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ESTABLISH AN ADDITIONAL ASSISTANT SECRETARY OF THE INTERIOR

GOVERNMENT

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HEARING

BEFORE THE

COMMITTEE ON

INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 291 and S. 2034

BILLS TO PROVIDE FOR THE ESTABLISHMENT WITHIN THE DEPARTMENT OF THE INTERIOR THE POSITION OF AN ADDITIONAL ASSISTANT SECRETARY

JULY 15, 1971



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1971

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ESTABLISH AN ADDITIONAL ASSISTANT
SECRETARY OF THE INTERIOR

DOCUMENTS

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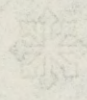
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(II)

S. 201 and S. 202

THE UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D. C.



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON, 1971

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ESTABLISH AN ADDITIONAL ASSISTANT SECRETARY OF THE INTERIOR

THURSDAY, JULY 15, 1971

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The committee met, pursuant to call, at 10 a.m. in room 3110, New Senate Office Building, Senator Clinton P. Anderson presiding. Present: Senators Anderson, Moss, Stevens, and Bellmon.

Also present: Jerry T. Verkler, staff director; James H. Gamble, Forrest J. Gerard, professional staff; and Thomas A. Nelson, Jr., assistant minority counsel.

Senator ANDERSON. The purpose of the open hearing today is to receive testimony from administration and public witnesses on S. 291 and S. 2034. Both bills provide for the establishment within the Department of the Interior the position of an additional Assistant Secretary whose primary responsibilities would include Indian Affairs.

S. 291 was introduced on January 26, 1971, by Senator Bellmon, and S. 2034, the administration proposal, was introduced on June 9, 1971, by Senator Jackson. The administration recommends enactment of S. 291 if amended as suggested in their report.

(The bills and Department reports follow:)

(1)

S. 291

IN THE SENATE OF THE UNITED STATES

JANUARY 26, 1971

Mr. BELLMON introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To establish within the Department of the Interior the position of Assistant Secretary of the Interior for Indian Affairs

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That there shall be in the Department of the Interior one
4 additional Assistant Secretary of the Interior who shall be
5 known as the "Assistant Secretary of the Interior for Indian
6 Affairs". The Assistant Secretary of the Interior for Indian
7 Affairs shall be appointed by the President, by and with the
8 advice and consent of the Senate, shall perform such duties
9 relating to the management of Indian affairs and matters
10 arising out of Indian relations as the Secretary of the Interior
11 shall prescribe.

1 SEC. 2. The Office of Commissioner of Indian Affairs
2 (together with the Offices of Assistant and Deputy Com-
3 missioners of the Bureau of Indian Affairs) are hereby
4 abolished, and all powers, functions, and duties of the Com-
5 missioner of Indian Affairs and the Assistant and Deputy
6 Commissioners of the Bureau of Indian Affairs are hereby
7 transferred to the Secretary of the Interior.

8 SEC. 3. Section 5315 of title 5 of the United States
9 Code is amended by adding at the end thereof the following:

10 “(92) Assistant Secretary of the Interior for Indian
11 Affairs.”.

12 SEC. 4. Clause (45) of section 5316 of title 5, United
13 States Code, is hereby repealed.

14 SEC. 5. The provisions of section 2 of this Act shall
15 take effect upon the expiration of ninety days following
16 the date of its enactment.

92^d CONGRESS
1st SESSION

S. 2034

IN THE SENATE OF THE UNITED STATES

JUNE 9, 1971

Mr. JACKSON (by request) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To establish within the Department of the Interior the position of an additional Assistant Secretary of the Interior, 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,*
3 That there shall be hereafter in the Department of the
4 Interior, in addition to the Assistant Secretaries now pro-
5 vided for by law, one additional Assistant Secretary of the
6 Interior, who shall be appointed by the President by and
7 with the advice and consent of the Senate, who shall be
8 responsible for such duties as the Secretary of the Interior
9 shall prescribe, and who shall receive compensation at the

1 rate now or hereafter prescribed by law for Assistant Sec-
 2 retaries of the Interior.

3 SEC. 2. Section 5315, title 5, United States Code, is
 4 amended by striking the figure "(5)" at the end of item
 5 (18) and by inserting in lieu thereof the figure "(6)".

U.S. DEPARTMENT OF THE INTERIOR,
 OFFICE OF THE SECRETARY,
 Washington, D.C., April 6, 1971.

HON. SPIRO T. AGNEW,
 President of the Senate,
 Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a proposal "To establish within the Department of the Interior the position of an additional Assistant Secretary of the Interior, and for other purposes".

We recommend that the proposal be referred to the appropriate committee for consideration, and that it be enacted.

This proposal provides for the creation of a new Assistant Secretary in the Department of the Interior who will be appointed by the President with the advice and consent of the Senate. He will have responsibility for those duties assigned to him by the Secretary of the Interior and shall be paid at the same rate as the other Assistant Secretaries of the Department of the Interior. The proposal also amends section 5313 of title 5, United States Code, by increasing the number of Assistant Secretaries provided for the Department of the Interior from 5 to 6. This new Assistant Secretary is needed in the Department of the Interior to help guide the implementation of a new National policy concerning American Indians that President Nixon sent to the 91st Congress in his statement of July 8, 1970.

In keeping with this new policy and the implementation of it, the new Assistant Secretary will be assigned the duties of supervising the Bureau of Indian Affairs and the Office of Territories by the Secretary of the Interior and will be given the title of Assistant Secretary of Indian and Territorial Affairs.

We believe that this new position will raise the areas of Indian and territorial responsibility to their proper role within the Department. The Indians and the people of the territories will no longer have to compete with the land and other natural resource problems for attention as they now do in the day-to-day operation of the Department. This will allow one man to focus his full time and attention on the unique problems and concerns of these people. He will be able to work with the Indians and the people of the territories to bring them into full enjoyment of the fruits of our Nation as equal partners. He will assist in the development of the full potential of these people, both for their own and the Nation's benefit.

In the area of Indian responsibility, this position will play a key role in carrying out the new, enlightened policy of the President toward our Indian people as it is implemented in the years ahead.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,

ROGERS C. B. MORTON,
 Secretary of the Interior.

[Enclosure.]

A BILL To establish within the Department of the Interior the position of an additional Assistant Secretary of the Interior, and for other purposes.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be hereafter in the Department of the Interior, in addition to the Assistant Secretaries now provided for by law, one additional Assistant Secretary of the Interior, who shall be appointed by the President by and with the advice and consent of the Senate.

who shall be responsible for such duties as the Secretary of the Interior shall prescribe, and who shall receive compensation at the rate now or hereafter prescribed by law for Assistant Secretaries of the Interior.

SEC. 2. Section 5315, title 5, United States Code, is amended by striking the figure "(5)" at the end of item (18) and by inserting in lieu thereof the figure "(6)".

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 28, 1971.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, United States Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department on S. 291, a bill "To establish within the Department of the Interior the position of Assistant Secretary of the Interior for Indian Affairs."

We recommend the enactment of the bill if amended as suggested in this report.

The bill establishes within the Department of the Interior the position of Assistant Secretary of the Interior for Indian Affairs. It provides that this new Assistant Secretary for Indian Affairs shall be appointed by the President, by and with the advice and consent of the Senate, and shall perform such duties relating to the management of Indian affairs and matters arising out of Indian relations as the Secretary of the Interior shall prescribe.

Section 2 of the bill abolishes the Office of Commissioner of Indian Affairs (together with the Offices of Assistant and Deputy Commissioners) and transfers all of their functions to the Secretary of the Interior.

Section 3 of the bill amends section 5315 of title 5 of the United States Code by adding to that section a new listing which is for the Assistant Secretary of the Interior for Indian Affairs.

Section 4 repeals clause (45) of section 5316 of title 5 of the United States Code. This removes from section 5316 the listing for the Commissioner of Indian Affairs.

Section 5 provides that section 2 of the bill, the section abolishing the Office of the Commissioner of Indian Affairs, shall take effect 90 days after the effective date of the Act.

The Department strongly favors the creation of an additional Assistant Secretary within the Department who will be responsible, upon assignment by the Secretary of the Interior, for the Bureau of Indian Affairs and the Office of Territories. It would be the Department's desire that this new Assistant Secretary be entitled "The Assistant Secretary of the Interior for Indian and Territorial Affairs". These two functions, both of which deal with human resources, should be combined in a single office, an office whose attention would be directed to the human resource element. This can be done if the bill is amended as we recommend.

We recommend that the title of the bill be amended by inserting immediately before the words "Assistant Secretary" where they appear in the title the words "an additional". We also recommend that the words "for Indian Affairs" be deleted from the title and that the words "and for other purposes" be substituted in lieu thereof. This would have the title of the bill read as follows: "To establish within the Department of the Interior the position of an additional Assistant Secretary of the Interior, and for other purposes." This amendment to the title of S. 291, while providing for an additional Assistant Secretary of the Interior does not by law establish the name of such Assistant Secretary but allows, as is the case with the other additional Assistant Secretaries of the Interior, the Secretary to prescribe for him duties and assign him whatever title he wishes.

We recommend that the bill be amended further by inserting on page 1, line 3, after the word "be" the word "hereafter". Further on page 1, line 3, we recommend that after the word "Interior" the phrase ", in addition to the Assistant Secretaries now provided for by law," be inserted. These amendments clarify that after the date of this enactment there shall be in the Department of the Interior one additional Assistant Secretary which shall be in addition to the five Assistant Secretaries now provided for in the law.

Further we recommend that beginning on page 1, line 4, the deletion of the language beginning with the word "shall" continuing through on lines 5 and 6 inclusive of the word "Affairs" on line 7. This amendment deletes the statu-

tory naming of the newly created Assistant Secretary as the Assistant Secretary for Indian Affairs. As stated above, we believe that the prescribing of duties and the assigning of names to Assistant Secretaries within the Department, in the name of good management, should be left to the discretion of the Secretary.

To further clarify this position we recommend that all of the language on page 1 beginning on line 8 after the comma be deleted and that there be inserted in lieu thereof the words "who shall be responsible for such duties as the Secretary of the Interior shall prescribe, and who shall receive compensation at the rate now or hereafter prescribed by law for Assistant Secretaries of the Interior."

We recommend the deletion on page 2 of all the language beginning on line 1 continuing through the bill to the end of line 16 and insert in lieu thereof the words:

"SEC. 2. Section 5315, title 5, United States Code, is amended by striking the figure '(5)' at the end of item 18 and by inserting in lieu thereof the figure '(6)'."

The Department feels there is a continuing need of the Office of Commissioner of Indian Affairs and we therefore have recommended language as an amendment to the bill that deletes the language abolishing the Office of the Commissioner of Indian Affairs. It is our intention that the new Assistant Secretary will supervise and work closely with, but not displace, the Commissioner of Indian Affairs in furthering the goals and aspirations of the American Indian.

Our new section 2 provides for necessary changes in section 5315 of title 5 of the United States Code to add one additional Assistant Secretary to those already provided for in that section.

In his message to the Congress on July 8, 1970, the President recommended the establishment of an additional position of Assistant Secretary of the Interior who would, under the direction of the Secretary of the Interior, supervise the Indian and Territorial Affairs Offices of the Department of the Interior. The President pointed out that the new position will raise the areas of Indians and territorial responsibility to their proper role within the Department. This legislation will mean that the Indians and the people of the territories will no longer have to compete with the land and other natural resources problems under the supervision of the Department for attention as they now do in the day-to-day operation of the Department. This will allow one man to focus his full time and attention on the unique problems and concerns of our Indians and territorial people. This attention can only result in improved understanding and relationships with these people.

The Office of Management and Budget has advised that enactment of S. 291, provided it is amended as suggested above, would be in accord with the program of the President.

Sincerely yours,

HARRISON LOESCH,
Assistant Secretary of the Interior.

Senator ANDERSON. The administration proposed identical legislation in the last session of Congress, following the President's July 8, 1970, message on American Indians. They submit that the creation of this post within the Department will facilitate and improve policy and administrative decisions in the areas of Indian and Territorial Affairs.

Senator BELLMON. Mr. Chairman, I have a statement that I would like to get in the record.

Senator ANDERSON. The entire statement will appear in the record at this point.

**STATEMENT OF HON. HENRY L. BELLMON, A U.S. SENATOR FROM
THE STATE OF OKLAHOMA**

Senator BELLMON. Thank you, Mr. Chairman.

I would like to take this opportunity to thank you as chairman of the Indian Affairs subcommittee for calling these hearings. It is my opinion that the legislation that we are considering today is one

of the most important pieces of legislation dealing with Indian Affairs which our committee will hear during the 92d Congress.

S. 291 provides for the establishment within the Department of the Interior, the position of Assistant Secretary for Indian Affairs. The Assistant Secretary for Indian Affairs shall be appointed by the President with confirmation by the Senate.

The Secretary of the Interior shall prescribe the duties relating to the management of Indian Affairs that the Assistant Secretary will perform. The position of Commissioner of Indian Affairs, along with the positions of Assistant and Deputy Commissioners, would be abolished, and their functions transferred to the Secretary of the Interior.

For many years the Bureau of Indian Affairs has received sharp criticism from Congress, interested sociologists, and the Indians who are served by that Agency of the Department of the Interior.

During my first year of service in the U.S. Senate, I was privileged to serve on a special Indian Education subcommittee of the Committee on Labor and Public Welfare. While that subcommittee was charged with the responsibility to investigate the educational needs of the Indian people, we were confronted with many examples of justified criticism of other Bureau functions. Chief among these was the dehumanizing effect of administering people problems by officials oriented toward land problems.

According to the latest figures, the Indian population of the United States was more than 50 percent greater in 1970 than the final count for 1960. The 1970 population of American Indians was 791,839, compared to 523,591 in 1960. I am proud to report that my own State, Oklahoma, ranks No. 1 in Indian population with 97,731.

It is my feeling that the growing Indian population of this country deserves to be represented within the Department of the Interior by its own Assistant Secretary.

Under the present administrative framework of the Department, the Bureau of Indian Affairs is presently the responsibility of the Assistant Secretary for Land Management. The reasons for this arrangement stem from the events surrounding the development of our country. It was thought that since lands were closely associated with the Indians who roamed the vast unsettled areas during the early days of our history, that the management of those people needed to be closely associated with public land management.

One hundred years ago, that may well have been the case, but no longer. Today the American Indian needs jobs, health care, education, and continued economic assistance to help him become a productive citizen.

Equally important, our Government needs to end the demeaning practice of dealing with its Indian citizens as if they were inanimate objects, as the title "Land Management" connotes.

The Bureau of Indian Affairs has continued to grow. In 1956 the budget of the Bureau was \$74.5 million; in 1961, \$126 million; in 1966, \$207.8 million; and in 1971, \$361.3 million. With continued emphasis on economic development, the budget and number of employees will surely increase year after year. This growth is further testimony that the head of the Agency merits elevation to the Assistant secretary level.

I feel that the time has come for this country to take a firm position on the future of American Indians. One of the best and most understandable methods to accomplish this is to provide for a people-oriented Assistant Secretary of the Department of the Interior who would be charged with the responsibility and possess the authority to cope with the serious and complex problems faced by our Indian citizens.

The present arrangement, the Bureau of Indian Affairs directed by the Assistant Secretary of Land Management, is both unworkable and dehumanizing so far as Indian citizens are concerned. The Assistant Secretary for Land Management, in addition to his supervision of the Bureau of Indian Affairs, is charged with the management of over 20 percent of the land area of the United States, plus all submerged lands constituting the Outer Continental Shelf. In addition to that awesome responsibility, the Bureau of Outdoor Recreation is under his direct supervision, as well as the responsibility for administration of the territories held by the United States.

To continue to place the welfare of almost 800,000 Americans under an agency called "The Bureau of Land Management" is to infer that Indians are not really people but some lesser order of creatures that can be managed as easily as the issuance of a permit to graze sheep or cattle.

This is an unintended insult stemming from the history of control of the American Indian when this country was being settled. I suggest that we have the opportunity with the enactment of this proposed legislation to correct a wrong that has existed far too long, and to begin to solve the problems related to our Indian citizens.

The sad lot of the American Indian is well known. The failure of our Government to assure him the opportunity and the means of gaining an equal share in American progress is one of the most shameful pages of our history.

The average Indian income is \$1,500, 75 percent below the national average. The average age of death of the American Indian is 44 years. For all other Americans, it is 65. The unemployment rate among Indians is nearly 40 percent—more than 10 times the national average. The infant mortality rate is twice the national average.

These dismal facts prove that the present arrangement has not worked, and are eloquent arguments for improvements which this bill will make possible. The creation of an Assistant Secretary for Indian Affairs in the Department of the Interior and the restructuring of the agency that would result from its creation will insure the opportunity for future progress for American Indians.

It is long past time the Federal Government start treating American Indians like people and not like property.

Senator ANDERSON. Mr. Secretary, you may proceed.

STATEMENT OF HON. ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR; ACCOMPANIED BY HARRISON LOESCH, ASSISTANT SECRETARY, PUBLIC LAND MANAGEMENT, AND FRANK A. BRACKEN, LEGISLATIVE COUNSEL

Secretary MORTON. Mr. Chairman, Senator Bellmon, I would like, if I may, to bring up to the table three people with me. I would like

Miss Victor, Assistant Secretary Loesch, and Mr. Bracken, who may be able to answer some questions here, and it would be helpful.

Senator ANDERSON. You may proceed.
 Secretary MORTON. Mr. Chairman, and members of the committee, Senator Bellmon, it is a pleasure to appear here this morning to testify in support of S. 2034 and S. 291, if amended as suggested in the Department's report, both of which have as their objective the establishment within the Department of the Interior of an additional position of Assistant Secretary of the Interior.

The new Assistant Secretary created by this legislation will have responsibility only for Indians and the trust territories. He will be called the Assistant Secretary for Indians and Territories.

As the Department of the Interior is now structured, Indian and Territorial Affairs come under the direction of the Assistant Secretary for Public Land Management, along with the Bureau of Land Management and the Bureau of Outdoor Recreation.

The creation of this new position will raise the areas of Indian and territorial responsibility to their proper role within the Department. The Indians and the people of the territories will no longer have to compete with the other bureaus for secretarial attention, as they now do in the day-to-day operation of the Department.

This will allow one man to focus his full time and attention on the unique problems and concerns of these people. He will be able to work with the Indians and the people of the territories to bring them into full enjoyment of the fruits of our Nation as equal partners. He will assist in the development of the full potential of these people, both for their own and the Nation's benefit.

One of the main concerns of the Indian people and the peoples of the territories is the management and development of their lands and resources that provide their livelihood and home.

Equally urgent are the personal and human needs that deserve greater attention. They need improved health, education, and housing. They need the chance to develop their own business enterprises, and generally to determine their own future.

It is to deal with the total needs—the land and resource needs as well as the human needs—that we recommend the creation of this additional Assistant Secretary.

This bill should be viewed not only as a worthy end itself but also an integral part of the administration's new approach to Indian policy. This approach has been submitted to the Congress in the form of a legislative package.

This package, composed of seven separate proposals, deals with various crucial aspects of Indian development and self-determination. President Nixon recognized the central role of this bill in the package in his historic message on Indian policy, delivered to Congress on July 8, 1970. In that message, he stated:

To help guide the implementation of a new national policy concerning American Indians, I am recommending to the Congress the establishment of a new position in the Department of the Interior—Assistant Secretary for Indian and Territorial Affairs.

Thus, it is appropriate that this bill should be the first of the package to be the subject of a hearing before this committee this term. This additional position will play a key role in carrying out the new,

enlightened policy of the President toward our Indian people as it is implemented.

There are two changes that need to be made in each of these bills. These changes are necessitated by the enactment of Public Law 92-22, which created an additional Assistant Secretary of the Interior. That was, of course, our Assistant Secretary for Management and Budget.

In order to make these changes, we recommend that section 2 of S. 291, as amended, and section 2 of S. 2034 be amended by (1) striking the figure "(5)" where it appears and substituting in lieu thereof the figure "(6)", and (2) by striking the figure "(6)" where it appears and substituting in lieu thereof the figure "(7)".

Thank you for this opportunity to appear in support of these bills. I will be happy to answer any questions that the committee might have.

Senator ANDERSON. Senator Bellmon.

Senator BELLMON. Thank you, Mr. Chairman.

Mr. Secretary, as you know, I have offered S. 291, and the main difference seems to be that in 291 we create an Assistant Secretary with the title of Assistant Secretary of the Interior for Indian Affairs, to make it include territories as well, but I am concerned that under 2034, where we simply create a new Assistant Secretary, that perhaps not this administration but some of the administrations might overburden this office with other duties, so that the Secretary might not be able to devote the time necessary to Indian matters.

Do you consider this a possibility?

Secretary MORTON. I do not think it would be either a probability or possibility. Of course, anything is possible, Senator Bellmon, but I feel that a Secretary of Interior will be more effective in proportion to the flexibility he has in the right to manage.

We have made a substantial change in the Department of Territories already. We have abolished the Office of Territories per se, and have included the functions of that office as a secretarial responsibility.

At this point in time, for example, Assistant Secretary Loesch has a Deputy Assistant Secretary for Territories. This change was made, and I think it is going to work very, very well.

The Office of Territories as it was constructed no longer filled the bill of serving the people in the territories because of the changes that occurred in the territories themselves.

In the Virgin Islands and Guam, for example, the political status of those two areas has changed considerably because of the fact that the Governors now in those two territories are elected by the people themselves. In Micronesia, or the Trust Territory of the Pacific, we have now appointed by the President an ambassador to deal with the question of status and the relationship between the High Commissioner and the Department of the Interior, or the Secretary, should be such that he should report directly to the Assistant Secretary for Territories, and not through a territorial director or office. In fact, there should be and is now a closer relationship between the High Commissioner and the Secretary himself than there has been in the past.

So these changes we have made in a sort of an orderly way to take advantage of or to respond to the changes that have taken place in the field.

Now, if we freeze in the responsibilities and take away the flexibility that a Secretary would have in making changes of that order, I think we are making a mistake.

On the other hand, I think that the title itself, the intent of Congress, the desire that you have, and I have, and we all share, in bringing the situation governing our Indian peoples into a brighter light, is obvious, and I would prefer, certainly, as the responsible manager of the Department, to have the flexibility perhaps to withdraw some element or appropriately add some element of responsibility to the Secretary, and yet stay completely within the spirit of the act.

Now, this is the case with Secretary Loesch. His title is Secretary. He is the Secretary for Public Lands. He is the land Secretary, as is well understood, and if we began to move elements of management into his jurisdiction that did not fit the spirit of that title, Congress would jump all over us, and I think perfectly rightfully so.

So in conclusion, to make a long story short, I feel that statutory job descriptions are not in the interest of the best management. However, I think the intent of Congress should be fully known and fully understood through the report and through the testimony that is brought before the debate on the bill, and then I think we are better off doing that than we would be by saying precisely this is the way it should be done.

Senator BELLMON. Mr. Secretary, Mr. Loesch's title is Assistant Secretary for Land Management, and this more or less identifies his responsibility. You have other Assistant Secretaries for Power and Water and other jobs. I fail to see why creating an Assistant Secretary for Indians and Territorial Affairs would be any different.

Secretary MORTON. I think we have a misunderstanding.

We want the title to be Assistant Secretary for Indian and Territorial Affairs. We want the title. We want the spirit of the act to be just that.

But I do not think we want to be bound in by a statutory job description that says you cannot add anything else to it, or you cannot take anything away from it. This is the case with Secretary Smith and Secretary Loesch. They do have the title. Their titles are identified, but within their general framework of their relationship to the total Department.

For example, the BOR is under Secretary Loesch. The National Park System used to be, and then it was put into a grouping with the Sport Fish and Wildlife. The statutory requirement for the Secretary for Sport Fish and Wildlife and Parks is only that he has Sport Fish and Wildlife, and we added to his responsibilities the Park Service. That was done back in 1964.

Senator BELLMON. What you are saying is that you would give this new Assistant Secretary a title of Assistant Secretary for Indian and Territorial Affairs.

What I am concerned about is that I want the Indian citizens to know they have an Indian Secretary interested and solely concerned with their welfare.

Secretary MORTON. I could not agree with you more. That is why we are here, and that is what we want to do, too, and there will be no doubt as to his responsibilities.

As to this point in time, there is no question in my mind about his responsibilities as far as BIA and all of Indian activities are concerned.

I would like to really study again, however, the advisability of putting the territorial responsibility under a new man at this time, because you are in a great deal of change there, and there might be very serious disadvantages from a management point of view of taking that responsibility away from Harrison Loesch, because he is familiar with it, it is complicated, and it has taken quite a time to become familiar with it, and we might want to move a little slower on that.

Mr. LOESCH. Senator Bellmon, if I could add one thing to what Secretary Morton has said, I am not sure it is clear that we have only one statutory Assistant Secretary in the Department. That is Assistant Secretary for Sport Fish and Wildlife.

My job, Hollis Dole's job, Jim Smith's job, so far as statutes setting those jobs up are concerned, are simply Assistant Secretaries, and the duties are assigned, and title is assigned, but not by the statute, and we are simply requesting that the Assistant Secretary for Indians and Territorial Affairs be left in the same status as all of the other ones except Mr. Reed's job, which is statutory as to Sport Fish and Wildlife.

Senator BELLMON. Mr. Secretary, there is another major difference between S. 291 and 2034, and that is section 2 of S. 291, which abolishes the Office of Commissioner of Indian Affairs and Office of Assistant and Deputy Commissioner of Bureau of Indian Affairs, and transfers those to the Secretary.

It seems to me that would be an advantage to you as administrator of the Agency, and give you greater flexibility of assigning duties to the new Assistant Secretary.

Secretary MORTON. It might be, Senator Bellmon, except from this point of view. I will be candid. I think we have a tremendous amount of work to do in this whole Indian area, and I am not at all happy with standards and management or benefits that are being derived from appropriations that the Congress is making.

Senator BELLMON. And the results as far as the Indian people are concerned.

Secretary MORTON. That is right. The results on the ground are with the people themselves and their lives.

So it may be perfectly within the realm of a person's talents or capability to serve as a Commissioner or serve as a Deputy Commissioner, but you may want to seek people of slightly different talents, probably broader experiences, in the role of the Secretary.

I would like to regard that as a separate second step. Let us work toward such a goal as that, but we might be cutting off our nose to spite our face if at this point in time we suddenly abolished those offices, then had an obligation to those people to put them in the new offices that we create, and we do not have any better set-up than we have got today.

I would hope that we could not bind ourselves arbitrarily at this point in time in this agency when these people need help.

Senator BELLMON. Mr. Secretary, it occurs to me if you create a new Assistant Secretary and put him in charge of a bureaucracy that is already locked in and sort of ossified, and do not shake up any of the

existing bureaucracy, you are going to give this man an impossible assignment.

Secretary MORTON. We candidly do not agree with you. I think we have already created a Deputy Assistant Secretary for Indian Affairs, who now reports to Secretary Loesch, and he has been effective in making some changes.

We may have some ossification problems, too, but we have got some others that would not fall in the category of being ossified.

I just think that what you are almost forcing us to do is changing the names of people who are already on board, in existence, by taking this route, which will not get the job done, and change their titles, and I think this is bad.

Senator BELLMON. I would not be forcing you to change anything. It would give you, the Secretary and Assistant Secretary, a freer hand in reorganizing and restructuring the agency that he is going to head.

As it is now, if he comes in, with these titles already set and positions already filled, he is going to find himself as somewhat a figure-head, in my opinion.

Secretary MORTON. I think it is a matter of judgment. I do not want to be under any moral obligation or any pressure to take a person who is now serving in the Bureau at a given level and bring him into the Secretariat. If I am not fully convinced that the talents of that individual are suited to that job and what you may do, when you abolish a position, you have then to deal with people who are in it, and I think we are trying to do exactly the same thing.

I think I would like to have the flexibility of working it out the best way we can at the present time, and come to the Congress at some future date, which I would do as soon as I saw that there was no longer a need for any particular job, be it the Commissioner's job or any other.

I would like to have the opportunity of the initiatives, rather than having the initiatives taken for me, which puts me in a little bit of an arbitrary position.

Senator BELLMON. Mr. Secretary, it is my hope to give you the flexibility that you want to have. That was the whole reason for putting this section in the bill.

That is all, Mr. Chairman.

Senator ANDERSON. Mr. Moss.

Senator MOSS. I just have one question.

You recently sent up a nomination for an Assistant Secretary for Programs, Mr. Larson, I believe, so you have had that Assistant Secretary's position open for some time. Why do you not fill that with Indians, and then come up seeking legislation on programs?

Secretary MORTON. Well, that route could have been taken. It might have been a viable alternative, Senator Moss, but I felt that we really need an overall program management system in the Department very badly to really measure what the benefits of the Department are to the constituencies that they serve.

When you have an agency as multimission-oriented as the Department of the Interior, 21 mission offices, they tend to become very autonomous, which is natural, and they tend to live in the status quo, which is natural, and the only way you can develop consolidations of mission, the prevention of overlap and conflict sometimes in mission,

is through a very thorough analysis and very creative approach to our problem.

We have these two arms of the Secretariat, the programs arm and the administration arm, which are designed to be departmentwide, and they are the only people in the whole Department, other than my own personal staff, which is about two or three people, and the Under Secretary, who operate departmentwide, and I think there are great savings, and great benefits to be derived through improving the relationship of bureaus one to the other, and improving the mission structure of the bureau so that there is less overlap and less conflict, and the only people that you can motivate and implement to do that are the people who have a departmentwide responsibility.

We could have gone that route. We could have taken the Water Quality Secretary and could have designated him as the Indian Secretary, but I feel that the Indian Secretary, with legislative backing that you have here, is going to have far more, be far more influential in management of Indian affairs than one who is just simply appointed to take over those responsibilities by a Secretariat.

The new Assistant Secretary for Indian Affairs now will have congressional authority and congressional backing. I think that is very important.

Senator MOSS. Thank you.

Thank you, Mr. Chairman.

Senator STEVENS. Mr. Secretary, what you are really seeking, then, with this legislation, more than anything else, is congressional approval of the concept of total reorganization of Indian affairs within the Department of Interior. Is that right?

Secretary MORTON. Yes. I think what we are doing is trying to prevent the Indian people from, to be very candid about it, sort of being a step-child in the whole Government structure and bringing him to a level with our public lands, with our Park Service, with our Bureau of Mines, with our other basic, fundamental responsibilities, and we do this, in fact, by bringing them under a specialist Secretary as these other areas are.

If you look at the history and talk to former Secretaries, and I have talked to Secretary Hickel and I have talked to Secretary Udall at great length on this on several occasions, you find that the attention that the Bureau of Indian affairs gets from the Secretary and Secretariat has always been at sort of a lower degree than some of the other bureaus, where there has been a person like Harrison Loesch, who is undoubtedly an authority on land law. He has had a lifetime of experience in dealing with land matters in his own home State, and in his own private practice.

We have the same specialist orientation in Hollis Dole, who is a geologist and who deals with minerals and is mineral-oriented.

Nobody has been Indian-oriented. What we are trying to do, because we think the time has come for a real program of self-determination on the part of the Indians, and some real progress, we have been talking around this issue, and yet we have deplorable conditions on reservations that neither you nor I nor anyone here are proud of.

And I think by bringing the Indian into focus as far as a governmental responsibility is concerned, we achieve a great deal.

I do not necessarily feel that it is total reorganization of the BIA, though. I think we have to do a lot of things in the BIA to make it fully responsive to the needs of the Indian.

Senator STEVENS. That was my next question.

If there is total reorganization, do you have any kind of management concepts formulated, or are there going to be more bureaus?

Secretary MORTON. No. I have a lot of management concepts, but what I need right now is an Assistant Secretary with whom I can perfect these management concepts, with whom I can work on a personal basis, whose responsibility is for the Indian people, and to the organizations which serve them, because any organization concept or any disciplines that I intend to impose, there is going to have to be some person at a very high level to constantly monitor them and adjust them to make them work on the ground.

Senator STEVENS. In my experience during my period at the Interior Department, Mr. Loesch's position was filled with somebody whose primary background was dealing with Indian affairs, but I agree with you that multiplicity of responsibility in the public lands management area has increased so that it is a wise move, and I congratulate you.

What organizational structure would you then have in terms of total number of Assistant Secretaries, if this is approved?

Secretary MORTON. We will have seven Assistant Secretaries, a total of seven. We have mentioned Assistant Secretaries Loesch, Smith, Dole, and Reed. That is four, and we have programs and administration, which is six, and this would be the seventh.

Senator STEVENS. Is the Solicitor now at that level?

Secretary MORTON. The Solicitor is at the same level, but his job is very specifically the lawyer for the Secretary and the Department.

Senator STEVENS. Thank you very much, Mr. Chairman.

Senator ANDERSON. Mr. Secretary, we appreciate your testimony here this morning.

There will be some discussions about the Indian Reservation areas in the future. Have you any comment to make on the present ownership of these lands? I am thinking of Cochiti, where I introduced a bill hopefully designed to help them, and now they claim this Indian land is already theirs. I wondered if you had any comment. I am referring to the Cochiti Pueblo Reservoir on the Rio Grande River.

Mr. LOESCH. Yes; I am acquainted with that, Mr. Chairman, and we are having a difficult time, as I understand the Bureau, making the necessary contractual arrangements.

You are speaking of the Indian interests in the Cochiti Reservoir. Is that correct?

Senator ANDERSON. Yes.

Mr. LOESCH. We have had a difficult time getting the contractual arrangements and the necessary credit arrangements made, if I follow your question.

Senator ANDERSON. There is some discussion about it. The Indians claim the Commission has said the Indians do not have title. I am trying to find out where these lands were.

I was wondering if this matter was causing you any trouble or embarrassment, if you could go ahead and push the title, when the Indian Claims Commission has already established the title, and on what basis do they operate the claim.

I am not trying to worry the Secretary. I know he has problems. But I wondered if Mr. Loesch could come back here and talk to us about it.

Mr. LOESCH. I would be very happy to do that, Senator Anderson.

Secretary MORTON. Give us the opportunity to discuss this with you, Senator. We are not quite fully aware at the moment of exactly the point you are driving at.

It is a complicated proposition, but I know that Secretary Loesch and myself and others would be delighted to get into all of the details of it that you would like.

Senator ANDERSON. Thank you.

The next witness is Franklin Ducheneaux, Special Counsel, National Congress of American Indians.

We are glad to have you, Mr. Ducheneaux. Go ahead.

**STATEMENT OF FRANKLIN DUCHENEAUX, SPECIAL COUNSEL,
NATIONAL CONGRESS OF AMERICAN INDIANS**

Mr. DUCHENEAUX. Thank you, Mr. Chairman.

My name is Franklin Ducheneaux, and I appear on behalf of the National Congress of American Indians as their consultant on legislative matters. Mr. Leo Vocu, Executive Director of NCAI, is attending a meeting of national Indian leaders in Albuquerque, New Mexico, and is unable to appear as witness. I wish to express the appreciation of NCAI and Mr. Vocu to you and the committee for this opportunity to present our position on these bills.

S. 219 by Senator Bellmon and S. 2034, the administration's bill, are similar in that they both provide for the establishment within the Interior Department of an additional Assistant Secretary. Beyond this, the two are radically different.

S. 2034 would simply create a new additional Assistant Secretary within the Department, without specifically providing that such position will be responsible for the administration of Indian affairs. The pertinent language of the bill provides that he, the new Assistant Secretary, ". . . shall be responsible for such duties as the Secretary of the Interior shall prescribe."

Of course, the Executive communication on S. 2034 and the departmental report on S. 291 indicate the intent of the Department that the new Assistant Secretary shall be charged with responsibility for the administration of Indian affairs along with trust territories, and that he shall be designated the "Assistant Secretary of the Interior for Indian and Territorial Affairs."

S. 291, in section 1, specifically provides that the new Assistant Secretary shall be known as the "Assistant Secretary of the Interior for Indian Affairs," and that he shall ". . . perform such duties relating to the management of Indian affairs and matters arising out of Indian relations as the Secretary of the Interior shall prescribe."

Section 2 abolishes the Office of Commissioner of Indian Affairs and the Offices of Assistant and Deputy Commissioners, and transfers their powers, functions, and duties to the Secretary of the Interior.

This is, of course, an implied repeal of sections 1, 1(a), 2, and 2(a) of title 25, United States Code, which sections are the legislative authority for these positions. Sections 3, 4, and 5 are housekeeping provisions.

Before going into NCAI's position on the two bills as they differ and our preference for either, we wish to go on record as supporting the concept and broad intent of both bills. Both recognize the inherent conflict of interest in the attempt to fairly represent Indian interests as trustee through administration by the Assistant Secretary for Public Land Management. Both recognize the need to give Indian interests a greater voice and a greater visibility in the higher councils of the Department of the Interior. Both recognize the frustration and despair of Indian leaders in trying to make their needs and petitions heard and considered beyond the Bureau of Indian Affairs.

There is an inherent conflict of interest in the role of the United States as trustee of the tribal entity and the private property of Indian tribes and individuals, and in its role as the protector of the public welfare and interest.

It is a conflict that is incapable of complete resolution. But substantial remedies are possible.

It has been proposed that the conflict be reduced by the transfer of the Bureau of Indian Affairs from Interior to HEW or elsewhere. The logic here is that Interior is a natural resource-oriented agency charged with and dedicated to the preservation and management of the Nation's resources, including those owned by the Federal Government, and subject to the influences and pressures of the private sector interested in the development of these resources. As a consequence, the trustee responsibility of the United States for Indian-owned resources, administered by Interior also, is often of secondary consideration when the two are in conflict.

While NCAI feels that this suggested danger to Indian resources is real, we are currently opposed to any such transfer.

Other remedies and proposals have been offered as a means of ameliorating the effects of this conflict, including that under consideration here today, that is, the creation of an Assistant Secretary whose sole or primary responsibility would be the administration of Indian affairs.

The Bureau of Indian Affairs and the Commissioner of Indian Affairs are currently under and subordinate to the Assistant Secretary of the Interior for Public Land Management. Included under that Assistant Secretary's authority, in addition to BIA, are the Office of Territories, the Bureau of Land Management, and the Office of Outdoor Recreation.

Within the Department of the Interior, but not under Public Lands, are such bureaus and agencies as Reclamation, National Park Service, Fish and Wildlife, and Mines, most of which come into conflict with Indian interests through the interests they advance or constituencies they serve. More often than not, in these conflicts, Indians come in a poor second.

I think we should hasten to add that this is not to indict any Assistant Secretary for PLM, including the incumbent, Mr. Loesch. I am certain that Mr. Loesch and his predecessors have done their utmost to fairly represent the Indian interest as well as the Nation's interest.

As President Nixon indicated in his message to the Congress on Indian affairs, and as Mr. Loesch himself has stated to this committee, it would be impossible for a man of the highest integrity to be a fair advocate for two conflicting interests in the same case. It is not the man, but the system.

Creation of an Assistant Secretary for Indian Affairs would not only insure greater protection of Indian interests within Interior, but would relieve the Assistant Secretary for Public Land Management from an impossible conflict situation.

As to our preference between the two bills, I am afraid we must be somewhat ambiguous. Both would, to a greater or lesser extent, achieve the desired result of reducing the danger to Indian resources because of the conflict and elevating the importance of Indian affairs within the Department.

S. 2034 would permit the new Assistant Secretary to concentrate on the more urgent, controversial aspects of Indian affairs and the broader policy considerations of Indian affairs while the Commissioner could give himself over to the daily press of administering Indian affairs.

We must, however, represent the desire of the Indian people that the bill be amended to provide that the new Assistant Secretary be given specific responsibility for Indian affairs, and that such responsibility be limited to Indian affairs.

S. 291 would achieve our goal by abolishing the Office of Commissioner and substituting in his place an Assistant Secretary for Indian Affairs. This would require a major reshuffling of authorities, powers, duties, et cetera, and the creation of subordinate positions under that of the new Assistant Secretary to administer the Bureau of Indian Affairs, which would probably have to be renamed.

The end result would be much the same, even though the language is considerably different.

At this point I would like to depart from my text to comment on the rest of the President's package.

The NCAI is vitally interested in the other pieces of legislation that the President has advanced, including trust council bill, local council bill, and the rest. With this bill, it would go far to alleviating the conflict situation in the Federal Government and in bringing about a better administration of Indian affairs.

As a consequence, the NCAI could support either bill, if amended as suggested.

Mr. Chairman, that completes my statement.

Senator ANDERSON. Senator Moss.

Senator MOSS. Of the two, is not 291 closer to what you would like?

Mr. DUCHENEAUX. S. 291 is Senator Bellmon's bill, and I think probably that we would prefer this approach, even though both would accomplish the goal.

Senator Bellmon's bill is much more comprehensive, in that it would abolish the position of the Commissioner and its subordinates and transfer the power to the Secretary of the Interior for eventual redelegation to the new Assistant Secretary, and S. 291 provides that the new Assistant Secretary shall be limited to Indian affairs.

And I think we support this, rather than the Department's position that the act recreating an Assistant Secretary, not mentioning Indian affairs, and that it also included territorial consideration.

Senator MOSS. You do not want the territories included. You want it to be exclusively for Indian affairs?

Mr. DUCHENEAUX. Yes; this is the position of the Indians.

Senator MOSS. Thank you.

That is all, Mr. Chairman.

Senator ANDERSON. Senator Stevens.

Senator STEVENS. We have a considerable number of problems with regard to our Trust Territories and our responsibilities in the territories which are quite similar to those in the area of Indian affairs.

I can think, for instance, of the land claims in Saipan and Truk and Corregidor, and some of the problems that we had in dealing with the rights of the people in the Virgin Islands and Puerto Rico.

Do you really see a basic conflict between the responsibilities for our own Indian people and those responsibilities, the responsibilities that our Government has assumed in regard to these people, and I am talking particularly about people of the Pacific, Micronesia people?

My experience downtown would not lead me to believe that would detract from the problems of Indian affairs. On the other hand, it would lead me to believe that a person who has the sensibilities and capability to deal with problems of our Indian people in this country is by far the best person to be dealing with problems of our people in the territories.

You can comment if you want, but I would urge you to consider that, that this above all is one of the greatest problems we have in the territories, is getting hold of someone who really does have a broad base of experience and can deal with these problems in the sense of fairness that we want to see directed towards our problems relating to the Indian peoples and native people of my State. I would urge you to consider that.

I think Secretary Morton has a very wise point, and instead of making the relationship with the territories the same as land management, to make the relationship with the territories one which is people-oriented, and this is the one that Assistant Secretary should be in the Department of Interior, which would be directly people-oriented.

I would advocate a very strong organization, and very capable one in terms of relationship with Congress, and particularly with this committee.

I urge you to consider that, and I think he has got a good point. I think he is going in a good direction, if we are going to be able to deal with some of those problems in the Pacific in the future.

We have just had the committee staff out there. They are feeling a great deal of problems of neglect that our Indian people had 40 years ago. They are not to the point where many of your organizations are, and I think they are going to want a great deal of the same kind of activity and same kind of approach in dealing with their problems, that is related to people, and not to land.

I would urge you to look at that one again, and tell us if in your examination—we have staff people who have been out there recently, and I know Senator Burdick and Senator Bellmon and I have been out there most recently, and I personally believe their problems are quite similar to the area of the Assistant Secretary for Indian Affairs, much more so than anywhere else in the Department.

Mr. DUCHENEAUX. If I could comment, Senator, I would like to add I appreciate the point you make, and I do not want to have the NCAI appear to be unconcerned about the problems of the people in the trust territories, but, as the Secretary indicated here today, he felt that the Indians ought to have the same kind of representation and advocacy in our Assistant Secretary as fish and wildlife and others, and I think

in fairness to the territories, perhaps they ought to have a chief administrator whose background is territories, and whose concern is territories, who would not have to go through the Assistant Secretary, who, I hope, if one of the bills is passed, would be appointed, a man who is primarily interested in Indian affairs and whose background is Indian affairs, and, if that is the case, it seems to me you would be shortchanging the territories and not giving them a chief administrator whose primary concern and background is territories.

Senator STEVENS. I think eventually we will reach that, but if we have a Deputy Assistant Secretary for Territories, and then also a Deputy Assistant Secretary for Indian Affairs, and I assume there probably would be two or three Assistant Secretaries in this area, that this one person's primary function is Indian affairs.

The situation today is with land management and Indian affairs and running the whole gamut.

Back in the days when I was there, they had parks and recreation and several other things in addition, and we gradually separated out these functions, and I think you are right, that eventually we are going to reach the day when we will want an Assistant Secretary for Territories.

I do not think we are at that point yet, because we are not sure how many of those, particularly the Pacific areas, how many of those areas are going to remain aligned with the United States.

But I would urge that you think about that. Your conclusion is right for the ultimate goal, and I would hope one of these days we would have an Assistant Secretary for Territories, but until we do, the only people-oriented portion of the Department on Assistant Secretarial level will be in Indian affairs.

Thank you, Mr. Chairman.

Senator MOSS. Could I ask one more question, Mr. Chairman?

Senator ANDERSON. Surely.

Senator MOSS. This is a little bit off the subject, but you did mention, that is, off of the exact matter before us, but you did mention the President's package on Indian affairs, and said that you generally supported it.

Has NCAI developed a priority listing, or will you bring us in a listing of how you feel about those bills and package?

Mr. DUCHENEAUX. I think up to now, Senator, NCAI has not developed that kind of list. There has been, as you are probably aware, a great number of meetings sponsored by the Administration on these bills with the Indian people, and out in the Indian country, and as far as I know, there is no list, but a great many people who support the concept of the bills see a lot wrong with them, and I would hope that we could create such a list and form such a list and bring it to the committee.

Senator MOSS. If you do, we would be very interested in seeing it at an early time. Thank you.

Thank you, Mr. Chairman.

Senator ANDERSON. Are you speaking today for the Council of American Indians?

Mr. DUCHENEAUX. Yes, sir.

Senator ANDERSON. Have they approved your testimony?

Mr. DUCHENEAUX. Yes, sir.

Senator ANDERSON. I have a letter from the Cochiti, sent to me 3 days ago, which said:

We want included in the record as part of the investigation and findings concerning Senate bill S. 447 the fact that the Pueblos purchased approximately 13,000 acres of land in the last century.

They claim that the Government has not turned over the land to them. Do you feel that also?

Mr. DUCHENEAX. I am not aware of that, Senator. I do not think that the NCAI could take a position on that. I am not aware of that at all.

Senator ANDERSON. The Forest Service had refused to do it, and they say the land has been deeded to them by the Claims Commission.

If the Court of Claims ruled that Cochiti Indians had a deed, but they had no title to the land, do you still hold title to it?

Mr. DUCHENEAX. If the Court of Claims had ruled that the Cochiti had title to it, it seems to me they would have. I could not speak against the Court of Claims.

Senator ANDERSON. The Indian Claims Commission has some function, at least, and we thought it was doing a fairly good job, although slow. If they held that the land in this area is not under ownership of that group, would you agree with that, or not?

Mr. DUCHENEAX. Again, Senator, I am not that familiar with it, and if NCAI would want to take a position on that thing, I think they would have to check with the Cochiti Pueblo on that. I could not say.

Senator ANDERSON. I think that is right.

Thank you very much.

Mr. DUCHENEAX. Thank you, sir.

Senator ANDERSON. That is all we have this morning.

Thank you very much.

(Whereupon, at 10:55 a.m., the committee adjourned, to reconvene subject to the call of the Chair.)

(Subsequent to the hearing the committee received the following communications:)

WILKINSON, CRAGUN & BARKER,
LAW OFFICES,
Washington, D.C., July 14, 1971.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JACKSON: We are writing on behalf of our tribal clients, the Arapahoe Tribe of the Wind River Reservation, Wyoming, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the Hoopa Valley Tribe, Hoopa, California, the Quinault Tribe, Taholah, Washington, and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. All of these support the provisions of S. 2034 which would create within the Department of the Interior a seventh Assistant Secretary of the Interior. We understand that the new Assistant Secretary will be assigned the duties of supervising the Bureau of Indian Affairs and the Office of Territories and will be given the title "Assistant Secretary for Indian and Territorial Affairs."

We support the creation of this new post which would give Indian affairs a proper position in the Department of the Interior. No longer would the Indians be in competition with land and other natural resource problems for attention at the highest policy levels in the Department.

We believe, however, that the bill should be amended to define expressly the duties of the new Assistant Secretary rather than leaving the duties to be assigned by the Secretary of the Interior. This would prevent the possibility of some future administration overloading the new Assistant Secretary with addi-

tional duties or completely changing the nature of these duties without Congressional consent.

We note that your Committee is also considering a bill introduced by Senator Bellmon, S. 291, which would create a new Assistant Secretary of the Interior, but abolish the office of Commissioner of Indian Affairs (together with the offices of Assistant and Deputy Commissioners of the Bureau). We believe that the approach recommended by the Administration in S. 2034 is preferable because it would provide Indians with a strong advocate at the highest policy levels of the Department, while leaving the Commissioner of Indian Affairs to perform his present duties as well as others that may arise because of the new Assistant Secretary.

We respectfully request that these comments be made a part of the record of the hearings on these bills.

Respectfully submitted,

By: GLEN A. WILKINSON,

JULY 15, 1971.

Senator HENRY M. JACKSON,
Chairman Senate Committee on Interior and Insular Affairs, Room 3106, New
Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: As you are aware, the National Council on Indian Opportunity conducted 16 field hearings on President Nixon's Indian legislative package as initially announced in 1970.

As a then consultant to NCIO, I was assigned to review the transcripts of the hearings, and extract and report the Indian commentary with respect to each bill in the package.

I have enclosed that section of the ensuing report dealing with the bill to add an Assistant Secretary of the Interior, in which it is made plain that the Indian people unanimously desire that the proposed Secretary's responsibility for Indian affairs (whether in conjunction with trust territories or not) be *legislatively* designated, which would require an amendment to the proposed legislation.

This material is submitted for your information, and for inclusion in the hearing record of the July 15 hearing.

Sincerely,

HAROLD M. GROSS,

Director, Indian Legal Information Development Service.

ASSISTANT SECRETARY OF THE INTERIOR

The purpose of this bill is to "raise the areas of Indian and territorial responsibility to their proper role within the Department." It is safe to say that the Indian people concur with the purpose. There is substantial uncertainty, however, as to whether the bill *as presently written*, accomplishes that purpose.

The bill did not stir great discussion, however, and virtually all comment with respect to it narrows to three points. First, it was the virtually unanimous view of the Indians that the *designation* "Assistant Secretary for Indian Affairs and Trust Territories" *be made in the bill*. The reason given for not making this designation is that, although there is prior precedent, only one of the several assistant secretaries within the Interior Department has a particular designation (Fish and Wildlife), and in that instance subsequent reorganization left the Assistant Secretary with only half of his duties, and, because of the legislative designation, this situation was difficult to change. Therefore, more "administrative flexibility" is required.

This argument carried little weight with the Indians to whom it was made. Both Martin Seneca and Franklin Ducheneaux are on record supporting the designation in the bill, and it is clear that the assurances in the transmittal letter and in the President's message are not enough for the Indians. Obviously, neither is binding on any subsequent President or Interior Secretary. The Indians clearly desire an assurance of permanence, even at a loss of "administrative flexibility."

Furthermore, a designation of "Assistant Secretary for Indian Affairs, Trust Territories, and such other duties as the Secretary may, from time to time prescribe" (or words to that effect) would seem to assure that additional duties could be added when "Trust Territories" is phased out, and when legislation is passed relieving the United States of responsibility for the Trust Territories, it could also delete that portion of the Assistant Secretary's title. This would seem

to provide a wide degree of "administrative flexibility" without leaving the status of the Assistant Secretary at the absolute discretion of the Secretary of the Interior.

At Spokane, Mr. Edwards of the Interior Department suggests that if designation of the responsibilities of the Assistant Secretary is made in the statute, the Assistant Secretary would be unable to sign mail for other absent Assistant Secretaries, since he would be unable to designate himself merely "Assistant Secretary". This is bureaucratic thinking at its most rigid, and convinced neither the Indians at Spokane, nor the present writer. No argument thus far postulated provides any real reason why the Assistant Secretary can not have his area of responsibility designated in the bill, providing to the Indians both the identity and reassurance of permanence that they so obviously desire.

The second objection, made in five different discussions, is that although this bill seeks to "raise" the level of responsibility for Indian Affairs, the bill merely makes a lateral transfer of the Commission to a position under a new Assistant Secretary. While this takes the Commissioner out from under the Assistant Secretary for Public Land Management, who manages several interests which conflict with those of the Indians, and is therefore an acknowledged improvement, it does not elevate the status of the Commissioner or Bureau of Indian Affairs, as some have claimed, and as the Indians desire.

An excellent discussion of this point is in the record of the Las Vegas hearing. There, it becomes clear that much will depend on the personality and attitudes of the individual selected for Assistant Secretary, as to whether the change will benefit the Indians at all. Thus, if the position is used as a resting place for retired congressmen, or the assistant secretary who is appointed is resistant to the views of Indians, the creation of this new level of bureaucracy can as much insulate the Secretary from the views of Indians as the old Assistant Secretary could. Mr. Ducheneaux's view is that it would be better "to abolish the position of Commissioner of Indian Affairs, and leave just the Assistant Secretary for Indian Affairs." The alternative is to simply make the Commissioner of Indian Affairs an Assistant Secretary, or authorize him to report directly to the Secretary of the Interior. At Las Vegas, one delegate suggested the creation of a cabinet-level Secretary of Indian Affairs.

Lost in the shuffle is the administration of Trust Territories, which might become an additional responsibility of the Commissioner or whoever is designated to handle the position as defined. The Interior Department representatives have indicated repeatedly that the administration of Trust Territories is a responsibility which will vanish within a few years, and hence the problem of what to do about Trust Territories ought not to stand in the way of a permanent improvement in the administration of Indian Affairs.

This leads directly to the third point, raised at Rapid City and at Albuquerque. That is, that the Assistant Secretary be an American Indian, or, as suggested at Albuquerque, that he be "an official of an Indian tribe." Again, as with the discussion of the ITCA, it is clear that although the ultimate power of appointment lies in the President, the Indian people desire to insure that he who is responsible for so many decisions affecting their lives is responsive to their needs and desires, and they would like some input into the appointment process.

In summary, there seems no good reason why the designation of "Assistant Secretary for Indian Affairs and Trust Territories, etc." cannot be written into the bill. With this change, Indian support seems assured, although elevation, rather than more transfer, of the BIA is preferred. Finally, the Indians desire some voice in the selection process of the Assistant Secretary, perhaps at the nomination or consultation level.