to me. They are not getting me my fair market value for my assets either. This treatment is not unique to native Americans. It is typical of the whole Department of the Interior.

All of us, whether we be native American or not, expect them to run this Government as a business, and they are not. They are not picking on you. You are just part of the system now.

On the six-point plan, did they consult with you all before bringing the plan forward?

Mr. BOURLAND. Absolutely not.

Mr. SYNAR. Ms. Adamson.

Ms. ADAMSON. We were at a meeting where they presented the plan.

Mr. SYNAR. Presented the plan, but not before.

Mr. BOURLAND. If I might interrupt, I was very, very insulted by the lack of consultation.

Mr. SYNAR. I am going to get into that. Interior keeps saying in their testimony today, "the consultation process is occurring." That is a quote. And, they have "already received valuable input from a number of sources."

Now, has the Department of Interior sat down with either one of your groups since they laid out the plan in June and asked for your reaction?

Mr. BOURLAND. I am going to ask Mr. Press. He is counsel on that.

Mr. PRESS. The answer is no, Congressman. Tribes sent in written comments. My recollection is that 15 to 20 tribes sent in written comments. It is our impression that the Department has not accepted any of those comments. They have completely rejected any tribal input. They have continued with the plan that they want, not anything that has to do with what the tribes want.

Mr. SYNAR. What about First Nations?

Ms. ADAMSON. Basically, we could say pretty much the same thing. In our investment workshops, we have encouraged tribes to submit recommendations. We have not been getting any feedback as to how they have been received.

Mr. SYNAR. Most of the initiatives outlined in their plan are already under way. In fact, a lot of them look an awful lot like the plan we saw in 1991. The new proposals, one, to transfer the funds to outside investment professionals and, two, to develop their own legislation to facilitate transfers to tribes themselves, were pretty vague and roundly criticized nonetheless, were they not?

Ms. ADAMSON. Yes.

Mr. BOURLAND. Yes, they were.

Mr. SYNAR. Have you seen any significant changes in the plan as a result of your consultations since June?

Mr. BOURLAND. As Dan indicated, no, we have seen none.

Mr. SYNAR. Now, a major part of the Department's reform—as you know, this is just new since the June plan—is to put these trust funds into a Treasury Department account. And in their testimony for today Interior says the trust fund would earn a return that is "equal to or greater than" the return they are getting today. Do you support that idea?

Ms. ADAMSON. I would want to look into it further. My understanding is that when they go over to the trust funds they are put at risk and they are technically taken out of trust. And that I wouldn't——

Mr. SYNAR. This is only one investment opportunity and what you all would like is a variety of options?

Ms. ADAMSON. We would like a variety of options, but we would really like input before they are designed. That is basically the point. Our conversation has been we can't quite understand why they feel compelled to reinvent the wheel on this. They could use what has been done, by this committee in particular, and then move to another area, such as investment options and cast a wider net to catch whatever other options are realistic or relevant.

Mr. PRESS. In regard to the G Fund, ITMA's position is that it's one useful investment vehicle if it is part of a larger package that includes the investment advisors that were originally proposed in the six-part plan but since withdrawn.

ITMA sent a legal opinion to the Department saying if they invest all of the trust fund money in Treasury they are going to be held to an absolute standard. If the tribes could demonstrate that they could have earned a penny more using any of the other investment vehicles that are available under the Federal statutes, the Department is absolutely liable under the court decision. So they are going against a pretty significant precedent if they force all the money into the G Fund.

Mr. SYNAR. Ms. Adamson, your testimony is a little bit disturbing. You say that BIA officials recently told you that the fractionated ownership work group was now defunct. Who told you it was defunct? What is the story here?

Ms. ADAMSON. Our understanding is we had a meeting with the BIA and the Office of Management and Budget about what, 2 months ago I think it was, maybe a month and a half ago and—probably it wasn't even that long ago—in which we talked about land ownership records and the land fractionation. And we brought up the heirship task force that we had been assuming was operating until then and which we wanted to take part in our land consolidation conferences. It was at that meeting that we were informed by, I think, Larry Moran of the BIA, that it was now defunct.

Mr. SYNAR. And when was that? Mr. Reynolds?

Ms. ADAMSON. Can I submit it for the record? I'll go back to my calendar. But it would be within a month ago.

Mr. SYNAR. We have Ada Deer's testimony. She talks about this and says that they want to be able to "present a proposal to all interested parties in the next 2 months as part of the overall consultative process," but she doesn't say that there is still a working group.

Ms. ADAMSON. We were told that they were going to try to—exactly from what that statement is—we were told that they were going to be submitting a plan soon, at which point we asked for the involvement of the heirship task force at the land conference to incorporate what they might be thinking with what the tribes might be thinking.

Mr. SYNAR. But you haven't seen any actual proposals?

Ms. ADAMSON. No, that's when we were told that they don't have a proposal yet but that the heirship task force, it was defunct, and it could not interface with us at all on this issue.

Mr. SYNAR. Given the unbelievable problems confronting us with regard to any reconciliation of the IIM accounts and the problems with fractionated ownerships, do either of you see a way out of this mess?

For example, how can we possibly get a settlement on the IIM accounts if there is no reconciliation and we will never know if the account balances are actually correct?

Mr. BOURLAND. That is right. I'll give you an example here. Let's take the Sioux Nation for example.

We were told by Arthur Andersen at an entrance conference—when they were going to begin the reconciliation in Rapid City, SD, the Office of Trust Fund Management and Arthur Anderson Company met with the Sioux Nation leadership in Rapid City, and we were told at the entrance conference that the Sioux Nation trust fund account would be the easiest one to reconcile.

It was the biggest, and it was a restricted account. It had no transactions out, no disbursements. So it was going to be an easy one. We were told it was going to be a very short time. We would be having an exit conference, and they would give us the findings.

That has been over 2 years ago. We have never had an exit conference. Tremendous amount of innuendo came out of the whole thing, and that's been the end of that. If they can't reconcile our account, how are they going to reconcile the rest?

Of course, a lot of things came out: missing records, documents just as they got into it. And, as we recall, during the fiscal year that they were under intense scrutiny—I believe that was in fiscal year 1992—they still misplaced 10 percent of all the records.

Arthur Andersen came back and reported that to Senator Inouye, that during this intense scrutiny—it would be like a bank—and I just couldn't imagine this, being under a Federal investigation, and the bank examiners poring all over it and having a year-long investigation. And during that year, the bank continues to misplace records and statements and lose money and not really seem to care.

You know, any bank in the State of South Dakota, if you lost 10 percent of the records, you would not be in business, and they would have you shut down and boarded up. And I think that would apply to any State. I live in South Dakota so I can say that for our State. And yet during that time this is what Indian country had to face.

So, as far as the reconciliation, I don't see how they are ever going to be able to accomplish this. And I think they can contract it through self-determination to the tribes, and that is one way to do it.

Mr. SYNAR. Let me ask Ms. Adamson. Is there ever going to be an acceptable approach for dealing with the fractionated ownership problem?

Ms. ADAMSON. I believe so, Congressman Synar. I serve on a mutual fund. We have 800,000 shareholders and a holding of $5 billion. It is not rocket science. It is a matter of a computerized data system and accurate entry of the data into it.

Under fractionated interests, I think that the money that could be saved through reducing the clerical costs by offering a revolving loan fund whereby tribes and Indian people could buy back interests in and of itself would do a tremendous amount to curtail the dramatic growth that is taking place in fractionated interests.

Probating, increasing the probate of wills, will writing itself—there are a number of steps that aren't magic that could be put into place that would curtail dramatically and at no cost curtail the growth of fractionation. And, like I said, a revolving loan fund would go a long way to solve what is already in place.

I would like to correct Chairman Bourland's comment. We didn't create the problem at all. In my daughter's generation, we projected out the costs of what it cost to—clerical costs of fractionated interests for 12 reservations. And if my daughter has 6 children, and they go on and have 4 apiece, it will cost you $2 billion just to clerk the records of 12 reservations in the North and South Dakota area. So you absolutely have to do something to correct the problem.

Mr. SYNAR. We have worked closely with you in developing the legislation that Mr. Richardson and I introduced, and you all have been particularly helpful in the areas of demonstration plans, training and assistance to allow tribes to manage their own funds. I am correct—since the Natural Resources Committee may be marking this bill up on Wednesday—you do support this legislative proposal?

Ms. ADAMSON. Yes, sir.

Mr. BOURLAND. Yes, we do.

Mr. SYNAR. OK. As far as we can tell from their comments on that legislation, the Department strongly opposes those provisions that I just mentioned. Apparently, they want the tribes to completely sever the trust relationship to avoid the Secretary having any possible liability.

In your view, is there any validity to their concerns in that regard, especially in view of the way we wrote the provisions limiting the Secretary's liability?

Ms. ADAMSON. In my view, that is a complete and total breach of trust. There has to be technical assistance provided.

Mr. SYNAR. Mr. Bourland.

Mr. BOURLAND. Yes, definitely so. I agree.

Mr. SYNAR. I find it rather ironic that the Department is so worried about the Secretary's liability when funds are being managed by tribes and apparently couldn't care less about it when the Secretary is liable for all this time the funds have been mismanaged by the Department. Do you find that strange, too?

Ms. ADAMSON. I shouldn't be laughing at it. It is bizarre.

Mr. SYNAR. Would you briefly tell us why you think it's important for us to have these demonstration plan provisions and to provide training and assistance?

Mr. BOURLAND. Dan, would you like——

Mr. PRESS. The approach in the demonstration programs actually grew out of a series of meetings that ITMA had back in 1991, 1992, where the tribes were asked what do you want for the future of the trust funds? And each of them said we want more control.

But each of them went on and said their idea of control was different from the other tribes and that is what self-determination has been all about. Each tribe has a different history, different needs, and they need different approaches.

So the legislation that you introduced really reflected the tribes's goal, which is the opportunity to shape the program to their needs without having to terminate their trust relationship. And that has been the history of this——

Mr. SYNAR. It is your money. You can do as good a job as they can, obviously, since they have done such a poor job, and it will give you expertise and training that you are going to need in other areas; right?

Mr. PRESS. And it is what the Self-Determination Act has been about since 1965.

Mr. SYNAR. Ms. Deer's testimony, again, is going to indicate that they want better coordination throughout the BIA. And to address that problem she states she intends to create a position of a "single accountable senior official" within the Bureau to oversee all aspects of the BIA trust fund. She further states that she is in the process of notifying tribes and others of the option of creating this position and intends to fill it by the end of the year.

Two questions. First, would you support her proposed step? And, second, would you find that sort of position preferable to the special trustee position which would be created under the Richardson-Synar proposal which would oversee trust fund functions throughout the entire Department and not just BIA?

Ms. ADAMSON. I think what's proposed under the legislation is the only measure that would provide the degree of corrective steps that need to be taken to comprehensively solve this.

Mr. BOURLAND. Right. At the present time, we couldn't support such a concept. The special trustee is the only solution. If you had an individual appointed under the Bureau of Indian Affairs they would lack the proper authority, especially line authority, to get anything done.

I think the GAO has indicated that a lot of those problems exist within the current Office of Trust Fund Management. All you would have is another tier within the Bureau.

Jim Parris might have another boss, but, other than that, what good is that going to do when it comes to line authority across the BMM and MMS? And so I don't think the solution is a workable one.

Mr. SYNAR. Let's focus on this consultation issue, which I deferred a minute ago. Mr. Bourland and Ms. Adamson, I am sure you recall the historic First Nation's meeting held by President Clinton at the White House earlier this year. And you know that many other high-level officials, including the Vice President and the entire Cabinet, met with tribal leaders from all over the country at that time.

A lot of commitments were made in those meetings about closer government-to-government relationships, closer consultations and "a new era of Federal tribal relations". As a general matter, is the Interior Department living up to those commitments?

Mr. BOURLAND. Well, essentially, the Interior Department—I think that the President, as he indicated in his speech—and I was there. I was one of the individuals that got to give a speech right back to the President—I think as the President indicated, though, that trust responsibility extended beyond Interior. But, at the same time, it was ironic because Interior has never fully lived up to its trust responsibility.

What is even more ironic is since the President's speech many other departments at—Cabinet-level departments are becoming very responsive. Department of Agriculture, for example, is just one of them, Department of Justice. We are seeing great movement out there on many fronts, many other departments. On the other hand, the Interior Department is just still stuck in the same quagmire.

Mr. SYNAR. So Interior is not——

Mr. BOURLAND. Yes, Interior is not doing it, yet other departments are moving. So I think the President was effective, but Interior still is not living up to its responsibility.

Mr. SYNAR. This is clearly better than previous administrations.

Mr. BOURLAND. Oh, yes, yes, definitely. The President's got people moving in another front, but Interior is still stuck in the rut.

Mr. SYNAR. Better or worse than previous ones, Ms. Adamson?

Ms. ADAMSON. There has been progress under this administration. But there seems to be a sense that they want to do it their own way and not necessarily join forces with, I mean, experts in the body of knowledge that is on the Hill and with Indian people. And many—as the other agencies are willing to move forward. They are engaging Indian people and listening.

And the Interior, for whatever reasons, wants to move forward their own way, which means reinvent the wheel and in our opinion doesn't mean moving forward.

Mr. SYNAR. Mr. Bourland, on July 18 of this year Elouise Cobell, the Chair of the ITMA, wrote to Assistant Secretary Ada Deer concerning Interior's complete failure to include you all in the development of the six-point plan, despite Congress' repeated directives that you be included.

Now in her letter she asks Miss Deer to advise ITMA about whether the Interior planned to include you all in further work of the IIM reconciliation approach, especially in light of the Appropriations Committee's specific directive that Interior do so.

Do you know if Elouise ever got a response? And, if so, what did the Department say about including ITMA in the IIM reconciliation efforts?

Mr. BOURLAND. To my knowledge, Elouise never received a response. Mr. Press is responsible for ITMA.

Mr. PRESS. She never received a response.

Mr. SYNAR. Have you received any assurances from the Department of the Interior that you will be included in the development of any approach, as opposed to simply commenting on whatever they decide?

Mr. PRESS. No, Mr. Chairman.

Mr. SYNAR. What about First Nations? Have you received any assurance from the Department that you will be included in the effort to develop the IIM reconciliation approach, as opposed to just commenting?

Ms. ADAMSON. None at all.

Mr. SYNAR. Well, I have to tell you we are truly at our wits end with these people. We keep telling them to consult with ITMA and other account holders. Mr. Richardson and Senator Inouye keep telling them. The Appropriations Committee keeps telling them to consult with them.

Why is there still a problem? I mean, what more can we do to work this thing out? We don't know what to do, to be very honest with you. I don't know how many times you have to tell somebody to do something, if they just won't do it.

Ms. ADAMSON. Congressman Synar, one time you stated that you were even considering contracting the entire trust fund management out. What are your thoughts on that?

Mr. SYNAR. Just moving it out from the BIA?

Ms. ADAMSON. Yes, sir.

Mr. SYNAR. My thoughts are that we can't do a lot in the next 2 weeks. Do you think this legislation may, once and for all, not only tell them, but it literally will force them—does this legislation force them to do what they haven't done through directive after directive after directive?

Ms. ADAMSON. The legislation will, if it is passed. Which is why we urge you to get it through this session.

Mr. SYNAR. I will say this—and counsel is correct. If this plan that Mr. Richardson and I have developed doesn't work, there is no other choice but to move it. It has to go.

Ms. ADAMSON. Yes.

Mr. SYNAR. Now, because consultation in the general language of the statute is required, do you think you'll do better with the special trustee in place—a person whose only job is to deal with the trust funds program?

Mr. BOURLAND. Yes, definitely.

Mr. SYNAR. You, too, Ms. Adamson?

Ms. ADAMSON. [Nods affirmatively.]

Mr. SYNAR. Ms. Adamson, on page 4 of your testimony, in discussing the apparently now-defunct heirship task force, you asked when and how the BIA was planning to consult on its legislative recommendations that impact land resources. And you say that the

Bureau told that you they "didn't have time for that." What is the story here?

Ms. ADAMSON. Well, our concern was when they shared their timeline with us, and it was January 1995, that we were very concerned that they wouldn't have enough time to get the actual input that we felt they needed. They gave us no answer, really.

Mr. SYNAR. Did they tell you they didn't have time for that?

Ms. ADAMSON. They just said that it was a very short, tight timeline.

Mr. SYNAR. On November 8, 1993, Secretary Babbitt signed an order entitled, "Departmental Responsibilities for Indian Trust Resources." That order states that the heads of Interior bureaus and offices are responsible for being aware of the impact of their plans, projects, programs, or activities on Indian trust resources, and it requires that any anticipated effects on trust resources be explicitly addressed in the Bureau's plans.

Now this Babbitt order states that the bureaus and offices are, "required to consult with the recognized tribal government with jurisdiction over the trust property that the proposal may affect," if there are going to be any impacts. It goes on to State that, "all consultations with tribal governments are to be open and candid so that all interested parties may evaluate for themselves the potential impact of the proposal on trust resources."

Now are you familiar with that order, both of you? Are you aware of any consultations with tribal governments that appear to have resulted from that order?

Mr. BOURLAND. I am going to say no, but my answer is two-part. No, and it's very, very unfortunate that in 1994 the Secretary of the Interior should have to give his employees a letter like that. That should be in their job description. That should be fundamental. It should be elementary to the very concept of why they are working for Interior and why they are working with Indian tribes. And it's really unfortunate.

And, again, the answer is no. Even though he has sent them that memo, it's not being done.

Mr. SYNAR. Ms. Adamson.

Ms. ADAMSON. To my knowledge, I am not aware of any consultation, which is why we are recommending at this point a statutory requirement.

Mr. SYNAR. Now what about the June, 1994, streamlining plan you heard me discuss with GAO, the one that includes a proposal to consolidate all Federal Indian programs into one Department of Indian Affairs by 2005 and decentralize all their functions? Have you all been consulted on that proposal?

Mr. BOURLAND. No, I heard about it for the first time today. And I am very taken aback. I do want to state that it's always been our policy that the Bureau of Indian Affairs should be a department—should be a Cabinet-level position, that a lot of my elders tell me that they are still insulted for being taken out from under the War Department.

We liked being under the War Department because we battled with the U.S. Government and sometimes won and sometimes we lost. But to be put in there with the wild horses and the trees and the land and the timber leases was not exactly what we had in mind.

But to have this kind of drop in our lap—I heard about it today. I'm a little taken aback, but I'm intrigued, and so I am going to have an open mind and an open heart about it, but I would like to know more about it.

Mr. SYNAR. You were not consulted?

Mr. BOURLAND. Never consulted. I just found out about it today.

Mr. SYNAR. Do you expect to be?

Ms. ADAMSON. Maybe after today.

Mr. SYNAR. Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman. I don't have any questions. I just want to commend you for holding this hearing. It is, in fact, deja vu all over again. We have been at this for a long time.

Mr. SYNAR. You know why I am retiring. I am just tired of this. I have had enough of it.

Mr. CLINGER. I have sat with you on at least three of these where the questions have been the same and the answers have been the same. Which is why I am here to see if there have been some changes to the questions that were asked today. Because I share with you the frustration that we have had, just not getting anywhere. And here we have groups that are clearly not in the loop, not involved in the shaping of policy, and I think it is appalling. I commend you on holding the hearing.

Mr. SYNAR. Let me get some final questions in here. I appreciate you all bearing with us.

Ms. Adamson, on the natural resources management issue, I have been troubled by your testimony concerning Interior's proposed budget cutbacks in the mapping service. Could you explain why that service is so important regarding the trust fund program and the impact those cutbacks would have, especially with regard to the consolidated or fractionated openership interests, which is a crucial area that we have to resolve?

Ms. ADAMSON. There is already a tremendous backlog in the fractionation settlements through the probating of the wills.

But one of the things that I was getting to, Congressman, is the inability for Indian people to swap or consolidate their interests or land holdings. Without the accurate data for them to go in locally to an office that allows them to map out the reservation land and what their interests are and where those interests are, they're completely stopped from any ability to look at how they would want to consolidate their holdings for any land usage.

It also prevents the tribe at a more comprehensive level from doing any comprehensive land usage planning or coding, zoning, et cetera. It effectively thwarts tribal sovereignty over asset land.

Mr. SYNAR. About a 27-percent cutback, I think; correct?

Ms. ADAMSON. Yes.

Mr. SYNAR. Do you think anybody at the Department even thought about that impact it would have on resolving the fractionated interests problems?

Ms. ADAMSON. Well, we have brought it up. I can't tell you.

Mr. SYNAR. You did bring it up. Is this another example why the Department needs a long-term or strategic plan, so they don't do this again?

Ms. ADAMSON. This is a problem that in and of itself has done more to disempower Indian people and tribal leaders than any other problem out there, probably. It is the basis of the trust responsibility. And it's one that continues to worsen. And without some sort of deep solution with long-term goals in it it's not going to correct itself. It's only going to get worse.

Mr. SYNAR. Mr. Bourland, as you know, we're encountering some serious problems on the five pilot tribes reconciliation process that we have in motion. For instance, there has been a large number of documents missing with regard to the Flathead Reservation pilot. Is that your knowledge?

Mr. BOURLAND. Yes, that's right.

Mr. SYNAR. For the record, could you tell us about that and explain what the impact will be?

Mr. BOURLAND. Well, essentially, in the five pilot reconciliation efforts, ITMA has consistently told the Department it's just not going to be workable. That, you know, with the amount of documents that are missing, accurate reconciliation of those accounts can never be achieved.

Additionally, the Department has held fast on the line that, well, you know, we will reach a reasonable medium or reasonable amount. Again, ITMA does not believe that that is feasible and that the Department is just simply raising false hopes. And, you know, that's not acceptable.

Mr. SYNAR. And we understand that the General Services Administration, which governs record retention, asked the BIA about whether such records should be retained, and the BIA failed to respond to GSA's request. Is that your understanding?

Mr. BOURLAND. I would have to——

Mr. PRESS. I am not aware of that.

Mr. SYNAR. If we don't have all the records, we're not going to get the complete reconciliation even for a limited period of time. And that means we still won't know if the account balances are actually correct. Are the tribes going to be willing to sign off on the final result under those circumstances?

Mr. BOURLAND. I know that the Sioux Nation will not sign off. I represent four of the seven bands of the great Sioux Nation, and so I know I would never put my signature to such action.

Mr. SYNAR. Ms. Adamson.

Ms. ADAMSON. No, I don't think anyone would want to sign off. There may be coercive tactics out there to get that signature, but no one is going to want to willingly.

Mr. SYNAR. Mr. Bourland, Mr. Press, the ITMA's testimony talked about the possibility of a lawsuit if the trust fund legislation is not enacted. Without violating the attorney/client privilege, could you tell us what such a suit would entail?

Mr. PRESS. Mr. Chairman, again, the suit will be filed only if the Secretary blocks the legislation. But a number of tribes have already enacted resolutions authorizing them to proceed with what's been called a massive breach of trust lawsuit against the Secretary.

It is not a terribly complicated lawsuit. You look at the laws governing trusts and you go through the section that says obligations of the trustee, and for every obligation the Secretary has violated—obligation to keep accurate records, obligation to provide accurate account balance, obligation to collect all of the money—there is no accounts receivable system, duty of loyalty, that you talked about before. It will just go down those one by one. And the proof will not be difficult either: Misplaced trust, GAO report, Arthur Andersen's audits, IG reports, OMB reports.

The relief that is being sought in the lawsuit will be really identical to what is called for in your legislation. It asks the court to appoint a receiver to take control of the trust fund program and manage it as the court directs. It is similar to what the courts have recently ordered in regard to the District of Columbia Housing Authority and the District of Columbia Foster Program where they've said these agencies are incapable of making order out of the chaos that they have created and, therefore, the court is going to take over.

The court receiver, who will report directly to the court, will have the authority, including the authority to put people in jail if they refuse to comply with the orders of the receiver.

We think if the legislation doesn't go through something like that is necessary because all other avenues are really exhausted.

Mr. SYNAR. Now, the special trustee that would be set up under the proposed legislation would also require a comprehensive strategic plan to be developed that would cover all facets of the trust fund business cycle and address all the problems that we have been discussing here today. I want to make it very clear, you all are supportive of that proposal, are you not?

Mr. BOURLAND. Yes, we are.

Ms. ADAMSON. Yes.

Mr. SYNAR. One final question. Mr. Bourland, you probably heard me earlier mention that Interior informed us last week that they had determined that the ITMA had to be formally chartered as a Federal advisory committee, but that GAO lawyers don't think that the Federal Advisory Committee Act is applicable in this case because ITMA represents the beneficiaries, not some outside interests as you might normally think of them. What is your position on that issue?

Mr. BOURLAND. I agree with GAO's assessment of the situation.

Mr. PRESS. This issue has come up every year since ITMA has been created, and every year GAO wanders over to Interior and says, no, you're wrong.

The other thing we noticed, while the BIA funds many other organizations—the Intertribal Agriculture Council, the Intertribal Timber Council—they have never raised these issues. They are identical in form and function to ITMA. We are the only ones they suddenly decided needed to be a Federal advisory committee.

Mr. SYNAR. This is just an attempt to shut you down because you are criticizing them?

Mr. PRESS. It is, I think. It is no question that we are unhappy with their failure to consult.

Mr. BOURLAND. Way back when ITMA was simply an ad hoc committee, back when—I think it was 1989. I think it was at the start of 1990 when I got on. And one of their positions back then under Dr. Brown's administration of the Bureau was to take an approach of, well, thank you for all that you have done, and now we're going to go and create our own committee, and that committee will take over and will become the committee of choice.

They did not seek this sort of recognition when they were going to create their own committee back then, and I think that it is just a tactic. It is unfortunate that they are looking at a way to try to make ITMA jump through some hoops that are unnecessary at this—at this late stage of the game.

But I think it is a panic eleventh-hour approach to what is happening here, and it's unfortunate. And I think it is very obvious though. I think that this committee can see what's happening. And everyone can see what's happening here.

Mr. PRESS. Mr. Chairman, I have never seen a legal opinion on this. I would be interested if the Department has ever prepared a legal opinion.

Mr. SYNAR. Let me conclude by, first of all, thanking all of you all for helping us develop this legislation before the Natural Resources Committee on Wednesday. It is my goal, my fervent goal, before I leave here, before we adjourn, to have this legislation through and signed.

If you all have nothing to do for the next 2 weeks, it's all hands on deck to help us do it. Because, if we don't, then the Department of Interior has been put on notice, as of about 10 minutes ago, that they are going to court. So it's now in their best interest to either settle this way or the other way. And we want to work with you. Thank you both.

Mr. BOURLAND. I wanted to say, too, Mr. Synar, again, our hearts and our doors are always open in the great Sioux Nation. You have been a tremendous champion. You have been a strong leader for us, and we have always had a friend in Washington, DC.

The other day before a group of elders we had a big meeting, and as we spoke we have always talked about our friends in Washington. And there was a lot of sadness and shock in the room about hearing that you weren't going to be in Washington, at least for the next 2 years. So, again, in that 2-year timeframe, always feel free to come to South Dakota, and you will always have friends in the great Sioux Nation.

Mr. SYNAR. Thank you very much. Thank all of you.

The final panel is the Department of the Interior. Representing them today is the Honorable Ada Deer, Assistant Secretary for Indian Affairs; accompanied by Jim Parris, Director of the Office of Trust Fund Management; Bonnie Cohen, Assistant Secretary for Policy, Management and Budget; and Mr. John Duffy, Counselor to the Secretary.

Do you have any objection to being sworn in?

[Witnesses sworn.]

STATEMENTS OF ADA DEER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY JIM PARRIS, DIRECTOR, OFFICE OF TRUST FUND MANAGEMENT, BUREAU OF INDIAN AFFAIRS; DONNA ERWIN, DEPUTY DIRECTOR, OFFICE OF TRUST FUNDS MANAGEMENT; STEVEN RICHARDSON, DEPUTY DIRECTOR FOR EXTERNAL AFFAIRS, BUREAU OF LAND MANAGEMENT; AND JIM SHAW, ASSOCIATE DIRECTOR OF THE ROYALTY MANAGEMENT PROGRAM, DENVER, CO; BONNIE COHEN, ASSISTANT SECRETARY FOR POLICY, MANAGEMENT AND BUDGET, U.S. DEPARTMENT OF THE INTERIOR; AND JOHN DUFFY, COUNSELOR TO THE SECRETARY, U.S. DEPARTMENT OF THE INTERIOR

Mr. SYNAR. Ada, welcome back. I have been seeing you probably more than any other single person in the last couple of weeks. And we look forward to your testimony. The entirety of it will be placed into the record, and at this time we would ask you to summarize.

Ms. DEER. Good morning, Mr. Chairman and members of the committee. I want to thank you for inviting me and my esteemed colleagues: Ms. Bonnie Cohen, Assistant Secretary of Policy Management and Budget; Mr. John Duffy, Counselor to the Secretary of the Interior; and Mr. Jim Parris, Director of the Office of Trust Fund Management; and to my left we have Ms. Harriet Brown, on my staff.

We are accompanied by others in the Bureau who have been dealing with trust funds and trust management issues and would be available to us in addressing your questions.

As you mentioned, I have submitted a detailed written statement, and I wanted to make some comments today before you and members of the committee.

First, let me state how highly I believe you are to be commended for your many years of leadership, diligence, and determination in this most difficult and pressing issue.

We're very appreciative of your having dedicated many years of hard work in bringing attention to the need for reform and providing such astute guidance in this area. We are truly grateful for your contributions, your persistence, and your dedication to the interests of Indian account holders during your tenure, and I am pleased that I have had this opportunity to work with you under this administration.

Now I'd like to move on to the pressing issues of the moment. I am aware of the requirement and the suggestion to have a 5-minute summary of the testimony.

We're all grappling with this issue and seeking the best way to bring about these kinds of significant changes. Expectations for reform have been particularly high for this administration after years of delay, frustration, and upheaval. Results have not been as quick or as easy as we would have liked or imagined, but after years of false starts I believe that we can say that we have turned the ship around and are making headway.

I wish I could tell you that we have a glowing report card at this first oversight hearing for our administration and all the concerns that you have noted in the 1992 report have been completely resolved. Although I have from time to time been noted somewhat as a miracle worker in my professional life, and I even have a Wonder Woman Award, unfortunately, I cannot tell you that I have worked great miracles or wonders in this tough area.

What I can give you is what I believe to be an honest report card, one in which we have some noted successes, some initiatives we have not yet completed, but which I believe show great promise. And, yes, some areas in which we need to do much more.

In these last two categories, let me point out where we are focusing our efforts during the next fiscal year. As you know, the deficiencies are not quick-fix types of problems and solutions are not easy, but I can assure you that we have the commitment, and a very definite course of action is underway. Using the committee's 1992 report as a gauge, I'd like to proceed to address these areas.

Successes: The prior year's reconciliation of tribal trust funds. This is a massive reconciliation project, without precedent in its scope. We have divided it into a number of workable phases during the 20-year period from 1972 to 1992. Noninvestment financial transactions will be completed in the next few weeks.

We gathered over 10,000 boxes of documents from areas and agencies. More than 650,000 documents were used in the reconciliation, and I am pleased to report that nearly 90 percent of the transactions in this category and 85 percent of the dollars in noninvestment activity have been reconciled.

This is just one of several tribal reconciliation components that are in various stages of completion targeted for September 30, 1995.

Current reconciliation efforts: We have been able to draw the line as of October 1, 1992, and are maintaining the current accounts in balance on a regular basis. We are now on-line with Treasury allowing daily monitoring of cash activity in the field. We have implemented controls, completely eliminating overdrafts in tribal accounts.

Acquisition of a core trust fund system: One of the most monumental achievements is a major contract for conversion to a state-of-the-art core trust fund system to be fully operational in 6 months. This type of system is used by all major trust fund organizations. It will provide accurate accounting on a single data base, provide for the ongoing evaluation of all securities, and provide timely, meaningful periodic customer statements for tribes. It replaces antiquated and inadequate accounting and investment systems.

Staffing and realignment of trust funds management: In April, 1994, I obtained approval of a major realignment of the Office of Trust Fund Management to provide qualified trained professionals and an effective framework to correct longstanding deficiencies. For the first time, this puts into place the division of duties that this subcommittee and the GAO have urged between the accounting and the investment functions. We're also stressing customer service and quality assurance.

With continuing success in the reconciliation efforts and implementation of major improvements in the data processing system, we will have truly provided professional customer relations to work hand in hand with and troubleshoot for our account holders. In hiring, we are bringing in professional managers with vast banking and investment managerial experience. These are initiatives.

Policies and procedures: We've now standardized best operating procedures for the field offices and updated IIM regulations, and developed a loss policy requiring that account holders be notified of errors.

Bureau of Land Management: There are notable improvements in the Bureau of Land Management and Minerals Management Service to more effectively involve tribes in a broad spectrum of resource management inspection and planning activities. We have discussed the establishment of a G Fund Treasury investment strategy for a special fund at Treasury that would pay interest at a rate in the same way as that paid on civil service, Social Security, and railroad retirement funds.

Land records improvements: We started a multiphased process to modernize and automate Federal Indian land records and ownership data. Indian allotted lands have now fractionated to the point where about 550,000 fractional interests of less than 2 percent account for over 60 percent of total ownership interests.

We are discussing major reforms with OMB to get at the heart of this problem as part of our budget process. We fully intend to undertake a major consultation effort with tribes and allottees in this reform.

Greater BIA trust management coordination: Being responsive to congressional concerns over the need to designate one individual who has complete line authority and can be held accountable for trust management, I am proposing a Deputy Assistant Secretary position within the BIA. I've sent letters to each of the tribes highlighting various options for this position.

Secretary's plan: We have been guided by the Secretary's six-point plan tied to three basic goals for trust management: Ensuring the safe investment of trust funds at favorable rates of return, providing timely and accurate account holder information, correcting decades of accounting inaccuracies, improving interbureau coordination and promoting tribal management of trust funds. It establishes priorities and milestones and identifies responsible officials.

These achievements mark the threshold of changing the past course of mismanagement. Your support, along with that of the tribes, tribal members, and other representatives is essential.

So, again, I thank you for your work and dedication, and I welcome your comments, views, and questions.

Mr. SYNAR. Thank you, Ms. Deer.

[The prepared statement of Ms. Deer follows:]

**OPENING STATEMENT OF ADA E. DEER
ASSISTANT SECRETARY OF INDIAN AFFAIRS
TO THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
SUBCOMMITTEE ON ENVIRONMENT, ENERGY, AND NATURAL RESOURCES
ON "INDIAN TRUST FUNDS MANAGEMENT"**
September 26, 1994

Good morning Mr. Chairman and members of the Committee. I want to thank you today for inviting me and my esteemed colleagues -- Ms. Bonnie Cohen, Assistant Secretary - Policy, Management and Budget; Mr. John Duffy, Counselor to the Secretary of the Interior; and Mr. Jim Parris, Director of the Office of Trust Funds Management (OTFM). We are accompanied by others in the Bureau and the Department who have been dealing with trust funds and trust asset management issues and will be available to assist us in addressing your questions during this hearing.

I would like to commend you for your many years of leadership, diligence, and determination in this difficult and pressing area. I agree with you that we have a tremendous responsibility to fulfill the federal trust and fiduciary responsibilities in managing the funds held in trust for Indian account holders. There have been many long standing problems we simply must address. We must ensure that significant improvements are made in the management of trust resources and that the monies we hold in trust are adequately accounted for and invested in the most safe, sound, and effective manner possible.

We are all grappling with this issue and seeking to make significant changes to correct the many ills which have been tolerated far too long. Expectations for reform have been particularly high for this Administration after years of delay, frustration and upheaval. Your testimony before Congressman Richardson's Committee last month spoke to the frustrations you and others have felt in failing to observe more progress on these issues. Results have not been as quick or as easy as we would have liked or imagined; but we are making real, and I believe, significant progress.

I wish I could tell you that we have a glowing report card on the status of trust funds and that I could say that all of the concerns you noted in the Committee's 1992 report have been resolved. However, I do believe that we have made great strides correcting some of the deficiencies. I am prepared to highlight the areas in which we have made great headway. I also want to describe other areas in which we are focussing our efforts during the next fiscal year. As you know, the deficiencies are not "quick fix" types of problems and solutions are not easy; but I can assure you that we have the resolve and commitment, and a very definite course of action is underway. First, I would like to describe the successes we have achieved.

Prior Year Reconciliation of Tribal Trust Funds

It is imperative that we provide as accurate an accounting as is practicable for tribal transactions and balances which had been neglected over the course of many, many years. We are making real and significant progress in reconciling tribal trust fund accounts for the twenty year period from 1972 to 1992. We are following the reconciliation plan agreed to by all the parties involved in this effort.

To accomplish this massive reconciliation undertaking, the effort has been divided into a number of workable phases, which are familiar to this Committee. In this regard, I am pleased to report that work on reconciling non-investment financial transactions will be completed in the next few weeks. In this process we gathered over 10,000 boxes of documents from Area and Agency offices; more than 650,000 documents were used in the reconciliation. The contractor has reconciled nearly 90% of the transactions and 85% of the dollars in the non-investment category. For a massive reconciliation of this type -- which is without precedent in terms of its scope -- we are completing a major milestone.

This is just one of several tribal reconciliation components that are in various stages of completion. During the coming fiscal year, periodic reports will be provided to tribes as each of these components is completed. I am committed to meeting the scheduled completion date of September 30, 1995, which will be followed by final certification and issuance of final reports to tribes and the Congress.

Current Reconciliation Efforts

In prior oversight hearings, members of your Committee have raised concerns over the Bureau's management of current trust fund activity. I assure you that while we are actively engaged in reconciling the trust fund transactions spanning the last 20 years, we are not neglecting the present. Since October 1, 1992, improvements have been made that have put us on-line with Treasury, allowing OTFM to monitor daily cash activity of investment and field financial activities. During this same period, we have implemented controls that have completely eliminated overdrafts in tribal accounts -- a problem which had previously plagued our trust fund operations. And most importantly, for the first time in over twenty years, we are reconciling transactions and maintaining current balances for tribal and Individual Indian Money (IIM) accounts on a regular basis.

Acquisition of a Core Trust Funds System

Our work in maintaining accurate balances will be further advanced by the conversion to a state-of-the-art core trust fund system provided by a private sector service bureau. The contract for this service was recently awarded to SunGard Asset Management Systems, and the system will be fully operational in six months. This type of system, used by all major trust fund organizations, will provide accurate accounting on a single database, provide for the on-going valuation of all securities, and provide timely periodic customer statements that will be meaningful to tribes. The core system will replace the antiquated and inadequate accounting and investment systems which have proven to be unreliable and inaccurate.

Staffing and Realignment of Trust Funds Management

One of the major criticisms we have faced has been the lack of qualified, trained professionals and an effective strategy to correct this longstanding deficiency. In April, 1994 I obtained approval of a major realignment of the Office of Trust Funds Management. This new organization for the first time brings about the division of duties between the accounting functions and the investment functions, that this Subcommittee and the GAO have urged upon us for years.

This new structure places two experienced Senior Executive Service level professionals in charge of the Office of Trust Funds Management. For the last two years or so, we have had a third SES manager assigned to monitor the reconciliation and certification contractors who are performing those two important and expensive tasks, as directed by the Congress. Even in our streamlining efforts, we recognize the importance of this organization and will be holding the trust funds program "harmless" in workforce downsizing efforts.

Additionally, under this realignment, we have placed six employees into professional level customer relation positions to provide a level of service to account holders which would normally be found in a commercial institution. It will be the responsibility of these individuals to interface with our account holders and to troubleshoot for them within the trust funds office. We have recruited and hired a Division Chief with vast banking and investment management experience to oversee OTFM's investment program.

This plan will be fully implemented by the end of this calendar year, and will allow us to provide adequate staff and structure to bring about major long term improvements in customer service and quality assurance, continued success in the reconciliation efforts, and implementation of major improvements in data processing systems.

Policies and Procedures

During fiscal year 1994, standardized processes for handling Individual Indian Money accounts at the Area and Agency level were developed. This will be implemented in early FY 1995 through the distribution of this two volume set of desk operating procedures. Additionally, with the implementation of the recently awarded core trust system, significant controls and training will be provided to the field so that all processes are performed in a consistent manner.

Another notable achievement is the updating of the Individual Indian Money Accounts regulations. This marks the first major revision of these regulations in over twenty years. These have now been for published for comments and will be finalized in fiscal year 1995.

A loss policy has now been developed and implemented that requires account holders to be notified of errors, and provides for timely and efficient handling of adjustments. It incorporates the changes which have been suggested by the General Accounting Office and is now being permanently placed in the BIA Manual.

Indian Minerals Steering Committee

In your comments on our reform plan, you accurately highlighted that OTFM is but one component of the Secretary's trust functions. A key component of our reform plan is better intra-Departmental coordination. As you know, the Bureau of Land Management (BLM) and the Minerals Management Service (MMS) have significant roles in the inspection and enforcement of energy leases and in royalty collections. A committee composed of key line officials from BLM, MMS, and BIA has been formed to address needed reforms in the way in which trust assets are managed across bureau lines. The group, known as the Indian Minerals Steering Committee, replaces its predecessor, the Tripartite Committee, which we found to be ineffective largely because of the lack of direct involvement of senior policy level management in all three bureaus. We believe that the Committee has the potential to make a positive impact on reform efforts and we intend to use it to produce real results.

Bureau of Land Management

The Bureau of Land Management has created the Native American Program Office (NAPO) to fulfill BLM's trust responsibilities to tribes and account holders and more effectively involve the tribes in a broad spectrum of resource management and planning activities. The new office will be located in Santa Fe, New Mexico, and will function as field staff for the BLM Director, reporting directly to the BLM Deputy Director. This new office brings together the responsibilities of the former Native American Minerals Policy Office and those duties formerly dispersed throughout the BLM.

The BLM is involved in a variety of activities related specifically to Native American oil and gas interests. The BLM Tulsa District Office participates in oil and gas hearings conducted by the Oklahoma Corporation Commission (OCC) to represent Native American interests on critical issues such as well spacing, increased density drilling, and production allowables. In fact, the BLM in Oklahoma ratified well spacing determinations made by OCC. If necessary, the BLM issues Orders to protect Native American oil and gas interests.

The General Accounting Office report notes that the BIA, BLM, and MMS currently have management improvement initiatives under way which, if effectively implemented, could improve the Department of the Interior's management of Indian natural resources. The BLM agrees with this assessment. On the subject of natural resource asset management, BLM is working to improve its systems for asset management. The BLM is currently developing the Automated Fluid Mineral Support System (AFMSS) to improve its support of the oil and gas program. Initially, AFMSS will cover lease operations, inspection and enforcement of production facilities, and environmental compliance. Design work is expected to be completed by November 1994. If the design and testing go well, the system should be implemented in 1996. Improvements in these oil and gas business practices will benefit allottees and tribes by ensuring that they know and receive the royalty to which they are entitled. In addition, over the long term, we should benefit from increased cooperation among a variety of governmental and private parties who are currently working on the development of the system.

Under the Federal Oil and Gas Royalty Management Act (FOGMRA), BLM is responsible for production verification on Federal and Indian oil and gas leases. In 1989, the BLM Farmington District Office entered into a Cooperative Agreement with the Navajo Nation and certified three Navajo Nation inspectors. They are trained to perform all inspection functions which BLM Inspectors perform. The Nation also participates in the formulation of plans and budgets and helps to establish priorities for the inspection and enforcement program. The BLM has worked with the Bureau of Indian Affairs to train two realty staff members for inspection of Navajo allotted leases within the BLM Farmington District. The BLM also has cooperative agreements with the Southern Ute and Ute Mountain Ute Tribes in Colorado, the Jicarilla Apache Tribe in New Mexico, and most recently, the Blackfeet Tribe in Montana. The BLM is currently negotiating an agreement with the Shoshone Arapaho Tribe of the Wind River Reservation in Wyoming.

<u>Minerals Management Service</u>

Over the past several years the Minerals Management Service (MMS) has focused the entire program on the goal of creating a culture which strives for all royalty to be paid correctly and timely. To this end, we have developed and implemented a Compliance Action Plan, a 3-year effort designed to improve up-front compliance. The goal is to create a climate of compliance; a culture within the lessee community where paying correctly and timely is everyone's expectation. We want a royalty system simple enough, and the commitment to compliance strong enough, that all payments are both timely and correct. In the long run, it should be less expensive for companies to pay correctly than to make corrections when we find errors. However, a problem remains for which we need help.

We have proposed legislation to provide authority to make assessments on underpaid royalties similar to that of the IRS for underpaid taxes. Existing penalty authority for underreporting of royalties is not adequate. The proposal includes provisions specifically targeted to Indian leases. An underreporting provision was part of the NPR legislation that passed the House last fall, but has not moved in the Senate. We are eager to see this legislation enacted and would be happy to work with the Subcommittee to see that accomplished.

In addition, we have continued to expand our cooperative audit agreements under the Federal Oil and Gas Royalty Management Act. In this past year, the Shoshone/Arapahoe and the

Blackfeet Tribes were added to the list of those with fully funded agreements, bringing the total to six. In 1995, we expect the Jicarilla Apache to enter into an agreement. We have also moved forward in other key areas.

We have recently made substantial progress regarding the enforcement of special lease terms contained in many Indian mineral leases. MMS has reached agreements with many Tribes and allottee associations on data sources and calculation methodologies to be used for "major portion" analyses required by leases. Negotiations are underway with other Indian groups. We are also making progress with the requirement to perform "dual accounting" for gas and gas products, another special term contained in Indian leases. We will issue letters to Indian lessees requesting certification that this valuation approach is being properly applied.

As part of the Vice President's National Performance Review (NPR) initiative, a special workgroup, which includes representatives of Tribes and allottees, has drafted and the Department has published an Advance Notice of Proposed Rulemaking soliciting input on various concepts for valuing natural gas on Indian leases. We have made a conscious decision to separate this rulemaking from a similar one being conducted for Federal leases. Finally, the MMS has established three local offices located in Lakewood, Colorado, Farmington, New Mexico and Oklahoma City, Oklahoma. Each office provides service to Indian mineral owners on a walk-in basis or through a toll-free telephone line. The Farmington office was set up to function as multi-bureau center (MMS, BIA, and BLM) to assist the Indian community. As noted in the GAO report, it has not functioned as effectively as we had hoped. Therefore, an NPR Reinvention Laboratory will review operations at the office and recommend solutions to enable it to function properly.

Other Developments

While we are making significant progress in the areas I have just mentioned, much more remains to be done. But there are encouraging signs. After years of discussion and congressional recommendations by this Committee and others, about moving trust funds or portions of trust funds out of Interior, we have been engaged in productive discussions with the Treasury Department. Treasury has agreed to assist us in establishing a simplified investment process that will yield investment returns that equal or exceed the rates of return we have achieved during the past several years.

In your 1992 report, you emphasized the importance of maintaining up-to-date tribal and individual land ownership records. We are undertaking significant improvements in land and title records. We have sought and obtained budget increases in both the Fiscal Year 1994 and Fiscal Year 1995 appropriations to support these improvements. We have taken the essential first steps in a multi-phased process to modernize and automate federal Indian land records and ownership data vital to better fulfilling our Trust responsibilities. A joint effort is underway in the BIA through a business systems planning effort that involves both Office of Trust Fund Management and the Office of Trust Responsibilities. A real estate management

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reengineering effort at the Standing Rock Sioux Agency has been nominated as a National Performance Review Reinvention Laboratory.

Additionally, we are considering how to address fractionated ownership interests in trust lands. As you know the fractionation of Indian lands has expanded geometrically to the point where there are hundreds of thousands of tiny fractions of allotted land. Nationwide, it is estimated there are approximately 550,000 fractional interests of less than two percent, which account for over 60 percent of the total ownership interests. Fractionation of ownership interests on allotted lands discourages productive use of the lands, and creates a record keeping burden that is a root cause of many of the ills that beset trust funds management. Consolidation of these interests is key to restoring the full economic potential of Indian lands. We hope to be able to present this proposal to all interested parties in the next two months as part of the overall consultation process.

I realize that further coordination within the Bureau needs to be strengthened. Therefore, I am in the process of notifying the tribes and interested parties of options for creating a single accountable senior official for all aspects of trust funds and trust asset management within the BIA. I am committed to completing this consultation effort and acting to get this key official in place by December 31st of this year.

In the Secretary's Reform Plan issued in June of this year we acknowledged the need to develop an Individual Indian Money (IIM) reconciliation plan and to improve IIM related systems. Both of these efforts are slated to be major efforts in fiscal year 1995.

Guiding of Trust Funds and Trust Asset Management Reforms

I have taken the time in this statement to describe some of the results and major developments we have underway. These efforts have been guided by our overall plan for Indian trust funds and trust asset reform, better known as the Secretary's Six Point Reform Plan. Mr. Chairman, both you and the General Accounting Office have been calling for a comprehensive strategic plan. We believe the reform plan provides the overall guidance that is needed. Strategic planning is a dynamic process, not a static document.

We believe we have been heavily engaged in a process which analyzes the Secretary's overall trust fund mission; identifies all the activities needed to fulfill this mission; identifies improvement options; and establishes priorities and milestones and identify accountable officials. This has been done from the very first days of this Administration. The Secretary's proposed six-point plan is intended to identify comprehensively all reform efforts necessary to carry out the Secretary's overall trust fund and trust asset management mission. It is tied to our goals for trust management: ensuring the safe investment of trust funds at favorable rates of return, providing timely and accurate account holder information, correcting decades of accounting inadequacies, improving intra-Bureau coordination, and promotes tribal management of trust funds. It establishes priorities and milestones and identifies responsible officials.

A critical element of the strategic planning process is obtaining agreement on proposals to implement policies. In our case, this means internal Departmental, other Executive branch agencies, congressional, and most importantly, tribal agreement. This consultation process is occurring on the overall six-point plan and on the various components of the plan. We have already received valuable input from a number of sources. One of your criticisms of the plan was the fact that it did not address the fundamental organizational problems within the BIA. We intend to reform our plan accordingly, and have already begun the process of examining organizational alternatives and seeking tribal consultation, as I mentioned earlier.

We also would like to point out that our reform plan will always be an evolutionary process. However, I am willing and expect to be held accountable for real tangible improvements and results. I have met with Committee staff in November and again in June. I would like to continue with these types of informal discussions throughout the year and in the future.

Again, these achievements mark the start of changing the past course of mismanagement in fulfilling the Federal trust responsibility to Indian account holders. These reforms mark a significant beginning to reaching a threshold in the improved management of trust funds and trust assets. Your support, along with that of the tribes, tribal members, and their representatives is essential to enabling us to conquer this threshold. Certainly, as one looks over the record of this Committee, many past hearings have been held to try to convince those in the leadership roles to affect change. We are already deeply committed to bring about a final resolution to the problems which have plagued effective management of Indian trust funds and trust assets for many years.

We are all grappling with the extent and interconnection of these problems, weighing the recommendations and suggestions from the tribes, Congress, GAO, OMB, and other intertribal groups on how we can make improvements. I have learned that there are going to be many views when dealing with an issue as complex and multi-dimensional as this, there will also be times when we do not all see eye to eye on a particular approach under consideration.

We are committed to bringing about reforms together with you and all of the other interested parties, particularly the tribes and individuals whose assets we hold in trust. I look forward to continuing a constructive, open dialogue about our differences on particular issues.

I welcome your comments, views, and questions; and have asked BIA staff as well as that of the Department, MMS, and BLM, to be here today to respond to your concerns as we proceed in this hearing.

Mr. SYNAR. I want to start with some basic questions, especially about the Secretary's fiduciary duties to account holders. But, before I do, I want to ask each of you—Mr. Duffy, do you have any money held in the Indian trust funds?

Mr. DUFFY. Do I have any money in the Indian trust funds? No, sir.

Mr. SYNAR. Ms. Cohen, do you?

Ms. COHEN. Not that I know of.

Mr. SYNAR. Ada?

Ms. DEER. My tribe probably does. But, actually, I'm not sure. Myself personally, no.

Mr. SYNAR. Does your tribe get a regular accounting and do you know the exact amount?

Ms. DEER. I'm sorry, I don't know the answer to that question.

Mr. SYNAR. What about any of Secretary Babbitt's income or assets—have they been put in the trust fund? Does anyone know? The reason I ask this, as you all know, we have been trying for years to get this mess cleaned up. And in spite of your report here today, the fact is that we're not making real progress.

The truth is that, as in the past, the Department just lurches from crisis to crisis, from hearing to hearing, throwing a bunch of Band-Aid fixes together.

Now we're trying to move a legislative solution, only to find out that this Department is opposing it.

It seems like a pretty safe bet to me that if your money was in that trust fund we'd have these problems addressed pretty quick. Frankly, I've come around to thinking that if you're successful in killing this legislative effort, maybe the best alternative is a law that requires that your money go into the trust fund so that you can actually live with the same real problems, in a personal way, that the account holders have to.

Sometimes, I think you don't realize that there are living, breathing human beings at the other end of this mess, and that these trust funds are their lifeblood.

Mr. SYNAR. Mr. Duffy, you have clearly been heavily involved in the Department's efforts to address this trust fund situation. Why is that—do you have some background in trust fund management? You're involved in it?

Mr. DUFFY. Actually, I'm glad you asked that question because it gives me an opportunity to explain how I got into trust funds management in the first place.

My role at the Department is really to work with the Secretary, from the Secretary's Office, on issues that are assigned to me by the Secretary and of interest and importance to the Secretary. Early in 1993, the Secretary articulated this concern, primarily from a conversation he had had with you, about the question of whether or not the Indian trust funds could appropriately remain in the Bureau of Indian Affairs. To a large extent, my role in trust funds has been to focus on that issue and to try to bring to fruition some of the insights that you gave the Secretary at that meeting, which were——

Mr. SYNAR. Let me—let me get you pinned down here. Do you have any background in trust fund management, yes or no?

Mr. DUFFY. I do not.

Mr. SYNAR. All right. Has the Secretary delegated all his authority to you with respect to the trust fund management?

Mr. DUFFY. Absolutely not.

Mr. SYNAR. All right. Now, let's talk about the Secretary's fiduciary responsibility to the account holders.

Mr. DUFFY. Could I, Congressman, finish my discussion of how this came up?

Mr. SYNAR. No. I'm not—Mr. Duffy——

Mr. DUFFY. I will get an opportunity?

Mr. SYNAR. Mr. Duffy, you will be here a long time today, but you will answer my questions and not your questions, OK? I just want to get that straight right off the top.

Mr. DUFFY. I will have an opportunity to have some time.

Mr. SYNAR. As long as you answer the questions I ask, I'm going to give you all the time in the world. But if you start going off on tangents, I'm going to intervene, OK?

Now——

Mr. DUFFY. I thought my answer was responsive.

Mr. SYNAR. You failed the first test. Let's go and see if you can do the second test, OK?

All right.

In *Seminole Nation* v. *United States*, the Supreme Court held that in managing Indian trust funds, the United States has charged itself with "moral obligations of the highest responsibility and trust" and that its conduct in dealing with Indians should be judged by the most "exacting fiduciary standards." Do you think that's a pretty fair description of the Secretary's trust responsibility, Mr. Duffy?

Mr. DUFFY. I think it is, yes.

Mr. SYNAR. That's a pretty high standard. In short, isn't it true that, like any other trustee, the Secretary must at all times act in the best interests of the beneficiaries?

Mr. DUFFY. No, that is not correct.

Mr. SYNAR. Would you like to describe what you think the standard is?

Mr. DUFFY. My understanding of this, which comes directly to me from the Solicitor's Office, is that the cases are legion with respect to the fact that we do not have the same role as a private trustee. We are a government trustee.

Mr. SYNAR. Is that written? Is that a written opinion?

Mr. DUFFY. I believe it is.

Mr. SYNAR. Can we get a copy of that?

Mr. DUFFY. I think it is a series of case law that has been developed. I don't know whether they have had a written opinion on this, but I know that this has been the description.

Mr. SYNAR. I will leave the record open for that one. I think that would be very interesting to see.

Ms. Deer, according to a January 21, 1994 letter which you sent to all tribal leaders, which blasted the ITMA for criticizing the Department's management of funds, you state yourself—and I have this letter; I think you're familiar with it—that the Secretary's fiduciary duties to the trust fund account holders go well beyond those which are imposed on a private trustee or financial institution. Is that not correct, what your letter said?

Ms. DEER. That's my understanding.

Mr. SYNAR. Ms. Deer, you sent this letter to the tribal leaders because you were upset that Elouise Cobell, the Chair of the ITMA, had given a presentation in which she stated that the Secretary was not even meeting the basic duties which a fiduciary—such as a bank or an investment service—would have to meet. She asserted, for instance, that the BIA cannot accurately account for the trust funds.

Now, even though your letter blasted the ITMA for its criticism, the fact of the matter is that they were absolutely on target. And if you didn't know it before, you certainly must now know, that after listening to the whole morning of testimony, those criticisms by every source other than your Department are all on target.

Let's take the issue of accounting of the funds, for example. If I am an IIM account holder and the BIA sends me a statement that indicates that I have $1,000 in my account, can you, Ms. Deer, assure me that $1,000 is actually right?

Mr. Parris.

Mr. PARRIS. Mr. Chairman, the accounts ordinarily in an institution this large with that many accounts would be audited and there would be assurance by an independent party that the account balances are correct. The Bureau has not had those accounts audited and, therefore, I say that there would always be question that—as to whether the balances were accurate.

Mr. SYNAR. Since they have never been reconciled or audited, will we ever be able to give an accurate answer?

Mr. PARRIS. We are not able to honestly, address what's happened in the accounts from time immemorial. I don't believe that there are enough king's horses and king's men, as they say, to get all the records back together to get the kind of assurance to say, beyond a shadowof a doubt, that those account balances would not be in question.

Mr. SYNAR. All right. Ms. Deer, since one clear and absolute duty of the Secretary, as trustee, is to accurately account for the trust fund moneys—and we know he cannot currently do that, As Mr. Parris has just stated—the Secretary is not meeting his fiduciary responsibility; is he?

Ms. DEER. Not in that respect.

Mr. SYNAR. GAO and others have repeatedly testified that the Secretary also has the fiduciary duty to properly and prudently invest the funds at all times and to maximize the benefits according to his authority under the law.

Now, GAO has testified as recently as this morning, as you heard them, that the Secretary is still not meeting that duty. Do you take issue with that testimony?

Ms. DEER. No, that's basically accurate.

Mr. SYNAR. Let me ask you this, Mr. Duffy. As the trustee for those funds, does the Secretary have a duty to try and protect himself and the Department from liability for mismanagement of the trust funds, is that one of his duties as a trustee?

Mr. DUFFY. I'm sorry, I don't think I understood. Are you asking me whether or not we invested the money appropriately?

Mr. SYNAR. That's correct.

Mr. DUFFY. I think we invested the money appropriately, yes.

Mr. SYNAR. Does he have a duty to try to protect himself and the Department from liability for mismanagement of the funds?

Mr. DUFFY. Not for liability and mismanagement.

Mr. SYNAR. His duty is just the opposite, isn't it? That is, he is supposed to care about the best interests of the account holders, not his own liability; isn't that right, Mr. Duffy?

Mr. DUFFY. My understanding is that those concept go hand in hand. We certainly want to provide the utmost balance between high returns and prudent management. That is what we're trying to do.

Mr. SYNAR. You don't think one is paramount over the other one, do you?

Mr. DUFFY. I don't—that's really a question for the Solicitor. That's an issue of what the public trust responsibility of the Department is. That's something I'm not equipped to answer, and that's a unique question, unique to Indian Affairs.

Mr. SYNAR. In the fiscal year 1994 budget request, Ms. Deer, the Department requested that Congress delete language that we've put in the law for several consecutive years, tolling the statute of limitations on the bringing of legal actions by account holders against the Secretary until the reconciliation process is complete. We put that in as a matter of simple fairness and equity. Why did you all request that that be deleted from the law?

Ms. COHEN. Can I answer that?

Mr. SYNAR. Yes.

Ms. COHEN. That was when this administration just took office, and there was confusion, and it was an error; and I believe that we indicated that in our testimony to the Appropriations Committee.

Mr. SYNAR. I'll take that as something that could happen.

Now, clearly a duty of the Secretary is to properly account for the trust funds, and Congress thinks the account owners have a right to know what is in their accounts. So as you know, we have been adding a provision to the law for many years that requires a complete reconciliation of the accounts before you make an effort to transfer trust funds to any party like an outside bank.

Yet, in both the fiscal year 1994 and 1995 budget submissions, you all requested that Congress delete that restriction. Why? Is it because your real goal is to ultimately dump this whole program on somebody else, or what?

Mr. Duffy.

Mr. DUFFY. We don't have any goal of dumping the program. As I started to say, I think we were trying to followup and have been trying to followup on the 1992 report by this committee, which, correctly indicated that there might be some benefit in moving the management of trust funds outside of the Department of the Interior.

Now, in the process of examining that possibility, we found that it would be extremely difficult to move all of trust funds management out of the Department of the Interior. Therefore, we concentrated our efforts on moving the investment portion out. In fact, my understanding was that GAO was doing a report at the request of your committee, which was designed to help us in identifying other Federal agencies that might take the investment portion. Now, I believe that report has just been issued.

But in December 1993, we received a tentative report from GAO which said in their conclusion, there was no Federal agency which could take the investment portion. With that in mind and with our conclusion and the Secretary's strong feeling that the investment portion should be outside of BIA, we looked to third-party alternatives while continuing our efforts with the Federal administration. After some work we identified in the Treasury Department an opportunity to allow an organization of the Federal Government with unquestioned ability in this area to take these funds, and the Treasury has agreed to take them.

What we are now negotiating is the terms on which the Treasury will take them. The Office of Trust Fund Management has assured us that if the Treasury takes the funds at the present time and ladders them, they will achieve as good or better a return than they are achieving now. And that's because we will be finally getting these trust funds in a single group, as opposed to being disbursed.

Mr. SYNAR. Does this prohibition stop you from moving funds into Treasury?

Mr. DUFFY. Not to Treasury. But our concern was if we couldn't get it within the Federal Government, we would need to move it to some other place.

Mr. SYNAR. You won't be requesting this again then, since that's what you are going to do?

Mr. DUFFY. My understanding is—and again, I'm not a solicitor, so I can't answer it definitively—but my understanding is that we are required to reconcile before we move it. I have always assumed that that would not be an impediment to our moving it to another department, but I really can't say.

Mr. SYNAR. All right.

On November 8, 1993, Secretary Babbitt signed an order entitled, "Departmental Responsibilities for Indian Trust Funds." Now this order states that its purpose is to "ensure that the trust resources of federally recognized tribes and their members that may be affected by the activities of the Department's bureaus and offices are identified, conserved and protected."

Ms. Deer, what prompted the Secretary to issue that order?

Ms. DEER. I think he's very cognizant of his responsibilities and, to my knowledge, this is the first Secretary's order of this type. It is a very historical step.

Mr. SYNAR. The Secretary had been in office a year. What prompted it at that point?

Ms. DEER. I'm sorry, I can't tell you.

Mr. SYNAR. Mr. Duffy, do you know?

Mr. DUFFY. I believe I do. I think that there was a feeling on a the part of a number of people, both in the Bureau of Indian Affairs, in the Office of the Associate Solicitor of Indian Affairs, and with others that it would be good for the Secretary to go on record as articulating the policy which, although we believed it was inherent in the responsibilities of the Department, nonetheless needed to be stated formally and officially. There is no doubt that what the

Secretary stated was not new, but to state it was new, because I don't think it had been stated that clearly before.

Mr. SYNAR. Secretary Babbitt's order requires consultation with tribes on any action by any bureau or office if that action would affect Indian trust assets. And to make sure this requires consultation takes place, it also requires that every bureau and office prepare and publish—by October 1 of this year—procedures and directives to ensure that their respective units are fully aware of that order; is that correct, Ms. Deer?

Ms. DEER. That's my understanding.

Mr. SYNAR. We must assume this isn't being done, since just a few weeks ago you asked Secretary Babbitt to extend that deadline 8 more months until June 1, 1995. And on August 17, he did that at your request. Now, your request memo to the Secretary says that "significant progress" has been made in meeting of the requirements of the order. What progress specifically has been made? For instance, has any bureau or office actually produced a document as required by the Secretary's order, even in draft form, outlining procedures and directives to ensure that their units are fully aware of and enforcing the order's requirement? Any office? Has any office done this?

Ms. DEER. I have a list here which I can enter into the record which outlines what is being done. As an example, we have the Minerals Management Service. It is currently sharing a draft plan with the tribes' allottees, BIA offices and will prepare a final draft after comments from these offices are received.

The Office of Surface Mining has adopted a schedule for completion of a directive on coordination and consultation with Indian tribes. This directive would apply to both abandoned mine land as well as active mines. The draft will be submitted to the American Indian Trust for review in March 1995.

The Bureau of Reclamation has developed procedures for the protection of trust assets in advance of a Secretary's order. Subsequent to the order, Bureau of Reclamation developed a supplementary set of common questions and answers about Indian-Alaska Native trust resources. The procedures and supplementary documents were reviewed by the Office of American Indian Trust and were found to be in substantial compliance with the order. So there are other——

Mr. SYNAR. Is BIA on your list there? Was BIA on there?

Ms. DEER. Of course, Those are not our entire efforts.

Mr. SYNAR. To your knowledge, as of today, is there any draft document available? What you have here is basically schedules to accomplish a draft document. But those are all in MMS, are they not?

Mr. DUFFY. I think she testified——

Mr. SYNAR. MMS has a draft, right, that's what you said. But there's no draft of any document for BIA, correct? And the best you are going to give me today, after making this great statement of significant progress, is that we now have somewhat of a schedule. That's it? That's what "significant progress" has now become?

Ms. DEER. We're talking about Secretary's Order 3175, right?

Mr. SYNAR. Yes.

Ms. DEER. And the progress that has been made by a number of the bureaus in the Department?

Ms. COHEN. I think a number of the bureaus have also identified specific activities that they will be involved in consultation. We can submit that to you.

Mr. SYNAR. Well, I don't understand. Explain something to me. If MMS can have a draft, why can't everybody else have a draft?

Mr. DUFFY. In fact, the Bureau of Reclamation has more than a draft. They have their policy, and it has already been produced.

Mr. SYNAR. You will provide all of this for the record.

Mr. DUFFY. We will be very happy to provide this for the record.

[The information can be found in the appendix.]

Mr. SYNAR. Mr. Clinger.

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

I think the last hearing we held on this was back in 1991. At that time, very strong recommendations and a strong direction, I think, was given at that time that consultation with the tribes was clearly inadequate and really almost nonexistent.

The testimony I heard of the last panel will suggest that really has not changed, that they have felt that they were not included in adequate consultation on any of the activities that have gone on. So I guess—I guess I would ask just the fundamental question, should the tribes be equal partners concerning these matters? Is that the view of the Department? Are they only being consulted upon prodding by the Congress, or is there a sense in the Department that they should be an equal partner in this exercise?

Ms. DEER. Proper consultation is a fundamental policy.

Mr. CLINGER. So the Department accepts as a fundamental policy that the tribes will be equal partners and will be fully involved in consultation? And yet, I think you're indicating that that—the mechanisms for doing this will not be in place for at least another 8 months. Is that a fair statement? You asked for an extension till June of next year?

Ms. DEER. The Secretary's order generated various efforts in a number of the bureaus, and it was felt that to best implement this bureauwide, or departmentwide, this extension would be necessary.

Mr. CLINGER. So for us to really sense whether "significant progress," other than getting ready to make progress, in fact happens, we will have to convene another hearing, presumably next June. Is that right? By that time, you will have in place what you propose to have, at least?

Ms. DEER. What I would propose between now and then is interim reports sent to the committee so you can see the progress that's being made, and then you could decide whether or not a hearing was necessary.

Mr. CLINGER. Has BIA ever been approached by any tribes asking to have all of their trust funds closed because the tribe believes that they can do a better job of handling their accounts in the private sector? And if you have had such a response or have had such an inquiry, what has been the response?

Mr. Parris.

Mr. PARRIS. Yes. We've been approached by the Navajo Tribe to distribute their funds. The tribes asked to also include the judgment award funds which we are not able to distribute because of legislative restrictions on the Department. Yes, we've been asked by tribes to distribute their moneys to them, and to close out their accounts.

Mr. CLINGER. And your response is that because of existing legislation, that cannot be accomplished?

Mr. PARRIS. Well, we have distributed the moneys to them which we can without any legislative restrictions. We are fully willing to work with them on transition of the funds to them.

Mr. CLINGER. But there are limitations right now in their right to self-determination, right?

Mr. PARRIS. Correct.

Mr. CLINGER. What would need to be done to change that? Will it require legislative action to give them a greater degree of self-determination?

Mr. PARRIS. The bill that is currently before Congress, as proposed, will allow the tribes to withdraw those funds, as I understand it.

Mr. CLINGER. Is it my understanding the Department opposes this legislation?

Mr. DUFFY. No, we don't.

Mr. CLINGER. It is my understanding you do not have——

Mr. DUFFY. We oppose the demonstration project. Our proposal would be to allow the tribes to take the money, as well, but not to have a demonstration project. So we agree that the Navajos should be allowed to take their tribal funds out and manage them if they so choose.

Mr. CLINGER. Why would you oppose the demonstration project?

Mr. DUFFY. There are a number of reasons. I think it would be better for me here to defer to Assistant Secretary Deer as the better person to answer this question.

Mr. CLINGER. So does the administration have an official position on H.R. 1846?

Mr. DUFFY. I believe we do. I believe we have sent a document dealing with 925 and with this bill, as well, and that we believe the demonstration project is unnecessary. Our view is that if you have a demonstration project, what you're trying to do is to determine whether something will work. But we've already reached the conclusion that tribes should be permitted to take their money out if they want to and to put it back in under some limitations. We do not want to terminate the trust responsibility or the trust right of tribes. There won't be a termination. There would be a right for the tribes to take money out and put it back in. The proposed limitation reflects the practical logistics of being able to do that. Obviously, the tribes can't put them in and take them out month by month.

Mr. SYNAR. Then let's make this clear. While the money's out, you would sever the trust relationship?

Mr. DUFFY. It would sever our responsibility.

Mr. SYNAR. Sever your responsibility for their liability?

Mr. DUFFY. That's correct. And we think it is appropriate.

Mr. SYNAR. Mr. Clinger, for the record, they're opposed to what we're trying to do with our legislation.

Mr. CLINGER. That was my understanding, as well. Thank you.

Mr. SYNAR. All right.

There are obviously dozens of separate issues and problems that we are going to talk about here today, and I am almost at a loss where to start. So I am just going to walk through the issues as you raise them in your testimony. Let's start with the "significant progress" your report claims on the reconciliation project.

Ms. Deer, your prepared testimony states that "It is imperative that we provide as accurate an accounting as practical for tribal transactions and balances which have been neglected over the course of many, many years." You are conceding that historically the Department has not accurately accounted for the trust funds, and even after reconciliation, we will not have reliable accurate account balances. Your statement says "as accurate as practical"?

Ms. DEER. I believe it is. I believe Mr. Parris can probably answer that in more detail.

Mr. PARRIS. Mr. Chairman, I believe that the reconciliation project is only attempting to reconcile the tribal accounts, at this time, back for a 20-year period. Not all tribes are going to be satisfied with that approach. It is fair to say that we cannot guarantee that the balances are going to be accurate as a result of that effort.

Mr. SYNAR. All right.

Your testimony notes, Ms. Deer, that the reconciliation project on tribal accounts has a number of facets. You indicate that you are committed to completing this effort by September 1995. We are already 3½ years into this effort. Which effort do you hope to complete by then: the whole reconciliation process for all the tribal accounts or just the first phase of the tribal reconciliation project?

Mr. Parris.

Mr. PARRIS. In June of this year, as part of the six-point plan proposed by the Department, we indicated that September 1995 would be the target date for having the tribal accounts reconciled for that 20-year period that we are attempting.

Mr. SYNAR. All tribal accounts?

Mr. PARRIS. At that point we were being told that was doable by both Bureau managers in charge.

Mr. SYNAR. You have been told. Is that still the case?

Mr. PARRIS. I am told that Arthur Andersen is suggesting that it will take longer than that.

Mr. SYNAR. How much longer?

Mr. PARRIS. Based on certain assumptions with which we're not completely sure that we can agree, they're proposing that it would take on into 1997.

Mr. SYNAR. Two more years beyond——

Mr. PARRIS. Yes, sir.

Mr. SYNAR. Even for the five pilot accounts you are having significant problems, aren't you, especially with things like missing documents? For example, as I said earlier, at Flathead, isn't it true there is a huge amount of documentation that just isn't there—it has been destroyed?

Mr. PARRIS. There have been documents for certain periods with the Five Tribes pilot that have been noted as being missing, and obviously that's a serious problem. It makes it very difficult, if not impossible, to try to gain assurance, give assurance to the tribe that their account balances are accurate.

Mr. SYNAR. Isn't it true that only recently, Mr. Parris, the Bureau of Indian Affairs has told the General Services Administration not to destroy these types of older documents?

Mr. PARRIS. It has been within the last couple of years, yes, sir.

Mr. SYNAR. On another pilot, the Fort Berthold Pilot, your June 1994 response to GAO's April report states that "the agency office was informed by the Indian Health Service that the area where the leases were stored has fungus and is harmful to one's health."

Ms. Deer, what does that mean? We can't get to those documents, either?

Mr. Parris?

Mr. PARRIS. It means that there were serious problems with gaining access to those documents, yes.

Mr. SYNAR. Did you ask EPA for help? [Laughter.]

Mr. PARRIS. I don't believe so.

Mr. SYNAR. In the same letter you say with respect to the Fort Peck Pilot that "the area where leases were stored was flooded and leases were destroyed." And you go on and on with regard to all the documents that simply aren't going to be there for the reconciliation effort.

Now, in reality, a full reconciliation cannot be done without all the source documents; isn't that correct, Mr. Parris?

Mr. PARRIS. That's correct.

Mr. SYNAR. Despite the Department's assertion that tremendous progress is being made on the tribal reconciliation effort—and let me say that I do recognize that it has been a tremendous task that we're asking you all to do—progress isn't quite all it has been made out to be.

For example, isn't it true that the work-to-date involves only the noninvestment tribal account transactions? You haven't even reconciled the investment transactions, have you?

Mr. PARRIS. We have not addressed the reconciliation activity on investments yet. We haven't covered that part yet.

Mr. SYNAR. During the briefing for us in June, the Department reported that Arthur Andersen, the reconciliation contractor, was finding a very low error rate in those noninvestment transactions.

Now, in my July 5 letter to you on the Department's six-point plan, which we'll get into later, I questioned the real progress being made and the reliability of the low error rate. In response, Ms. Deer, your August 4 letter to me concedes both points. On these questions your letter says, and I want to read it,

> The projected error rate is only related to the errors in the posting of non-investment financial transactions greater than $1,000 in the principal amount to the general ledger for which there is a known universe and a majority of related source documents. We agree this error rate is not applicable to all components of the reconciliation project. The investment analysis component of this project is still in progress and no error projections can be made.

With so many qualifications and limitations in that explanation, Ms. Deer, I'm not sure if the projected error rate means anything at all, no matter how much the Department brags about it. What do you think?

Ms. DEER. I would have to defer to the expert, Mr. Parris.

Mr. SYNAR. Mr. Parris, given that explanation I just read, what has been reconciled and what still remains to be?

Mr. PARRIS. Obviously the first phase of our reconciliation project that has been completed——

Mr. SYNAR. I didn't ask you that. I'm gonna play tough with you, too. What has been reconciled?

Mr. PARRIS. In noninvestment-related activity nothing has been reconciled.

Mr. SYNAR. Good answer. Totally?

Mr. PARRIS. In total, that's correct.

Mr. SYNAR. That's right.

As you are aware, Congress has required not only reconciliation and audit, but also that a separate independent firm certify that reconciliation work. Now, Coopers & Lybrand had been hired as that certification contractor.

Ms. Deer, isn't it true that Coopers & Lybrand will only be certifying that Arthur Andersen did their job as laid out by the contract; they will not be certifying the accuracy of the account balances that are developed by Arthur Andersen? Mr. Parris?

Mr. PARRIS. That's correct. They will be certifying only that Arthur Andersen is complying with the terms of the contract.

Mr. SYNAR. Ms. Deer, are you expecting lawsuits as a result of the reconciliation effort?

Ms. DEER. It's possible, but I hope people will look at the effort that we're exerting here to reconcile.

Mr. SYNAR. Mr. Duffy, are you expecting them?

Mr. DUFFY. I'm not, no.

Mr. SYNAR. Mr. Parris?

Mr. PARRIS. It wouldn't surprise me.

Ms. COHEN. Excuse me.

Mr. SYNAR. Yes.

Ms. COHEN. Could I say something on the Arthur Andersen and the Coopers overlook of Arthur Andersen? Because this came up earlier in the morning in connection with GAO, so I'd like to set the record straight.

Arthur Andersen did not come in, at least as far as I know, and agitate not to have Coopers involved in overlooking their work. They came in and explained to us what they were doing and we asked the role of Coopers, again being new, and questioned whether or not it was redundant. And if I'm—I think I remember that GAO was in that meeting. Wherever they are, I thought they were in that meeting. But that was the extent of the discussion.

And then it was explained to us that this was a priority of Congress', and we never did anything with it. But it was not an appeal on Arthur Andersen's part, as least as far as I know.

Mr. SYNAR. Now you are aware—I know you are not new. You are aware we required the separate certification—there wasn't any question what we wanted?

Ms. COHEN. That's right. And so we had a discussion——

Mr. SYNAR. There shouldn't have been any debate at all.

Ms. COHEN. There was no debate. There was a discussion as to what was going on because of the amount of resources being invested.

Mr. SYNAR. It doesn't matter. We told you to do it.

Ms. COHEN. And that's what we were told. And so we dropped the discussion.

Mr. SYNAR. Now, according to a set of notes from a June 15, 1994 meeting between BIA and the contractor representatives—someone at Interior is expecting lawsuits. Mr. Schultz of Coopers & Lybrand comments that in talking to Pam West—I think she is in the Interior Department—"possible great liability for the government." .

Mr. LaBorde of Arthur Andersen then responds that "It's too bad that this [reconciliation effort] couldn't be put under privilege. There will be lawsuits, no doubt about it, and may pull Arthur Andersen and Coopers & Lybrand into it."

Are lawsuits expected because the reconciliation won't result in the Department being able to provide accurate account balances?

Mr. DUFFY. Do you want me to respond?

Mr. SYNAR. Yes, Mr. Duffy.

Mr. DUFFY. I believe Pam West is at the Justice Department, as I have been told. But I think—and perhaps I misunderstand, Mr. Chairman, but I don't think the reconciliation has ever been considered to be an audit.

Basically, what we are trying to do here is determine in some way whether or not there are reasons to believe that significant errors have been made in the accounting. It was never anticipated that all of the records would be obtained. There was no way they were all going to be obtained. What was anticipated was that we would do the best we could and then come up with a question as to how much—given a percentage or other statistical analysis, how much evidence there was of significant error or failure. So I don't expect and/or anticipate lawsuits here.

We are attempting to reach an idea for ourselves, the Department, using the certification and reconciliation method given to us by the past administration and by Congress. We are trying to determine if there have been serious problems. That's what I understand the reconciliation to be about.

Mr. SYNAR. You're not expecting that low error rate to hold out, as being where we are going to end up?

Mr. DUFFY. I don't—I have no reason to believe we won't end up there. I think there's no reason to believe one way or the other that there will be greater or lesser errors. What we found is that, in posting, there are a small number of errors.

Ms. COHEN. I also think it is not an error rate that we hold out. It is only the error rate that they found. It is not applicable to anything else, but it is what was found.

Mr. SYNAR. Ms. Deer, your testimony goes on to state that "For the first time in over 20 years, we are reconciling transactions and maintaining current balances for the tribal and individual Indian money accounts on a regular basis." We are obviously glad to hear that.

But just for the record, that does not mean that the existing balances, the ones you are working on, are actually accurate, does it?

Ms. DEER. I'd presume not.

Mr. Parris, would you have additional comments?

Mr. PARRIS. No, there is no way. I think when Arthur Andersen issued their audit reports for 1988, 1989, and 1990, they qualified their opinions at that time because of the cash balances not being able to go beyond prior years.

Mr. SYNAR. Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman.

I want to move on to the next item addressed in your testimony, which is the acquisition of the core trust fund system that Mr. Parris—I think we need to give you credit where it's due and commend you and the Department for getting on top of this. We understand that acquisition of this new core trust fund system was scheduled to be completed, finished, done with by September 30, which is about 3 days from now. Are you on track to get this done?

Mr. PARRIS. The goal was to have it awarded by September 30 and implemented by March 31, 1995. We will have meetings later this week with the contractor to begin the process of developing an implementation plan and a conversion plan to accomplish that.

Mr. CLINGER. So what did you propose to have done by this Friday?

Mr. PARRIS. The award of the contract itself, which we did.

Mr. CLINGER. Will that happen?

Mr. PARRIS. Yes.

Mr. CLINGER. OK. It's already been done?

Mr. PARRIS. It's already been signed, yes.

Mr. CLINGER. The acquisition of this system was strongly recommended by GAO some time ago, wasn't it, Ms. Deer? This isn't something new.

Ms. DEER. I believe that's right.

Mr. CLINGER. Ms. Deer, in the section on this system, your testimony again talks about maintaining accurate account balances, and we went through this a moment ago. The chairman went through this a moment ago. The new system will certainly help ensure that the future transactions are accurately reported, but it won't suddenly make all existing account balances accurate, will it?

Mr. PARRIS. No. If I can explain, what we were getting at in that part of the testimony was that since October 1, 1992, we have been reconciling the tribal accounts and the individual Indian money account activity on a monthly basis. We do the reconciliation on the tribal accounts in our office, Office of Trust Fund Management, every month and we monitor all of the area office activity relative to the individual Indian money account reconciliation each month.

We do this through use of a series of techniques, one of which is to access daily on-line, real-time systems data bases from Treasury that give us access to when deposits are made to the trust accounts and we can track the activity on a daily basis.

Mr. CLINGER. So we have some—some hope that what is going on now, in the future will be accurate. But my question is, we can't really ensure that what went on in the past is accurate?

Mr. PARRIS. The balance isn't what we are attesting to, no.

Mr. CLINGER. To ensure that you, as trustee, collect all the moneys that account holders are entitled to under leases and other agreements, GAO, in its report, strongly recommended—not just now but in the past—that you put in place an accounts receivable system. And in fact, they basically said that without such an accounts receivable system, you can't ensure you are collecting everything the account holders are entitled to. We have had testimony in past hearings about the shocking disparity in what the tribes were entitled to and what they were given credit for.

So, in fact, they basically said you can't ensure you are collecting everything the account holders are entitled to. Do you plan to put an accounts receivable system in place? And if not, why not?

Ms. DEER. I think that, Mr. Clinger, if I may suggest that we call upon our deputy, Ms. Donna Erwin. She is deputy to OTFM and can provide some additional information.

Mr. CLINGER. With specific question on the accounts receivable issue——

Ms. ERWIN. I'm Donna Erwin.

Mr. SYNAR. Please come to the table. Did you get sworn in?

Mr. DUFFY. Yes, she did.

I'd be happy to step back.

Ms. ERWIN. To the extent possible, there are certain things within the tribal and the core trust system that will enable us to track the accounts receivables as far as the investments, the investment activity. We will be able to project when something is due and post it on the day that that is due.

As far as the IIM and a total accounts receivable system, that will be addressed during that first 6 months of 1995 when we have the teams that will be evaluating and doing an analysis with the options on what we'll do for the total IIM system.

Mr. CLINGER. So you're saying you'll make a decision on accounts receivable within the next 6 months; is that——

Ms. ERWIN. We are scheduled to be—during January to June 1995 to actually have teams put into place to do an analysis and be able to restructure and have the plan for restructuring the IIM system. That will be the total accounts receivable.

Mr. CLINGER. Right.

Ms. ERWIN. This will actually make great strides in improving what we have as far as investments, and we'll be able to track when an interest is due and when a maturity is due. It will automatically post, just like private-sector trust departments are doing.

Mr. CLINGER. So just very simply, are you basically then complying with what the GAO—and do you intend to comply with the GAO recommendation in this regard?

Ms. ERWIN. Yes, we definitely intend to and it is a very major focus. But we're doing this in phases. We cannot do all of it. So the first phase is the investment side with the system. The second phase will be when we are evaluating the total IIM system.

Mr. CLINGER. OK. Thank you.

Mr. SYNAR. Mr. Parris, your staffing plan to get 49 new key positions in the Office of Trust Fund Management was finally approved in April 1994, right?

Mr. PARRIS. Yes. It was actually, I believe, 43 positions that were approved in April.

Mr. SYNAR. That took 2 years to get that plan approved; did it not?

Mr. PARRIS. Yes, it did.

Mr. SYNAR. Ms. Deer, your testimony today states that the OTFM staffing plan will "be fully implemented by the end of this year." Now, my understanding is that Mr. Parris was only able to fill 20 or so out of 49 of the positions this fiscal year, even though we appropriated the money. And when you say you will be filled "by the end of the year," do you mean all the rest of the new positions are going to be filled by Friday, the end of the fiscal year, or by December 31?

Mr. PARRIS. By December 31.

Mr. SYNAR. In discussing the employer reductions that will have to take place at Interior over the next few years, your testimony states that OTFM will be "held harmless." By that, do you mean that the OTFM won't suffer from a reduction from the current number of employees, or do you mean, Mr. Parris, that you will fill all the rest of the new staffing positions despite future cutbacks everywhere else?

Mr. PARRIS. It is my understanding we are going to be allowed to fill the positions that we've been authorized under the 130 DM.

Mr. SYNAR. So you're going to fill the 25 you don't have?

Mr. PARRIS. That's right.

Mr. SYNAR. Are you going to cut them from elsewhere?

Mr. PARRIS. I am not aware of that being the case. I don't know. I just know that we are being allowed to fill the positions in our office.

Mr. SYNAR. You are going to go up to 109?

Mr. PARRIS. One hundred seven.

Mr. SYNAR. One hundred seven? OK.

We have a copy, Mr. Parris, of a draft proposed plan to reduce GS/GM–14 and –15 positions. It's dated August 24, 1994, and was sent by the Acting Deputy Commissioner of Indian Affairs to all area and central office directors for comments. With respect specifically to your office, this new proposal calls for an OTFM organization consisting of "an office of the director, administrative support staff, 5 divisions, 12 branches and a supervisory ratio of 1 to 5.25." Is that correct?

First of all, are you familiar with the document?

Mr. PARRIS. I'm familiar with the document, yes.

Mr. SYNAR. All right. Is this proposed reduction and consolidation consistent with the DM–130 staffing plan which we just talked about, which was approved in April after 2 years of waiting?

Mr. PARRIS. It was my understanding that that document doesn't apply to OTFM, in other words, the Assistant Secretary signed a memorandum here about a week and a half ago that indicated that we would be held harmless from that.

Mr. SYNAR. So there was a change, right?

Mr. PARRIS. Yes. Yes, there was.

Mr. SYNAR. All right.

Ms. Cohen, we have copy of the June 20, 1994, streamlining proposal for BIA, more formally called "Reengineering the Bureau of Indian Affairs in Accordance with the National Performance Review." Ms. Deer, I understand that on September 16 you had a meeting with your employees to outline this plan, apparently 3 months after it was developed and shortly before it was to be finalized. Is that correct?

Ms. COHEN. September 16?

Mr. SYNAR. Yes.

Ms. COHEN. A meeting with?

Mr. SYNAR. An "an all-employees meeting, Assistant Secretary of Indian Affairs, September 16." We have your notes from the meeting.

Ada, did you have the meeting?

Ms. DEER. Oh, yes.

Mr. SYNAR. You had the meeting, OK. Were your employees' union, tribal, and other Indian group representatives involved in developing this plan?

Ms. DEER. We have two streams of efforts going on here. One, we have suggestions made by the DOI/BIA Indian task force, and then we also have the streamlining directive by the reinventing government initiative. We have incorporated a number of the suggestions from the task force into the streamlining plan.

Mr. SYNAR. The specific plan—I'm interested in the specific plan; were the employees' union, tribal, or Indian group representatives involved in developing the plan of June 20.

Ms. DEER. This plan, as far as I know, was developed within the Department, within the Bureau.

Mr. SYNAR. All right. Among other things, this plan proposes that all Federal Indian programs, including those at HHS, be consolidated with BIA and elevated to a Cabinet-level Department of Indian Affairs. Frankly, I would have advised you to consult with some people up here about that idea before you put it on paper.

But in any event, it also proposes what amounts to be a massive decentralization of your employees out to the field. Since so many trust-related problems are already in the field, how do you think this massive decentralization will help you deal with the trust fund operation problems?

Ms. DEER. You have put your finger on a very important problem. We have, again, two efforts going on. We have the high priority of resolving the trust funds issue, which requires resources and the staff, on which we have finally gotten approval, and are in the process of doing, and at the same time, we have the streamlining effort going on.

So we are going to have to sit down and figure this out, but let me say that I am very committed to considering exemptions for this. There have been exemptions made in other areas, and this would be high on the list to be considered.

Mr. SYNAR. Clearly, it does have an impact on the trust fund functions. Was that considered when the streamlining plan was being considered?

Ms. DEER. Not in this particular plan, no.

Mr. SYNAR. Why not?

Ms. COHEN. Can I just add something?

Mr. SYNAR. Yes, Ms. Cohen.

Ms. COHEN. The streamlining plan and moving to decentralization and reducing administrative offices, central offices, by some large percent is true across the Department, but simultaneously across the Department we are making clear that the—in no case is the financial integrity or efforts being made to strengthen financial systems to be sacrificed to this decentralization. So I think that is—as Ms. Deer is indicating, the Indian trust fund efforts would certainly be one that would require careful study before any kind of decentralization.

Mr. SYNAR. This was a high priority. I mean, you knew that before this reorganization effort started. I mean, this is not like this is the first time we've brought this subject up. You knew it was a high priority.

Ms. COHEN. I know it's a high priority.

Mr. SYNAR. Well, why wasn't it part of the consideration?

Ms. COHEN. It is part of the consideration.

Mr. SYNAR. Before June?

Ms. COHEN. It's—it's part of the consideration all the time. The various bureaus are looking at ways they can decentralize activities. But in no case—and they are only in the planning stages—in no case is any decentralization going forward that undermines the financial efforts of the Department.

Mr. SYNAR. Well, the talking points paper from the September 16 meeting of the BIA employees states that, even though a 50-percent cut in the FTE's was required by 1999, you intend to downsize the central office by 50 percent beginning in fiscal year 1995; and you have apparently plan to complete it by the fourth quarter of 1996. Who's going to be left at headquarters to oversee all these trust fund reforms?

Ms. DEER. Well, this is what I meant, we have to now sit down at the table and figure this out. We are not unmindful of all of our responsibilities.

Mr. SYNAR. You have already made the decision—let me go back.

According to this information, by September 20—we're having a hard time with this, because the memo just doesn't follow what you're saying. According to this information, by September 23, 1994, last Friday, all bureaus within the Department were to have provided additional detailed information regarding the streamlining plans—that's correct, is it not—and a statement in some September 29 talking points states that "BIA will proceed with the implementation of our June 20, 1994 streamlining plan."

First, do you intend to proceed with the streamlining plan as laid out in the June 20 document?

Ms. DEER. We are attempting to comply, as I mentioned earlier, with the reinventing streamlining effort, as directed through the Vice President's initiative; and we are not unmindful of our financial responsibilities and obligations. So we are going to have to sit down and really look at this.

Mr. SYNAR. Mr. Parris, I'm sorry to have to put you on the spot again. Were you involved in developing this plan?

Mr. PARRIS. No. We would get memoranda sent to us from time to time.

Mr. SYNAR. Is there anything in this June 20, 1994, streamlining plan that would adversely affect your organization in terms of the progress you are making in getting OTFM on track?

Mr. PARRIS. Anything that would impact or reduce the number of people in our office at this point would impact our ability to meet the goals and objectives we set out in our strategic plan.

Mr. SYNAR. Mr. Clinger.

Mr. CLINGER. Just following up on that, it seems to me that if, as you have indicated, what is proposed in this plan is going to result in reducing the resources you have available to conduct the function of your office that you should have been consulted about that before the plan was finalized.

Mr. PARRIS. I would have liked to have participated.

Mr. CLINGER. Appreciated that opportunity?

Mr. PARRIS. Yes.

Mr. SYNAR. As always, Clinger hit the point right on the head, when I couldn't find the hammer.

Mr. CLINGER. Let me move to another area here, the progress that you discuss concerning the BLM trust-related functions. You note establishment of BLM's new Native American Program office in Santa Fe.

Mr. Parris, do you have authority over these people and their trust fund-related activities?

Mr. PARRIS. We have had no contact with Bureau of Land Management in the implementation of that or installation of that office.

Mr. CLINGER. So the answer is no?

Mr. PARRIS. No.

Mr. CLINGER. You don't have any authority over that office?

Mr. PARRIS. No, I do not.

Mr. CLINGER. You also note that BLM agrees with GAO that some of their management initiatives, "if effectively implemented," in quotes, could improve the Department's management of the natural resources program. Like things we discussed before, haven't these initiatives been under way for some considerable period of time?

Ms. DEER. Mr. Clinger, we do have a staff member, Mr. Steve Richardson, here from BLM, and I think he could answer in detail some of your points.

Mr. CLINGER. Well, we would appreciate hearing from Mr. Richardson, as always.

Ms. DEER. I think you are familiar with him.

Mr. CLINGER. Yes.

Mr. SYNAR. I've kind of waited for this moment for a long time.

Mr. RICHARDSON. So have I.

Mr. SYNAR. You are under oath.

Mr. CLINGER. Before—before implying, I think the simple answer, one-word answer to the initial question was, haven't these initiatives been under consideration for some period of time?

Mr. RICHARDSON. Yes, sir.

Mr. CLINGER. Well, do you want to amplify on what—what is the present status of these proposals?

Mr. RICHARDSON. Yes; I think that what we have tried to do in terms of implementing the secretarial directive is to begin to organize efforts that give a greater accountability to production verification, inspection, enforcement, and to encourage greater cooperation. We have increased, for example, the number—the level of support for cooperative agreements under section 202 of the Federal law on Gas Royalty Management Act.

We have five outstanding agreements. We are currently negotiating one with the Wind River Reservation and the Shoshone Arapaho, and we have increased the level of funding from 50 to 100 percent.

We also have a number of efforts under way in terms—particularly in oil and gas, for greater accountability on the ground where we are trying, through a series of laboratories, to find better ways to deliver the service at a lower cost, include more consultation with customers. We have held focus groups throughout the West, always involving native Americans, always involving tribal representatives, trying to do a better job delivering the trust asset management.

Mr. CLINGER. OK, so you indicate that you are moving to effectively implement these recommendations. When can we—when can we expect an honest-to-goodness progress report saying we have actually accomplished these things?

Mr. RICHARDSON. I think that within the next year we are going to have one very important thing. One of the things that is noted in your 1992 report, which is the absence of accurate data and an inventory and universe of oil and gas—and oil and gas income is a significant contributor to a number of tribes, particularly in the Four Corners area. But the development of our automated fluid mineral support system will begin to put us on the road with an international standard, a kind of standard that we believe will produce accurate information, ease the ability of production verification, be able to provide for a clear audit trail for disputes for MMS's payouts, for tribes to be able to know where they're going.

Also, we believe that at that point we'll be able to engage in more contracting efforts for production verification, inspection enforcement with tribal entities, and that certainly is our goal.

Mr. CLINGER. The testimony mentioned that BLM is developing the automated—automated fluid mineral support system to improve support of the oil and gas program and says that if the design and testing go well, the system should be implemented in 1996.

Mr. RICHARDSON. Yes, sir.

Mr. CLINGER. Now, that's pretty vague and pretty far away. Why is it going to take so long? And what are you going to do if the design and testing do not go well, as you had anticipated?

Mr. RICHARDSON. Well, thus far, the design and testing have gone extremely well. But we're trying to find blocks of areas to focus on and the Four Corners area is the area where we're going to begin. This operation is located in Santa Fe and will involve a significant number of energy tribes. We want to be able to carefully document and plan what we are doing there before we begin to export it to other areas.

1996 is not that far away in terms of an aggressive plan like this; and to try to dislodge the old system and—actually—I should say old systems—is somewhat difficult. We believe that the AFMMS system will be able to go on line some time in the next year with the Four Corners laboratory and with Four Corners, which is also noted in the GAO report that there—we do have in the Four Corners a—an operation where we're going to try to enhance a seamless operation between agencies. AFMMS is at the heart of doing that and providing the data to make that happen, but we're going to take it in blocks that we can understand. It is indeed part of an experiment, so we have to understand its weaknesses as well as its strengths before we fully implement it across the system.

Mr. CLINGER. Your testimony deals with the Minerals Management Service and says that they recently made progress regarding enforcement of special lease terms contained in many Indian mineral leases. It also notes that MMS has reached agreement with many tribes and allottee associations on data sources and calculation methodologies and, quoting, "negotiations are under way with other Indian groups."

Once again, things are under way. Who does MMS really—or already have agreements with? When did they reach agreement with them? And who are the groups that are mentioned?

And I gather you were going to provide us with that.

Mr. SYNAR. Before you do, state your name for the record.

Mr. SHAW. My name is Jim Shaw. I'm the Associate Director of the Royalty Management Program in Denver. We have six tribes right now that we have funded agreements with and two that we have unfunded agreements with that do their own auditing as part of our cooperative audit program; we will have a seventh funded one early this next fiscal year. We have an aggressive program to try to recruit and bring as many tribes into that effort as are interested. Some of them are very sophisticated. Some of them still need a fair amount of assistance and training, and we try to provide that.

Mr. CLINGER. What is the total universe that you might be getting?

Mr. SHAW. There are 27 tribes overall, I believe, that receive payments. But the top seven or eight receive the vast majority of the funds.

Mr. CLINGER. Are those the ones that you presently have——

Mr. SHAW. That's correct.

Mr. CLINGER [continuing]. Agreements with?

Mr. SHAW. Yes, sir.

Mr. CLINGER. You state that, quoting, "We," meaning the Department of the Interior, "will issue letters to Indian lessees requesting certification if this Indian approach is being properly applied."

What does this mean, that you are sending them letters asking them to certify that it's being applied properly?

Mr. SHAW. I am not sure I understand your question.

Mr. CLINGER. Well, it says—the testimony states, "We," meaning Interior, "will issue letters to Indian lessees requesting certification from the Indian lessees that this valuation approach is being properly applied."

What does that mean?

Mr. SHAW. The term, major portion, which is a part of ongoing Indian leases, says something to the effect that in addition to being paid 12 to 12.5 percent, whatever the royalty rate is, times the value, meaning that which the producer was paid for his production, that no lessee should receive less than that received for a major portion of production in the field or major area.

That term has been a difficult one to define, and in the 1988 regulations, which laid out a very elaborate procedure for defining and doing that, we found out that there wasn't always the right data available to be able to do that calculation the way the regulation intended. So we have been negotiating with each tribe or allottee association a method that utilizes the best surrogate calculation technique that we can agree on.

For example, in Oklahoma, we're using State Tax Commission data to do that calculation. Before we would go out and bill and use that, we work with the Indians affected to make sure that that methodology is acceptable to them.

Mr. CLINGER. You note—the testimony notes that yet another special work group has drafted the MMS draft notice soliciting input on various concepts for valuing natural gas on Indian leases. And this work group actually does include representatives of tribes and allottees, unlike any of the BIA's trust fund work groups.

How come MMS includes the tribes and allottees in their work groups and BIA and the Solicitor's office just don't seem to be able to get around to doing that? Obviously, we are happy that the tribes are included in the MMS operations, but if they are included there, why can't they be included in the BIA? Why are they included in your work group?

Mr. SHAW. I can answer why they are included in ours. We feel these are very important but difficult to deal with lease terms which reasonable people can and do disagree on the best way to carry out. And we didn't feel we could make any progress if we couldn't get consensus from the affected parties.

We can make a number of changes by rule. We are limited, obviously to a fair interpretation of what it says. But in order to have any chance of that rule having acceptance and working, we need to have not only the Indian community, but through the Federal side, we will also be bringing in the affected industry as well, and try to reach a consensus. And we have some indication that those people working together probably can bring in something that is workable.

Mr. CLINGER. So you have no reluctance to inviting them in and involving them in the process?

Mr. SHAW. We have worked very, very hard to include them in all of our work.

Mr. CLINGER. Thank you.

Mr. SYNAR. Let's turn briefly to the loss policy. But first, giving credit where credit is due, I want to thank you for finally—finally—getting a policy in place for identifying and handling losses and notifying account holders. We have discussed this problem in our hearings in the past. Can you explain to me why it took so long?

Ms. DEER. I think Donna Erwin is our person on that.

Mr. SYNAR. Jim, why did it take so long?

Mr. PARRIS. Early drafts of this loss policy were written by our staff almost 2 years ago. It took a lot of reviews by a lot of different people.

Mr. SYNAR. Where was the holdup?

Mr. PARRIS. It was a combination of things. In the beginning when we first wrote it as a draft and sent it out for comment to tribes, we did not get all the comments and all the points addressed that the GAO was concerned about. GAO gave us a response and the tribes came back. We went back to the drawing board and rewrote it and then met with some of our regulation staff within the Bureau of Indian Affairs, then it went to the Department.

We have rewritten as result of each stage of that, and now we are at the point where we are ready to publish it. It was a long, more drawn out process than I would have imagined that just took an incredible amount of time. The longest length of time was taken in the review.

Once we got something presentable to the Bureau, regulation staff; and there was a lot of sending papers back and forth to them; it took a lot longer than I think it should have, at that point.

Mr. SYNAR. We have appropriated $6 million to repay losses to the account holders. How much of that has actually been used to repay account holders for the losses they sustained?

Mr. PARRIS. We distributed all but $500,000 to the account holders. We have established a $500,000 escrow fund for a mass cancellation project that was meant to offset the automatic cancellation of Treasury checks that was effected by the Treasury Department in 1989, I believe. We appealed and were able to obtain funds to reimburse Treasury—or trust account owners that had been issued checks but had not cashed them yet. As we identify those through reconciliation efforts over the next couple of years, we will draw down on that pool that we have set up. The rest of the money has been distributed as we have been appropriated.

Mr. SYNAR. I am glad that you set that money aside, but if there wasn't sufficient documentation to identify them before, how are you going to identify them now?

Mr. PARRIS. It's going to take time for our people at the agency level to do the research necessary to identify actually who and where these people are so that we can notify them.

Mr. SYNAR. You are not going to try to figure it out like you did in the old days, are you; just wait and see if they showed up?

Mr. PARRIS. No, no, we will go after them.

Mr. SYNAR. OK. GAO reported this morning there is a balance of $4 million yet to be repaid, meaning that we haven't yet appropriated the money. You requested $3 million for that purpose for fiscal 1995; right?

Mr. PARRIS. That is correct.

Mr. SYNAR. Do you intend to use all of it during fiscal 1995 to repay the losses to the account holders?

Mr. PARRIS. To the extent that we are able to identify claims and there are losses associated with financial institutions yet to be repaid, that will be offset as much as we can with the money that we are given.

Mr. SYNAR. I want to move to the Indian Minerals Steering Committee which you discussed in your testimony. But first, I want to talk about something in the Department's June 13, 1994, trust fund reform plan—the so-called six-point plan.

The document states that the Office of the Trust Fund Management—that is you, Jim—is, "charged with overseeing the trust fund program nationally and ensuring that the Federal trust responsibility of the Secretary is appropriately carried out consistent with law, policy, and procedure."

Now, in my July 5 written comments to you on that six-point plan, I pointed out that is just not correct. And I suspect you did not write this; did you, Jim?

Mr. PARRIS. No.

Mr. SYNAR. Who did?

Mr. PARRIS. Which letter, exactly? Are we talking about the June 6 letter?

Mr. SYNAR. No, I am talking about the six-point plan.

Mr. PARRIS. Oh, no, we didn't. We wrote portions of it relating to the reconciliation project and relating to the investments. We collaborated with the Department on that and with the staffing. We wrote out of our office primarily.

Mr. SYNAR. You must have been pretty surprised to learn that somebody at the Department thinks you and your office are completely responsible for the entire trust fund program and carrying out all of the Secretary's trust responsibilities.

Mr. Duffy, who wrote that part?

Mr. DUFFY. I have no idea, but I am confident that the——

Mr. SYNAR. Could you try to identify it?

Mr. DUFFY. I could try to identify it. But where is it? First, could you just point out where in your——

Mr. SYNAR. Page 10 of your June 13, 1994, reform plan, second paragraph. "The office of trust fund management has been charged with overseeing the Indian trust funds program nationally and ensuring that the Federal trust responsibility of the Secretary is carried out consistent with law, policy, and procedure."

Mr. DUFFY. Right. I think the emphasis there is trust funds prog.am.

Mr. SYNAR. Nationally.

Mr. DUFFY. Right. The trust funds. It is the Office of Trust Funds Management and it is overseeing the Indian trust funds program. As for the other aspects of it, that is obviously handled by the Bureau, and it is also handled by MMS and BLM, as they just reported.

Mr. SYNAR. Well, the point is, assuming that the Indian Mineral Steering Committee actually comes up with recommendations as they pertain to improving BLM and MMS trust fund functions, Jim Parris will not have the authority to implement those changes; will he?

Mr. DUFFY. That's correct. He won't have authority to do that.

Mr. SYNAR. He only has OTFM. As a matter of fact, Mr. Parris doesn't even have the authority over the field office people who do the trust fund activities, like accounting; isn't that correct?

Mr. DUFFY. I will have to defer to the Assistant Secretary.

Mr. PARRIS. That's right.

Mr. SYNAR. Well, as long as there are people who think Jim Parris is in charge of the entire trust program, I would suggest that you all just get out of the way and let him be in charge of the whole program across the Department. He is the only one down there that we have found that knows anything about it and who could actually get anything done. So why don't you get out of the way and let him do it?

Mr. DUFFY. We understand that he is in charge of trust funds.

Mr. SYNAR. Going back to the steering committee recommendations, Ada, even you will not be able to implement them; will you? BLM and MMS will have to implement them on their own; right?

Ms. DEER. All three agencies are involved in this process.

Mr. SYNAR. But you cannot implement them; can you? They will have to do their own implementation.

Ms. DEER. That's right.

Mr. SYNAR. Wasn't the Indian Minerals Steering Committee actually formed several years ago?

Ms. DEER. Yes.

Mr. SYNAR. So this is not a new initiative; is it? This is just on its third name change; right?

Ms. DEER. Well, I can only speak for this year. In an attempt to achieve better communication, cooperation, and coordination, we thought it would help to have a better name change.

Mr. DUFFY. It was significantly reformed in terms of its structure.

Mr. SYNAR. How was it significantly reformed?

Mr. DUFFY. I don't know. I think we better ask somebody who was actually on the committee.

Mr. SYNAR. Is that significant reform, Mr. Parris?

Mr. PARRIS. I'm not on that committee.

Mr. SYNAR. Since you are running the place down there, is that significant reform? I mean, you have got some experience at this.

Ms. COHEN. We have people here who are on and running the committee, if we could have people respond.

Steve?

Mr. SYNAR. All right.

Mr. RICHARDSON. Yes, I am a member of the committee and we did do more than change our name. We have rewritten the charter. We have identified that we would work on crosscutting issues where the——

Mr. SYNAR. Let's go through what GAO said. You played this game, Steve. GAO points out in its report that "a committee can't implement" anything. Do you agree with that?

Mr. RICHARDSON. That's correct.

Mr. SYNAR. It can only recommend change; correct?

Mr. RICHARDSON. We are a steering and policy committee. That's correct.

Mr. SYNAR. After that it takes leadership in each one of these agencies to get it done; right?

Mr. RICHARDSON. Yes, sir.

Mr. SYNAR. So these working groups are always forming, changing names, breaking up, and reforming and never doing anything. Why is this time going to change?

Mr. RICHARDSON. I think because this time what we have done is discarded the traditional look at technical issues only and begun to talk about policy issues. In the past, the tripartite committee took a look at only technical issues and never really put enough time or effort into looking on the ground.

In comparison, now, I think that the Indian Minerals Steering Committee is involved, for example, in the Four Corners Laboratory, and the interest that Mr.——

Mr. SYNAR. When was this first established?

Mr. RICHARDSON. Our first meeting was in June of this year.

Mr. SYNAR. The committee? The committee itself?

Mr. RICHARDSON. The committee itself was established some time ago. I believe 3 or 4 years before the committee at which I first attended, at which I was first a member.

Mr. SYNAR. How many player changes have we had?

Mr. RICHARDSON. I believe there have been a number.

Mr. SYNAR. And you are going to tell me under oath you think it is a new day?

Mr. RICHARDSON. Mr. Chairman, I am going to tell you that; yes, sir.

Mr. SYNAR. Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman.

I don't have any further questions, except to say—and I have to leave now, but I want to say that I remain somewhat skeptical. I am hopeful. I think that we have heard some promises, but we have heard promises before. We always, I think, need to say that the proof is in the pudding.

I think there has been some progress made, but a lot more—a lot more needs to be done. And I think this subcommittee—we will no longer have the leadership of our chairman, but I am sure the subcommittee is going to continue to have an abiding interest in this thing because it has been going on too long. It's been too long delayed and the tribes are being penalized because of it.

I am certainly going to retain my interest in following up on what you have committed to do here today.

Thank you, Mr. Chairman.

Mr. SYNAR. Thank you, Bill, and thank you obviously for everything that you have done during the years that we have worked on this project together.

Ms. Deer and Mr. Duffy, you said that you have been engaged in productive discussions with the Treasury Department about putting the trust funds in an investment fund there. This plan is a replacement for what had been the third point in the Secretary's June 13 six-point plan, which at that time was to transfer the management of the trust funds to skilled investment professionals; is that right?

Mr. DUFFY. That's correct.

Mr. SYNAR. Who specifically came up with the original idea that was in the June 13 six-point plan to transfer the management of the trust funds to skilled outside professionals?

Mr. DUFFY. I think that was a combination of individuals and we discussed it with a number of people in various committees on the Hill.

The idea was to try to model something after a State pension plan. As I said before, we had hoped to follow the recommendation of your committee in moving it to another Federal Agency.

Mr. SYNAR. Let's get into that because at the briefing you had for some of us on the plan on June 13, and in my letter of July 5 to you, we had to remind you that the Department could not transfer the management of the trust funds to any outside party. Now, your original plan wasn't just a case of sloppy writing; that was the case of someone at the Department seriously misunderstanding the law and the Secretary's trust obligations.

How could it be that anyone down there thought that the management of those trust funds could be transferred to an outside party?

Mr. DUFFY. I believe that the management could be transferred if authorized by Congress. And it was always our understanding that this would require legislation. In fact, we proposed that it would require legislation. In fact, we believed that——

Mr. SYNAR. Did you expect to get that while I was in Congress?

Mr. DUFFY. We thought we could convince you——

Mr. SYNAR. Did you have anyone, Congressmen Richardson, Synar, Miller, Yates, Regula, Senator Inouye, anybody give you any indication that would be received with any success?

Mr. DUFFY. Well, we thought, Mr. Chairman, that your recommendation in 1992 focused originally on the idea that as much should be transferred out of BIA as could be transferred. This is what we thought could be transferred. We hoped to convince you that this would be a superior approach.

We wanted to try to model something after State trust fund boards, State pension plans.

Mr. SYNAR. When you switched gears again after June 13 and started talking with the Treasury Department about this new investment fund proposal, you didn't consult with the tribes or ITMA or any of the account holders on this latest proposal; did you?

Mr. DUFFY. We——

Mr. SYNAR. Just yes or no. Did you?

Mr. DUFFY. On the G fund, you mean?

Mr. SYNAR. Yeah.

Mr. DUFFY. I don't believe we did. I don't really know.

Mr. SYNAR. Have you produced any analysis, anything, that shows that a Treasury fund of this type you are discussing will outperform all other investments authorized by 25 U.S.C. 161 and 162, all of the time?

Mr. DUFFY. I will have to refer to the appropriate individuals here, because I have not really been directly involved in those negotiations.

Mr. SYNAR. The question is do you have any internal analysis that shows that you will outperform other investments authorized by 25 U.S.C. 161——

Mr. DUFFY. I have just handed one by Mr. Kendig, so I think he ought to——

Mr. SYNAR. Would you provide that for the record?

Mr. DUFFY. Sure.

[The information can be found in the appendix.]

Mr. SYNAR. At an August 11th hearing before Mr. Richardson's subcommittee, ITMA argued that under court precedents, unless the G-Fund, or whatever Treasury fund you are talking about, produces the highest yield all of the time, the government would be strictly liable for the difference between that yield and what could have been earned from the best of the other approved investments. Do you agree with that assessment?

Mr. DUFFY. No, I do not.

Mr. SYNAR. Do you have any written legal opinion on that issue?

Mr. DUFFY. I have a memo, it wasn't a formal opinion but I have a memorandum from the Office of the Solicitor indicating that there is a balance between return—this is a prudent trustee standard—it is a balance between return and safety.

Mr. SYNAR. All right. Will you provide that for the record?

Mr. DUFFY. I will certainly get the Solicitor, he may want to have a formal document sent to you.

Mr. SYNAR. Is there no formal document now?

Mr. DUFFY. Not to my knowledge.

Mr. SYNAR. So this was verbal.

Mr. DUFFY. It was sort of an informal internal memorandum.

Mr. SYNAR. An informal what?

Mr. DUFFY. It was an informal memorandum.

Mr. SYNAR. Written?

Mr. DUFFY. For my briefing book, yes.

Mr. SYNAR. That is a document. We will have that document, too, if we could. All right.

You have that document?

Mr. DUFFY. I don't think I have it with me, but I can get it.

Mr. SYNAR. All right. Thank you.

The record will be left open.

[The information can be found in the appendix.]

Mr. SYNAR. When the Department informed my staff director of this latest idea, about a month or so ago, you said you were talking to Treasury about establishment of a G-Fund providing a higher rate of return than that which you otherwise would have earned with the trust funds. But you don't mention a G-Fund in your testimony today. Is that still what you are talking to Treasury about, or have you switched gears yet one more time in the last month?

Mr. DUFFY. No, the problem I think is a question of whether we should be using the term G-Fund at all. The Treasury would prefer that we used the term Treasury fund or some sort of special Treasury fund, because it is more accurate. The G-Fund is a particular fund and it is not accurate to use the term G-Fund.

Mr. SYNAR. Regardless of what you call it——

Mr. DUFFY. It is the same fund.

Mr. SYNAR. You say in your statement, "will yield investment returns that equal or exceed the rates of return," that you have achieved during the past several years. What is now equal or exceed?

Mr. DUFFY. I have to defer——

Mr. SYNAR. Let me restate that. Why is it now "equal or exceed" versus what you originally had told us a month ago, which was a "higher" rate of return?

Ms. ERWIN. Donna Erwin again, Mr. Chairman. I was in on the original looking at this fund. I think what we have to remember is that we are under the constraints of what we can invest in currently. We also have those same types of problems in having to forecast or the tribes being able to forecast what their needs are and what their cash-flow needs are.

As a result of that, we have been tied with very short maturities. If we look at the IIM and the IIM return that we have been receiving in the pool it is a much higher return by about 300 basis points, a 3-percent higher return.

Now, the difference in that is because they are longer termed maturities. So as a result of going into a pool, the maturities would be longer. When we have discussed with the tribe and ITMA this fund, their objection was they want other options.

But if you look at just the constraints in the regulations that right now by which we are bound, means that we can only look at governments. The tribes have to stay shorter term because they don't always know what their needs are going to be or when their needs will be changing.

Mr. SYNAR. Has the Treasury Department expressed any concerns about this whole thing?

Ms. ERWIN. They have been negotiating with us and have talked with us.

Mr. SYNAR. What are their concerns?

Ms. ERWIN. Their concern is that we could be subsidizing the tribes; that there is a possibility that this would be subsidized if we didn't have the proper laddering. But as you put all of that money into one pool, it gives the liquidity at the lower end so you have the liquidity of being able to move in and out. So we do not feel that this would be a large subsidy.

Mr. SYNAR. This is the whole point. Since your fiduciary duty is to maximize the return for the beneficiaries, it doesn't seem to us that you can just dump this in some Treasury fund in order to simplify your own life. You are supposed to be looking out for the account holders.

Ms. ERWIN. I think we are. I have 25 years in trust, and I think we are looking out for the account holders. The misunderstanding here is with the tribes—as I said, the M pool. We are able to take all that money and put it together is a much longer term.

Mr. SYNAR. You heard the tribes and their representatives this morning. They don't like this idea. They want the flexibility.

Ms. ERWIN. Mr. Chairman, we don't have the flexibility currently. If the legislation is changed, we would gladly be able to look at other alternatives. Currently, we are only allowed to invest——

Mr. SYNAR. Do I take that as an endorsement of the Richardson-Synar bill?

Ms. ERWIN. I didn't say that, did I?

Mr. SYNAR. This is not funny, because of the fact that, in the legislation, we are doing exactly what you say you want to do. So jump on board.

Let me ask you this: why haven't the account holders been involved in this? It's their money.

Ms. ERWIN. I don't know that we have tried to exclude the tribes.

Mr. SYNAR. That is not the point. You haven't included them as Congress has directed you to.

Ms. ERWIN. We probably do need to do more consultation.

Ms. COHEN. On this risk return thing——

Mr. SYNAR. Why did you change to "equal or exceed," from "higher" rate of return in just 1 month? I never got an answer to that one.

Ms. COHEN. Let me first make the point that it is my understanding that we are not out for the maximum rate of return——

Mr. SYNAR. That is your fiduciary responsibility.

Ms. COHEN. Our responsibility is to achieve the best rate of return within certain risk levels. And that is very important here. And that is the advantage of this Treasury fund, which offers Government-guaranteed investments which are safe, and longer maturities which offer a higher yield.

Mr. SYNAR. Wait 30 seconds. I have got to take this call on a conference that we are having.

[Recess.]

Mr. SYNAR. I apologize. Now everyone agrees that the Department needs help on the investment side. GAO has long recommended that the BIA contract with investment advisors and

Congress has directed it and provided money for it, I might add. Even the Department conceded this is a critical need.

Ada, as recently as a few months ago we understood you were on track to contract for investment advisors and custodial services, but I don't see anything about that in your testimony today. Has the Department put that on hold?

Mr. Parris?

Mr. PARRIS. I believe that our instruction was to await the negotiation of a Treasury fund before we went after advisory services.

Mr. SYNAR. We directed BIA, and the Appropriations Committees directed BIA, to acquire those services. Did you inform those committees that you were deviating from that specific directive?

Ms. ERWIN. Mr. Chairman, we have not deviated. That time pattern is still a meetable target date. One of the things that we will need to know if this fund does come about, and if we had other alternatives, we would have to go back for a whole new RFP, request for proposal process, until we know how much could go to a fund and what types of managers we would need.

Mr. SYNAR. When will you know that?

Ms. ERWIN. Well, once we find out what happens Wednesday and once we negotiate with Treasury. We have to evaluate to be able to do that properly, and we have known this all along. We talked about this. We have to know the fund mix that we would want. This has been even in the six-point plan; it does address that we need to know that. So we are not off target and have not missed the target dates for being able to implement that.

Mr. SYNAR. We are going to go out the 7th. Can we have a final decision by the 15th?

Ms. ERWIN. Yes.

Ms. COHEN. We can try. We can certainly try.

Mr. SYNAR. Well, now it's "We can try." Can we can have a decision by the 15th?

Ms. COHEN. Well, we are in discussions with Treasury.

Mr. SYNAR. I have 10,000 more of these questions. Let me tell you what this is all about. Every time we tell you to do something, somebody down there says, well, within the context of the minimum intent which they asked us to do, even though it was a directive from the Appropriations Committee, we will try another way.

And not only do you try it another way but you never inform Congress, the Appropriations Committees, this committee, or anybody else, that you are doing it that way. So then we come into oversight and we find out, well, not only did you not take our directive, you didn't come back and tell us you weren't taking our directive. So this whole theme of the lack of sustained, high-level leadership just comes over and over and over again.

You know, you all don't read English like the Congress, OMB, GAO, all the—you just don't read it the same way. And we were talking beforehand, it's like this is life over here. Every single person in this room, with the exception of you all sitting at the table, is on one plane, on the same track, using the same words, the same English. And you're over here. And these are different—they are not even the same.

Now, it's not because of lack of effort. It's not because of lack of intention. It's not because of the lack of directive. It's not because of the lack of audits. It's not because of the lack of hearings, the lack of oversight. There is nothing lacking on our side.

And, you know, I don't know what to say. I mean, I am at the end of this, obviously, but it's not going to be dropped, because we have some very fine Members that are going to do it. But this record that we have built on this issue is devastating. It clearly takes you off the high-risk category at OMB and puts you in the category of being the worst run Agency in the Federal Government.

Now, I say this recognizing I have a lot of BIA employees in my own district and these field offices are fine places, but they can't do anything. You all just don't get it.

I mean, Wednesday is critical. I am going to tell you, we are either going to solve your problem or the Federal court system is going to solve your problem. I cannot believe in my wildest imagination that you are telling Inouye, Synar, Richardson, Miller, everybody who has been the biggest troopers for you, that we are wrong. We did what we told you to do; consult with the tribes, find out what they want. We did it. We found out what the problem was. We went to them and did it.

And now you come in here, at the last minute, and you are not even for that. What planet are you on? This is unbelievable. I mean, I think very frankly you all ought to leave this room and give them the dadgum bill and move it on suspension and let's get it through and see if we can march by that tune for a while. You have marched by every other tune there is. Try our tune.

I just—I mean, I have got—I will turn in the rest of the questions for the record, because going on is not going to do any good.

I mean, Ada, I have known you for a number of years. Duffy, Parris, all of you guys. I mean, you know, this is just a great disappointment.

And I hope that you all, in the next 48 hours, will ask yourself who the hell you work for. Because it's clear you are not working for the account holders.

Folks, it's their money. It's not our money. It's their money. And they are telling us the way they want it managed. It's their money.

I can't even imagine you are opposed to what Congressman Richardson and I are doing. We can solve this problem in 1 week. Senator Inouye will take this legislation freestanding from the Senate desk and pass it.

And then 1 year from now, whoever is the oversight chairman for these committees will come in and say, now, let's see what happened. And if we are wrong, then we bear the burden. We bear it, not you. It's off your back.

You all are fine people. I mean, all of you are dedicated public servants and I am not trying to question that. But I mean, how long does a committee of Congress like this and the Appropriations Committees and all of us have to pound on you to get your attention?

We were sitting here Sunday working hard, because we were going to do it every day of the week until it's over with, but the fact is we haven't asked one new question. We have not brought up one new issue.

I just hope that you all leave this room and you huddle up and you say dadgumit, he's right, Yates is right, Miller is right, Inouye is right, Richardson is right. Regula is right, Craig Thomas is right. Bill Clinger is right. The only people who are not on this team are you all.

And I really believe that if you want to serve—if you want to make up just some—some of the crime that has been committed on these tribes and these individual account holders, you can do it. I swear to God. I believe they would forgive you for a lot of it, if, within the next 48 hours, you would embrace this legislation. I really believe that.

But if you don't, they are going to have absolutely no confidence, even when passed and signed by this President, that you all will have any intention or enthusiasm to implement it the way it is supposed to be done.

This is the end of it. I mean, as I said, I am out of here. And I have enjoyed working with many of you. Some of the finest people I have ever worked with in my life. And you who I am talking to, you know I am not trying to pick on anybody or any agency. But I have got to tell you, of all the things I have done in public service, the one thing I wanted to solve before I got out of here was this.

It just breaks your heart that we can't do any better than this. I said it years and years ago: If this was Social Security, there would be a war on our hands. People deserve better. It's their money. It's not even our money.

And I hope that as we adjourn this hearing—let me thank all the witnesses for being here—that you all will get out of here, we will clear the room if you want us to, and you all will come up with a new position before Wednesday. And you tell Bill Richardson you are for it. Then and only then will we know that you are on the same plane that we are on.

That concludes the hearing.

[Whereupon, at 2:35 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

Insert on Page 115, Line [illegible]

Office of American Indian Trust

DATE: **November 21, 1994**

SUBJECT: Status of Compliance with Secretarial Order No. 3175.

STATUS: Departmental bureaus and offices are preparing draft procedures or directives to ensure that the trust resources of Indian tribes are conserved, identified and protected per Secretarial Order No. 3175. On August 17, 1994, the Secretary approved an extension of the Order for 8 months to June 1, 1995. This will provide 6 months for the affected bureaus and offices to finalize their procedures or directives and 2 months for the Office of American Indian Trust (OAIT) to review them. All bureaus and offices have assured OAIT that they will be able to comply with the Secretarial order by the new deadline and offered the following updates regarding the development of their implementation plans:

BUREAU/OFFICE	**RESPONSE**
Bureau of Land Management	Procedures have been developed and are in draft stage.
Minerals Management Service	Currently sharing the draft plan with tribes, allottees, and BIA offices and will prepare a final draft after comments from these offices are received.
Office of Surface Mining	The Office of Surface Mining has adopted a schedule for completion of a "directive on coordination and consultation" with Indian tribes. The directive would apply to both abandoned mine lands, as well as active mines. The draft will be submitted to OAIT for review in March of 1995.
Bureau of Reclamation	Reclamation had developed procedures for the protection of trust assets in advance of the Secretarial Order. Subsequent to the Order, Reclamation developed a supplementary set of common "questions and answers" about Indian/Alaska Native trust resources. The procedures and supplementary document were reviewed by the Office of American Indian Trust and were found to be in "substantial compliance" with the Order. The Assistant Secretary has concurred with the finding.
Bureau of Mines	Work is currently being done to develop the necessary directives.

(continued)

BUREAU/OFFICE	RESPONSE
Geological Survey	Geological Survey is currently working to issue a "statement of procedures" A draft will soon be provided to the Office of American Indian Trust
Fish and Wildlife Service	Currently FWS is working with the tribes and their Regional Indian Desks to develop Regional implementation plans that will be used at the National office to assemble their National plan.
National Biological Survey	A task force has been formed to clarify and document the responsibility of NBS regarding implementation of the Secretarial Order. A draft will then be prepared
National Park Service	NPS is working with their Regional Indian Desks to develop Regional implementation plans that will be used at the National office to assemble their National plan.

CONTACT: Director, Office of American Indian Trust, 208-3338

Insert on Page 166, Line 3940

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
INDIAN TRUST MANAGEMENT HEARING
BRIEFING PAPER

ISSUE: ITMA discussion of Cheyenne-Arapaho Tribes of Indians of Oklahoma v. U.S., 516 F. 2d 1390 (1975) in supplemental testimony dated August 29, 1994 and submitted to the House Committee on Natural Resources, Subcommittee on Native American Affairs.

BACKGROUND: ITMA asserts that if the Secretary invests tribal funds in the proposed "G" fund rather than investments available to him under 25 U.S.C 162a, he would be liable for the difference in yields under the holding in Cheyenne-Arapaho, (trustee has an obligation to maximize trust income by prudent investment; thus, if eligible investments were available at higher yields, the U.S. could be liable for the difference between what interest it paid and the maximum such funds could have legally and practically earned if properly invested outside).

DISCUSSION: ITMA's reading of the Cheyenne-Arapaho is limited in scope and its analysis suggests that the holding would apply in all instances by failing to take into account other relevant factors. While ITMA correctly restates the Courts discussion and holding in the case, it fails to state that the case was remanded to the trial court for a determination as to what yeild was the "maximum return" for the period involved and for determinations with regard to related matters. In instructions directed to the trial court, the Court stated:

> "[I]n assessing the return available outside Treasury, ... the trial judge should take into account the availability of eligible investments....He will, in addition, have to decide the length of time within which it would have been reasonable for defendant to make funds available for investment, to make actual investments and to to reinvest where appropriate. As to funds which were invested, but at rates less than those found by the trial judge to be the maximum available, the trial judge will have to determine whether defendant breached its duties by not making a switch in investments which would have been made by a 'man of ordinary prudence ... in dealing with his own property."

In this regard, it is noted that under the "prudent man" standard, securing the "maximum return" must be considered under the circumstances in which one is operating. Here, it is noted that the "G" fund is formulated and intended to address the very real concern of early redemption caused by frequent changes in tribal leadership and realignment of priorities. Moreover, it is well accepted that while a trustee has an obligation to make the trust productive, he has an equal obligation to assure that the trust is preserved. Again, "par value" redemption provides a buffer to loss of income due to penalties associated with early redemption. Finally, ITMA's analysis is largely based on the assumption that the "G" fund will generate yields that are less than those that can be generated by investments made pursuant to 25 U.S.C. 162a.

Departmental analysis, however, indicates that yeilds under the "G" fund would be as great, if not greater, than those realized under the present investment scheme.

GAO

United States
General Accounting Office
Washington, D.C. 20548

Accounting and Information
Management Division

B-259478

December 2, 1994

The Honorable Mike Synar
Chairman, Subcommittee on
Environment, Energy, and Natural Resources
Government Operations Committee
House of Representatives

Dear Mr. Chairman:

Enclosed are responses to the questions you provided subsequent to our testimony during your September 26, 1994, oversight hearing on "The Interior Department's Failure to Correct Serious Problems in the Management of the Indian Trust Funds."

I hope that this information is helpful. If you have further questions or would like to discuss any of the issues in more detail, please call me at (202) 512-3406 or Gayle Condon, Assistant Director, at (202) 512-9577.

Sincerely yours,

George H. Stalcup

George H. Stalcup
Associate Director
Financial Integrity Issues

Enclosure

RESPONSES TO QUESTIONS FROM SEPTEMBER 26, 1994, HEARING

Question 1: GAO's latest report for the Subcommittee and your September 26 testimony both emphasize that it is absolutely essential that the Department carefully and methodically develop a comprehensive strategic plan to correct all the serious trust fund problems throughout the Department. You have made that recommendation before, as has the Inspector General. Congress has directed the Department to develop such a plan. OMB had directed the Department to develop such a plan. Yet we still don't have one. In your view, why does the Department refuse to take such action?

GAO Response: Interior Department officials have told us that they believe that the Department's 6-Point Trust Funds and Trust Asset Management Reform Plan is a strategic plan. The 6-Point Plan is discussed in our responses to other questions, which follow.

Question 2: GAO representatives were present in June 1994 when the Department held a briefing for some Congressional committee staff, including our Subcommittee staff director, and some tribal representatives. At that time, with Mr. Duffy in the lead, Department officials laid out what they called an Indian Trust Funds and Trust Asset Management Reform Plan--otherwise known as the "Secretary's 6-point Plan".

None of the Congressional offices were consulted on that plan as it was being put together, and we are informed that none of the account holder representatives were involved. Was GAO involved in the development of that plan?

GAO Response: GAO was not involved in the development of that plan.

Question 3: While Interior Department witnesses assert that this 6-Point Plan IS a strategic plan, at the September 26 hearing, GAO stated that the Department's "6-point plan" does not constitute the kind of comprehensive, strategic effort needed to resolve these longstanding problems. In addition to those you identified at the hearing, in what ways does the 6-Point Plan fail to constitute a strategic corrective action plan?

GAO Response: In our view, the 6-Point Plan falls short of a comprehensive strategic plan in two key areas. First, it does not include certain key elements that would be part of a comprehensive strategic plan for trust fund operations, including (1) an analysis of the overall trust fund management mission, (2) identification of all activities needed to fulfill this mission, (3) identification of available internal and external improvement options, (4) establishment of priorities and milestone dates for completing corrective action, assigning responsibility, and holding managers accountable, and (5) participation of key external groups.

Second, the 6-Point Plan does not address all fundamental problems that have been identified or related corrective actions needed to ensure accurate trust fund account balances. For example, the plan does not address (1) serious backlogs in BIA's beneficial ownership information for leases and other land use agreements to ensure that account ownership information is accurate and up-to-date, (2) the Bureau of Land Management's (BLM) inadequate enforcement and inspection of mineral leases to ensure that accurate production data are available to verify the accuracy of corresponding royalty payments, or (3) inadequate Minerals Management Service (MMS) royalty systems to ensure that all earned revenues are received. Further, as we recommended in our September 1994 report,[1] the Secretary of the Interior should direct the Assistant Secretary for Indian Affairs to take immediate action to ensure that leases and other contractual information are maintained and validated to ensure that all earned trust fund revenues are billed for, collected, and posted to the correct account.

Question 4: The first of the Department's "6 points" was to "Complete the reconciliation of tribal trust funds". At the hearing, we discussed the tribal account reconciliation effort. Isn't it true that effort was undertaken by the previous administration at the insistence of Congress?

GAO Response: Yes. Beginning with Interior's fiscal year 1987 Supplemental Appropriations Act, the Congress has continued to address the need to reconcile the Indian trust fund accounts in each of Interior's annual appropriations acts by providing that none of the funds appropriated shall be used by BIA to contract with any third party for the management of tribal or individual Indian trust funds until the funds held in trust for such tribes

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[1]Financial Management: Focused Leadership and Comprehensive Planning Can Improve Interior's Management of the Indian Trust Funds (GAO/AIMD-94-185, September 22, 1994).

or individuals have been audited and reconciled and the tribes or individuals have been provided with an accounting of such funds. In May 1991, BIA awarded a contract for the reconciliation effort, which is ongoing.

Question 5: Point #2 in the Department's 6-point plan is to "Provide essential staffing to the Office of Trust Fund Management". We already discussed the fact that it took Jim Parris, Director of the Office of Trust Fund Management, two years to get his staffing plan approved--and even so, he only gets half the people in FY 94, the current fiscal year. Beefing up OTFM staff certainly isn't anything new, is it?

GAO Response: The Office of Trust Funds Management's (OTFM) staffing needs have been well documented. As noted by the Subcommittee, OTFM's staffing plan was pending for 2 years before it was approved.

Question 6: For the record, please describe GAO's understanding of the Bureau's streamlining/downsizing plan as it applies to the Office of Trust Fund Management, and the effect that plan--and the September 9, 1994 "Allocation and Management of FTE's" directive--would have on the OTFM staffing plan just approved in April 1994.

GAO Response: BIA's streamlining plan called for a 50 percent reduction in Bureau staff by the end of fiscal year 1995. The plan proposed to accomplish this by eliminating middle management positions and delegating decision-making authority to BIA's agency offices, which are located on or near the reservations.

OTFM is responsible for oversight of the trust fund accounting functions, which include (1) developing trust fund accounting policies and procedures and (2) performing periodic reconciliations of account and systems balances. OTFM is also responsible for investing both tribal and Individual Indian Money (IIM) trust funds. Decentralization of OTFM's financial management oversight functions could impact the consistency of trust fund accounting operations.

At your September 26, 1994, hearing, the Assistant Secretary for Indian Affairs testified that OTFM would be held "harmless" from the streamlining efforts. On October 14, 1994, the Assistant Secretary for Indian Affairs signed a memorandum exempting OTFM from the BIA-wide hiring freeze related to the streamlining plan. As of October 27, 1994, streamlining plan showed that OTFM will have 96 full time equivalent positions (FTEs) through 1999, a reduction of 11 positions from OTFM's staffing plan, which was approved in April 1994.

Question 7: Point #3 in the Department's 6-point plan is to "Acquire sound, proven, commercially available investment and accounting systems and services to facilitate the transfer of trust fund management to skilled investment professionals." Isn't it true that this proposal is not new either--that the Bureau of Indian Affairs tried to undertake such a transfer in the 1980s, and Congress had to remind them that the Department can not transfer the management of the trust funds to a third party? Does this proposal to transfer the "management" of the trust funds suggest to you--as it did to us--a lack of understanding on the Department's part about the Secretary's trust responsibilities and, if so, why?

GAO Response: In briefings and other discussions of the 6-Point Plan, Department officials have not acknowledged the Secretary's responsibility for, and lack of authority to transfer, the exercise of judgment and decision-making in managing the trust funds. Our September 1994 report reiterated that while the Secretary might contract for technical assistance (such as bookkeeping or investment advice) in managing the trust funds, Interior cannot contract or delegate to a third party the exercise of judgment and decision-making.

Question 8: Isn't it true that the Congress forbid the Department from undertaking any transfer of funds until the reconciliation process was completed?

GAO Response: Yes. Since Interior's fiscal year 1987 supplemental appropriations act, each of Interior's annual appropriations acts have continued to provide that

> "none of the funds [appropriated] shall be used by the Bureau of Indian Affairs to transfer funds under a contract with any third party for the management of tribal or individual Indian trust funds until the funds held in trust for all such tribes or individuals have been audited and reconciled to the earliest possible date, the results of such reconciliation have been certified by an independent party as the most complete reconciliation of such funds possible, and the affected tribe or individual has been provided with an accounting of such funds."

Question 9: The Department did come up with one new thing: they stated in their 6-point plan that they were going to have the private investment managers "supervised" by a "Blue Ribbon Board" which would be appointed by the Secretary--ostensibly similar to those used by State pension plans. (I note for the record that the Department was unable to tell us who would sit on this Board.) Although this portion of the plan apparently is now on hold, for the record please describe any concerns GAO may have about the Department's initial proposal in this respect. Would such a plan, in your view, comport with the Secretary's trust obligations?

GAO Response: The 6-Point Plan did not fully and clearly articulate how the Department defines "supervised." As we previously stated, the Secretary, as trustee for tribes and Indians, cannot delegate to a third party, such as the Blue Ribbon Board, his ultimate fiduciary responsibilities--the exercise of judgment or decision-making. However, the Secretary could establish a Board and contract for investment advisors to assist in trust fund investment so long as the Department establishes investment policies and procedures and provides instructions on how the accounts would be invested.

Question 10: As noted above, Department officials apparently have delayed or dropped this idea. Now they are talking to the Treasury Department about moving all the Trust funds to a "G-Fund", or some other investment account, at the Treasury Department. What does GAO think of the Department's latest proposal for putting all the trust funds in a G-Fund or other investment account at the Treasury Department?

GAO Response: At the September 26, 1994, hearing, Department officials said that they believe that Interior should not be in the investment business and that Treasury is better able to handle this function. The Department is pursuing, with Treasury, the establishment of a G-Fund (government securities fund) for Indian trust fund investments.

The Department's G-Fund proposal requires further examination. Questions that should be addressed include the following:

-- Would the proposal satisfy the Secretary's fiduciary responsibility--as established in both statutory and case law--to maximize the return on investments within the constraints of the law?

- Would the proposal be responsive to tribes who have called for a range of investment options for their trust funds, rather than a single investment fund option?

- Would the Department use the G-Fund as a vehicle for transferring trust funds management to Treasury?

Question 11: At the September 26 hearing Department officials testified that they had not taken action to implement BIA's trust fund management improvement initiatives to contract for investment advisors and a custodian. They said that these initiatives were on hold pending the results of discussions with Treasury to establish a G-Fund for Indian trust fund investments. Evidently, the Department believes that investment advisors and a custodian will not be needed if Treasury agrees to establish such a G-Fund.

What is the status of these initiatives? Do you agree that these initiatives will not be needed, if a G-Fund is established?

GAO Response: According to BIA officials, BIA began developing a request for proposals (RFP) for custodian services in mid-November 1994. BIA plans to submit the draft RFP to the Department by mid-December 1994 for review and approval. The officials also told us that BIA has no plans to initiate a contract for investment advisors at this time because the Department believes that the advisors would not be needed if a G-Fund is established for trust fund investments.

We believe that even if a G-Fund is established, the Department would still need to provide for both investment advisor and custodian services. For example, the recently enacted trust fund management reform legislation (Public Law 103-412, American Indian Trust Fund Reform Act of 1994) establishes a mechanism for tribes to withdraw and invest their own trust funds and requires the Secretary to provide technical assistance either directly or through contracts. This would require the Department to make some provision for investment advisors to analyze investment portfolios to determine the best methods of investment. In addition, custodian services would be useful in tracking investments between BIA and Treasury and ensuring the proper transfer of any tribal trust funds that are withdrawn to investment institutions selected by the tribes.

Question 12: With regard to Point #4, the Department stated that it would "propose legislation to facilitate the assumption by tribes of the management and control of tribal trust funds for tribes who wish to elect to do so." Does the legislation just approved by the Congress (H.R. 4833), and sent to President Clinton for signature, accomplish this goal?

GAO Response: Yes. H.R. 4833, which was signed by the President on October 25, 1994 (Public Law 103-412, American Indian Trust Fund Reform Act of 1994), establishes a mechanism for tribes to assume management and control of their trust funds. Specifically, the legislation permits tribes, after developing a plan for approval by the Secretary, to withdraw and invest their own funds.

Question 13: Point #5 in the 6-point plan is to "Work toward resolution of the complex issues surrounding Individual Indian Money (IIM) Accounts." To "work toward" resolution of these issues, the Department's document describes three different working groups for these tasks. Isn't it true that working groups on fractionated ownership, IIM Reconciliation, and Land Records and IIM Systems were actually formed two or three years ago?

GAO Response: Yes. The fractionated ownership working group (formally called the Heirship Task Force) was formed in 1990. The Individual Indian Money (IIM) Reconciliation working group was formed in January 1993. The Land Records working group, which was formed in November 1992, completed its work in July 1993.

Question 14: How do the task forces itemized by the Department differ from the others previously established?

GAO Response: The fractionated ownership and IIM Reconciliation working groups are continuing the work started by the original groups. In the summer of 1994, BIA established a new working group--the Land Records and IIM Systems working group--to look at how trust lands and resource management, trust funds management, and land title and records processes and systems relate and how they should be integrated to provide consistent, accurate ownership information.

Question 15: Have the account holders been participants, to date, in any of these task forces or working groups?

GAO Response: As of the September 26, 1994, hearing, account holders had not participated in the working groups. However, Interior's Solicitor's Office, which is leading the IIM Reconciliation working group, invited the Inter-tribal Monitoring Association (ITMA) to a November 9-10, 1994, working group meeting. A Solicitor's Office official explained that while Interior had also planned to invite a number of allottee associations to represent individual Indian account holders, time limitations prevented them from issuing purchase orders to cover allottee representatives' travel expenses. However, a Quinault Association member attended the November meeting at her own expense.

With regard to future participation by these account holder groups, the Solicitor's Office official said that the Department feels that the Federal Advisory Committee Act (FACA) applies. This act requires agencies to charter, as an advisory committee, any organization it establishes or uses for the purpose of obtaining advice or recommendations. The Solicitor's Office official said that a FACA contract would be forthcoming for ITMA and that, in the interim, the Department would issue purchase orders on a case-by-case basis to pay for ITMA's travel expenses to attend working group meetings. However, an ITMA representative said that this approach would not cover their administrative expenses.

We have not addressed whether FACA applies in a situation such as this. We would emphasize, however, that as the Secretary carries out his duties as trustee to the Indians, whose funds are under the consideration of this working group, he has a fiduciary obligation to seek the input of the trustors or representatives designated by them.

The Solicitor's Office official also said that the Department plans to satisfy the concern expressed in Interior's fiscal year 1995 appropriations act conference report that Interior include ITMA and other account holders' representatives in proceedings to develop an IIM account reconciliation approach.

Question 16: Point #6 in the Department's plan is to "Encourage and facilitate more direct tribal management of natural resources on trust lands". Were these efforts already planned or underway at Interior prior to the 1994 development of the Secretary's 6-point plan?

GAO Response: Most of the efforts discussed in Point #6 of the Secretary's 6-Point Plan were already planned or underway as BLM and MMS National Performance Review or management improvement initiatives.

Question 17: Excluding the portions of the plan which they can not do--such as turn the trust fund management over to someone else--if Interior actually accomplished all the rest of the things they have on this list, would it fix the trust funds program at Interior? If not, why not?

GAO Response: While implementing the 6-Point Plan would provide a number of improvements, completion of the Plan itself would not fix the trust fund program. As discussed in our response to question 3, the 6-Point Plan does not address a number of fundamental actions needed to resolve trust fund management problems, such as BIA field office accounting problems and the lack of complete, up-to-date lease and ownership information.

Question 18: Isn't it true that in the early 1990's, GAO criticized an Interior Department 6-part plan, which basically recommended the same kinds of things Interior now recommends under this one: finish the reconciliation, acquire reliable systems, etc.? Why did GAO criticize that earlier plan?

GAO Response: While we recognized the Department's 1990 6-part plan as a management improvement initiative, we said at that time, and we have consistently maintained since then, that Interior's and BIA's trust fund management improvement plans have been piecemeal. They have not been tied to an overall comprehensive or strategic approach for solving trust fund financial management problems.

Question 19: As you know, Congressmen Richardson and myself, along with Senator Inouye, introduced legislation to reform the trust fund program statutorily. And we have worked to meld those bills together and get them acted on this year. Among other things, the legislation (H.R. 4833) would establish a Special Trustee within Interior to oversee all trust fund functions and policies, set up demonstration programs to facilitate greater tribal control over trust funds, and require the Secretary to invest and pay interest on IIM trust funds.

Over the past several years, we have worked very closely with GAO, as well as ITMA, First Nations, and other groups on this legislation, and GAO supports its enactment by Congress this year. Are you convinced this legislative solution is the only way to get these problems fixed?

GAO Response: We fully endorse the provisions of the legislation and view them as important facets of an ultimate solution to long-standing trust fund management problems. For example, we have long pointed to the need for legislation requiring the Secretary to pay interest to IIM account holders. Another key aspect of the legislation is the establishment and funding of the Office of Special Trustee, which would be responsible for developing a comprehensive strategic plan overseeing Indian trust funds and asset management programs across BIA, BLM, and MMS. While Interior could have administratively established this office, it did not do so.

Further, we supported the provision in the draft legislation for a demonstration program, which would have offered tribes an opportunity to develop investment experience and expertise before deciding to assume full responsibility for managing their own investments. As enacted, the legislation does not require the Secretary to establish a demonstration program. Rather, the Secretary is to approve tribes' investment plans and to provide technical and financial assistance to tribes who choose to withdraw and invest their own trust funds. We believe that the technical and financial assistance called for in the act would benefit tribes who choose to withdraw and invest their own trust funds.

Question 20: We understand that the Bureau of Indian Affairs is moving ahead with its streamlining plan, which includes staff decentralization efforts and elevation of BIA to a cabinet-level Department of Indian Affairs. We also understand that many senior level managers are planning to accept buy-outs and retire. How would this affect management capabilities in the areas of trust fund management?

GAO Response: BIA's streamlining plan, along with the plans of other Interior agencies, is a component of Interior's departmentwide streamlining plan. The revised streamlining plan that the Department submitted to the Office of Management and Budget (OMB) on October 13, 1994, did not include the proposal for a cabinet-level Department of Indian Affairs. However, BIA's plan includes this proposal. In late November 1994, we called this inconsistency to the attention of Department and BIA management.

In early November 1994, an Interior official told us that, due to staff reduction levels established for other Interior agencies, the Department had told BIA management that the Bureau did not need to reduce staffing levels by as much as the 50 percent goal for the Department and that BIA's downsizing efforts should be spread over at least 2 years, rather than 1 year, which was the Assistant Secretary's original proposal. The Department's streamlining plan submitted to OMB on October 13, 1994, shows targeted BIA staffing reductions of about 5 percent.

With regard to the effect of BIA's streamlining efforts on trust fund management, the Assistant Secretary for Indian Affairs has stated that OTFM will not be affected by BIA's streamlining plan. However, BIA's October 27, 1994, plan showed 96 FTEs for OTFM through fiscal year 1999, a reduction of 11 FTEs from the 107 positions approved in OTFM's April 1994 reorganization and staffing plan.

BIA's streamlining plan also shows reductions of 45 FTEs for the Office of Trust Responsibilities (OTR) from the fiscal year 1993 base of 97 to the fiscal year 1999 target of 52. In order to meet the Secretary's 6-Point Plan objectives to improve land records and IIM systems, the Assistant Secretary for Indian Affairs has exempted OTR's national Land Title Records and Land Record Information programs and offices from BIA's streamlining actions. However, the Department has told OTR that the three new Land Title and Records Office positions approved in Interior's fiscal year 1995 appropriations process cannot be filled at this time. According to an OTR official, these positions are needed to help address serious backlogs in ownership determinations and recordkeeping, which directly impact the accuracy of trust fund accounts. However, our September 1994 report[2] shows that more than these three positions will be required--OTR will need to double its current resources for up to 2 years to eliminate these backlogs.

BIA's current plan is not detailed enough to fully assess the impact of the planned decentralization and related retirements and resulting management changes on other BIA offices that perform functions related to trust fund management.

Question 21: Does the Bureau's September 1994 streamlining plan appropriately account for the management enhancement and reform efforts necessary in the area of trust funds management? If not, in what ways does the proposal appear deficient?

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[2]See footnote 1.

GAO Response: As of November 1994, BIA's streamlining plan discussed a proposed organizational structure, including a reduced number of positions and offices, three management layers, and the delegation of management decision-making to the agency office level. However, BIA's plan does not present information on how the proposed organization will support trust funds management or related reform efforts. For example, BIA's plan does not include (1) a revised mission statement, (2) a management strategy for how critical trust fund management functions will be carried out by various BIA offices in the future, (3) a discussion of how management oversight will be performed, (4) a description of the line authority between OTFM, OTR, and BIA field offices that perform trust fund and land records management functions, or (5) a description of the roles, responsibilities, and functions of OTFM, OTR, and BIA's remaining regional, central, and agency offices.

Question 22: In light of GAO's extensive knowledge of the Bureau and of management weaknesses within BIA, please describe any concerns you have over the Department's streamlining plan as it applies to the Bureau of Indian Affairs.

GAO Response: We have three major concerns about the BIA component of the Department's streamlining plan: the lack of (1) a mission statement, (2) information on how BIA will transfer a greater share of BIA's programs to tribes, and (3) consultation with tribes and Indians.

The Department's plan states that BIA will redefine its mission, be streamlined, and become a tribally driven organization. However, BIA has not yet revised its mission statement and it has not provided details on how programs will be managed at the tribe/agency level.

For example, the Department's plan states that BIA will increase the number of programs managed at the agency office level by moving a proposed $138.1 million in fiscal year 1995 budget authority and an additional $207.5 million in fiscal year 1996 budget authority to BIA's agency offices, where tribes participate in determining the funding priority for their programs.

While the Department's streamlining plan does not address tribal management of programs, the Appropriations Committees have asked the Department to report on its efforts to promote tribes' self-governance. The Conference Report (H.R. 103-740) on Interior's fiscal year 1995 appropriations calls for the Department to submit a report to the Appropriations Committees by March 15, 1995, covering how it plans to downsize and restructure BIA's central, area, and agency offices in accordance with assumptions on the expected level of self-governance compacting and contracting and the need to give tribes a stable funding base.

With regard to tribal consultation, the Department's plan states that no specific decisions on restructuring the field (agency office) and area office operations will be made until BIA has consulted with the tribes. Despite this provision, the Department's and BIA's plans contain a number of other provisions that indicate that such decisions have been made. Examples of these provisions include the following:

-- The Department's plan states that BIA will move all operational functions to the field and reduce area office staff by consolidating administrative functions and that BIA will examine consolidating these functions in fewer locations.

-- BIA's plan includes four options for replacing BIA's 12 area offices with 7 regional technical assistance service centers, which would support 82 consolidated agency offices but have no line authority over them.

-- BIA's plan also shows three bureauwide organization options which place OTFM in a different part of the bureau--under (1) Trust Responsibilities, (2) Financial Officer, and (3) Central Office, with OTFM functions split between policy and operations.

-- BIA's bureauwide options also show three different placements for OTR's Land Title and Records Program--under Trust Responsibilities, Operations, and the Administrative Services Center.

In the past, tribes have expressed concern about BIA's failure to consult with them before developing program and organization changes.

Question 23: The Secretary of the Interior has dual responsibilities to manage federal lands and resources and also carry out the government's trust responsibility to the Indians. With regard to these responsibilities, in your view, would the Interior Solicitor be required to provide the Secretary with advice from both a federal government and Indian trustee perspective? If so, should both government and Indian representatives be "at the table" during deliberations?

GAO Response: In carrying out his trust responsibilities to Indians, the Secretary is charged with accommodating Indian interests within the confines of the law. In carrying out his responsibilities to manage federal land and resources, the Secretary acts on behalf of the entire American citizenry. In some instances, Indian interests may conflict with national interests, and the Secretary is required to accommodate both to the extent possible.

The Solicitor, as the Secretary's lawyer, should identify potential conflicts for the Secretary and options for satisfactorily resolving them. Offering a spokesperson for Indian interests an opportunity to participate in land and resource deliberations where the Solicitor has identified a potential conflict is one way to ensure that Indian interests are fully articulated and considered.

(917330)

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

NOV 22 1994

Honorable Mike Synar
Chairman
Subcommittee on Environment, Energy
and Natural Resources
Committee on Government Operations
House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

Enclosed are responses to the questions transmitted with your letter of October 18, 1994, in followup to your hearing on the Department's Management of Indian Trust Funds.

Thank you for the opportunity to provide this additional information.

Sincerely,

Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs

Enclosure

FOLLOW-UP QUESTIONS FOR THE DEPARTMENT OF THE INTERIOR WITNESSES FROM CHAIRMAN SYNAR:

QUESTION

1. Under "other developments" in the Department's September 26 prepared statement, you discussed a joint effort underway in BIA on real estate management improvements, that involves OTFM and the Office of Trust Responsibilities. Wasn't this group actually formed several years ago?

ANSWER

This particular group was formed within the past year to develop a Business System Plan (BSP) for activities falling under the purview of the Office of Trust Funds Management and the Office of Trust Responsibilities. The BSP provides a road map as to how an organization should be aligned from the standpoint of its information systems and organizational structure.

QUESTION

2. Isn't it true that, as of 9/26/94, there had not been any account holder involvement in this effort? Why not?

ANSWER

One of the major steps in the development of a BSP is collection of input from Bureau customers relative to trust funds and trust activities. The BSP group is currently conducting interviews with several tribal officials to obtain their comments on the BSP. The purpose of this effort is not to implement a plan but to arrive at a position from which a plan can be developed. Since we are in the initial stages of preparing an overall system plan, involvement by account holders will certainly play a major role in its development.

QUESTION

3. When Congressional staff and others were briefed by Department officials in June, 1994 on DOI's 6-point plan, we were advised that there was a work group addressing the issue of fractionated ownership. However, at the September 26 hearing, Ms. Adamson of First Nations Development Institute testified that BIA officials had recently told her the work group was "defunct". What is the status of the ownership work group, what is it currently tasked to do, and what schedule for action has been established for it?

ANSWER

Ms. Adamson was informed by Bureau officials that the original task force was discontinued and a subsequent group formed from within the Department to specifically develop a proposed legislative solution. On October 20, 1994, The Assistant Secretary - Indian Affairs, transmitted copies of the proposed legislation to all tribal leaders. As outlined within the Secretary's Reform Plan, we hope to initiate consultation with tribes and individual interest holders by November 15, 1994 and conclude consultation by January 15, 1995.

QUESTION

4. Isn't it true that there has been no account holder involvement in the fractionated ownership work group effort even though it involves the IIM account holder's money?

ANSWER

In an effort to provide a mechanism from which a viable solution could be reached, the Department developed a proposed legislative solution to the fractionated heirship problem. It is our hope that this proposal will be the spring board from which an ultimate solution will be developed. As stated within the Secretary's Six Point reform plan, the Department fully intends to conduct meaningful consultation with interest holders and the tribes before any legislation is introduced to Congress.

QUESTION

5. Has the (IIM) group done any work on an IIM reconciliation approach since the June 1994 briefing for Congressional staff and others?

ANSWER

The OFTM has done a significant amount of work on IIM reconciliation at the request of the IIM work group. In the May - October 1994 time period, OFTM compiled substantial statistical information on IIM accounts which it concluded and provided to the work group on October 27, 1994. This data had been requested by the group for the purpose of evaluating the feasibility of available options to full reconciliation of IIM accounts which have been identified by the group. These options were highlighted in the June 1994 briefing of Congressional Staff and interest groups. On November 9 -10, 1994 the IIM Work Group to met for the purpose of reviewing the IIM data and to commence work on its report.

QUESTION

6. Has ITMA or other account holder group been involved in the work group? Are you aware of a Appropriations Committee directive to include ITMA in the development of any reconciliation approach? When does the Department intend to include ITMA?

ANSWER

As of this date, the IIM work group has met four times. ITMA participated in the most recent meeting. The objective of these meetings has been to gather information concerning IIM accounts and related records. As the group has compiled information it has discussed and sketched out various options which may serve as alternatives to a full reconciliation of IIM accounts, an endeavor that does not appear to be feasible, given the loss or destruction of certain documents and records of transactions and huge estimated costs into the hundred of millions of dollars. On the basis of information and knowledge obtained over this period of time, it appears to the group that a statistical sampling approach may be the most viable option to full reconciliation. Until recently, however, the group was still actively involved in the process of compiling data that it required before going forward. Now that the information and data are available, the work group has been expanded to include account-holder representatives for the purpose of preparing on a report outlining various options. ITMA and other account holder representatives participated in the IIM Work Group's meeting on November 9 - 10, 1994. In summary, as of the completion of the November 9 - 10 meeting, the IIM work group, thus far, has focused on compiling and assessing the information necessary to reach an informative decision on how to proceed on IIM reconciliation. This fact finding phase is largely complete, and IIM account-holders, through various representatives, will be invited to participate in evaluating viable alternatives to full reconciliation of IIM accounts.

QUESTION

7. I understand that the Department is now thinking that they will develop a settlement approach for the IIM accounts....How does the Department hope to get a settlement on these accounts, if you can't even assure people that their account balance is correct?

ANSWER

Settlement is being considered as one option among alternatives under consideration. Until an IIM reconciliation approach is finalized, further comment on any single alternative would not be appropriate.

QUESTION

8. If it was your money, would you settle under those circumstances?

ANSWER

Yes. The Department is attempting to conduct the most comprehensive reconciliation practicable taking cost and account holder interest into account and to conclude a fair and equitable resolution of account balances. This approach is consistent with representing the best interests of account holders.

QUESTION

9. Would the "senior accountable official" you proposed be able to oversee all these functions, including those at BLM and MMS? If not, did the Department believe that the official you propose for BIA would be able to solve all the critical trust fund problems within the Department.

ANSWER

The position referred to would be a senior level position within the Bureau of Indian Affairs. This option is still being considered. This position would focus on coordination and oversight of the myriad of functions within the existing BIA structure that are associated with the entire cycle of trust fund and trust asset management related activities. We believe that this framework could prove more effective and place a focus on coordination of trust fund activities such as accounting, investing, and disbursing of funds as well as the recording of land ownership, leasing of lands, and collection of revenue -- all performed within the BIA. With respect to the coordination of programs Department-wide, we will be complying with the recently enacted Indian Trust Funds Reform Act of 1994, which establishes a Special Trustee position for that purpose.

QUESTION

10. Does the Department still contend, as asserted in your 9/26/94 prepared statement, that the Secretary's 6-Point Plan constitutes a comprehensive strategic plan that will address **all**

the problems facing the trust fund program?

ANSWER

Yes.

QUESTION

11. OTFM does have a strategic plan in place now, but it covers only OTFM; isn't that correct?

ANSWER

Yes.

QUESTION

12. Were any account holder representatives involved in the process of developing the Secretary's June 1994 "6-point plan" prior to its release on June 13? If not, why not?

ANSWER

The 6-point plan was presented as a draft specifically for the purpose of eliciting comment from Tribal leaders, Congressional staff and account holder representatives.

Again, we want to reiterate what has been stated in previous correspondence and testimony: the Secretary's Plan is intended to consider all inputs and identify comprehensively all reform efforts necessary to carry out the Secretary's overall trust fund and trust asset management mission.

QUESTION

13. You say in your statement that you've "already received valuable input" on it from a number of sources. Isn't it true that no one supported it - not a single Tribe or account-holder group, not Congress, not GAO - no one except the Department of the Interior?

ANSWER

We have received a number of responses from tribes with respect to the proposed plan. As in any feedback received from the diversity of tribes involved, the range of support, comments, and suggestions has varied. For example, many focussed on specific areas of concern to their own tribes, such as in the issue of addressing the fractionated ownership problems. Others suggested additional changes which could be incorporated into the plan or which we may apply as it is implemented. These comments related to such areas as in the notification of errors found in accounts or in the classification of positions in the DM 130 for OTFM. Others expressed support for the reform plan and efforts on the part of the Department to address long standing problems. (See attached responses.)

QUESTION

14. In 1991 the Department was working with ITMA on a strategic plan, and in a March 1992 letter to this subcommittee, Eddie Brown, then-Assistant Secretary for Indian Affairs, stated that he anticipated that "the strategic plan could be prepared in appropriate consultation with ITMA and completed by early summer" of 1992. What happened to that effort, and why was that strategic plan never completed?

ANSWER

That effort was undertaken in the previous administration, and has been reviewed and is being used with respect to development of specific action plans by OTFM which are consistent with the overall strategy we are employing. However, that effort did not adequately or comprehensively address trust funds management, trust asset management, and greater tribal involvement in the management of natural resources needs which we believe are necessary. The Secretary's reform plan of June 13, 1994, does provide the necessary foundation for moving forward with these kinds of needed reform efforts on a timely basis. We are currently implementing this plan and overseeing improvements in the management of Indian trust funds and trust assets.

QUESTION

15. We understand that in the summer of 1994 Department officials met with ITMA on DOI's draft legislative proposal. We are further advised that ITMA representatives expressed strong opposition to it. Representatives of First Nations Development Institute also opposed it. Yet, in Ms. Deer's August 4 letter to me, she stated that your proposed legislation had been shared with ITMA and First Nations, and "their input has been incorporated into Interior's draft legislation." Specifically, what ITMA or First Nations "input" was actually incorporated into the Department's draft legislation?

ANSWER

The Department did meet with ITMA representatives on at least three or four occasions to discuss the legislation being drafted by the Department. Officials from the Department also spoke on the telephone with ITMA representatives in a number of follow-up conversations. As you noted, we also met with, and had substantive discussions on the telephone with, representatives from First Nations Development Institute.

ITMA apparently has advised you that it expressed "strong opposition" to the Department's draft legislation. However, you should know that in its discussions with the Department over the summer, ITMA representatives clearly expressed a positive interest in the Department's efforts to make greater use of investment opportunities in Treasury based securities.

Additionally, ITMA representatives supported the Department's efforts to provide technical assistance to Tribes wishing to take their funds out of trust. ITMA representatives also were interested in our efforts to provide objective standards by which to determine whether to allow a Tribe to remove its money. In fact, ITMA asked the Department to modify our draft legislative language in the objective standards section to make it mandatory (rather than discretionary) that the Secretary allow a Tribe to take money out of trust whenever a Tribe demonstrated that it met the objective criteria. We agreed with ITMA's reasoning, and changed our draft legislation to require the Secretary to allow any Tribe meeting the objective criteria to remove their funds from trust status.

Despite the seemingly productive nature of our summer discussions, there was always one point on which the Department and ITMA could not reach agreement. That point was ITMA's insistence on a provision requiring the Department to invest Tribal monies held in trust as directed by the Tribe. ITMA strongly disagrees with the Department on that issue. ITMA abruptly discontinued further meetings and indicated that it was not interested in conducting any further discussions with Department on the Department's draft legislation. A short time later, before Congressman Richardson's Committee, contrary to its discussions with us, ITMA testified that it absolutely opposed all aspects of the Department's draft legislation, including the Department's efforts to greater use of investment opportunities in treasury based securities.

We want to emphasize that it was ITMA, not the Department of the Interior, which cut off further discussions on the Department's draft legislation. We also want to emphasize that your staff made it clear to us that they would prefer that we work within the confines of the existing draft legislation written by them with the help of ITMA. We acceded to that request, and discontinued work on our own legislation.

QUESTION

16. With respect to the Secretary's potential liability in cases where the Tribes elect to manage their own funds, did you get a legal analysis on this question before you made your decision to

oppose H.R. 1846? If so, please provide a copy. If not, explain why no such legal opinion was requested.

ANSWER

A legal opinion on this question was not requested. While Section 205 of H.R. 1846 attempted to limit the Secretary's liability for loss of funds during demonstration programs, it did not provide for a complete waiver. Indeed, by its very language Section 205 made it clear that the Secretary would remain liable with regard to certain specified actions. Accordingly, we did not feel that a legal analysis as to the Secretary's potential liability was required since the bill was explicit on this issue. Further, our concern with regard to Section 205's treatment of the Secretary's liability was one grounded in policy as well as in the legislative language. As previously stated and as we recommended at the time, it was our position that the Secretary's liability should be limited to actions executed prior to the withdrawal and subsequent management of trust funds by the Tribes. In this regard, we further stated that we did not believe that the Department had the resources to effectively oversee and monitor tribal management of their funds.

See attached Department briefing paper on the Cheyenne-Arapaho decision.

QUESTION

17. What is the status of ITMA's contract with the Bureau?

ANSWER

We are currently engaged in the final stages of negotiations with ITMA on a new agreement for FY-1995.

QUESTION

18. Shortly before the September 26 hearing, Department officials informed our Subcommittee and other Congressional officials that the Department's lawyers had determined that ITMA should be formally chartered under the Federal Advisory Committee Act (FACA). Did the Department obtain a written legal opinion from the Solicitor's Office on this question before deciding the group should be chartered under FACA? If so, provide it for the record. If not, why not?

ANSWER

In the Office of the Solicitor, the branch of Administrative law and General Legal Services (ALGLS) in the Division of General Law provides advice on the Federal Advisory Committee Act (FACA) to all bureaus and offices in the Department. In the fall of 1991, the Bureau of Indian Affairs (BIA) requested ALGLS to review a Memorandum of Understanding (MOU) between BIA and ITMA under which ITMA was to provide comments to BIA on various trust funds issues. ALGLS attorneys concluded that the MOU was problematic and advised BIA that the relationship evidenced by the MOU was an advisory committee subject to FACA. ALGLS further advised BIA to charter an advisory committee to accomplish ITMA's tasks under the MOU. At that time, BIA contemplated that ITMA would complete its work under the MOU within approximately six weeks, before BIA could complete the chartering and appointment process under FACA. A committee, thus, was not chartered. BIA did not request a written opinion following its meeting with ALGLS.

The issue of FACA and ITMA again came up late this summer when the Office of the Secretary consulted with ALGLS on ITMA's special master proposal. During a meeting ALGLS learned that BIA's relationship with ITMA had continued beyond 1991, and that it was based on a cooperative agreement. ALGLS told the Office of the Secretary of the review and advice in 1991, and the Office of the Secretary requested that ALGLS review the cooperative agreement for any problems under FACA. Two staff attorneys in ALGLS, including one who reviewed the MOU in 1991, independently reviewed the cooperative agreement and each concluded that the relationship between BIA and ITMA was subject to FACA because: BIA and the General Accounting Office organized ITMA; BIA provides all or nearly all of ITMA's funding; and ITMA's main purpose is to monitor the reconciliation project and provide advice and recommendations to BIA on the project.

The Office of the Solicitor advised BIA that it should no longer meet with ITMA under the cooperative agreement and should instead charter an advisory committee to provide the advice and consultation ITMA gave under the cooperative agreement. Again, no written legal opinion was requested. BIA relied on the oral advice of the Office of the Solicitor, and decided to carry on its trust fund management consultations with tribes through an advisory committee under FACA.

QUESTION

19. As you know, the House and Senate have approved H.R. 4833 prior to adjournment and it is currently awaiting the President's signature. For the record, please advise the Subcommittee what

steps the Department intends to take to meet the specific provisions of that legislation, who will be in charge of coordinating those actions and the time-table for taking such actions.

88-693 97 - 6

ANSWER

Below is a list of the items in the American Indian Trust Fund Management Reform Act of 1994 that requires action by various components of the Department of the Interior.

Items in bill

Appointment of Special Trustee	**DOI Chief of Staff**	
Position description	AS/PMB	Nov 94
White House contacted	IOS	Nov 94
Develop budget request	AS/PMB	Nov/Dec 94
Strategic Plan	**Special Trustee**	
Develop plan	Special Trustee from appointment	1 year
Reconciliation	**BIA/OTFM**	
Complete tribal reconciliation by 9/30/95	OTFM	9/30/95*
Letter to Committees and other interested parties w/ options for closure	BIA	Nov 94
Interest Payments on IIM Accounts	**BIA**	
Develop plan for handling interest	BIA/OTFM	Dec 94
Determine how to pay lost interest due to failed financial institutions	BIA/OTFM	Dec 94
Develop budget request	BIA/OTFM	Nov/Dec 94
Miscellaneous	**Special Trustee/OTFM**	
Develop budget request for for Technical Assistance to Tribes	BIA/OTFM	Nov/Dec 94
Promulgate regulations	Special Trustee from date of enactment	1 year
Secretary's annual report	Office of the after Secretary date of enactment to Congress	1 year

*Alternative dates are currently under discussion with the Congress.

Special Trustee's annual	Special Trustee from report date of appointment	1 year
Quarterly statements	OTFM	IIM 7/1/95
Technical assistance	OTFM	Ongoing

Annual audit	OTFM	
FY91-94	OTFM	9/30/95
FY95	OTFM	6/30/96
FY96	OTFM	6/30/97
Approve process for withdrawal of funds	OTFM	1/31/95

The White House has been contacted about the nomination and clearance process for the Special Trustee since the position requires a Presidential appointment. A position description is under development for this position as well.

On November 9, 1994, the Assistant Secretary of Indian Affairs and Bureau of Indian Affairs staff met with Congressional staff members and delivered a letter to the Subcommittee that presented some options to the Subcommittee for bringing the tribal reconciliation to closure.

Several items in the Act have budgetary impacts. In fiscal year 1995, the Bureau of Indian Affairs and the Office of the Secretary are reviewing their operating budgets for funding. Several items will require funding in fiscal year 1996 and beyond. These budgets are currently under development. Within the context of the FY 96 Budget, these funding requirements are being explored.

QUESTION

20. What is the status of the BIA's proposed "streamlining" plan?

ANSWER

The draft BIA's streamlining plan has been incorporated into the overall Department's plan which was forwarded to the Office of Management and Budget (OMB) on October 13, 1994. As such, it is currently under review with the rest of the Department's plan.

QUESTION

21. Specifically, how will that plan (if implemented) affect trust fund management operations -- an area identified as a material weakness within the Department?

ANSWER

Realignment of the Office of Trust Funds Management has been one of the major points of the Secretary's Reform Plan. It is to provide adequate staff and structure to implement major long term improvements to address the material weakness status of this program area. As such, we do not anticipate any adverse impact on the implementation of the realignment. We are looking at the proposed staff to supervisor ratios as part of this process; however, the number of positions needed to be filled at OTFM will not be changed.

QUESTION

22. For the record, please explain in detail how the streamlining plan or the Bureau's September 9, 1994 "Allocation and Management of FTEs" directive will affect the OTFM staffing plan approved earlier this year. Under the OTFM staffing plan, Mr. Parris was able to fill a number of positions in FY 1994, and the remainder of the new positions were to be filled in FY 1995. Under the streamlining proposal and the 9/9/94 directive, will Mr. Parris still be able to fill all of the new positions approved for OTFM in April 1994? If so, when? If not, explain in detail what the Department's justification is for not permitting all these new positions to be filled.

ANSWER

As noted above, the OTFM realignment is a critical element of the Secretary's Reform Plan in that it will provide adequate staff and structure to implement major long term improvements. We therefore do not anticipate any adverse impact of streamlining on the filling of positions within that realignment. We intend to fill the same number of positions as noted in the DM-130 and staffing plan by the dates projected, given success in the recruitment of qualified staff.

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
INDIAN TRUST MANAGEMENT HEARING
BRIEFING PAPER

ISSUE: ITMA discussion of Cheyenne-Arapaho Tribes of Indians of Oklahoma v. U.S., 516 F. 2d 1390 (1975) in supplemental testimony dated August 29, 1994 and submitted to the House Committee on Natural Resources, Subcommittee on Native American Affairs.

BACKGROUND: ITMA asserts that if the Secretary invests tribal funds in the proposed "G" fund rather than investments available to him under 25 U.S.C 162a, he would be liable for the difference in yields under the holding in Cheyenne-Arapaho. (trustee has an obligation to maximize trust income by prudent investment; thus, if eligible investments were available at higher yields, the U.S. could be liable for the difference between what interest it paid and the maximum such funds could have legally and practically earned if properly invested outside).

DISCUSSION: ITMA's reading of the Cheyenne-Arapaho is limited in scope and its analysis suggests that the holding would apply in all instances by failing to take into account other relevant factors. While ITMA correctly restates the Courts discussion and holding in the case, it fails to state that the case was remanded to the trial court for a determination as to what yeild was the "maximum return" for the period involved and for determinations with regard to related matters. In instructions directed to the trial court, the Court stated:

> "[I]n assessing the return available outside Treasury, ... the trial judge should take into account the availability of eligible investments....He will, in addition, have to decide the length of time within which it would have been reasonable for defendant to make funds available for investment, to make actual investments and to to reinvest where appropriate. As to funds which were invested, but at rates less than those found by the trial judge to be the maximum available, the trial judge will have to determine whether defendant breached its duties by not making a switch in investments which would have been made by a 'man of ordinary prudence ... in dealing with his own property."

In this regard, it is noted that under the "prudent man" standard, securing the "maximum return" must be considered under the circumstances in which one is operating. Here, it is noted that the "G" fund is formulated and intended to address the very real concern of early redemption caused by frequent changes in tribal leadership and realignment of priorities. Moreover, it is well accepted that while a trustee has an obligation to make the trust productive, he has an equal obligation to assure that the trust is preserved. Again, "par value" redemption provides a buffer to loss of income due to penalties associated with early redemption. Finally, ITMA's analysis is largely based on the assumption that the "G" fund will generate yields that are less than those that can be generated by investments made pursuant to 25 U.S.C. 162a.

Departmental analysis, however, indicates that yeilds under the "G" fund would be as great, if not greater, than those realized under the present investment scheme.

ONE HUNDRED THIRD CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT OPERATIONS

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TRUST FUNDS MANAGEMENT

The Honorable Ada Deer
Assistant Secretary - Indian Affairs
U.S. Department of the Interior
19th and C Streets, N.W.
Washington, D.C. 20240

Dear Ada:

Thank you for the opportunity to comment on the Department's 6-point proposal for addressing the longstanding problems afflicting Interior's management of the $2 billion Indian Trust Funds. I appreciate the personal time and attention you have devoted to this subject.

The Department's proposal was outlined generally during a June 13 meeting of various Department and Bureau of Indian Affairs, Bureau of Land Management, and Minerals Management Service officials; and some Congressional staff and tribal representatives. I apologize for the delay in submitting written comments on that meeting and the Department's new proposal. However, this is a complex situation involving myriad inter-related problems within BIA and the Department, and sufficient time was needed for careful consideration of the Department's briefing materials (and DOI officials' statements at the meeting) and for consultation with tribal representatives and others about various aspects of the proposal.

As you know, the issues addressed by the Department's proposal are not new to us: between October 1989 and May 1991, the Committee on Government Operations' Subcommittee on Environment, Energy and Natural Resources held four indepth oversight hearings on the serious and longstanding deficiencies plaguing the trust fund program and on the Department's intermittent and grudging efforts to correct them.

As a result of those hearings and the Committee's concern over the lack of adequate Departmental attention to this matter, in April 1992 the full House

Committee on Government Operations adopted without dissent an investigative report on this subject, entitled "Misplaced Trust: The Bureau of Indian Affairs' Mismanagement of the Indian Trust Fund." That unanimously-accepted report (copies of which were provided to the new, high-level Department officials in early 1993) --

-- repeatedly stressed the Government's unquestioned obligation by statute and treaty to properly discharge its trust responsibilities with regard to management of, and accounting for, the trust funds;

-- found that Interior, through "grossly inadequate" BIA management and "inattentive and indifferent" Departmental leadership, had "failed to fulfill its fiduciary duties to the beneficiaries of the Indian trust fund"; and

-- concluded, among other things, that "the Government's failure to demonstrate the accuracy of its accounting of trust funds could be adjudged sufficient to establish the Government's liability to the tribes for a breach of fiduciary duties."

Based on the Subcommittee's extensive investigations and hearings, and to underscore the seriousness with which this Committee viewed the numerous trust fund management (including financial management), accountability, internal control and reporting problems, the Committee made numerous specific recommendations for corrective action by the Bureau and the Department. Unfortunately, more than two years later, many key corrective actions still have not been implemented. Indeed, several are not even addressed by the Department's six-point proposal outlined in June; in some cases, reported progress in others areas was, at best, misleading.

Given our long history of oversight of these continuing problems, I think you can understand why I am immensely disheartened by the lack of meaningful progress on reforms and by inadequate understanding of and attention to these deficiencies from some high-level Department officials. In fact, it appears that some officials now centrally involved in the decisionmaking process have not bothered to read our Committee's report, to review the many critical General Accounting Office (GAO) and Inspector General reports on this subject, or even to gain an understanding of the history, scope and severity of the problems.

Moreover, having waited so many months for the Department's views on the carefully crafted trust fund reform legislation already pending in Congress, I was especially dismayed to hear that the Department has now apparently decided to develop its own substitute legislative proposal.

Finally, it seems obvious that the Department and the Bureau still are not initiating adequate and appropriate consultation with the Inter-Tribal Monitoring

Association and other trust fund accountholder representatives as directed by the Congress and promised by the Department. This failure has long been a legitimate point of criticism against DOI headquarters personnel involved with these issues; I am frustrated and dismayed to learn it is a continuing problem under the current Administration. I know that you personally would agree that it simply is inexcusable that those most directly affected by the program and DOI's actions must constantly struggle to gain admittance to the Department's inner-circle of key decisionmakers.

As the Government Operations Committee report repeatedly stressed in 1992, strategic plans were to be developed, decisions made, and corrective actions undertaken after full consultation with accountholder representatives, not before. In fact, every Committee recommendation to the Department was premised specifically on full and timely consultation. Clearly, there has not been sufficient consultation with accountholder representatives prior to the Department developing its proposed plans and policy positions. The Department's after-the-fact outreach effort is not a suitable substitute for meaningful prior consultation.

Let me now turn to the Department's proposal, based on the briefing documents you presented to Congressional staff and tribal representatives on June 13, and statements of various Department officials at that meeting:

GENERAL OBSERVATIONS

-- Interior's 6-point plan is not an overall strategic plan, as strongly recommended by the Government Operations Committee in its April 1992 report and by GAO in various reports. Instead, the proposed plan addresses management initiatives, which, for the most part, were already planned or underway in BIA, BLM, and MMS. In some cases, the initiatives as presented at the June 13 briefing do not appear to be fully developed. For example, inconsistent or incorrect information presented during the briefing does not indicate adequate management understanding or planning for trust fund investment services.

-- Interior's confidence in the 6-Point plan alone, without also addressing the underlying organizational and management framework and the high-level leadership necessary to ensure successful implementation, may result in simply repeating past failures. Interior's plan still does not address the coordination needed in BIA to ensure that all BIA offices -- Areas, Agencies, Office of Trust Responsibilities (OTR), and Office of Trust Funds Management (OTFM) -- will work together to solve Indian trust fund management problems. For example, there was no proposal for solving the BIA Agency Office accounting or lease record maintenance problems, even though solving these problems is absolutely fundamental to achieving accurate trust fund balances.

The reported progress of the Tripartite Committee, formerly termed the Joint BIA, BLM, MMS Steering Committee, was overstated. For example, it is our understanding that the new Tripartite Committee only had its first meeting on May 18, 1994 and that the second meeting will not take place until this month. The new Committee is now in the process of drafting a Charter and a Memorandum of Understanding on how the three Interior agencies will work together. Thus, the Tripartite Committee has not yet begun to coordinate with Indian groups, even though their early input is essential. Also, we are concerned that the BIA representative on the Committee may not be sufficiently cognizant of the OTFM operations on which the Committee will need some perspective. This is crucial if the Tripartite Committee hopes to help resolve BIA's trust fund management problems, including unreliable data and the need for systems integration. Finally, it is important that all parties recognize that the Tripartite Committee is a coordinating group. While the Tripartite members can agree to work together to solve common or related problems, they cannot make policy.

Interior's inexplicable and unusually long delay in providing Administration comments on H.R. 1846 and S. 925, introduced by myself and Senator Inouye, has merely served to stall trust fund management reform efforts. Interior stated at its June 13, 1994 briefing that official agency comments on these companion bills would be provided to the Congress after the July 4th District Work Period, apparently along with the Department's proposed "substitute" legislation. Consideration of alternative legislation at this very late date would only serve to further delay essential legislated reform proposals. In addition, Interior's approach will limit the opportunity for consultation with, and input from, affected stakeholders, since Interior offered tribes and the Inter-Tribal Monitoring Association (ITMA) only two weeks to comment on a new (and, in many respects, altogether too vague) 6-point plan. Further, because Interior did not state that it would submit its actual legislative proposal to tribes for consultation, it is not clear how Interior will interact with the tribes in that regard. As you may know, we spent many, many months in close consultation with tribal representatives and other parties prior to introducing H.R.1846; that consultative process was crucial to achieving the support it now enjoys. Given our own experience, I am hardpressed to see how the Department can possibly undertake an adequate and meaningful consultative process on a new proposal at this late date.

Let me also offer our thoughts and concerns with regard to the specific elements of the proposed 6-point plan:

<u>1. Complete Reconciliation of Tribal Trust Funds</u>

At the June 13 briefing, the Department overstated the status and projected results of BIA's tribal trust fund reconciliation project. BIA's reconciliation project is essentially testing postings of selected transactions, such as the <u>non</u>-investment tribal transactions. For the most part, these transactions are not being reconciled to source documents, such as leases or other agreements. Importantly, but not acknowledged by Department officials, BIA cannot determine the universe of either the non-investment transactions or the tribal leases. Thus, because of this lack of a complete universe, BIA cannot make reliable projections of error rates or draw any firm conclusions on the results of a portion or all of the reconciliation work. (I would also note that the unreconciled investment transactions are far more likely to be error-prone than the non-investment transactions, again undermining the reliability of the error rates being suggested by BIA.)

In response to an ITMA question about on June 13 the availability of lease documentation, I understand that BIA's reconciliation Project Manager discussed the reconciliation "approach" rather than answering ITMA's question. He did not disclose that a significant number of lease documents for the five pilot tribes were not properly maintained by BIA's cognizant Agency Offices and that, as a result, they cannot be located. Here, as in many other instances, it appears that while the ITMA was created to allow accountholder representatives to monitor the reconciliation project, the Association is being given very limited information on the project.

The Subcommittee is aware that BIA's Reconciliation Project Manager has not always reported to the OTFM Director and that there are instances where this continues to be a problem. For example, the Project Manager has not actively involved the certification contractor in an "over-the-shoulder" review, as required by BIA'a contract. Some of BIA's contract cost growth and slippages in milestone datea are a result of ineffective use of the certification contractor. Indeed, BIA will spend an additional $1.2 million in fiscal year 1995 for the certification work, in part, because BIA's Project Manager did not ensure that documentation needed for the certification work was made available to the contractor in a timely manner.

In addition, although BIA's Project Manager was aware that the certification contractor planned to request an additional $1.2 million to continue its work in fiscal year 1995, the Project Manager did not inform the OTFM Director or BIA management in advance of BIA's fiscal year 1995 appropriation hearing. This resulted in the need for Interior and BIA to provide the Appropriations Committees with revised cost estimates for this work in May 1994.

BIA's recent information on reconciliation cost estimates is inconsistent. The Subcommittee understands that on May 19, 1994, Interior and BIA management told the Appropriations Committees that reconciliation and certification project costs would total $25.3 million through fiscal year 1996. At Interior's June 13, 1994 briefing, BIA's Reconciliation Project Manager presented cost estimates totaling $20.6 million through fiscal year 1996 -- a decrease of about $5 million. The General Accounting Office (GAO) has advised the Subcommittee that there does not appear to be any hard copy support for these estimates. In addition, the estimates do not include the costs of reconciling or testing individual Indian money (IIM) account data or testing MMS royalty receipt transactions for revenues transferred to BIA. Further, based on the cost of the work already performed, the estimates appear to understate the cost of the global "fill the gap" work. Because the cost projections are, at best, rough estimates and because all costs are not yet estimated, we have to conclude that significant funding increases may be needed in the future to complete the remaining reconciliation tasks.

2. Provide Essential Staffing to the Office of Trust Funds Management

Interior's written briefing package for the June 13 meeting incorrectly states that OTFM has been charged with overseeing the Indian trust funds program nationally and ensuring that the Secretary's trust responsibility is consistently carried out in accordance with law, policy, and procedure. In fact, OTFM does not have such broad authority. For example, the Secretary's trust responsibility includes functions outside OTFM, such as those performed by BLM and MMS.

In addition, responsibility for BIA's lease management, collection, accounting, disbursement, and issuance of statements to accountholders is delegated to BIA's Area Offices (for tribes) and its Agency Offices (for individual Indians). While OTFM generally oversees trust fund operations through its responsibility for reconciling trust fund accounts, it does not have management or supervisory authority over the Areas and Agencies, and increasing OTFM's staff will not serve this purpose..

Further, OTFM does not administer all of BIA's trust funds accounting systems. The Integrated Resources Management System (IRMS) is operated by BIA's Agency Offices and no BIA office is currently charged with responsibility for maintaining this system. In addition, BIA's Office of Trust Responsibilities (OTR) appears to have the lead responsibility for development of an IIM accounting system to replace IRMS. While OTFM is in the process of contracting for a core trust accounting system which will be dependent on IIM accounting system data, OTFM was not included in the OTR IIM system planning effort until early June 1994.

Finally, BIA has no consistent, written policy or procedures for trust funds management for either OTFM or BIA's Area and Agency Offices to follow as guidelines. As a result, it is unclear how OTFM could be charged with ensuring that trust funds management is carried out in accordance with policy and procedures. While additional staffing is essential for effective performance of OTFM's responsibilities, clearly OTFM should not be held accountable for trust fund management functions performed by BLM, MMS, or BIA's Area and Agency Offices, or for accounting system design efforts by OTR or other offices.

7

3. Acquire Sound, Proven, Commercially Available Investment and Accounting Systems and Services to Facilitate the Transfer of Trust Fund Management to Skilled Investment Professionals

A great deal of clarification is needed on this initiative as it is now described, and I am concerned by the lack of thought or detail put forth by the Department in this regard. First, a fiduciary cannot transfer the exercise of judgment and discretion to someone else. Second, whenever the government accepts funds in trust on behalf of another, as is done here, the management of those funds is considered an inherent government function which cannot be contracted out to the private sector. The government may contract for management assistance (investment advice or bookkeeping, for example), but may not contract out the ultimate decisionmaking responsibilities, which require the exercise of judgment and discretion. Either the Department was simply imprecise in spelling out this constraint, or Interior officials do not fully understand this fundamental limitation. Third, it would not be feasible to contract with investment professionals for trust fund management. Investment professionals would be able to handle investment functions, but not other trust fund management functions, such as accounting or natural resource asset management.

In addition, Interior's briefing materials are unclear with regard to functions that the so-called Blue Ribbon (investment) Board would perform versus functions that would be performed by a custodian. For example, Interior's information states that investment advisors would forecast and monitor portfolios that produce instantaneous execution of trades based on predetermined factors. First, it is the Subcommittee's understanding that if BIA were to contract for investment advisors, these parties would advise either a Board and/or BIA trust fund managers of various investment options for their consideration. Then, BIA managers, possibly assisted by a Board, would make investment decisions and advise its contractor custodian of its decisions so that the custodian, not the investment advisors, could execute the trades. Interior's failure to fully consider and clarify its thinking in this regard causes me significant concern.

Further, Interior's discussion of developing additional investment options for those trust funds remaining with BIA is inconsistent with its statement that the Department "should not be in the investment business" and that, "in general" tribes should be allowed to assume responsibility for their own trust funds. According to the June 13 presentation, Interior appears to be expanding its trust fund investment business by it's approval of OTFM investment advisors and the discussion of broadening OTFM's investment options.

Finally, Interior has stated that delegation (or contracting-out) of investment responsibility to third parties should not be subject to completion of the tribal or IIM account reconciliations. However, we have no assurance that Interior will provide for needed adjustments identified during the reconciliation effort to be passed on to accountholders who have withdrawn their money from BIA's trust fund accounts.

Additional comments require further information from the Department. Thus, the Subcommittee would like clarification on the scope of Point 3 and on how the Department plans to implement it, including: what specific administrative functions you propose to delegate to any contractors; to what extent and in what ways Interior plans to stay in the investment business; who would comprise the membership of the so-called Blue Ribbon Board, along with a precise description of its role, authorities and any limitations on those authorities; and what provision Interior would make for handling adjustments identified during the reconciliation effort, if Congress permits account maintenance to be transferred to a third party prior to completion of the reconciliation project.

4. Authorize the Assumption by Tribes of the Management and Control of Tribal Trust Funds and the Transfer of Government Investment to Private Sector Investment Professionals Supervised by Blue Ribbon Board

I am at a loss to understand the Department's sudden decision, at this very late date, to develop some sort of alternative legislation to that which has already been before Congress for more than a year. First and foremost, the legislation introduced by myself and Senator Inouye was the subject of extensive pre-introduction consultation with accountholder representatives -- a consultative process which, clearly, the Department will not have time to undertake if legislation is to move this Session. Second, as you are aware, Senator Inouye and I (along with other supporters of the legislation) have been waiting since last fall for the Department to submit official comments on our bill so that we might sit down with you and accountholder representatives and try to address any legitimate problems or concerns you might have about its provisions. For whatever reason, the Department has chosen not to participate in that normal process of legislative give-and-take. Instead, without the courtesy of alerting either the tribes or the sponsors of the legislation, and without having stated any objection to the pending legislation, the Department only now announces some vague and inexplicable notion of developing its own "alternative" bill.

So far, the Department's proposal has been described in only the broadest way; thus, it is not clear what the Department's objections might be to the current legislation or exactly how it might propose to change those provisions. Moreover, statements by some officials at the June 13 meeting conflicted with what is described in DOI's written material, adding to the confusion over what you intend to propose. However, some general conclusions can be drawn from the information already provided, and I want to offer some observations on several points.

It is not clear why Interior would state that it is opposed to pilot efforts but, at the same time, require that the tribes' assumption of responsibility for their funds be phased in, with greater portions of their funds being made available for withdrawal from the trust funds after Interior's audit and evaluation of the tribes' performance. It appears that Interior's legislative proposal overlooks the benefits of demonstration pilots. For example, a demonstration pilot would provide a structured transition for tribes wanting to exit the current trust funds scheme, with far less administrative burden to Interior than the Department's own proposal for detailed evaluation and reporting.

On a related question, I would also request your clarification concerning whether the Department intends to obligate the Secretary to approve tribal proposals for withdrawal of trust funds, or whether, instead, you intend that the Secretary's approval would simply be discretionary regardless of the adequacy of the withdrawal proposal or a tribe's demonstrated investment capability.

Interior is proposing that the government's liability be terminated when funds are withdrawn by the tribes, yet it is not clear why Interior's audit and evaluation of the tribes' performance is necessary. Nor is it clear why tribes should be required to submit periodic reports to Interior on their financial management, including financial statement audit reports -- something which BIA itself is unable to do for the tribes and other accountholders. In addition, Interior's discussion of its proposed legislation appears to provide for assumption of trust fund accounting and investment by tribes only. Our House and Senate bills would allow individual Indian accountholders, as well as tribes, to assume responsibility for their own trust funds.

Interior's approach, as explained at the June 13, 1994 briefing, would pull BIA deeper into the investment business, at a more sophisticated level than the Bureau has demonstrated that it can handle. Interior has not fully articulated the role of the Blue Ribbon Board (which presumably will serve as an investment advisory board) and the Board's relationship with BIA. In addition, Interior has not articulated how the tribes and BIA will interact regarding other investment vehicles and BIA's responsibility to invest according to the tribes' instructions. It is not clear if the Board's approval of the tribes' instructions will be required or what the government's liability will be.

Finally, Interior officials's statements and the Department's written documents both indicate that the Blue Ribbon Board, as a third party, would "supervise" the private investment managers that BIA will contract for. As noted above, it would not be proper for the Board, rather than BIA or Interior, to "supervise" a private contractor.

5. Work Toward Resolution of the Complex Issues Surrounding Individual Indian Money (IIM) Accounts

Interior's IIM Work Group, which was formed in January 1993, was to prepare a draft proposal on IIM reconciliation approaches for review in May 1994.

However, at the time of the June 13, 1994 briefing, the draft proposal had not been provided to Work Group members for internal review or to the ITMA or IIM accountholder-representatives. No explanation for this delay was provided at the briefing.

Representatives of BIA's Office of Trust Responsibilities discussed the impact of fractionated heirships on IIM accounting and ownership recordkeeping. I am advised they talked about the Fractionated Heirship Work Group's proposals on which they plan to obtain tribal input. Although the Work Group's draft proposals were submitted to the Department on November 15, 1993 and consultation with the tribes was planned for early January 1994, to date there has been no consultation with the tribes. The reasons for the delay in consulting with the tribes was not explained at the June 13, 1994 briefing. Also, Interior did not present information on any of the options in the draft proposal. As a result, it appears that Interior's efforts thus far involve an initiative to identify "options" rather than a plan of action. I want to strongly recommend that meaningful consultation with accountholder representatives be initiated <u>in earnest</u> immediately; otherwise, the chances for successful resolution of these particularly difficult IIM issues will diminish considerably.

OTR's efforts to improve land title and records systems are not new efforts and funds have already been appropriated for this purpose. In addition, the initiative to study options for improving IIM-related accounting systems appears to be a response to the recommendation in GAO's June 1992 report (GAO/AFMD-92-38) that BIA review current systems as a basis for determining whether systems modifications, new systems design, or contracts for ADP services would most efficiently bring about needed improvements. OTFM's fiscal year 1995 budget request included $1 million for a comprehensive systems study. However, OTR had already begun to develop a systems plan to address IIM accounting without OTFM involvement.

While the Subcommittee understands that OTR and OTFM have pledged to work together on an IIM accounting system approach, the Subcommittee is concerned that, without BIA headquarters leadership, effective coordination may not be achieved and the proposed system may not be adequate to solve IIM accounting problems.

<u>6. Encourage and Facilitate More Direct Tribal Management of Natural Resources on Trust Lands</u>

Interior's presentation on the status of its efforts in this area appeared to be somewhat overstated. Moreover, Interior's initiatives in this area are not new proposals. They include BLM and MMS National Performance Review initiatives which are already planned or underway. While MMS is in the process of implementing initiatives to involve tribes in management of their mineral assets.

BLM's efforts appear to be only in the planning stages. Further, while the joint program office in Farmington, New Mexico is an excellent approach at coordinating Indian natural resource program efforts by BIA, BLM, and MMS, the Subcommittee understands that the Farmington office is not yet functioning as a fully-coordinated unit. Instead, BLM, BIA, and MMS staff at Farmington still function as three separate offices.

In addition, it is not clear that BLM can use P.L.93-638 self-governance funding to delegate inspection and enforcement responsibilities for Indian leases to tribes. Like MMS, BLM would have authority for cooperative agreements under Section 202 of the Federal Oil and Gas Royalty Management Act of 1982. MMS has been told by the Interior Solicitor that it must use its Section 202 authority to delegate functions to tribes and that it cannot use P.L.93-638 funds for this purpose. It is not clear whether BLM must also use its Section 202 authority, or if the Interior Solicitor has ruled with regard to BLM's authority. The Subcommittee requests clarification on BLM's authority to delegate inspection and enforcement functions to tribes. If P.L. 93-638 funds are available for this purpose, what would be the effect, or loss of funding, on other self-governance programs?

I hope these comments are useful to the Department as you reconsider certain aspects of the Department's proposed plan. I'm sure you agree it is crucial that the longstanding problems plaguing the trust fund program be addressed in a thoughtful and comprehensive manner as quickly as possible. Too many months have already passed without meaningful engagement by the Department on these problems. In my view, it would be an unforgivable abrogation of our mutual responsibilities to the accountholders if we do not come together now to enact reforms this year and I am happy to work with you and others at the Department toward this end. I look forward to receiving the Department's clarification on the questions I have raised in this letter, so that we might respond further and move ahead with speed and determination to resolve these longstanding problems.

With warm regards.

Sincerely,

Mike

MIKE SYNAR, Chairman
Subcommittee on Environment,
Energy and Natural Resources

cc: The Honorable John Conyers, Jr.
Chairman
Committee on Government Operations

The Honorable William F. Clinger, Jr.
Ranking Minority Member
Committee on Government Operations

The Honorable J. Dennis Hastert
Ranking Minority Member
Subcommittee on Environment, Energy and
Natural Resources

The Honorable Daniel Inouye

The Honorable Sidney Yates

The Honorable Bill Richardson

The Honorable Ralph Regula

The Honorable Bruce Babbitt
Secretary of the Interior

Inter-Tribal Monitoring Association

Mr. John Duffy
Counselor to the Secretary

Office of Trust Fund Management
Albuquerque

Hoopa Valley Tribal Council

P.O. Box 1348 ● Hoopa, California 95546 ● (916) 625-4211

Dale Risling
Chairman

HOOPA VALLEY TRIBE
Regular meetings on 1st & 3rd Thursdays of each Month

July 1, 1994

Mr. Jim Parris, Director
Attn: Trust Fund Reform Plan
Office of Trust Funds Management
505 Marquette N.W., Suite 700
Albuquerque, New Mexico 87102

Dear Mr. Parris,

This letter responds to your request for comments on the "Trust Fund Reform Plan." Although there are many complex issues discussed in this plan, I will submit just a few comments at this time. I apologize for the lateness of these comments. The Tribe did not receive the plan until Friday, June 24, 1994. The Tribe believes the plan should be expanded to include options for assumption of control of trust management duties by the Tribe. A written agreement between the tribe and the Secretary should be approved by both parties describing the conditions upon which the tribe may withdraw funds, return funds, or assume trust duties from the Bureau.

Listed below are specific changes to the plan:

Pg. 4 Section D. reads as follows:

> Adjusting entries in instances where errors are identified.
>
> Comment: Adjusting entries is fine, but this should be done with tribal consultation.
>
> Suggested change:
> -Adjusting entries in instances where errors are identified, and notification will be sent to the tribe prior to adjustment.

Page 2.

Pg. 15 Paragraph 2. Line 4. reads as follows:

However, it is also recognized that these securities are purchased from an existing inventory (unless purchased directly from Treasury) and a very competitive market exists.

Comment: The tribe is not aware of an existing inventory within the Bureau of Indian Affairs and that purchasing from an existing inventory was a regular activity of the Bureau. We reserve comment on this item. We request a copy of the existing inventory and any supporting policies.

Suggested change: Delete Line 4.

Pg. 15 Paragraph 5 reads as follows:

Investment through use of a funds program and customized portfolios. A thorough analysis will be conducted to determine the proper mix of accounts that could benefit from investment through a funds structure versus the accounts that will still utilize customized portfolios. This will include an investment procedure to determine guidelines and dollar thresholds that will apply.

Suggested change: Investment through use of a funds program and customized portfolios. A thorough analysis will be conducted to determine the proper mix of accounts that could benefit from investment through a funds structure versus the accounts that will still utilize customized portfolios. The Tribes will then be contacted and the analysis will be discussed with the proper tribal officials. The BIA will seek approval by tribal resolution to invest through a funds structure. This will include an investment procedure to determine guidelines and dollar thresholds that will apply.

Page 3.

Pg. 15 Paragraph 6. reads as follows:

> Acquire professional investment advisors to analyze current portfolios and make recommendations, and execute trades based on their access to vast databases that provide forecasting, research, and analytical resources. The Bureau will retain the ultimate decision-making responsibility.
>
> Suggested change: With tribal consultation, the Bureau will acquire professional investment advisors to analyze current portfolios and make recommendations, and execute trades based on their access to vast databases that provide forecasting, research, and analytical resources. The Bureau will retain the ultimate decision-making responsibility, but will discuss recommendations and proposed trades with the Tribes to ensure they are informed of transactions regarding their accounts.

Pg. 18 Section of Returns of Withdrawn Funds reads as follows:

> Returns would be permitted, at the Secretary's discretion, subject to administrative feasibility. The purpose of a return provision would be to allow tribes that have "second thoughts" to return funds to federal management. Rewithdrawl might be subject to limitation at the Secretary's discretion.
>
> Suggested Change: Returns would be permitted upon request of the Tribe per a prior written agreement between the Secretary and the Tribe. One purpose of a return provision would be to allow tribes that have "second thoughts" to return funds to federal management.

I recognize and support the BIA's efforts to resolve long standing problems in the management of Indian trust funds. Tribes have vested rights in ensuring that funds are managed properly and must be directly involved with ongoing management of Trust funds. If there are any new developments regarding this plan, please contact me. The Tribe reserves the right to comment at a later date on the Natural Resources provisions.

Sincerely,

Dale Risling Sr., Chairman
Hoopa Valley Tribe

Hoopa Tribe Real Estate Services
P.O. Box 1130, Hoopa, CA 95546

Hoopa Valley Tribal Council

P.O. Box 1248 ● Hoopa, California 95546 ● (916) 625-4211

Dale Risling, Sr.
Chairman

HOOPA VALLEY TRIBE
Regular meetings on 1st & 3rd Thursdays of each Month

June 30, 1994

United States Department of the Interior
Office of the Secretary
Ada E. Deer, Assistant Secretary - Indian Affairs

Dear Ms. Deer:

I have reviewed the DRAFT (Indian Trust Funds and Trust Assest Management Reform Plan.

I am concerned about the fractionated ownership interest: I have a fractionated interest in an (80 acre tract, here in California) (there was eight original owners) now there are probably one hundred owners in this tract of land. How do we address this situation?

Attached are my comments. Any questions, call (916-625-4903) or write the Realty Department, P.O. Box 1130, Hoopa, CA 95546.

Sincerely,

Dorothy Lincoln

Dorothy Lincoln
Realty Officer
Hoopa Valley Tribe

Attachments:

Historical Evolution

Early legal cased have established that tribes are "domestic dependent nations." As such, they have both a special trust relationship with the federal government and a separate governmental status as tribes.

The courts have consistently characterized the trust relationship as being similar to that of a guardian to his ward. The trust relationship requires the federal government to protect and enhance the property and resources of Indian Tribes. The governmental status of tribes arises from the fact that they retain inherent sovereign powers and are "distinct, independent political communities having territorial boundaries within which their authority is exclusive."

Historically, American Indians considered their tribal lands as having the same status as air, sky, or water. There was no concept of individual landownership, and the only boundary lines that existed were those established by a tribe's ability to protect its hunting grounds from encroachment by other tribes through mutual agreement or force.

Fractionated Ownership interests in Trust Lands

As a result of the Allotment Act, the Indians' age-old communal concept of landownership underwent a radical change. It has taken many decades for Indians to fully understand their role as a title landowners. The major damage caused by alloment of tribal lands stems from the division, or fractionation, of title as joint ownerships become divided into smaller shares with succeeding generations of heirs. Historically, Indians preferred not to leave wills and allowed their lands to be inherited in undivided shares upon their death. It is the BIA's responsibility to record the undivided fractions of ownership interest in each parcel. The division of the title through heirship is termed "fractionation." The major hardship caused by fractionation are: (1) the administrative burden that it causes for the BIA; (2) the difficulty it causes for the allottees in securing agreement for disposal or control of the allotted lands; and (3) the reduction of value in each heir's share of the land because of the inability to use the land productively. All three of these problems have accelerated as more and more land has come into heirship and the number of undivided ownership interests has multiplied geometrically with each succeeding generation. These problems are widespread and acute on all allotteed reservations.

Mixed Fee and Trust Lands

In most cases, the conversion of title from trust to fee comes as the consequences of a marriage between an Indian allottee and a non-Indian. Although non-Indian family members legally come into title through law by marriage or inheritance, they are not eligible for trust benefits. Problems inherent in fractionalized interests are usually magnified when dealing with undivided fee interests because of the difficulty of locating the heirs of fee share owners through BIA records, tribal records, or other means.

An owner of a small fee share would likely have little success in selling his interest to buyers other than the tribe or another interest holder in the same allotment. Further, fee owners may not avail themselves of the services of the BIA in disposing of or using their undivided shares in the land. A partition of the allotment, fee from trust, would allow Indian owners to avoid the extra complications inherent in fee interests.

<u>Indian Land Consolidation Act</u>
In 1983, Congress passed the Indian Land Consolidation Act (ILCA), which was intended as a means of comating fractionation. The main effect of the act was to cause undivided interests of less than 2 percent to escheat to the tribe. The act has not been popular among most tribal members. It was amended in 1984, and further amendments are expected. The First Nations Financial Project commissioned Harvard University's John F. Kennedy School of Government prepared a response to the Indian Land Consolidation Act. The response, published in April 1988, contains 12 recommendations, based on the following assumptions:)1 that the concept of the reservation should be preserved; 2) that the trustee role of the Secretary of the Interior should be maintained, with some modifications; and 3) that tribes should be as active and independent as possible in determining their own courses of action. The Harvard project's 12 recommendations are listed below:

Recommendation#1:	Encourage tribes to hold public forums on fractionated heirship.
Recommendation #2:	Encourage owners of fractionated interests to write wills.
Recommendation #3:	Prepare a handbook explaining BIA's will-writing process.
Recommendation #4:	Encourage BIA to create a task force on estate-planning and probate.
Recommendation #5:	Hold a Congressional hearing on creative alternatives to escheat.
Recommendation #6:	Draft escheat codes incorporating the ideas discussed at the hearing.
Recommendation #7:	Allow other owners of fractionated interests to have the first right to purchase fractionated interests.
Recommendation #8	Require BIA to produce regulatins for the ILCA.
Recommendation #9	Draft a model land consolidation plan an tribal inheritance code.
Recommendation #10:	Encourage tribes to assume responsiblity for leasing their allotted lands.
Recommendation #11:	GAO (Government Accounting Office) or CRS (Congressional Research Service) should do a study on the federal costs associated with fractionated heirship.
Recommendation #12:	Provide low-interest loans for tribes to purchase fractionated interests.

Tribal Land Enterprises

The goals of the Rosebud Sioux TLE are:

- To remedy the problem of fractionation;
- To provide for consolidation of individual interests;
- To develop land management plans;
- To preserve values of individual ownerships;
- To provide a means for accomplishing ownership exchanges;
- To develop land-based economic enterprises;
- To provide proper record-keeping and accounting; and
- To provide a long-term land buying and consolidation plan for its members.

Tribes or individual Indians may acquire lands in trust subject to the provisions of federal laws and regulations governing Indian land acquisition. It is important to note, however, that the U.S. Government does not favor Indian acquisition of lands in trust that are not already in trust within a reservation, except under special circumstances.

ENCOURAGE AND FACILITATE MORE DIRECT TRIBAL MANAGEMENT OF NATURAL RESOURCES ON TRUST LANDS.

Native American Program Staff

The program will have primary responsibility in policy guidance for the administration of trust resources, training support for BLM and tribal officials, program and tribal coordination assistance and guidance to field offices and coordination assistance in the development of regional tribal/agency partnerships for resource planning and management.

Improved IIM-Related Systems

The Bureau of Indian Affairs has received much criticism for the management of Individual Indian Money (IIM) accounts. The issues surrounding IIM accounts are complex and require a comprehensive solution, one that involves land records, ownership data, and financial and management controls.

Special Deposit Accounts
Special deposit accounts in the IIM system are used primarily as clearing accounts for funds received awaiting distribution to individual account holders. (We have an individual who has paid irrigation charges to the Bureau of Indian Affairs, five years ago. This should have interest for five years added to the principal. The land transaction, the individual had requested, (fee to trust) has not been processed, for environmental reasons. Who's responsibility is it to see that this person is refunded their money in the Special Deposit Account?

Authorize the Assumption by Tribes of the Management and control of Tribal Funds .
Tribes that want to manage their funds should be allowed, in general to do so. Such management is the very essence of self-determination and self-governance.

CENTRAL COUNCIL
tlingit and haida indian tribes of alaska
ANDREW P. HOPE BUILDING
320 West Willoughby Avenue - Suite 300
Juneau, Alaska 99801-9983

June 29, 1994

Attend.: "Trust Fund Reform Plan"
Office of Trust Funds Management
505 Marquette N.W., Suite 700
Albuquerque, New Mexico 87102

RE: Comments on the "Indian Trust Funds and Trust Asset Management Reform Plan"

This correspondence constitutes the official comments of the Central Council Tlingit and Haida Tribes of Alaska regarding the above referenced document.

General:

First, Central Council Tlingit and Haida is pleased that the Department of Interior (DOI) Secretary's staff and Bureau of Indian Affairs (BIA) has invested the resources to develop a Trust Fund and Trust Asset Management Plan, but is disappointed that the developmental process did not include Tribal input.

Congressional directive and prior BIA commitments provided for Tribal inclusion in the planning process. However, the referenced plan, although it incorporates some InterTribal Monitoring Association (ITMA) concepts, was prepared and published without Tribal consultation or other input.

Tribes have a clear and vested interest in the Trust Management issue and the sophistication to provide valuable input in the development of solutions to the current problems. Exclusion of Tribes from the process results in the loss of valuable expertise, continued suspicion of the BIA, and the great potential for significant differences between the wishes of the Trust Agent and the Beneficiaries, the Tribes and Individual Indians.

Central Council Tlingit and Haida requests BIA's compliance with Congressional directives and its own commitment for full partnership in the development of plans, policies and methodologies impacting Tribes.

Secondly, Central Council Tlingit and Haida is disappointed that the BIA reform plan does not take into consideration, or even comments on the use of a Special Trustee. We view this proven approach used to correct mismanaged organizations has significant promise in getting the Office of Trust Fund Management (OTFM) on track.

ITMA has studied the Special Trustee concept in both corporate and governmental environments, has reported these findings to DOI officials, yet the Reform Plan completely ignores this option.

Central Council Tlingit and Haida endorses the Special Trustee concept as put forth by ITMA and requests inclusion of the concept in any Trust Fund or Trust Asset Management Plan put forth by the BIA.

Our specific comments follow the sections of the proposed plan.

I. <u>Complete Reconciliation of Tribal Trust Funds</u>

<u>General:</u>

Central Council Tlingit and Haida is pleased that OTFM is proceeding with the reconciliation process, but have concerns as expressed below.

<u>Comment I.1.:</u>

Central Council Tlingit and Haida is disturbed that the 5 Pilot Tribes in the reconciliation process were not allowed to provide input into the methodology of the reconciliation. As a result, we understand that reconciliation, with at least some of the 5 Pilot Tribes, has ended without meeting reconciliation objectives.

Concurrence in methodology between OTFM, the contract auditor and the Tribe is elemental to the process. Reference page 4, Section B Objective, stating: "Also included are an agreed upon special procedures review of five selected tribes on a pilot basis, intended to perfect the reconciliation methodology at the BIA agency level, to seek acceptance of the reconciliation results from the select tribes, and to present a basis for cost projections for this approach on a broader scale."

Central Council Tlingit and Haida requests OTFM and the audit contractor meet with Tribes and jointly agree on a reconciliation methudology consistent with the partnership theme of the referenced objective and that expressed by the Assistant Secretary.

<u>Comment I.2.:</u>

Central Council Tlingit and Haida takes considerable exception to the misleading reference to "probable error rate" referenced in the last sentence, first paragraph, page 6 of the reform plan.

At the June 13, 1994, briefing on the reform plan by Department of Interior (DOI) officials to Congressional and Tribal representatives, Mr. Eric Davenport of Central Council Tlingit and Haida questioned Mr. Joe Christie, OTFM, about this reference to a ".... less than one half of

1 percent(.)" error rate.

Mr. Christie admitted at that meeting that this measurement only references OTFM staff data input accuracy onto ledgers or into computer records. It is not a measurement or indication of OTFM's overall records systems status.

It further concerns us that OTFM underscored and bolded this reference which further leads us to believe that OTFM's intent is to put this figure forward to Tribes as an indication that things really are not that bad.

Central Council Tlingit and Haida requests OTFM convey performance measures in proper context and manner which will not mislead Tribes, Tribal leaders or members of Congress.

Comment I.3.:

Central Council Tlingit and Haida has difficulty seeing from the reform plan how and when full Tribal reconciliation will occur. The reform plan speaks to the 5 Pilot Tribes but is unclear as to the how the rest of the Tribes will receive reconciliation.

Central Council Tlingit and Haida requests OTFM prepare Gantt charts, or similar visual documents to chronicle the projected reconciliation plan and needed dollars through project completion of all Tribes.

II. Provide Essential Staff to OTFM

Comment II.1.:

Central Council Tlingit and Haida endorses the ITMA and OTFM recommendation and implementation of the reform plan staffing changes outlined in the DM-130.

Central Council Tlingit and Haida does request that OTFM:

1. **Prepare classification specifications sufficient to meet the technical demands of OTFM, and then is careful to select individuals that meet those requirements.**

2. **Continually evaluate staff performance ensuring high levels of service to Tribal and Individual OTFM Trust customers.**

3. **Use caution in the implementation of the DM-130 as the published schedule in the reform plan appears challenging.**

III. Acquisition of Commercial Accounting Systems

Comment III.1.:

Central Council Tlingit and Haida endorses the ITMA and OTFM recommendation and implementation of commercial accounting systems and centralized custodian services.

Comment III.2.:

Central Council Tlingit and Haida is concerned about the first sentence of this section stating that "(t)he Federal Government should not be in the investment business."

We are aware that elements within DOI propose to relinquish, or at least minimize OTFM's Trust responsibility by moving the management function to another entity within, or outside the government. It is our understanding that Tribes oppose this position and would rather OTFM adhere to industry standards and practices.

We may be over-reading this referenced sentence but do not wish any misunderstandings on this issue.

Central Council Tlingit and Haida requests OTFM make affirmative statements about maintaining its trust management responsibilities including that of making investments within the context of statute and policy.

Comment III.3.:

The reform plan is void of details on the Blue Ribbon Board. This is very disconcerting. The statements in Sections III. and IV. of the reform plan about the board lead one to believe that such a board gives full control to the Secretary as he appoints the board, and they supervise, which could mean almost anything and/or anyone.

Additionally, should such a board be put in place its membership would ostensibly serve at the pleasure of the Secretary. This poses extreme problems in the potential for politicizing management of OTFM. Further, changes in administrations puts at risk the continuity of policy and policy application, the tenure of investment advisors, and the like.

When the Central Council Tlingit and Haida examines Trust Services organizations we look for consistency, longevity, objectivity, assurances, etc. The Blue Ribbon Board seems to contradict all of these basic principles of Trust management.

Central Council Tlingit and Haida strongly opposes the development and implementation of a Blue Ribbon Board as put forth in the Reform Plan.

IV. Authorize the Assumption by Tribes of the Management ....

Comment IV.1.:

S.925/H.1846 were introduced over a year ago and include the statutory provisions endorsed by Central Council Tlingit and Haida, other Tribes and ITMA.

Congress has requested in September, 1993, comment by DOI/BIA on this legislation. To date DOI has either failed or is refusing to comment.

Central Council Tlingit and Haida is confused by the proposal of legislation in Section IV. of the reform plan. We understand from Mr. Eric Davenport, our staff person at the June 13, 1994, briefing, that no legislative language is even written, and that DOI's legislative staff person, Mr. Dan Constentine, did not even promise such language until after July 4, 1994.

We find much, but not all, of the conceptual language outlined in the reform plan consistent with that in S.925/H.1846. This raises the question of why propose new legislation.

Much effort and expense has gone into moving the existing legislation to this point. We believe it is imperative to pass this legislation this session so we can begin correcting some of the existing problem areas. If DOI supports the basic concepts of S.925/H.1846, as stated in the Section IV. outline, it would make sense to comment on and work with the legislation now before Congress.

Central Council Tlingit and Haida requests DOI join league with ITMA and the Tribes to move S.925/H.1846 to passage this congressional session.

Central Council Tlingit and Haida requests DOI eliminate Section IV. from the reform plan, its legislative initiative and Blue Ribbon Board, and rather comment to Congress on S.925/H.1846 no later than July 10, 1994.

V. Individual Indian Money (IIM) Accounts

Comment V.1.:

Central Council Tlingit and Haida endorses the close examination of IIM account reconciliation and related systems development.

We understand the complexity of the issue having also dealt with these concerns. We also know that BIA systems do not meet industry Trust standards and fear that many IIM account holders have been damaged as a result.

Central Council Tlingit and Haida supports Section V. of the Reform Plan with the accompanying understanding of Tribal Partnership in the development of solutions and related systems as promised during the June 13, 1994.

VI. ... Direct Tribal Management of Natural Resources on Trust Lands

Comment VI.1.:

Central Council Tlingit and Haida supports Section VI. of the Reform Plan and encourages the continued expansion of direct relations between lessors, Tribes and BLM in the management of Indian Trust Assets.

Summary:

Indian Trust Fund and Trust Asset Management is a critical issue to Central Council Tlingit and Haida. Mismanagement over the years has impacted the people of our Tribe and those of the many Tribes in our country. We believe that Indian people deserve, and they expect, performance in their Trust accounts similar to that afforded the rest of society in their Trust accounts.

Central Council Tlingit and Haida supports the work of ITMA both in terms of its ability to provide constructive input to the BIA and OTFM, and as a communicator of information to the Tribes of this country.

We continue to call upon DOI officials to support the Assistant Secretary in building mechanisms by which true partnerships function in the development of systems impacting Tribes and individual Indians.

The proposed Reform Plan has some positive aspects, and some negative points. We trust our comments will serve in the further improvement of the document and resulting action plans.

As a capable and willing player, Central Council Tlingit and Haida offers itself as a contributor in this process, hoping that the shortcomings of the past are replaced with "inclusivity."

Regards,

Judith George

per Edward K. Thomas
President

cc: The Honorable Senator Inouye
The Honorable Senator Knighthorse-Campbell
The Honorable Representarive Synar
The Honorable Representative Richardson
The Honorable Representative Miller
Ms. Elouise Cobell, Chairwomen, ITMA

Colville Confederated Tribes

P.O. Box 150 - Nespelem, Washington 99155 (509) 634-4711

June 30, 1994

Office of Trust Funds Management
505 Marquette N.W., Suite 700
Albuquerque, New Mexico 87102

RECEIVED
JUL 05 1994
TRUST FUNDS MANAGEMENT

RE: Trust Fund Reform Plan

To Whom It Concerns:

We greatly appreciate the opportunity to express our position regarding the long term strategy for trust funds and trust asset management reform. The reform plan has been reviewed by our administrative and financial staff. The following comments and suggestions are the result of this review process.

1. <u>Adequate Time to Formulate Responses/Proper Notification</u>: This reform draft was received by the Colville Confederated Tribes on June 23, 1994 with a deadline for comments as of June 27, 1994. Our concern is that the short time frame for submitting comments distracts from your objective of soliciting tribal input. Additionally, a concern was expressed that the information had not been properly distributed through B.I.A. staff at the local agency level. Accordingly, efforts to access technical support from this source were hindered.

2. <u>Consistency with B.I.A. Reorganization</u>: The expected outcome of the Portland Area reorganization is "Tribal Empowerment" and is embodied in three principles:

a. Delegation of Authority to the lowest level
b. Tribal management and control of budget and resources
c. Recognition of the Tribes as independent sovereigns

Efforts should be made to ensure that the items discussed in the trust fund reform plan are consistent with the strategies outlined by the B.I.A. reorganization committee including, as appropriate, solicitation of comments from the reorganization committee members.

3. <u>Summary of Audit Findings</u>: Millions of dollars have been spent on operational reviews and financial audits to identify weaknesses in the control and oversight of Indian Trust Funds. These problems should be summarized and prioritized as part of the reform document to facilitate the proper evaluation of the recommended reform plan.

4. <u>Cost Effectiveness</u>: The recommended reforms require a substantial outlay of cash for the following identified purposes:

Tribal Trust Account Reconciliation	$20,627,007	(FY 1991-1996)
Additional Staffing	1,443,219	(FY 1994-1995)
Fund Management Service	260,000	(Initially 1-5 yrs)
Investment Advisory Service	500,000	(Annually)
Custodian Service	100,000	(Annually)
IIM Reconciliation	5,665,000	(FY 1994-1996)
Land Records Management Project	20,380,000	(Multi-yr Project)
TOTAL	$48,975,226	

All governments must effectively manage their resources. This includes close evaluation of the use of these resources to obtain the maximum value or benefit.

Three concerns arise out of the preliminary review of the recommended allocation of resources (cash):

a. Additional Staffing Request: The reform suggests an additional 43 FTE should be added. However, the existing data does not justify this request for the following reasons:

* No discussion of operational efficiency is undertaken. What are the current employees responsible for? What will be the specific responsibilities of the new employees?
* What affect will the BIA reorganization have upon the defined responsibilities and staffing levels? Are "new" employees needed? Is it possible to "reassign" duties as necessary?
* How will the contracting for fund management, investments, and custodial services affect current staffing requirements? Are additional funding and staffing requests tied to program performance? Typically, contracting for services currently provided by government employees should result in reduction or reassignment of existing staff NOT the addition of employees.

b. Account Reconciliation: The recommended reform was designed to address the primary concern of regularly reconciling accounts. The reform specifically states the procedures to identify past reconciliation problems. However, no mention is made as to how reconciliations will be maintained in the future. It would be unfortunate if this process had to be repeated again in twenty years due to a failure to identify and implement corrections to the existing reconciliation processes.

c. Allocation of Unidentified Funds: It is our understanding that the reconciliation was undertaken to allocate unidentified funds to the various accounts. It would appear that spending $25 Million to allocate an estimated $12 Million in funds is not the most cost-effective use of funds. This concept is particularly true if it is determined that the unidentified funds were the result of unallocated interest earnings. The earlier methodolgy employed by the B.I.A. to allocate interest (based on month end or week end account balances) makes it extremely likely that not all earned interest was properly allocated. This fact, combined with the lack of account reconciliation and high interest rates, could result in large unallocated (unidentified) balances. It would appear that a more effective method to handle this discrepancy would be to recommend a procedure o fairly allocate the unidentified funds. Why not allocate the unidentified amounts in a n equitable manner based on current known percentages for distribution so that all Tribes receive a share?

5. Contracting Services: Contracting with the private sector and other government agencies for the delivery of services provides opportunities for 1) containing costs, 2) enhancing productivity, and 3) accessing technical expertise. The cost-effectiveness of subcontracting services in meeting established service levels should be determined on a case-by-case basis. Although it is possible that the contracting for services may be the best alternative for the Trust reform, we have some concerns regarding service to the Tribe.

These concerns are as follows:

a. Procedures for Posting & Withdrawing Funds: Will additional time constraints or limitations regarding the number of transactions be mandated to the Tribe?

b. Staffing Requirements: As stated previously, contracting an activity currently provided by staff should result in a reduction NOT an addition of employees.

c. Tribal Representation: Efforts should be made to ensure that the Tribal interests are represented in all future contracting and process changes either by solicitation of comments or representation on committees (i.e. investments)

6. Tribal Management of Funds: This reform states that the Bureau has determined it should not be in the investment business. Accordingly, it is proposed to introduce legislation to allow the Tribes to manage their own funds. This is a positive step in line with the BIA reorganization objectives. However, questions arise over the control of tribal funds.

a. For instance, a Tribe should be able to withdraw all of its funds if it has demonstrated capacity to invest and manage its own funds (i.e. current investment policy and procedures, adequate staffing and technical ability, and proven performance record).

b. Additionally, limiting returns and rewithdrawals subject to the Secretary's discretion limits the Tribe's ability to manage its funds. The federal governement is spending millions of dollars on an improved service yet it is driving the Tribe away from this service by limiting accessibility. A better approach would be to limit the number of transactions per month to a Tribe. This procedure would enable the Tribe to utilize the improved system when it provides the best return. In addition, this procedure would justify the proposed B.I.A. increase in costs for staff and services. It would also make the BIA be accountible for providing a better service.

7. IIM Reconcilation: It has been recommended that a statistical sample be selected to review the receipt, disbursement, and interest posting to individual accounts. It might be more cost effective to analize the larger account balances. This procedure recognizes that fewer accounts would be reviewed but that a larger portion of the dollars would be verified. This would result in a more timely and less costly alternative.

8. Fractionated Ownership: The Colville Tribe has developed a Land Use and Acquisition Policy that identifies the fractionated ownership of land as an existing problem. The Tribe supports acquisition of land, through purchase or exchange, which will allow for consolidation of fractionated parcels in the best interest of the Tribe. However, we do not support legislative solutions which do not necessarily solicit tribal input or which would not be in the Tribe's best interest. This problem was identified by the Tribes in the mid-eighties. Consistency in treatment, training and funds for field staff to implement one data base computer system would improve this situation.

9. Land Records Management Project: The Colville Tribe supports an integrated Land Management System. It is very difficult to maintain accurate and all encompassing records on multiple systems. All agencies should be able to access this land information in an accurate and timely manner. However, the Colville Tribe and Agency have developed their own GIS Program using combined resources for implementation and operation. Any changes should be coordinated with Tribal and Agency staff. In addition, details regarding the proposed cost estimates should be provided. It is possible that some of the additional costs (perhaps relating to additional staffing or equipment) could be obtained out of existing budgets (by realigning responsibilities, combining technologies, or utilizing existing processes and various agency resources).

10. Tribal Management of Natural Resources: The Colville confederated Tribes has signed a Cooperative Agreement with the Bureau of Indian Affairs, Colville Agnecy, for the purpose of providing Integrated Resource Management of all Tribal natural resources. This agreement will provide the instrument for the Tribe to consider the gradual and planned take-over and management of all B.I.A. natural resource responsibilities should we choose to do so. This agreement includes the following programs:

* Forest Management
* Fish and Wildlife Management
* Parks and Recreation
* Environmental Trust
* Geology
* Roads
* Range
* Land Services
* Environmental Protection
* Realty
* Geographic Information System

Accordingly, the Colville Tribe is quite supportive of this component of the reform plan. We believe we are leading in this area of self determination and will welcome working with the Bureau of Land Management or any other federal agency in reaching our goals. However, we want to reinforce that adequate funding of these programs is required to insure that program objectives are met.

As stated previously, we appreciate the opportunity to review the Indian Trust Funds and Trust Asset Management Reform Plan. It appears that many of the proposed concepts and strategies have already been implemented. We hope that our comments and concerns will be helpful in generating discussion. Please contact the Tribe's Controller, Diana White, at extension 815, if you have any questions.

Sincerely,

Frances Charette

for Eddie Palmanteer Jr, Chairman
Colville Business Council

Rec'd Correspondence Ofc-BIA JUL 6 1994

Colville Confederated Tribes

P.O. Box 150 - Nespelem, WA 99155 (509) 634-4711

6/27/94

Ada E. Deer,
Assistant Secretary
Bureau of Indian Affairs
Washington, D.C. 20240

Honorable Ada E. Deer:

The Colville Confederated Tribes will go on record as protesting the notification to respond to the "draft" INDIAN TRUST FUNDS AND TRUST ASSET MANAGEMENT REFORM PLAN.

This protest is taking place because of the short notification on the time frame to respond. The Colville Tribes received the draft on June 23, 1994 and the deadline to respond is June 27, 1994.

We ask that the deadline be extended by least two weeks, e.g., July 11, 1994.

Cordially

Eddie Palmanteer Jr., Chairman
Colville Business Council

PATRICIA MADUEÑO - Chairperson
LLEWELLYN BARRACKMAN - Vice Chairman
MELBA GUERRERO - Secretary
ELDA BUTLER - Member STEPHEN LOPEZ - Member
DELBERT HOLMES - Member LELAND MCCORD - Member

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June 29, 1994

RECEIVED
JUL 05 1994
TRUST FUNDS MANAGEMENT

Office of Trust Funds Management
Attn: Trust Fund Reform Plan
505 Marquette N.W., Suite 700
Albuquerque, New Mexico 87102

Dear Sirs:

We have quickly reviewed the draft document entitled "Indian Trust Funds and Trust Asset Management Reform Plan", having received it in our office only June 24th.

Upon initial review, we are encouraged by the six components of the plan along with the objective and plan action.

Although we may find particular concerns upon further review, we feel the reform plan definitely makes a concerted effort at a resolution long overdue.

Sincerely,

Patricia Madueño, Chairperson
FORT MOJAVE INDIAN TRIBE

PM:jlj

COMMENTS ON
THE INDIAN TRUST FUNDS
AND
TRUST ASSET MANAGEMENT REFORM PLAN

CENTRAL COUNCIL, TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA

GENERAL COMMENTS:

Central Council is disappointed that the developmental process of the Indian Trust Funds and Trust Asset Management Reform Plan did not include Tribal input. However, the Central Council is pleased that the Department of the Interior (DOI) and the Bureau of Indian Affairs (BIA) has invested the resources to develop the plan.

The Central Council Tlingit and Haida request BIA's compliance with Congressional directives and its own commitment for full partnership in the development of plans, policies and methodologies impacting Tribes.

Central Council is disappointed that the BIA reform plan completely ignores the Special Trustee concept. They view this proven approach used to correct mismanaged organizations has significant promise in getting the Office of Trust Fund Management (OTFM) on track.

Central Council Tlingit and Haida endorses the Special Trustee concept as put forth by ITMA and requests inclusion of the concept in any Trust Fund or Trust Asset Management Plan put forth by the BIA.

I. COMPLETE RECONCILIATION OF TRIBAL TRUST FUNDS

Page 4, Section B.
"Also included are an agreed upon special procedures review of five selected tribes on a pilot basis, intended to perfect the reconciliation methodology at the BIA agency level, to seek acceptance of the reconciliation results from the select tribes, and to present a basis for cost projections for this approach on a broader scale."

Central Council Tlingit and Haida request OTFM and the audit contractor meet with Tribes and jointly agree on a reconciliation methodology consistent with the partnership theme of the referenced objective and that expressed by the Assistant Secretary.

Page 6, end of first paragraph "The probable error rate resulting from the reconciliation is less than one half of 1 percent." At the June 13, 1994, briefing on the reform plan, the group was told that this was not a measurement or indication of OTFM's overall records systems status.

Central Council Tlingit and Haida requests OTFM convey performance measures in proper context and manner which will not mislead Tribes, Tribal leaders or members of Congress.

GENERAL COMMENT: Central Council Tlingit and Haida request OTFM prepare Gantt charts, or similar visual documents to chronicle the projected reconciliation plan and needed dollars through project completion of all Tribes.

2. PROVIDE ESSENTIAL STAFF TO OTFM

Central Council Tlingit and Haida endorses the ITMA and OTFM recommendation and implementation of the reform plan staffing changes outlined in the DM-130.

3. ACQUISITION OF COMMERCIAL ACCOUNTING SYSTEMS

Page 13, first paragraph first sentence "The Federal Government should not be in the investment business."

Central Council Tlingit and Haida request OTFM make affirmative statements about maintaining its trust management responsibilities including that of making investments within the context of statute and policy.

Page 13, Section III & page 17 Section IV, the statements about the Blue Ribbon Board.

Central Council Tlingit and Haida strongly opposes the development and implementation of a Blue Ribbon Board as put forth in the Reform Plan.

4. AUTHORIZE THE ASSUMPTION BY TRIBES OF THE MANAGEMENT AND CONTROL OF TRIBAL TRUST FUNDS AND THE TRANSFER OF GOVERNMENT INVESTMENT TO PRIVATE SECTOR INVESTMENT PROFESSIONALS SUPERVISED BY BLUE RIBBON BOARD.

GENERAL COMMENT: S.925/H1846 were introduced over a year ago and include the statutory provisions endorsed by Central Council Tlingit and Haida, other Tribes and ITMA.

Central Council Tlingit and Haida requests DOI join league with ITMA and the Tribes to move S.925/H1846 to passage this congressional session.

Central Council Tlingit and Haida requests DOI eliminate section IV. from the reform plan, its legislative initiative and Blue Ribbon Board, and rather comment to Congress on S.925/H.1846 no later than July 10, 1994.

V. WORK TOWARD RESOLUTION OF THE COMPLEX ISSUES SURROUNDING INDIVIDUAL INDIAN MONEY (IIM) ACCOUNTS

Central Council Tlingit and Haida supports section V. of the Reform Plan with the accompanying understanding of Tribal Partnership in the development of solutions and related systems as promised during the June 13, 1994 meeting

6. ENCOURAGE AND FACILITATE MORE DIRECT TRIBAL MANAGEMENT OF NATURAL RESOURCES ON TRUST LANDS

Central Council Tlingit and Haida supports Section VI. of the Reform Plan and encourages the continued expansion of direct relations between lessors, Tribes and BLM in the management of Indian Trust Assets.

FIRST NATIONS DEVELOPMENT INSTITUTE
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(703) 371-5615 • Fax (703) 371-3505

U.S. Department of the Interior
Office of Trust Funds Management
505 Marquette N.W.
Suite 700
Albuquerque, N.M. 87102
June 27, 1994

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JUN 2 . 1994
TRUST FUNDS MANAGEMENT

In the matter of Trust Fund Reform Plan

[These comments are submitted by First Nations Development Institute]

First Nations Development Institute is generally positive toward the trust funds reform plan announced by the Interior Department on June 13, and applauds the thoughtful effort of many parties that has obviously gone into it.

First Nations also finds it necessary to note a seemingly obvious inherent contradiction of the reform plan. If the overarching purpose is to distance government from the investment business and enable tribes to manage their own trust funds, then spending approximately $2,642,127 over fiscal years 1994 and 1995, with an annualized cost of approximately $2,128,522 (not counting cost-of-living allowances for the 43 new hires in 1996 and beyond), to hire new permanent civil service personnel either unnecessarily burdens the government with further bureaucratic dead weight or charts an intentional course to undermine the reform plan's stated purpose. In brief, why commit millions upon millions of dollars to hiring new personnel if the intent is to phase out their jobs? Where will they go if the phase-out takes place?

The same money could be used to build tribal capacity; and phased interim privatization would avoid the potential expansion and entrenchment of OTFM. This peril is particularly worrisome in view of the reform process's dependency on the individual qualities of Jim Parris and Donna Irwin among others.

Nonetheless, First Nations could see its way to wholeheartedly supporting the plan as it stands if the following conditions are met:

1) Legislative language specifies that Generally Accepted Accounting Procedures serve as a minimum standard throughout OTFM for all accounting, receipt and distribution procedures.

2) Legislation and administrative policy guarantees an outside audit that will verify the integrity of the OTFM trust funds systems annually.

3) The federal government's liability rests upon responsibility. Legislation must guarantee that before the federal government can waive trust funds liability, an adequate provision of technical assistance to

COPY

tribes desiring to withdraw and manage their own trust funds must be demonstrated.

4) Administrative policy requires that full directors' liability insurance be maintained by any tribe or tribal organization authorized to withdraw and manage trust funds as a precondition for assigning tribal trust funds management responsibilities to any party other than the BIA.

5) Legislative language assures the same recourse against malfeasance for tribal members as provided in relevant securities acts. such as the Employees Retirement Investment Securities Act.

The following are First Nations' thoughts for further refining and improving the plan as it stands.

INTRODUCTION

Page 1. paragraph 3:

The plan states that "the Federal Government has a fiduciary responsibility to ensure proper control over and accounting for each account."

This is a key component of the new plan. First Nations has always held that trust funds reform legislation should include a clear and concise definition of minimum fiduciary standards to which the federal government can be held. Legislation should adopt language similar to that which is included in laws already on the books. The Securities Act of 1940 and its amendments. as well as the Employees Retirement Investment Securities Act (ERISA). section 404(a). define minimum fiduciary standards for those exercising trust over another's assets.

Page 1, paragraph 5:

Continued consultation with tribes must not put tribes in a reactive mode: trust fund and fractionation proposals need tribal input as they are developed. not after they have been formulated. This standing concern of First Nations will be referenced elsewhere in these comments.

In addition. it is our understanding that at some point of the reform process. Interior or congress will need to authorize compensation for lost tribal funds. If not these compensations should be planned for as part of the accounts reconciliation process.

I. COMPLETE RECONCILIATION OF TRIBAL TRUST FUNDS

Page 4. Section C. Basic Approach. item (2)

"verification of the accounting system non-investment revenues postings to lease document revenue receivable terms ("Fill the Gap")" needs to address situations such as that which exists at the Umatilla Agency where there is no accounts receivable system covering lease income. Also. individual allottees have no way of identifying lease income from the checks they receive. because neither the allotment from which the income is derived, nor lease number is identified. This information will be vital to the ongoing audit process as well.

Page 4, Section D. Results Expected, last item:

One of the most important results expected of the reconciliation process is the credibility of account balances. The plan states that in some cases, "balances will serve as a basis for discussion and possible settlement with tribes about particular accounts." First Nations urges that these discussions should follow the model of ongoing consultation, rather than the frequent BIA practice of notifying tribes of a fait accompli and calling it discussion. This should be a general consideration of trust funds reform in all of its phases.

Page 6, subsection b. Investment analysis, second paragraph:

First Nations urges that the results of the contractor review be made available for independent review before computerized procedures to perform the analysis are finally settled upon.

Page 7, item e. Mineral Management Service Fill the Gap:

Review of MMS procedures and documents should be conducted in consultation with groups such as the Council of Energy Resource Tribes.

II. PROVIDE ESSENTIAL STAFFING TO THE OFFICE OF TRUST FUNDS MANAGEMENT

First Nations, after entertaining many doubts on this score, is ready to support the essential staffing of OTFM, but still believes that OTFM should move forward only in the context of eventual privatization of trust funds management. Another concern is that the ambitious hiring goals put forward for OTFM in the Secretary's reform plan may not be achieved; in that event, we urge the department to enforce OTFM director Jim Parris's assurance that "we will get the job done" even if it means contracting services.

First Nations indeed prefers the latter alternative, providing OTFM "will get the job done."

Page 10, Section A. Background, end of first paragraph and beginning of second:

The plan discusses internal accounting procedures and controls. This is a very important section of the plan.

The 1983 Price Waterhouse "In-Depth Review of Indian Trust Funds" contained strong criticisms and recommendations with regard to the handling of and accounting for trust income. Recommendations pointed to a clear separation between cash handling functions within the trust fund management department in order to establish clear audit trails for receipt, recording, and disbursement of money for both tribal and IIM accounts.

This segregation of functions may be what the plan is getting at on page 11, paragraph 1, when it references "interface requirements"; and after initial skepticism, First Nations is satisfied that the segregation of functions is underway within OTFM.

However, given the lack of independent audits in the past, First Nations feels compelled to urge the importance of the independent audit mentioned by Mr. Parris June 13. First Nations strongly urges that the internal audit be in place before the next presidential elections, or at least so far along that personnel changes will not effect its implementation.

Page 11, Section B. Implementation Plan for Staffing OTFM, second item:

First Nations would like to see the classification of all position descriptions (due for completion on June 30) made public.

Page 12, last sentence:

What is the total FY 1995 funding dedicated to "All other existing positions including those newly established in FY 1994"?

III. ACQUIRE SOUND, PROVEN, COMMERCIALLY AVAILABLE INVESTMENT AND ACCOUNTING SYSTEMS AND SERVICES TO FACILITATE THE TRANSFER OF TRUST FUND MANAGEMENT TO SKILLED INVESTMENT PROFESSIONALS

As a longtime proponent of commercial-off-the-shelf trust funds management for the BIA and the eventual privatization this will facilitate, First Nations is especially favorable toward this point of the reform plan. First Nations notes, however, that one-year leases with one-year options afterward leave the outsourcing process somewhat subject to political change. We urge that the new Core Trust Funds system be past the interim phase before the next presidential election cycle. In addition, the acquisitions processes should be open enough to permit independent monitoring and review.

Page 14, top line:

The words "leased trust system" sound like a commitment to lease. In recent months, verbs such as "procure," "subscribe to" and "acquire" have been used. We endorse a leasing policy as the only viable solution, and encourage the reform plan to proceed with it under that name.

Page 14, paragraph 1:

Could IIM check distribution be contracted to a local financial institution? In any case, some method should be found to facilitate the timely distribution and cashing of IIM checks.

IV. AUTHORIZE THE ASSUMPTION BY TRIBES OF THE MANAGEMENT AND CONTROL OF TRIBAL TRUST FUNDS AND THE TRANSFER OF GOVERNMENT INVESTMENT TO PRIVATE SECTOR INVESTMENT BY BLUE RIBBON BOARD

Tribal options for assuming control of their trust funds have long been a

First Nations priority. First Nations very much supports the thrust of this portion of the reform plan. A general observation is that with another bill before congress, parties to the reform process must be sure of where they stand regarding each. First Nations would hope for an early read from Interior on its positioning relative to the Synar/Inouye bill.

Page 17, paragraph 2:

"Tribal withdrawals should be subject to reasonable standards, safeguards, and restrictions." This is a view that can hardly be disagreed with: First Nations notes the importance of legislative language ensuring that this goal can be met.

Page 17, Section A. Tribal Management, item c

The phased assumption of trust funds management by tribes is an extremely important provision. First Nations concurs with the concept of additional withdrawals after audit and evaluation of prior management, but also urges that demonstrable investment managing and monitoring education, from certified professionals, be legally required of tribal councils that seek to withdraw their funds from trust.

As we envision it, such education would take the form of technical assistance **before** removal of funds from trust. Many questions of detail arise. It would be best if legislation stipulate the qualifications a technical assistance provider must possess. It would be best if the federal government paid for the technical assistance under terms of its trust responsibility. It would be best if tribes were required to meet a minimum proficiency standard after the technical assistance is provided.

This will allow the federal government to give the tribes control over their trust funds with confidence.

Page 18, paragraph 1:

The same concern as above: First Nations urges that "regulation minimum standards" include demonstrable investment managing and monitoring education, from certified professionals, before tribal councils can remove funds from trust.

Page 18, paragraph 2:

Though First Nations agrees that tribes withdrawing funds from trust must assume the risks of the marketplace and the responsibility for creating a plan, we believe the phrase "even if arguably negligent" is too broad. This raises the possibility of a less favorable administration using the trust funds management process as a mere waiver to help the government improperly disburden itself of trust fund responsibilities.

First Nations believes the department can protect itself adequately by recasting this clause to read, "unless negligible under established fiduciary standards" which should be specifically cited.

Page 18, paragraph 4:

The possibility of a tribe's returning funds to trust is most important to First Nations as a "loss limit" function. The department's support for this concept is commendable. One concern of First Nations is with subjecting return to "administrative feasibility." Under a readily foreseeable scenario, a tribe with "second thoughts" might stand to lose large sums while awaiting administrative processing. First Nations hopes to participate in discussions on how to address this issue in legislation.

V. WORK TOWARD RESOLUTION OF THE COMPLEX ISSUES SURROUNDING INDIVIDUAL INDIAN MONEY (IIM) ACCOUNTS

First Nations is encouraged that the department has come up with credible alternatives for the reconciliation of IIM accounts. We would be interested though in an analysis of the "down sides" to these methodologies for reconciliation.

Page 21, item 2:

Distribution of revenues needs to address accounts which remain on hold because of the probate backlog. Which accounts are these? How are they invested?

Page 22, subsection (c) Disbursements:

At one time, there was a great deal of concern that uncashed checks issued to IIM account holders were being returned to Treasury and subsequently deposited into the general account, not back into the accounts of the IIM account holders as they should have been. Has this situation been resolved? If not, does OTFM intend to address it?

Page 24, Timeline, second item:

The consultation period is scheduled for the dead of winter, over the Thanksgiving, Christmas and New Year's holidays. The consultation period should begin a week earlier and end a week later to ensure an adequate chance of tribal commentary.

Page 25, paragraph 1:

The separate data systems must be able to interface between internal departments, bureau agencies, area and national offices. Tribes and individual landowners must have local access to:

-- a single, computerized, land ownership record system and payment disbursal system with access to the agency level via modem or communications software

-- the ability to access data to evaluate and implement plans to address fractionated titles

-- the ability to prepare timely certified title status reports for mortgages, probates, appraisals, and land transactions

-- the ability to give owners a meaningful accounting of their lands (including income derived and the allotment from which it is derived), to assist in land consolidation and estate planning

-- the ability to combine land records within a tract if they are owned by the same individual, rather than carry these interests on separate ownership records. For instance, if over a period of time I become the owner of three 25 percent interests within one tract, they are carried as three separate land ownership records, each representing 25 percent, rather than as one ownership record representing 75 percent

-- staffing to microfilm, catalogue, archive, and maintain local land records

Page 25, paragraph 2, third sentence:

The client data systems mentioned here should include tribes.

Page 25, paragraph 3, last sentence:

"The reautomation of the federal Indian land records and ownership data systems (see, Chapter V Section D.1, below) will provide the foundation for the resolution of this issue."

We do not find a Chapter V Section D.1 but applaud the intention announced here. However, First Nations views automated data processing as a BIA weakness and urges vigilant oversight by the department and other government agencies.

Page 25, paragraph 4:

The department's land records automation work group needs to involve tribes. First nations suggests establishment of a "records work team" including tribal representatives such as Virgil Dupuis, land manager, Confederated Salish & Kootenai Tribes; Arvel Hale, former chief appraiser, BIA central office; Kevin Moore, Umatilla Agency realty officer; Bill Northover, Confederated Tribes of the Umatilla Indian Reservation Department of Natural Resources, GIS division; and Allen McQuillen, records/cartography, U.S. vs. Mitchell.

Page 27, paragraph 2:

The "Tiger Teams" are an excellent approach to improved IIM-related systems, but First Nations believes a tribal representative should be included on each, from the beginning. This is of primary importance to a government-to-government relationship. The effected constituency must be involved.

VI. ENCOURAGE AND FACILITATE MORE DIRECT TRIBAL MANAGEMENT OF NATURAL RESOURCES ON TRUST LANDS

The teamwork, training and consultation referenced in this part of the reform plan is a model approach. Inter-departmental boundary disputes die hard, however, and pro-Indian efforts have not always been sustained despite good intentions. First Nations recommends that the Interior Department continue its hands-on leadership in moving the process forward.

Page 30, subsection b. Procedural Guidance:

The consultation process adopted here may be a good model for the trust fund and fractionation issues.

Page 32, Section B, Improvements in Delegation of Receipt and Audit of Oil and Gas Revenues from Indian Lands:

The direct involvement on the part of Indian mineral owners should be extended to Indian timber and agricultural owners. No matter what the resource, Indian landowners must have accurate and accessible information for proper management of their resources. In the case of fractionated interest, individuals must know land values, income derived, co-owners, etc., to make exchanges that will result in a viable economic unit of land.

Page 33, item 2, Indian Royalty Valuation Regulations:

Can a list of those tribes and allottee associations that have been consulted be made available, either to the public at large or to First Nations?

Page 35, paragraph 2:

A committee comparable to the Tripartite Steering Committee is needed to address fractionation. It should include tribal representatives.

CLOSING COMMENTS

The department and its various bureaus have done a superlative job of coming to grips with the global scope of trust funds issues, as reflected in the closing words of Bonnie R. Cohen at the June 13 meeting: "I think while ... most of us would like to find a simple solution, it turns out that the more time you spend on this the more complicated it is, and I think if we step back from the presentations people made you see that we have viewed the problem as one that we have to address from the beginning, that is from when your leasing is done of the land, we have to assure people that we have the systems in place to identify ownership, to deal with fractionated heirship, we have to be able to assure people that when the money comes in the door we can account for it, we have to invest the money wisely and well and be able to assure people that we're doing that, and be able to demonstrate it. And what we're trying to do here is address really the sweep of the problem."

First Nations concurs wholeheartedly with these goals. But the process is as important as the goal, and in closing we would emphasize that land reform must be the workhorse of a successful trust funds reform process.

A BIA-wide policy to resolve fractionation should be implemented. Without such a policy, fractionated interests and their owners will continue to be treated as a problem that needs to go away, rather than a resource that can be utilized. A BIA land reform policy should include:

-- education and technical assistance for landowners so that they can take advantage of already existing means of land consolidation, such as will-writing, gift deeding, land exchanges, joint tenancy, and land acquisitions. Recommended contacts are Helen Sanders of the Quinault

Tribe: Austin Nunez, chairman, San Xavier District; and Calvin Waln, former secretary, Intertribal Agricultural Council;

-- notification of all 2 percent or less interest owners so that they can consolidate their interests as an option to losing or selling them;

-- revamping of budget priorities within the BIA to meet the staffing needs in the areas of realty and probate so as to adequately address backlogs, technical assistance needs and data requirements. Recommended contacts are Virgil Dupuis, land manager, Salish & Kootenai Tribes; Kevin Moore, Umatilla Agency realty officer; and Judge Sally Willett, administrative law judge, Phoenix Area;

-- an appropriation to meet opportunities for tribal and individual purchase of fractionated interests;

-- Representatives from First Nations Development Institute, the Council of Energy Resource Tribes, the Intertribal Agricultural Council, Intertribal GIS Council, the Native American Rights Fund, the National Congress of American Indians, the Intertribal Monitoring Association, and the Indian Land Working Group need to be involved in formulating and implementing a reform policy. All of these organizations represent constituencies impacted by fractionation.

INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS
P.O. Box 730
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Mr. Jim Parris, Director
Office of Trust Funds Management
Bureau of Indian Affairs
United States Department of Interior
505 Marquette, N.W., Suite 700
Albuquerque, NM 87102

Dear Mr. Parris,

Attached you will find ITMA's response to the "Interior Department's proposed Trust Fund Reform Plan."

We are particularly concerned about the Department's unwillingness to involve tribes in the development of these policies. We do not believe that asking us to comment on your work product constitutes a form of tribal involvement that is consistent with government-to-government partnership President Clinton has committed to. We expect that in the future, the Department will make sure that tribal representatives are sitting at the table when the policies are developed. That way we could avoid this inappropriate situation we are facing now, where you give us two weeks to respond to issues you have spent months working on.

The ITMA reserves the right to submit additional comments on the reform plan in the future.

Sincerely yours,

Elouise C. Cobell
Chairperson

cc: Senator Daniel Inouye
Senator John McCain
Senator Robert Byrd
Congressman Bill Richardson
Congressman Mike Synar
Congressman Sidney Yates
Honorable Ada E. Deer

INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS
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**ITMA'S RESPONSE
TO THE INTERIOR DEPARTMENT'S
PROPOSED TRUST FUND REFORM PLAN**

OVERVIEW

The Intertribal Monitoring Association on Indian Trust Funds (ITMA) was pleased to see that many of the components of the Department's proposed Trust Fund reform plan followed the general approach recommended by ITMA. In particular, ITMA strongly supports the plans to:

* provide adequate staffing for the Office of Trust Fund Management (OTFM).

* authorize OTFM to contract for new systems, investment advisors and custodial services.

* improve the management of land records and to find ways to address the fractionated heirship problem.

However, there are a number of very basic deficiencies in the Plan, such that ITMA is unable to support the overall initiative. These include:

* the failure to disclose the Department's long-term direction for trust fund management and its refusal to state that it does not intend to contract out the entire trust fund operation to the private sector in the future.

* the absence of plans for a special trustee or other mechanism to insure centralization of authority and responsibility for all trust fund and trust asset-related matters in an office that can provide the beneficiaries with the complete and sole loyalty that a trustee is obligated to provide.

* the plan to have the Department introduce its own trust fund legislation with so few days left in the Congressional session will prevent tribes from having adequate time to comment on the Department's bill and threatens enactment of a bill this year, which is one of the highest priorities for ITMA.

* the complete exclusion of the tribes from the Department's

development of an approach for the IIM reconciliation removes any legitimacy from that workproduct. This action is also inconsistent with clear directions from Congress. We also object to the effort to mislead the tribes by claiming that the Department really is not developing IIM reconciliation approaches, when your own documents state that they are proposed approaches.

* The effort on a number of different issues to treat "we develop, the tribes comment" as tribal involvement is unacceptable. The tribes must be sitting at the table as the ideas are developed, not responding to your ideas. This is not simply symbolic. It is our money and the Department's long standing gross mismanagement that are at issue. If we are not full partners, the process has no credibility.

A detailed response to the elements of the Trust Fund Plan follows.

I. GENERAL COMMENTS

A. Absence of a Long-term Plan for Trust Funds

The plan fails to provide any indication of the Department's long-term plans for the future of the trust fund program. ITMA and Congress have always taken the position that while it is essential to take some short-term steps to stop the bleeding, these steps must be in the context of a long term strategy for the future of trust funds. In May of 1991, Congressman Synar asked the Department to prepare a long-term strategic plan for the future of trust funds. There has been much discussion of transferring OTFM to the Federal Reserve Board, or of handing off most of the trust fund functions to a private bank. ITMA has strongly opposed such approaches as being inconsistent with tribal self-determination and has recommended a long-term self-determination strategy of getting the money as close to the reservation level as possible.

The plan simply ignores the long-term picture, addressing none of these possibilities and offering no alternatives. When asked at the June 13th meeting where the Department sees the trust funds program 3-4 years from now, the Department did not give a substantive answer, stating instead that it wants to maintain "maximum flexibility." ITMA does not know whether this means the Department still has not developed a long-term plan or whether it is refusing to disclose it to the account holders. Based on certain comments in the plan document on the blue ribbon panel, there is suspicion that the Department in fact intends to hand off the trust fund responsibilities to the private sector but is unwilling to come out and say so. Either way, no trust fund reform plan is adequate or deserving of tribes' confidence until placed within the context of a long-term approach.

B. The Lack of Commitment to a Special Trustee or Other Leadership and Coordinating Mechanism

At the House Appropriations Committee hearings on the BIA's FY 95 budget, Congressman Dicks stated, in regard to trust funds, "someone's got to grab hold of it and make it happen....There's got to be a sense of urgency, (not) business-as-usual."

As the Department's own presentation demonstrated, there are a large number of Interior offices involved in various aspects of the trust fund program; OTFM the office of Trust Responsibility, BLM, MMS, PMB, etc. However, the plan fails to propose a person or office with authority and responsibility for "grabbing hold and making it happen." The Department appears to be relying on a new improved tri-partite committee. This is unworkable since committees have never managed or provided leadership.

ITMA has proposed the creation of a special trustee, reporting to the Secretary, with authority and responsibility Department-wide. The Department has refused to engage in a discussion about this approach, yet has failed to provide any alternatives. The House Appropriations Committee has instructed the Department to submit by August 12th a report that sets out the Department's ideas on coordinating mechanism and the appointment of a special trustee to consolidate authority and accountability. Perhaps that report will provide the Department's approach. But until such a mechanism is included in the trust fund reform plan, it will not be an effective plan, because experience has shown that it will not get implemented fully or in a timely manner.

C. The Lack of Commitment to Meaningful Tribal Involvement

In its development of the six point plan, in its development of the IIM reconciliation approach, and in its proposed development of fractionated heirship legislation, the Department's approach to tribal involvement is for the Department to develop approaches and then send them out to tribes for comment. This is not consistent with Congressional instructions nor the commitments made by President Clinton, Secretary Babbit or Assistant Secretary Deer. The "Department develops, the tribes comment" approach to tribal involvement is a vestige of the paternalistic era which we thought had disappeared. Until the Department invites the tribes to sit at the table and participate in the development of the various approaches, the trust fund reform plan will not likely enjoy wide-spread legitimacy in the eyes of the Indian community.

II. THE SPECIFIC POINTS OF THE SIX POINT PLAN

A. Completing the Tribal Reconciliation

We support the goal of timely completion of the tribal reconciliation. However, we object to the Department's efforts to portray the "low error rate" during the first phase as indicative of anything. This first phase is nothing more than insuring that a clerk properly copied the correct numbers from the Area office submission onto the general ledger. In fact, ITMA endorsed this activity in the reconciliation simply to prepare the books and records for audit or analysis, not as a substitute for that analysis. ITMA cannot endorse the concept of "declaring victory" by spending more than one-half of the $20+ million devoted to reconciliation on those areas where few errors were expected to be found, as Joe Christie explained on June 13. For example, we continue to be concerned about the Department's apparent inability or unwillingness to provide straight answers to questions regarding the thousands upon thousands of "timing differences" involving tens of millions of dollars, and how these will be reported to the tribes if they do not constitute "errors" under the present approach.

ITMA is also awaiting the information on whether the Department intends to go forward with global filling the gap procedures and what that will cost. In addition, it is our understanding from participating tribes that, contrary to previous agreement, the BIA and Arthur Andersen are not willing to agree to the special procedures the tribes have requested. This needs to be corrected if the original goals of the reconciliation are to be achieved.

Finally, it is inaccurate to claim that the reconciliation will provide "reasonable assurances as to account balances." (p. 2) We do not believe that a tribe's accountant will be able to advise the tribe to accept the results of this effort as providing such reasonable assurances.

B. Staffing OTFM and Authorising it To Acquire Proven Systems, Investment Advisors, and Custodial Services.

ITMA fully supports all of these recommendations and has been urging the Department to take them for more than two years. However, ITMA opposes the intent to use these improvements to "Facilitate the transfer of trust fund management to skilled investment professionals." This makes it clear that the Department is intending to move investment functions out of OTFM. Yet it has failed to provide any indication of how it intends to do this other than the vague reference to a blue ribbon panel. As discussed in the section on legislation, no tribe has ever advocated that investment functions be removed from OTFM. In fact, ever since the Mellon and Security Pacific Banks fiascos, tribes and Congress have been wary of attempts by the Department to hand off trust fund responsibility to the private sector. There may or may not be some merit in this concept, at this point we do not know. However, until the Department spells out this concept and is candid with tribes on its long-term plans for trust funds, ITMA will strongly oppose the blue ribbon panel approach. We also note that the Report accompanying the FY 95 Interior Appropriations prohibits the Department from contracting out such activities as investment functions.

C. Legislation

ITMA's views on the Department's proposed legislation were set out in a document that has already been sent to the Department to accommodate the Department's fast-tracking of that issue. A copy is attached. In sum, it expresses its concern that the Department's plans to introduce its own bill will endanger the enactment of any trust fund bill this year and represents top-down policy making from Washington. Instead, it urges the Department to work within the framework of the already-introduced Synar/Inouye bill, which was developed through several years of tribal consultation.

D. The IIM Reconciliation

In 1990, Congress instructed the Department to involve the tribes in the development of the approaches to the reconciliation. Congress reiterated this in the FY 95 House Interior Appropriations Committee Report. This was not simply for cosmetic purposes. The Department is being asked to develop an approach to uncover its own errors. The Department will be required to compensate Indians and tribes who suffered loss as a result of those errors. Thus the Department has a conflict, since it has an obligation to fully disclose but will naturally have a tendency to minimize its errors and liability. The account holders need to be at the table to insure the Department is not developing an approach that is in its self-interest, rather than reflecting the absolute duty of loyalty a trustee owes to account holders.

Tribes in fact were invited to sit around the table during the development of the tribal reconciliation under the previous Administration. However, this Administration has chosen to exclude tribes from the development stage and instead has limited tribal involvement to that of commenting on what the Department has produced. This is unacceptable, inconsistent with the instructions from Congress and violates the Department's trust responsibility. As a result ITMA continues to be concerned that the Department has yet to be completely forthcoming, either to tribes or to the Congress regarding this Administration's real intentions.

We also object to the blatant misrepresentation made at the June 13th meeting. The chair of the Department's IIM reconciliation workgroup represented that the workgroup was not developing approaches; it was simply gathering information. However, the material presented in the packet on June 13th sets out the Department's proposed approach and provides a specific budget for it. It is difficult to understand how the Department can figure out the budget for it. It is difficult to understand how the Department can figure out the budget for an approach while claiming that no approach has been developed. This unwillingness to be candid simply reinforces ITMA's concerns that the Department is not acting in the best interest of the beneficiaries, as it is obligated to do pursuant to the caselaw on the Government's trust responsibility.

D. Fractionated Heirship

ITMA supports the Department's goal of finding solutions to the fractionated heirship problem. However, we oppose the proposed schedule in which the Department develops proposed legislation and then sends it out to the tribes for comments. There are several intertribal groups working on the fractionated heirship problem. The Department should developing legislation in concert with them.

ITMA supports the development of the improved land and title records system. As indicated at the June 13th meeting, however, this must be done in close coordination with OTFM. Otherwise we will once again be faced with BIA systems that are unable to talk to each other.

In regard to the so called "tiger teams" for developing improved IIM systems, ITMA again objects to the complete exclusion of tribal representatives from those teams. We are also suspicious of the plans to use staff from other federal departments. For several years, various DOI officials have been pushing the use of USDA, USGS, MMS, and other agencies to address Indian trust fund and trust asset issues. ITMA's exploration of this has led us to conclude that these other agencies have little to contribute to the unique Indian issues. ITMA thought that this issue had been put to rest several years ago. It is disturbing to see that it has reemerged.

E. <u>MMS and BLM</u>

ITMA supports the efforts by these agencies to promote more direct tribal management of natural resources on trust lands. There are several intertribal Indian organizations with established expertise in these areas, such as CERT. We therefore urge the Department to solicit their views on the BLM and MMS initiatives.

Quinault Indian Nation

POST OFFICE BOX 189 TAHOLAH, WASHINGTON 98587 TELEPHONE (206) 276-

August 15, 1994

Mr. Jim Parris, Director
Office of Trust Funds Management
Bureau of Indian Affairs
United States Department of Interior
505 Marquette, N.W., Suite 700
Albuquerque, NM 97102
telephone #: 505/766/3230
fax #: 505/766/1491

The Quinault Indian Nation has received the Department's material describing its Indian Trust Fund Reform Plan.

It is unreasonable to expect a tribe to respond to that much material addressing so many complex and technical issues in less than two weeks. However, we have reviewed the analysis prepared by the Intertribal Monitoring Association on Indian Trust Funds (ITMA). This organization was established by tribes to provide technical advice and analysis to tribes on trust funds issues. We agree with and support the recommendations made by ITMA and urge the BIA to follow them.

We are particularly concerned about the Department's unwillingness to involve tribes in the development of these policies. We do not believe that asking us to comment on your work product constitutes a form of tribal involvement that is consistent with government-to-government partnership that President Clinton has committed to. We expect that in the future, the Department will make sure that tribal representatives are sitting at the table when the policies are developed. That way we could avoid this inappropriate situation we are facing now, where you give us two weeks to respond to issues you have spent months working on.

The Quinault Indian Nation reserves that right to submit additional comments on the reform plan in the future.

Sincerely,
Pearl Capoeman-Baller
Pearl Capoeman-Baller, President
Quinault Indian Nation

cc: Senator Daniel Inouye
Senator John McCain
Senator Robert Byrd
Congressman Bill Richardson
Congressman Mike Synar
Congressman Sidney Yates
Honorable Ada E. Deer
Senator Ben Nighthorse Campbell

REFERENCE:

COEUR D'ALENE TRIBE

ROUTE 1
TRIBAL HEADQUARTERS • CdA SUBAGENCY
PLUMMER, IDAHO 83851
(208) 686-1800 • Fax (208) 686-1182

July 7, 1994

RECEIVED
JUL 11 1994
TRUST FUNDS MANAGEMENT

Ms Ada Deer
Assistant Secretary of the Interior
Bureau of Indian Affairs
Washington, DC

Dear Secretary Deer:

I want to thank you for the opportunity to respond to your letter regarding reconciliation of tribal trust fund accounts and individual Indian money trust fund accounts. Your letter of June 16th, was not received here until the 23rd. This response, therefore, is also slightly delayed.

Madame Secretary, we consider you an important friend. I also recognize the fact that the problem regarding these accounts is one that you inherited. Our Tribal Council is confident that you will do your best to reconcile these accounts, but I will also tell you frankly that we on the Council are very unhappy that so much money will be spent to do so.

It is my understanding that the BIA will spend $20 million to find the missing $17 million among Tribal accounts. That's $20 million that could be used by tribal governments throughout Indian Country. I also understand that more accountants must be called in to review work done by the previous accountants who first audited the trusts.

As I review this information, I keep reflecting on the word, "trust." These accounts involving tribes and individuals are entrusted to the Bureau and its personnel. Why has the system failed? Who is responsible? Why is a 67% increase in core staff proposed when the accounts they handle are being turned over to private business?

I know that these questions are also in your mind. I know you understand our tribal government and other tribal governments are frustrated by the sometimes sluggishness and indifference within the BIA.

Madame Secretary, I do not envy the task before you or the difficulty facing you with the problems you have inherited. I know all of us on the Coeur d'Alene Tribal Council are confident and hopeful following your appointment that you can, somehow, transform this BIA history of constant process into a future of constant progress.

God bless you for your efforts.

Sincerely,

Ernie L. Stensgar, Chairman
Coeur d'Alene Tribe

INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS
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Telephone # (406) 338-2992
FAX # (406) 338-7008

July 6, 1994

Honorable Ada E. Deer
Assistant Secretary
Bureau of Indian Affairs
U.S. Department of the Interior
Room 4150
1849 C Street, N.W.
Washington, D.C. 20240

Dear Ms. Deer:

It is not possible to respond to all of the proposals the Department put on the table at the June 13th meeting on trust fund reform within the two week period provided to the Tribes. However, since the legislation is on a fast track, ITMA felt it was critical to get its comments on this issue to you as soon as possible. A comprehensive response to all of the six points will be sent to Mr. Parris in the near future.

ITMA has never disputed the Department's right to have a major role in the development of the trust fund legislation. In fact, we have been urging the Department to comment on H.R. 1846/S.925 since June of 1993. However, we believe it is imperative that:

1. Trust fund legislation be enacted this year; and

2. the legislation that is enacted be first circulated for meaningful tribal input.

ITMA is concerned that the Department's legislative approach set out in part IV of your agenda may be inconsistent with both of these imperatives. Our first comment therefore, is that we recommend that the Department forgo its plans to draft a new bill and instead comment on the Synar/Inouye bill.

Your intent to send up a Departmental bill after the July 4th recess will make it much more difficult to get a bill through this year. We question whether a bill can be drafted, be approved within the Department and pass OMB clearance by July 11th. Whenever the bill reaches the Congress, it will then take time for the tribes to comment and for the Hill staff to compare the Department's bill with the Synar/Inouye bill. Given the relatively few legislative days left in this session, this makes enactment problematical. ITMA acknowledges that the existing bills have room for improvement. But commenting on them will permit a much faster timetable then will sending up a new Departmental bill.

Secondly, sending up a Departmental bill at this late date is inconsistent with your commitment to true tribal self-determination. Tribes spent over a year developing and discussing the Synar/Inouye bill before it was introduced. It was reviewed at numerous ITMA, NCAI and Reorganization Taskforce meetings. Congress has held two hearings on it. As a result, the approach and the framework, as well as the specific provisions reflect the tribal position. If the Department commented on the existing bills, those comments would be presented within this framework and approach.

In contrast, a new bill will likely present an entirely new approach and framework; otherwise there is no reason for you not just to comment on the existing legislation. As a result, it will take much more time for the tribes to review, consider and respond. However, there is insufficient time left for meaningful tribal consultation. Also, you have repeatedly stated your commitment to having policies developed from the tribes up, not from the top down. Having the Department propose a new approach is clearly "top-down" policy development.

In regard to the specifics of the Department's proposal, it is difficult to comment because the material provided is so sketchy. Rather than providing a good sense of where the Department is going, it is really nothing more than some random ideas. In response to the few specifics that were provided:

1. The material states that the Department's bill "will authorize the Secretary to <u>allow</u> a tribe to manage" ... its own money. This implies that the decision will be discretionary with the Secretary. ITMA would strongly oppose such an approach. The Synar/Inouye bill follows the approach used in the Self-determination Act, under which the Secretary <u>must approve</u> the tribe's request if it meets the criteria set out in the Act. Any retreat from this standard would be inconsistent with the principles of self-determination.

2. ITMA objects to the proposal to phase in participation, under which a Tribe could only manage a percentage of its funds until it proved to the Secretary it was capable. Many tribes are now managing much more money on their own than they have in ITMA trust funds. The Department's approach is paternalistic and unacceptable. No limitations should be imposed unless the Secretary can show reasons why he believes they are necessary for that particular Tribe. The real protection should come in the development and approval of the money management plans.

3. The material indicates in several places that the Department's bill will relieve the Secretary of all liability, even if he is negligent in approving a tribe's request to withdraw or its plan. It appears that the Secretary wants all of the authority and none of the responsibility. The Secretary, as trustee, must remain liable if he negligently approves a tribal plan that fails to meet some basic standard of reasonableness.

4. It is not clear from the June 13th material whether the bill will provide for the same range of tribal options provided by the Synar/Inouye bill. These include but are not limited to the tribe's right to withdraw its money from trust status, the right to keep it in trust but to manage it, the right to direct its management, or any other approach that is consistent with the Act. This broad and flexible approach reflects the desires of tribes. At various ITMA meetings, each tribe that discussed its goals for trust funds indicated a somewhat different approach that reflected that tribe's unique circumstances and objectives. Consistent with the principles of self-determination, the Department's bill must be similarly broad enough to permit a tribe to craft its own approach.

5. The June 13th material provides no detail at all on the "blue ribbon panel". It has never before been raised in any meetings. As a result, we are unable to comment on it. However, we strongly object to the statement the "the government should not be in the investment business." We are not aware of any tribe that has taken this position. In fact, the position of ITMA and the Reorganization Task Force is that it opposes the transfer of significant decision-making trust fund responsibility to the private sector. We are also concerned about where the Department may be heading with this approach. When ITMA asked at the June 13th meeting whether this was the beginning of an approach similar to the Mellon/Security Pacific Bank approach, in which the Department tried to hand off all of its activities to a private bank, the Department refused to provide an answer, stating instead that the Department wanted "maximum flexibility for the future." The Tribes need to know what the Department's long-term plans are for trust fund management and the blue ribbon panel before we can comment on it, much less support it. In addition, there appears to be an inconsistency between the proposals in part 3, in which OTFM employs investment advisors and the statement in part 4 that the government should not be in the investment business.

It appears that while the Department provided virtually no information on the blue ribbon panel, it could constitute a very significant change in the way the Department manages Indian trust funds. As a result, it will require much more detail from the Department and then thorough discussion by the tribes and IIM account holders. It will be impossible to do this between now and the end of the Congressional session. For this reason, ITMA opposes the inclusion of any provisions on the blue ribbon panel in the legislation.

We also note that the statement in the material, that "delegation of investment responsibilities to third parties should not be subject to completion of the Tribal or IIM reconciliation," is in conflict with language in the House Interior FY 95 Appropriations Act report. That report prohibits any such contracting out of investment functions until the reconciliation is completed. ITMA has and will continue to support the Appropriations Act language. We question whether the Department has consulted with the Appropriations Committees before proposing legislative language that seeks to override appropriations language.

ITMA will submit more detailed comments once the Department provides more detail on its legislative approach. We close by re-emphasizing that the Synar/Inouye bill represents the position of the Tribes, developed during two years of consultation. If the Department bill significantly deviates from the Synar/Inouye bill, the Department has an obligation to explain to the Tribes why it is deviating from its oft-stated commitment to having policy developed at the reservation-level, not in Washington.

Sincerely yours,

Elouise Cobell

Elouise Cobell

cc: Senator Daniel Inouye
Congressman Mike Synar
Congressman Bill Richardson
Congressman Sidney Yates
GAO

Prairie Band of Potawatomi Indians
14880 K Rd.
MAYETTA, KANSAS 66509-91[illegible]
913 966-2255

Mr. Jim Parrish
Office of Trust Funds Management
Bureau of Indian Affairs
United States Department of the Interior
505 Marquette N.W., Suite 700
Albuquerque, NM 8701

July 20, 1994

Dear Mr. Parrish,

The Prairie Band Potawatomi Nation has received your material describing the Indian Trust Land Reform Plan.

Albeit, it is not time effective for our Nation to address so many complex and technical issues in less than two weeks, we have reviewed the analysis prepared by the Intertribal Monitoring Association on Indian Trust Lands (ITMA), which was established by tribes to provide technical advice and analysis on trust funds issues. We agree with, and support the recommendations made by ITMA and urge the BIA to follow them.

The Potawatomi Nation is particularly concerned about the Department's unwillingness to involve tribes in the development of policies, which does not constitute the government-to-government partnership that the Clinton Administration has committed itself to. In the future, we expect that tribal representatives will be sitting at the table when policies are in the process of being developed, which certainly could have avoided the current situation of the meager two week time frame given to us to respond to issues that your department has spent months working on.

The Prairie Band Potawatomi Nation reserves the right to submit any additional comments on the reform plan in the future.

Sincerely,

Mamie Rupnicki

Mamie Rupnicki, Chairperson
Prairie Band Potawatomi Nation

MR:jj

cc. Senator Daniel Inouye
Senator John McCain
Senator Robert Byrd
Congressman Bill Richardson
Congressman Mike Synar
Congressman Sydney Yates
Honorable Ada E. Deer

LA JOLLA INDIAN RESERVATION

P.O. Box 1490 • Pauma Valley, CA 92061-1490
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July 20, [illegible]

Mr. Jim Pa[illegible], Director
Office of [illegible]ust Funds Management
Bureau of [illegible]dian Affairs
United States Department of Interior
505 Marquette [illegible] N.W., Suite 700
[illegible] 87102

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JUL 25 1994
TRUST FUNDS MANAGEMENT

[illegible]

[illegible] Band [illegible] Indians [illegible] received the Department's material [illegible] Trust Fund Reform Plan.

[illegible] to expect a tribe to respond to that much [illegible] complex and technical issues in less [illegible]. However [illegible] reviewed the analysis [illegible] Association on Indian Trust Funds [illegible] established by tribes to provide [illegible] on trust fund issues. We [illegible] support the recommendations made by ITMA and urge [illegible] BIA [illegible] follow them.

[illegible] concerned about the Department's unwilling[illegible] tribes in the development of these policies. We [illegible] comment on your work product [illegible] President Clinton [illegible] future, the Department [illegible] tribal representatives are sitting at [illegible]. That way we could avoid [illegible] situation [illegible] now, where you give [illegible] to issues [illegible] have spent months working [illegible].

The [illegible] right to submit additional comments on [illegible] in the future.

Sincerely, [illegible]

Doreen A. Fitzsimmons

[illegible] Fitzsimmons
Chairperson

[illegible] Daniel Inouye
[illegible] John McCain
[illegible] Robert Byrd
[illegible]man Bill Richardson
[illegible]man Mike Synar
[illegible]

(BEST RESULT FROM DEPT)

The Chippewa Cree Tribe of the Rocky Boy's Reservation

Phone (406)395-4478 or 4210 - Finance Office
(406)395-4282 or 4321 - Business Committee

Rocky Boy Route, Box 544
Box Elder, MT 59521

July 19, 1994

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JUL 25 1994

TRUST FUNDS

Mr. Jim Parris, Director
Office of Trust Funds Management
Bureau of Indian Affairs
505 Marquette, N.W., Suite 700
Albuquerque, NM 87102

Dear Mr. Parris

The Chippewa Cree Tribe has received the Department's material describing its Indian Trust Fund Reform Plan.

It is unreasonable to expect a tribe to respond to that much material addressing so many complex and technical issues in less than two weeks. However, we have reviewed the analysis prepared by the Intertribal Monitoring Association on Indian Trust Funds (ITMA). This organization was established by tribes to provide technical advice and analysis to tribes on trust fund issues. We agree with and support the recommendations made by ITMA and urge the BIA to follow them.

We are particularly concerned about the Department's unwillingness to involve tribes in the development of these policies. We do not believe that asking us to comment on your work product constitutes a form of tribal involvement that is consistent with government-to-government partnership President Clinton has committed to. We expect that in the future, the Department make sure that tribal representatives are sitting at the table when the policies are developed. That way we could avoid this inappropriate situation we are facing now, where you give us two weeks to respond to issues you have spent months working on.

The Tribe reserves that right to submit additional comments on the reform plan in the future.

Sincerely yours,

John Sunchild Sr.
John Sunchild Sr.
Chairman

gl/JSC

xc: Senator Daniel Inouye
Senator John McCain
Senator Robert Byrd
Congressman Mike Synar
Congressman Bill Richardson
Congressman Sidney Yates
Honorable Ada E. Deer

BLUE LAKE RANCHERIA
Post Office Box 428
Blue Lake, California 95525
(707) 668-5101

July 19, 1994

Mr. Jim Parris, Director
Office of Trust Funds Management
Bureau of Indian Affairs
United States Department of Interior
505 Marquette, N.W., Suite 700
Albuquerque, NM 87102

The Blue Lake Rancheria Tribe has received the Department's material describing its Indian Trust Fund Reform Plan.

It is unreasonable to expect a tribe to respond to that much material addressing so many complex and technical issues in less than two weeks. However, we have reviewed the analysis prepared by the Intertribal Monitoring Association on Indian Trust Funds (ITMA) . This organization was established by tribes to provide technical advice and analysis to tribes on trust fund issues. We agree with and support them.

We are particularly concerned about the Department's unwillingness to involve tribes in the development of these policies. We do not believe that asking us to comment on your work product constitutes a form of tribal involvement that is consistent with government-to-government partnership President Clinton has committed to. We expect that in the future, the Department will make sure that tribal representatives are sitting at the table when the policies are developed. That way we could avoid this inappropriate situation we are facing now, where you give us two weeks to respond to issues you have spent months working on.

The Tribe reserves that right to submit additional comments on the reform plan in the future.

Sincerely yours,

Claudia Brundin

CLAUDIA BRUNDIN/CHAIRPERSON

cc: Senator Daniel Inouye
Senator John McCain
Senator Robert Byrd
Congressman Bill Richardson
Congressman Mike Synar
Congressman Sidney Yates
Honorable Ada E. Deer

Rec'd Correspondence Ofa-BIA
JUL 26 1994 (FYI)

The Chippewa Cree Tribe of the Rocky Boy's Reservation

Phone (406)395-4478 or 4210 - Finance Office
(406)395-4282 or 4321 - Business Committee

Rocky Boy Route, Box 544
Box Elder, MT 59521

July 19 1994

Mr. Jim Parris, Director
Office of Trust Funds Management
Bureau of Indian Affairs
505 Marquette, N.W., Suite 700
Albuquerque, NM 87102

Dear Mr. Parris

The Chippewa Cree Tribe has received the Department's material describing its Indian Trust Fund Reform Plan.

It is unreasonable to expect a tribe to respond to that much material addressing so many complex and technical issues in less than two weeks. However, we have reviewed the analysis prepared by the Intertribal Monitoring Association on Indian Trust Funds (ITMA). This organization was established by tribes to provide technical advice and analysis to tribes on trust fund issues. We agree with and support the recommendations made by ITMA and urge the BIA to follow them.

We are particularly concerned about the Department's unwillingness to involve tribes in the development of these policies. We do not believe that asking us to comment on your work product constitutes a form of tribal involvement that is consistent with government-to-government partnership President Clinton has committed to. We expect that in the future, the Department make sure that tribal representatives are sitting at the table when the policies are developed. That way we could avoid this inappropriate situation we are facing now, where you give us two weeks to respond to issues you have spent months working on.

The Tribe reserves that right to submit additional comments on the reform plan in the future.

Sincerely yours,

John Sunchild Sr.
Chairman

gt/JSC

xc: Senator Daniel Inouye
Senator John McCain
Senator Robert Byrd
Congressman Mike Synar
Congressman Bill Richardson
Congressman Sidney Yates
Honorable Ada E. Deer

JUL 25 1994
900

FORT SILL — CHIRICAHUA — WARM SPRINGS — APACHE TRIBE

PHONE (405) 588-2298 · 2314 — FAX (405) 588-3133
ROUTE 2, BOX 121 — APACHE, OKLAHOMA 73006

July 21, 1994

RECEIVED
AUG 01 1994
TRUST FUNDS MANAGEMENT

Honorable Ada E. Deer
Assistant Secretary - Indian Affairs
U.S. Department of the Interior
Washington, D.C. 20240

Dear Ms. Deer:

The Fort Sill Apache Tribe has received the Department's material describing its Indian Trust Fund Reform Plan.

It is unreasonable to expect a tribe to respond to that much material addressing so many complex and technical issues in less than two weeks. However, we have reviewed the analysis prepared by the Intertribal Monitoring Association on Indian Trust Funds (ITMA). This organization was established by tribes to provide technical advice and analysis to tribes on trust fund issues. We agree with and support the recommendations made by ITMA and urge the BIA to follow them.

We are particularly concerned about the Department's unwillingness to involve tribes in the development of these policies. We do not believe that asking us to comment on your work product constitutes a form of tribal involvement that is consistent with government-to-government partnership President Clinton has committed to. We expect that in the future, the Department will make sure that tribal representatives are sitting at the table when the policies are develope, which would avoid the inappropriate situation we are facing now, where we are given two weeks to respond to issues you have spent months working on.

The Tribe reserves that right to submit additional comments on the reform plan in the future.

Sincerely yours,

Business Committee

Mildred I. Cleghorn

Mildred I. Cleghorn
Chairperson

FORT SILL APACHE SEAL

The seal has a picture of an Apache warrior as the main focus. The cactus and mountains symbolize the terrain in which the Apache are at home. The "Gods Eye" patterns ... designs are representative of Apache beadwork designs. The crossed arrows represent peace and friendship. ... of Apache people.

Lac Vieux Desert Band of Lake Superior Chippewa Tribal Government
P.O. Box 249, Choate Road • Watersmeet, Michigan 49969
906-358-4577 • Fax: 906-358-4785

Executive Officers:
John C. McGeshick, Tribal Chairman
Albert Pete, Sr., Vice-Chairman
Michelle Burke, Secretary
Harvey White, Treasurer

Council Members:
John McGeshick, Jr.
Jim Williams, Jr.
Michael Hazen, Sr.
Rose Williams
Helen Smith

700

July 20, 1994

RECEIVED
AUG 01 1994
TRUST FUNDS MANAGEMENT

Honorable Ada Deer
Assistant Secretary - Indian Affairs
U.S. Dept of Interior
19th and C Streets, N.W.
Washington, D.C. 20240

The Lac Vieux Desert Tribe has received the Department's material describing its Indian Trust Fund Reform Plan.

It is unreasonable to expect a tribe to respond to that much material addressing so many complex and technical issues in less than two weeks. However, we have reviewed the analysis prepared by the Inter-Tribal Monitoring Association on Indian Trust Funds (ITMA). This organization was established by tribes to provide technical advice and analysis to tribes on trust fund issues. We agree with and support the recommendations made by ITMA and urge the BIA to follow them.

We are particularly concerned about the Department's unwillingness to involve tribes in the development of these policies. We do not believe that asking us to comment on your work product constitutes a form of tribal involvement that is consistent with government-to-government partnership President Clinton has committed to. We expect that in the future, the Department will make sure that tribal representatives are sitting at the table when the policies are developed. That way we could avoid this inappropriate situation we are facing now, where you give us two weeks to respond to issues you have spent months working on.

The Tribe reserves that right to submit additional comments on the reform plan in the future.

Sincerely,

John C. McGeshick

John C. McGeshick Sr.
Tribal Chairman

cc: Director Jim Parris
Senator Daniel Inouye
Senator John McCain
Senator Robert Byrd
Congressman Bill Richardson
Congressman Mike Synar
Congressman Sidney Yates

FORT MOJAVE INDIAN TRIBE
PATRICIA MADUEÑO - Chairperson
LLEWELLYN BARRACKMAN - Vice Chairman
MELBA GUERRERO - Secretary
ELDA BUTLER - Member STEPHEN LOPEZ - Member
DELBERT HOLMES - Member, LELAND MCCORD - Member

500 MERRIMAN AVENUE, NEEDLES, CA 92363
(619) 326-4591 • FAX (619) 326-2468

June 29, 1994

RECEIVED
JUL 05 1994
TRUST FUNDS MANAGEMENT

Office of Trust Funds Management
Attn: Trust Fund Reform Plan
505 Marquette N.W., Suite 700
Albuquerque, New Mexico 87102

Dear Sirs:

We have quickly reviewed the draft document entitled "Indian Trust Funds and Trust Asset Management Reform Plan", having received it in our office only June 24th.

Upon initial review, we are encouraged by the six components of the plan along with the objective and plan action.

Although we may find particular concerns upon further review, we feel the reform plan definitely makes a concerted effort at a resolution long overdue.

Sincerely,

Patricia Madueño

Patricia Madueño, Chairperson
FORT MOJAVE INDIAN TRIBE

PM:jlj

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 14 1994

Memorandum

To: Deputy Commissioner for Indian Affairs
Attention: Director, Office of Management and Administration

From: Ada E. Deer Ada E. Deer
Assistant Secretary - Indian Affairs

Subject: Waiver of Hiring Limitations for the Office of Trust Funds Management

Pursuant to the memorandum dated October 3, 1994, (Subject: Bureau of Indian Affairs Hiring Limitations), the Office of Trust Funds Management (OTFM) should be added to the list of organizations exempt from the hiring freeze. This is necessary if we are to continue to implement the OTFM staffing plan outlined in Point 2 of the Department's 6 Point Plan presented on June 13, 1994 to the Tribes and Congressional Committees. With the waiver, the recruitment and filling of permanent and temporary positions will be allowed to resume. Vacancies can then be filled with both non-federal and federal employees. This waiver applies to all vacant positions for OTFM.

Please notify the Division of Personnel Management and the Albuquerque Area Office, Branch of Personnel, so that they may continue staffing and recruitment activities. Your immediate attention and cooperation to this request is greatly appreciated.

cc: Area Director, Albuquerque Area Office
Attention: Branch of Personnel

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 14 1994

Memorandum

To: Deputy Commissioner of Indian Affairs
All Area Directors
All Central Office Directors

From: Ada E. Deer Ada E. Deer
Assistant Secretary - Indian Affairs

Subject: Exemption of National Land Titles and Records Program and Offices, and the Land Records Improvement Program from Area Office Reorganizations, Personnel Reductions, and Budget Actions

On June 13, 1994, the Secretary of the Interior issued the proposed *Indian Trust Funds and Trust Asset Management Reform Plan*, which stated the long-term constructive improvements necessary for the effective management of trust funds and trust assets. This six-point plan identified and stated costs and timelines for mission critical components relating to the management of trust funds by the Office of Trust Funds Management. The plan also included the mission critical components of the Bureau of Indian Affairs (Bureau) relating to the inherently federal functions, processes plans and projects of the national Land Titles and Records (LTR) Program and the Land Records Improvement (LRI) Program.

In order to meet the objectives of the Secretary's proposed six-point plan I am exempting the national LTR-LRI programs and offices from all Area Office reorganizations, personnel reductions and budget actions. This exemption is consistent with the September 9, 1994, memorandum of the Deputy Commissioner regarding the allocation and management of FTEs. The LTR-LRI programs and offices, together with the Office of Trust Responsibilities and the Office of Trust Funds Management, are performing a Business Systems Plan for Strategic Alignment (BSP-SA) which is designed to help achieve the goals, principles and steps of the National Performance Review and its streamlining requirements. Any necessary reorganization, restructuring, and personnel and budget actions of the LTR-LRI programs and Land Titles and Records program offices will be determined by and will be the responsibility of Central Office program management. Any such reorganization, restructuring or actions will conform to the requirements of the Secretary's proposed six-point Reform Plan, the BSP-SA and the Bureau's Streamlining Implementation Plan.

If there are any questions or if further information is required, please contact Michael Jones, Land Records Officer, at telephone (202) 208-6691, or fax (202) 219-1065.

ONE HUNDRED THIRD CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT OPERATIONS

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

October 31, 1994

The Honorable Ada Deer
Assistant Secretary for Indian Affairs
U.S. Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240

Dear Ada:

I do not customarily intercede in executive branch personnel matters. But under the circumstances, I feel I must tell you how shocked and dismayed I am to learn that the Bureau of Indian Affairs is attempting to reassign Jim Parris, Director of the Office of Trust Fund Management (OTFM), to another vaguely-defined position which is completely unrelated to the management of Indian trust funds. In fact, it appears that Ms. Hilda Manual, in her capacity as the most recent Acting Deputy Commissioner for Indian Affairs, has already taken steps to summarily remove Mr. Parris, against his wishes, by assigning his deputy to be Acting Director, effective October 26.

This decision will have severe consequences for the trust funds program at a time when it most needs stability and continuity, it is a slap at the tribes and those of us in Congress who have pushed for needed reforms, and constitutes indefensible treatment of a dedicated public servant.

Last Thursday, one Department official informed us that you had made this decision. In a conversation on Friday with my Subcommittee staff director, Ms. Manual stated that she had made the decision. Others have informed us that Ms. Cohen and Mr. Duffy played a key role in this decision. Regardless, I am extremely distressed to learn that you apparently concurred in it, especially in light of certain of Ms. Manual's comments to my staff director concerning the alleged reasons for the reassignment.

For example, Ms. Manual made the astonishing comment that, while Mr. Parris had done a "very good job" at OTFM, he "is no longer needed" in the trust fund program. Ms. Manual concluded that Jim is "no longer needed" at OTFM despite the fact that the new trust fund reform bill, just signed into law by President Clinton, will require very significant changes in the Department's trust funds program and Jim's experience, expertise and commitment to reform will be essential to the future success of these new efforts.

Even more astounding, Ms. Manual admitted that she has little, if any, specific familiarity with the trust funds program, and admitted that she made the decision to reassign Mr. Parris to the self-governance program without discussing with him or anyone else the potential impact of this change on the trust funds program. While she stated that she had "concluded" there would be no adverse effect on the program, she also admitted that she had not, in fact, specifically considered the possible impact of his transfer on trust fund operations or management.

Ada, if it is true that Ms. Manual concluded there would be no adverse impact on OTFM or the program without actually considering that question or discussing it with knowledgeable persons, then she could not possibly have been in a position to make an appropriate or informed decision about the future management of OTFM. This action is all too reminiscent of the Department's recent downsizing effort, which failed to consider the effect of allocated reductions on the "priority" trust funds program and thus had to be revised, and of the Bureau's streamlining plan which likewise was developed without specific consideration of the impact on trust funds and likewise is having to be revised as a consequence. These kinds of abrupt and ill-considered actions on critical management questions -- including the most recent effort unilaterally to reassign Mr. Parris -- are a major reason the Department can't get this program on track, notwithstanding Mr. Parris' efforts.

As you know, on October 25, President Clinton signed into law H.R.4833, the Indian trust fund management reform act which was recently approved overwhelmingly by the Congress. As you also know, the Department lobbied aggressively against passage of that bill which (contrary to Ms. Manual's view) will require a major new emphasis on trust fund activities and significant management improvements and coordination efforts. In rejecting the Department's opposition to it and signing the legislation into law, President Clinton reinforced his strong commitment to making government work better, despite the efforts of the bureaucracy to undermine that goal. It is, therefore, especially stunning and ironic that Ms. Manual took action to remove Mr. Parris from this critically important management post, in which he has done an extraordinary job, on the very day that President Clinton signed the new reform measure.

Contrary to Ms. Manual's assertion to my staff director, Mr. Parris did not -- and does not have to -- instigate a "campaign" in support of his position, nor has he asked me to intervene on his behalf. As you well know, I am one of many, many people who respect and admire Mr. Parris for his abilities, his dedication and his tireless efforts to improve the Department's management of the trust funds program. Those of us who have worked on this problem for years know that Jim is an extremely talented and capable senior career executive; he does not have to convince us of it.

Our view also happens to be shared by tribal leaders throughout the country who have a very high regard for his management abilities and who have come to know and trust him as a man of intelligence, candor and integrity. Moreover (and this is what really galls certain bureaucrats and others in the headquarters hierarchy), everyone knows that Jim Parris is the one man, above all others in the Department, who is committed to needed reforms in this area and who has fought for implementation of those reforms against extraordinary resistance from Washington. Understandably, then, the tribal trust fund community considers this rash action not only unjustified and counter-productive, but an egregious affront to them. I agree.

Ms. Manual stated to my staff director that Mr. Parris' talents would be useful in the self-governance area. Certainly self-governance is an increasingly important program area for the Bureau and obviously the Department will need to staff key positions with good people. But needed reforms in the trust funds program -- by the Department's own repeated statements -- is supposed to your highest priority. By this action the Department has, once again, shown its true colors and relegated trust funds to the far edge of the radar screen.

I also have very serious questions and concerns about how this sudden decision was executed by the Bureau. For example, Ms. Manual stated that her actions had been discussed and cleared with both the Department's personnel office and with the federal Office of Personnel Management and were in full compliance with all the requirements for reassignment of a career Senior Executive Service employee. However, there are several requirements with which she does not appear to be adequately familiar.

For example, in her conversation with my staff director, Ms. Manual stated categorically that she was not required to inform Mr. Parris in writing of the reasons for his reassignment to another position, and indeed she has not done so. Yet the regulations governing this area explicitly require such written notification of the reasons for reassignment of an SES employee. As another example, Ms. Manual does not appear to have undertaken "prior consultation" with Mr. Parris about such a reassignment, even though the regulations also explicitly require it. Rather, Ms. Manual simply informed Mr. Parris of the decision. Other questions also are raised about her actions, and we will pursue them with the proper officials.

Given Ms. Manual's failure to comply with these simple consultation and notice requirements, as well as other potential issues, it seems to me there is a very legitimate question raised as to whether her October 25 action to remove Mr. Parris as Director of OTFM is even valid.

In a nutshell, after only a few weeks as "acting" Deputy Commissioner for Indian Affairs, with little familiarity with the trust funds program or Mr. Parris' work, without considering the implications for the program, and with no legitimate or even believable explanation as to the reasons for her action and no prior consultation with Mr. Parris, Ms. Manual has attempted to reassign the one person in the program who is most needed, is the most knowledgeable, the most competent, and the most committed to reform -- and she has done this on the very day that President Clinton signed the trust fund reform act.

In light of all this, it can not surprise you that all of us who have been involved in this area for many years question the real reason for Mr. Parris' reassignment, and it is uniformly seen as an effort to punish him for having pushed for reform, for having the temerity to establish good and candid working relationships with ITMA and the tribal trust community, and for being too forthright with Congress about the condition of the trust funds program. Others view these factors as significant and desirable attributes; but it has never been a secret that many in the headquarters heirarchy see them as professional offenses.

Ada, I say this as a friend and supporter and someone who cares very much about getting this program on track: the effort to remove Jim Parris as Director of OTFM is an obviously ill-considered and destructive decision, made for the all wrong reasons. And contrary to what Ms. Manual or certain others at headquarters may think, the decision will have severe repercussions for the program and for your efforts to smoothly implement major management reforms under the new law. Moreover, the manner in which this extremely capable, dedicated and decent public servant has been treated in this matter is appalling and completely inexcusable.

For all these reasons, and for the good of the trust funds program, I implore you to rescind this decision. Anything less would be a disservice to Mr. Parris, to the tribes whose funds are held in trust, and to the Department's trust funds program.

I look forward to talking with you personally about this matter as quickly as possible.

Sincerely,

Mike

MIKE SYNAR, Chairman
Subcommittee on Environment,
Energy and Natural Resources

cc: The Honorable William F. Clinger, Jr.
Ranking Minority Member,
Committee on Government Operations

The Honorable J. Dennis Hastert
Ranking Minority Member, Subcommittee on
Environment, Energy and Natural Resources

ONE HUNDRED THIRD CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT OPERATIONS

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

October 31, 1994

The Honorable Bruce Babbitt
Secretary of the Interior
U.S. Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240

Dear Bruce:

Enclosed is a letter I have sent to Ada Deer, concerning the Department's abrupt attempt to reassign Mr. Jim Parris, Director of the Bureau's Office of Trust Fund Management.

President Clinton has just recently signed into law the Indian Trust Funds Management Improvement Act and, as you know, we are at a critical juncture in the future of the Department's trust funds program. No decision could be more unjustified, or more counter-productive, than reassignment of Mr. Parris. As I noted in my letter to Ada, this action also is a slap at the Tribes who have funds in trust and at all of us in Congress who have long fought for reforms. Moreover, the Bureau's treatment of Mr. Parris, a longtime Bureau employee and career Senior Executive, is inexcusable, and is absolutely contrary to the message the Department should be sending to its employees who, like Mr. Parris, have dedicated themselves to helping the Department meet its responsibilities to Native Americans.

Bruce, the programmatic and political repercussions of this action could be severe. Please personally review the enclosed letter and help ensure that this reassignment is rescinded as soon as possible.

With warmest regards.

Sincerely,

Mike

MIKE SYNAR, Chairman
Subcommittee on Environment,
Energy and Natural Resources

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

NOV 22 1994

Honorable Mike Synar
Chairman, Subcommittee on Environment,
Energy and Natural Resources
Committee on Government Operations
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Mr. Synar:

Thank you for your letter of October 31, 1994. As you know, personnel decisions are often difficult and although this was a tough decision, I believe it is the right one.

As you are well aware and have noted in your letter, Mr. Parris has great strengths and is very capable in dealing effectively with tribes and other organizations. We are offering him an opportunity to serve in a capacity using these skills and talents in the Self Governance program, which is also an area of high priority with this Administration. By assuming his position as a member of the Senior Executive Service (SES), Mr. Parris has accepted the terms associated with this rank and can also be assured that necessary SES reassignment procedures will be adhered to in this process.

Again, I thank you for your continued interest and concern in the trust funds management program. As you well know, this issue remains a top priority in this Administration and I am personally committed to bringing about long needed reforms in trust funds management. We have achieved much with the progress in tribal reconciliation, approval and implementation of the Office of Trust Funds Management (OTFM) realignment, development of field accounting procedures, and procurement of a core trust funds system. We also have significant work ahead of us to assure implementation of the recently enacted "Indian Trust Funds Reform Act of 1994." I have full confidence in the capable leadership at OTFM and we will continue to stress service to the tribes in this critical program area.

Sincerely,

Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs