

BIA MANAGEMENT OF INDIAN TRUST FUNDS

OVERSIGHT HEARING
BEFORE THE
SUBCOMMITTEE ON
NATIVE AMERICAN AFFAIRS
OF THE
COMMITTEE ON
NATURAL RESOURCES
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
FIRST SESSION
ON

BUREAU OF INDIAN AFFAIRS' MANAGEMENT OF TRUST FUNDS; AND

H.R. 1846

NATIVE AMERICAN TRUST FUND ACCOUNTING AND MANAGEMENT
REFORM ACT OF 1993

HEARING HELD IN WASHINGTON, DC
SEPTEMBER 27, 1993

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(III)

BUREAU OF INDIAN AFFAIRS' MANAGEMENT OF TRUST FUNDS; AND, H.R. 1846, NATIVE AMERICAN TRUST FUND ACCOUNTING AND MANAGEMENT REFORM ACT OF 1993

MONDAY, SEPTEMBER 27, 1993

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATURAL RESOURCES,
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 1324, Longworth House Office Building, Hon. Bill Richardson (chairman of the subcommittee) presiding.

STATEMENT OF HON. BILL RICHARDSON

Mr. RICHARDSON. Welcome. This morning the Subcommittee on Native American Affairs will conduct a hearing on the BIA management of Indian trust funds.

The BIA is currently responsible for managing some \$2.1 billion in Indian trust funds. This includes almost 2,000 tribal accounts worth \$1.7 billion and some 300,000 individual money accounts worth over \$450 million. These accounts are comprised of monies received mostly through leasing practices such as timber stumpage, oil and gas royalties, agricultural fees or judgment awards.

Over the years, several audits and reports have detailed long-standing inadequacies in the management of these accounts. The problems are numerous.

One, the BIA cannot give a complete record balance to its account holders.

Two, no uniform, written policies exist to detail the proper management and care of the accounts.

Three, personnel charged with the management of these funds have not received adequate training to gain the needed expertise on a consistent basis.

This money belongs to the tribes and individual Indians who own these accounts. The Federal Government has the fiduciary responsibility to see that these funds are invested, recorded, and managed in a proper fashion.

Numerous audits and reports issued by the Department of the Interior Inspector General, the General Accounting Office, the Office of Management and Budget, and congressional committees, time and time again point to the fact that the Federal Government has not been a good trustee. OMB has listed tribal trust funds as one of the high-risk liability areas for the Government.

These problems did not happen overnight and this subcommittee does not expect them to be fixed overnight. Some changes have occurred. The BIA has contracted to begin reconciliation of many of the accounts and the Intertribal Monitoring Association has been formed to work with the BIA and Congress to address the problems.

This morning we will focus on some of these problems as well as potential solutions. We will hear from my colleague Mike Synar of Oklahoma who, as chairman of the Government Operations Subcommittee on Environment, Energy, and Natural Resources, released a 1992 report entitled "Misplaced Trust: The Bureau of Indian Affairs' Management of the Indian Trust Fund," which has been the impetus for much of the movement in this area.

Congressman Synar is also the author of H.R. 1846, which would give tribes more control over their tribal trust funds.

We will also hear from the new Assistant Secretary for Indian Affairs, Ada Deer, who is responsible for the management of Indian trust funds. The General Accounting Office will testify concerning work it has completed and is currently working on in this area. Also testifying will be tribal representatives, members of the Intertribal Monitoring Association, and representatives of private sector financial institutions.

I hope this morning will mark the start of positive dialogue that will bring forth innovative solutions to the old problems that have plagued Indian trust funds for far too long.

At this time, I would ask that the background on Indian trust fund management be made part of the record. In addition to receiving testimony on trust funds, we will be taking comments to Mr. Synar's bill, H.R. 1846. With this in mind, I would also ask that the bill and section-by-section of H.R. 1846 be made part of the record.

[Background, text of H.R. 1846, and a section-by-section of the bill follows:]

INDIAN TRUST FUND MANAGEMENT

BACKGROUND

Funds have been held in trust for Indians by the Federal Government since 1820. The Bureau of Indian Affairs (BIA) has had the authority to invest Indian Trust Funds since 1918, however, it was not until 1966 that the BIA exercised its full range of investment authority. The Office of Trust Funds Management (OTFM) within the BIA is responsible for implementing the fiduciary responsibility of ensuring that all proper controls and accountability is maintained with regard to the Indian trust funds. OTFM, located in Albuquerque, New Mexico, oversees the trust fund operations at the 12 BIA Area Offices and 93 BIA Agency offices.

Trust fund accounts are comprised mainly of money received through the sale or lease of trust lands and include timber stumpage, oil and gas royalties, and agriculture fees. Accounts containing judgment funds awarded to tribes are also maintained. Trust funds controlled by the BIA currently total over \$2.1 billion with \$1.7 billion in tribal trust funds and \$450 million in Individual Indian Money (IIM) accounts. Several accounts can be held for each tribe. The BIA is currently managing some 1,880 tribal accounts and almost 300,000 separate IIM accounts.

In order to protect these funds, investments must be unconditionally secured through Federal Government deposit insurance. Funds must be deposited in interest bearing accounts within 30 days of receipt. The Federal government is responsible for lost interest if funds are not invested within that time. The responsibility for management of Indian Trust Funds by the BIA has been determined through a series of court decisions, treaties, and statutes.

Over the years numerous audits and reports on Indian trust funds have been published by the Inspector General of the Department of the Interior, the U.S. General Accounting Office, the Office of Management and Budget, and Congressional Committees. A 1992 report released by the House Committee on Government Operations entitled, "Misplaced Trust" details multiple problems with the management of these funds.

Among the problems which persist are:

- 0 the Federal government cannot give a proper accounting of balances to each of the account holders
- 0 lack of uniform written policies to govern how accounts are to be managed and under what circumstances funds can be withdrawn
- 0 not all personnel involved with trust fund management receive the proper training needed to carry out the duties required

0 inadequate automated and record keeping systems

0 Office of Management and Budget considers Indian Trust Funds to be a "high risk" liability to the Federal Government

BIA has contracted with the Arthur Anderson Company to reconcile the accounts. Although this process has begun it is not expected to reconcile all of the tribal accounts and is expected to reconcile few, if any, of the Individual Indian Money accounts. Much needed documentation is missing, making reconciliation extremely difficult.

Tribes have voiced their desire to have more input and control over tribal accounts and the way in which the BIA manages them. Several tribes have withdrawn certain accounts and taken on the responsibility for managing those accounts. In 1991 the Intertribal Monitoring Association (ITMA) was formed to work with BIA in the reconciliation of current accounts as well as the formulation of future management practices.

Fractionated heirship of tiny parcels of Indian land cause the IIM accounts to be small, but numerous. As time goes on and this land continues to be passed down through the generations, the problem of accounting for the thousands of small IIM accounts grows.

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Fractionated heirship of tiny parcels of Indian land cause the IIM accounts to be small, but numerous. As time goes on and this land continues to be passed down through the generations, the problem of accounting for the thousands of small IIM accounts grows.

103D CONGRESS
1ST SESSION

H. R. 1846

To require the Secretary of the Interior to pay interest on Indian funds invested, to authorize demonstrations of new approaches for the management of Indian trust funds, to clarify the trust responsibility of the United States with respect to Indians, to establish a program for the training and recruitment of Indians in the management of trust funds, to account for daily and annual balances on and to require periodic statements for Indian trust funds, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 1993

Mr. SYLAR introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To require the Secretary of the Interior to pay interest on Indian funds invested, to authorize demonstrations of new approaches for the management of Indian trust funds, to clarify the trust responsibility of the United States with respect to Indians, to establish a program for the training and recruitment of Indians in the management of trust funds, to account for daily and annual balances on and to require periodic statements for Indian trust funds, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Native American Trust
3 Fund Accounting and Management Reform Act of 1993".

4 **SEC. 2. DEFINITIONS.**

5 For purposes of this Act—

6 (1) the term "Secretary" means the Secretary
7 of the Interior; and

8 (2) the term "Bureau" means the Bureau of
9 Indian Affairs of the Department of the Interior.

10 **TITLE I—TRUST FUND INTEREST**
11 **PAYMENTS**

12 **SEC. 101. PAYMENT OF INTEREST ON FUNDS INVESTED.**

13 (a) PAYMENT OF INTEREST.—(1) The fourth proviso
14 of subsection (a) of the first section of the Act of June
15 24, 1938 (25 U.S.C. 162a), is amended by striking "may
16 invest" and inserting "shall invest".

17 (2) The first section of the Act of June 24, 1938 (25
18 U.S.C. 162a), is amended by adding at the end the follow-
19 ing new subsection:

20 "(d) Amounts deposited or invested under subsection
21 (a) shall earn interest at the appropriate rates, taking into
22 consideration the type of deposit or investment. The Sec-
23 retary shall periodically pay such interest to the appro-
24 priate Indian tribe or individual Indian or, at the election
25 of the Indian tribe or individual Indian, add such interest
26 to the principal so deposited or invested."

1 (b) TECHNICAL CORRECTION.—The second sub-
2 section (b) of the first section of the Act of June 24, 1938
3 (25 U.S.C. 162a), as added by section 302 of Public Law
4 101-644 (104 Stat. 4667), is hereby redesignated as sub-
5 section (c).

6 (c) REPEAL OF LIMITATION ON UNITED STATES LI-
7 ABILITY.—Paragraph (2) of subsection (c) of the first sec-
8 tion of the Act of June 24, 1938, as amended by sub-
9 section (b), is amended to read as follows:

10 “(2) Amounts deposited or invested under this sub-
11 section shall generate earnings at the appropriate rates,
12 taking into consideration the type of investment con-
13 cerned. The Secretary shall periodically pay such earnings
14 to the appropriate Indian tribe or individual Indian or,
15 at the election of the Indian tribe or individual Indian,
16 add such earnings to the principal of such funds so
17 invested.”.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to interest earned on amounts de-
20 posited or invested on or after the date of the enactment
21 of this Act.

22 **SEC. 102. AUTHORITY FOR PAYMENT OF CLAIMS FOR IN-**
23 **TEREST OWED.**

24 The Secretary is authorized to make payments to an
25 Indian tribe or an individual Indian—

1 (1) in full satisfaction of any claim of such In-
2 dian tribe or individual Indian for interest on
3 amounts deposited or invested on behalf of such In-
4 dian tribe or individual Indian before the date of en-
5 actment of this Act under the Act of June 24, 1938
6 (25 U.S.C. 162a), and who was not paid the appro-
7 priate amount of interest on such funds; and

8 (2) in an amount equal to the interest which
9 would have been earned if funds of such Indian tribe
10 or individual Indians which were subject to the Act
11 of June 24, 1938 (25 U.S.C. 162a), had been depos-
12 ited or invested in accordance with such Act.

13 **TITLE II—INDIAN TRUST FUND**
14 **MANAGEMENT DEMONSTRA-**
15 **TION PROGRAM**

16 **SEC. 201. PURPOSE.**

17 The purpose of this title is to demonstrate new ap-
18 proaches for the management of tribal and individual In-
19 dian funds held in trust by the United States and man-
20 aged by the Secretary through the Bureau, that, consist-
21 ent with the trust responsibility of the United States and
22 the principles of self-determination, will—

23 (1) give Indian tribal governments and individ-
24 ual Indian account holders greater control over the
25 management of such trust funds;

1 (2) pursuant to tribal instructions, involve in-
2 vestment of such trust funds by the Secretary in a
3 manner that will also help to promote economic
4 development in Indian communities; or

5 (3) otherwise demonstrate how the principles of
6 self-determination can work with respect to the man-
7 agement of such trust funds, in a manner consistent
8 with the trust responsibility of the United States.

9 **SEC. 202. DEFINITION.**

10 For the purposes of this title, except for the purposes
11 of section 208, the terms “Indian tribe” and “tribe”
12 mean—

13 (1) an Indian tribe;

14 (2) a consortia of Indian tribes; or

15 (3) an association of Indians holding individual
16 Indian trust fund accounts managed by the Sec-
17 retary through the Bureau.

18 **SEC. 203. DEMONSTRATION PLANS.**

19 An Indian tribe may submit to the Secretary a plan
20 to demonstrate a new approach for the management of
21 tribal or individual Indian funds held in trust by the Unit-
22 ed States for such tribe or the members of such tribe, and
23 as of the date of the enactment of this Act, managed by
24 the Secretary through the Bureau. Such plan may provide
25 for the following:

1 (1) Management of such funds directly by the
2 Indian tribe in financial institutions selected by the
3 tribe, subject to supervision and oversight by the
4 Secretary. For the purposes of this section, the term
5 “management” may include one or more of the func-
6 tions carried out, as of the date of the enactment of
7 this Act, by the Secretary through the Bureau in
8 managing such funds, such as collection, disburse-
9 ment, and investment functions.

10 (2) Management of such funds by the Secretary
11 in a manner that—

12 (A) involves investment of such funds in fi-
13 nancial institutions on or near the reservation;

14 (B) increases tribal access to such institu-
15 tions;

16 (C) promotes economic development activi-
17 ties on the reservation; or

18 (D) otherwise promotes tribal priorities.

19 (3) Management of such funds at the local level
20 through contracts with local financial institutions
21 that meet the purposes of this title.

22 (4) Such other approaches, as determined by
23 the Secretary, that meet the purpose of this title.

1 **SEC. 204. APPROVAL OF PLANS BY THE SECRETARY.**

2 (a) IN GENERAL.—The Secretary shall approve and
3 implement, or provide for the implementation by an Indian
4 tribe of, a plan that meets the following conditions:

5 (1) Such plan has been approved by the appro-
6 priate Indian tribe, as follows:

7 (A) For a plan involving tribal trust funds,
8 such plan is accompanied by a resolution from
9 the tribal governing body approving the plan.

10 (B) For a plan submitted by an Indian
11 tribe (as defined in paragraphs (1) and (2) of
12 section 202) involving individual Indian money
13 accounts, where most or all of the account hold-
14 ers are members of the submitting tribe, it is
15 accompanied by a resolution from the tribal
16 governing body approving the plan, along with
17 a certification that the tribe held no fewer than
18 2 public meetings to provide an opportunity for
19 account holders to comment on the plan.

20 (C) For a plan submitted by an Indian
21 tribe (as defined in paragraph (3) of section
22 202), it is accompanied by a written approval
23 signed by each participating account holder,
24 along with a certification that the tribe on
25 whose reservation the trust asset that is the

1 source of the funds is located, has been con-
2 sulted regarding the plan.

3 (2) The Secretary determines such plan to be
4 consistent with standards of reasonable prudence,
5 after considering all appropriate factors, including
6 but not limited to the following:

7 (A) The capability and experience of the
8 individuals or institutions that will be managing
9 the trust funds.

10 (B) The protection against substantial loss
11 of principal.

12 (C) The rate of return, provided that the
13 plan need not produce the highest rate of re-
14 turn possible if the Indian tribe chooses to ac-
15 cept a lower rate in return for other benefits
16 such as the benefits from investing in local fi-
17 nancial institutions.

18 (D) The ability of the Secretary to effec-
19 tively monitor the demonstration, pursuant to
20 the trust responsibility of the United States as
21 specified in section 205.

22 (3) The duration of the plan does not exceed 5
23 years.

24 (b) INVESTMENT IN EQUITIES.—Nothing in this sec-
25 tion shall prohibit an Indian tribe submitting a plan for

1 a demonstration under this section from providing in such
2 plan for the investment of its trust funds in equities, if
3 the Secretary determines that such plan meets the stand-
4 ard of reasonable prudence under subsection (a)(2).

5 **SEC. 205. FEDERAL TRUST RESPONSIBILITY.**

6 (a) IN GENERAL.—If an Indian tribe assumes man-
7 agement of trust funds pursuant to a demonstration under
8 this title, the trust responsibility of the United States with
9 respect to such funds shall, for the duration of the dem-
10 onstration, be limited to the following:

11 (1) The exercise of reasonable prudence by the
12 Secretary in approving the plan for the demonstra-
13 tion.

14 (2) An annual audit provided by the Secretary,
15 directly or by contract, to determine that the tribe
16 is performing in conformance with the plan for the
17 demonstration.

18 (3) If the Secretary finds, through such audits,
19 that the tribe is not in compliance with the terms of
20 the plan, the Secretary shall—

21 (A) terminate the demonstration; or

22 (B) prescribe remedial action to be taken
23 by the tribe to achieve compliance with the
24 plan.

1 (b) DECREASE IN INTEREST AND LOSS OF PRIN-
2 CIPAL.—If a plan for a demonstration submitted under
3 this title and approved by the Secretary provides for the
4 implementation of such demonstration by the Secretary,
5 the United States shall not be liable, during the period
6 of such demonstration, for any decrease in interest rate
7 or any loss of principal that is proximately caused by the
8 Secretary's prudent implementation of such demonstra-
9 tion.

10 (c) AGREEMENT.—Prior to the implementation of
11 any demonstration under this title, the Indian tribe in-
12 volved shall sign a written statement indicating that it un-
13 derstands and accepts the limitations on the trust respon-
14 sibility of the United States as provided in this section.

15 **SEC. 206. TECHNICAL AND FINANCIAL ASSISTANCE.**

16 The Secretary shall, directly or by contract, provide
17 Indian tribes with technical and financial assistance in de-
18 veloping, implementing, and managing plans for dem-
19 onstrations under this title.

20 **SEC. 207. NO INCOME TAX CONSEQUENCES.**

21 Funds managed pursuant to a demonstration pro-
22 gram under this title, and distributions made from such
23 funds, shall, for purposes of the Internal Revenue Code
24 of 1986, be treated in the same manner as such funds

1 would be treated if such funds were managed directly by
2 the Secretary, through the Bureau.

3 **SEC. 208. VOLUNTARY WITHDRAWAL FROM TRUST FUND**
4 **PROGRAM.**

5 (a) IN GENERAL.—An Indian tribe may, in accord-
6 ance with this section, submit a plan to withdraw some
7 or all funds held in trust for such tribe by the United
8 States and managed by the Secretary through the Bureau.

9 (b) APPROVAL OF PLAN.—The Secretary shall ap-
10 prove a plan under this section that meets the require-
11 ments specified in section 204(a)(1) and subparagraphs
12 (A) and (B) of section 204(a)(2).

13 (c) TERMINATION OF TRUST RESPONSIBILITY.—Be-
14 ginning on the date funds are withdrawn pursuant to this
15 section, any trust responsibility of the United States with
16 respect to such funds shall terminate.

17 **SEC. 209. REPORT TO CONGRESS.**

18 The Secretary shall, beginning one year after the date
19 of the enactment of this Act, submit an annual report to
20 the Congress on the implementation of demonstration pro-
21 grams under this title. Such report shall include rec-
22 ommendations for changes necessary to effectively imple-
23 ment the purpose of this title.

1 **TITLE III—RECOGNITION OF**
2 **TRUST RESPONSIBILITY**

3 **SEC. 301. AFFIRMATIVE ACTION REQUIRED.**

4 The first section of the Act of June 24, 1938 (25
5 U.S.C. 162a), as amended by section 101(a)(2), is
6 amended by adding at the end the following new sub-
7 section:

8 “(e) The Secretary shall properly discharge the trust
9 responsibilities of the United States under this section
10 by—

11 “(1) providing adequate systems for accounting
12 for and reporting trust fund balances;

13 “(2) providing adequate controls over receipts
14 and disbursements;

15 “(3) providing periodic, timely reconciliations to
16 assure the accuracy of accounts;

17 “(4) determining accurate cash balances;

18 “(5) preparing and supplying account holders
19 with meaningful periodic statements of their account
20 balances;

21 “(6) establishing consistent, written policies and
22 procedures for trust fund management and account-
23 ing; and

1 “(7) providing adequate staffing, supervision,
2 and training for trust fund management and ac-
3 counting.”.

4 **SEC. 302. TRUST RESPONSIBILITY WITH RESPECT TO NATU-**
5 **RAL RESOURCES.**

6 The Congress recognizes that the trust responsibility
7 of the United States extends to tribal and individual In-
8 dian owners of natural resources located within the bound-
9 aries of Indian reservations and trust lands. This includes
10 the fiduciary responsibility to manage funds held in trust
11 by the United States for Indian tribes and individual Indi-
12 ans derived from actions including, but not limited to, the
13 use and sale of leased lands, judgments, mineral leases,
14 oil and gas leases, timber permits and sales, and water
15 resources.

16 **TITLE IV—TRAINING AND**
17 **PERSONNEL**

18 **SEC. 401. TRAINING.**

19 (a) TRAINING PROGRAM.—The Secretary shall estab-
20 lish a program to assist Indians, including, but not limited
21 to, employees of the Bureau and members and employees
22 of Indian tribes, to obtain expertise in the management
23 of trust funds. Components of such program may include
24 the following:

1 (1) An outreach program to encourage and as-
2 sist Indians to obtain employment with private fi-
3 nancial institutions.

4 (2) Agreements with financial institutions and
5 other entities under which such entities would pro-
6 vide classroom training, on-the-job training, intern-
7 ships, and employment opportunities not to exceed 2
8 years, for employees and prospective employees of
9 the Bureau.

10 (b) RECRUITMENT.—

11 (1) EMPLOYMENT DESCRIPTIONS.—The Sec-
12 retary shall ensure that the employment description
13 for any Federal position related to the management
14 of Indian trust funds contains requirements nec-
15 essary to ensure that a person filling such position
16 would have the necessary skills, based on industry
17 standards, to fully perform the position's responsibil-
18 ities in a manner consistent with the responsibility
19 of the United States to properly manage Indian
20 trust funds.

21 (2) PAY.—The Secretary, in consultation with
22 the Office of Personnel Management, shall establish
23 the rate of pay payable for a position related to the
24 management of Indian trust funds at a level of the
25 General Schedule appropriate for such position.

1 (c) INDIAN PREFERENCE.—Nothing in this title shall
2 authorize or permit any waiver of Indian preference laws
3 as such term is defined in section 2(f)(2) of Public Law
4 96–135 (25 U.S.C. 472 et seq.).

5 **TITLE V—RESPONSIBILITY TO**
6 **ACCOUNT FOR INDIAN TRUST**
7 **FUNDS**

8 **SEC. 501. RESPONSIBILITY OF SECRETARY TO ACCOUNT**
9 **FOR THE DAILY AND ANNUAL BALANCES OF**
10 **INDIAN TRUST FUNDS.**

11 (a) REQUIREMENT TO ACCOUNT.—The Secretary
12 shall account for the daily and annual balance of all funds
13 held in trust by the United States for the benefit of an
14 Indian tribe or an individual Indian which are deposited
15 or invested pursuant to the Act of June 24, 1938 (25
16 U.S.C. 162a).

17 (b) PERIODIC STATEMENT OF PERFORMANCE.—Not
18 later than 10 business days after the close of a calendar
19 month, the Secretary shall provide a statement of perform-
20 ance to each Indian tribe and individual with respect to
21 whom funds are deposited or invested pursuant to the Act
22 of June 24, 1938 (25 U.S.C. 162a). The statement, for
23 the period concerned, shall—

24 (1) identify the source, type, and status of the
25 funds;

- 1 (2) the beginning balance;
- 2 (3) the earnings and losses; and
- 3 (4) the ending balance.

4 (c) ANNUAL AUDIT.—The Secretary shall cause to be
5 conducted an annual audit on a fiscal year basis of all
6 funds held in trust by the United States for the benefit
7 of an Indian tribe or an individual Indian which are depos-
8 ited or invested pursuant to the Act of June 24, 1938 (25
9 U.S.C. 162a), and shall include a letter relating to the
10 audit in the first statement of performance provided under
11 subsection (b) after the completion of the audit.

12 (d) EFFECTIVE DATE.—This section shall take effect
13 October 1, 1993, but shall only apply with respect to earn-
14 ings and losses occurring on or after October 1, 1993, on
15 funds held in trust by the United States for the benefit
16 of an Indian tribe or an individual Indian.

○

September 22, 1993

**SECTION-BY-SECTION ANALYSIS OF
H.R. 1846
THE NATIVE AMERICAN TRUST FUND ACCOUNTING
AND MANAGEMENT REFORM ACT OF 1993**

SECTION 1. TITLE

Section 1 cites the bill as " The Native American Trust Fund Accounting and Management Reform Act of 1993."

SECTION 2. DEFINITIONS

Section 2 defines terms used in the Act.

TITLE I--TRUST FUND INTEREST PAYMENTS

SECTION 101. PAYMENT OF INTEREST ON FUNDS INVESTED.

Section 101 amends provisions in the Act of June 24, 1938, codified in Title 25 of the United States Code, regarding the deposit of tribal funds in banks. Subsection (a) (1) amends the fourth proviso in 25 U.S.C. 162a (a) so that the Secretary is required to invest the trust funds of any tribe or individual Indian in any public-debt obligations of the United States and in any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States.

Paragraph (a)(2) adds to 25 U.S.C. 162a a new subsection (d), which requires that the amounts deposited under 25 U.S.C. 162a (a) shall earn interest at the appropriate rates, and that the Secretary shall periodically pay such interest, or add such interest to the principal, of the appropriate Indian tribe or individual.

Subsection (b) makes a technical correction by renumbering 25 U.S.C. 162a (b)(1) as subsection (c).

Subsection (c) amends paragraph (2) of new subsection (c) to repeal the current limitation of United States liability. It replaces the subsection with language which provides that amounts deposited or invested shall generate earnings at the appropriate rates.

Subsection (d) provides that the amendments made by Section 101 shall apply to interest earned on amounts deposited or invested on or after the date of the enactment of this Act.

SECTION 102. AUTHORITY FOR PAYMENT OF CLAIMS FOR INTEREST OWED.

TITLE II--INDIAN TRUST FUND MANAGEMENT DEMONSTRATION PROGRAM

SECTION 201. PURPOSE.

Section 201 provides that the purpose of this title is to demonstrate new approaches for management of tribal and individual Indian funds held in trust, that, consistent with the trust responsibility of the United States, will do the following:

- (1) give Indian governments and individual Indian account holders greater control over the management such funds
- (2) involve Secretarial investment of such funds in a manner that will help to promote economic development in Indian communities, pursuant to tribal instructions
- (3) demonstrate how the principles of self-determination can work with respect to the management of such funds, in a manner consistent with the trust responsibility of the United States

SECTION 202. DEFINITION.

Section 202 defines the terms "Indian tribe" and "tribe" to include a consortium of Indian tribes and as associations of Indians holding individual Indian trust fund accounts managed by the Secretary.

SECTION 203. DEMONSTRATION PLANS.

Section 203 provides that an Indian tribe may submit a plan to the Secretary to demonstrate a new approach for the management of tribal or individual Indian funds held in trust by the United States. For the purposes of this section, the term "management" may include one or more of the functions carried out by the Secretary through the Bureau in managing such funds, such as collection, disbursement, and investment functions. Subsections (1) through (4) provide approaches that the plan may provide:

- (1) Management of such funds directly by the Indian tribe in financial institutions selected by the tribe, subject to supervision by the Secretary.
- (2) Management of such funds by the Secretary in a manner that involves investment of such funds in financial institutions on or near the reservation, increases tribal access to such institutions, promotes economic development activities on the reservation, or otherwise promotes tribal priorities.

(3) Management of such funds at the local level through contracts with local financial institutions that meet the purposes of Title II.

(4) Such other approaches, as determined by the Secretary, that meet the purpose of Title II.

SECTION 204. APPROVAL OF PLANS BY THE SECRETARY.

Subsection 204 (a) provides for Secretarial approval and implementation of a plan submitted by an Indian tribe. Paragraphs (1) and (2) provide conditions which a tribal plan must meet before Secretarial approval. Under paragraph (1), a plan must have first been approved by the appropriate Indian tribe, in the following manner:

(A) A plan involving tribal trust funds must be accompanied by a resolution from the tribal governing body approving the plan.

(B) A plan involving individual Indian money accounts, where most or all of the account holders are members of the submitting tribe, must be accompanied by a resolution from the tribal governing body approving the plan, along with a certification that the tribe held no fewer than 2 public meetings to provide an opportunity for account holders to comment on the plan.

(C) A plan submitted by an association of individuals holding individual Indian trust fund accounts managed by the Secretary (an Indian tribe under 202 (3)) must be accompanied by a written approval signed by each participating account holder, along with a certification that the tribe on whose reservation the trust asset that is the source of the funds is located, has been consulted regarding the plan.

Under paragraph 2, the Secretary must determine such plan to be consistent with standards of reasonable prudence, after considering all appropriate factors, including but not limited to those set out in subparagraphs (A) through (D):

(A) the capacity and experience of the individuals or institutions that will be managing the trust funds

(B) the protection against substantial loss of principal

(C) the rate of return, provided that the plan need not produce the highest rate of return possible if the Indian tribe chooses to accept a lower rate in return for other benefits.

(D) the ability of the Secretary to effectively monitor the demonstration, pursuant to the trust responsibility of the United States.

Subsection 204 (b) provides that this section does not prohibit a tribe from submitting a demonstration plan for the investment of its trust funds in equities, if the Secretary determines that such plan meets the standard of reasonable prudence under subsection 204(a)(2).

SECTION 205. FEDERAL TRUST RESPONSIBILITY.

Section 205 provides for limitations on the trust responsibility of the United States. Subsection 205(a) provides that, if an Indian tribe assumes management of trust funds pursuant to a demonstration, the trust responsibility of the United States with respect to such funds shall, for the duration of the demonstration, be limited to (1), the exercise of reasonable prudence by the Secretary in approving the plan, and (2), an annual audit provided by the Secretary, directly or by contract, to determine that the tribe is performing in conformance with the plan.

Paragraph 205 (a)(3) provides that if the Secretary finds, through such audits, that the tribe is not in compliance with the terms of the plan, the Secretary shall either (A) terminate the demonstration, or (B) prescribe remedial action to be taken by the tribe to achieve compliance.

Subsection 205 (b) provides that if a demonstration plan approved by the Secretary provides for implementation by the Secretary, the United States shall not be liable, during the demonstration period, for any decrease in interest rate or any loss of principal that is proximately caused by the Secretary's prudent implementation of the plan.

Subsection 205 (c) provides that, prior to the implementation of any demonstration, the Indian tribe involved shall sign a written statement indicating that it understands and accepts the limitations on the trust responsibility of the United States.

SECTION 206. TECHNICAL AND FINANCIAL ASSISTANCE.

Section 206 directs the Secretary to provide Indian tribes with technical and financial assistance in developing, implementing, and managing plans for demonstrations under this title, whether directly or by contract.

SECTION 207. NO INCOME TAX CONSEQUENCES.

Section 207 provides that, for purposes of the Internal Revenue Code of 1986, funds managed pursuant to a demonstration program, and distributions made from such funds, shall be treated in the same manner as such funds would be treated if such funds were managed directly by the Secretary, through the Bureau.

SECTION 208. VOLUNTARY WITHDRAWAL FROM TRUST FUND PROGRAM.

Section 208 provides that an Indian tribe may withdraw some or all trust funds. Subsection 208 (a) authorizes an Indian tribe to submit a plan for withdrawal of such funds. Subsection (b) requires Secretarial approval of a plan to withdraw funds. The plan must meet the requirements specified in section 204 (a)(1) and subparagraphs (A) and (B) of section 204(a)(2). Subsection (c) provides that any trust responsibility of the United States with respect to such funds shall terminate, beginning on the date funds are withdrawn.

SECTION 209. REPORT TO CONGRESS.

Section 209 directs the Secretary to submit an annual report to the Congress on the implementation of demonstration programs, beginning one year after the enactment of this Act. The report is to include recommendations for changes necessary to effectively implement the purpose of Title II.

TITLE III--RECOGNITION OF TRUST RESPONSIBILITY

SECTION 301. AFFIRMATIVE ACTION REQUIRED.

Section 301 outlines the trust responsibilities of the Secretary with respect to management of trust funds. This section amends 25 U.S.C. 162a by adding a new subsection "(e)." New subsection (e) provides that the Secretary shall properly discharge the trust responsibilities of the United States by providing adequate systems for accounting for and reporting trust fund balances; providing adequate controls over receipts and disbursements; providing periodic, timely, reconciliations to assure the accuracy of accounts; determining accurate cash balances; preparing and supplying account holders with meaningful periodic statements of their account balances; establishing consistent, written policies and procedures for trust fund management and accounting; and providing adequate staffing, supervision, and training for trust fund management and accounting.

SECTION 302. TRUST RESPONSIBILITY WITH RESPECT TO NATURAL RESOURCES.

Section 302 recognizes the fiduciary responsibility of the United States to manage funds held in trust by the United States for Indian tribes and individual Indians derived from actions including, but not limited to, the use and sale of leased lands, judgements, mineral leases, oil and gas leases, timber permits and sales, and water resources.

TITLE IV--TRAINING PERSONNEL

SECTION 401. TRAINING

Section 401 provides for establishment of a program to assist Indians to obtain expertise in the management of trust funds. Subsection 401 (a) directs the Secretary to establish a program, which shall include employees of the Bureau and members and employees of Indian tribes. Such programs may include (1) an outreach program to encourage and assist Indians to obtain employment with private financial institutions and (2) agreements with and other entities under which such entities would provide classroom training, on-the-job training, internships, and employment opportunities not to exceed 2 years, for employees and prospective employees of the Bureau.

Subsection 401 (b) provides for recruitment. Paragraph (b)(1) directs the Secretary to ensure that employment descriptions for federal positions related to the management of Indian trust funds contains requirements necessary to ensure that persons filling such positions have the necessary skills to fully perform the responsibility consistent with the trust responsibility of the United States. Paragraph (2) requires the Secretary to establish appropriate rates of pay for positions related to the management of trust funds at a level of the General Schedule.

Subsection 401 (c) prohibits any waiver of Indian preference laws as defined in section 2(f)(2) of Public Law 96-135 (25 U.S.C. 472 et seq.).

TITLE V--RESPONSIBILITY TO ACCOUNT FOR INDIAN TRUST FUNDS

SECTION 501. RESPONSIBILITY OF SECRETARY TO ACCOUNT FOR THE DAILY AND ANNUAL BALANCES OF INDIAN TRUST FUNDS

Section 501 sets forth the responsibility of the Secretary to account for the daily and annual balances of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian which are deposited or invested pursuant to 25 U.S.C. 162a.

Subsection (b) directs the Secretary to provide a statement of performance to each Indian tribe and individual with respect to whom funds are deposited or invested pursuant to 25 U.S.C. 162a. The statement shall identify the source, type and status of the funds; the beginning balance, the earnings and losses, and the ending balance.

Subsection (c) directs the Secretary to conduct an annual audit on a fiscal year basis of all trust funds which are deposited pursuant to 25 U.S.C. 162a and to include a letter relating to the audit in the first statement of performance provided under subsection (b) after the completion of the audit.

Subsection (d) provides that section 501 shall take effect October 1, 1993, but shall only apply with respect to earnings and losses occurring on or after October 1, 1993, on trust funds.

Again, I would like to welcome our colleague, Congressman Mike Synar, who has been a pioneer in this area, who has tirelessly worked to bring attention to this issue over the years, who has done a lot of the legwork that has led us to this hearing, and who is most welcome this morning, my good friend from Oklahoma. He and I have a running dispute as to who has the most Native Americans in their congressional district. Even though the census may rule in his favor, I have some news for him shortly.

I would like to welcome my good friend and thank him for the great work he has done in this area. Please proceed.

**STATEMENT OF HON. MIKE SYNAR, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF OKLAHOMA**

Mr. SYNAR. Bill, you may have the second-largest Native American district, but you have as big a heart on the issue.

I will be very brief because you have people who you really should hear from this morning that will tell you the story that we found through the years, that we need to enact the Native American Trust Fund Accounting and Management Reform Act of 1993. I am here today to express my strong support of that measure and urge this subcommittee to move swiftly and positively on that issue. This is a product of all these hearings and investigations we have done over the last four years, and we will obviously make these available to the subcommittee, of all the things we found wrong with the Bureau of Indian Affairs' trust fund management.

Candidly, as you said in your opening statement, it has failed in its fiduciary responsibilities and duties. It has, very candidly, been grossly inadequate in a number of areas that need correction.

You said it best. The Bureau can simply not even account for the trust fund monies. They can't provide account holders' meaningful periodic statements or account balances. And what this legislation will do is to allow our Secretary of the Interior to invest and pay interest on individual Indian money funds held in trust by the Federal Government. It will authorize demonstration of new and innovative approaches to management of the funds. It would clarify our trust responsibility with respect to the Indians and establish a program for training and recruitment of Indians for the management of their own trust funds.

It will require an accurate periodic accounting of the trust funds to account holders. And, very candidly, this is essential if we are going to reform the long-standing mismanagement of the Indian trust fund and give a greater say to the 300,000 Native Americans for whom the Bureau of Indian Affairs holds a very special responsibility.

These monies, as you point out, are in the billions of dollars. They are crucial to the daily operation of our tribes and the income to literally tens of thousands of our Native Americans.

It goes without saying that these funds do not belong to the Bureau. They belong to the tribes and the individual Native Americans. Very simply, we are just the trustee, and a pretty damned poor one at that.

Sadly, the BIA has failed in its responsibilities. The real losers of this mismanagement are the tribes and the account holders. They have been literally victimized by the Federal Government,

and they have no recourse but to the very agency that has caused the problem and been responsible for the predicament.

This legislation is designed to correct many of the deficiencies. It was prepared with the advice and counsel of Native Americans and tribal officials that we met with. It does not contain all the answers. I am not here to tell you that it does. But I think it is a very good first step, a good starting point by which to correct literally years and decades of mismanagement.

Let me just conclude with this. If this had been the social security system, we would have had a war already. This is an absolute disgrace, the way we have run this trust fund. Our Native Americans and our tribes deserve our leadership. They deserve our support. They deserve our accountability. They deserve a fair shake and an honest, competent administration from their government. They deserve more control over their own destiny.

I think the Native American Trust Fund Accounting and Management Reform Act of 1993 takes us down that path. I urge you to move very quickly on this issue so we can begin to solve this problem.

[Prepared statement of Mr. Synar follows:]

JOHN CONYERS, JR., MICHIGAN
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H.R. 1846, The Native American Trust Fund Accounting and Management Reform Act of 1993

Statement of
REPRESENTATIVE MIKE SYNAR
 Chairman, Subcommittee on Environment, Energy and Natural Resources
 Before the Subcommittee on Indian Affairs,
 House Committee on Natural Resources

September 27, 1993

Mr. Chairman, thank you for this opportunity to appear and testify in favor of H.R. 1846, the Native American Trust Fund Accounting and Management Reform Act of 1993. Enactment of this measure will promote reforms of the Indian Trust Fund which are long overdue, and I am here to strongly urge your swift action and positive on the bill.

I introduced H.R. 1846 in the House of Representatives on April 22, 1993. It is identical to S. 925, which was introduced in the U.S. Senate on May 7, 1993 by the Chairman of the Senate Select Committee on Indian Affairs, Senator Daniel Inouye and eight co-sponsors.

This Act was the product of more than four years of investigation and oversight by my Subcommittee. The purpose of that investigation was to review and evaluate the Bureau of Indian Affairs' efforts to identify and correct chronic management deficiencies that have plagued the Indian Trust Fund program for decades.

Mr. Chairman, the Bureau has repeatedly failed to fulfill its fiduciary duties to the beneficiaries of the Indian Trust Fund. The Bureau's management of the Indian Trust Fund has been -- and unfortunately continues to be -- grossly inadequate in numerous important respects. The Bureau cannot accurately account for Trust Fund monies. It cannot even provide account holders with meaningful periodic statements on their account balances. It does not consistently and prudently invest trust funds and pay interest to account holders. It does not have consistent written policies or procedures that cover all of its trust fund accounting practices. Under the management of the Bureau of Indian Affairs, the Indian Trust Fund is equivalent to a bank that doesn't know how much money it has.

Fortunately, inattentive and indifferent leadership within the Department of the Interior, which has worsened the scope and severity of the gross mismanagement by the BIA headquarters staff, may be improving. Under the leadership of Secretary Babbitt, Assistant Secretary Ada Deer and Assistant Secretary Bonnie Cohen, I think we now have underway a sincere and committed effort to reform the Bureau and the Department. But it will take the collective efforts of the Administration, Congress and the Native American community to sustain and support that reform effort. This legislation is a critical element of those reform efforts.

Mr. Chairman, as you know, this legislation requires the Secretary of the Interior to invest and pay interest on Individual Indian Money (IIM) funds held in trust by the federal government; it authorizes demonstrations of new and innovative approaches for the management of Indian Trust Funds; it clarifies the trust responsibility of the United States with respect to Indians; it establishes a program for the training and recruitment of Indians in the management of trust funds; and, it requires an accurate periodic accounting of Indian Trust Funds to the account holders. Its enactment is essential if we are to reform longstanding mismanagement of the Indian Trust Fund and give the 300,000 Native Americans for whom the Bureau of Indian Affairs holds money in trust a greater say in the management of their affairs.

Mr. Chairman, you understand better than most that the system of trusteeship and federal management of Indian funds is deeply rooted in Indian-United States history. Treaties are the first and probably most important means by which trust funds were held by the United States for the benefit of individuals or tribes. While the earliest treaties did not provide that the United States retain funds in trust for the tribes, in 1820 the federal government adopted the policy of holding tribal funds in trust.

Later, the role of trustee was delegated to the Secretary of the Interior. Since 1918, the Interior Department's Bureau of Indian Affairs (BIA) has had the legal authority to invest Indian Trust Funds. In 1938, the Bureau decided that all Individual Indian Money (IIM) funds would be invested and managed by its Agency Offices. Since 1966, the BIA's Branch of Investment has pooled all IIM accounts for investment purposes. The Bureau allocates interest earned on the investment pool to individual accounts.

In April 1992, the House Committee on Government Operations unanimously approved a report based on a three year investigation by my Subcommittee of the BIA's mismanagement of the \$2 billion Indian Trust Fund. That report, House Report 102-499, demonstrated that the BIA's disgracefully indifferent supervision and control of the Indian Trust Funds has consistently failed to exercise its responsibility and has failed all reasonable expectations of the tribal and individual account holders, Congress and taxpayers.

The Indian Trust Fund is more than balance sheets and accounting procedures. These monies are crucial to the daily operations of Native American tribes and a source of income to tens of thousands of Native Americans. Although it should go without saying, it

seems forgotten that these funds do not belong to the Bureau – they belong to tribes and individual Native Americans. We are simply the trustee, and a pretty poor one at that. The Committee on Government Affairs' report outlined all of these problems and made numerous recommendations to improve the management of the Indian Trust Fund and thereby improve the protection of the account holders.

Financial management problems in the Bureau of Indian Affairs' handling of the Trust Fund have been neglected for decades. There is a continuing crisis in the BIA's management of the Trust Fund that can only be cured by radical changes in leadership, organization, accountability and communication at the Bureau of Indian Affairs and the Department of the Interior.

The real losers in the mismanagement of the Indian Trust Fund are the Tribes and the individual Indian account holders. These account holders are being victimized by the federal government. Yet they have had no recourse except to the very agency that is responsible for their predicament.

The legislation before the Committee today was designed to correct these deficiencies. It was prepared with the advice and counsel of many Native Americans and tribal officials. It does not contain all the answers for correcting the manifest difficulties presented by the current mismanagement of the Indian Trust Fund. For example, it does not establish a procedure for directing settlements for account holders caused by past mismanagement by the Bureau of Indian Affairs; this is because the dimensions of such losses and any potential settlements will not be known until many of the existing accounting problems are corrected. However, the Act does provide a good starting point for discussion and dialogue on that subject.

Here is summary of what the Native American Trust Fund Accounting and Management Reform Act of 1993 will do:

- Title I amends 25 U.S.C. 162a with the same language as contained in the Native American Trust Fund Equity Act of 1991, H.R. 1756, which I introduced on April 10, 1991. The measure would require the Secretary of the Interior to trust funds invest in a productive manner and to pay interest to account holders. It will hold the Secretary accountable for any failure to prudently invest funds held in trust for individual Native Americans. Moreover, it will authorize the Secretary of the Interior to pay lost interest resulting from past BIA failures to properly manage IIM investments.

This legislation reinforces our legal, moral and ethical obligations to Individual Indian Monies account holders. By its enactment, Congress will create the authority for the Secretary of the Interior to honor the federal government's fiduciary responsibilities to Native Americans; however, any expenditures under such authority will be subject to the annual appropriations

process.

- Title II authorizes demonstration programs that will give Indian tribal governments greater control over the management of their tribal and individual Indian funds held in trust by the United States; involve tribal governments in instructing the Secretary to invest tribal and individual Indian trust funds in a manner that will promote economic development in Indian communities; and demonstrate how the principles of Native American self-determination -- principles we strongly support -- can work with respect to trust fund management.
- Title III tracks the Government Operations Committee's recommendations to clarify the trust responsibilities of the United States.
- Title IV authorizes the Secretary to establish a program to assist Indians in obtaining expertise in the management of their trust funds.
- Title V requires the Secretary of the Interior to accurately account for the daily and annual balances of Indian Trust Funds, to provide Indian Trust Fund account holders with periodic statements of account balances and to obtain an annual audit of such funds.

The scope and severity of the gross mismanagement by the BIA headquarters staff historically has been made worse by inattentive and indifferent leadership within the Bureau of Indian Affairs and the Department of the Interior. This type of trust fund mismanagement would never be tolerated in other, similar federal trust activities. And, if bankers and private trustees handled peoples' money the way the Bureau has handled Native Americans' trust funds, we would put them in jail. That this has taken place in the administration of the federal government's sacred trust for Native Americans can only be described as a national disgrace.

The trust of the Congress, the taxpayers -- and most importantly -- the tribes and Individual Indian Money account holders has been misplaced in the Bureau of Indian Affairs. BIA has failed us all in the performance of its duties.

Mr. Chairman, clearly, the responsibilities imposed by Treaties, statutes and the courts have established a complex set of responsibilities for the BIA. However, accounting for the daily and annual balances of the Trust Fund has been a continuing point of controversy and rightful criticism of BIA management. There are hundreds of thousands of Native Americans who look to the BIA for the help, understanding and cooperation. They deserve leadership. They deserve support. They deserve accountability. They deserve a fair shake, honest and competent administration from their government. They deserve to have greater control over their own destiny. They deserve the enactment of Native American Trust Fund Accounting and Management Reform Act of 1993.

I first introduced this legislation as H.R. 6177 on October 10, 1992 to provide my colleagues an opportunity to study the measure and to provide the Native American community, including tribal leaders and representatives of Indian Trust Fund account holders, an opportunity to consult with Congress and the Administration on the implications of these important changes in the relationship between Native Americans and the federal government. After nearly six months and a broad set of discussions, the reaction to these proposals has been overwhelmingly positive. I deleted the original Title III from last year's bill, which authorized demonstration programs to promote the development of energy resources on Indian lands. That Title was modeled after the provisions relating to Indian natural resource development contained in H.R. 776, the National Energy Strategy, which was enacted as P.L. 102-486 and became law on October 24, 1992.

The only new matter included in this measure is Title V, which specifically requires the Secretary of the Interior to account for daily and annual balances of Indian Trust Funds, to provide Indian Trust Fund account holders with periodic statements of account balances and to obtain an annual audit of such funds. This new requirement operates on the simple principle that information is power and that account holders have a right to this information. The sooner the Secretary is required by statute to account for and report account balances, the sooner the Department and BIA will take the steps necessary to correct longstanding financial management problems and promote a settlement for account losses caused by the Bureau's past mismanagement.

Mr. Chairman, the time has come to enact the Native American Trust Fund Accounting and Management Reform Act of 1993. I look forward to working with you and other Members of the Committee, as well as my colleagues in the Senate, to ensure its rapid enactment.

Mr. RICHARDSON. The Chair recognizes the gentleman from Montana for an opening statement, and for the first set of questions to our colleague.

STATEMENT OF HON. PAT WILLIAMS

Mr. WILLIAMS. Thank you, Mr. Chairman.

I just want to thank you and particularly our colleague, Mike Synar, for the good work he has done in years past. Our review of the situation over the last couple of years has led me to the conclusion that BIA has been irresponsible in carrying out its fiduciary responsibilities.

I think at the heart of it is that this government patronizes Indians. BIA should be responsible to the tribes, not the other way around. I think we need an overhaul of the way BIA operates, and maybe that, Mr. Chairman, will lead to an overhaul of the way Americans view their fellow Americans who are Indians.

Again, I want to say that there is little doubt but that BIA has been an irresponsible partner with the tribes. And the gentleman from Oklahoma is precisely correct. If this type of irresponsibility could be demonstrated in other trust funds that America holds, it would be considered an absolute crisis by the majority of people in this country.

One can't help but notice this crisis has virtually been overlooked. Again, I believe it is because of the way Americans view Native Americans. So let's see if we can't get about changing both the BIA and the view that some citizens have towards their neighbors.

Again, I want to thank the gentleman from Oklahoma, who has done more than just provide rhetoric on this. He has really gotten in up to his elbows and found out the facts. We all owe you a debt of gratitude.

Mr. RICHARDSON. I thank the gentleman.

I would like to ask my colleague a question. Some have suggested that the private sector monies for the Bureau be handed over to a private entity. You have suggested that the GAO look into this. Would you like to share your views on this subject?

Mr. SYNAR. I would, Bill, because the frustration that we have had in dealing with this has led us to the conclusion that unless Ada and her new regime at BIA can change some basic attitudes down there in mid-level management, it is going to regrettably take us to a point where a year or two from now we will be right back here with the same problem.

I have got confidence in Bruce and Ada and those now committed to this principle. I don't think there has been a Secretary of Interior we could count on more for this kind of correction. But there comes a point in time where we can't leave it up to the best intentions of those that are in charge. It may be we have to contract out and do it in a way that will ensure that our Native Americans will have more control over their own destiny, and secondly that we get the kind of accounting we expect in any kind of financial dealings.

So I think what we do is, let's pass this act, make these management reforms, get them in place. Let's come back here in a year, and if by then we haven't made some good improvements or we are not moving in the right direction, I think the three of us and others

will have to ask the question of whether the government should continue to be involved in this or whether we should let it move into the private sector.

Mr. RICHARDSON. That seems like a constructive suggestion.

Another component of your bill is that you would like to see the tribes get involved in the financial management of these funds. Do you think that if some of the tribes invest in banks near the reservation, it will spur economic development?

Mr. SYNAR. Absolutely. In fact, the two things that we need to remember are, one, the tribes have a better understanding of what they need and how those funds can be best used. And secondly, they are not the same tribes they were a decade ago. They are very sophisticated; they have the financial capabilities to do this.

In those areas for tribes that may be a problem, the act addresses that by helping through training and recruitment of Native Americans to do this work. I am convinced within a year or two with that kind of training even the tribes that don't have these capabilities can get up to speed.

Mr. RICHARDSON. You have been a leader here in the Congress of the entire reform effort of reorganizing the Congress and the Federal Government. You have also looked into the BIA itself as an agency. Do you think it makes sense to make this a part of the Vice President's reinventing government effort?

Mr. SYNAR. If we don't, we are ignoring the fact that it is, as you said in your opening statement, one of the areas on the most critical list in our government, and if we don't reinvent the BIA, then we have failed in our commitment to do things that will make the government function better.

I will tell you this, and I don't say this with any pride. You would be hard pressed to find another agency in our Federal Government that is as poorly run and managed as the BIA. I mean, I have jurisdiction over a vast area of agencies and departments, and to my knowledge there is probably not one that has had as many consistent problems as the BIA.

Mr. RICHARDSON. You have performed excellent service in this area, and we look forward to working with you as we deal with your bill. I agree with your view that we should move rapidly, but perhaps it makes sense to give the new Assistant Secretary, who we all have extreme confidence in, a little time to see how the Bureau operates.

Again, I commend you on these efforts, and you are welcome to join us on the panel as we move ahead with the witnesses.

Does my colleague from Montana have any further questions or wish to make any further statements?

Mr. SYNAR. No. I will see you all on the Floor later this afternoon.

Mr. RICHARDSON. I thank the gentleman.

The subcommittee will now hear from the Assistant Secretary of Indian Affairs, the Honorable Ada Deer.

Assistant Secretary Deer, please step up to the podium. Before you begin, I would like to take a moment to give you a special welcome because this is our first opportunity to have you before this subcommittee.

I would like everybody to know that I was thrilled to hear of this appointment of Ada Deer as Assistant Secretary of Indian Affairs. She is a member of the Menominee Tribe of Wisconsin. Her tribe was terminated by the Federal Government in 1954 during the disastrous time of "Federal termination."

Ms. Deer led the fight for restoration of her tribe, and when the Menominee Tribe was restored in 1973, it helped launch the beginning of the reversal of the termination policy. So she is kind of a pioneer on this issue. She is the first woman ever to be chosen as leader of her tribe.

Ms. Deer graduated from the University of Wisconsin, and was the first American Indian to receive a master's degree from the School of Social Work at Columbia University. She was a fellow at the Harvard Institute of Politics, John F. Kennedy School of Government, and was presented a National Distinguished Achievement Award by the American Indian Resources Institute in 1991.

She has been a long-time advocate for Native American issues and now faces what I believe to be a most difficult task in taking charge of the BIA.

Ms. Deer, I know you will be a great asset to Secretary Babbitt and President Clinton.

We have had a brief opportunity to meet privately, and you know I am not always the BIA's biggest fan in terms of its management practices, but I am encouraged by your compassion and understanding of the issues affecting Native Americans. I look forward to working with you in a long—at least eight years—productive relationship. Your smile is fading already.

Before you proceed, I would like to see if my colleague from Montana would like to say anything.

Mr. WILLIAMS. I just want to join in welcoming the Assistant Secretary. We are delighted you are here and eager to hear your testimony.

Mr. RICHARDSON. We have a procedure in the subcommittee of having the full statement inserted in the record. We ask each witness to summarize in five minutes. We will waive this in your case should you wish to proceed beyond the five minutes because this is your first speech before us. We want you to feel as welcome as possible. So please proceed.

STATEMENT OF ADA E. DEER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY JIM PARRIS, DIRECTOR, TRUST FUNDS MANAGEMENT AND DONNA ERWIN, DEPUTY DIRECTOR, TRUST FUNDS MANAGEMENT

Ms. DEER. Thank you very much for those warm words of welcome, Congressmen Richardson and Williams. I appreciate your good words, and I look forward to a long, productive, eight-year partnership here also.

It has been an interesting experience this year. I have come from being a designee to a nominee to a trustee. I look forward to the challenge of assisting the Bureau of Indian Affairs, the tribes, and the Congress in developing a close partnership as we work to resolve the problems confronting American Indians and Alaskan Natives.

I would like to read my testimony, but before I begin, I would like to introduce my two staff people, Mr. Jim Parris, director of the Office of Trust Funds Management, and Donna Erwin, who is the deputy director.

I am pleased to be here to discuss the Indian trust fund management and H.R. 1846, the Native American Trust Fund Accounting and Management Reform Act of 1993.

I would also like to commend Mr. Synar and the committee for their diligence and leadership in bringing attention to this long-standing issue. It is a very difficult issue, and it will take good thinking on everyone's part to bring a good resolution to this.

This legislation complements part of an overall effort within the Department to improve trust funds management. I view the improvement of trust fund management as a major priority in this administration, and I am looking forward to working further with Congress and tribal leaders in this effort.

H.R. 1846 is identical to S. 925 as introduced in the Senate. The Senate committee has developed a revised version of the bill. We have been working on a report of the revised S. 925, and we expect to submit a report on both bills in the very near future; in fact, a matter of days.

We are in substantial support of H.R. 1846. We commend the committee for its effort to improve the management of Indian trust fund accounts through legislation. However, we do have some concerns with H.R. 1846. Our comments presented here are reflective of input received from several sources, including a special task group formed by the Department to address H.R. 1846 and the Intertribal Monitoring Association (ITMA).

First, let me address the efforts now being made by the Department. The Bureau of Indian Affairs has already taken steps and has plans for taking additional steps to address the need for improvement in the trust funds management program.

The BIA has obtained the services of Arthur Andersen and Company to conduct a reconciliation of the tribal and IIM accounts in an effort to establish a level of confidence in the proper accounting and investment of trust funds management by the BIA.

We have focused primarily on the reconciliation of tribal accounts for a 20-year period to be completed by April 1994. A team has been formed to develop reconciliation options to address Individual Indian Money accounts.

Plans for providing additional staffing for the Office of Trust Funds Management are currently being developed and will be submitted to the Department in early October for review and approval. The additional staffing will allow the BIA to provide customer relations' staff for our trust account owners and additional staff to concentrate on matters such as training, records management, and quality assurance, that have not received proper attention in the past.

We have established a permanent staff dedicated to the timely and accurate ongoing reconciliation of trust fund accounts and to monitor area office reconciliation reports. System enhancements of the current trust systems have streamlined the accounting process to virtually eliminate the need for entering the same accounting data into several different systems which have complicated the rec-

conciliation process. Regulations are being drafted, procedures are being developed, and systems are being evaluated and redesigned.

We have submitted a Bureau of Indian Affairs manual draft on Indian trust fund account losses for review to the General Accounting Office. This regulation addresses policy and responsibilities for loss identification, notification, and reimbursements. This is in addition to placing new staff to support the new trust fund environment.

We are working closely with the representatives of our clients, the tribes, Alaska Natives and their own IIM account's inventories to make them active partners in the process of resolving areas of concern. ITMA has been and continues to be a valuable ally in this process. We have made substantial progress and look forward to continue to improve our delivery of quality trust funds management to our clients.

The Department is interested in exploring the possibilities with GAO and other agencies for transferring parts of the trust fund's management functions out of the Department to another entity, public or private, which may better perform these functions.

Let me now address H.R. 1846. I have a few comments to make and we will supplement these comments in a fuller report to be submitted in the future.

We strongly support the concept of demonstration programs, and have in fact already undertaken such programs administratively. Demonstration programs will provide the Department and tribes with constructive experience on how best to manage their own funds.

In addition to the provisions of the bill, we would recommend a provision providing for a performance review of the tribe's performance on managing its plan.

We are in basic support of the provisions in Title I for prospective payment of interest on both tribal and IIM accounts and for redress of known underpayment in the past consistent with this reconciliation effort. This is under review and we will have further comments on this issue in our report.

Section 301 of H.R. 1846 presents a list of basic fiduciary trust responsibilities with which the Secretary is to comply. These are the foundation of a solid trust fund management program.

We are in the process of obtaining assistance from trust systems design experts in the private sector to develop a trust fund management system that will allow the Secretary to meet these requirements. We have made a commitment to not only meet this challenge but to exceed the basic services outlined in H.R. 1846.

We are in agreement on the need to train Indian employees of the Bureau of Indian Affairs and members and employees of Indian tribes. There is a real need to provide this type of training, experience and to offer salaries compatible with the private-sector levels. The provisions of this section will help to provide trust fund management capabilities at the agency, area, central office levels, and to tribes.

This concludes my prepared statement. I will be happy to answer any questions the committee may have.

[Prepared statement of Ms. Deer and attachments follow:]

STATEMENT OF ADA E. DEER, ASSISTANT SECRETARY - INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS, OF THE COMMITTEE ON NATURAL RESOURCES, U.S. HOUSE OF REPRESENTATIVES, ON H.R. 1846, THE "NATIVE AMERICAN TRUST FUND ACCOUNTING AND MANAGEMENT REFORM ACT OF 1993".

September 27, 1993

Good morning, Mr. Chairman and Members of the Committee. I am pleased to be here to discuss Indian trust fund management and H.R. 1846, the "Native American Trust Fund Accounting and Management Reform Act of 1993". This legislation complements part of an overall effort within the Department to improve trust fund management. I view the improvement of trust fund management as a major priority in this Administration and I am looking forward to working further with Congress and tribal leaders in this effort.

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accounting and investment of trust funds managed by the BIA. We have focused primarily on the reconciliation of tribal accounts for a 20-year period to be completed by April 1994. A team has been formed to develop reconciliation options to address Individual Indian Money accounts. Plans for providing additional staffing for the Office of Trust Funds Management are currently being developed and will be submitted to the Department in early October for review and approval. The additional staffing will allow the BIA to provide customer relations staff for our trust account owners, and additional staff can concentrate on matters such as training, records management and quality assurance that have not received proper attention in the past.

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We are working closely with the representatives of our clients, the tribes, Alaska Natives and IIM account owners to make them active partners in the process of resolving areas of concern. The ITMA has been and continues to be a valuable ally in this process. We have made substantial progress and look forward to continue to improve our delivery of quality trust fund management to our clients.

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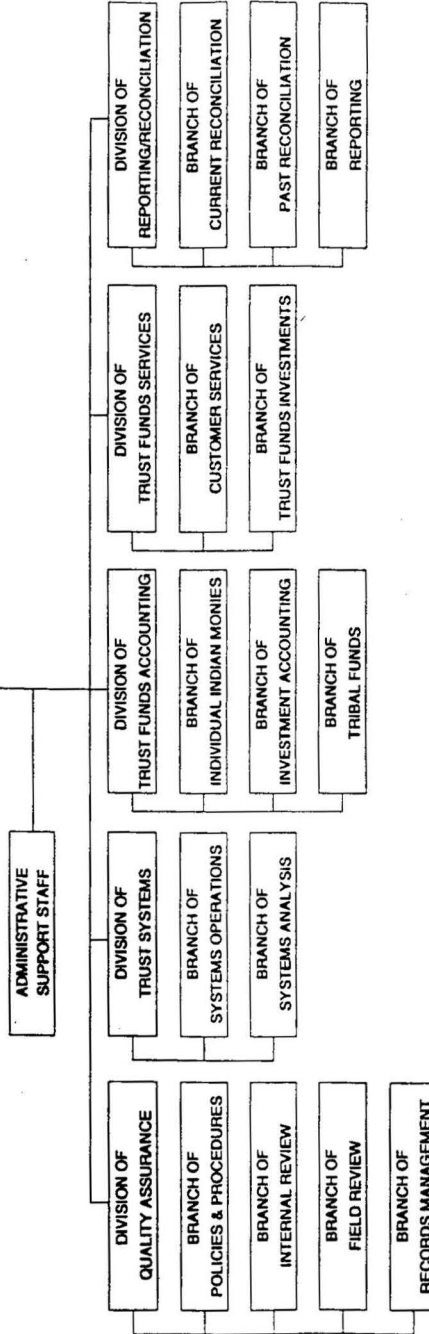
This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

Reconciliation of Tribal Accounts-Missing Documents

- **61% of non-investment related transactions and 42% of the dollars have been reconciled.**
- **72% of the transactions from the 1st ten year period (1983-1992) have been reconciled.**
- **Only 46% of the transactions from the 2nd ten year period (1973-1982) have been reconciled.**
- **A concerted effort is now being made to gather all remaining missing documents by the end of October 1993.**
- **This will allow Arthur Andersen & Company time to produce reconciled account statements for all Tribes by April 1994.**

OFFICE OF TRUST FUNDS MANAGEMENT
PROPOSED ORGANIZATIONAL CHART

DRAFT



DRAFT

Chart #2:

OTFM Realignment

- A revised 130 DM reorganization package will be submitted, within the next 30 days, to the Bureau/Department for review and approval.
- OTFM will request an increase of 42 FTE's to support and provide for quality assurance, systems development, customer services, and accurate and timely reporting and reconciliation.
- This organization chart adheres to a workload analysis performed by a contractor.
- A resolution has been passed by the Inter Tribal Monitoring Association (ITMA) regarding the chart.

BUREAU of INDIAN AFFAIRS
TRUST FUND MANAGEMENT SYSTEM
SYSTEM DEVELOPMENT STRATEGY

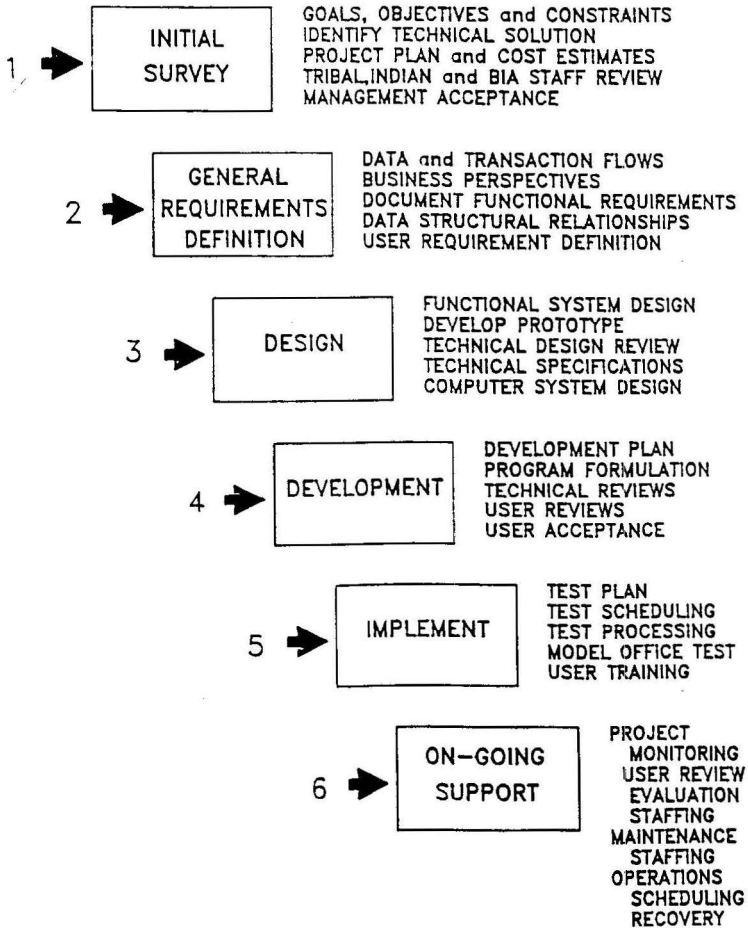


Chart #3

Systems Requirements for New Trust Funds Management System

- The Bureau intends to perform a systems requirements analysis and conceptual design for a new system for trust funds management by September 1994 with the aid of an experienced trust systems design team from the private sector.
- A request for proposals to obtain contract assistance will be issued within the next 6 weeks.
- It is anticipated that the Tribal and overall investments portion of this new design will be defined by May 1994, with the Individual Indian Monies portion not being completed until September 1994.
- Upon preparation of the conceptual design, the Bureau would have completed Steps 1 and 2, and the first two parts of Step 3 outlined in Chart #3. The remaining Steps would be completed as applicable for any custom programming required after the conceptual design is approved.

OTFM Improvements:

- OTFM staff has been dedicated to bringing the internal and external (Treasury) reconciliations current and maintain an effective monitoring system for correcting reconciling items. This endeavor began with FY 1993. All reconciliations have been brought current and continue to be reconciled monthly on a continuing basis. This is the first time in history all reconciliations have been maintained current. This effort demonstrates the Bureau's ability and dedication to accurately account for Trust Fund activity.
- A long awaited Loss Policy has been submitted to the Department of Interior for final approval and signature. The final publication is to be released in early FY 1994. This policy provides Indian country, the Department, and the Bureau a clear understanding of the Bureau's responsibilities for any loss of interest and/or principal asset.
- OTFM has established an internal controlled correspondence process, which has allowed OTFM to respond to all correspondence and submit reports on a timely monitored basis. This process allows for much more effective communication with Trust Customers. The desire of the Bureau to be more reflective of customer expectations throughout Indian country will be further enhanced with the establishment of the proposed Customer Services Branch within the new organization.
- Although, the Strategic Plan remains in draft form OTFM has continued to work on projects outlined within the plan. The following projects were substantially completed within the allotted time frames: Recalculation/Distribution of IIM Interest; SF 1081 Reconciliation; Trust Account Profiles; Issuance of Oil & Gas Explanation of Payments (EOPs); Distribution of Oil & Gas Interest, Recruitment and Training Plan, Workload Analysis, Current Reconciliation, and Inventory of Existing Policies and Procedures.
- OTFM has identified 14,726 IIM checks and 188 Tribal checks, totalling \$1,086,145 representing Treasury dollars. This is the continuing Mass Cancellation Project (Competitive Equality in Banking Act of 1987).
- The losses in failed financial institutions continues to plague OTFM's investment reputation. There has been no losses incurred since 1988 prior to the establishment of the Office of Trust Funds Management (OTFM). OTFM utilizes a very effective system to monitor the financial stability of all institutions that they currently invest funds with.

Mr. RICHARDSON. I thank the Assistant Secretary.
The Chair recognizes the gentleman from Montana.
Mr. WILLIAMS. Thank you.

Madam Secretary, there have been, through the years, efforts to reform and overhaul and change the BIA, and we have had a number of Secretaries who have been committed to that, just as we know you are. And yet those changes, probably because of some rigidity within the BIA bureaucracy, and I don't say that to denigrate BIA because every agency and department has rigidity within its bureaucracy, but because of that rigidity, many of those reforms were not able to go forward.

Have you considered those past failed efforts and are you planning to change the structure in any way that you might be able to get the reforms that your two task forces will develop through the bureaucracy and therefore amount to a full change in the regulations and the way in which BIA operates?

Ms. DEER. I hope to activate and mobilize all people in the BIA to perform our tasks to the fullest, and I will be working closely with the task force and carrying on various other tribal consultations to bring this about.

You make an excellent point. The Bureau of Indian Affairs is part of the Federal bureaucracy and we do have to comply with the Federal rules and regs. I look forward to exploring the new flexibility that will be possible under the reinventing government.

I have been here a very short time. I am still waiting to get some of my staff people aboard, but you can be assured that this will take a high priority in my administration.

I am a social worker. I am interested in bringing about social justice and social reform. Many people before me have struggled to reform the Bureau of Indian Affairs. I want to point out it will take a strong partnership between the Congress, the tribes, and the Bureau to bring about substantial changes.

So I welcome the good communication that we are having here today, and I look forward to a strong partnership. When I met with Congressman Richardson, we talked about having some additional sessions with the Members so we can have more individual consultation. Because I am an activist, I look to move things along, but I also want to call on the Congress, too, to think anew so that together we can proceed.

One of the points in all of this is that the BIA has consistently been underbudgeted. We cannot position the tribes for the twenty-first century if we are consistently underbudgeted. That is another area, but I want to bring this out so we can keep that in mind.

Mr. WILLIAMS. I guess the other partner would be the White House and the Vice President's office. I know from the visit that President Clinton as candidate Clinton, Governor Clinton, made to Montana some months ago, that he is concerned about past operations within the BIA, personally concerned about them. In fact, during public statements, Mr. Chairman, while candidate Bill Clinton was in Montana, the only negative things he had to say about anything in Washington, including, by the way, then-President Bush, the only negative thing Bill Clinton had to say when he was in Montana was about the BIA.

So I would suggest, Madam Secretary, that the President will be personally interested in seeing reforms carried out despite rigidity, and I know the Vice President, in his efforts to reinvent government, is particularly interested in it.

The idea has been raised about congressional creation of a special master to oversee these operations. What is your opinion of that?

Ms. DEER. I would have to study that a little more. I would like to call on either one of my two staff members here to see what their reaction is.

I think what we really need are the resources to do the job, and I don't know if a special master is the way to do it, but that is my personal opinion at this point.

Mr. WILLIAMS. Do either of the staff people with you have a thought about that? The idea is to appoint a special master to oversee the Office of Trust Fund Management.

Mr. PARRIS. I think it is too early to tell whether the special master concept has got merit or not. We don't know enough about the way it would be structured, the way that the trust fund management operation would interface with the rest of the BIA and the field offices, in order to make it work.

The key here would be coordination with the BIA offices at the agency level closest to the customer to make sure of the communication of data upon which the special master of the trust fund management program would have to rely. We would have to make sure that that communication was effective before we could say that the special master concept could really work.

Mr. WILLIAMS. Madam Secretary, you spoke some about the two task forces and the efforts that are under way. I understand that those task forces were formed to begin working somewhere between six and nine months ago.

Can you give us a progress report of how they are coming and tell us again when you expect them to complete their work?

Ms. DEER. The joint BIA-tribal task force will be meeting shortly. I have asked them to start prioritizing the many recommendations. I expect that within several months we should have an idea of the priorities that the task force wishes to recommend to the BIA.

I know there is a tracking system. Some of the recommendations have been carried out, but there has not been a final determination of these priorities. We will make these progress reports available to you and your staff as the meetings are completed.

I believe the task force is scheduled to carry on its work for another year. I hope that we can complete this in less than a year because I am eager to get these priorities recommended and implemented.

Mr. WILLIAMS. Do I understand correctly there is one group working on the Individual Indian Money accounts, and another working on the management of the trust assets, minerals and timber and so on. Is that correct? Two task forces?

Ms. DEER. Yes.

Mr. PARRIS. Yes.

Mr. WILLIAMS. They have both been formed and they are meeting; is that correct?

Mr. PARRIS. There have been two meetings of the Individual Indian Money task force. I am not sure how many meetings have been held with the land records and ownership group. I know they have met. They have issued some draft reports. I am just not certain.

Mr. WILLIAMS. I guess speaking for myself but I am sure the Chairman would concur, we would appreciate being updated from time to time as to the progress of both of these working groups. This is a very high priority to this committee and to this Congress. We would like to see those task forces complete their task, and we recognize that it is an arduous task with many ramifications. They have to get it right.

And so for my own part, I am not interested at all in hurrying them. I am interested in letting them know of our interest. I am interested in being sure that they know that we want a job done with expertise, following full deliberation, and that we want it done in a timely fashion.

And then we hope you will come back and present the final report to us, and we will work together to see which is the most deliberate and proper way to implement it.

Thanks, Mr. Chairman.

Mr. RICHARDSON. I want to endorse what my colleague said, and also, Madam Secretary, if your staff could keep our staff up to date on the Land Records Management Work Group and the progress they are making on this issue.

I would like to welcome the Ranking Minority Member Craig Thomas of Wyoming and see if he would like to make an opening statement or proceed with some questions.

Mr. THOMAS. Thank you, Mr. Chairman. I am sorry that I am late. I got back late last night and had some things to do this morning.

Welcome, Madam Secretary. This is your first exposure to this committee.

Ms. DEER. I have had a very warm welcome.

Mr. THOMAS. Good. I am glad to hear that.

I am very interested in this, too. The first year I was here, I was on Mr. Synar's subcommittee, and we had some fairly extensive hearings in terms of this matter. And I must tell you I was very surprised, I was very surprised at the situation with regard to these trust funds and how they had been handled or apparently been handled.

I guess one of the most surprising things that was not available was an accounting. That has been sometime ago, a couple of years ago, and I guess obviously the question, and I won't go over it again, that I am sure you are asked is whether we are making progress. I hope the answer is yes, we are.

I noticed here you mentioned Arthur Andersen. How long has Arthur Andersen been involved in reviewing and auditing this program?

Mr. PARRIS. Arthur Andersen first audited the trust funds in 1988, 1989, and 1990, and then won the award for the contract for the reconciliation of the trust funds in May of 1991. They have been working on the reconciliation ever since.

Mr. THOMAS. So since 1991 they have been working on the reconciliation. When do you expect them to be completed?

Mr. PARRIS. The tribal reconciliation statements are expected to be issued in April of 1994. The Individual Indian Money reconciliation has not yet been initiated. It is awaiting the recommendation of an approach that is considered practical for the 300,000 Individual Indian Money accounts. That is supposed to be issued by the IIM work group that was mentioned earlier. I understand we are looking for a report by the end of this calendar year. That approach has not yet begun.

Mr. THOMAS. In the meantime, what about the return on the dollars? How is that handled in terms of earnings and so on? What establishes the yield on these dollars?

Ms. ERWIN. Are you asking currently or are you saying in comparison with Arthur Andersen?

Mr. THOMAS. No, I am just saying, are the beneficiaries receiving the reasonable amount of return on the dollars?

Ms. ERWIN. I think we are. I think if you compare it to the private sector, not only our liquid money market overnight rates we receive through Treasury, but also in the constraints of current legislation, we only invest in the derivative products of Treasury or in government, and CDs. I feel we are getting very comparable rates currently found in the private sector.

Mr. THOMAS. I guess my question, though, is, if you don't know the amount, if you don't have good records, how do you know if the Treasury is receiving the return on the proper amount of money?

Ms. ERWIN. Currently, we are taking the approach that we have a cutoff date of this fiscal year. We are currently reconciling on a monthly basis and we are maintaining the account balances as they are from that point. As we discover problems throughout the Arthur Andersen audit, they will make corrections and that will become part of the settlement at the end of the reconciliation process.

If there is an invalid balance within an account is what you are asking me, that is possible, but that would be part of the settlement once this is settled.

Mr. THOMAS. What is the Federal Government's responsibility to ensure that over time? I guess the Federal Government is responsible for these dollars as a trustee, right?

Ms. ERWIN. Correct. You are asking, what are we doing on an ongoing basis? As I said I feel we are investing and getting comparable rates. But we can only invest on the balances that are—

Mr. THOMAS. Yes, I understand. I recall you had some sort of an investment counselor, an investment contract, a couple of years ago?

Ms. ERWIN. I have only been with the BIA about a year. I think we have discussed in our strategic plans to set up an investment committee, an oversight committee, if that might be what you are referring to.

Mr. THOMAS. You have never had professional investors under contract?

Ms. ERWIN. No, we have not. We currently deal with brokers and advisers across the country, but they are not under contract. They do training in-house.

Mr. THOMAS. In addition to getting the numbers right, which is obviously important, and may be the first step, do you have any notions as to how this ought to be changed structurally?

Mr. PARRIS. You mean organizationally?

Mr. THOMAS. Well, the purpose of the funding. We are moving a great deal towards putting more responsibilities with the tribes and so on. Do you see this changing? Is there any particular reason why the Federal Government ought to be doing this at all?

Mr. PARRIS. I believe the trend is definitely towards tribes taking more control of their funds and managing them themselves or placing them with investment managers of their choosing.

With compact agreements being negotiated with tribes across the country, with 638 self-determination agreements continuing to be more active across the country, the trend is definitely toward the government getting out of the act and the tribes becoming more self-proficient. We are trying to complement that strategy as we move toward developing new approaches. With Ms. Deer's leadership, and with Secretary Babbitt's initiatives, I am sure we will be able to devise plans.

Our goal is to establish systems that would complement that transition into self-determination for tribes in the future. We want to try to help them become more knowledgeable and provide training through bills such as has been suggested by Mr. Synar, to complement that goal.

Mr. THOMAS. I would think they would be enthusiastic about that, the tribes. I should think the tribes would be enthusiastic about that.

Mr. PARRIS. They are.

Mr. THOMAS. Given the experience they have had with this system.

Mr. PARRIS. They are very excited.

Mr. THOMAS. Thank you, Mr. Chairman.

Mr. RICHARDSON. I thank the gentleman.

Let me ask the Assistant Secretary, is it your view, Madam Secretary, that the BIA will deal with this issue on its own, or do you see yourselves involving the tribes in groups like the Indian monitoring association?

Ms. DEER. We have been working closely with ITMA, and I will continue to do that, to rely on their consultation, their guidance and their input.

Mr. RICHARDSON. Now, it is my understanding that the reconciliation of tribal accounts is going to be completed in April of 1994; is that correct?

Ms. DEER. That is the goal.

Mr. RICHARDSON. How strong is that goal? I think it is essential that deadline be met. Is it your view that the deadline can be met?

Mr. PARRIS. I can answer that. Right now the reconciliation of the tribal accounts, plans are for us to attempt reconciling back to 1972 based upon the availability of the records, underlying records that the Bureau of Indian Affairs has been able to pull together.

The work that has been done so far has been very encouraging, but it must also be pointed out that the records availability for the 1972 to 1983 period is going to be a real challenge for us to be able to meet those target dates.

In order for Arthur Andersen to be able to generate those statements by April of 1994, they have to have the records available to them by October 31, 1993. We are presently working with each of the area offices and going through an unprecedented search for records across the BIA and trying to push for everything that we can pull together to enable Arthur Andersen to do that.

We also have teams going to GSA record storage centers across the country to pull together the records available there. This will be the second pass through those record storage centers to try to get the rest of the records.

I feel like we are doing everything we possibly can to make sure we comply with those dates.

Mr. RICHARDSON. Mr. Parris, you mentioned a special thorn in my side, the area offices. Tell me the process by which an agency here in Washington and the area offices play in the management of trust funds and explain the process by which a tribe can take charge of its own trust account monies.

Mr. PARRIS. Let me answer the last part first, if I may. Right now the tribes right now can, if they want to, take control of their trust funds money. They can put in a request through the agency superintendent up through the area director, who would then coordinate with the Office of Trust Funds Management. We would then look for what appeared to be a reasonable and prudent management plan for the use of those funds. In most instances, tribes have investment programs and plans for that money that are very prudent.

We haven't seen any yet that have not complied with that request, but they would be able to withdraw their income that is related to the lease income. In other words, there are two major types of income that come in from trust funds, one of which is from judgment awards or settlements, and the other from lease income such as oil or gas and range fees.

These monies, from the lease income, can be withdrawn upon request, and permission of a reasonable management plan. The judgment awards depend upon the law surrounding the establishment of that judgment award. There is restrictive language in each of the judgment awards that calls for the area director to be responsible for the proper distribution of those funds in compliance with the terms of withdrawal.

In other words, there are specific laws passed that govern how those monies can be spent. It will take either a change in legislation or a resubmission of management plans by the tribe in order to allow the tribes to withdraw judgment award money.

Mr. RICHARDSON. Now, does the area director make the decision as to whether a plan submitted by the tribe is approved or not?

Mr. PARRIS. They must approve it, yes.

Mr. RICHARDSON. How many of the area directors are financial experts?

Mr. PARRIS. I am not certain how many are financial experts.

Mr. RICHARDSON. All right. Let me put it this way: How many of these area directors in your judgment have made direct decisions on these issues?

And, Mr. Parris, I know you have had experience in this issue; you have worked very well with this subcommittee, and I don't

mean to make that question in a negative manner, but please, please tell me. Could it be that we have gotten into this mess because these area directors who have very little financial expertise and have their little fiefdoms are making these decisions?

Mr. PARRIS. From my experience in the BIA, and I have only been in the BIA about eight and a half years, but prior to coming to the BIA, I audited the Bureau of Indian Affairs back in Oklahoma at the agencies where a lot of oil and gas leases were. My experience with area directors is that they rely heavily on their staff at the area level, and since the early 1950s, when the area director concept was formed, it became apparent that their training has been more in the realm of management oversight than any kind of expertise or reliance on financial managers in any heavy way.

Mr. RICHARDSON. Mr. Parris, do you have the authority to overrule the area directors' decisions?

Mr. PARRIS. No, I don't.

Mr. RICHARDSON. You don't? Does the Assistant Secretary?

Mr. PARRIS. Oh, yes.

Mr. RICHARDSON. Why don't you have the authority to overrule them?

Mr. PARRIS. I report to the same manager they do, which is the Deputy Commissioner, and I have no direct line authority over them.

Mr. RICHARDSON. Ms. Erwin, do you have authority over them?

Ms. ERWIN. No, I am Jim's deputy director, so I am in the same situation. We have the area directors reporting to the Deputy Commissioner, the same as we do.

Mr. RICHARDSON. Well, I think for the Assistant Secretary, this is an area that I hope you really look into. These area directors, not just on trust funds, but on everything, have these fiefdoms. They report to themselves; they have no accountability.

As as we look at reorganizing the BIA, we need to look at those lines of authority. I personally think, and I have said this openly and in the press, that I would like to see a more direct relationship between you here in Washington and the tribes. I don't think we need these area offices.

Now, we need some expertise on the ground, but I think the wave of the future is self-governance where the tribes are assuming more responsibility. I think many tribes are capable and willing to make these decisions, and I just think that one of your priorities will be the scope and responsibilities of these area offices. You have 12 area directors scattered around the country making decisions that I think very responsible officials like Mr. Parris, who have been trying to get an account and basically control of some of these aberrations and mistakes, should do.

So, Madam Secretary, again, we wish to welcome you to Washington. We are very pleased with your becoming Assistant Secretary. We want to commend you on some of the recent decisions you have made, rapid response, effective; we know you are a doer, probably because like myself and Mr. Thomas, you have been in the political arena; you have run for office.

You remember Lyndon Johnson wished that everybody in his cabinet had someday run for sheriff. While I don't recommend that

for you, I think you have been in this arena before, and we want to welcome you, and we would hope that your staff could remain for the completion of the hearing in case we have further questions for them. If not, Madam Secretary, we thank you, you are excused. Is there anything you wish to say?

Ms. DEER. Yes. I would like to say that we have to keep in mind that we are dealing with a legacy of paternalism in the Bureau of Indian Affairs, and as I mentioned in my confirmation statement, paternalism is over. We now must all work together in a new partnership, and in administering the trust funds, we have to remember that there is a heavy fiduciary responsibility to do the highest and best job possible for the tribes and the individuals. I look forward to developing some new approaches, some demonstration projects as the tribes do move forward under self-determination. I appreciate the committee's warm reception, your cooperation, your receptiveness, and I really want to forge a close communication and interaction here so that we can move Indians into the twenty first century in the best way possible.

Mr. RICHARDSON. Madam Secretary, I want to just hear this before you leave. Mr. Parris, of these area directors, how many are women?

Mr. PARRIS. None.

Mr. RICHARDSON. Did you hear that, Madam Secretary.

Ms. DEER. Yes, I did.

Mr. RICHARDSON. Thank you all very much. Thank you.

Ms. DEER. Thank you.

Mr. RICHARDSON. Our second panel, Mr. Brian Crowley, director of planning and reporting, accounting and information, management division, General Accounting Office; accompanied by Mr. Thomas Armstrong, assistant general counsel, Ms. Gayle Condon, assistant director, and Mr. Robert Wagner, Jr., audit manager.

Mr. Crowley, welcome to the subcommittee. Again, we will impose the five-minute rule. We want to direct questions to you, so please proceed.

STATEMENT OF BRIAN P. CROWLEY, DIRECTOR OF PLANNING AND REPORTING, ACCOUNTING AND INFORMATION MANAGEMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY THOMAS ARMSTRONG, ASSISTANT GENERAL COUNSEL; GAYLE CONDON, ASSISTANT DIRECTOR; AND ROBERT WAGNER, JR., AUDIT MANAGER

Mr. CROWLEY. Thank you, Mr. Chairman. You covered much of my testimony in your opening remarks and some of the other things that were said here this morning. My statement talks about the status of BIA's actions to correct its past problems, the problems that still need to be addressed, and the provisions of H.R. 1846 that can help BIA resolve some of these problems.

You mentioned a couple of things that we have recommended in the past, and these are recommendations to correct some problems that are pretty well understood by this committee, as shown by your opening statement and some other statements made here. But we call for things like developing written policies and procedures that hadn't been in place; arranging for periodic audits of the trust fund operations; periodic statements—the Indians should have

statements to know what their accounts are all about; arrange for training of personnel involved in trust fund operations, and review current systems to determine whether they are working properly.

A couple of things, one thing you didn't mention and I think I should emphasize to you is that OTFM can't correct BIA's trust management problems in isolation from some of the other BIA and Interior components that have a big impact on this problem, and it is the cooperation of these organizations that is essential to correcting BIA's trust management problems. MMS and BLM are involved in that.

One of the things we have recommended was to effectively address the long-term trust management problems. BIA needs to develop a comprehensive strategic plan for addressing the trust fund operations, including interfacing between other systems and operations.

Mr. Chairman, BIA has made some progress in the short term. In January 1993, BIA issued an advance copy of its strategic plan. It has divided that plan into two parts. Phase I covers the improvements needed within OTFM, and Phase II, which is still being developed, is to cover improvements and organizations outside of OTFM. Another thing that happened was that interest on the MMS oil and gas collections, which had not been distributed to account holders since 1985, was distributed to all but the Navajo Tribe during the past year, and that is pending the Navajo's look at the system used to distribute the income.

OTFM has made progress in bringing its systems reconciliations for 1993—the backlog—up to date. In response to our recommendations, BIA has conducted an organization and staffing analysis. These analyses resulted in a number of recommendations which, if effectively implemented, should improve the trust fund operations.

With specific regard to the Trust Fund Reconciliation Project, as you are probably aware, BIA created a Special Projects Team outside of OTFM in November of 1992 to oversee the Trust Fund Reconciliation Project, and part of that effort was to develop Phase II of the strategic plan. In March 1993, the Department directed the Special Projects Team to complete the reconciliations by March of 1994, but in August of 1993 the team was returned to OTFM where this work is continuing. We have recently issued a report on that, by the way, sir.

Another task force which was talked about earlier is the Solicitor-led task force on the IIM Work Group which I can get into if you would like. The Land Records Management Work Group was also established this past year.

A number of concerns that we have regarding the trust fund management improvement and the reconciliation projects are that—on particular projects—progress is lagging in a number of areas. Implementation of Phase I of BIA's strategic plan is technically on hold until the new administration has had time for review and comment. OTFM has moved forward on a number of initiatives, however, including the development of employee performance standards and desk operating procedures. Phase II of the plan is moving ahead very slowly, and that is primarily because of the Department's directive to focus priority attention on the reconciliation project.

In April 1992, the Department prepared a reorganization plan that has been updated. According to OTFM, they have called for an increase in staff from 51 people to 100. Of the 51, 47 are presently on board or there have been commitments made to fill those positions.

The March 1994 timetable which Mr. Parris referred to, which is now I guess April of 1994 for the completion of a tribal reconciliation, we feel may be unrealistic, given the volume of records to be reviewed and the time required to search for the missing documents.

The main thing I wanted to point out here is that the administration has moved slowly in making key BIA appointments. The Assistant Secretary for Indian Affairs' position was not filled until mid-July 1993, and since January 1993, the position of Deputy Commissioner has been filled in an acting capacity by a number of individuals. There are also two other key vacancies. One is the OTFM investment chief position and the other is the accounting chief position which we feel need to be filled as soon as possible.

Basically, H.R. 1846 would address many of our concerns. We think that it sets a good plan for BIA to carry out. One thing I want to point out, though, is that BIA has been responsible for performing most of the functions specified in this act all along. The proof of whether the Department will carry out the provisions will be in the new administration's execution of those initiatives.

I just want to emphasize in closing that adequate financial systems, accounting staff, the filling of key positions and the support of senior Department and BIA managers are important elements in fixing BIA's trust fund problems. These problems took a lot of years to develop, and they are going to take a lot of years to solve. Even with a concerted effort on the part of management, the Congress, and OMB, these are not going to be easily solved problems.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions you may have.

[Prepared statement of Mr. Crowley and GAO report follow:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Native American Affairs,
Committee on Natural Resources
House of Representatives

For Release
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September 27, 1993

FINANCIAL
MANAGEMENT

BIA's Management of the
Indian Trust Funds

Statement of Brian P. Crowley
Director of Planning and Reporting
Accounting and Information Management Division



GAO/T-AIMD-93-4

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the management of the Indian trust funds by the Bureau of Indian Affairs (BIA).

Mr. Chairman, since April 1991, we have testified six times before congressional committees on BIA's management of the Indian trust funds and its efforts to reconcile and audit the trust fund accounts. These testimonies addressed the nature of BIA's past problems, the status of its trust fund reconciliations, and actions BIA might take to improve trust fund operations. My statement today will discuss (1) the status of BIA's actions to correct its past problems, (2) problems that still need to be addressed, and (3) provisions in H.R. 1846, the Native American Trust Fund Accounting and Management Reform Act of 1993, that can help BIA resolve some of these problems.

By way of background, I will first summarize BIA's trust fund management problems and some of the needed actions that have been recommended to overcome those problems.

As you know, the Secretary of the Interior is directed by law to manage Tribal and Individual Indian Monies (IIM) trust funds. BIA, through its Office of Trust Funds Management (OTFM), is responsible for carrying out the government's fiduciary responsibility to ensure that proper control and accountability are maintained over each trust account. The OTFM, located in Albuquerque, New Mexico, oversees trust fund operations at BIA's 12 Area Offices and 93 Agency Offices.

In fiscal year 1992, OTFM was responsible for managing and accounting for about \$2 billion, representing approximately 1,880 tribal and 288,000 IIM trust fund accounts. Fiscal year 1992 reported receipts totaled almost \$550 million and disbursements totaled about \$500 million. Tribal and IIM accounts had reported balances of \$1.5 billion and \$440 million, respectively. The balances in the trust fund accounts have accumulated in part from payments of claims, oil and gas royalties, land use agreements, and investment income.

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

The audit reports have included recommendations for BIA to

- develop written policies and procedures for the conduct of trust operations,
- periodically reconcile account balances,

- arrange for periodic audits of trust fund operations,
- provide periodic statements to account holders,
- arrange for training of personnel involved in trust fund operations, and
- review current systems to determine whether systems modifications will bring about needed improvements most efficiently or whether alternatives should be considered, including cross-servicing arrangements, contracting for ADP services, or new systems design and development.

In our August 1992 testimony¹, we said that OTFM cannot correct BIA's trust fund management problems in isolation from other BIA and Department of the Interior components. For example, the Bureau of Land Management and the Minerals Management Service (MMS) are responsible for the trust-related functions of land and lease management, and oil and gas royalty collections and accounting, respectively. The cooperation of these organizations is essential to correcting BIA's trust fund management problems.

We stated further that to effectively address long-term trust fund management problems, BIA needed to develop a comprehensive strategic plan for addressing every aspect of its trust fund operation, including interfaces between other systems and operations that impact trust fund accounting. We also advised BIA officials about how the Chief Financial Officers Act of 1990, Public Law 101-576, can provide a framework for improving its trust fund management.

STATUS OF TRUST FUND IMPROVEMENTS

BIA has made some progress in short-term and long-term trust fund management improvements. Some examples follow.

- In January 1993, BIA issued an advance copy of its strategic plan for trust fund financial management improvement. Due to the scope and complexity of its problems in this area, BIA divided the strategic plan into two phases. Phase I covers improvements needed within OTFM, whereas Phase II of the plan, which is still being developed, is to cover improvements in organizations outside OTFM.
- Interest on MMS oil and gas collections, which had not been distributed to account holders since 1985, was distributed to all but the Navajo tribe during the past year. The Navajo funds

¹Financial Management: Status of BIA's Efforts to Resolve Long-Standing Trust Fund Management Problems, (GAO/T-AFMD-92-16, August 12, 1992).

are available and are to be distributed pending the outcome of a review of BIA's computer program for distributing income by the tribe's accounting firm.

- OTFM has brought its fiscal year 1993 systems reconciliations backlog up-to-date, with a few exceptions. According to OTFM, the trust fund general ledger accounts are being reconciled to their Treasury accounts and Investments subsystem accounts. In addition, the IIM subsystem accounts are being reconciled to the general ledger at most Area Offices. Those Offices having difficulty are receiving assistance from OTFM.
- In response to our recommendation that BIA conduct an organization and staffing analysis, OTFM contracted for a workload analysis of OTFM and trust fund-related functions performed in BIA's Area and Agency Offices. The OTFM analysis was completed in November 1992, and the Area and Agency Office analysis was completed in April 1993. These studies contain a number of recommendations which, if effectively implemented, should improve trust fund operations.

The following has occurred with regard to the trust fund reconciliation project.

- In November 1992, BIA management created a separate Special Projects Team outside of OTFM, by reassigning 5 staff and the Project Assistant and reallocating \$6.4 million from OTFM, to oversee the trust fund reconciliation project and develop Phase II of the strategic plan. OTFM retained responsibility for routine trust fund operations and the short-term trust fund improvement projects.
- In March 1993, the Department directed the Special Projects Team to focus its attention almost exclusively on the tribal reconciliation project and mandated that the work be completed by March 1994. The Special Assistant in charge of the Special Projects Team developed an ambitious plan to accomplish the tribal reconciliation work by that date. In August 1993, the Special Projects Team, was returned to OTFM, where this work is continuing.
- On January 13, 1993, a Solicitor-led team, referred to as the IIM Work Group, consisting of BIA, Department, and Inter-tribal Monitoring Association representatives was formed to explore settlement or other alternatives to reconciling the IIM accounts. IIM reconciliations were halted in February 1992, primarily due to missing records and the potential costs of reconciling a large number of small accounts. To date, the team has had two meetings but has made only limited progress towards defining alternatives for settlement or reconciliation of the IIM accounts.

- The Land Records Management Work Group, led by a BIA Agency Superintendent, was formed in November 1992 to ensure that problems associated with fractionated ownership are addressed through effective systems which provide accurate and timely information. This group has not met for the past few months and its draft report is on hold until the work group fully understands the trust fund reconciliation process.

PROBLEMS THAT STILL NEED TO BE ADDRESSED

We have identified a number of concerns affecting the trust fund management improvement and reconciliation project. As we testified last year, BIA recognized the seriousness of its problems but was making only limited progress in addressing them. Currently, progress is lagging in a number of areas. Some examples follow.

- While implementation of Phase I of BIA's strategic plan is technically on hold until the new administration has time for review and comment, OTFM has moved forward on a number of initiatives, including development of employee performance standards and desk operating procedures. Development of Phase II of the plan, which deals with areas outside OTFM's control, is moving ahead slowly due in part to a Department directive to focus priority attention on the tribal reconciliation project.
- In April 1992, OTFM prepared a reorganization plan which would increase its staff from 51 to 90 positions. However, the reorganization was delayed pending decisions on trust fund management improvement initiatives. As of September 1993, BIA is moving ahead with OTFM's reorganization plan which now calls for an increase from 51 to 100 authorized positions. The increase of 10 positions relates primarily to the transfer of the Special Projects Team to OTFM. According to OTFM, 47 of the 51 currently authorized positions are either on board or selections have recently been made to fill these positions.
- The March 1994 timetable, which the Department has established to complete the tribal reconciliations back to 1972, may be unrealistic given the volume of records to be reviewed and time required to search for missing documents. While progress is being made on the reconciliation project, according to OTFM's September 10, 1993 progress report, missing records are still a significant problem. Because of this problem, OTFM feels it will be difficult to meet the March 1994 deadline. As a result, OTFM has prepared a draft issue paper which contains options on how to proceed with the tribal reconciliation work.
- BIA has not yet filled certain key OTFM vacancies, such as the Investment and Accounting Chief positions. As a result, OTFM has not been able to implement pilot tribal investment programs. Tribes are expressing concern about implementation delays for the investment pilots. During much of fiscal year 1993, the

OTFM Deputy Director has covered the Accounting and Investment Division Chiefs' functions. According to OTFM, a selection was made for the Investment Chief position on June 24, 1993. However, the position remains unfilled pending the outcome of a background check. OTFM is currently requesting a waiver from the background check requirement. Regarding the Accounting Chief position, OTFM expects to be able to fill this position once its proposed reorganization is approved.

- OTFM's plan to have written trust fund policies and procedures has slipped from March 1994 to September 1995. OTFM has developed an inventory of needed policies and procedures and has hired a contractor to assist in their development.
- OTFM has implemented automated interfaces between its general ledger and its subsidiary ledgers so that data entered into one component of the system does not have to be entered a second time. Unfortunately, the automated interfaces have not worked as intended, and OTFM is attempting to resolve this situation. However, even if the interfaces ultimately work as envisioned, OTFM will still need an integrated trust fund system to eliminate some of the problems that are now occurring. The OTFM director realizes this and is currently developing a request for proposal to hire a contractor to perform a systems and account holder needs assessment.

With respect to the need for a reliable integrated trust fund system, we are currently performing a study for another House subcommittee to address options for transferring trust fund accounting and investing functions to other entities. We have identified entities that may be able to manage BIA's trust accounting and investing activity and some that have, or are, developing oil and gas royalty and real estate trust accounting systems that seem appropriate to BIA's accounting needs. The Subcommittee Chairman requesting this study wants us to ensure that the options we are identifying will avoid the problems associated with BIA's failed 1990 attempt to transfer the trust funds to a large private bank, which led to the congressional ban on transfers.

In addition, the administration has moved slowly in making key BIA appointments. The Assistant Secretary for Indian Affairs position was not filled until mid-July 1993 and, since January 1993, the position of Deputy Commissioner has been filled in an acting capacity by a number of individuals from within BIA.

H.R. 1846 REFORMS

The Native American Trust Fund Accounting and Management Reform Act of 1993 (H.R. 1846) mandates many of the improvements recommended

in BIA audits and contractor studies. Among other things, the proposed legislation

- reaffirms the trust responsibility of the United States and instructs the Secretary to provide (1) adequate systems for accounting, (2) adequate internal controls and periodic timely reconciliations, (3) account holders with meaningful, periodic statements of their accounts, and (4) periodic statements of performance and an annual audit of the trust fund accounts;
- reaffirms that the government's trust responsibility includes the funds derived from the use and sale of leased lands, judgments, mineral leases, oil and gas leases, timber permits and sales, and water resources;
- gives tribes the option of voluntarily and permanently removing their funds from the government's trust or doing so on a pilot, or demonstration, basis in order for tribes to manage their own funds; and
- requires that the Secretary establish a program to assist Indian people to obtain expertise in the management of trust funds, including outreach agreements with financial institutions to provide classroom training, internships, and employment opportunities.

The Department of the Interior has been responsible for performing most of the functions specified in H.R. 1846 all along. The proof of whether the Department will carry out the provisions of H.R. 1846 will be in the new administration's execution of these initiatives.

Adequate financial systems and accounting staff, the filling of key positions, and the support of senior Department and BIA managers are important elements in fixing BIA's trust fund problems. These problems took many years to develop. Even with concerted effort, the selection of a modern integrated accounting system, sufficient staffing and funding, and the strong support of Department and BIA management, the Congress, and OMB, these problems will take time to correct.

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Mr. Chairman, I wish to thank the Committee for the opportunity to testify on our work and on this important legislation. This concludes my remarks. I would be happy to answer any questions you or Members of the Subcommittee may have at this time.

(901654)

GAO

United States General Accounting Office

Report to the Chairman, Committee on
Indian Affairs, U.S. Senate

September 1993**FINANCIAL
MANAGEMENT****Creation of Bureau of
Indian Affairs' Trust
Fund Special Projects
Team**

GAO/AIMD-93-74



United States
General Accounting Office
Washington, D.C. 20548

**Accounting and Information
Management Division**

B-254432

September 21, 1993

The Honorable Daniel K. Inouye
Chairman, Committee on Indian Affairs
United States Senate

Dear Mr. Chairman:

This report responds to your request for information about the creation of the trust fund Special Projects Team¹ within the Bureau of Indian Affairs (BIA). You asked if BIA, in creating the Team, followed (1) Department of the Interior (DOI) guidelines, (2) appropriations act provisions to notify the House and Senate Appropriations Committees and receive their concurrence before transferring funds and staff to the Team, and (3) appropriations act provisions to submit reorganization proposals to the Joint Tribal/BIA/DOI Advisory Task Force on BIA Reorganization for consideration. You also asked if BIA was required to notify the Inter-tribal Monitoring Association (ITMA) and obtain their views on the Team proposal. Further, you requested that we identify the officials responsible for creating the Team and their present duty stations, as well as Department and BIA actions to investigate the circumstances surrounding the Team's creation and resolve the situation.

Results in Brief

In creating the Special Projects Team, BIA did not adhere to established guidelines.

- BIA managers did not follow established Department or BIA policies and procedures when they created the Team.
- BIA managers did not follow appropriations act guidelines to notify the Appropriations Committees and the Reorganization Task Force about the reorganization. Further, BIA's fiscal year 1994 budget submission to the Appropriations Committees did not refer to the creation of the Team outside the Office of Trust Funds Management (OTFM) or the related reallocation of funds from OTFM.

None of the established guidelines required BIA to notify ITMA in advance about the decision to create a new organization. However, since ITMA was created to monitor BIA's reconciliation and trust fund improvement efforts and the Team assumed responsibilities in these areas, ITMA officials told us

¹The Team was also informally referred to as the Office of Special Projects.

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they believed they should have been notified that the Team would be separate from OTFM.

With respect to the Department and BIA investigations of the circumstances surrounding the Team's creation, the following actions were taken or planned.

- Department and BIA management reviewed the procedures followed in creating the Team and concluded that their policies and the appropriations act guidelines had not been followed.
- On August 2, 1993, BIA's Acting Deputy Commissioner, Indian Affairs, signed a memorandum directing that the Team's functions be returned to OTFM and that the Team's Special Assistant and Project Assistant be detailed to OTFM.
- BIA plans to report to the House and Senate Appropriations Committees on actions taken to abolish the Team.

Appendix I lists the positions of the officials involved in creating the Team and their current positions.

Background

On August 20, 1992, following discussions between BIA and Office of Management and Budget (OMB) officials about BIA's limited progress in reconciling trust fund accounts, OMB requested that BIA designate a project manager with sole responsibility for the reconciliation project to report directly to the Deputy Commissioner, Indian Affairs. On November 23, 1992, the Deputy Commissioner signed a memorandum creating the Special Projects Team to develop, implement, and/or oversee implementation of certain trust fund management initiatives, including management of the ongoing trust fund account reconciliation project. The memorandum stated that the Team was temporary and that its operations would continue until the reconciliation project and certain trust fund improvement projects were completed. BIA staff estimated the project would last between 5 and 8 years. In forming the Team, BIA management (1) appointed a Special Assistant to lead the Team and assigned a Project Assistant, 5 detailees, and 10 temporary staff and (2) reallocated \$6.4 million from OTFM.

In its April 1993 hearing on BIA's fiscal year 1994 budget submission, the House Appropriations Committee, Subcommittee on Interior and Related Agencies, discussed BIA's creation of the Team. Following the hearing, the Reorganization Task Force and ITMA stated their objections to the Team's

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creation. The Reorganization Task Force, which consists of tribal, BIA, and Department representatives, was established in December 1990, pursuant to provisions in the Department's fiscal year 1991 appropriations act. Its purpose is to provide input to the Department, BIA, and the Appropriations Committees on reorganizations of BIA functions. ITMA was initially established in September 1990 as an ad hoc advisory committee to monitor BIA's trust fund account reconciliations. In 1991, the ad hoc committee was formally established as an association representing Indian tribes, and its responsibilities were expanded to include advising BIA on trust fund management and strategic planning. In late 1992, ITMA began to function as an advisory group to the Reorganization Task Force for trust fund issues.

Scope and Methodology

To address the questions in your request, we reviewed pertinent sections of Department and BIA policy manuals and BIA's fiscal year 1993 appropriations act. We also reviewed BIA documents related to the Team's creation. We met with Department and BIA managers to obtain their views on the guidelines followed when the Team was created and to discuss the actions they were taking to address congressional, Reorganization Task Force, and ITMA concerns about the Team's creation. We also talked with House and Senate Appropriations Committee staff to obtain their views.

We performed our work between July 16, 1993, and August 27, 1993, at the Department of the Interior and BIA headquarters in Washington, D.C., in accordance with generally accepted government auditing standards. As your office requested, we did not obtain agency comments on a draft of this report. However, at the end of field work, we discussed its contents with Department officials; Acting Deputy Commissioners, Indian Affairs; and the OTM Director. We have incorporated their comments where appropriate.

Department and BIA Guidelines Not Followed in Creating the Team

Interior Department and BIA policy manuals contain provisions which Department employees are to follow when implementing organizational changes. Part 101 of the Departmental Manual (DM) contains the Department's (1) overall policy for organization management and (2) guidelines for establishing organizational structures and responsibilities and for abolishing or relocating organizational components. Part 101 DM also details the documentation needed to implement organizational changes, including organization charts, functional statements, and staffing analyses. Once approved, this documentation is inserted into a Part 130 DM chapter designated for the

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specific BIA component organization. Part 101 DM contains the following provisions relating to implementation of organizational changes.

- Organizational changes can only be implemented through a new or revised DM chapter or by a Secretary's Order establishing temporary authority.
- Changes to the manual are required when an organizational change is of a continuing nature. However, if the change is urgent, a Secretary's Order can be used on an interim basis, but must be followed by a Part 130 DM change.
- Changes to the manual are required for technical and administrative organizational changes involving units located outside the headquarters city (Washington, D.C.).
- Organizational changes which affect the DM must be approved by the Assistant Secretary, Policy, Management, and Budget; the supervising member of the Secretariat; and the Director of Congressional and Legislative Affairs.
- Interim organizational changes, assignments of personnel, or reprogramming of funds and other resources related to organizational changes that affect the DM cannot be implemented until a change to the manual is released or a Secretary's Order has been approved.

The Bureau of Indian Affairs Manual (BIAM) also contains guidelines for implementing organizational changes. Part 5 BIAM 2, which is applicable to all BIA headquarters and field office organizations, specifies the following:

- All BIA organizational structures are to be published in the BIAM and are not considered official until published.
- Special projects staffs established for more than 1 month but less than 1 year must be published in a Part 5 BIAM bulletin and must include functional statements and the proposed organizational staffing charts. In addition, staff groups in operation for 1 year or more are considered permanent and require a change to the DM if the change meets Department policy outlined in Part 101 DM.
- Interim implementation of organizational changes is not permitted.

In October 1992, before the Team was established, BIA's Directives Officer determined that the organization fit the criteria listed above for publication in the DM and BIAM. Specifically, the Team was (1) located in Albuquerque, New Mexico, not Washington, D.C., the headquarters city, (2) formed by detailing staff and reprogramming funds from OTFM, and (3) a special projects staff that was to continue for more than 1 year. Therefore, the Directives Officer advised BIA and Department officials that

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a Part 130 DM change or Secretary's Order was needed. However, although the Special Assistant who was to be in charge of the Team prepared a draft Secretary's Order, BIA did not publish a formal change to the DM and BIAM or request that the Secretary's Order be issued as a temporary measure when the Team was created. Nor did BIA request approval from the Assistant Secretary-Policy, Management, and Budget. The Office of Management Improvement, the departmental organization responsible for reviewing organizational matters and Part 130 DM changes, was abolished on October 8, 1992.² Department officials said that this left a gap in the review process at the time the Special Projects Team was being proposed.

In mid-February 1993, the Team's Special Assistant submitted a draft functional statement and staffing chart for the Team to the Acting Deputy Commissioner, Indian Affairs, for review. On March 22, 1993, the Special Assistant prepared a memorandum for the file noting that Department officials had determined that the Team should be established by memorandum rather than DM procedures. On March 29, 1993, the Acting Deputy Commissioner approved the Team's functional statement and on April 1, 1993, the temporary Acting Deputy Commissioner signed a memorandum transmitting the functional statement and position chart for immediate classification of positions and administrative action. Thus, the Team lacked the authorization and documentation that BIA and Department guidance required.

Appropriations Committees Not Notified

BIA's fiscal year 1993 appropriations act provides that any proposal to reorganize BIA shall not be implemented until (1) the Reorganization Task Force reviews it and recommends implementation to the Secretary and (2) the proposal has been submitted to the Appropriations Committees.

According to the staffs of the Subcommittees on Interior and Related Agencies, Senate and House Committees on Appropriations, the Committees were not notified in advance about the Team's creation. They advised us that they were concerned that (1) the Team was created outside established Department and BIA guidelines and (2) BIA's fiscal year 1994 budget submission did not disclose that the Team's funding and staff would be separate from OTFM.

The House Appropriations Committee addressed its concern in its report, Department of the Interior and Related Agencies Appropriations Bill, 1994

²At the time of our review, this departmental review function was assigned to three staff members in the Department's Office of Information Resources Management.

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(Report 103-158). The report states that the Committee did not intend that funds provided for financial trust management should be used to fund the Team unless it was incorporated into and reported to the Director of OTFM. The Committee noted that it saw no convincing reason for creating a separate entity outside of OTFM and that the appropriations act's consultation provisions had not been met. The Committee requested that BIA abolish the Team and report back on the Team's status by August 13, 1993. A Senate Appropriations Committee staff member told us that the Senate Committee concurred with the House request that BIA abolish the Team and report on specific actions taken.

The Department's Director of Budget told us that the budget staff did not notify the Appropriations Committees about the Team because they were not aware that a new organization had been created and they had received no indications from BIA that the Appropriations Committees should be notified of a reprogramming. The Budget Director also told us that, as a general rule, when changes in lower level organizations such as the Team are not specifically identified as part of the organization chart in the budget, or Departmental Manual changes are not proposed, the Appropriations Committees are not generally notified.

Reorganization Task Force and ITMA Not Consulted

As mentioned in the previous section, BIA's fiscal year 1993 appropriations act provided that BIA should consult with and obtain the views of the Reorganization Task Force and advise the Appropriations Committees of this consultation before implementing a reorganization proposal.

In a May 12, 1993, letter to the Secretary of the Interior, the Task Force stated that it was not consulted about the creation of the Team. In addition, BIA and Department officials we contacted concurred that BIA had not followed this requirement.

The appropriations act does not provide that BIA consult with ITMA. While ITMA was informed of the Team's creation, it had not been consulted and was not aware that the Team was to be separate from OTFM. ITMA was concerned about the impact that this organizational change would have on the trust fund accounts reconciliation effort, which ITMA has monitored since at least September 1990. ITMA wrote the Department on May 5, 1993, regarding its concerns.

Investigation of Circumstances Surrounding Creation of the Team

Department and BIA officials told us that they became aware of the magnitude of the procedural problems associated with the Team's creation when the issue was raised by the House Appropriations Committee, Subcommittee on Interior and Related Agencies, during the April 21, 1993, hearing on BIA's fiscal year 1994 budget request and again at the June 22, 1993, Senate Committee on Indian Affairs hearing on S. 925, the Native American Trust Fund Management Reform Act of 1993. Subsequently, Department and BIA management reviewed the established guidelines pertaining to organizational changes within the Department and BIA and the actions taken to create the Team and concluded that the guidelines had not been followed when the Team was created.

On July 8, 1993, we met with the Acting Deputy Commissioner, Indian Affairs, who was appointed in May 1993, and Department Solicitor's Office attorneys. These officials said that they believed that Department guidelines had not been followed because the Team's creation was considered a management initiative and not a reorganization. However, our analysis showed that the Department and BIA manuals state that the guidelines apply to any organizational change, not just reorganizations. The Acting Deputy Commissioner stated that he believed that these guidelines should have been followed.

Department officials involved in the review process for establishing the Team told us that they believed that the Team was to have been a small staff within, and paid for by, the Deputy Commissioner's office. As a result, they felt that a memorandum to establish the small staff was sufficient. Department officials also told us that they were unaware of Part 5 BIAM provisions which state that special projects staffs expected to operate for over 1 year are considered permanent and that publication of the related organization structure in the Departmental Manual is required.

Department officials also stated that they did not know that the Team was to be staffed and funded from OTFM resources and thus had not taken this information into consideration when advising BIA on whether the Team should be established by memorandum. Further, they said they were unaware that the Reorganization Task Force had not been notified about the Team's creation. On August 27, 1993, the former Deputy Assistant Secretary, Indian Affairs, told us that when the former Deputy Commissioner created the Team, there was no intention of it becoming a separate office. However, he acknowledged that after that time, the Team took on the appearance of a separate office.

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The Department views the actions that managers took to create the Team as a procedural misunderstanding not requiring disciplinary action. Also, because the departmental office charged with responsibility for reviewing organizational changes had been abolished prior to the Team's creation, there was no final departmental review. For the most part, Department and BIA officials initially involved in the Team's creation are no longer in the same positions of authority due to the abolishment of the Department's Office of Management Improvement and staffing changes resulting from the new administration.

On August 2, 1993, the Acting Deputy Commissioner, Indian Affairs, notified the Special Assistant for the Special Projects Team that, effective immediately, he had returned the Team's functions to OTFM and detailed the Special Assistant and the Project Assistant to OTFM and that these officials were to report to the OTFM Director. However, this action will not be finalized until OTFM's Part 130 DM is revised and approved. With respect to the House Appropriations Committee's request that BIA notify the Committee on the status of the Team by August 13, 1993, a BIA official told us that BIA plans to report to the House and Senate Appropriations Committees on the status of the Team when they meet in conference on the Department's fiscal year 1994 appropriations.

On August 26, 1993, the OTFM Director told us that he was revising the OTFM organization chart for the Departmental Manual to include a Management Improvement Staff responsible for prior year trust fund account reconciliations. He also told us that such a staff would be useful on a continuing basis to handle future OTFM management initiatives in addition to the trust fund account reconciliations.

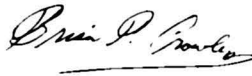
We are sending copies of this report to the Secretary of the Interior; the Assistant Secretary for Policy, Management, and Budget; the Assistant Secretary, Indian Affairs; the Acting Deputy Commissioner, Indian Affairs; the Chairmen and Ranking Minority Members of the cognizant

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Appropriations and Oversight Committees; the Director of the Office of Management and Budget; and other interested parties.

Please contact me at (202) 512-9450 if you or your staff have any questions concerning this report. Major contributors to this report are listed in appendix II.

Sincerely yours,

A handwritten signature in cursive script, reading "Brian P. Crowley". The signature is written in dark ink and is positioned above a horizontal line.

Brian P. Crowley
Director of Planning and Reporting

Appendix I

Officials Involved in Creating the Special Projects Team

Officials involved in the review and approval process	Current position
Department	
Assistant Secretary, Policy, Management, and Budget	Left Department
Principal Deputy Assistant Secretary, Policy, Management, and Budget	Same
Staff Assistant to the Principal Deputy Assistant Secretary, Policy, Management, and Budget	Chief, Drug Program Coordination Staff
Director, Office of Management Improvement*	Acting Director, Office of Construction Management
Chief, Organization and Operations Analysis, Office of Management Improvement*	Supervisory Management Analyst, Office of Information and Resources Management
Deputy Assistant Secretary, Indian Affairs	Deputy Director, Office of Policy Analysis
BIA	
Deputy Commissioner, Indian Affairs	Left BIA
Acting Deputy Commissioner, Indian Affairs	Area Director, Portland Area Office
Assistant Director, Financial Management, Office of Management and Administration (Temporary Acting Deputy Commissioner, Indian Affairs)	Same

*This office was abolished on October 8, 1992.

Appendix II

Major Contributors to This Report

Accounting and
Information
Management Division,
Washington, D.C.

Gayle L. Condon, Assistant Director
Robert W. Wagner, Jr., Audit Manager

Office of General
Counsel

Thomas H. Armstrong, Assistant General Counsel

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Mr. RICHARDSON. Now, Mr. Crowley, the individuals with you, what is their particular expertise? Could you just very briefly tell us?

Mr. CROWLEY. Sure. Mr. Tom Armstrong is in our Office of General Counsel and he has been involved with this work for several years now. On my right is Ms. Gayle Condon. Gayle has been the project manager involved with Indian affairs for a long, long time. September of 1990, but it feels longer than September of 1990. Her audit manager is Robert Wagner, who has been involved for about the same amount of time.

For many years in my past career at GAO, I had responsibility for the Bureau of Indian Affairs work as the auditor in charge of BIA at GAO, back in the early 1980s. I can tell you that, from a personal view, BIA has been one of the worst managed agencies I have run into in my government career, which now spans 30 years.

Mr. RICHARDSON. The gentlemen from Wyoming?

Mr. THOMAS. Thank you, Mr. Chairman. How many audits do you know has GAO made of this trust fund matter?

Mr. CROWLEY. Many. I can't give you an exact number off the top of my head. I can provide it for the record. There are at least six testimonies we have done up on Capitol Hill over the last 18 months.

Mr. THOMAS. First of all, I am sorry to say I haven't been able to follow this over the last couple of years as closely as I did a couple of years before. It appears there is some progress being made. So I want to start with that notion.

Mr. CROWLEY. I would have to second that. We were up here a couple of months ago, and we were disappointed in the progress. But we have seen things pick up. I think through the years, there had been a little progress.

We saw a lot of progress last summer. When we had the change in administrations, there was a lull until we have gotten new people in place. But as the new people have come in place, I would have to agree with you, sir, that there has been progress made and it is being made.

Mr. THOMAS. And it was unfortunate. I think there was progress being made a year ago and so on, and obviously slowed up with new people. But let me go to something that has troubled me a lot, and I don't know the answer to this. You guys have been working at this and you do a good job and so on, but nothing ever seems to happen. I mean, how many times can you go through and outline all these problems, and then the next time you come, you outline the problems again, and it is terribly frustrating for me, frankly, and for us. It must be for you.

Mr. CROWLEY. Well, yes.

Mr. THOMAS. Why don't we do something? Where is the Inspector General, for heaven's sake. I understand GAO doesn't have any authority, apparently, but I can't imagine that someone doesn't listen to what you are doing. I can't imagine that you don't have some meetings with people in BIA. And this is not a judgmental thing; at least with dollars it is pretty quantitative.

Can you tell me why something doesn't happen?

Mr. CROWLEY. Well, something is happening.

Mr. THOMAS. I know, but way late.

Mr. CROWLEY. Well, I agree. The problem is that the problem is so big. We are talking about a lack of records. We are talking about 1,800, 1,900 accounts for the tribes, about 288,000 individual accounts for the individual Indians. We are talking about transactions that are in the millions each year.

It is a very, very big problem, and you can't solve it on the cheap. It is going to cost money, it is going to take talent, and it is going to take commitment to get it done. It is not something that the four of us around this table could do if we took our entire time and just tried to solve the whole problem within a couple of weeks. We couldn't do it.

Mr. THOMAS. Well, you know——

Mr. CROWLEY. Let me just tell you that all of us get on the train at a particular point in time. Back in the early 1980s, I can tell you the train was not even moving. In the last couple of years, I have seen the train moving. I see some fits and starts, but I see the train moving and I see some things happening, and I am pretty encouraged by what I heard this morning from the Assistant Secretary, and from Jim Parris and his deputy.

Mr. THOMAS. Let me interrupt. I heard the same damn thing four years ago from an Assistant Secretary who was just as positive as this one. I don't mean to take away from the Secretary, but the gentleman who was there before said the same thing.

Mr. CROWLEY. And made some effort to correct it. So there was some progress made. I mean you can't say that there was none. There was some made.

Mr. THOMAS. I don't say these things to be critical. We need to get to it; obviously you are going to say we are going to fix it. Of course, it is broken. And you know, you say how big it is. It is big. But my gosh, every mutual fund in the country handles more than that.

It isn't something that is impossible. It isn't a new discovery or something we are not technically able to do. You know, Shearson-Lehman does more than that every day with the mutual fund.

Mr. CROWLEY. The problem with Shearson, well, not the problem, but Shearson has always got a leg up on these people because it has records. We don't have a lot of records for this stuff.

Mr. THOMAS. You didn't have to be a nuclear scientist to know that when you are holding money in trust, you have to have records. That isn't a brand-new discovery; is it?

Mr. CROWLEY. I agree. But the problem is that the people that are trying to solve this problem right now don't have the records, and can't find them.

Mr. THOMAS. I am sometimes astounded that we got into this situation. You know, even I, who can hardly balance my checkbook sometimes, would have known you are going to need records if you are going to keep money in somebody's account.

Mr. CROWLEY. Right.

Mr. THOMAS. You never did comment on the Inspector General. Why don't they take these things and push a little harder to make some changes?

Mr. CROWLEY. The Inspector General has done several reviews of BIA, but I can't comment specifically on that.

Mr. THOMAS. Okay. Well, I am obviously just venting a little frustration.

Mr. CROWLEY. Well, I can understand it.

Mr. THOMAS. Not particularly at all. But GAO comes, the auditors come and everything, you know, make the report, but the important thing is after the report we have to figure out some mechanism to cause it to change. And government has a hard time doing that. Shearson does it because if you don't make a buck, the guy is gone, that is why, and there is a motive to move. There seems to be no motive to move here.

Mr. CROWLEY. Well, I will tell you, having frequent hearings up here has made a difference. You keep the pressure on, and I can bet you there will be a difference. The pressure really wasn't on many years ago, I can tell you that.

And you are frustrated now. You should have seen me back in the early 1980s when I issued good reports that I felt were good solutions to problems and had no action taken on them. It got to the point where I wouldn't do them unless I was absolutely forced to do the reviews.

Mr. THOMAS. I understand. You said somewhere in your testimony where there had been very little progress made—oh, here it is.

Mr. CROWLEY. Which page are you on?

Mr. THOMAS. Five. OTFM's plan to have written trust fund policies and procedures has slipped.

I guess again, even though the auditing is still going on, the reconciliation still goes on, it seems to me pretty clear that the policies and procedures which brought us to this point are not the ones that you would like to embrace in the future; right?

Mr. CROWLEY. They didn't have written policies and procedures.

Mr. THOMAS. Well, the absence of them. Wouldn't that be one of the first things you would do would be to start today and put some policies and procedures in for tomorrow?

Mr. CROWLEY. Yes.

Mr. THOMAS. But that has not been done.

Mr. CROWLEY. What they did was to develop an inventory of the policies and procedures they need and they have hired a consultant or contractor to develop some of those for them.

Mr. THOMAS. I see. So there is something happening.

Mr. CROWLEY. Something happening, yes. They got the inventory of what needs to be done and now they have a contractor on board that is helping them develop some good procedures to carry things out.

Mr. THOMAS. Did you ever think about farming this out? There are people who do keep records.

Mr. CROWLEY. Yes. We have another study ongoing for another subcommittee here on the Hill, and what we are doing is we are looking at different options that could be taken by BIA to better carry this whole function out.

Mr. THOMAS. Maybe instead of increasing BIA's staff here, they ought to hire somebody else to do it.

Mr. CROWLEY. Before you hire somebody else—we have made mistakes in the past where we have hired people to go solve a problem and they don't understand what the problem is. We spent a lot

of money for those people to walk around for a while and then get almost nothing out of it—one thing we have to do is make sure we know what we want the contractors to do.

Mr. THOMAS. Sure.

Mr. CROWLEY. The private sector is outstanding when you tell them specifically do this, this, this, and this. But they are not so good when you say we have some problems, can you go fix them for us.

Mr. THOMAS. I understand. I am oversimplifying. But it does seem like there is a policy portion here which is one thing. There is a bookkeeping, accounting portion here, which is a different thing.

Mr. CROWLEY. And really, what we are coming down to, too, is that we really have two kinds of things here. We have the tribal accounts, which are really trust type of accounts, and then you have the individual Indian accounts, except for the supervised accounts of minors and incompetents, probably we are looking at more of a demand deposit account for individual Indians.

They are not really trust, per se; they are individual savings accounts. And you need different systems for those kind of operations. So maybe we will try to get a number of different options which we can bring up here to show you, as to what BIA could do to handle this.

Mr. THOMAS. You are very forthcoming for an auditor. I appreciate it. Thank you so much. I have taken too much time.

Mr. RICHARDSON. I thank the gentleman. Let me say that I am very pleased at the intensity of my colleague's views on this issue, because he knows the intensity is shared by the chairman and others, and I hope in a bipartisan way we can do something about this issue.

I think, Mr. Crowley, I want to commend you for the efforts over the years that you and your staff have tried to address this problem.

Let me ask you some questions. You testified that the Trust Fund Special Projects Team was created by pulling staffs and funds out of—I hate to get into this bureaucratic stuff—OTFM, and later these funds and staff were transferred back.

Mr. CROWLEY. Right.

Mr. RICHARDSON. Why did this happen, and has it affected the reconciliation project at all?

Mr. CROWLEY. Well, it has affected it somewhat. It occurred because there was concern about trying to solve the problem. People wanted a quick answer on how you solve this problem. It was OMB who directed BIA to set up a special task force to solve the reconciliation problem. When BIA went about setting up this task force, they decided to pull about five people from OTFM and about \$6.4 million.

The trouble was that the way that they set it up was not in accordance with either congressional guidelines or in accordance with their own policies and procedures within the Department. So it turned out not to be something that they should have done, not the way they went about doing it.

The other problem is that when you pull something out from OTFM you lose central control over the whole issue. You have

OTFM which was going to keep the daily, ongoing current year reconciliations and keep the trust fund management operations, but this special group was supposed to oversee the catching up, so to speak, on prior year reconciliation, and you really shouldn't separate the two.

You should have somebody do that, but you shouldn't fragment the responsibility. So I think that there were concerns both on the House and the Senate side that this Special Projects Team was not a good idea, and it turned out that the Department, after researching the issue, agreed with them and reversed the decision. The decision was reversed in August 1993.

Mr. RICHARDSON. Now, in your judgment, why did the effort in 1990 to privatize this effort fail?

Mr. CROWLEY. Oh, we got into that a little bit before. That is how essentially, BIA wanted to solve this issue, by entering into a contract with the private sector to come in and solve this massive problem. Neither BIA nor the private sector outfit, Security Pacific National Bank, fully understood what the problem was, or the ramifications of it.

And they thought they were walking into pretty much of a banking operation, and it didn't turn out that way. They really did not understand, we think, the total problem. The consequence was that there was a lot of shuffling around; BIA got several products from Security Pacific, but BIA really didn't get much in a tangible way out of the contract. So it was later terminated.

But, I think this gets back to the point that if we want the private sector to do things for us, it is a good idea that we know specifically what we want them to do and what is the problem that we want them to solve, so that there is something that they can work with. You just can't bring them in and tell them, solve this problem, you have to have the parameters of what it is.

Mr. RICHARDSON. Now, U.S. Trust and other financial entities are coming in here to advise us, I assume that the BIA trust accounts should be managed by the private sector. Do you agree with that?

Mr. CROWLEY. I am not ready to address this yet. You know, we are in the middle of a study which is looking at different ways of handling the whole operation, and that is one of the things that we are looking at right now. So I can't comment on whether or not I think that is such a good idea. I am going to spell out for you the rationale as to what are the upsides and downsides of it.

I think certainly there are parts of it that probably could go to the private sector, but I really want to spell out what I think those parts are. So if I would beg off on that.

Mr. RICHARDSON. When are you going to complete your study?

Mr. CROWLEY. March of 1994.

Mr. RICHARDSON. You know, I still commend you, but why do you need so much time? You know, I am fighting with the BIA on this because we are trying to reform the BIA. They tell me that their commission to restudy the restructuring of BIA will need another year to complete it. How much time is it going to take?

Now you all are obviously overworked and underpaid, but why does it take so long to do this?

Mr. CROWLEY. I am glad you understand our situation.

Mr. RICHARDSON. Maybe I answered my own question.

Mr. CROWLEY. No, We could be in a position to brief you in December.

Mr. RICHARDSON. All right. Well, I would like that to happen. Because you know, we can't wait around. I can't speak for my colleague on the minority side, but I want to give the new administration a honeymoon period and you pointed out that the Assistant Secretary just came on board in August, or she was just confirmed a couple of weeks ago, but you know, by the end of December, we are 25 percent through the first term.

Mr. CROWLEY. No, I understand.

Mr. RICHARDSON. Are you involved with the BIA task force on reform?

Mr. CROWLEY. Well, we are aware of their work related to BIA's trust funds.

Mr. RICHARDSON. They want another year. They want to study things another year.

Mr. CROWLEY. Okay. Look, I don't want to get into our internal processing, because I am part of the internal processing. We can finish the work and be in a position to at least come up and talk to you about what our preliminary results are. I think that would probably be pretty helpful to you.

Mr. RICHARDSON. Well, now one of the frustrations of both the tribal and the Bureau side is the low rates of return on the investment. Do you think the BIA should be permitted to invest in other than government-protected investments? Are you studying that too?

Mr. CROWLEY. I think by law they are required to put it in government securities.

Mr. RICHARDSON. No, I know they are. But my question is, Why can't they invest in other non-government protected investments? Do you think they should be able to?

Mr. CROWLEY. Well, you know, you are going to have demonstration projects. What you need to do is make sure that they have the ability to do this. I mean you have to provide training, you have to provide them some help. You can't just turn them loose to go out and start investing in things.

They have to have some ability to handle it very well. And there is a law that you are about to—or there is a bill that you are going to act on that does provide for training for these people so that they will be able to do it. My short answer is yes, if they have the training, I think it would be a good idea for them to do it.

Mr. RICHARDSON. Well, let me just conclude with my thanks to all of you. Mr. Crowley, we want some bold recommendations out of you.

I don't have the time. I would like to, but you know, we move from issue to issue here, 12 issues a day, and if it is noon, it must be NAFTA, and we have to rely on our experts, like you. That is your responsibility. We want you to be bold. I think by the end of the year, that is fine.

We would like to maybe either have a hearing or a briefing, and we want you to accelerate these recommendations because this is very important. These are trust funds of our Native Americans that

have been mismanaged. It is not right. Why should it happen that way?

Why should BIA be the most inefficient government agency that we have? They serve our Native Americans. Maybe that is why we have problems with our Native American population.

We have the ability to do legislation here, but we want to do it on a sound basis, and you are our watchdogs, and we expect you to do that. I think you have done well, but I want you to accelerate your pace because we intend to move.

So Mr. Crowley and your staff, thank you very much for coming up and speaking with the subcommittee.

Mr. RICHARDSON. Our third panel is our Native American panel. We would like to welcome the Honorable Bill S. Fife, Principal Chief, Creek Nation, Okmulgee, Oklahoma; Ms. Elouise Cobell, chairperson, Intertribal Monitoring Association on Indian Trust Funds from Browning, Montana; Mr. Eric Davenport, Intertribal Monitoring Association on Indian Trust Funds, Tlingit and Haida Indian Tribes of Alaska; Ms. Faith Roessel, executive director of the Navajo Nation.

We welcome all our witnesses, and I would remind our witnesses again, we have the five-minute rule.

The Honorable Bill S. Fife, please proceed.

PANEL CONSISTING OF BILL S. FIFE, PRINCIPAL CHIEF, MUSCOGEE (CREEK) NATION, OKMULGEE, OK; ELOUISE COBELL, CHAIRPERSON, THE INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS, BROWNING, MT; ERIC R. DAVENPORT, BOARD MEMBER, THE INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS, AND DIRECTOR, BUSINESS ADMINISTRATION, CENTRAL COUNCIL, TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA; AND FAITH R. ROESSEL, ESQ., EXECUTIVE DIRECTOR, NAVAJO NATION WASHINGTON OFFICE

STATEMENT OF BILL S. FIFE

Mr. FIFE. Good morning, Mr. Chairman and members of the committee. I am Bill Fife, Principal Chief of the Muscogee Creek Nation. I appear before the committee today to express the Muscogee Nation's extreme concern over the degree and effectiveness of the BIA exercise of tribal trust resources.

The Muscogee Creek Nation at this time has in excess of 1,500 IIM accounts, in addition to the approximately \$12 million of tribal trust funds that are being administered by the Bureau.

While the tribe has a substantial amount of funds within the BIA trust management system, the tribe has never been provided an audit report indicating the funds were being maintained in accordance with generally accepted trust standards or being invested to obtain maximum return on investment.

Elected officials of the tribe have received numerous questions and complaints regarding the collection of money due to individual Indians, deposit of money into improper accounts and lack of accounting to individual account holders. It is our understanding that those individuals that demand a monthly statement are furnished a difficult-to-understand account summary that contains no detail

on the source of funds by the area office. However, service should be a function of accountability and not merely an act to pacify a vocal minority.

The proposed H.R. 1846 legislation will establish for the BIA the fiduciary responsibility for managing these funds, make the BIA provide account holders with accurate and current statements on a regular basis, and provide direction to the BIA for the development of internal processes, with the consent of the tribes, which will enhance future management of the trust funds and possible management of these funds by tribal governments.

The National Council of the Muscogee Nation has over the past year passed two resolutions, TR 92-15, and TR 92-16, which reject the proposed BIA strategic plan for reconciliation of trust funds and supports the intertribal Monitoring Association reconciliation plan which would provide to the tribe a complete financial and compliance audit of trust funds in accordance with the fiduciary trust standards and which support the Intertribal Monitoring Association to address critical issues regarding trust funds management within the BIA respectively.

The fiduciary responsibility for the handling of trust funds include the investment of idle funds in accordance with sound cash management principles. The BIA's lack of prudent cash management principles has resulted in lost interest for the individual Indian.

The Muscogee Nation believes the BIA should be liable for the interest lost to the account holders and should not be protected by legislation. This argument is supported by the contention of the BIA that the records are not sufficient to identify lost interest in a cost-effective manner. Legislation should be enacted to require the BIA to be liable for interest lost to account holders due to their inept handling of trust funds and require the BIA to handle all trust funds in accordance with fiduciary standards imposed on non-Indians.

Any legislation addressing tribal trust funds, correction of past mismanagement and the implementation of new management policies should not be developed without prior tribal consultation and should provide for an oversight group similar to the ITMA to insure proper implementation of legislation as has H.R. 1846 in conjunction with the Intertribal Monitoring Association.

The Muscogee Nation supports the passage of H.R. 1846 in order to require the BIA to function as a true fiduciary for Indian trust funds. H.R. 1846 will provide an initiative to define the scope of Federal responsibility with respect to the management of trust assets and to give tribes and tribal members greater control over the management of their trust funds for tribal economic opportunity.

The Muscogee Nation advocates the BIA should permit current professional staff to fully staff the Office of Trust Funds Management with qualified personnel to properly account for trust funds and carry out these functions for those tribes which desire to continue BIA control of trust funds.

In other areas, the fiduciary duty and general trust obligation of the United States to Indian people with respect to trust resources has slowly deteriorated over the last decades. The BIA places most of the blame for this trend on declining fiscal budgets. We believe

declining financial resources may have contributed to the problem; however, a trend of declining commitment on the part of bureau has surely undermined the spirit of Federal trust obligation.

The Bureau has historically and should presently act as an advocate for tribal governments and Indian people. A proactive approach to tribal issues and a cooperative partnership between tribal governments and the Bureau must develop and be sustained as we move into the twenty-first century. A major problem rests with the Bureau in processing tribal trust land acquisitions.

Delays can result in years passing before tribally-requested actions are taken. This delayed response on the part of the bureau works as an inhibitor and deterrent to self-sustaining reservation economic development.

The immediate solution to the problem of the delayed processing of fee lands to trust must be delegated to the lowest possible level within the Bureau. Currently, the decision authority is with the central office level. The decision level for trust acquisitions must be at the agency level.

There exists the need for repeal of numerous Federal statutes allowing the State courts of Oklahoma to exercise Federal instrumentality jurisdiction over the persons and estates of individual citizens of the Muscogee Nation. Such exercise of Federal instrumentality jurisdiction has caused the loss of in excess of one million acres of land, ownership of which could have been more thoroughly protected by the Federal Government or the tribes themselves.

Submission of Indian trust resources to even the ministerial authority of State courts is in the Muscogee Nation's opinion the most deplorable breach of trust responsibility and is totally unacceptable.

This is the official position of the Muscogee Nation. I thank the committee for the opportunity to address this important issue today and urge the support and passage of H.R. 1846.

[Prepared statement of Mr. Fife and resolutions follow:]

TESTIMONY ON INDIAN TRUST FUNDS

**BEFORE
THE SUBCOMMITTEE ON NATIVE AMERICANS
COMMITTEE ON NATURAL RESOURCES
HOUSE OF REPRESENTATIVES**

H.R. 1846

**"THE NATIVE AMERICAN TRUST FUND ACCOUNTING
AND MANAGEMENT REFORM ACT OF 1993"**

**Submitted by
Bill S. Fife, Principal Chief
Muscogee (Creek) Nation**



MUSCOGEE (CREEK) NATION

OFFICE OF THE PRINCIPAL CHIEF
P.O. BOX 580, OKMULGEE, OK 74447 (918) 756-8700

BILL S. FIFE
PRINCIPAL CHIEF
SHELLY STUBBS CROW
SECOND CHIEF

**STATEMENT TO THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
OF THE COMMITTEE ON NATURAL RESOURCES CONCERNING H.R. 1846,
"THE NATIVE AMERICAN TRUST FUND ACCOUNTING
AND MANAGEMENT REFORM ACT OF 1993"
SEPTEMBER 27, 1993**

Good morning Mr. Chairman and members of the Committee. I am Bill Fife, Principal Chief of the Muscogee (Creek) Nation.

I appear before the Committee today to express the Muscogee Nation's extreme concern over the degree and effectiveness of the Bureau of Indian Affairs exercise of tribal trust resources.

The Muscogee (Creek) Nation has at this time in excess of 1,500 I.I.M. accounts in addition to the approximately \$12,000,000.00 of Tribal trust funds that are being administered by the Bureau.

While the Tribe has a substantial amount of funds within the B.I.A. trust management system, the Tribe has never been provided an audit report indicating the funds were being maintained in accordance with generally accepted Trust standards or being invested to obtain maximum return on investment.

Elected officials of the Tribe have received numerous questions and complaints regarding the collection of money due to the individual Indian, deposit of money into improper accounts and lack of accounting to individual account holders on a consistent basis. It is our understanding that those individuals that demand a monthly statement are furnished a difficult to understand account summary, that contains no detail on the source of funds, by the Area office. However, service should be a function of accountability and not merely an act to pacify a vocal minority.

The proposed H.R. 1846 legislation will establish for the B.I.A. the fiduciary responsibility for managing these funds, make the B.I.A. provide account holders with accurate and current statements on a regular basis and provide direction to the B.I.A. for development of internal processes, with the consent of the Tribes, which will enhance future management of these Trust Funds and possible Management of these Funds by the Tribal Government.

The National Council of the Muscogee (Creek) Nation has, over the past year, passed two resolutions TR92-15¹, and TR92-16², which reject the proposed B.I.A. Strategic plan for reconciliation of Trust Funds and supports the Inter Tribal Monitoring Association reconciliation

¹Exhibit 1: Resolution Rejecting the BIA Strategic Plan

²Exhibit 2: Resolution to participate in ITMA on Indian Trust Funds

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plan which would provide to the Tribe a complete financial and compliance audit of Trust Funds in accordance with Fiduciary Trust standards and which support the Inter Tribal Monitoring Association to address critical issues regarding Trust funds management within the B.I.A. respectively.

The fiduciary responsibility for the handling of trust funds should include the investment of idle funds in accordance with sound cash management principles. The B.I.A.'s lack of prudent cash management principles has resulted in lost interest for the individual Indian. The Muscogee (Creek) Nation believes the B.I.A. should be liable for the interest lost to the account holders and should not be protected by legislation, which appears to protect incompetence. This argument is supported by the contention of the B.I.A. that the records are not sufficient to identify lost interest in a cost effective manner. Legislation should be enacted to require the B.I.A. to be liable for interest lost to account holders due to their inept handling of trust funds and require the B.I.A. to handle all trust funds in accordance with fiduciary standards imposed on non-Indians.

Any legislation addressing Tribal Trust funds, correction of past mismanagement and implementation of new management policies should not be developed without prior tribal consultation and should provide an oversight group similar to the I.T.M.A. to insure proper implementation of legislation as has H.R. 1846 in conjunction with the Inter Tribal Monitoring Association.

The Muscogee (Creek) Nation supports the passage of H.R. 1846 in order to require the B.I.A. to function as a true fiduciary for Indian Trust funds. H.R. 1846 will provide an initiative to define the scope of federal responsibility with respect to the management of trust assets and to give Tribes and Tribal members greater control over the management of their trust funds for Tribal economic opportunity. The Muscogee (Creek) Nation advocates that the B.I.A. should permit current professional staff to fully staff the office of Trust Funds Management with qualified personnel to properly account for trust funds and carry out these functions for those tribes which desire to continue B.I.A. control of trust funds.

In other trust areas, the fiduciary duty and general trust obligation of the United States to Indian people with respect to trust resources has slowly deteriorated over the last several decades. The Bureau places most of the blame for this trend on declining fiscal budgets. We believe declining financial resources may have contributed to the problem, however, a trend of declining commitment on the part of the Bureau has surely undermined the spirit of the federal trust obligation.

The Bureau has historically and should presently act as an advocate for tribal governments and Indian people. A proactive approach to tribal issues and a cooperative partnership between tribal governments and the Bureau must develop and be sustained as we move into the 21st century.

Page 3

A major problem rests with the Bureau in processing tribal trust land acquisitions. Delays can result in years passing by before tribally requested action is taken. This delayed response on the part of the Bureau works as an inhibitor and deterrent to self-sustaining reservation economic development. In the business world of today gross delays translates into gross losses in tribal revenue.

The immediate solution to the problem of delayed processing of fee lands to trust must be delegated to the lowest possible level within the Bureau. Currently, the decision authority is at the Central Office level. The decision level for trust acquisitions must be at the Agency level. The time required to process trust acquisitions would be reduced resulting in a more efficient and effective service delivery to the tribes.

Indian owned lands and natural resources are both a source of desperately needed economic opportunity and an irreplaceable heritage for future generations. Thus it is essential that the protection of federal trusteeship continue along with competent management and environmentally sensitive development. Federal legislation should be enacted to specify the roles, responsibilities and duties of the Federal government if standards to guide the administration of the federal governments fiduciary duties are only going to vacillate from administration to administration.

There exists the need for repeal of numerous federal statutes allowing the state courts of Oklahoma to exercise federal instrumentality jurisdiction over the persons and estates of individual citizens of the Muscogee Nation. Such exercise of federal instrumentality jurisdiction has caused the loss of in excess of one million acres of land, ownership of which could have been more thoroughly protected by the federal government or the tribes themselves. Submission of Indian trust resources to even the ministerial authority of state courts is in the Muscogee Nation's opinion the most deplorable breach of trust responsibility and is totally unacceptable.

This is the official position of the Muscogee Nation. I thank the Committee for the opportunity to address this most important issue today and urge the support and passage of H.R. 1846, the Native American Trust Fund Accounting and Management Reform Act of 1993.

CERTIFICATION



BILL S. FIFE, PRINCIPAL CHIEF

MUSCOGEE (CREEK) NATION



TR92-15

Exhibit 1

A RESOLUTION OF THE MUSCOGEE (CREEK) NATION REJECTING THE BUREAU OF INDIAN AFFAIRS STRATEGIC PLAN FOR RECONCILIATION AND AUDIT OF TRUST FUNDS AND SUPPORTING THE INTERTRIBAL MONITORING ASSOCIATION'S PREPARATION OF A STRATEGIC PLAN FOR RECONCILIATION AND AUDIT OF TRUST FUNDS

Section 100. Be it Enacted by the Muscogee Nation in Council Assembled:

Section 101. FINDINGS: The National Council finds that:

- A. The Bureau of Indian Affairs has mismanaged the Trust funds and natural resources of Tribes and cannot provide adequate documentation to the Tribes as to the accuracy of Trust Fund balances..
- B. This mismanagement has been documented by Department of Interior Office of Inspector General and the General Accounting Office.
- C. The Bureau of Indian Affairs has proposed a Strategic Plan to reconcile and audit balances of all Trust and I.I.M. funds in order to meet Congressional mandates for a proper accounting of all Trust Funds under their control.
- D. The Muscogee (Creek) Nation, through the InterTribal Monitoring Association, has determined that the proposed B.I.A. Strategic Plan, does not address a complete financial and compliance audit of B.I.A. trust responsibilities in land, mineral and other sources of revenue for Trust fund accounts and thus could minimize potential liabilities of the U.S. Government.

Section 102. PURPOSE:

The purpose of this ordinance is to:

- A. Advise the U.S. Congress that the Muscogee (Creek) Nation, by this resolution rejects the proposed Bureau of Indian Affairs Strategic Plan.
- B. Advises the U.S. Congress that the Muscogee (Creek) Nation, by this resolution endorses a Strategic Plan prepared by the Inter Tribal Monitoring Association, which proposes a financial and compliance audit of Trust funds in accordance with Fiduciary/Trust standards.

Section 103. The National Council hereby authorizes the Principal Chief to transmit this resolution to the U.S. Congress and take any actions necessary to achieve the results requested by the InterTribal Monitoring Association.

James M. Inhofe
Suite 305, 201 W. 5th St.
Tulsa, OK 74103

Mike Synar
2B22 Federal Office Bldg.
Muskogee, OK 74401

Bill Brewster
Suite B, 900 N. Mississippi
Ada, OK 74820

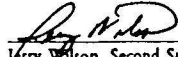
Dave McCurdy
Suite 110, 330 W. Gray
Norman, OK 73070

Ernest Istook
Suite 520, 5400 N. Grand
Oklahoma City, OK 73112

Glenn English
252 Old Post Office Bldg.
215 Dean A. McGee Avenue
Oklahoma City, OK 73102

ENACTED by the Muscogee (Creek) National Council on this 21st day of November, 1992.

IN WITNESS WHEREOF, the Presiding Officer of the Muscogee (Creek) National Council has hereto attached his signature.


Jerry Wilson, Second Speaker
National Council
Muscogee (Creek) Nation

CERTIFICATION

I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council, comprised of thirty-one members with 25 members attending this meeting on the 21st day of November, 1992, and that the above is in conformity with the provisions therein adopted by a vote of 22 in favor, 1 against, 0 abstentions, and that said resolution has not been rescinded or amended in any way and the above is the signature of the Second Speaker of the National Council.


Janice Tiger Berryhill, Recording Secretary
National Council
Muscogee (Creek) Nation

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature this 25th day of November, 1992, to the above Tribal Resolution, TR92-15, authorizing it to become an Ordinance under Article VI, Section VI of the Constitution of the Muscogee (Creek) Nation.


Bill S. Fife, Principal Chief
Muscogee (Creek) Nation





Exhibit 2

TR92-16

**A RESOLUTION OF THE MUSCOGEE (CREEK) NATION TO PARTICIPATE IN
INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS**

WHEREAS, At the insistence of tribal governments and the direction of the Congress of the United States, the Bureau of Indian Affairs has undertaken a long-overdue effort to reconstruct, reconcile, and audit the trust fund accounts of Indian tribes and individuals; and

WHEREAS, the Bureau selected 37 tribes to be included in Phase I of this effort to reconcile and audit trust fund accounts, and designated those 37 tribes to serve as an initial Ad Hoc Advisory Committee to the Bureau's efforts; and

WHEREAS, the Bureau and the Congress have indicated that these tribes' active participation to date has greatly improved the process of designing the work to be performed and in selecting and retaining a contractor to perform the reconciliation tasks; and

WHEREAS, much work will remain to be done following the reconciliation phase, including designing the audit program and selecting a contractor to perform the actual audits, and in making recommendations for long-range improvements in the nature and direction of the Indian trust funds management program; and

WHEREAS, the tribes selected as the initial Ad Hoc Advisory Committee have subsequently constituted themselves as the Intertribal Monitoring Association on Indian Trust Funds to continue to provide oversight and tribal input into the Bureau's efforts to reform the trust funds management program; and

WHEREAS, 25 federally recognized tribes have already adopted resolutions supporting the continued efforts of the Intertribal Monitoring Association on Indian Trust Funds; and

WHEREAS, the BIA has entered into a cooperative agreement, with the Intertribal Monitoring Association on Indian Trust Funds for the purposes of continuing to receive collective tribal views and insights into the management of Indian trust funds; and

WHEREAS, the Intertribal Monitoring Association on Indian Trust Funds, by the terms of its charter, is open to all federally recognized Indian tribes; and

WHEREAS, all federally recognized Indian tribes have a direct and important interest in the management of Indian trust funds,

NOW, THEREFORE, BE IT RESOLVED THAT:

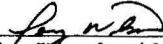
the Muscogee (Creek) Nation hereby expresses its intention to be represented within the Intertribal Monitoring Association on Indian Trust Funds, and agrees to designate a representative to participate in the Association's activities, and

BE IT FURTHER RESOLVED,

the Muscogee (Creek) Nation, by this resolution does hereby express its expectation that the Intertribal Monitoring Association on Indian Trust Funds will keep both the designated representative and the tribal governing body fully informed of the activities of both the Association and the Bureau of Indian Affairs in all matters pertaining to the

ENACTED by the Muscogee (Creek) National Council on this 21st day of November, 1992.

IN WITNESS WHEREOF, the Presiding Officer of the Muscogee (Creek) National Council has hereto attached his signature.


 Jerry Wilson, Second Speaker
 National Council
 Muscogee (Creek) Nation

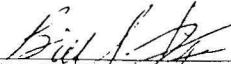
CERTIFICATION

I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council, comprised of thirty-one members with 25 members attending this meeting on the 21st day of November, 1992, and that the above is in conformity with the provisions therein adopted by a vote of 23 in favor, 1 against, 0 abstentions, and that said resolution has not been rescinded or amended in any way and the above is the signature of the Second Speaker of the National Council.


 Janice Tiger Berryhill, Recording Secretary
 National Council
 Muscogee (Creek) Nation

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature this 24th day of November, 1992, to the above Tribal Resolution, TR92-16, authorizing it to become an Ordinance under Article VI, Section VI of the Constitution of the Muscogee (Creek) Nation.


 Bill S. Fife, Principal Chief
 Muscogee (Creek) Nation



Mr. RICHARDSON. I thank the gentleman. We want to welcome Elouise Cobell who has been performing as chairperson of the Intertribal Monitoring Association. Welcome.

Please proceed, Madam Chairperson.

STATEMENT OF ELOUISE COBELL

Ms. COBELL. Thank you very much. I would also like to point out to you that I am the Chair of the Intertribal Monitoring Association, but I am also comptroller of the Blackfeet Indian Nation and I am an individual Indian account holder.

I would like to thank the committee for the opportunity to testify today on the past and the future of the Indian Trust Fund Program. I will talk about the ITMA's experience in trying to work with the Federal Government on the cleanup of the Trust Fund Program and our support for H.R. 1846.

When the House Interior Appropriations Committee approved the BIA's Reconciliation Audit and Certification Plan, they approved it with a condition, and that condition being that the tribes have input into this process. In the fall of 1990, the BIA brought together an ad hoc committee of 35 representatives to serve as an ad hoc committee to provide tribal input into the reconciliation.

The tribal representatives recognized that the problem that existed was much deeper than the historical reconciliation, that the larger problem was to correct the material weakness in the BIA's management of the tribal and IIM trust funds, which included meaningful tribal involvement and the management of the trust assets, which create the income that flows into the trust funds.

In 1991, the tribal representatives from the ad hoc committee formed themselves into a formal association, the Intertribal Monitoring Association on Trust Funds. For the first time in 150 years, tribes had an organized involvement in the BIA's handling of their Trust Fund Program.

Many of the activities that we have been involved in are working with the BIA on the design of the tribal reconciliation, monitoring the BIA and Arthur Anderson's implementation of the reconciliation contract, having input into the BIA's strategic plan, working with the Office of Trust Fund Management on the improvement of their operations, preparing a concept paper that reflects the tribe's goals for the Trust Fund Program, which includes many of the ideas that are reflected in H.R. 1846.

We have also participated on a task force to develop an approach for individual Indian reconciliation, and also to develop a conceptual approach in addressing the mismanagement of the trust assets. We also work closely with the GAO, congressional staff and this committee, Congressman Synar, Congressman Yates and Senator Inouye's. I guess the single most important message we wish to convey to this committee is that the horror reported in Congressman Synar's Misplaced Trust report are not things of the past.

While we have seen progress over the past two and a half years, it has been very slow. And every forward step has required an enormous effort. For every hour we spend working on ways to improve the management of the Indian trust funds, we spend 10 or 20 hours fighting off the efforts by bureaucrats to undermine our efforts and to prevent real progress from being made.

I need to share with you a few of the difficult stories to get a feel for what it is like to take on a bureaucracy. The Office of Trust Fund Management has had a need to fill key management positions, such as the chief of investments, since the BIA is investing millions of dollars a day. The Office of Trust Fund Management reorganization was approved by the Intertribal Monitoring Association and the Reorganization Task Force, but two years later is not in effect, due to the bureaucrats in the Department kicking the organizational chart back and forth, and as a result, two years has passed with still no key management positions in place, including the much-needed investment chief.

But, in November of 1992, the bureaucrats were able to create a new office called the Office of Special Projects, and took the responsibility for the reconciliation away from the Office of Trust Fund Management and placed it in this new office, and in the next nine months, the new office managed to weaken the reconciliation approach that was hammered out by the Deputy Director of OMB, OMB Comptroller, Deputy Comptroller, the Office of Trust Fund Management and ITMA. With the creation of this new office, the bureaucrats were able to exclude ITMA from any involvement in the reconciliation.

In fact, the five tribes' pilot project was weakened and distorted. We urge this committee to review the GAO report on creating the Office of Special Projects. Fortunately, the House Interior Appropriations ordered the Department to disband the Office of Special Projects and return the responsibility for the reconciliation to the Office of Trust Fund Management.

When ITMA and OTFM reentered the reconciliation effort, it was agreed that there was a need for a meeting of the five tribes and the U.S. Deputy Comptroller be brought in to get to the reconciliation and to put it back on track, and to explain to the tribes, the five pilot tribes what the reconciliation would do and wouldn't do.

ITMA quickly found themselves in a week-long battle, because high-level Department officials did not want to permit the OMB official to participate in the meeting. His participation was finally approved, and the meeting was extremely productive. You can imagine how difficult it is to continue each day when you have to deal with these issues and you can't get to the real important issues as far as cleaning up the trust funds.

Earlier this month, we had a very productive and a positive meeting with Ada Deer, the new Assistant Secretary. We believe she is deeply committed to the kind of change we would like to see.

But based on our experience, we are not convinced she will be able to successfully overcome the undermining that she will run into from the bureaucrats in the BIA, in the Department and in OMB that have so successfully prevented progress in the past.

One of the ideas that we had is, it is ITMA's position that any plan to move the trust funds out of the BIA must be carefully thought out. Any move must bring the funds and the management of them closer to the Indian community so that Indian people will have greater control and can leverage those funds to increase their economic power in their communities.

Any move must be consistent with the trust relationship, and the BIA for the foreseeable future needs to have a significant role in

the trust fund management. The approach that was talked about earlier, the special master comes from the Intertribal Monitoring Association, and we want to emphasize to you that we have not completed our study, our consultation with the tribes, Congress and the administration, but we feel that it could move toward a solution for the trust fund problem.

The special master would have two major roles. One of the roles is bringing the Federal Government into compliance with its legal obligation as trustee; and second, to developing a long-term solution to the trust fund situation. ITMA believes that while the BIA will continue to have a role in trust fund management for the foreseeable future, there is a need to hand off more and more responsibility to the Indian communities when the tribes are ready and willing to do so.

I just have one last experience that I would like to share with you, and I will make it very quick. The Blackfeet Tribe owns a national bank; and the experience of the Blackfeet Tribe and the tribally-owned Blackfeet National Bank demonstrates the current reality and the potential advantages of a program which allows more choices. The bank, by bringing in deposits, has built a pool of funds which it can lend to the community to help build the economy.

The ability to attract additional local deposits is limited and will grow only when the economy grows. This requires the maximum utilization of external sources of deposits to meet loan demand. The bank frequently bids for BIA trust fund deposits as a source of new funds, but is often unable to compete with the larger financial institutions.

Under the current system, even the Blackfeet Tribe's own funds would not be accessible through this bidding process. I guess I would like to point out with the capability of having additional deposits, we are able to leverage through loan guarantee programs and selling to the secondary market that gives an opportunity to build our economy on the reservation.

And I believe that we probably will have to do a lot of work together in talking about the special master concept, but we need to be able to work together to find out if this is a solution that is feasible, and that Indian communities will accept. I feel that it is one solution that we need to do additional work on, but I have little confidence in the progress that has been made with the old-line bureaucrats.

They make it very difficult to achieve any progress as far as the sensitivity toward the Indian communities. Thank you for the opportunity to testify.

[Prepared statement of Ms. Cobell follows:]

TESTIMONY ON INDIAN TRUST FUNDS

BEFORE THE SUBCOMMITTEE ON NATIVE AMERICANS
COMMITTEE ON NATURAL RESOURCES
HOUSE OF REPRESENTATIVES

Submitted by
THE INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS

September 27, 1993

**TESTIMONY ON INDIAN TRUST FUNDS
BEFORE THE SUBCOMMITTEE ON NATIVE AMERICANS
COMMITTEE ON NATURAL RESOURCES
HOUSE OF REPRESENTATIVES**

Submitted by

THE INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS

September 27, 1993

My name is Elouise Cobell. I am the Chair of the Intertribal Monitoring Association on Indian Trust Funds (ITMA), Comptroller of the Blackfeet Tribe, and an IIM account holder in the BIA trust funds program. I would like to thank the Committee for the opportunity to testify today on the past and future of the Indian trust funds program. I will discuss ITMA's experience in trying to work with the Federal government on the clean-up of the trust funds program and will address H.R. 1846, a bill that ITMA strongly supports.

ITMA began when the House Interior Appropriations Committee instructed the BIA to involve tribal representatives in the development of the historical reconciliation, audit and certification of the trust funds the Committee had ordered the BIA to carry out. The BIA brought approximately 35 tribal representatives together in Albuquerque in the Fall of 1990. The representatives quickly realized that the reconciliation was going to be a monumental undertaking, given that the BIA had failed to reconcile or audit its trust funds books during the entire 150 year history of the trust fund program. The representatives also recognized that the historical reconciliation was just one part of a much larger problem that included correcting the material weaknesses in the BIA's management of tribal and individual Indian trust funds, the absence of any meaningful tribal involvement in the management of their trust funds, and the problems in the management of the trust assets that created the income that flowed into the trust funds, such as the collection of that income, the BIA land records system, and all of the other components outside the Office of Trust Funds Management itself that were managed in ways that grossly violated the Federal government's obligations as trustee.

In order to be better structured to provide meaningful tribal input into all of these issues, the tribal representatives formed an ad hoc committee which then evolved into a formal association -- the Intertribal Monitoring Association on Indian Trust Funds. ITMA has 28 member tribes and we send out material on our activities to all 400 tribes in the country. ITMA is headed by a 12 person board of directors composed of tribal and IIM association representatives, all of whom volunteer their time

- 2 -

to this effort. Funds for our travel and to pay legal and accounting consultants have been provided by the BIA for the past two years. To our knowledge, ITMA represents the first time in the 150 year history of the BIA trust fund program that tribes have had any organized involvement in that program.

Our activities have included:

- * working with the BIA on the design of the tribal reconciliation and then monitoring the BIA's and Arthur Andersen's implementation of that reconciliation;
- * having input into the BIA strategic plan for trust funds;
- * working with the Office of Trust Funds Management on helping that office improve its operation;
- * preparing a concept paper that reflected the tribes' goals for the trust fund program, which included many of the ideas that are now reflected in H.R. 1846;
- * participating on task forces to develop an approach to the IIM reconciliation and to develop a conceptual approach for addressing the mismanagement of the trust assets;
- * Working closely with GAO and Congressional staff from this Committee, Congressman Synar's, Congressman Yates', and Senator Inouye's Committees. In fact, the strong support we have received from this Committee and these other Committees has been critical to whatever successes we have had in our mission.

After two and a half years, ITMA is a veteran of the trust fund wars, with many more purple hearts than silver stars. The single most important message we wish to convey to this Committee, based on this experience, is that the horrors reported in Congressman Synar's Misplaced Trust report are not things of the past. Officials in the Department of Interior continue the same kinds of acts of commission and omission that Congressman Synar's report shows have been responsible for the gross mismanagement of Indian monies during the past 150 years. As a result, while we have seen progress over the past two and a half years, it has been very slow, and every forward step has required an enormous effort. For every hour we spend working on ways to improve the management of Indian trust funds, we spend ten or twenty hours fighting off the efforts by the bureaucrats to undermine our efforts and to prevent real progress from being made. I would like to highlight just a few of these episodes.

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* OTFM Reorganization

The Office of Trust Funds Management (OTFM) has developed a very solid core management team. However, for over two years, it has needed to fill key branch chief positions, such as the chief of investments, since the BIA is investing millions of dollars a day without anyone in charge. In order to hire staff, OTFM was told it needed to have its organizational chart approved by ITMA, Congressional committees, and Departmental officials pursuant to departmental requirements. In the Summer of 1991, OTFM provided its proposed organization chart to ITMA. We quickly approved it, as did the Congressional appropriations committees, on a preliminary basis. The director of OTFM then sent it to BIA headquarters for processing. Over two years later, that simple organizational chart still has not been approved. It has been kicked back and forth, as each bureaucrat in the Department moves a box from one side of the chart to another. As a result, OTFM still is unable to hire key staff and still has no one in charge of investments.

* The Office of Special Projects

The Committee should not conclude from this organizational paralysis that the Department is incapable of moving quickly. During the Summer and Fall of 1992, ITMA had worked closely and effectively with the OTFM, the Deputy Director of OMB and the OMB Comptroller and Deputy Comptroller of the United States to hammer out an approach to the tribal reconciliation that provided the tribes with what begins to approximate a real accounting. This fact, coupled with the fact that OTFM was willing to work closely with ITMA in implementing this approach apparently was too much for the old-line bureaucrats to take. In November of 1992, they created a new office, called the Office of Special Projects and took responsibility for the reconciliation away from OTFM and placed it in this new office. In the succeeding nine months, this new office, with the help of the old-line bureaucrats, managed to substantially weaken the reconciliation approach and to completely exclude ITMA from any involvement in it.

But showing that they can work quickly, while OTFM has spent two years trying to get staffed up, the bureaucrats had been able to create, fund and staff the Office of Special Projects in less than a month's time. GAO recently completed an investigation of how this happened. GAO found that the bureaucrats were able to move so quickly because they simply ignored all of the Departmental requirements for creating a new office as well as the Congressional requirements that no monies be transferred to a new office without approval of the appropriations committees. The final irony is that when asked by GAO why this happened, the bureaucrats claimed that they were not aware of those requirements, even though they had spent two years making OTFM jump through each of these same requirements in its futile effort to

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get its organizational chart approved. We urge the Committee to review that GAO report.

* Monkey Wrenches in the Reconciliation

In late June of this year, the House Interior Appropriations Committee ordered the Department to disband the Office of Special Projects and to return responsibility for the reconciliation to OTFM. In August, when the Department complied, ITMA was again permitted to be involved in the reconciliation. When ITMA and OTFM re-entered the reconciliation picture, we found that the original in-depth accounting approach that had been negotiated with the OMB officials had been weakened and distorted, particularly in regard to the development of a pilot of the approach with five tribes. ITMA and OTFM agreed that there was a need for a meeting of ITMA, OTFM, the five tribes and the United States Deputy Comptroller from OMB, (the other two OMB officials who had helped to develop the approach, being political appointees, had left during the transition) to get the reconciliation back on track. ITMA quickly found itself in a week-long battle because high level Department officials did not want to permit the OMB official to participate in the meeting. The reasons for their opposition is still not clear. His participation was finally approved and the meeting was extremely productive. But when we have to spend a week fighting over such a minor issue as this, imagine how difficult it will be to make progress on important issues. Also, the bureaucrats know that diversionary battles such as these use up the limited time and funding ITMA has, as part of their war of attrition on anyone who tries to challenge their control over the Trust fund program.

* Proposal to Delete the Appropriations Language Tolling the Statute of Limitations.

Over the past few years, the Interior Appropriations Acts have included language that tolls the statute of limitations on claims by account holders until the reconciliation and audit is completed, because only then will the account holders be able to know if they have any claims. Yet in this year's budget request, the BIA proposed that this language be deleted, even though the reconciliation has just begun. If deleted, it would have effectively taken away from the account holders any legal remedy for whatever errors will be uncovered during the reconciliation, because by the time the errors are discovered, the statute of limitations would have already run. The old-line bureaucrats correctly thought they could sneak this through during the confusion at the start of a new Administration. Fortunately, Congressman Yates rejected the BIA request and continued to include the tolling language in the bill his committee marked up this past June.

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* The ITM Reconciliation and the Trust Asset Strategic Plan

Early this year, the BIA created two task forces. The first one was to develop an approach for the reconciliation of the individual Indian money accounts, which promises to be much more complicated than the tribal reconciliation. The second is to develop an approach for a strategic plan for improving the Department's management of the trust assets -- land, timber, minerals, etc. Nine months later, not a thing has been accomplished on either of these two critical issues.

The list could go on and on. Our conclusion is that while OTFM has a solid team in place and is beginning to make progress, the officials above OTFM in the BIA and in the Department of Interior lack the ability, the willingness and the integrity to properly oversee the historical reconciliation, the improvements in the existing management of trust funds, or any other aspect of the trust fund program. We had a very positive meeting with the new Assistant Secretary, Ada Deer, earlier this month. Ms. Deer is, we believe, deeply committed to the kind of change we would like to see. But based on our experience over the past two years, we are not convinced that she will be able to successfully overcome the undermining that she will run into from the bureaucrats in the BIA, in the Department, and in OMB that have so successfully prevented progress in the past.

Having set out this depressing situation, the obvious question is what can be done about it. ITMA has two suggestions. The first is for Congress to quickly enact H.R. 1846 with certain amendments proposed by ITMA and attached to this testimony. At the very least, it will enable tribal account holders to assume control over the management of their funds, while maintaining the trust status of those funds. Eric Davenport will talk about the benefits that bill will produce.

While many tribes will be able to obtain control over their trust funds through this legislation, others will not want to or may not be able to. In addition, there are 300,000 individual Indian account holders who will continue to need the BIA to manage their trust funds. The solution for them is more complex. ITMA and the Indian community completely reject the superficially appealing one of dumping all of the BIA responsibility for trust funds over to one private bank. This was tried twice in the past ten years and in both cases, the tribes, after studying the concept, concluded it would be worse than the existing situation. First, such an approach would move the money further from the Indian community, to a private institution that has no direct ties to the Indian people. Secondly, the activities of OTFM are inextricably tied to many other components of the BIA. OTFM depends on the agencies and Area offices to collect the money, it depends on the BIA land records, it depends on the Minerals Management Service to handle oil and gas receipts, etc. Severing trust funds from these other activities by moving trust funds to

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a private institution could cause severe hemorrhaging and be very costly to the Indian people.

It is ITMA's position that:

- 1) any plan to move trust funds out of the BIA must be very carefully thought out;
- 2) any move must bring the funds and the management of them closer to the Indian community so Indian people will have greater control and can leverage those funds to increase their economic power in their communities;
- 3) any move must be consistent with the trust relationship; and
- 4) The BIA, for the foreseeable future needs to have a significant role in Trust funds management.

The approach we are considering, and I want to emphasize that we have not yet completed our study or our consultation with the tribes, Congress, or the Administration on it, is for the Congress to appoint a special master to oversee the Office of Trust Funds Management, just as a court would if the gross violations of the trustee's obligation that have occurred here were ever brought to it. The special master would not be a Federal employee but someone like the CEO of a private financial institution with real experience in the management of bank trust fund departments, with access to all of the capability and expertise available in his institution and elsewhere and, ideally, someone with stature in the financial community. By himself, he likely would have more capability in the area of trust funds than do all of the bureaucrats at 18th and C Street combined. He would use this expertise to help OTFM in a variety of ways. The director of OTFM would report directly to the special master, who in turn would report to a Board of Directors composed of the Secretary and Assistant Secretary, the Director of OMB, GAO and representatives of the Indian community. The special master, whose existence would be limited to no more than a five year period, would have two major roles.

1. **Bringing the Federal government into compliance with its legal obligations as trustee.** His or her role would not be to run OTFM on a day-to-day basis but to provide overall management, direction and guidance on all trust fund matters as if OTFM was one subsidiary of a large financial institution headed by the Special Master. Therefore, the special master and the board would be responsible for advising and overseeing the improvement activities at OTFM (including bringing OTFM into compliance with Titles III and V of H.R. 1846), and the implementation of the trust funds' self-determination initiatives of H.R. 1846. With a direct line item and the protection of the Board, the special master hopefully will be immune to the petty

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undermining by the old-line bureaucrats in the BIA and the Department. But because the trust fund activities would remain within the BIA, they can maintain the necessary ties to the other BIA programs.

2. **Developing a long-term solution to the trust fund situation.** ITMA believes that while the BIA will continue to have a role in trust funds management for the foreseeable future, there is a need to hand off more and more responsibility to the Indian community when the tribes are ready and willing to do so. This would be the special master's second responsibility -- to develop a plan that will, by the end of five years, accomplish this objective and thereby eliminate the need for the special master.

The picture of the future for financial management in Indian country is now beginning to emerge. There are beginning to emerge Indian-owned financial institutions that are based on the reservation and which can assume greater responsibility for certain trust fund functions. An important aspect of allowing Tribes to have more choice with regard to the investment of their trust funds is the opportunity it represents to increase the flow of financial capital to Tribal communities. It is well documented that there is a substantial need for such capital to build community infrastructure, finance much needed housing and support new and existing commercial and agricultural enterprises. Yet, for the most part Tribal trust funds, while providing moderate returns, have minimal impact in these areas. With the ability to choose investment options, Tribes would have the ability to direct at least a portion of their funds into institutions which directly serve theirs or other Tribal communities.

The experience of the Blackfeet Tribe and the Tribally-owned Blackfeet National Bank demonstrates the current reality and the potential advantages of a program which allows more choices. The Bank, by bringing in deposits, has built a pool of funds which it can lend in the community to help build the economy. The ability to attract additional local deposits is limited, and will grow only when the economy grows. This requires the maximum utilization of external sources of deposits to meet loan demand. The bank frequently bids for BIA trust fund deposits as a source of new funds, but is often unable to compete with larger financial institutions. Under the current system, even the Blackfeet Tribe's own funds would be accessible only through this bidding process.

In the scenario that would arise from the passage of this bill the Blackfeet Tribe or any other Tribe could make the choice of depositing funds in the Blackfeet National Bank or any other bank. Then these funds could be utilized in a way which helps to improve local Tribal communities as well as earning a direct financial return. Even these small amounts of deposits when

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combined with the use of loan guarantee programs and secondary markets can have significant impact in terms of new businesses and housing.

We recognize that all of these changes cannot happen overnight. But a capable special master can work with the tribes and Indian financial institutions to produce a long-term solution that will maximize Indian control and bring the funds as close to the reservation as possible, while retaining certain core functions in the BIA. (We have little confidence that such progress could be made so long as OTFM is being overseen by the old-line bureaucrats.)

We also recognize that the special master approach is not a panacea. It will take hard work and commitment by the Indian community, the Congress, and the Secretary for this to succeed. But based on our experience over the past two years, we think this approach has promise. We will continue to talk about this idea with the Indian community and hope that we can come back to the Committee with a specific proposal before the Committee marks up H.R. 1846.

Again, I would like to thank the Committee for this opportunity to testify.

PROPOSED AMENDMENTS TO H.R. 1846

SUBMITTED BY

THE INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS

1. RETROACTIVITY OF THE OBLIGATION TO EARN INTEREST ON IIM ACCOUNTS

Add as a new subsection 102(3):

"(3) The Secretary's obligation to pay claims for interest on amounts deposited or invested on behalf of individual Indians prior to the enactment of this Act shall be retroactive only to the date that the Secretary began investing individual Indian monies on a regular basis, and then, only to the extent the claim is identified as part of the reconciliation, audit, and certification directed by Congress pursuant to the Act of _____, P.L. 102-381, or is filed by the account holder with supporting documentation and is verified by the Secretary pursuant to his policy for treating account holder losses."

JUSTIFICATION

The Secretary has argued that the retroactivity provision in Section 102 is: 1) unfair because it would require him to pay interest claims filed by IIM account holders for a period when he had no legal obligation to pay interest, and 2) unworkable because it would be a overwhelming undertaking for him to go back and make an interest determination for each account for each year. The proposed new subsection deals with both of these concerns. In regard to unfairness, it has been determined that despite the lack of a legal obligation to pay interest, at some date certain in the 1960's, when all of the IIM account monies were put into a single national pool, the Secretary, as a matter of practice and policy, began investing IIM monies. As a result, any failures to pay interest after that date resulted not from any legal questions but from mismanagement by the Secretary, for which he should be liable as trustee. Subsection (3) limits the retroactivity provision to the period from that date certain to the present.

To remove concern about the administrative nightmare, proposed subsection (3) limits the Secretary's obligation to go back into the records to find unpaid interest to any interest investigatory process that is included in the reconciliation of IIM accounts. Thus the Secretary will be obligated to do no more than what he will be doing anyway as part of his obligation to conduct a reconciliation. While the IIM reconciliation approach has not yet been developed, the tribal reconciliation approach has a specific component to identify unpaid interest. Subsection (3) also permits claims if the account holder is able to provide

independent documentation of unpaid interest, which of course, imposes no administrative burden on the Secretary.

2. DEMONSTRATION PROGRAMS FOR ALLOTTEE ASSOCIATIONS TO MANAGE THEIR MEMBERS FUNDS.

Subsection 204(a)(1)(c) is struck in its entirety and replaced with a new section 209, which shall read as follows:

The Secretary may approve plans to demonstrate new approaches for the investment of monies in IIM accounts submitted by associations of allottees, but only if the plan meets such conditions as the Secretary determines necessary to protect the interests and rights of the individual account holders; and the application is accompanied by

- 1) documentation that the Tribe on whose reservation the majority of the allotments are located has been consulted, and
- 2) written statements signed by each participating individual account holder authorizing the association to manage his or her funds.

JUSTIFICATION

Concern has been raised about the many unanswered questions still outstanding regarding a provision that would permit allottee associations to manage the funds of their members. On the other hand, there is a need and a willingness among all parties to at least experiment with ways allottee associations can help resolve the IIM trust fund problems. The original language required that the Secretary "shall" approve an allottee association plan when it met the few conditions imposed. The proposed language gives the Secretary broad discretion to set the terms and conditions of approving such a plan, thereby giving him the authority to insure that all of the questions are satisfactorily answered before a plan is approved.

3. MANAGEMENT OF IIM ACCOUNTS BY A TRIBE

At the end of 204(a)(1)(B) replace the period with a semicolon and add the following:

"provided that, upon approval of the plan, the tribe shall notify each IIM account holder that it will be assuming management of his or her account, and shall provide the account holder with the right to opt out of the plan and have the BIA continue to directly manage his or her account."

JUSTIFICATION

A major policy question is whether a tribe should be able to assume management of the individual Indian's accounts for all trust assets on its reservation without the prior written consent

of each IIM account holder. In fact, under the Self-determination Act, tribes have the legal authority to contract for BIA programs that manage the trust assets of individual Indians -- for example, when the tribe contracts for the realty function on a reservation that has allotted land. However, consistent with an approach used in the Indian Agriculture Act, it is proposed that an individual Indian have the right to opt out of the tribal management of his trust funds. This is both consistent with the Self-determination Act and relieves a tribe of the administrative nightmare of tracking down and getting signatures from each allottee.

4. PUTTING TRIBAL MONIES BACK INTO TRUST

Add as a new section 210, the following:

"Sec. 210. Within one year after the enactment of this Act, a Tribe may return to trust status any judgment funds or other funds (plus accumulated earnings) that had at one time been in trust status but that had been removed by the Tribe by: 1) declaring those funds to be "trust funds", 2) providing proof that they had previously been held in trust, and 3) incorporating those funds, or investments purchased with those funds, into a demonstration plan submitted to the Secretary pursuant to Section 202. Upon the expiration of the one year grace period, tribal funds or investments presently not held in trust by the Secretary may no longer be put into trust status. The Secretary shall not be liable for any losses suffered by the tribe during the period the funds were not in trust status."

JUSTIFICATION

Some tribes wanted to keep their monies in trust status but felt compelled to take them out because of the BIA's inadequate management or, more recently, because of the low yields that the BIA was obtaining in light of the restrictions on the kinds of investments the BIA is authorized to make. With the enactment of this bill, those barriers will no longer exist and some tribes will want to restore the funds to trust status. While not permitting an ongoing movement of funds between trust and non-trust status, the proposed amendment will create a one-time window for tribes to restore funds to trust status by incorporating them as part of a demonstration plan. The provision also permits the tribes to incorporate investments made with the funds into the plan so they are not obligated to sell stocks or bonds during the one year period when doing so might cause them to lose money.

5. MAINTAINING RIGHTS TO FILE CLAIMS

Add as a new section 211, the following:

"By submitting or approving a plan under this section, neither the tribe, the individual Indian account holder nor the Secretary shall be deemed to have accepted the account balance as accurate nor to have waived any rights to assert that the balance was inaccurate and to seek compensation for any under or over payment, failure to earn appropriate interest, or other valid claim."

JUSTIFICATION

Until the reconciliation process is completed, there will be no certainty about the correct balance of any trust account. Both the tribes, the individual Indians, and the Secretary have an interest in insuring that by participating in a demonstration program authorized by this title, they are not waiving their rights to bring a claim for under or over payment once the reconciliation is completed. This section provides that protection.

6. SCOPE OF INVESTMENT OPTIONS

Section 204(b) is amended by adding after the word "equities" the words "or other forms of investments."

JUSTIFICATION

This section authorizes tribes that are conducting demonstration programs a broader range of investment options than is available to the BIA. However, as introduced, the bill only authorized "equities," when tribes may want to invest in corporate bonds, and other investments that are neither equities nor within the BIA's existing scope of authority. This amendment would broaden the scope to achieve the intent of the Act. As with the equities, the Secretary would have to find that tribal investment in these other vehicles is prudent.

Mr. RICHARDSON. Thank you, Madam Chairperson. You know, you mention the old-line bureaucrats. I am going to try to probe to find out who these people are. They are the problem, and it is very unfortunate that they have so much ingrained power over there. I think, if they are hearing or watching, we are very upset at this periodic effort to stall reform, and hopefully we can be helpful to you.

Let me proceed with Mr. Davenport.

STATEMENT OF ERIC R. DAVENPORT

Mr. DAVENPORT. Good morning. It is an honor and a great opportunity for me to provide testimony on H.R. 1846 to the House Subcommittee on Native American Affairs. My name is Eric R. Davenport. I am director of business for the Central Council of Tlingit and Haida Indian Tribes of Alaska headquartered in Juneau, Alaska, and I am a board member on the Intertribal Trust Fund Monitoring Association.

Today my comments are focused on the demonstration plan portion of the bill. The purpose of the demonstration plan within H.R. 1846 is twofold. First, it permits tribes the opportunity to exercise some control over their funds held in trust by the Federal Government through the Bureau of Indian Affairs. Tribal participation in this way is consistent with the spirit of self-determination.

ITMA supports this approach to trust fund management as it allows tribes to accept a level of management responsibility which they feel they are prepared to assume. It also permits redeposit of funds should they discover that they would rather have the BIA manage the account.

The second purpose and benefit of the demonstration plan permits tribes to take advantage of investment opportunities which are not available through the BIA management plan. Specifically, stock, corporate bond and mutual fund investments are from time to time greater earning opportunities for tribes and provide a better match with the tribe's overall investment policy. These types of investments are not possible through the BIA.

ITMA supports this expansion of investment opportunities for Indian tribes. ITMA is also cognizant of the risk/reward investment principles. Built into the demonstration plan in H.R. 1846 is the approval of tribal investment policies and plans. Such approval provides such assurance that tribes are aware of higher risk type investments and that they limit their exposure to these risks. In essence this approval process ensures tribes know and follow overall sound trust management practices.

In my opinion, there are two very organic factors to the demonstration plan portion of H.R. 1846. These are the recognition of tribes as coequals with the BIA in the management of their trust funds, and the greater opportunity for tribes to realize and exercise their fiduciary responsibility to their tribal membership in the management of these critical areas.

In the case of my tribe, the Central Council Tlingit and Haida, we have managed our trust fund account for the last 10 years. Part of the reason for drawing funds out of BIA management control was because BIA recordkeeping was so poor that we were uncer-

tain of account balances. But most importantly, we could get much greater return at similar risk through other investment sources.

At the Central Council, we have our own investment policy we follow. I might add we are in the process of revising that policy now to reflect improvements in our overall financial health. We are proud of our investment success and take pride in and comfort in managing our own account.

The Central Council Tlingit and Haida does not view funds which we manage any differently than those managed by the BIA. They are all part of our trust fund, and in our case the result of congressional judgments. The only difference between those we manage and those managed by the BIA is that our funds receive annual audit. I might add we have not had audit exceptions in our managed trust funds during the 10 years that we have managed our portion of the fund. This compares to the BIA-managed trust funds which have never been audited.

Depending on investment markets, BIA managed funds may from time to time have the greatest development opportunity for tribes. Under the demonstration plan in H.R. 1846, tribes could move funds between management organizations; namely, the tribe or the BIA, and have access to the greatest investment opportunities and function as a fiduciary partner in the management of their funds. Such redeposit to a BIA-managed account would not change the status of these funds. They remain in trust status.

In our opinion, trust status is tribally driven, not BIA driven. Congressional judgments and treaties were issued to tribes, not the BIA.

To further clarify this issue of putting tribal monies back into trust, ITMA proposes the following amendment to H.R. 1846, adding section 210:

Within one year after the enactment of this Act, a tribe may return to trust status any judgment funds or other funds plus accumulated earnings that had at one time been in trust status, but that had been removed by the tribe by declaring those funds to be trust funds, by providing proof they had previously been held in trust in the past, and by incorporating those funds or investments purchased with those funds into a demonstration plan submitted to the Secretary pursuant to Section 202. Upon expiration of the one-year grace period, tribal funds or investments presently not held in trust by the Secretary may no longer be put into trust status. The Secretary shall not be liable for any losses suffered by the tribe during the period the funds were not in trust status.

But not all tribes are like Central Council Tlingit and Haida. Many tribes may not want to manage their funds themselves. In such case, the demonstration plan element of H.R. 1846 would not be desired or pursued by these tribes.

The opinion of Central Council Tlingit and Haida and ITMA is that H.R. 1846 is a good step in the right direction in terms of management of Indian trust funds. To that end ITMA endorses H.R. 1846 and encourages passage by the House of Representatives.

I am very appreciative of your time this morning and consideration of this important issue.

Mr. RICHARDSON. Thank you, Mr. Davenport. Good testimony. I appreciate your recommendations and your timeliness. Thank you.

[Prepared statement of Mr. Davenport follows:]



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TESTIMONY
of
ERIC R. DAVENPORT, DIRECTOR, BUSINESS ADMINISTRATION
To
House Subcommittee on Native American Affairs
of the
Committee on Natural Resources

September 27, 1993

Good Morning, It is an honor and great opportunity for me to provide testimony to the House Subcommittee on Native American Affairs on H.R. 1846.

My name is Eric R. Davenport. I am Director of Business for the Central Council Tlingit and Haida Indian Tribes of Alaska headquartered in Juneau, Alaska, and a Board Member on the Intertribal Trust Fund Monitoring Association (ITMA).

Today my comments are focused on the Demonstration Plan portion of the bill.

The purpose of the Demonstration Plan within H.R. 1846 is twofold. First, it permits Tribes the opportunity to exercise some control over their funds held in Trust by the federal government through the Bureau of Indian Affairs (BIA). Tribal participation in this way is consistent with the spirit of self-determination.

ITMA supports this approach to Trust Fund management as it allows Tribes to accept a level of management responsibility which they feel they are prepared to assume. It also permits redeposit of funds should they discover that they would rather have the BIA manage the account.

The second purpose, and a benefit of the Demonstration Plan permits Tribes to take advantage of investment opportunities which are not available through BIA management. Specifically, stock, corporate bond and mutual fund investments are, from time to time, greater earning opportunities for Tribes, and provide a better match with the a Tribe's overall investment policy. These types of investments are not possible through the BIA.

ITMA supports this expansion of investment opportunities for Indian Tribes.

ITMA is also cognizant of risk/reward investment principles. Built into the Demonstration Plan in H.R. 1846 is the approval of Tribal investment policies and plans. Such approval provides some assurance that Tribes are aware of higher risk type of investments and that they limit their exposure to these risks. In essence this approval process ensures Tribes know and follow overall sound Trust management practices.

In my opinion, there are two very organic factors to the Demonstration Plan portion of H.R. 1846. These are the recognition of Tribes as co-equals with the BIA in the management of their Trust Funds, and the greater opportunity for Tribes to realize and exercise their fiduciary responsibility to their Tribal membership in the management of these critical assets.

In the case of my Tribe, the Central Council Tlingit and Haida, we have managed our Trust Fund account for the last 10 years. Part of the reason for drawing funds out of BIA management control was because BIA record keeping was so poor that we were uncertain of account balances. But most importantly, we could get much greater return at similar risk through other investment sources.

At the Central Council we have our own investment policy that we follow. I might add that we are in the process of revising that policy now to reflect improvements in our overall financial health. We are proud of our investment success and take pride in and comfort in managing our own account.

The Central Council Tlingit and Haida does not view funds which we manage any differently than those managed by the BIA. They are all part of our Trust Fund. And, in our case, were the result of Congressional judgements. The only difference between Trust Funds which we manage and those managed by the BIA is that our funds receive annual audit; and I might add that we have had no audit exceptions in our managed Trust Funds during the last 15 years, and no audit exceptions in any fund activity for the last 14 years. This compares to the BIA managed trust funds which have never been audited.

Depending on investment markets, BIA managed funds may, from time to time, have the greatest investment opportunity for Tribes. Under the Demonstration Plan in H.R. 1846, Tribes would have access to these investment opportunities as a fiduciary partner in the management of their funds. Such redeposit to a BIA managed account would not change the status of these funds, they remain in Trust status. In our opinion, Trust status is Tribally driven not BIA driven. Congressional judgements and treaties were issued to Tribes, not the BIA.

To further clarify this issue of **PUTTING TRIBAL MONIES BACK INTO TRUST**, ITMA proposes the following amendment to H.R. 1846, adding section 210: "Within one year after the enactment of this Act, a Tribe may return to trust status any judgement funds or other funds (plus accumulated earnings) that had at one time been in trust status but that had been removed by the Tribe, by declaring those funds to be "trust funds", by providing proof that they had previously been held in trust in the past, and by incorporating those funds, or investments purchased with those funds, into a demonstration plan submitted to the Secretary pursuant to Section 202.. Upon the expiration of the one year grace period, tribal funds or investments presently not held in trust by the Secretary may no longer be put into trust status. The Secretary shall not be liable for any losses suffered by the tribe during the period the funds were not in trust status."

But not all Tribes are like Central Council Tlingit and Haida. Many Tribes may not want to manage their funds themselves. In such cases, the Demonstration Plan element of H.R. 1846 would not be desired or pursued by these Tribes.

The opinion of the Central Council Tlingit and Haida and ITMA is that H.R. 1846 is a good step in the right direction in terms of management of Indian Trust Funds.

And to that end ITMA endorses H.R. 1846 and encourages passage by the House of Representatives.

I am very appreciative of your time this morning and consideration of this important issue.

Mr. RICHARDSON. Ms. Roessel.

STATEMENT OF FAITH R. ROESSEL, ESQ.

Ms. ROESSEL. Mr. Chairman, Representative Thomas, thank you for the opportunity. President Zah sends his regrets that he could not be here today. The Navajo Nation would also like to thank you, Chairman Richardson, for your leadership in passing the investment employment credits, because that is really complementary to the Navajo Nation's interest in trying to maximize control over their own trust funds so that we can reinvest that into our own communities. And we need the investment employment credits for trying to create a private sector.

Currently, the Navajo Nation manages with the BIA a half billion dollars' worth of trust funds. Our first fund was created over 40 years ago for educational scholarships. We now have eight trust funds established, and as of December 31, 1992, we were managing 76.2 percent of our trust funds with the BIA managing 23.8 percent.

The six Navajo Nation funds under our control is our largest, the permanent trust fund, which has tripled in value since 1985 when it was first created. Another fund was created to assist with handicapped senior citizens, and vocational education, and our oldest fund, as I stated, is a scholarship fund which started with the principle of \$5 million and is now up to \$39 million, and we only use the interest on those accounts for scholarship programs.

We have other three miscellaneous accounts, pension funds, workers comp, and another account. The two funds under BIA control are created from favorable Indian claims, commission judgments, and from oil and gas royalties. And it is interesting because our second largest fund is controlled by the BIA. And this fund, the general fund, provides 40 percent of the Navajo Nation's generating budget—operating budget. So it is very important to us that we try to get access to that fund more readily.

As we have outlined in our testimony in detail, the Navajo Nation has established its own investment policies and procedures. As recently as 1981, at least 90 percent of Navajo Nation trust funds were managed by the BIA, and that was just a little over 10 years ago.

Now, as I have stated, we are up to three quarters of our funds being managed by ourselves. What really gave us a boost was in 1985 with the Kerr-McGee litigation, which established the principle that the Navajo Nation could tax without Secretarial approval, and that allowed us to establish our permanent trust fund.

In 1989 and 1990 we then embarked on an investment management project. The result, as I stated, is the Policies and Procedures Act which governed all our investments. To carry out these procedures we have in place a Navajo Nation Investment Committee to implement our policies. It is composed of five members. The Navajo Nation Comptroller is the Chair. The Navajo Nation Attorney General, another member, as well as the Auditor General, the Navajo Nation President, and the Chair of our Budget and Finance Committee of our Navajo Nation Council.

Our current investment policies are similar to State, city and county policies. We have the prohibition on any investments made

into real property, and also we have made the principled prohibition that prohibits any securities investments in companies which derive revenue from the manufacture or distribution of alcoholic beverages.

The Budget Finance Committee controls the Investment Committee, and the Navajo Nation Council is the ultimate arbiter. The benefits of undertaking control are, first, we are able to place the money into the securities of our choice.

Second, as Representative Synar was asked, it really is a benefit to be able to deposit large sums of money into local banks, to leverage loans, and that the tribes do understand their own priorities most intimately.

I should note that a few weeks ago President Zah testified in Albuquerque before the Comptroller of the Treasury, because we want to try to work better with the banks around the area, but it certainly helps to put our money in the banks to leverage loans.

Third, the largest benefit is the greater return on investments and the turnaround to reinvest into our own Navajo programs, services and, of course, educational scholarships.

Overall, we recommend this legislation make clear that the BIA be able to divest the Indian tribal judgment funds to an Indian tribe. As you have heard on the record earlier this morning, Mr. Parris stated that the BIA does not release the judgment funds to a tribal unless there is specific congressional authorization. And, in our instance, there is a local field solicitor opinion that prohibits any type of access to our judgment funds. Also, we propose language in our testimony to make that kind of clarification in the proposed legislation.

Second, we do recommend that there be a mandate in the legislation for reconciliation.

Third, we do not want to be required to go through the demonstration project, because we think that we have established ourselves and our track record to be able to undertake this.

So whether that is an ambiguity or not, we want to be sure that the intent of Congress is that that is not a requirement for tribes sufficiently sophisticated. I think the question was asked by the Chairman about GAO, about this particular aspect, and he said he didn't want to turn them loose.

I am assuming he was talking about American Indian tribes, but we don't want to have them impose more onerous standards on tribes.

In concluding, I would say we have our own system and what has assisted us greatly is that we are able to monitor most directly how the BIA is doing with our own funds still under their management, but more importantly we have been able to manage our own funds.

Thank you, Mr. Chairman.

[Prepared statement and supplemental testimony of Ms. Roessel follow:]



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TESTIMONY OF THE NAVAJO NATION
BEFORE THE
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
OF THE
HOUSE NATURAL RESOURCES COMMITTEE
REGARDING
BIA MANAGEMENT OF INDIAN TRUST FUNDS
INCLUDING
H.R.1846, "NATIVE AMERICAN TRUST FUND ACCOUNTING AND
MANAGEMENT REFORM ACT OF 1993"

SEPTEMBER 27, 1993

Testimony of the Navajo Nation
on BIA Management
of Indian Trust Funds
including H.R. 1846, "Native American Trust Fund
Accounting and Management Reform Act of 1993"

On behalf of President Peterson Zah and the Navajo Nation, I would like to thank Chairman Richardson and the Members of the Subcommittee on Native American Affairs for the opportunity to testify on the Bureau of Indian Affairs (BIA's) management of Indian Trust Funds and H.R. 1846, the "Native American Trust Fund Accounting and Management Reform Act of 1993." The Navajo Nation submitted written testimony earlier this year to the Senate Committee on Indian Affairs, and it again welcomes the opportunity to express its views concerning this legislation.

The Navajo Nation in recent history has made numerous attempts to gain more control of its own trust funds and appreciates the work of this Subcommittee in overseeing this important legislation. We support the intent of the act since we see it as a possible vehicle to gain more control of our own investments.

The Navajo Nation

The Navajo Nation is the largest American Indian tribe in the United States with a total population of 219,198 enrolled members (13 percent of all Indians nationwide). The Navajo Reservation is also the largest in size (36 percent of all Indian lands in the lower 48 states) with a land base of approximately 17 million acres that spans into the three states of Arizona, New Mexico and Utah. It is comparable in size to the state of West Virginia.

The Navajo Nation is also rich in natural resources and possesses tremendous economic potential. Despite our reserves of oil, natural gas and coal, socio-economic conditions on the Navajo Nation are similar to those found in underdeveloped third world countries. For example, according to the 1990 United

States Census, the median family income for the Navajo Nation was \$10,433 compared to \$30,056 for the entire United States. In addition, the percentage of people living under the poverty line on the Navajo Nation in 1989 was approximately 56 percent. The corresponding figure for the United States was approximately 13 percent.

The Role of the Trust Funds in the Navajo Nation's Economy

In spite of these conditions, the Navajo Nation seeks to improve the quality of life for our people by enhancing self-government, promoting a more self-sustaining economy through private sector economic development and improving and expanding the services provided by the Navajo Nation government. A much-needed boost to foster economic development in Indian country was provided by Congress earlier this year when the "Indian Investment and Employment Tax Incentives" were enacted into law. The Navajo Nation would like to thank Chairman Richardson for his tireless efforts in garnering support and seeing this important legislation enacted into law.

Although these tax incentives will be of great use to the Navajo Nation, its economy continues to lack a strong private sector, and we depend heavily on the revenue generated from our reserves of natural resources. We realize that in order to establish a healthy, growing economy for the future of our people, it is vital that we exercise greater control of our natural resources and maximize revenues from these and other sources. Through wise investments, this revenue can achieve the maximum amount of returns which can then be reinvested into Navajo communities through economic development and community development projects. If enacted, this legislation would allow the Navajo Nation and other American Indian tribes to take another step in managing their own trust funds and gaining more control over their own future.

Overview and Management of the Navajo Nation's Funds

The history of the Navajo Nation actively participating in development of investment strategies is significant and demonstrates a long term capacity to manage the investment of the Nation's assets.

Beginning in 1957, the Navajo Nation enacted legislation authorizing the creation of a "Navajo Education Scholarship Trust Fund" and dedicated \$5,000,000 for this purpose. Since that time through further actions of the Navajo Nation's Executive and Legislative Branches these investment strategies have been continued and enhanced. For example, in 1968, Merrill, Lynch, Pierce, Fenner and Smith were retained as investment experts to increase the investment capacity of the "Navajo Education Scholarship Trust Fund." As of December 31, 1993, through continued investment and added principal, this Scholarship Trust Fund has

grown to a level of over \$39 million.

The Navajo Nation currently has over a half of a billion dollars in funds that are categorized in eight different groups according to their specific use.¹ For example, one of the major funds, classified as "General Funds", is the general operating fund of the Navajo Nation government and is derived from revenues received from coal royalties, oil and natural gas royalties and timber stumpage. From the interest earned from the Scholarship Trust Fund, the Navajo Nation provides much-needed monetary awards to Navajo undergraduate and graduate students. Another fund is the "Chapter Funds" derived from favorable Indian Claims Commission judgments. A portion of the income derived from the interest of these funds are also earmarked to provide scholarships to Navajo college students, but the bulk of the interest is designated to finance the 110 chapter governments on the Navajo Nation. The chapter government is the local unit of government that provides services to the local community.

All of the Navajo Nation's funds are either managed by the Navajo Nation with the assistance of an independent financial advisor or held in trust and managed by the BIA. As recently as 1981, however, at least 90 percent of the Navajo Nation's trust funds were managed by the BIA. Since then, the Navajo Nation has been able to steadily increase the amount of funds under our control. Our greatest strides in overseeing our own investments have been made since 1985 when the Navajo Nation received over \$150 million dollars as a result of the Kerr McGee v. Navajo tax decision which upheld our taxing authority without requiring Secretary of the Interior approval. This landmark decision allowed the tribe to levy and collect back taxes owed to the Navajo Nation, but more importantly, it allowed the Navajo Nation to undertake investment management responsibility of the revenue.

As a result of this sudden increase in tribal revenue, and realizing that we could not foresee the future in terms of financial resources, the Navajo Nation Council approved legislation creating and authorizing a "Permanent Trust Fund." The purpose of this legislation was to put in trust, under tribal control, a recurring source of money so as to maintain future fiscal stability of the Navajo Nation.

In 1986, the Navajo Nation Council established and authorized the Navajo Nation to administer four different Navajo Trust Funds dedicated to specific needs totalling \$21 million. The Nation has invested the principal and from the interest only, awards grants consistent within the purposes of each fund.

¹The Categories of the Navajo Nation's Trust Funds consist of: a General Fund, a Permanent Trust Fund, 1986 Trust Funds, Scholarship Funds, Pension Funds, 1982/1986 Chapter Funds, Workers Compensation Funds, and Other Funds

As of December 31, 1992, the BIA was overseeing 23.8 percent of Navajo Nation funds and the tribe was managing the remaining 76.2 percent. Although we oversee a large portion of our total funds, we wish to assume control over all of our assets. The Navajo Nation sees H.R. 1846 as a way in which we can assume investment authority over the Navajo Nation funds currently managed by the BIA.

Navajo Nation Investment Policies and Procedures

In the development of the aforementioned Permanent Trust Fund, we invested in local institutions through the purchases of certificates of deposits, short-term annuities, and other short-term assets. After much discussion, we recognized that our investment strategies and practices were not conducive to the intent of the Permanent Fund which is to accumulate revenue so that the proceeds can be used to supplement the tribe's finances after the year 2010. Through the assistance of financial advisors and our growing in-house expertise, in 1989 and 1990, we embarked on a sophisticated Investment Management Project. The net result of the Project was the adoption of the Navajo Nation Investment Policies and Procedures, which now governs all Navajo Nation invested assets. Created along with the *Policies* was the Navajo Nation Investment Committee who directly oversees the duties carried out by the Division of Finance, the Investment Managers and the Independent Financial Advisors. The Committee's membership consists of: the Navajo Nation Controller who also serves as Chairman of the Committee; the Navajo Nation Attorney General; Auditor General; Navajo Nation President or designee; and the Chairman of the Navajo Budget and Finance Committee.

Pursuant to the aforementioned *Policies*, the Navajo Nation's overall investment program was formally implemented in January 1991 after being approved by the Budget and Finance Committee of the Navajo Nation Council on November 5, 1991. The *Policies* include the statement that the investment of all Navajo Nation financial resources, including those financial resources held by the BIA, are to be under the direct investment control of the Navajo Nation. Our current investment policies are very similar to state, city and county policies in that funds categories are established. There are prohibitions on certain investments like real property. We try to achieve a maximum rate of return given the risk levels, and we try to maintain a certain amount of liquidity. The policies are enforced by the Nation's Investment Committee and all final decisions are made by the Budget and Finance Committee of the Navajo Nation Council.

Benefits of Tribal Control

As a result of our independent investment program, the Navajo Nation realized a number of benefits. Not only were we able to place the monies in securities of our choice, we were able to deposit large sums of money into local

banks in our area. These deposits yielded returns in that we were then able to leverage loans from area banks for the benefit of the Navajo people. We also have been able to increase our returns as compared to the returns achieved by the Bureau and with the same level of risk. The investment results for 1991 and 1992 have indicated that by moving some funds into longer maturity bonds, the return on these funds achieved at least a two to two and one-half percent greater return than the BIA investments. In addition, by moving some funds from short term investments into stocks, the return on these funds achieved at least a four and one-half to five percent greater return than the BIA investments. According to the Nation's independent auditors in our most recently completed audit, an example which points to the tribe's success in managing our own funds, is that the Permanent Trust Fund has nearly tripled in value since 1985 when it was first established.

Judgment Funds Held in Trust by the BIA

Presently, three types of funds are held in trust by the BIA (General Funds, 1982/1986 Chapter Government Funds, and 1982 Scholarship Funds). Of high priority to the Navajo Nation are Chapter Government Funds and the 1982 Scholarship Funds. These funds, otherwise known as "Judgment Funds" because they are derived from favorable judgments from land claims, remain on deposit with the BIA in Dockets 69 and 299, 256-69 and 377-70 and 588-83L before the United States Claims Court.² The Indian Tribal Judgment Funds Use or Distribution Act as codified in 25 U.S.C. §1401-1408 governs all tribal judgment fund distributions. We raise this point because to date, the BIA has taken the position that in order to release Indian Tribal Judgment funds to the Navajo Nation it needs Congressional authorization.

Attempts Toward Transfer of BIA Trust Accounts to Navajo Nation

The Navajo Nation began serious discussions with the BIA in 1990 regarding the possibility of withdrawing the remainder of our tribal funds from the BIA's trust supervision. The discussions with the BIA are ongoing and may or may not resolve the issue of transferring BIA authority to the Navajo Nation.

As of May 1993, the BIA has begun to release funds to the Nation which are not the subject of "Judgment plans" pursuant to 25 U.S.C. § 1401 et seq. These

² None of the Navajo Nation judgment claims funds provide for per capita payments to members. Each dedicates interest earned to specific activities, such as scholarships or chapter development. It is the Navajo Nation's intent to continue the restrictions on use of the funds, but to direct and control the investment to maximize the return.

are funds derived from Navajo Nation trust assets, minerals, timber, land leases, and the like. To date we have received and are now investing significant sums of money based on this BIA action.

The BIA has offered to invest the remaining judgment funds pursuant to instructions from the Navajo Nation. This accommodation, while helpful, may not prove to be effective, as the BIA indicates it is restricted by law and regulations to the type and nature of investment placements it may make. H.R. 1846 appears to liberalize the provisions of 25 U.S.C. § 162(a) entitled, "Deposit of tribal funds in banks; bond or collateral security; investments; collections from irrigation projects" yet it appears that the overall rate of return may remain less than what the Nation is currently receiving by investing pursuant to the Navajo Nation Investment Policies and Procedures which provide for a more diversified investment portfolio.

Allow Navajo Nation (and Other Indian Tribes) Authority to Manage Own Indian Trust Funds

Because of the Navajo Nation's success in managing our own funds, we would like to pursue taking over complete management and control of all Navajo investments. We view this legislation as an important means of accomplishing this goal.

Section 208(a) of the bill provides that "An Indian tribe may, in accordance with this section, submit a plan to withdraw some or all funds held in trust for such tribe by the United States and managed by the Secretary through the Bureau." We do not interpret Section 208 as requiring a tribe to participate in the five year demonstration period (Sections 203 and 204) as a condition for withdrawing some or all of its funds to manage pursuant to § 208. If there is ambiguity on this point, it should be clarified because the Navajo Nation with its advanced procedures and policies does not believe it should be required to go through a five year demonstration period before it can manage its own funds once held by the BIA.

Further, in light of the now nearly 40 year history of the development of Navajo investment management and our comprehensive investment policies, there appears to be little need for a Navajo Nation Demonstration period. The Navajo Nation already possesses a very comprehensive plan by which all of our investment activities are guided. Our experience with the funds we currently manage shows that we are capable of handling our own investments. As such, the BIA has been requested to transfer all funds under their investment control to the investment control of the Navajo Nation. The Act should recognize an Indian tribe's own investment policies and procedures and sophistication.

Recommendations

Although we support the Subcommittee's intent on improving the management of Indian trust funds, the Navajo Nation would like to recommend that certain aspects be clarified. H.R. 1846 as currently written, may not address all funds held in trust and invested by the BIA. The BIA holds funds pursuant to the Indian Tribal Judgment Funds Use or Distribution Act pursuant to 25 U.S.C. § 1401 et seq. Since this proposed legislation does not clearly provide access to these funds, a tribe such as the Navajo Nation, may be required to seek separate legislative authorization to access such funds due to the Congressional review and acceptance of the distribution plans as required by 25 U.S.C. §§ 1403 and 1405.

To avoid seeking a separate legislative authorization, H.R. 1846 can be expanded to state that funds held by the BIA pursuant to the "Indian Tribal Judgment Funds Distribution Act", are subject to Section 208 dispersal to an Indian tribe. The recommended language in Section 208(a), underlined, would read as follows:

- (a) IN GENERAL.- An Indian tribe may, in accordance with this section, submit a plan to withdraw some or all funds held in trust including judgment fund accounts established by 25 U.S.C. § 1401 et seq. for such tribe by the United States and managed by the Secretary through the Bureau.

Further, Section 208 should be amended to provide that there be an accounting and reconciliation of funds process between the BIA and tribes prior to or contemporaneous with the release of funds. Unfortunately, tribal records and BIA records appear to be inconsistent and create the impression that funds held by the BIA may have been misallocated or improperly accounted for over time. Such a reconciliation process would address these issues and allow claims to be made by a tribe, if necessary. We recommend the following changes in Section 208(b), underlined:

- (b) APPROVAL OF PLAN.-The Secretary shall approve a plan under this section 204(a)(1) and subparagraphs (A) and (B) of section 204(a)(2) and the reconciliation of the subject accounts to be transferred between the Bureau and the tribe.

These recommendations are necessary for the Navajo Nation and other tribes to wholly manage and control their own investments. At Navajo, we certainly have confidence we possess the capability to manage our own resources.

Conclusion

One of the cornerstones in improving conditions on the Navajo Nation and in Indian country is through self-government and more tribal authority. With complete control in overseeing the investments of the Navajo Nation's trust funds, the Nation will be able to better carry out its goals of economic self-sufficiency and social stability.

The Navajo Nation believes that with the expertise we have acquired and the safeguards and mechanisms we have established, the time has come for us to assert direct control so we may maximize our revenue and savings for our children and grandchildren.

We are more than happy to work with the Subcommittee to discuss our recommendations to achieve direct tribal control over our trust funds and to rightfully take our place as trustee for our own funds.



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Supplemental Written Testimony of the Navajo Nation
on the BIA's Management of Indian Trust Funds
and H.R. 1846, "The Native American Trust Fund
Management and Accounting Act of 1993"

Submitted to the House Subcommittee on Native American Affairs as part of the
written record of the hearing held on Monday, September 27, 1993

Submitted October 13, 1993

**Supplemental Testimony of the Navajo Nation
on the Use of the Private Sector in Managing the
Navajo Nation's Trust Funds
to be submitted for the hearing record**

In addition to the testimony submitted at the hearing held on Monday, September 27, 1993 on the Bureau of Indian Affairs' (BIA's) management of Indian Trust Funds and H.R. 1846, the "Native American Trust Fund Management and Accounting Act of 1993", the Navajo Nation would like to thank the Subcommittee for allowing the Nation to supplement its written statement with an additional description of the Navajo Nation's use of the private sector in managing its trust funds.

Utilizing the Private Sector

As written in the previous statement, within the last decade, the Navajo Nation has gained considerable control in overseeing the investments of its trust funds. In order to achieve the highest level of return on investments, more stability, and better accounting, in June 1989, the Navajo Nation embarked on a sophisticated investment strategy to incorporate the use of individuals and financial institutions from the private sector. The purpose of such a strategy was to place a majority of the Navajo Nation's investments with the private sector. To facilitate this, the Navajo Nation adopted revised Investment Policies and Procedures for all Navajo Nation financial resources which was approved in October 1990 by the Budget and Finance Committee of the Navajo Nation Council.

In conjunction with approving the revised Investment Policies and Procedures, a formal process was followed in request for proposals (RFP's) to hire an Investment Advisor from the private sector. This process was extremely comprehensive in scope involving extensive interviews with potential advisors. Following the approval of the revised Investment Policies and Procedures and the Investment Advisor's hiring, the Advisor assisted the Nation in conducting a comprehensive search for private sector "Investment Managers and Custodians/Trustees." In conducting such searches, the Navajo Nation Investment Committee established criteria involving the types of investments to be carried out, the capabilities of the Investment Managers, and the abilities of the Investment Managers to communicate with the Navajo Nation Investment Committee. The Investment Managers and Custodians/Trustees were then chosen in November 1990 based on how well they would be able to fulfill such criteria.

During the interim, a majority of the Navajo Nation's funds were invested on a short-term basis in local banks by the Financial Services Department of the Navajo Division of Finance. As these short-term investments matured through the end of 1990 and throughout 1991, the funds were transferred under the immediate investment control of the Investment Managers. Presently, Investment Managers

from the private sector directly oversee approximately 90 percent of the funds under direct control of the Navajo Nation.

Currently, the Navajo Nation employs seven Investment Managers from the private sector. The Navajo Nation also utilizes three Custodian/Trustees, each having responsibility for various funds within the Navajo Nation (Pension Funds, Scholarship Funds and Pooled Funds).

Investment Management Structure of the Navajo Nation

In adopting the revised Investment Policies and Procedures, the Navajo Nation successfully incorporated individuals and financial institutions from the private sector to assist in managing investments of the Navajo Nation's funds. Attached is the Navajo Nation Investment Management organizational chart listing all individuals and financial institutions involved in managing the Navajo Nation's funds. These individuals are charged with specific duties and responsibilities in carrying out the investment policies of the Navajo Nation. First, the Budget and Finance Committee of the Navajo Nation Council is authorized to coordinate, oversee and regulate fiscal, investment, contract and audit policies of the Navajo Nation. As such, the Budget and Finance Committee has approval authority over policies and contracts recommended by the Navajo Nation Investment Committee (all investment functions).

Second, the Navajo Nation Investment Committee is responsible for developing and recommending investment policies of the Navajo Nation, recommending the Investment Advisor selection, and reviewing recommendations for Investment Managers and custodians/trustees. In addition, the Investment Committee receives quarterly investment performance reports from the Investment Advisor and financial staff of the Navajo Nation and reports to the Budget and Finance Committee. Present Investment Committee membership is comprised of the Controller, Attorney General, Auditor General, a Presidential appointee, and the Chairperson of the Budget and Finance Committee.

Third, the Investment Advisor is responsible for providing performance evaluation of the Investment Managers, monitoring Investment Manager compliance with established Investment guidelines, assisting the Investment Committee with Investment Manager and Custodian/Trustee searches and contracts, as well as assisting with negotiation of fees. Fourth, the responsibility of the Custodian/Trustee is to hold (safeguard) securities purchased by the Investment Managers on behalf of the Navajo Nation, and to report all investment transactions activity on a monthly basis to the Navajo Nation. Fifth, Investment Managers are responsible for investing Navajo Nation funds in compliance with investment policy guidelines established by the Navajo Nation.

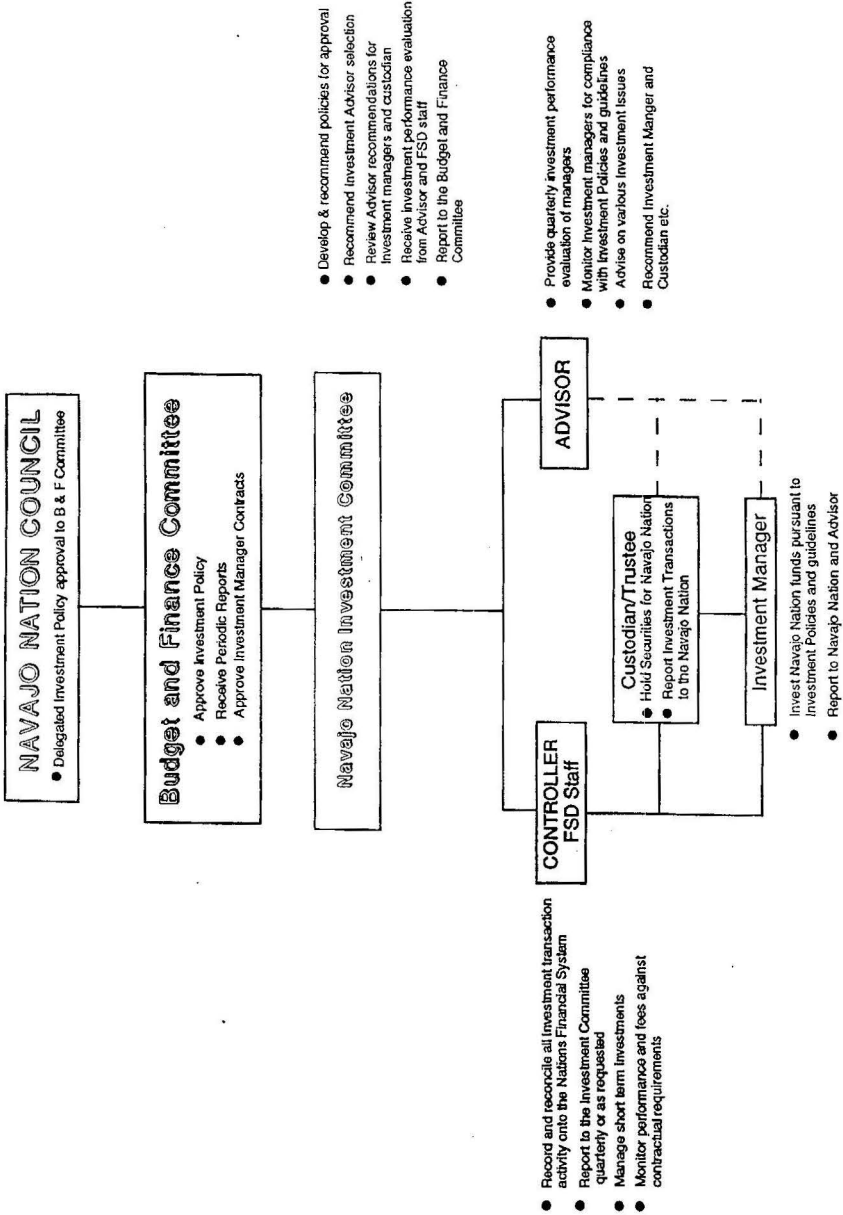
Finally, the Financial Services Department of the Navajo Division of Finance is responsible for managing short-term investments of the Navajo Nation, reporting

to the Investment Committee quarterly or as requested, and recording and reconciling all investment transaction activity in the Navajo Nation's financial system.

Conclusion

The incorporation of the private sector in managing the Navajo Nation's investments has resulted in not only greater returns (than those achieved by the BIA) to be used for the direct benefit of the Navajo people, but in greater flexibility as to the type of investments the Nation may make. In establishing the Navajo Nation Investment Management structure, the Nation has created a strong working relationship with the private sector and demonstrated that it is capable in carrying out sophisticated, long-term investments.

NAVAJO NATION INVESTMENT MANAGEMENT ORGANIZATIONAL STRUCTURE



Mr. RICHARDSON. Thank you very much. Let me ask Chief Fife, you testified as to the problems with your tribe receiving an audit of its funds. Do you know if the tribe has ever received full accounting of what the BIA is holding in trust for the Creek Nation?

Mr. FIFE. No, sir, I don't. I have been in office over a year and a half now, and I don't recall ever hearing of an audit, complete audit on our trust fund account.

Mr. RICHARDSON. So you don't know how much money you have?

Mr. FIFE. That is true.

Mr. RICHARDSON. This is incredible. Chief, I think you have made some very good recommendations. It just strikes me as worse than a house-checking problem. Thank you very much, Chief.

Ms. Roessel, I agree with you. I think the Navajo Nation has given the clear message the tribes are capable and have set up a strategy. We were fortunate to get through the Congress those Indian tax credits. We are going to proceed with further tax credits for companies that specifically relocate onto the reservations.

I think it is imperative that tribes develop specific policies for trust fund management. I think the Navajo Nation investment policies and procedures, in my judgment, sounds to be a very good and thought out research document. I have read it. I think it is a good strategy.

As you are aware, the issue of judgment funds is certainly related. It is a little different from the rest of the trust fund issues which we are discussing, and we will consider the inclusion of such funds further down the line. As I understand it, that is your recommendation also. Is that correct?

Ms. ROESSEL. Yes, it is, Mr. Chairman.

Mr. RICHARDSON. Ms. Roessel, what is your view as to the use of the private sector in the investment of these funds? Do you have any position? I know perhaps the Navajo Tribe may be a little sensitive to that. Regarding outside management, should we give tribes flexibility by having the option of investing with the private sector?

Ms. ROESSEL. Mr. Chairman, I may not have made it clear, but our testimony, I think, does state—maybe it does not, but let me clarify for the record, I am happy to submit this as part of a supplement to our testimony, but we do have a financial adviser that the Navajo Nation uses, and this individual is someone that is from the private sector, and in each of the funds, it is managed not just by one entity, private sector entity, but several depending on the fund. So I think the simple answer is we are certainly not scared of going out and seeking where the experts are. That is what we have done. And the Investment Committee really has responsibility for oversight to review the recommendations for investment managers and custodians.

We have somebody already in the system with that role, but also with our different funds. We have specific banks and managers that manage those particular accounts.

Mr. RICHARDSON. Mr. Davenport, you testify that you have had this account for 10 years. Why is this legislation necessary and how would it enhance the current process?

Mr. DAVENPORT. Seventy percent of our fund is still in BIA accounts. We have got about 23 percent that we are currently manag-

ing. Of major significance in the bill is the ability of tribes to take the money and to invest it in instruments that the BIA can't currently participate in, that have similar risk potentials but yet greater reward potentials, and then be able to move that money back into the BIA-managed account at other times.

Our approach is one of a partnership where we participate with the Bureau in the management of the trust fund. And its view now is not being a partnership. And once we manage it, the BIA is saying, you are out, can't put it back, sorry.

Mr. RICHARDSON. I have more questions, but I am going to ask my colleague who has patiently been waiting to proceed. Thank you.

Mr. THOMAS. Thank you, Mr. Chairman. I will try and be brief. First, let me say I am impressed and pleased with your testimony, each of you today. I think it is very positive testimony. I am a little interested, Chief Fife, you didn't comment on individual accounts, did you? You generally talked about the tribal account.

Mr. FIFE. Yes, I did touch on it a little bit, about the problems that the individuals have in not knowing how much their balance is, and lost interest.

Mr. THOMAS. That is an horrendous problem. I understand there are 300,000 plus accounts, I think. I don't know what it is going to cost to reconcile all those. Do you have any idea? Have you heard any numbers on the cost of that?

Mr. FIFE. I have heard some numbers, up to \$300 million to \$500 million to do this reconciliation. I don't know. It seems like a hell of a lot of money to spend on the reconciliation of trust funds.

Mr. THOMAS. I realize that the formation of these came from the allotment process and all that sort of thing, and apparently they are a bit like mineral royalty interest on fee lands in Wyoming. They just accumulate; is that it? How do you get out of that thing? It doesn't sound like a very satisfactory arrangement.

Ms. COBELL. It is not. The individual Indian accounts, there are also minor accounts that we forget to mention, where the judgment awards were awarded to the tribe, and minor accounts were set up for the minors, and that has been a real problem because there is no accountability at all to any guardian on those accounts.

Basically you are right, the account is derived from any income from Indian land or natural resources. For instance, I have an individual Indian account. I own land. And so I cannot, by the trust responsibility or the trust that is—management of the trust assets, the Bureau of Indian Affairs takes control of managing that fund for me. So I actually am in the 300,000 Indian accounts that has not had their accounts reconciled.

Mr. THOMAS. It seems like an unmanageable thing. I am thinking of some ways to change that a bit, I guess.

There is a lot of differences among tribes, I think. Some are very large and business-oriented. Others are very small, probably don't have the capacity. Have you ever thought, either of you, who do this fairly sophisticated management, offering to do the work for small tribes?

Mr. Davenport.

Mr. DAVENPORT. No. The Central Council is not offering that as a service. I am not—

Mr. THOMAS. There are tribes that have, I think, just a few hundred members, and they are sort of living apart and this and that. They obviously don't have the same capacity to handle that as you do.

Mr. DAVENPORT. First of all, in the demonstration portion of the plan, it would be at the option of the tribes. The tribe is not mandated to participate at that level. That is one of the real nice features about it, it is when they get ready, and it is a choice on their part.

I will add that we do have some tribes in southeast Alaska that do have smaller amounts of money, and that we will be accessed from time to time to assist them in appropriate ways of dealing with those kind of funds.

I would say that is on an informal basis rather than a formal basis.

Mr. THOMAS. I understand. I guess my concern is when you talk about tribal management or tribal involvement, a one-fits-all program isn't going to work.

Ms. ROESSEL. I would agree with that. I think each tribe has to develop at their own pace and what they are comfortable with.

As far as the Navajo Nation is concerned, we certainly would formally be able to work with tribes that are interested to see how we have set up our structure, how we are overseeing it, our policies and procedures and so forth. So I think to that extent we certainly would be willing to work with other tribes.

Mr. THOMAS. Ms. Cobell, you mentioned, and if you can just give me a very short answer, and I think, Mr. Davenport, you mentioned it, you are interested in doing some things for yourselves, doing it yourself, but you want to maintain the trust relationship. What specific aspect of the trust relationship is it that is compelling in terms of you doing your own management of these funds?

Ms. COBELL. I think in the case of the individual Indian account holder it is very important we have the trust relationship that has been promised to the individuals. One of the initiatives that we have been working on through the Blackfeet National Bank is a development of a trust department that we would be able, in working with the government, to contract on some of the individual Indian accounts, and not the ones that create all the problems such as defractionated heirship where you are getting in 50 cents in on an account in a year. But we would like to have the opportunity to show and demonstrate that we can manage those individual Indian accounts just like any private trust on the outside.

But I think it is important that the government still hold the trust responsibility to those individual Indians.

Mr. THOMAS. So, more specifically to the individual accounts as opposed to the tribal accounts? Is that true?

Ms. COBELL. Well, in that specific case, and I think Ms. Roessel talked about it, every tribe is unique in its own way. Some tribes are more sophisticated. They could take their entire trust funds out and manage them themselves. Other tribes are not so sophisticated. They do not have the capability to manage at this point. But I believe that eventually that will be the vision of every tribe, is to be able to pull their funds out and manage them themselves.

Mr. THOMAS. Would you comment on the elements of the trust that are important to you, Mr. Davenport?

Mr. DAVENPORT. Yes. In the case of the Central Council, claims activity initiated in 1934 and didn't conclude until almost 40 years later in 1971. And so the struggle of that period is very important to the people of southeast Alaska and to that tribe. And the derivatives of those funds are viewed as trust. And they view my role and responsibility of the funds that I manage in a fiduciary context.

And so they are trust funds. So, you know, that is the perception of the tribe in that regard. We handle them in the same way that whether they are with Sea First Bank or whether they are with BIA.

Mr. THOMAS. So the characteristic of trust is what needs to be maintained, not necessarily the government trusteeship. Is that a fair observation? If something new could provide—you could work in behalf of the Federal Government or instead of the Federal Government as a trustee.

Mr. DAVENPORT. Or in partnership with.

Mr. THOMAS. Yes, I understand. That is what I was trying to discover. By the way, if some of you are concerned about MMS, I share your concern. I think BIA has a rival in terms of difficulty of management, and that is MMS, because they collect a lot of Federal royalties in our State, of course, and interestingly enough the State collects them at about a sixth of the cost and basically does the same thing. We are working at that a bit. Thank you, Mr. Chairman.

Mr. RICHARDSON. I thank the gentleman. Let me ask Chairperson Cobell, am I to understand from your testimony that an organization chart for OTFM submitted in 1991 is still yet to be approved?

Ms. COBELL. Right.

Mr. RICHARDSON. 1991. That is two years.

Ms. COBELL. It has been two years. Like I stated in the testimony, we can't understand it either. There is much need for key management positions. They are spelled out in that reorganization. But I guess I have no answer except that I think there are bureaucrats that are opposing the reorganization.

Mr. RICHARDSON. I understand. Let me ask Mr. Parris, who I see in the back of the room, if this is true, where is the chart being held up? In the Bureau or at the Department level?

Mr. PARRIS. The Bureau has asked our office to prepare a revised organization chart to fold back in the Special Projects Team that was referred to in the testimony earlier. In order to do that we had to go back to the drawing board, and we are going to be submitting that early this week to the Bureau personnel office so they can re-submit it to the Department for approval.

Mr. RICHARDSON. So is it the agency? Has it been held up at the Bureau or at the Department level?

Mr. PARRIS. It has been frozen at the Department level for some time because of the changes of administration. Pending the review and approval, and then in August or late July we were given the go-ahead to revise the organizational plan in order to fold back in the Special Projects Team.

Mr. RICHARDSON. When will the committee get this chart? The Reorganization Task Force has approved the reorganization of the Office of Trust Fund Management, and it is at the Department level. As I stated in the testimony, it is very difficult for us to understand why an Office of Special Projects could be created without any type of approval, and yet the Office of Trust Funds Management is still waiting for their key management positions. And the operation of the Office of Trust Funds Management is very crucial for the present-day accounting of the funds and investing of the funds.

Ms. Cobell and Mr. Davenport, would you please submit to the staff after the hearing the names of those quote, "old-line bureaucrats" who are holding up reform? We would like to have that.

Ms. COBELL. Sure. We have it ready.

Mr. RICHARDSON. Madam Chairperson, the concept of a special master is an interesting one, but one that I feel has to be well thought out. I happen to believe that the special master works best when such an individual reports to a small entity, to a small group or a judge. I am a little concerned about such a special master reporting to a large board of directors.

Are you receiving any feedback from Indian country on this proposal?

Ms. COBELL. We are having a work session. The Intertribal Monitoring Association, in fact, we start this afternoon, where we are bringing in people to understand more thoroughly the role of the special master. And we mailed out to almost 400 tribes the concept of the special master. We have not received any comments at this time. But we are going to be working with organizations such as NCAI and other bigger organizations that would give us the capability to get tribal input because I think we have to move very carefully to make sure that they understand what a special master would do.

Mr. RICHARDSON. Mr. Davenport, do you have any views on that?

Mr. DAVENPORT. Well, I think that there are certainly some potential advantages, and as Ms. Cobell has already stated, I think that further study and analysis so that we paint the picture right is imperative.

Mr. RICHARDSON. Let me ask Faith, because I know she is also a distinguished lawyer, about the concept of the special master. I am specifically interested in who that person would report to, a large board of directors, a judge, or a smaller unit. Do you have any view on that?

Ms. ROESSEL. I am only familiar with special masters as they have been used in the water litigation, water law, water litigation context. And there I think, as usual, it just depends on the lawyer and whether he likes the special master or not.

Mr. RICHARDSON. But in those water cases, the special master reports only to a judge, right?

Ms. ROESSEL. Right, it is the judge or the surrogate. It is judicially created.

Mr. RICHARDSON. Mr. Fife, do you have any thoughts on this?

Mr. FIFE. Well, as I understand it, this person would be sort of a CEO for the organization. And to me, a proper person to report to would be the Under Secretary.

Mr. RICHARDSON. I just want to ask the tribes to get back to us on this, because this is an important component. I would hope that they cooperate with Ms. Cobell in giving her, and the group that she heads, the answers she needs. She is obviously trying to consult with tribes on this. Maybe the responses have been a little slow. I would hope that they get back to her and let us know what their views are.

Let me conclude by thanking this very good panel. You have made some very good suggestions. We hope to be in touch with you. Madam Chairperson, I really admire the work you are doing, even more so after this hearing. I hope you do stay in touch with us. Thank you.

For our last panel, we have Mr. Ross Taylor, senior vice president, U.S. Trust Company of New York; and Mr. Richard C. Hyde, executive vice president and chief investment officer of the Society National Bank in Cleveland, Ohio. As I have mentioned, we do ask you to summarize your statements for the record. They will be fully inserted. I want to thank both of you for coming and taking your time to give us some good policy advice on this issue. We welcome the private sector's involvement.

I have always felt the private sector should play a role in this. We appreciate your coming. Mr. Taylor, please proceed.

PANEL CONSISTING OF P. ROSS TAYLOR III, SENIOR VICE PRESIDENT, UNITED STATES TRUST COMPANY OF NEW YORK; AND RICHARD C. HYDE, EXECUTIVE VICE-PRESIDENT AND CHIEF INVESTMENT OFFICER, SOCIETY NATIONAL BANK, AND CHAIRMAN AND CHIEF EXECUTIVE OFFICER, SOCIETY ASSET MANAGEMENT, INC., CLEVELAND, OH

STATEMENT OF P. ROSS TAYLOR III

Mr. TAYLOR. First, I would like to thank you for the opportunity to testify from a back office standpoint. The administrative aspects of this are not overburdening, nor does the dollar amount make it difficult for them to be fully managed.

As a professional investor in representing professional investors, our current concern is that the Native American trust funds suffer from significantly constrained investment options. They are, as has previously been mentioned, constrained to invest primarily in bank CDs and Treasury securities or derivatives. These restrictions, which we believed were imposed to provide greater safety and security for assets, have, in fact, actually resulted in the assets absorbing greater risks.

These accounts, as structured, have little or no investment diversification. They are all fixed income vehicles. They have a high degree of correlation. All assets are tied to Treasury securities, and by the inclusion of CDs, bank CDs, they have failed to eliminate what we call event or principle risks. Banks go bust, even banks insured by the FDIC.

By trying to avoid one type of risk, the loss of principal, these accounts have been impelled to absorb other, even greater long-term risks. Most significantly, they have been forced to absorb the risk of loss of purchasing power. If the goal of these accounts is to generate investable assets over the long run, the current structure

in which they operate is crippling. If they wish to pay out 5 percent a year, they must earn over 9 percent in the current environment. Historically, Treasury securities and derivatives have had little or no excess return with which to build principal.

My goal is to constantly balance risk and return. I cannot avoid risk. I can only determine which risk I can absorb and how much I wish to take. The loss of principal seems to be the general definition of risk to most investors. But in a diversified portfolio of bonds and stocks, risk or loss of principal is a short-term, isolated consideration.

Since 1926, there is only one three-year period, non-overlapping years, in which the equity market has shown a loss. Conversely, there are four periods during this time in which long-term government securities have shown negative returns.

All financial markets suffer volatility. The high correlation of allowable investment in the Native American trust funds does not eliminate volatility. It has in fact concentrated it. The addition of asset classes such as equity and special investments would serve to both dampen the overall volatility of the accounts and increase their long-term returns.

Knowing the time horizon of an investment is essential. If these accounts are long term, and they appear to us to be long term, their asset mix should be long term. In my attached testimony, my testimony, we have Exhibit 3, which gives historic rates of returns for various asset classes.

From 1945 to 1993, 100 percent equity portfolio would have generated about 12.2 percent annually, whereas a 100 percent invested in Treasury bonds would have generated about 5 percent annually. While on the surface this doesn't sound like a lot of money, the miracle of compounding makes it substantial that \$1 invested in stocks in 1946 today would be worth over \$250, generating you \$7.5 a year in income. That \$1 you put into bonds would be worth today about \$10.50, generating you about 64 cents in income.

If this income is to be used to be invested in projects that tribes have need for, the loss long term is, as I said, crippling.

Treasury bonds, in addition to offering long-term payoffs, have offered you more consistent patterns of payoffs. In the 66 years up to 1992, 37 years have seen rising payoffs from portfolios invested in Treasury bonds and securities, whereas 29 years have seen falling. Equity securities have seen 56 years of rising payouts and 10 years of falling.

We are nearly at the end of a great bull market for bonds. The current returns one gets in the current fixed income markets are low. The chance for capital gains is terribly low. In Exhibit 4 of my testimony we give our projections for the next three to five years. Suffice it to say we believe that bonds will offer very little real return. CDs will effectively offer none or negative return. And equity will offer a very strong real return.

Effective portfolio management requires the blending of investors, and in this case we believe the investors could be the individual tribes. As a professional investor, I am governed by the "prudent man rule." This discourages me from taking excessive risk, including overconcentration.

I could not legally voluntarily invest funds under my management in the manner in which the Bureau of Indian Affairs is currently required to invest the Native American trust funds. We have recently seen several precedents for liberalizing investment provisions, most particularly the defined contribution retirement plans, the 404-C regulations.

Recent changes in the current interest rate environment focus on the need to liberalize restrictions on Native American trust funds. We not only can generate investment in much greater returns, but we can also reduce substantially the volatility and risk these accounts suffer over the long run.

[Prepared statement of Mr. Taylor follows:]

U.S. TRUST

**Subcommittee on Native American Affairs
of the Committee on Natural Resources Hearing
on the Bureau of Indian Affairs' Management of
Indian Trust Funds**

Monday, September 27, 1993

Testimony Given By

**P. Ross Taylor III
Senior Vice President
United States Trust Company**

83-758 217

The Current Law

At present, the U. S. government is the trustee for Indian tribal funds and all investment decisions are made by the Secretary of the Interior through the Bureau of Indian Affairs. Indian tribes and individual Indians have no control over how or where the funds are invested.

The Secretary of the Interior is authorized to invest Indian tribal funds in two ways:

First, the funds can be withdrawn from the U.S. Treasury and deposited in selected banks. Only banks regulated by the Federal Reserve or the Federal Deposit Insurance Corporation are eligible for these deposits. In certain cases where the funds must be kept available on demand, the Secretary can waive the requirement that banks pay interest.

Second, the funds can be invested directly in public-debt obligations of the U.S. government. These government obligations must be in the form of bonds, notes or other obligations where *both the principal and the interest are unconditionally guaranteed by the U.S. government*. And such investments can be made only through the Treasury.

As we understand it, the investments may not be placed in corporate securities, repurchase agreements or equities. Nor is the Secretary allowed to lend the securities for any purpose.

Investment Risks

As previously mentioned, investments in Native American Trust Funds are subject to significant restrictions. These restrictions, imposed to provide greater "safety" for these trusts, have, from an investment perspective, exposed them to greater risks. These restrictions have resulted in little or no diversification in the character of these funds' investments. They are all fixed income, or fixed income derivative investments. In addition, there is a high degree of correlation between the various investment classes that are eligible for use: they are all tied to rates of, and movements in, the Treasury markets. The inclusion of CD's also serves to create what we call "event" or principal risk. CD's and their returns are not guaranteed. Banks and S&L's can and do go out of business. If a bank which issued you a CD goes under, you might lose some or all of your principal. You will almost certainly lose accrued interest, and possibly even access to your money until a settlement is worked out.

Earning low, or temporarily no, returns on your invested assets serves to increase the likelihood of a fourth type of risk: loss of purchasing power. Purchasing power risk is the most insidious risk an investor faces. It is the erosion of your assets' purchasing power due to the failure of your investment returns to keep up with inflation. In a 4% inflation environment, an organization which wants to spend 5% of its principal annually must earn over 9% each year in order to keep its purchasing power intact.

As structured, these trusts are highly concentrated, highly correlated vehicles not immune from "event risk," earning the lowest returns allowable by law. By attempting to avoid one risk, they are compelled to suffer other, even greater, long-term risks.

Risk is not something that you can avoid. You can only choose which risks you wish to absorb. As investment managers we are always attempting to balance two primary variables: risk and return. Of the two, risk is usually perceived as the potential loss of principal. As mentioned before, there are many different types of risk. Principal risk, when dealing with publicly traded securities, is an isolated risk. It exists in the short-run for individual securities. A broader form of principal risk is volatility (Exhibit 1). All publicly traded securities have volatility. The high correlation of these funds' allowable asset mix does not eliminate volatility, it only concentrates it (Exhibit 2). The addition of asset classes such as equities, which do not have direct correlation to the fixed income markets, will serve to reduce overall portfolio volatility, as well as enhance expected returns.

Historic Rates of Return for Various Asset Classes

As stated previously, there are several elements to investments that determine their degree of success in achieving financial assurance. To repeat, those elements are Risk, Expected Returns, and Time over which the performance of these investments will be monitored. I would like to introduce the historical returns of several classes of investments in order to acquaint you with the range of their past returns.

In Exhibit 3, I have provided the annualized rates of return from 1945 to 1993 for equities as represented by the Standard & Poor's Index and bonds as represented by the Long-Term Government Bond Index. As you can clearly see, the annualized rates of return have varied significantly. A portfolio comprising 100% equities has grown at a rate of 12.2% annually through this extended period, while a portfolio of long-term government bonds has produced an annualized rate of return of just 5.0%.

It is interesting to note that long-term bonds have barely outperformed the risk free rate of return of U.S. Treasury bills during this same period. The effective blending of just these three asset classes (stocks, bonds, and cash) results in the stated rates of return; i.e., 75% stocks, plus 25% long-term government bonds would have resulted in a 10.7% annualized return for this period. Note that we have just come through one of the most dramatic bull markets in bonds in history and, in the last decade, investors have been able to achieve double digit returns in fixed income portfolios. We feel that these returns are an anomaly and, based on historical data, may not be achievable in the future.

At this juncture, I would like to discuss U.S. Trust's projected rates of return for these asset classes over the next three year horizon which tends to be an industry accepted market cycle for performance measurement (Exhibit 4).

As they like to say in mutual fund advertisements, past performance is no guarantee of future results. We believe that this is very much the case with the financial markets today. We believe that the rates of return that will be received from financial assets over the next three to five years will be lower than we have seen in recent years. We believe that the equity markets will return between 10% to 12%, with a single point estimate of 11%. Fixed income, coming off the greatest bull market in its history, will return between 4.90% and 6.75% annually, with a single point estimate of 6.0%. CD's and one year Treasury securities should return between 3.25% and 4.25%, with a 3.75% single point estimate. A

60% equity/40% fixed income portfolio should return 8.0% to 10.0%, with a single point of 9.0%.

Asset Allocation - Blending Risk and Return

The goal of asset allocation is to determine a combination of assets which has the greatest probability of achieving certain desired investment objectives. The importance of the asset allocation decision cannot be overstated. Historically, more than 90% of portfolio return is directly attributable to asset selection rather than to individual security selection.

This investment approach is a rational framework by which asset mix is considered in terms of its opportunity for return versus exposure to capital market risk. By evaluating the trade-offs between risk and return, the investor can better reach the appropriate asset mix. U.S. Trust's recommended asset allocation ranges are contained in Exhibit 5.

Asset allocation is designed to achieve a balance of securities in a given portfolio that is consistent with the Prudent Man Rule, to reflect the degree of discretion and intelligence required to seek reasonable income, preserve capital and avoid speculative investments.

Recent Legislation Regarding the Liberalization of Investment Restrictions

Historically, it has been the decision of the U.S. government to invest the assets of these trusts in a most cautious and conservative manner. In recent years, similar trusts have been established for the Nuclear Utility Industry. These nuclear decommissioning trusts (tax qualified by the IRS) were created to set aside a portion of rates being paid by utility customers to ensure that sufficient funds would be available to decommission (dismantle) the existing nuclear power plants at the end of their useful lives. The trusts were permitted to invest only in "Black Lung Trust" securities, specifically:

- 1) Direct obligations of the U.S. Treasury
- 2) Municipal bonds not in default
- 3) U.S. bank certificates of deposit

Any deviation from these approved securities would result in immediate loss of the tax-exempt qualification under IRS 468A. In July of 1992, as part of the comprehensive energy bill (HR 2012), approval was granted to liberalize the investment restrictions, allowing the trusts to maintain their tax qualification while extending their diversification to include equities. This liberalization will allow these trusts to seek more significant rates of return providing a level of financial assurance commensurate with projected decommissioning costs.

On October 15, 1992, the U.S. Department of Labor published final regulations which changed the composition of defined contribution retirement plans (Regulation 404c). The regulation states that "the plan must provide a broad range of investment choices which participants may select among or combine in varying proportions to meet their investment goals." To ensure this requirement is met, the plan sponsor must offer at least three "core" investment choices:

- 1) each of which has substantially different risk/return characteristics
- 2) each of which is diversified
- 3) with aggregate risk and return levels for individual needs
- 4) each of which, when combined with investments in the other alternatives tends to minimize risk through diversification.

A combination of core investment vehicles that is suggested is:

- 1) a diversified bond fund
- 2) an equity fund
- 3) a balanced fund

I believe that these two recent changes in the liberalization of these specific investment restrictions focuses on the importance of creating a flexible investment approach that will provide sufficient portfolio returns in changing market environments.

Conclusion

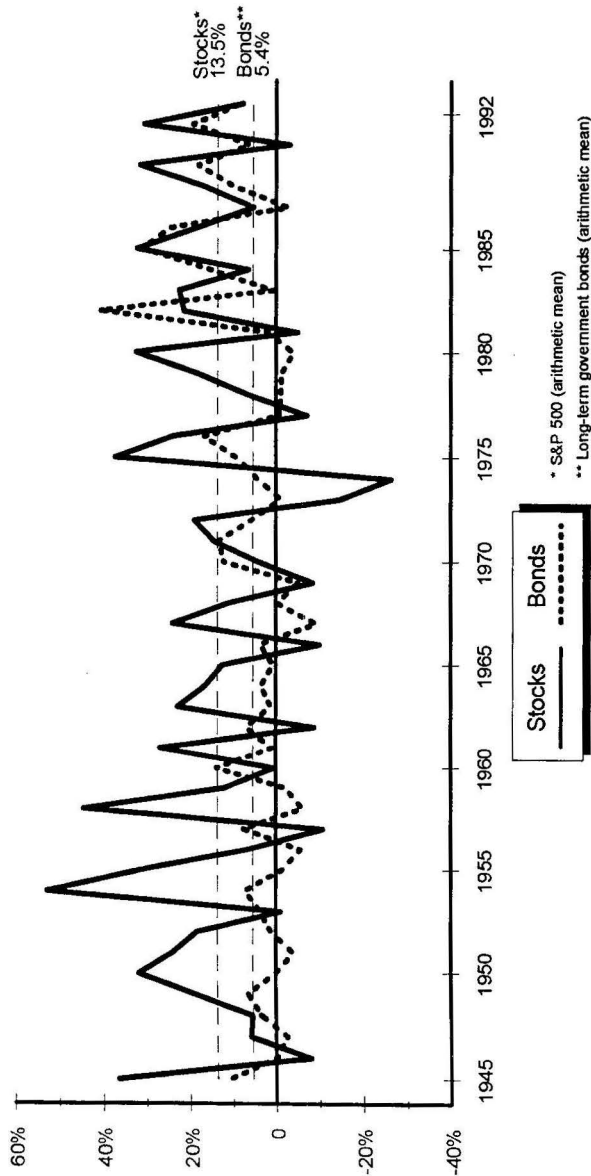
The existing investment restrictions tend to concentrate the portfolio's risk and deny the trust sufficient diversification to perform under changing market conditions. Liberalizing these restrictions should actually lower risk and increase returns. The investment world, supported by modern communications, state of the art computers, and aggressive, sophisticated investors changes dramatically from minute to minute. Prudently managed portfolios must be given the flexibility to benefit from these changes to ensure the continued financial success of our institutions.

Exhibit 1

ASSET ALLOCATION

Variability of Market Returns

1945 - 1992



Source: Ibbotson Associates

U.S. TRUST

Exhibit 2

ARE BONDS REALLY LESS VOLATILE?

Investment	Years of Rising Payout	Years of Falling Payout	1926 to 1992 Income Change	Principal Change
Equities	56	10	1,729.5%	3,130.7%
20 Year Treasury Bonds	37	29	49.8	-25.7
5 Year Treasury Notes	38	28	105.9	22.9
Treasury Bills	39	27	7.3	---

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Source: Ibbotson Associates

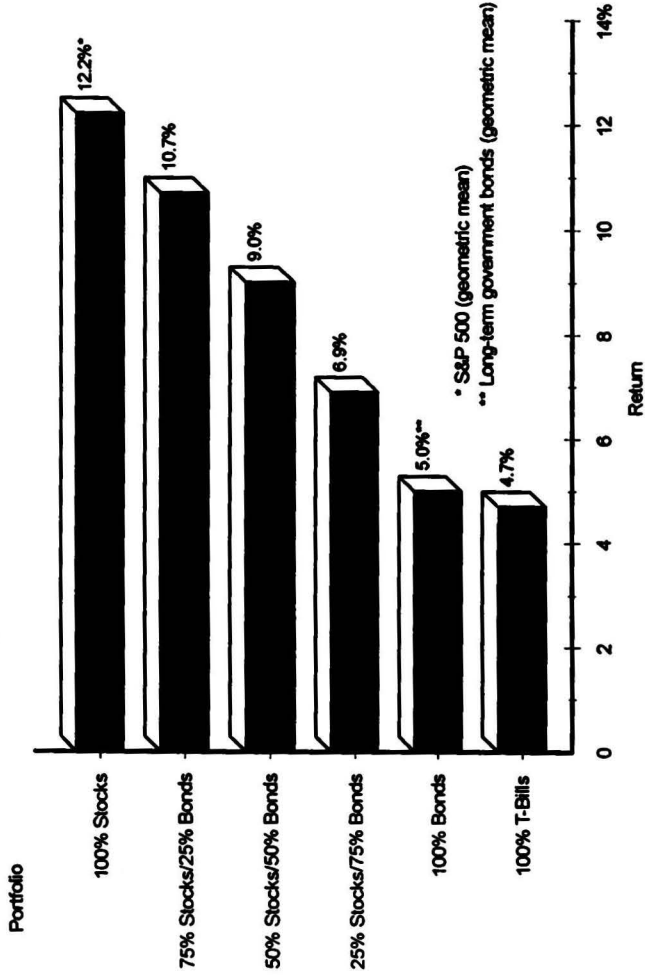
Exhibit 3

ANNUALIZED RETURNS

1945 - 1992

\$1.00 Invested

1945 - 1992



Source: Ibbotson Associates

U.S. TRUST

Exhibit 4

U.S. TRUST FORECAST 1994 - 1996

	Range	Single Point
Equity	(10.00% - 12.00%)	11.00%
Fixed Income	(4.90% - 6.75%)	6.00%
CD's	(3.25% - 4.25%)	3.75%
Balanced	(8.00% - 10.00%)	9.00%

Exhibit 5

<u>Asset Allocation Recommendations</u>	<u>Annualized Returns</u>		
	<u>Post WW II</u>	<u>1980's</u>	<u>1992</u>
Domestic Equities	12.3%	17.5%	7.6%
International Equities	14.1	20.3	-13.1
Special Investments	5-30	15-30	5-10
Fixed Income	5.0	12.6	8.1
Cash Equivalents	4.8	8.9	3.1

Mr. RICHARDSON. Thank you very much.
Mr. Hyde.

STATEMENT OF RICHARD C. HYDE

Mr. HYDE. Mr. Chairman, we have submitted a written statement for the record. I ask that written statement be made part of the record.

Mr. RICHARDSON. Without objection.

Mr. HYDE. I will highlight those remarks. If I can just editorialize a little bit on some of those remarks, there are one or two statistics that were perhaps missing.

The Society Corporation, as we indicated, is a financial services provider. We were established in 1849. Unlike some of the banks that today continue to have a difficult time with their financial ratios, we are happy to report that we are a strong financial institution with ROA and ROE figures that compare very favorably to industry averages.

We are encouraged by the provisions of H.R. 1846. That fact, I think in your words, Mr. Chairman, innovative solutions to an old problem are in fact being offered encourages us. The demonstration of those new approaches and the established program of training and recruitment of Indians in the management of trust funds is in fact one of the points that we would like to comment on this morning.

We obviously echo Mr. Taylor's remarks that we think there is a huge opportunity cost here if these funds are not properly invested. But our comments are largely going to be focused on the offer of training and personnel and the need to allow self-determination to take place.

The arduous task of reconciliation is in fact under way. I am encouraged by some of the testimony I have heard this morning. I would say there obviously needs to be continued need for work on the reconcile accounts. We are sympathetic to these efforts.

We think the opportunity that exists today are for making the funds more productive and for allowing the tribes themselves to have much more corrective involvement in the management of those funds. If we do not separate the issues, we worry that you might have a modern day John Dice versus John Dice, where you are focusing entirely on the reconciliation issue and not on the issue of making these funds as productive as possible and in fact giving the tribes the active involvement in the management of these funds.

We think that H.R. 1846 in effect offers a flexible approach that does facilitate reform. As we look at title IV of the training and personnel issues, we think within the private sector there is ample evidence today that training programs do in fact take place, and we see no reason why this cannot be the same situation here.

Society Corporation in September of 1992 was privileged to have a visit by former Secretary Lynn Martin, who presented us with the Eve Award, which reflects corporations that have been involved with multifaceted programs that are directed at the recruiting and advancement of minorities and women into upper levels of corporate management.

We find that our efforts, however, are not limited to our own employees. Somewhat anecdotally, I would share with you the fact that in the course of managing approximately \$25 billion of fiduciary assets, we have in fact several relationships that do involve developing nations. In the course of those relationships, we find it is not unlike the situation here. We find that sometimes we are dealing with countries that are very asset rich, but may not have the capabilities to actively manage their own funds.

We have in fact in these instances provided our client with an internship program that does include sending some of their constituents to our offices, involving them very actively in the training program.

Mr. Chairman, in your earlier remarks I believe you posed a question to Mr. Synar that dealt with the question of the absence of a physical proximity and whether or not this created a problem. I think I would answer that question in perhaps a little different way.

I think the physical proximity is very important insofar as providing traditional banking services. It is perhaps not as important insofar as helping in the training and the education of people who can in fact become more directly involved with their own destiny.

As evidence of that, I would cite the fact that I personally have made over 24 trips to our client, which in this case was nine time zones removed and almost 9,000 miles away. So it is a reciprocal process that does involve some efforts on the part of both parties.

Mr. RICHARDSON. Where was that trip to, Mr. Hyde?

Mr. HYDE. I would say to you that, out of respect of the confidentiality of our client, it is in the Middle East that we travel.

Mr. RICHARDSON. That is fine. I was just interested in the distance factor.

Mr. HYDE. I would also comment that we are involved currently with a program that really is independent of H.R. 1846 and is intended to be a joint venture with Native Americans where our hope is to provide the intellectual resources that can be used to help in an internship program. We find it a little ironic when we are traveling all the way to foreign countries and yet we are not directly involved with some of the people in our own country.

We hope to correct the situation with efforts that would involve both training and scholarship programs, not unlike what we heard about earlier with the testimony involving the Navajos. I found that testimony very interesting, the contrast between Mr. Davenport and Ms. Roessel. If I heard the statistics correctly, it almost is a reverse situation, where in one instance 75 percent of the funds were under management, and in the other case the number was 25 percent.

I think a key part of this program in our mind is to make it a very individualized program, where we recognize that each tribe is in fact unique, each tribe should in fact have a different investment objective and a different risk tolerance and the investment program should reflect those differences.

I believe, in Mr. Thomas's words, the one-size-fits-all approach is in fact unlikely to work. Our purpose today is not to provide testimonial to the relationships that Society has or the programs we might be initiating, but to affirm the fact that the private sector

does have programs in place that we think are congruent to the intent of H.R. 1846.

In conclusion, I would state that we hope the obvious passage of this bill would foster more of such programs in the future. We thank you for the opportunity to participate in this hearing.

[Prepared statement of Mr. Hyde follows:]

Society Asset Management Inc

Society

Richard C. Hyde

Statement of
 RICHARD C. HYDE,
 EXECUTIVE VICE-PRESIDENT AND CHIEF INVESTMENT OFFICER,
 SOCIETY NATIONAL BANK
 and
 CHAIRMAN AND CHIEF EXECUTIVE OFFICER,
 SOCIETY ASSET MANAGEMENT, INC.
 Before the
 Committee on Natural Resources
 Subcommittee on Native American Affairs

September 27, 1993

Mr. Chairman, on behalf of Society Corporation, I appreciate this opportunity to appear before the Subcommittee on Native American Affairs and present testimony on the Bureau of Indian Affairs' (BIA) management of Indian trust funds and H.R. 1846, "The Native American Trust Fund Accounting and Management Reform Act of 1993."

1. Background of Society Corporation

Society Asset Management, Inc., is a wholly owned subsidiary of Society National Bank which, is a wholly owned subsidiary of Society Corporation, a financial services company based in Cleveland, Ohio, with an asset base of \$26.0 billion as of June 30, 1993, and more than 400 banking offices in Ohio, Indiana, Michigan and Florida. Society's major business activities include providing traditional banking and associated services to consumer, business and commercial markets. Society has one of the largest investment management and trust businesses in the United States with offices in Ohio, Indiana, Michigan, Texas, Florida, New York, Colorado and Missouri, and provides a full range of investment and fiduciary services to institutions and individuals.

Society also offers customers a variety of complementary services, either directly or through nonbank subsidiaries, one of which is Society Asset Management, Inc., of which I serve as Chairman and Chief Executive Officer. Society Asset Management, Inc., is registered with the Securities and Exchange Commission and several State securities departments. It provides investment advisory services to corporate and public retirement plans, foundations and endowments, Taft-Hartley plans and high net worth individuals nationwide. It also provides investment advisory services covering a broad range of actively-managed equity and fixed income products, cash equivalents, convertible securities and international equity. Society Asset Management is the investment adviser to the collective trust funds of Society National Bank and

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to The Society Funds, a family of mutual funds.

2. The problem of Indian trust fund management

The Committee on Government Operations reported on the extensive and persistent problems of Indian trust fund management in "Misplaced Trust: the Bureau of Indian Affairs' Mismanagement of the Indian Trust Fund" (House Report 102-499 (April 22, 1992)). Those difficulties are nearly as old as the BIA itself and have created substantial obstacles to tribal self-determination and economic development. For 165 years Congress and the Executive have acknowledged the severity of the problem, but they have been unable to reach a consensus on a solution, let alone implement one. During that same period, the private sector has developed increasingly efficient and accountable financial management systems including the technology required to participate successfully in today's competitive and complex financial markets. The unwillingness or inability of the federal government over the years to import those systems to the BIA's trust fund management is well-documented even though debates persist about the reasons why that has happened.

The introduction of H.R. 1846 in the 103d Congress provides a fresh opportunity for discussing the use of private sector financial managers and systems in trust fund management, as has been proposed from time to time by the Executive. We welcome the opportunity to participate in this discussion. In our view, the Congress confronts two principal issues regarding Indian trust fund management. The first is the challenge of reconciling approximately 300,000 Individual Indian Money (IIM) accounts and 3,000 tribal accounts. The second is to make those accounts more productive and responsive to the goal of tribal self-determination.

3. Reconciliation of trust accounts

As documented in House Report 499, the condition of BIA records and the nature of the trust accounts of individual Indians create "formidable obstacles" to account reconciliation. The estimate for such an accounting of IIM accounts is \$281 to \$390 million. When compared with the \$440 million in those accounts, one must question whether the benefits of an accounting in that form are worth the costs. Having said that, we are mindful that beginning in 1987 Congress has insisted in annual appropriations acts that:

None of the funds in ... [the] Act[s] 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 such tribe or individual have been

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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 tribe or individual has been provided with an accounting of such funds.

E.g., Public Law 101-121, 103 Stat.701, 714 (October 23, 1989). Moreover, House Report 499 recommends that that provision be retained in future appropriations acts until a "full and fair accounting of all accounts in the Indian trust fund has been completed." Id. at 65. The Committee on Government Operations recommended that a final opportunity, until early 1993, be given to the Department of the Interior to improve trust fund management. If no demonstrable progress was made then the Report recommended that the trust fund be transferred to the Federal Reserve Board or some other appropriate agency. Id. at 66.

On June 22, 1993, the Senate Committee on Indian Affairs held hearings on S. 925, the companion to H.R. 1846. At that hearing, the Intertribal Monitoring Association on Indian Trust Funds indicated that neither the Association nor the tribal and individual account holders were prepared to endorse the transfer of the fund to the Federal Reserve. Instead, they proposed an amendment to appoint a Special Master to oversee the BIA's Office of Trust Fund Management.

Whatever policy the Committee ultimately chooses to adopt on the issue of account reconciliation, it seems generally to be acknowledged by federal and tribal interests that a new program to do so is not going to be ready for adoption in the near future. Nonetheless, Society is prepared to assist the Committee, Indian tribes and the Department to accomplish that goal as efficiently as possible.

4. Improving trust fund productivity and tribal self-determination in trust fund management

On April 22, 1993, H.R. 1846 was introduced by Congressman Synar. Entitled the Native American Trust Fund Accounting and Management Reform Act of 1993, the bill suggests an emerging view in the Congress that its prior insistence on a complete reconciliation of tribal and individual accounts before any reform in trust fund management will occur is giving way to a more flexible approach that facilitates reform and experimentation in trust fund management for the benefit of Indians and Indian tribes. We offer the following comments on Title II and Title IV.

a. Title II-Indian Trust Fund Management Demonstration Program The demonstration program authority in H.R. 1846 would

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authorize new relationships among Indian tribes, the government and private institutions for trust fund management.

One of the most valuable contributions an institution such as Society can make to a trust fund demonstration program is to build a strong foundation for trust fund management services through an early assessment of a tribe's goals and needs for its trust fund. That assessment will enable the design of an efficient and responsive system for the tribe. Society also has the infrastructure such as on-line computer capability at diverse locations to provide current account transactions and balances; electronic funds transfer; investment services; as well as the ability to generate financial reports for the Office of Management and Budget, the Treasury Department and the BIA. That capability could easily incorporate service to numerous locations in Indian country.

Society believes that competition in the marketplace for provision of investment services is healthy and that any private investment manager of an Indian tribe should cooperate fully in the transfer of accounts and investments to another institution should the tribe make a decision to do so.

With regard to certain specific provisions in H.R. 1846, we offer the following observations. The authority in Title II for private management of certain tribal and individual trust funds creates an implicit exception to the prohibition against third party trust fund management established in annual appropriations acts discussed above. But the prohibitory language in those acts is explicit. In view of the protective purpose of the prohibition and the controversy that led to its adoption in the appropriations acts, we recommend that Title II be amended to include an express exemption from the prohibition in each case in which the Secretary of the Interior approves a plan for an Indian-supervised, privately-managed trust fund program.

Moreover, during the term of a demonstration program, section 205 of H.R. 1846 limits the scope of the federal trust responsibility for the funds involved in the program. That limited responsibility does not include the duty to reconcile the demonstration program account. Presumably, this means for example that the Secretary would approve of only those demonstration programs that called for use of tribal funds whose reconciliation was not in question. If reconciliation is in question, does the Committee nevertheless intend that the demonstration program proceed with funds from an unreconciled account? If so, what responsibility would the private manager bear in that regard?

We note that Title III of H.R. 1846, entitled Recognition of Trust Responsibility, requires "periodic, timely reconciliations to

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assure the accuracy of accounts." There is no indication in Title II that the reconciliation obligation of the Secretary of the Interior in Title III is a prerequisite to approval of a demonstration program. Nor does Title II otherwise state how the trust obligation in Title III relates to the demonstration program authorization in Title II. In fact, as to any funds approved for use in a demonstration program, the limitation on liability in Title II appears to exempt the Secretary from the reconciliation obligation in Title III. To the extent that this issue remains unresolved in H.R. 1846, it may have the effect of discouraging private managers from participating in a demonstration program.

Society recommends that the bill be amended to make clear that any funds approved for management in a demonstration program will be certified by the Secretary of the Interior to be a portion of an account or accounts which is less than any amount which later may be determined in a reconciliation. Otherwise, it will be difficult for a demonstration program to proceed without the risk of continued controversy over ownership of the funds in the program.

b. Title IV-Training and Personnel Society strongly supports the training and personnel provisions of H.R. 1846. Our views on this may be summed up in the adage, "If you give a person a fish, you have fed him for a day; but if you teach that person how to fish, you will feed him for a lifetime." Society has a well-established program of out-reach and training that it developed for citizens of developing nations which are participants in Society's asset management program. It includes training in Society's various offices, and training and oversight by Society executives following trainee placement in financial management positions in their countries of origin. This program could be adapted to a BIA program that would retain a private institution to train tribal officials to do their own investing and help tribes develop systems to protect the integrity of their funds and provide on-reservation banking services.

As part of a training program for Indian tribes, an institution such as Society could develop strict guidelines on matters such as the qualifications for money managers, and criteria for investment risks, maturities, and rate sensitivity guidelines. This is a particularly pressing need, quite apart from trust fund management, given the advent of unprecedented income to Indian tribes from gaming enterprises sanctioned by the federal Indian Gaming Regulatory Act. Society can provide investment services and train customer representatives in Indian country who could explain and maintain account transactions. Society believes that there would be no difficulty in integrating Indian preference criteria in staffing trust fund management and investment services.

In addition, Society is pleased to report its own training

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initiative in this regard; it will establish a scholarship foundation for training Native Americans in financial management. The scholarships will be awarded and administered by an independent board with the objective of providing qualified Native Americans with an opportunity to study financial management.

5. Conclusion

Today, there is a dearth of money management expertise in Indian country, although there is an emerging effort to ameliorate that situation with the Intertribal Monitoring Association on Indian Trust Funds. The irony is that while Indian tribes and members of Congress are severely critical of BIA money management, most tribes still believe their money is safer with the BIA than in the hands of tribal politicians.

H.R. 1846 would allow tribes to do their own investing; this makes sense. The BIA needs to get out of trust fund management entirely, but the unfortunate fact is that most tribes do not have the competence or the accountability to manage their money at this time. The problems raised by Indian trust fund accounting are proof of an essential failure in Indian policy from its inception to enable Indians to succeed in their transition from an aboriginal culture to a cash economy and achieve the goals of self-determination and self-governance. Some would argue that the government's only objective was to create a system that would provide access to Indian lands and resources without regard to the consequences to Indians themselves. However questionable the motives, the unfortunate fact is that the federal government's institution for Indian trust fund management over the years has been badly designed and managed. The question now before the Congress is whether the private sector can be employed to improve trust fund management. Society believes that it can, and would be pleased to work with tribal governments, organizations such as the Intertribal Monitoring Association on Indian Trust Funds and this Subcommittee to realize that goal.

Mr. RICHARDSON. Thank you very much.

Mr. Hyde, you testified as to the problems which would arise regarding reliability of funds, reconciled or not, which are taken out of BIA's control. Let me say I agree with you. We must be clear on this issue if any legislation is to proceed.

How do you suggest we deal with that?

Mr. HYDE. With the liability issue? Well, I would suggest there would be an exemption as far as the burden of reconciliation is concerned, if you are in fact to really get the full force and enthusiasm of the private sector.

Mr. RICHARDSON. Do either of you believe that a private entity can take over the management of the individual Indian money accounts as well as the larger tribal accounts? Why don't we start with you, Mr. Hyde.

Mr. HYDE. Well, I think that, as we have already heard, the cost benefit of that reconciliation if the number is \$200 million or \$300 million, is certainly questionable in our minds. To the extent that there can be some type of negotiation reached on that issue, I think the answer is, yes, the private sector can be involved.

I think the important question is, Should it be involved or to what extent should it be involved. I would encourage the tribes, as you can perhaps surmise, to be involved in a greater extent themselves.

Mr. RICHARDSON. Mr. Taylor.

Mr. TAYLOR. I would say certainly yes. It is very much more a straight banking, savings and banking situation. It is a good opportunity for the tribes themselves to potentially get into some of the banking business. They are their assets, and there is no reason they shouldn't have a greater influence over them.

Mr. RICHARDSON. Let me be perfectly blunt, since both of you are in the business of making money for your clients. Do you think that you could make more money for the tribes than the BIA has?

Mr. TAYLOR. I think given the investment constraints in the BIA, it would be almost difficult not to make more money for the tribes than the BIA has.

Mr. HYDE. I would echo Mr. Taylor's remarks.

Mr. RICHARDSON. Many tribes have made it clear that whether they take direct control over their trust funds or the Federal Government maintains the responsibility, they want more control over the investment practices.

Do you believe that you can meet the tribe's desire to have Indian funds invested near Indian country, and at the same time ensure a good return of rate for the money?

In other words, could you design a program that would create jobs for the tribe besides setting a good return on their investment?

Mr. Taylor.

Mr. TAYLOR. I think it is very much market specific. As you mentioned, each tribe is very unique in its own circumstances.

So a blanket answer is simply an incorrect one. Obviously there are cases where that is very possible. I recognize that tends to be outside traditional rules governing ERISA money or trust fund money, because you are also trying to accomplish in that instance social good with the money as opposed to simply an investment possibility. But there is no reason why you certainly cannot look at

it, and in our opinion allocate a certain portion of assets and trust funds towards that type of project.

Mr. RICHARDSON. Mr. Hyde.

Mr. HYDE. I think the distinction does need to be made between social investing and meeting the risk-adjusted returns of the client if that is a major part of the client's objective, and I think yes, we can do that, but I think in most cases we are more interested in enhancing the returns with the smallest amount of risk.

I think in the earlier testimony, one of the speakers talked about I believe it was the Blackfeet Bank situation, whereby putting funds into that bank there could be lending arrangements made with the community, and I think that is perhaps a better way to approach that particular goal.

Mr. RICHARDSON. Like the Community Development Banks that individuals are talking about? I believe there is one in Cleveland, isn't there?

Mr. HYDE. We have one ourselves, yes.

Mr. RICHARDSON. I am very interested in pursuing your role and the role of the private sector in a future arrangement. Tell me what kind of an investment plan you would design for the tribes.

Let's say it is not for social investment; it would be to get the greatest return on their money. Could you give me a brief description of what you would do with that money?

Mr. HYDE. I think, as I indicated earlier, the starting point is to be a good listener and to recognize that in fact one size does not fit all, and that would necessitate sitting down with the individual tribes and trying to determine what their specific risk tolerances might be and what their investment objectives would be. That would really be the cornerstone of implementing a successful program.

Mr. RICHARDSON. Mr. Taylor.

Mr. TAYLOR. I would say obviously the key is not just to listen but also where you have expertise to attempt to educate.

We are working with a tribe in the Pacific Northwest, where they had historically invested their monies very similar to the way the Bureau of Indian Affairs invested their monies, and they have recently begun to explore new alternatives. We have spent time educating them about their various risks and what their definition of risk is. As I said, it is an educational process. What we have done is advocated a much greater use of equity. In fact, they have not used equity.

We believe equity is an attractive investment for them. It allows them to build assets as well as income. We were looking at something which is a radical shift, a 50 percent equity portfolio from what had been 100 percent Treasury bills, effectively. It is an educational process, we teach them, they teach us, and in the end we are coming out with something that is much better for the long-term interest of the tribe and the members of the tribe.

Mr. RICHARDSON. I am sure your companies have had some dealings with the BIA in the past. What has been the problem? What, in your judgment, is the single most important step we need to take to correct this problem right now?

Mr. Taylor.

Mr. TAYLOR. You have to get the accounting done, get the money, in my personal opinion, out of the government's hands and into the tribe's hands, where they can make their own investment decisions for their own needs. The key will be the depth of the problem with the accounting of the assets.

I find in the private sector if you ran a business that way, you wouldn't be running a business very long.

Mr. HYDE. I think the separation of the issues, rather than making one dependent on the other, I think they need to be approached simultaneously. The reconciliation is obviously very important, but I think the ability, if you will, to get the best available people involved with the management of these funds and to implement a training program is a step in the right direction.

Mr. RICHARDSON. How do you feel about my earlier statement that area directors have been making many of these decisions and have no financial expertise? Isn't it incredible that somebody with very little financial accounting investment expertise is making these kinds of decisions?

Mr. HYDE. Tragic is the word that comes to mind.

Mr. RICHARDSON. What about you, Mr. Taylor?

Mr. TAYLOR. I think it is a colossal mistake to allow people who don't understand what they are doing to have control over other people's assets. If we did it that way, we would be out of business.

Mr. RICHARDSON. What would you recommend be done within the BIA in terms of who reports to whom? Who should ultimately make these decisions? For instance, if we have minimal reform and the only thing we can do is say, the main decision maker within BIA is not the area director, but is Mr. Parris or Assistant Secretary Deer, the Secretary of the Interior, somebody? Who would you say it should be?

Mr. TAYLOR. It would be our opinion you should concentrate the decision making re your investments in the hands of your professionals, so it would be Mr. Parris and his people.

Mr. HYDE. I think it would be appropriate to have a focus point, whether it be Ms. Deer, Mr. Parris. That should be the clearinghouse, if you will, to get the appropriate support of this office to make the intelligent decisions.

Mr. RICHARDSON. Do you both endorse Congressman Synar's bill as a starting point?

Mr. HYDE. Yes.

Mr. TAYLOR. Very much so.

Mr. RICHARDSON. Is there anything else you wish to add? Any other records you wish to submit for the record of our proceedings today?

Thank you very much. This hearing is adjourned.

[Whereupon, at 12:12 p.m., the subcommittee was adjourned.]

A P P E N D I X

SEPTEMBER 27, 1993

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

H.R. 1846, THE NATIVE AMERICAN TRUST FUNDS ACCOUNTING AND MANAGEMENT REFORM ACT OF 1993

Subcommittee on Native Americans

Committee of Natural Resources

United States House of Representatives

Statement by

THE COUNCIL OF ENERGY RESOURCE TRIBES

**H.R. 1846, The Native American Trust Funds
Accounting and Management Reform Act of 1993**

Statement by

**The Council of Energy Resource Tribes
October 5, 1993**

The 53 member tribes of the Council of Energy Resource Tribes and their individual members are the owners of more than one half of the two billion dollar portfolio of Indian Trust Funds administered by the Bureau of Indian Affairs. We need not recite for this Committee the numerous inadequacies of the Bureau's historic program for the administration, investment, and accounting of these funds. The Council of Energy Resource Tribes would like to take this opportunity, however, to commend Congressman Synar and this Committee for the leadership that is reflected in H.R. 1846. This Bill, if enacted into law, would provide for the first time in the history of this nation a realistic opportunity for Indian tribes and their individual members actually to receive the benefit of the substantial wealth which they own in the form of these Trust Funds and the underlying resources which have generated these funds. The Council of Energy Resource Tribes wholeheartedly endorses the testimony offered by the Intertribal Monitoring Association on Indian Trust Funds and the Tribal representatives who appeared before this Committee on September 27th. We note with considerable pleasure the commitment contained in the Administration's testimony to provide adequate staffing to the Office of Trust Funds Management in order that long-neglected duties that would be expected of any trustee in the private sector can finally be addressed in the Bureau of Indian Affairs.

In this regard, we would like to urge this Committee to continue to provide vigilant oversight to the Bureau and the Department in these efforts. As pointed out in ITMA's testimony, the Department of Interior and the Bureau of Indian Affairs have a long history of showing up at Congressional hearings and making all the appropriate clucking noises about partnerships with tribes, commitment to the highest standards of fiduciary care, and a determination to see that historic problems in the administration of the trust responsibility are corrected forthwith. Immediately following these hearings, however, the career employees take charge again and the status quo prevails until the next Congressional hearing.

This hearing marks the first time that this Committee has addressed the issue of Trust Funds Management by the Bureau of Indian Affairs, and it marks the Clinton Administration's first representations to this Committee on the subject. This Committee and the Clinton Administration, therefore, have a unique opportunity to begin writing on a clean slate with regard to the problems in this area which have vexed the Congress for some twenty years and Indian account holders for more than one hundred fifty years. It is in this vein that we respectfully suggest that this Committee has an opportunity to make a difference that has eluded all prior attempts to reform the administration of this important program. Our experience in the arena leaves us with no doubt whatsoever that this opportunity can be a fleeting one, and only constant vigilance by tribes themselves and by the appropriate committees of the Congress can make the difference which we see to be clearly possible in the present circumstances. We hope that this Committee will follow up vigorously with periodic inquiries to the Department regarding progress on the commitments made by the Administration in testimony.

We likewise urge this Committee to pay particular attention to the efforts of the Bureau and the Department to secure an appropriate automated system for the administration and management of these Trust Funds. The Director and the Deputy Director of the Office of Trust Funds Management have made it abundantly clear in meetings with tribes over the last two years that an adequate staff in the Office of Trust Funds Management is a necessary, but not sufficient, condition for effective and responsible

management and administration of these funds. The present accounting systems utilized by the Bureau of Indian Affairs are not designed nor are they capable of providing the necessary tools for the management, investment, and accounting of more than two billion dollars in cash and securities in some three hundred thousand accounts. Unless the Department and the Bureau move expeditiously to acquire an adequate system for the administration of these funds, no real improvement will be possible notwithstanding the most ardent commitment on the part of the Secretary and his team at the Department of Interior.

The continuing effort to effect a historical reconciliation of tribal accounts for the most recent twenty-year period is proceeding in significant respects as though that were an end in itself. We would like to take this opportunity to advise the Committee that while this will be an unprecedented achievement, this exercise in itself will result in no significant improvement in present and future administration, and may not even result in satisfactory agreement between the government and any tribe, much less all tribes who have trust funds in the system. This is so because a number of issues related to the legality of disbursements, valuation of underlying resources, and ownership of properties generating these funds, etc., will not be addressed in the reconciliation. We believe that this Committee must fully understand that the reconciliation of these accounts on the books and records of the Bureau of Indian Affairs, and the reconciliation of these records with those maintained in the U. S. Treasury, are but important first steps toward the ultimate objectives of reaching a settlement between the tribes and the government with respect to the balances in their accounts and in improving the administration of these funds in the future. In this regard, we believe that significant modifications of the contract for the reconciliation of these accounts will be necessary in the very near future before any tribe will find the end product useful even as a starting point in evaluating alternative strategies for reaching settlement with the government. In large measure, therefore, the ultimate success of this effort will depend on the willingness of the government and the contractor to address the continuing concerns of those tribes whose accounts are presently being reconciled.

We are also pleased to note that Chairman Yates of the Appropriations Subcommittee has directed the Bureau to continue the annual audit of trust fund operations, which has been suspended since 1990. We hope that this Committee will lend its voice to the directions of the Appropriations Committee and urge the Administration to move expeditiously to engage a competent firm to conduct an audit of the trust funds operations of the fiscal years 1991, 1992, and 1993. This office annually executes transactions involving Indians' money in excess of 90 billion dollars a year, and we agree with ITMA that it is irresponsible in the extreme to suggest that these operations need not be audited on an annual basis. We note in this regard that the current Director of the Office of Trust Funds Management is the first official in the history of the Bureau of Indian Affairs to secure such an audit of these trust funds operations for the period 1988 to 1990, and we urge this Committee to join us in insisting that the Bureau continue this practice on an annual basis. We note that the Inspector General granted a waiver from the provision of the Chief Financial Officers Act to the Bureau of Indian Affairs with respect to auditing the trust funds operations for fiscal year 1991. It is our understanding that the White House budget office continues to resist the suggestion that those operations should be audited, notwithstanding the waiver granted by the Inspector General. We urge this Committee to invite the Administration to reconsider this position, and we applaud Chairman Richardson's suggestion during the hearing that the views of the Certified Public Accountant and the experienced banker who direct the activities of this office should be given great deference in these matters.

It gives us no pleasure to take note of the expense associated with the effort of cleaning up these accounts and reforming the Administration of these billions of dollars of Indian money. On the other hand, we

note that the alacrity with which previous Administrations and Congresses have acted to restore the confidence of depositors in the nation's commercial financial institutions should not be allowed to leave the impression with hundreds of thousands of American Indians that this nation has more regard for uninsured non-Indian depositors in commercial institutions than it has for the American Indians and Alaskan Natives whose monies the government holds in what Indian country regards as a sacred trust. We do not believe it is irresponsible to suggest that penny pinching, penurious, budget-driven decisions will not achieve the results that the Congress clearly expects and that the Administration has promised. We urge this Committee to advise the Administration that what the Congress expects is nothing less than as complete and honest an accounting as it is possible to render to the Indian tribes and individuals whose monies are at stake here. Likewise, we urge the Committee to advise the Administration that the Congress fully expects the Secretary to request sufficient funds to staff the additional positions which are being created in the Office of Trust Funds Management. We are advised informally that budget examiners in the White House budget office have suggested that the revised organizational chart for the Office of Trust Funds Management may be nothing more than an empty shell because the Administration has no intention of funding those positions. We believe that this will be nothing less than a cruel hoax perpetrated upon our tribes and their members if this were allowed to happen.

In short, while much is happening with respect to efforts to reform the Administration of Indian trust funds in the Bureau of Indian Affairs, the program which Indian tribes demand and which we believe the Congress expects is not yet in sight. We sincerely believe that only the firmest guidance and direction from this Committee and the Congress will provide the Administration with sufficient incentive to see that an improved program is actually achieved. We realize that this will require a significant commitment of both fiscal and personnel resources, but we expect the Congress to demand nothing less.

In closing we would like to express our sincere appreciation to Chairman Richardson and this Committee for the leadership and initiative which are reflected in the record of the September 27th hearing. If this Committee can achieve the improvements in this program which have proved so elusive for so many years, Indian country will be forever grateful. If the Council of Energy Resource Tribes can provide any additional information or be of further assistance in this matter, please do not hesitate to call upon us at (303) 297-2378. Thank you very much for your consideration.

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