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INDIAN TRUST COUNSEL AUTHORITY

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON

INDIAN AFFAIRS

OF THE

COMMITTEE ON

INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

ON

S. 1012 and S. 1339

**BILLS TO PROVIDE FOR THE CREATION OF THE INDIAN
TRUST COUNSEL AUTHORITY, AND FOR OTHER PURPOSES**

MAY 7 AND 8, 1973



Printed for the use of the
Committee on Interior and Insular Affairs

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INDIAN TRUST COUNSEL AUTHORITY

MONDAY, MAY 7, 1973

U.S. SENATE,
SUBCOMMITTEE ON INDIAN AFFAIRS,
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met at 2 p.m., in room 3110, Dirksen Office Building, pursuant to notice, Hon. James Abourezk, chairman, presiding.

Present: Senators Abourezk [presiding] and Bartlett.

Also present: Jerry Verkler, staff director; Forrest Gerard, Richard Craft, and James Beirne, professional staff members.

OPENING STATEMENT OF HON. JAMES ABOUREZK, A U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator ABOUREZK. The Senate Indian Affairs Subcommittee is now in order.

The subject of today's hearings is legislation to provide for the creation of the Indian Trust Counsel Authority.

S. 1012, introduced by Senator Jackson and myself, and S. 1339, introduced by Senator Jackson, Senator Fannin, and myself at the request of the administration are virtually identical measures similar to legislation considered last Congress by this subcommittee.

The purpose of this legislation is to guarantee that the United States will fully and faithfully exercise its fiduciary duties to the American Indians and Alaska Natives with respect to natural resource rights.

These fiduciary duties have too often become compromised due to the conflicting responsibilities of various Federal agencies.

For example, the Department of the Interior is responsible at the same time for the management and utilization of public land and water resources and the management of Indian affairs—the Solicitor of the Department, in effect, is the attorney to the trustee for Indians, Bureau of Indian Affairs, while serving the Bureau of Reclamation and Bureau of Land Management.

The Department of Justice is obligated to provide legal representation to the Indian beneficiaries of the trustee relationship while representing other conflicting agencies and even while defending Indian Claims Commission proceedings for the United States.

This conflict serves neither party.

In *United States v. Kagama* (118 U.S. 375, (1886)), the Supreme Court recognized that the United States had a duty to protect Indian rights. In 1942, in the case of *Seminole Nation v. United States*, the

Court stated that the United States "has charged itself with moral obligations of the highest responsibility and trust," (316 U.S. 286, 297, (1942)).

The courts have stressed that "the most exacting judiciary standards should be applied to scrutinize Federal management of Indian property." *Seminole Nation v. United States*, (316 U.S. 286, 297, (1942)); *Navajo Tribe v. United States*, (364 F. 2d, 320, 324, (Ct. Cls, 1966)). In the *Navajo Tribe* case, the Court emphasized the duty of loyalty owed by the United States to the Indians.

To prevent self-dealing by the United States—and perhaps even more importantly, to prevent the appearance of self-dealing—it is necessary that the legal and moral obligations of the United States to preserve and protect Indian natural resource rights be accorded a strong and effective voice which will be independent of countervailing pressures.

This voice, perhaps the conscience of the United States, should be able to participate in the actual decisionmaking affecting Indian natural resources; and when a decision is made adverse to the interests of the Indians, should be able to go into the courts to have the decision reversed.

The mechanics of providing this independent legal counsel and representation is the subject of this hearing.

At this point I shall order that the bills and executive communication be made a part of the record.

[The texts of S. 1012 and S. 1339 and an executive communication follow:]

93^d CONGRESS
1ST SESSION

S. 1012

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 1973

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

A BILL

To provide for the creation of the Indian Trust Counsel Authority, 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 in reaffirming the trust and treaty relationships be-
4 tween the United States of America and the American In-
5 dians, and between the United States and the Alaska Natives,
6 which Indians and Natives are hereinafter referred to as
7 “Indians”, the purpose of this Act is to establish an Indian
8 Trust Counsel Authority to provide independent legal coun-
9 sel and representation for the preservation and protection of
10 the natural resource rights of the Indians.

11 SEC. 2. (a) The Indian Trust Counsel Authority, hercin-

1 after referred to as the Authority, is established as an inde-
2 pendent agency in the executive branch.

3 (b) The Authority shall be governed by a Board of
4 Directors composed of three members to be appointed by the
5 President by and with the advice and consent of the Senate.

6 (c) At least two of the members of the Board of Direc-
7 tors shall be Indians.

8 (d) The terms of office of members of the Board of
9 Directors shall be four years, except that of the first three
10 members appointed, one shall be appointed for a two-year
11 term, one shall be appointed for a three-year term, and one
12 shall be appointed for a four-year term. A member appointed
13 to fill a vacancy occurring prior to the expiration of the term
14 for which his predecessor was appointed shall be appointed
15 for the remainder of such term. Upon the expiration of his
16 term of office, a member shall serve until his successor has
17 been appointed and qualified. A member of the Board of
18 Directors may be removed by the President only for ineffi-
19 ciency, neglect of duty, and malfeasance in office.

20 (e) The President shall designate one of the Directors
21 to serve as Chairman at his pleasure.

22 (f) The members of the Board of Directors shall receive
23 pay at the daily equivalent of the rate provided for grade
24 GS-18 in section 5332 of title 5, United States Code, for

1 each day they are engaged in the business of the Authority,
2 and shall be allowed travel expenses, including a per diem al-
3 lowance as authorized by section 5703 of title 5, United
4 States Code, in connection with their services for the
5 Authority.

6 SEC. 3. The Board of Directors shall convene at the
7 call of the Chairman, but must convene at least once each
8 quarter, to set policy for the Authority and review its activ-
9 ities. The Board of Directors shall report to the President
10 and the Congress annually on the activities of the Authority.

11 SEC. 4. The Board of Directors shall, without regard to
12 the provisions of title 5, United States Code, governing
13 appointments in the competitive service, appoint and pre-
14 scribe the duties of a chief legal officer for the Authority,
15 who shall have the title of Indian Trust Counsel, and who
16 shall be paid at a rate equal to that provided for in level V
17 of the Executive Schedule (5 U.S.C. 5316), and a Deputy
18 Indian Trust Counsel who shall be paid at a rate not in ex-
19 cess of that provided for grade GS-18 in section 5332 of
20 title 5, United States Code.

21 SEC. 5. (a) The Board of Directors shall appoint, fix
22 the pay of, and prescribe the duties of such attorneys as it
23 deems necessary after consulting with the Indian Trust
24 Counsel.

1 (b) The Board of Directors shall appoint and fix the
2 compensation of such special counsel and experts as it deems
3 necessary.

4 (c) Attorneys or special counsel appointed under this
5 section may, at the direction of the Authority, appear for or
6 represent the Authority in any case in any court, before any
7 commission, or in any administrative proceeding.

8 (d) The Board of Directors may, in the event of a
9 conflict between parties requesting the assistance of or the
10 representation of the Authority under the provisions of sec-
11 tion 8 or 9 hereof, hire special counsel of experts to assist
12 or represent one or all of the parties.

13 SEC. 6. The Board of Directors shall, subject to the
14 provisions of title 5, United States Code, appoint such em-
15 ployees as it deems necessary in exercising its powers and
16 duties.

17 SEC. 7. The Authority, in the exercise of its functions,
18 shall be free from control by any executive department.

19 SEC. 8. The Authority, with the consent of an aggrieved
20 Indian, Indian tribe, band, or other identifiable group of
21 Indians, is authorized to render legal services in regard to
22 rights or claims of the Indians to natural resources, including,
23 but not limited to, rights to land, rights to the use of water,
24 timber, and minerals, and rights to hunt and fish, within the
25 United States trust responsibility owing to the Indians,

1 which services are now rendered by the Department of the
2 Interior or by the Department of Justice, but nothing in this
3 Act shall absolve the Department of the Interior and the
4 Department of Justice of their responsibilities to the Indians,
5 including those which derive from the trust relationship
6 and any treaties between the United States and any Indian
7 or Indian tribe: *Provided*, That the Department of Justice
8 as of the effective date of this Act or as soon thereafter as
9 practicable, is relieved of its responsibility to represent In-
10 dians or Indian tribes with regard to their rights or claims
11 to natural resources, including, but not limited to, rights to
12 land, rights to the use of water, timber, minerals, and rights
13 to hunt and fish. The legal services performed pursuant to
14 this section may include, but shall not be limited to, the in-
15 vestigation and inventorying of Indians' land and water
16 rights, and the preparation and trial and appeal of cases in
17 all courts, before Federal, State, and local commissions, and
18 in all administrative proceedings.

19 SEC. 9. The Authority, with the consent of an aggrieved
20 Indian, Indian tribe, band or other identifiable group of
21 Indians, acting in the name of the United States as a trustee
22 for the Indians, may initiate and prosecute to judgment in all
23 courts of the United States, suits against the United States,
24 its officers and employees, and in all courts of the United
25 States and of the States, suits against any of the States, their

1 subdivisions, departments and agencies, or against persons
2 and corporations, public or* private, all actions in law and
3 equity for the protection, preservation, utilization, conserva-
4 tion, adjudication, or administration of natural resources or
5 interests therein had or claimed by the Indians, including,
6 but not limited to, rights to land, rights to the use of water,
7 timber, and minerals, and rights to fish and hunt. The Au-
8 thority is authorized to prosecute appeals in all courts of the
9 United States and of the States, and to intervene in any Fed-
10 eral, State or local administrative proceeding in order to pro-
11 tect the rights of the Indians. The United States waives its
12 sovereign immunity from suit in connection with litigation
13 initiated by the Authority under this section. Any such suit
14 against the United States, its officers and employees should
15 be tried to the court without a jury.

16 SEC. 10. The powers granted to the Authority by this
17 Act shall not extend to the filing or prosecution of or inter-
18 vention in any action, claim, or other proceeding against the
19 United States relating to any matter as to which a claim has
20 been filed or could have been filed under the Indian Claims
21 Commission Act of 1946, as amended, or any other special
22 statute authorizing a claims suit to be brought by Indians
23 against the United States but shall not include suits that
24 could be brought under the provisions of section 1346 (a) (2)
25 and 1491 of title 28, United States Code: *Provided, how-*

1 *ever*, that the Authority may assist any Indian tribe request-
2 ing such assistance in its claim pending before the Indian
3 Claims Commission.

4 SEC. 11. The Authority is authorized to—

5 (1) make such rules and regulations as it deems
6 necessary to carry out its functions;

7 (2) request from any department, agency, or inde-
8 pendent instrumentality of the Government any informa-
9 tion, personnel, services, or materials it deems necessary
10 to carry out its functions under this Act; and each such
11 department, agency or instrumentality is authorized to
12 cooperate with the Authority and to comply with a
13 request to the extent permitted by law, on a reimburs-
14 able or nonreimbursable basis;

15 (3) receive and use funds or services donated by
16 others; and

17 (4) make such expenditures or grants, either di-
18 rectly or by contract, as may be necessary to carry out
19 its responsibilities under this Act.

20 SEC. 12. There are authorized to be appropriated to the
21 Authority created herein such sums as may be necessary to
22 carry out the provisions of this Act.

93D CONGRESS
1ST SESSION

S. 1339

IN THE SENATE OF THE UNITED STATES

MARCH 22, 1973

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

A BILL

To provide for the creation of the Indian Trust Counsel Authority, 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 in reaffirming the trust and treaty relationship between
4 the United States of America and the American Indians,
5 and between the United States and the Alaska Natives,
6 which Indians and Natives are hereinafter referred to as
7 "Indians", the purpose of this Act is to establish an Indian
8 Trust Counsel Authority to provide independent legal coun-
9 sel and representation for the preservation and protection of
10 the natural resource rights of the Indians.

1 SEC. 2. (a) The Indian Trust Counsel Authority, here-
2 inafter referred to as the Authority, is established as an in-
3 dependent agency in the executive branch.

4 (b) The Authority shall be governed by a Board of
5 Directors composed of three members to be appointed by
6 the President by and with the advice and consent of the
7 Senate.

8 (c) At least two of the members of the Board of Direc-
9 tors shall be Indians.

10 (d) The terms of office of members of the Board of
11 Directors shall be four years, except that, of the first three
12 members appointed, one shall be appointed for a two-year
13 term, one shall be appointed for a three-year term, and one
14 shall be appointed for a four-year term. A member ap-
15 pointed to fill a vacancy occurring prior to the expiration
16 of the term for which his predecessor was appointed shall be
17 appointed for the remainder of such term. Upon the expira-
18 tion of his term of office, a member shall serve until his
19 successor has been appointed and qualified. A member of
20 the Board of Directors may be removed by the President
21 only for inefficiency, neglect of duty, or malfeasance in office.

22 (e) The President shall designate one of the Directors
23 to serve as Chairman at his pleasure.

24 (f) The members of the Board of Directors shall re-
25 ceive pay at the daily equivalent rate provided for grade

1 GS-18 in section 5332 of title 5, United States Code, for
2 each day they are engaged in the business of the Author-
3 ity, and shall be allowed travel expenses, including a per
4 diem allowance as authorized by section 5703 of title 5,
5 United States Code, in connection with their services for
6 the Authority.

7 SEC. 3. The Board of Directors shall convene at the
8 call of the Chairman, but must convene at least once each
9 quarter, to set policy for the Authority and review its activi-
10 ties. The Board of Directors shall report to the President
11 and the Congress annually on the activities of the Authority.

12 SEC. 4. The Board of Directors shall, without regard to
13 the provisions of title 5, United States Code, governing ap-
14 pointments in the competitive service, appoint and prescribe
15 the duties of a chief legal officer for the Authority, who shall
16 have the title of Indian Trust Counsel, and who shall be paid
17 at a rate equal to that provided for in level V of the Execu-
18 tive Schedule (5 U.S.C. 5316), and a Deputy Indian Trust
19 Counsel, who shall be paid at a rate not in excess of that
20 provided for grade GS-18 in section 5332 of title 5, United
21 States Code.

22 SEC. 5. (a) The Board of Directors shall appoint, fix
23 the pay of, and prescribe the duties of such attorneys as it
24 deems necessary after consulting with the Indian Trust
25 Counsel.

1 (b) The Board of Directors shall appoint and fix the
2 compensation of such special counsel and experts as it deems
3 necessary.

4 (c) Attorneys or special counsel appointed under this
5 section may, at the direction of the Authority, appear for
6 or represent the Authority in any case in any court, before
7 any commission, or in any administrative proceeding.

8 (d) The Board of Directors may, in the event of a
9 conflict between parties requesting the assistance of or the
10 representation of the Authority under the provisions of
11 section 8 or 9 hereof, hire special counsel or experts to
12 assist or represent one or all of the parties.

13 SEC. 6. The Board of Directors shall, subject to the
14 provisions of title 5, United States Code, appoint such em-
15 ployees as it deems necessary in exercising its powers and
16 duties.

17 SEC. 7. The Authority, in the exercise of its functions,
18 shall be free from control by any executive department.

19 SEC. 8. The Authority with the consent of an aggrieved
20 Indian, Indian tribe, band, or other identifiable group of
21 Indians, is authorized to render legal services in regard to
22 rights or claims of the Indians to natural resources, includ-
23 ing, but not limited to, rights to land, rights to the use of
24 water, timber, and minerals, and rights to hunt and fish,
25 within the United States' trust responsibility owing to the
26 Indians, which services are now rendered by the Depart-

1 ment of the Interior or by the Department of Justice, but
2 nothing in this Act shall absolve the Department of the
3 Interior and the Department of Justice of their responsibili-
4 ties to the Indians, including those which derive from the
5 trust relationship and any treaties between the United States
6 and any Indian or Indian tribe: *Provided*, That the Depart-
7 ment of Justice as of the effective date of this Act or as
8 soon thereafter as practicable, is relieved of its responsibility
9 to represent Indians or Indian tribes with regard to their
10 rights or claims to natural resources, including, but not lim-
11 ited to, rights to land, rights to the use of water, timber,
12 minerals, and rights to hunt and fish. The legal services per-
13 formed pursuant to this section may include, but shall not
14 be limited to, the investigation and inventorying of Indians'
15 land and water rights, and the preparation and trial and ap-
16 peal of cases in all courts, before Federal, State, and local
17 commissions, and in all administrative proceedings.

18 SEC. 9. The Authority, with the consent of an aggrieved
19 Indian, Indian tribe, band, or other identifiable group of
20 Indians, acting in the name of the United States as trustee
21 for the Indians, may initiate and prosecute to judgment in all
22 courts of the United States suits against the United States,
23 its officers, and employees, and in all courts of the United
24 States, and of the States, suits against any of the States,
25 their subdivisions, departments, and agencies, or against

1 persons and corporations, public or private, all actions in
2 law and equity for the protection, preservation, utilization,
3 conservation, adjudication, or administration of natural re-
4 sources or interests therein had or claimed by the Indians,
5 including, but not limited to, rights to land, rights to the use
6 of water, timber, and minerals, and rights to fish and hunt.
7 The Authority is authorized to prosecute appeals in all
8 courts of the United States and of the States, and to intervene
9 in any Federal, State, or local administrative proceeding in
10 order to protect the rights of the Indians. The United States
11 waives its sovereign immunity from suit in connection with
12 litigation initiated by the Authority under this section. Any
13 such suit against the United States, its officers, and employees
14 shall be tried to the court without a jury.

15 SEC. 10. The powers granted to the Authority by this
16 Act shall not extend to the filing or prosecution of or in-
17 tervention in any action, claim, or other proceeding against
18 the United States relating to any matter as to which a claim
19 has been filed or could have been filed under the Indian
20 Claims Commission Act of 1946, as amended, or any other
21 special statute authorizing a claims suit to be brought by
22 Indians against the United States but shall extend to sections
23 1346 (a) (2) and 1491 of title 28, United States Code:
24 *Provided, however,* That the Authority may assist any In-

1 dian tribe requesting such assistance in its claim pending be-
2 fore the Indian Claims Commission.

3 SEC. 11. The Authority is authorized to:

4 (1) Make such rules and regulations as it deems neces-
5 sary to carry out its functions.

6 (2) Request from any department, agency, or inde-
7 pendent instrumentality of the Government any information,
8 personnel, services, or materials it deems necessary to carry
9 out its functions under this Act; and each such department,
10 agency, or instrumentality is authorized to cooperate with the
11 Authority and to comply with a request to the extent per-
12 mitted by law, on a reimbursable or nonreimbursable basis.

13 (3) Receive and use funds or services donated by others.

14 (4) Make such expenditures or grants, either directly
15 or by contract, as may be necessary to carry out its respon-
16 sibilities under this Act.

17 SEC. 12. There are authorized to be appropriated to the
18 Authority created herein such sums as may be necessary to
19 carry out the provisions of this Act.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 15 1973

Dear Mr. President:

Enclosed is a proposal "To provide for the creation of the Indian Trust Counsel Authority, and for other purposes."

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

Creation of the Indian Trust Counsel would provide independent legal counsel and representation on behalf of Indians and Alaska Natives in the assertion of their natural resource rights. Such an authority is needed to remedy a conflict of interests on the part of the Federal Government. President Nixon described this conflict in his Indian Message of July 8, 1970:

"The United States Government acts as a legal trustee for the land and water rights of American Indians. These rights are often of critical economic importance to the Indian people; frequently they are also the subject of extensive legal dispute. In many of these legal confrontations, the Federal government is faced with an inherent conflict of interest. The Secretary of the Interior and the Attorney General must at the same time advance both the national interest in the use of land and water rights and the private interests of Indians in land which the government holds as trustee.

"Every trustee has a legal obligation to advance the interests of beneficiaries of the trust without reservation and with the highest degree of diligence and skill. Under present conditions, it is often difficult for the Department of the Interior and the Department of Justice to fulfill this obligation. No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute; yet the Federal government has frequently found itself in precisely that position. There is considerable evidence that the Indians are the losers when such situations arise. More than that, the credibility of the Federal government is damaged whenever it appears that such a conflict of interest exists.

"In order to correct this situation, I am calling on the Congress to establish an Indian Trust Counsel Authority to assure independent legal representation for the Indians' natural resource rights."

This proposal will carry out the policy enunciated in the President's message by establishing the Indian Trust Counsel Authority. President Nixon reaffirmed the need for the Authority in his March 1, 1973, Human Resources Message to the Congress. The Authority will be free from control by any Executive Department. This independence will enable the Authority to protect the natural resource rights and interests of Indians untrammelled by any other interest.

A sectional analysis in the Appendix to this letter spells out the structure and functions of the Trust Counsel Authority in detail. Some of the special features of the proposal, however, require further explanation.

The Authority will be under the direction of a three-man Board of Directors, two of whom must be Indians. The Board is given the authority to hire necessary attorneys including the chief legal officer and his deputy and such other personnel as they deem necessary to carry out the functions given them by the proposal. Having majority control of the Board will assure Indians that they can determine the direction of the Authority's activities and that the people hired to carry out the Authority's functions are acceptable to them. Such assurance should make the Authority a body that from its inception enjoys the confidence and trust of Indians.

The proposal provides that the Indian Trust Counsel, who is the chief legal officer for the Authority, shall be a level V in the Executive Schedule. We feel that this level is necessary in order for the Authority to be able to obtain the kind of person that it needs to direct the legal activities of the Authority and in order to give him sufficient stature to be able to deal with cabinet and sub-cabinet members of the Executive Department. The Board of Directors is also authorized to hire, fix the pay, and prescribe the duties of such attorneys, including special counsel, as it deems necessary. These attorneys will be the working group that will carry out the responsibilities and functions of the Authority. It is the Administration's intention that the Authority will build up a cadre of well-trained and devoted attorneys whose energies will be turned to the protection and preservation of the Indians' natural resource rights and interests. The Authority to hire special counsel

is needed in those instances when the Authority must go outside of its own staff to hire someone uniquely qualified to assist in the preparation of trial or appeal material regarding a special case. The Board will have similar authority to hire outside experts.

The proposal authorizes the Authority, upon the request of an aggrieved Indian or group of Indians, to assist those Indians in the protection of their natural resource rights and interests in the courts and before administrative bodies. This authority will be used when a tribe has a justiciable claim and feels that it needs the assistance of the Authority for prosecuting that claim. The assistance rendered by the Authority is in addition to the responsibilities that the Department of the Interior has to protect Indians, not only in their natural resource rights, but in all rights protected by the trust relationship between the United States and American Indians. Upon enactment of the proposal, the Department of Justice will be relieved of its responsibility to represent Indians in the area of natural resources but will continue to fulfill the responsibilities it has with regard to Indians generally (for example, its responsibility to advise the Secretary of the Interior with respect to the probate of Indians' wills). This relief of Justice is subject to the responsibility of Justice, in conducting any litigation that affects Indians' natural resource rights, to recognize the responsibilities of the United States which arise from its trust relationship to Indians.

Acting in the name of the United States as Indian trustee, the Authority will be able to initiate suits, upon request by an aggrieved Indian or group of Indians, to protect the rights of the Indians in their natural resources against the United States, or any of its departments, agencies, officers or employees as well as against the States, their subdivisions, departments and agencies or against any private or public person or corporation. The United States waives its sovereign immunity as to such litigation initiated by the Authority. (The Authority will use its power to initiate litigation in those cases where the Indians' rights or claims are of such a nature that Indians are precluded from bringing suit against the United States because of bars that the United States has as a sovereign to suits generally. These will be removed by the provision waiving the United States' sovereign immunity as it relates to actions brought by the Authority. The proposal clearly limits the waiver of sovereign immunity to the narrow area of litigation initiated by the Authority.)

We wish to stress that the Authority will be barred from relitigating any claims that have been filed or should have been filed before the Indian Claims Commission. However, the Authority will be permitted to assist in claims that are still in the process of being litigated before the Commission.

American Indians have for long felt that the Federal government, because of the inherent conflict of interests that the President discussed in his message, has not given their natural resource rights adequate legal protection. We believe that enactment of this proposal will restore the confidence of the American Indian in the ability of our government to meet the legal obligation it has as trustee to advance the rights and interests of the beneficiaries of the trust without reservation and to the highest degree of its ability and skill.

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

Sincerely yours, .

John P. Whitaker
Acting Secretary of the Interior

Honorable Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

Enclosures

APPENDIX

SECTIONAL ANALYSIS OF PROPOSAL

Section 1 of the proposal outlines its purpose, as described in the letter, supra.

Section 2 establishes in the Executive Branch an independent agency to be known as the Indian Trust Counsel Authority. The Authority will be governed by a three-man Board of Directors who will be appointed by the President by and with the advice and consent of the Senate. At least two of the members of the Board must be Indians. The term of members of the Board shall be 4 years except that the initial Board shall be appointed in a staggered manner. The President shall designate one of the members of the Board to serve as chairman. The members of the Board shall receive pay that is the daily equivalent to that of a GS-18 for each day they are engaged in the business of the Authority and shall be allowed necessary travel expenses.

Section 3 provides that the Board of Directors shall convene at the call of the chairman but must meet at least once each quarter to set policy for the Authority and to review its activities. This section requires the Board to report annually to the President and the Congress on the activities of the Authority.

Section 4 authorizes the Board, without regard to the civil service laws, to appoint and prescribe the duties of the chief legal officer for the Authority, who shall be called the Indian Trust Counsel, at level V of the Executive Schedule, and a Deputy Indian Trust Counsel, who shall be a grade GS-18.

Section 5 authorizes the Authority to appoint and fix the pay and prescribe the duties of attorneys it employs. It also authorizes the Authority to appoint and fix the compensation of needed special counsel and experts. Finally, it authorizes the attorneys or special counsel appointed by it to appear for and represent the Authority in any case before any court, commission or administrative proceeding pertaining to its responsibilities. In order to deal with conflicting requests for the Authority's assistance, the Board is provided with authority to hire experts or special counsel to represent one or all of the parties involved.

Section 6 authorizes the Authority to hire such other employees as it deems necessary.

Section 7 provides that the Authority shall be free of control by any Executive Department.

Section 8 authorizes the Authority, with the consent of any aggrieved Indian or Indian tribe, band, or other identifiable group of Indians, to render legal services in regard to rights or claims of the Indians in relationship to their natural resources. The Section spells out the kinds of natural resource rights and interests to be protected by the Authority. The Authority's exercise of its responsibility to protect Indian resources does not absolve the Department of the Interior or the Department of Justice from their trust responsibilities to Indians, except that the Department of Justice is relieved of its responsibility to represent Indians with regard to natural resources--the same responsibility which the Trust Counsel Authority will assume. This section also provides that the Authority may perform such services as the investigation and inventorying of Indians' land and water rights and the preparation, trial and appeal of cases involving the natural resources of Indians in all courts and before Federal, State, and local commissions and administrative bodies.

Section 9 authorizes the Authority, with the consent of any aggrieved Indians, Indian tribe, band, or other identifiable group of Indians, acting in the name of the United States as trustee for the Indians, to initiate and prosecute to final judgment in all Federal courts against the United States or any of its officers or employees, or in the Federal or State courts against any of the States, their subdivisions, departments or employees or against any persons or corporations, public or private, all actions in law and equity for the protection of the natural resource interests and rights of the Indians. The United States waives its sovereign immunity to suit in connection with litigation initiated by the Authority under this section. Suits against the United States and its officers and employees shall be tried before the court without a jury.

Section 10 provides that the powers granted the Authority by this Act shall not extend to the filing or prosecution of or intervention in any action, claim, or other proceeding against the United States relating to any matter as to which a claim has been filed or could have been filed before the Indian Claims Commission or under any special statute authorizing a suit to be brought against the United States but makes it clear that the prohibition does not include suits that could be brought under the provisions of sections 1346(a)(2) and 1491, title 28, U.S.C. The Authority can assist in cases pending before the Indian Claims Commission if so requested.

Section 11 enumerates the authorities of the Authority.

Section 12 authorizes the appropriation of funds necessary to carry out the provisions of the Act.

A B I L L

To provide for the creation of the Indian Trust Counsel Authority, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in reaffirming the trust and treaty relationship between the United States of America and the American Indians, and between the United States and the Alaska Natives, which Indians and Natives are hereinafter referred to as "Indians", the purpose of this Act is to establish an Indian Trust Counsel Authority to provide independent legal counsel and representation for the preservation and protection of the natural resource rights of the Indians.

SEC. 2. (a) The Indian Trust Counsel Authority, hereinafter referred to as the Authority, is established as an independent agency in the Executive Branch.

(b) The Authority shall be governed by a Board of Directors composed of three members to be appointed by the President by and with the advice and consent of the Senate.

(c) At least two of the members of the Board of Directors shall be Indians.

(d) The terms of office of members of the Board of Directors shall be four years, except that, of the first three members appointed, one shall be appointed for a two-year term, one shall be appointed for a three-year term, and one shall be appointed for a four-year term.

A member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Upon the expiration of his term of office, a member shall serve until his successor has been appointed and qualified. A member of the Board of Directors may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

(3) The President shall designate one of the Directors to serve as Chairman at his pleasure.

(f) The members of the Board of Directors shall receive pay at the daily equivalent rate provided for grade GS-18 in section 5332 of title 5, United States Code, for each day they are engaged in the business of the Authority, and shall be allowed travel expenses, including a per diem allowance as authorized by section 5703 of title 5, United States Code, in connection with their services for the Authority.

SEC. 3. The Board of Directors shall convene at the call of the Chairman, but must convene at least once each quarter, to set policy for the Authority and review its activities. The Board of Directors shall report to the President and the Congress annually on the activities of the Authority.

SEC. 4. The Board of Directors shall, without regard to the provisions of title 5, United States Code, governing appointments in

the competitive service, appoint and prescribe the duties of a chief legal officer for the Authority, who shall have the title of Indian Trust Counsel, and who shall be paid at a rate equal to that provided for in level V of the Executive Schedule (5 U.S.C. 5316), and a Deputy Indian Trust Counsel, who shall be paid at a rate not in excess of that provided for grade GS-18 in section 5332 of title 5, United States Code.

SEC. 5. (a) The Board of Directors shall appoint, fix the pay of, and prescribe the duties of such attorneys as it deems necessary after consulting with the Indian Trust Counsel.

(b) The Board of Directors shall appoint and fix the compensation of such special counsel and experts as it deems necessary.

(c) Attorneys or special counsel appointed under this section may, at the direction of the Authority, appear for or represent the Authority in any case in any court, before any commission, or in any administrative proceeding.

(d) The Board of Directors may, in the event of a conflict between parties requesting the assistance of or the representation of the Authority under the provisions of section 8 or 9 hereof, hire special counsel or experts to assist or represent one or all of the parties.

SEC. 6. The Board of Directors shall, subject to the provisions of title 5, United States Code, appoint such employees

as it deems necessary in exercising its powers and duties.

SEC. 7. The Authority, in the exercise of its functions, shall be free from control by any Executive Department.

SEC. 8. The Authority, with the consent of an aggrieved Indian, Indian tribe, band or other identifiable group of Indians, is authorized to render legal services in regard to rights or claims of the Indians to natural resources, including, but not limited to, rights to land, rights to the use of water, timber, and minerals, and rights to hunt and fish, within the United States' trust responsibility owing to the Indians, which services are now rendered by the Department of the Interior or by the Department of Justice, but nothing in this Act shall absolve the Department of the Interior and the Department of Justice of their responsibilities to the Indians, including those which derive from the trust relationship and any treaties between the United States and any Indian or Indian tribe: Provided, That the Department of Justice as of the effective date of this Act or as soon thereafter as practicable, is relieved of its responsibility to represent Indians or Indian tribes with regard to their rights or claims to natural resources, including, but not limited to, rights to land, rights to the use of water, timber, minerals, and rights to hunt and fish. The legal services performed pursuant to this section may include, but shall not

be limited to, the investigation and inventorying of Indians' land and water rights, and the preparation and trial and appeal of cases in all courts, before Federal, State and local commissions, and in all administrative proceedings.

SEC. 9. The Authority, with the consent of an aggrieved Indian, Indian tribe, band or other identifiable group of Indians, acting in the name of the United States as trustee for the Indians, may initiate and prosecute to judgment in all courts of the United States suits against the United States, its officers and employees, and in all courts of the United States, and of the States, suits against any of the States, their subdivisions, departments and agencies, or against persons and corporations, public or private, all actions in law and equity for the protection, preservation, utilization, conservation, adjudication or administration of natural resources or interests therein had or claimed by the Indians, including, but not limited to, rights to land, rights to the use of water, timber, and minerals, and rights to fish and hunt. The Authority is authorized to prosecute appeals in all courts of the United States and of the States, and to intervene in any Federal, State, or local administrative proceeding in order to protect the rights of the Indians. The United States waives its sovereign immunity from suit in connection with litigation initiated by the Authority under this section.

Any such suit against the United States, its officers, and employees shall be tried to the court without a jury.

SEC. 10. The powers granted to the Authority by this Act shall not extend to the filing or prosecution of or intervention in any action, claim, or other proceeding against the United States relating to any matter as to which a claim has been filed or could have been filed under the Indian Claims Commission Act of 1946, as amended, or any other special statute authorizing a claims suit to be brought by Indians against the United States but shall extend to section 1346(a)(2) and 1491 of title 28, United States Code: Provided, however, that the Authority may assist any Indian tribe requesting such assistance in its claim pending before the Indian Claims Commission.

SEC. 11. The Authority is authorized to:

(1) Make such rules and regulations as it deems necessary to carry out its functions.

(2) Request from any department, agency, or independent instrumentality of the Government any information, personnel, services, or materials it deems necessary to carry out its functions under this Act; and each such department, agency or instrumentality is authorized to cooperate with the Authority and to comply with a request to the extent permitted by law, on a reimbursable or non-reimbursable basis.

- (3) Receive and use funds or services donated by others.
- (4) Make such expenditures or grants, either directly or by contract, as may be necessary to carry out its responsibilities under this Act.

SEC. 12. There are authorized to be appropriated to the Authority created herein such sums as may be necessary to carry out the provisions of this Act.

Senator ABOUREZK. I would like, for the purposes of this hearing, to have the Interior Department witnesses testify first, followed by the Justice Department witnesses; then I would like the witnesses from the Justice Department to sit at the table with the Interior people after the opening statement, so that we can ask questions jointly of this Government panel.

The first witness to present testimony will be the Assistant Secretary for Congressional and Public Affairs of the Department of the Interior, Mr. John Kyl, and he is to be accompanied by Marvin Franklin, Assistant to the Secretary for Indian Affairs and Mr. William Rogers, Deputy Assistant Secretary of Indian Affairs.

STATEMENT OF HON. JOHN H. KYL, ASSISTANT SECRETARY FOR CONGRESSIONAL AND PUBLIC AFFAIRS, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY WILLIAM ROGERS, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS; DENNIS DRABELLE, LEGISLATIVE OFFICE; ROBERT BRUCE, LEGISLATIVE OFFICE; JAMES CLEAR, OFFICE OF THE SOLICITOR; WALLACE H. JOHNSON, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE; ACCOMPANIED BY WALTER KIECHEL, JR., DEPUTY ASSISTANT ATTORNEY GENERAL; EDWARD S. LAZOWSKA, LEGISLATIVE ASSISTANT; AND FLOYD L. FRANCE, CHIEF, GENERAL LITIGATION SECTION, ALL OF THE LAND AND NATURAL RESOURCES DIVISION

Mr. KYL. Mr. Franklin is not present. Dennis Drabelle is here and also we have James Clear of the Solicitor's Office and Robert Bruce of the BIA Legislative Office.

Senator ABOUREZK. When do you expect that a Commissioner of Indian Affairs will be appointed, Mr. Kyl, so we can deal with him in matters of Indian Affairs?

Mr. KYL. I think the honest way to answer your question is to relate this fact, sir, the nomination of Mr. Franklin was sent to the White House prior to the time you asked the question for the first time and I have hoped since that time we would have him on board already. But he is not.

Of course, it is not my prerogative to in any way intimate what the situation is at the top executive level.

Senator ABOUREZK. But the nomination is now in the White House, if I understand it correctly?

Mr. KYL. Yes.

Senator ABOUREZK. All right. We are happy to have you here today and we are pleased to hear your testimony in this matter.

Mr. KYL. Thank you, Mr. Chairman. We are pleased today to participate in your consideration of the Indian Trust Counsel bill, the first item of the President's Indian package legislation to be taken up by the Congress this year.

As you know, this is not a new bill. Except for one improvement in the drafting it is identical to the bill on the same subject which we submitted to the last Congress.

It is our hope, however, that this bill and the others in the package will be afforded fresh and determined attention by this Congress and that they will be enacted as soon as possible.

As you know, the U.S. Government is charged with a trust responsibility with regard to Indians. This term is often misunderstood. It applies to resources, not to persons. This trusteeship is tied to the protection, preservation, and development of tribal and individual Indian resources, such as land, water, fishing, and hunting rights, mineral development, and timber.

This trust responsibility is frequently compared to the duties of a private trustee, such as the administrator of an estate. But the analogy is faulty because of a unique feature in the U.S. Indian trust responsibility; the assets of this trust must be managed and administered with the consent of the beneficiary—that is, the tribe or individual Indian.

This factor complicates the decisions which must be made and at times makes a wholly satisfactory decision almost impossible to reach.

But as the Federal agency most directly charged with the responsibility of adhering to the conditions of the Government's trust, we have a more difficult problem. Both in appearance and in fact and both for the Department of the Interior and the Department of Justice, there is frequently an inherent conflict-of-interest between the requirements of the trusteeship and the broader responsibility to the people of the United States.

It is frequently difficult and again sometimes impossible to be a single-minded advocate of a claim or demand arising under the trusteeship, when that claim or demand runs counter to what appears to be the general public interest.

S. 1339 is designed to remove this conflict. I might mention at this point that S. 1012, the other bill before the committee this morning, is identical to last year's trust counsel bill. But in reviewing the proposal for submission this year, we noticed some overly complicated drafting in section 10 of the bill. We have corrected this drafting in S. 1339 and thus that is the version of the proposal which we recommend that the committee consider.

S. 1339, then, establishes an independent entity to be known as the Indian Trust Counsel Authority. The guiding structure of this Authority will be a three-man Board of Directors, appointed by the President with the advice and consent of the Senate. At least two of these Board members must be Indians.

The Board of Directors will set up the operation of the Authority, hire the Trust Counsel and his deputy, and set the policy for the Authority by means of meetings at least once each quarter.

The Board will also hire attorneys and other staff as deemed necessary. The Board has authority to hire needed special counsel and experts to assist it in its work, particularly in the event that two or more conflicting parties request help on the same legal matter.

The Trust Counsel Authority will be free from control by any executive department. However, like any Federal agency, the Authority will have to clear its annual budget request with the Office of Management and Budget before submitting it to the Congress.

The Authority will be authorized to bring suit with regard to Indian natural resource claims with the consent of the aggrieved

Indian tribe, band, or other group of Indians. The services of the Authority will not be forced on any tribe or individual. Consent of the aggrieved party is required before the Authority can take action.

The Department of Justice will be relieved of its responsibility to sue with respect to Indian natural resource rights. However, Justice will retain its other responsibilities on behalf of Indians—for example, seeing to it that their civil rights are protected.

A rundown of the litigating authority of the Trust Counsel includes the following:

- Initiating suits against the United States.

- Initiating suits against the States and their subdivisions and against private persons or corporations.

- Prosecuting appeals in any court.

- Intervening in any Federal, State, or local administrative proceeding.

In connection with the Trust Counsel's power to initiate suits against the United States, the sovereign immunity of the United States is waived. The effect of this waiver is that the United States will open itself up to suit on a broad range of natural resource claims that presently cannot be brought.

The question of the relationship of the Trust Counsel Authority to the Indian Claims Commission naturally arises.

First, there is nothing to prevent the Authority from helping Indians with any pending claim before the Commission.

On the other hand, the Authority is barred from opening any claim that should have been brought before the Commission but for some reason was not filed in timely fashion.

What we are talking about here are pre-1946 claims. These are the ones that should have been brought before the Indian Claims Commission. Those that were not are defunct, and the Trust Counsel is powerless to resuscitate them.

Finally, the Trust Council may work on post-1946 claims, but in some forum other than the Indian Claims Commission.

The Trust Counsel Authority will have the power to make appropriate rules and regulations and to request help from other Federal agencies in the form of information, personnel, services, or materials. All Federal agencies are authorized to cooperate with the Trust Counsel Authority in complying with such requests.

American Indians have long felt that the Federal Government—because of the conflict of interests I have discussed—has not given their natural resource rights adequate legal protection. We believe that enactment of this proposal will restore the confidence of Indians in the Government's commitment to meet its legal obligation as trustee for these rights without reservation and to the highest degree of its ability and skill.

That concludes my statement, Mr. Chairman.

Senator ABOUREZK. Thank you.

Before we ask questions, I would like to have the Justice Department witnesses present their testimony and then we will ask questions of the entire panel.

Mr. JOHNSON. Thank you, Mr. Chairman.

Senator ABOUREZK. Would you identify yourself for the record?

STATEMENT OF HON. WALLACE H. JOHNSON, ASSISTANT ATTORNEY
GENERAL, DEPARTMENT OF JUSTICE

Mr. JOHNSON. I am Wallace Johnson, Assistant Attorney General for Land and Natural Resources Division of the Department of Justice. I am joined at the table by Walter Kiechel, Deputy Assistant Attorney General, and by Floyd France and Edward Lazowska, who is the legislative assistant in the Division.

Mr. Chairman, I am privileged in this first appearance before a congressional committee as an Assistant Attorney General to render the strong endorsement of the Department of Justice to the legislation you are today considering, creating an Indian Trust Counsel Authority.

The bills, S. 1012 and S. 1339 are substantially identical.

As you know, the President first proposed such legislation in his message to the Congress of July 8, 1970, and again urged its enactment in his message of March 1, 1973.

One of my predecessors in the Department of Justice, the now Judge Shiro Kashiwa of the U.S. Court of Claims, testified before this subcommittee in favor of S. 2035, 92d Congress, a bill identical to S. 1012, on November 22, 1971, and he again made clear the Department's support of that bill in testimony before the Senate Judiciary Subcommittee on Practice and Procedure on November 30, 1971.

The Secretary of the Interior has on a number of occasions urged enactment of this legislation.

I join these illustrious sponsors when I ask that either S. 1012 or S. 1339 receive prompt and favorable action by this subcommittee and the Congress.

The Department of Justice participated in the drafting of this legislation, with the Department of the Interior and other Government agencies, but the basic concept of having an independent agency protect Indian legal rights to natural resources is one which the Indians have supported for many years.

Pending the enactment of such legislation the Departments of Justice and Interior have entered into an understanding whereby the Department of Justice consults with the Department of the Interior as to the position proposed to be taken with respect to Indian natural resource trust interests in litigation, and undertakes on timely respect to include in any brief filed by the Department of Justice supplementary matter setting forth the views of the Department of the Interior.

The understanding, which is applicable to all litigation conducted by any division of the Department of Justice or participated in by the Solicitor General, is intended to give the fullest possible representation to Indian natural resource trust interests in such litigation, but it is patently not a full substitute for the representation of such interests by an independent Indian Trust Counsel Authority.

With the creation of the Authority the Department of Justice would be pleased to participate in an orderly transition of the Department's responsibilities with respect to Indian natural resource trust interests to the Authority.

We have reviewed this legislation and provided a large amount of background material concerning it in the previous appearance before this subcommittee.

As I mentioned previously, I am joined by the individuals in the Land and Natural Resource Division that have primarily been responsible for handling the litigation that would fall within the scope of the Authority when it is created, and they are accompanying me here today to respond to the questions of this subcommittee, which we will be happy to do.

Senator ABOUREZK. I might mention before we begin asking questions, that the Department of the Interior had set a briefing on the reshuffling of the Bureau of Indian Affairs at the same time as the hearing today, and I would hope that the communications, in that regard at least, would improve because I know some of the members of the committee would have liked to have attended such a briefing but it would be impossible.

Mr. KYL. The only item concerning the Indian Bureau reorganization which is included in this briefing is the simple delineation of the fact that the Bureau of Indian Affairs is taken from the Bureau of Land Management and it is established under the organization as a separate entity reporting directly to the Secretary.

The details of the Indian organization are not part of the briefing which is going on.

Senator ABOUREZK. So we just had our briefing on it.

Mr. KYL. The matter under discussion in H.R. 201 at the moment is the general reorganization of the Department of the Interior, but does not include details on the Indian Bureau reorganization.

Senator ABOUREZK. I have a fairly long question I want to ask the panel.

I think we have a vote coming up. What I will do is pass out this question to you and you can read it while we are over voting.

I am going to call a 15 minute recess for the purposes of voting on the floor of the Senate.

[Recess.]

Senator ABOUREZK. We will resume.

Senator Bartlett, I assume, will be right back, and Senator Fannin has indicated that after the vote he will be over here.

I will start with our questioning again and I hope you have had time to study the question before. As a matter of fact, I won't read the full question. I will ask that you respond to the question that has been given to you.

A copy of the question will be placed in the record by the reporter at this point.

President Nixon, in his July 8, 1970, message to Congress on American Indians, described the need for the Trust Council Authority legislation by underscoring the inherent conflict of interests faced by the Federal trustee, Department of the Interior, when its determination of the national interest in the use of land and water rights conflicts with the private interests of Indians in land which the Government holds as trustee.

In reference to this conflict, the President said at that time " * * * No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute; yet the Federal Government has frequently found itself in precisely that position * * *"

The legislation pending before the committee represents one alternative method of overcoming this problem. However, there are, in my view, inherent weaknesses in that approach.

For example, the Trust Counsel Authority, if created, would undoubtedly become the "smallest" independent agency within the Federal Government.

It seems appropriate to ask at this point just how effective this small organization would be when advancing Indian interests against opposing non-Indian interests that might possibly enjoy the support of the Departments of the Interior and Justice.

With this brief background in mind, I would like to raise what I consider to be a viable alternative to meet the problem which the President so vividly described in his July 8, 1970, message to Congress on American Indians.

If the conflict described by the President is as serious as we are led to believe, would it not appear reasonable to consider the transfer of the Bureau of Indian Affairs in its entirety out of the Department of the Interior and its establishment as an independent organization. This would provide an opportunity:

1. To bring about a restructuring of the Bureau in light of contemporary Indian needs.
2. To develop the needed legal capacity within this organization to meet the serious legal problems which arise in the protection of Indian natural resources.
3. To develop a new mission and role for the Bureau, in light of the influence other governmental agencies now play in terms of funding program development, et cetera.
4. To give Indian people themselves a more effective role in the direction to be taken by the restructured organization. This could be accomplished through the establishment of a commission to serve as the policy voice for the restructured Bureau.

These considerations do not exhaust the advantages to be gained from a transfer of the Bureau of Indian Affairs from the Department as an independent agency. There are admittedly disadvantages. These should also be identified and a decision made that will best serve the interests of Indian people.

I would appreciate reactions from both the Interior and Justice witnesses at the table today and as a followup I shall submit a written communication to both Departments shortly following this hearing that will request that they undertake a study to determine the feasibility of transferring the Bureau of Indian Affairs from the Department of Interior.

My letter of request will contain a date on which such feasibility studies should be completed and reported back to the committee.

Senator ABOUREZK. Please go ahead.

Mr. JOHNSON. Mr. Chairman, the reason I indicated a desire to respond first to the question is that the primary responsibility of the Department of Justice is litigation.

We are a litigating division in the lands and natural resources area and at the present time we, of course, represent both the Indians in a trustee capacity and the United States on behalf of many of its offices, agencies, and departments.

In that regard, our primary concern with this legislation and with any other substitute legislation would be that the agency, whatever agency it is, whether it is an independent authority or independent Indian agency with broader responsibilities, would be granted adequate legislative tools to litigate.

The policy questions inherent and management questions inherent in whether there should be an independent agency with broader responsibility is one that I think is properly before either the Office of Management and Budget or the Department of the Interior whose representative is here with me today.

Insofar as I can today give you a specific answer to this question, I would say that indeed, we would want to look at the specific language granting litigating authority to any agency that would be created and generally, insofar as the responsibility was similar to that of the legislation which you have introduced and which was submitted by the President, we would favor it.

Mr. KYL. Mr. Chairman, I respond first with regard to the question on the first page which is highlighted by this language, "for example the Trust Counsel Authority if created would undoubtedly become the smallest independent agency within the Federal Government and then the question just how effective this small organization would be for advancing Indian interests."

Very frankly, this is a matter of judgment and my reason for saying that is that last year members of this committee were afraid this Trust Counsel would become too powerful and have too much information to plead the case and therefore the other side would be at a disadvantage.

Now, we have this question. Frankly, I think it is a matter of judgment. But we would intend that this Trust Counsel with limited kind of business would be expert.

It would have all of the other departments make available to them the materials, the personnel needed for research and so on.

In my own mind I am sure we would have a good strong voice for the Indians and further it would in effect solve the problem of credibility which we have at this time when we are faced with this problem of a conflict.

It is a problem, I repeat once more, created by a conflict of interest and not by a neglected duty. It is the situation which makes the business impossible under the present set up.

Now, on page 2, you ask this question. "I consider a viable alternative to meet the problem which the President so vividly describes in his July 8, 1970 message, if the conflict is as serious as the President describes it, should we take the Bureau of Indian Affairs in its entirety out of the Department of the Interior and establish an independent organization?"

I am afraid, sir, if that happened, you would still have the same kind of conflict of interest arising as you have at the present time.

Senator ABOUREZK. I am curious to know why that would be the case.

Mr. KYL. For this reason: You still have an agency which has to clear its policy with the Office of Management and Budget, you still have an agency which has to fit its program to the general administration program, you still have all of the same kinds of conflicts that you do at the present time.

If a major change in direction would come later, we would certainly be able at that time to incorporate this Trust Counsel idea.

I don't think we should await that day if we want to take care of this problem. Solving it in the manner we have suggested certainly does not prevent that kind of a reorganization or movement to a separate Indian Bureau entirely outside the Department of the Interior.

Senator ABOUREZK. I think, Mr. Kyl, that one of the major complaints, probably even a greater complaint than the fact that there is a conflict of interest within the Interior Department so far as Indian trust rights are concerned, is the fact that the Bureau of Indian Affairs is not being responsive to the Indian people.

It has established a form of power base within the Government, the existence of which depends upon the weakness of the Indians so far as political power is concerned.

Wouldn't it be much more desirable to have a separate agency substantially different than the present structure of the Bureau of Indian Affairs so that the Indian people themselves would be running that separate agency, so that even though it does have to compete with other agencies in the budget process it would at least be out there by itself and able to advocate for itself rather than have the conflicting advocacy that we now see within the Department of the Interior? Wouldn't that be much more preferable than the way we have it now?

Mr. KYL. May I respond in this fashion. First of all we are here today on this specific proposal which I think is a good proposal. Beyond that, however, we have been engaged for many months in consultations with the Indians, particularly with the legally elected tribal leaders of the Indians across the country.

This consultation involves both organization and legislative proposals, take question No. 1 on page 2 regarding bringing about a restructuring of the Bureau in light of contemporary Indian needs. This we are trying to do. The reason it has not been brought to the Congress at this time is the fact that we have been consulting with the Indians on every step of this proposal.

Senator ABOUREZK. If I might break in just a minute, you made the comment that you have been talking with the elected Indian leaders. I think that points up one of the major failings of the Bureau of Indian Affairs today. They refuse to talk to people not within the tribal structure nor within the tribal government.

You know what I am speaking of, the conflict between urban versus reservation Indians. The Bureau has chosen to ignore the fact that we have a great Indian population in the cities who are suffering from severe problems.

This is one of the things that I want to point out.

Second, I want to say that there is no guarantee that the Trust Authority will not run into budget problems on its own. The very problems you spoke of will not be solved by this sort of thing as opposed to taking the Bureau of Indian Affairs completely out of the Interior Department.

Mr. KYL. Well, may I point out once more that it doesn't really matter where you put the BIA, it is the question of where you put the litigating authority.

Therefore, we have a couple of different conditions. You mentioned the BIA and its being tied to reservation Indians.

Under statute, the responsibility of the Bureau of Indian Affairs is to the federally recognized Indian tribes. Therefore the Bureau of Indian Affairs must be careful of where it goes on these other matters of nonreservation Indians.

At the present time we do have joint relationships with HEW, for instance, in regard to education and in regard to health. There is another matter you brought up, giving voice to the people who aren't on reservations or enrolled members of federally recognized tribes.

Mr. Franklin and Mr. Rogers, in considering organization, have sought to include nonelected Indian leaders in some kind of counsel so that their voice can be heard in this whole proposition.

In other words, I can tell you, sir, that the Bureau of Indian Affairs, Mr. Franklin and Mr. Rogers and Mr. Bruce and the rest of them work in the field daily. They certainly have not been ignorant of the fact that there is a broader problem than that of federally recognized tribes and they have sincerely and totally sought the advice and counsel of Indians at every step.

We have one other Indian bill which has yet to come to the hill. We have clearance as far as the administration is concerned. This is the one that would take the old EDA funds and put them into block grants for Indian tribes.

The reason that is not here is that it has not been finally approved by the elected Indian tribal leaders and we want that approval on the method of the bill and its principal.

So these things you speak about here are certainly subjects of the greatest concern and discussion right now in the Department.

Senator ABOUREZK. Were you going to go on further?

Mr. KYL. I wondered if you have any further questions on this?

Senator ABOUREZK. Can I summarize the Department's attitude at this point as saying that the Department is opposed to making a separate agency out of the Bureau of Indian Affairs?

Mr. KYL. No, sir; you may not say that accurately. The accurate situation is this: This whole matter is subject to review right now not only by the Department of the Interior, but by others and the conclusion has not yet been reached.

Senator ABOUREZK. When do you expect such a debate to be finished within the administration?

Mr. KYL. At this moment I cannot tell you what that date would be, sir.

Senator ABOUREZK. In a more specific vein, I would like to ask the opinion of both Departments with regard to a Trust Counsel Authority, do you think an authority that has a total litigating staff available to it, and doesn't have to reach outside, would be preferable to a Trust Counsel Authority that is a minimum, skeleton staff which would operate as a house counsel, but would be able to farm out litigation to either private law firms under contract or to the Justice Department when that becomes necessary under certain civil rights cases and other areas of jurisdiction?

Who would like to answer first?

Mr. KYL. I would defer to Justice for the first response to that, sir.

Mr. JOHNSON. I suppose we are talking about a question of degree here, Mr. Chairman. The best answer may be that both capacities are needed in order to properly perform the trust litigating responsibility delegated to the Agency.

Without being able to talk in terms of budgets and manpower, I think there is a clear benefit to be derived from having an independent capacity, similar to that which the Department of Justice now has with respect to this litigation, and yet having the flexibility, under certain specific circumstances, to be able to retain independent counsel, either in a consulting capacity or to represent the parties involved in the litigation.

Insofar as our specific experience is concerned, we have not only attorneys within the land and natural resources division, but the ability to utilize the manpower of the 93 U.S. attorneys' offices. There is just no way to impact the manpower capacity that we have in that regard. It is a tremendous resource. I can conceive of the Trust Authority being a blend of both.

Senator ABOUREZK. I can think of an example that happened recently, within the last couple of years, where an entire corporation belonging to a tribe was converted to the use of the former tribal chairman when he left office. He suddenly claimed that was his company. A complaint was lodged with the U.S. Attorney General's Office in that district and the U.S. attorney did nothing about it. Eventually a private lawsuit was brought and the Court determined that the company did indeed belong to the tribe and it had been wrongfully converted by the former tribal chairman.

What would you suggest could be included in this legislation that would avoid or prevent something like that? If the U.S. attorney will not act, what remedy would the Trust Counsel have to make him act if they thought he should?

Mr. JOHNSON. To put in the appropriate perspective the situation you just articulated, we are concerned today with legislation to respond to the need to protect the Indian natural resource trust interests. Insofar as there would be various causes of action available or arising that would involve the United States of America as a party in interest, I would assume that the full range of legal remedies would be available to all Indians to proceed against the Government.

Now, in the situation that you have described, it is possible that Mr. France, who is accompanying me today and who is Chief of the General Litigation Section, would have some specific knowledge that would be of benefit in resolving the specific question.

Senator ABOUREZK. Well, just assume that as a hypothetical, that was an actual incident, by the way, but just assume that as a hypothetical.

Mr. FRANCE. I don't know what matter you have in mind, Mr. Chairman, but if it was desired that the Department of Justice represent the tribe in getting a judicial declaration that this corporation was tribal property, the matter should have been referred to the Department of Justice through the Interior Department and we would have instructed the U.S. attorney as to what action he should take.

As far as I know, that matter never reached the Department of Justice.

Senator ABOUREZK. Well, let me say this, it did. I referred it there myself and tried everybody I could think of at the time and just couldn't get anything done.

At the time everybody threw up their hands. It was a matter of the discretion on the part of the U.S. attorney and I am just curious if there is something that we can put in this legislation to prevent that kind of thing from happening, because I can see it happening time and again.

Mr. JOHNSON. Mr. Chairman, I am not sure there is a legislative solution needed in this instance because the actions of the U.S. attorneys are generally matters of interest to the Department of Justice.

They are within the bureaucratic framework, and indeed the U.S. attorney is the local representative of the Department and of the President in each district and cooperates closely with the people back in Washington.

Now, obviously there are situations where there are different points of view expressed and different opinions held by the lawyers in the field as opposed to the lawyers in headquarters, as it were.

Senator ABOUREZK. Well, is there anything that we could write into the legislation that would prevent that?

Mr. JOHNSON. There may well be a legislative response. I guess what I am saying to you is that I don't know that a legislative response is necessary. I don't know if there is any need to mandamus the U.S. attorneys to adhere to the views of the Department of Justice because there is in fact a good working relationship.

If, in fact, you would conclude that there should be something written in here that would address that specific issue, we would, of course, be happy to either—well, to look at specific language to accomplish that goal for the committee.

Senator ABOUREZK. I wonder if you might be able, within the 30-day period, to give us a response to that very question and suggestions as to what we might do with it.

I wonder if the Interior Department has a response to this overall question?

Mr. KYL. I think, sir, you are getting to the whole thrust of this bill, subject to the Trust relationship responsibility and the fact that it is a resource matter.

The Trust Counsel certainly can take that case to court and further, may I point out in section 5 of the bill, in subparagraph C, attorney for special counsel can be appointed in the event of a conflict between parties requesting the assistance of or representation of the Authority under section 8 or 9 hereof, they can also hire special counsel or experts to assist one or all of the parties.

I think what we are doing in the bill is exactly the kind of thing you would desire to be done, sir.

Senator ABOUREZK. I am sorry, I missed that, Mr. Kyl. Do you think that the Authority should have discretion to hire as many attorneys as it might deem necessary to get the job done rather than try to restrict legislatively the number of counsel it has thereby forcing them to hire outside counsel?

Mr. KYL. First, we recognize the virtue of the independent agency of which this Trust Counsel is. There is provision in section 5(c), to hire special counsel and we deal with the particular problem of conflict in (d) of that section which says the Board of Directors may, in the event of a conflict between parties requesting the assistance of or representation of the Authority under the provisions of section 8 or 9, hire special counsel or experts to assist or represent one or all of the parties.

Senator ABOUREZK. I notice in the bill which was sent up by the administration that there is no requirement for an annual authorization. Section 12 on page 7 provide for an open ended authorization.

I presume the committee and the Senate will do what it intends to do, but I just want to state at this time that I will offer an amend-

ment to this bill requiring that the Authority return for an annual authorization which would give the Senate and the House a bit of overview and a bit of oversight for this particular Trust Counsel Authority, and I assume you don't have any objection to that, do you?

Mr. KYL. No, sir; as a matter of fact, we say although it is an independent agency it has to go before the committees of Congress for appropriation and has to fit into the overall program.

For what it is worth, I don't think at this point anybody can anticipate a totally accurate figure, but after considerable study we conclude there would be a Chief Counsel probably at level five to get the kind of individual we want, a Deputy Chief Counsel, GS-18, and 15 attorneys, probably at the GS-13 level.

In addition, 10 technical and professional administrative positions and 10 clerical positions with the contract attorneys, consultants, board of directors' meetings, et cetera, the estimate that we arrive at which I repeat is the best estimate we can make at this point is that the appropriation would be about \$3 million annually.

Senator ABOUREZK. That would be the first, perhaps the experimental stage?

Mr. KYL. Yes; I think it would require some experience with the annual review provided by the legislation. This is a matter over which you would have some control.

Senator ABOUREZK. I agree. I think we ought to, as you say, try it out and see where we have to go from there.

Does the Justice Department believe it is being absolved of any of its responsibilities for the Indian people as a result of this legislation?

Mr. JOHNSON. Mr. Chairman, we are presently litigating approximately 225 cases that would, as I view this legislation, fall within the jurisdiction of the Authority. I understand those cases would become the responsibility of the Indian Trust Council to prosecute and insofar as other cases of a similar nature were to be litigated, they would also fall within the responsibility of the Indian Trust Authority.

Insofar as those particular cases or class of cases are involved, yes, the Department of Justice is absolved of its authority to conduct the litigation on behalf of the parties in interest.

Senator ABOUREZK. In the event the committee should amend the proviso on page 5 of the bill, line 6 in section 8, which would maintain legislatively that the Justice Department keep its jurisdiction, do you have any position you would like to state in the event that would happen?

Mr. JOHNSON. It seems to me that the whole reason behind the legislation before this committee is to obviate any apparent conflict with respect to the Department of Justice acting as an attorney for a trust beneficiary and acting as an attorney for the Department of the Interior or another Federal agency.

If you amended the proviso, there would be that apparent conflict in the future as there is that apparent conflict in the present.

My view would be that in order to facilitate the proper functioning of this Indian Trust Counsel Authority it would be most appropriate to transfer that litigation which would come under its jurisdiction as legislatively created here into the Agency as soon as we can effect transfer.

That is not to say we would simply pack up the case files and ship them off to the Indian Trust Authority. I would conceive of a close working relationship between our attorneys and the attorneys that would come into being, as it were, as the new attorneys of record, all designed to facilitate an expeditious transfer of responsibility, along with not in any way, shape, or form, jeopardizing the load of litigation.

Senator ABOUREZK. Why do you think Justice ought to be absolved of its responsibilities toward the Indian people in that case?

Mr. JOHNSON. Well, a litigating attorney today in the Department of Justice is fulfilling the responsibility placed on him under the law. Insofar as there would be a real conflict, he obviously would not serve. We are talking at least in part here about an apparent conflict.

Senator ABOUREZK. We are talking about the case of no conflict right now.

Mr. JOHNSON. That is what I am driving at. The broad nature of the litigation instituted on behalf of the Indians by the United States as trustee falls into a natural resource category and can best be handled by one litigating authority. If a procedure were to be developed which would resolve the question of whether one or the other of two litigating agencies had responsibility, we would simply be delaying what has been delayed too long already.

In other words, what we are interested in is supporting an agency which is going to initiate litigation, necessary litigation, not irresponsible litigation but necessary litigation, promptly.

If there were an additional procedure which was created to resolve the question of who has responsibility to represent the Indians, then we are adding an ingredient that in our view is unnecessary.

Now, again, Mr. Chairman, I haven't had an opportunity to review any specific legislation provisions that would create such a procedure. If it would be your desire and intention that we review such language and submit a formal opinion to the committee on it, I would be happy to do so.

Senator ABOUREZK. I would like you to do so and we would like to have it within 30 days.

Thank you.

Do you have anything further?

Mr. KYL. I would like to say something, Mr. Chairman. At this time it is our desire to have a cleancut delineation of duties here. We are afraid if there were a dual jurisdiction there could be cases that would drop between the cracks somewhere. We also believe that sometimes there are conflicts of interest, in the terms of reference that we use that phrase today, that can develop during the litigation which are not anticipated before the case goes to trial.

In the case of having the Trust Counsel handle that legislation, then that conflict of interest would not be present, whereas it might be should the Justice Department be handling the case.

I think we are more than a little worried at this point about who would make the decisions on where those cases should go. So we do prefer a clean delineation of the authority.

Senator ABOUREZK. I have a number of other questions. I think the staff passed them out to both Departments. Rather than go through

the sometimes technical answers and so on, I would like to ask each Department to respond to these questions in writing to the committee within a 30-day time period.

Mr. KYL. I would be happy to do that, sir.

Senator ABOUREZK. Yes; it would save time. Senator Bartlett has some questions to ask and we have other witnesses today. So in the interest of hearing everybody at length, we would like to have you do that.

Mr. JOHNSON. We will be happy to do that, Senator.

[Subsequent to the hearing the Departments of Justice and Interior submitted the following information:]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 11, 1973.

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

DEAR MR. CHAIRMAN: This responds to your letter of May 14, 1973, requesting this Department's answers to several questions concerning S. 1012, "To provide for the creation of the Indian Trust Counsel Authority, and for other purposes." In addition we are providing the answer to a question asked by Senator Abourezk at the hearing on this bill, May 7 (this appears as question #13, *infra*).

1. "Senator Abourezk requested the views of your Department on the feasibility of transferring the Bureau of Indian Affairs from Interior and establishing it as a separate agency."

Answer. Although the question does not say so specifically, we assume that the motive for transferring the BIA out of the Department of the Interior would be to eliminate the conflict of interest which S. 1012 is designed to solve. Initially, such a transfer would not affect the Department of Justice, where the conflict of interest generally comes to a head with regard to litigation. Secondly, such a transfer is too drastic a remedy for the narrow area encompassed by the conflict—Indian natural resources litigation. There may be other unrelated reasons for recreating the BIA as a separate agency, but we believe that the elimination of the conflict of interest which we have discussed can be handled with more precision. Finally, we would note that the concept of making the BIA a separate agency is a controversial one in the Indian community, and it would be unfortunate to hold up the solution of the conflict of interests while this controversy worked itself out.

2. "Should U.S. attorneys be required to adhere to the views of the Department of Justice—provide appropriate language."

Answer. We defer to the views of the Department of Justice, which we understand will also be replying to this set of questions, on this matter.

3. "Provide estimated staff and funding levels for the Authority.

(a) If Justice is relieved of all responsibility for litigation."

Answer. Before addressing this question, we would observe that it will be up to the Trust Counsel Authority's Board of Directors to make these decisions: the Authority will be an independent agency, and we cannot purport to speak for it. We would estimate that the first budget of the Authority would call for about \$1.5 million which would include about \$350,000 for full time staff and the remainder for contractual arrangements, consultation, travel, supplies, etc. As the case load developed this figure would be adjusted each year to provide whatever funds are required to fully develop the Authority's responsibilities.

"(b) If Justice is relieved only in those situations involving a conflict of interest."

Answer. We have no way of making such a comparison, even by conjecture. Doubtless the number of cases actually involving a conflict of interest is less than the sum of all Indian natural resource claims, but we are unable to make meaningful estimates of the number or cost of the former. (Indeed, as a party enmeshed in these conflicts, perhaps we lack the objective vision necessary to make such an estimate.)

4. "What will be and should be the effect of this legislation on 25 U.S.C. 175?"

Answer. Again, we defer to the views of the Department of Justice for the answer to this question.

5. "Under Section 8 of this legislation, the Department of Justice would be relieved of its responsibilities to represent Indian tribes with respect to their rights or claims to natural resources. Isn't this far too broad? Why should the Department of Justice be absolved of the responsibility in situations where there is no conflict of interest, *i.e.*, where there is some third party invading Indian natural resource rights. It might be argued that in some situations it will be a matter of dispute as to whether or not the Department of Justice actually has a conflict of interest. In such cases a procedure could be set up to permit the Trust Counsel to intervene at the request of the Tribe or Indians concerned."

Answer. We firmly believe that anything less than a complete severance of natural resource litigation on behalf of Indians from the Department of Justice would fail to assure Indians and the general public that the conflict of interests has been solved. To involve the Department of Justice and the Trust Counsel in decisions as to whether a conflict existed in particular cases would lead to confusion and uncertainty. Even the case mentioned in the question—where a third, non-governmental party is invading Indian rights—may have ramifications involving such conflicts which do not surface right away. For the Trust Counsel to intervene in a case where Justice was already representing an Indian party seems particularly ill-advised—the Trust Counsel's intervention, in addition to being procedurally knotty, would be a public vote of no-confidence in Justice and would further damage the credibility of the Federal Government in Indian country. If both the fact and the appearance of such conflicts are to be avoided—and we believe that this is what is necessary to restore the confidence of Indians in the government's representation of their natural resource interests—then only a clear-cut separation of the litigating responsibility in that area will do the job. We therefore do not feel that any language could be supplied to segregate the responsibility and still achieve the purpose of the legislation.

6. "When the decision made as to whether Justice will prosecute, I refer here specifically to the testimony of Adrian Fisher at page 150 of last Congress' hearing, and I quote:

Mr. Stoddard replied by saying:

"Your honor, I must confess that I am extremely embarrassed because I am wearing at least two hats here. The Attorney General told me unequivocally [sic] I am not to oppose the motion for immediate possession to permit the construction of this project to proceed, because he has conferred with the Corps of Engineers who don't want it stopped. On the other hand, the Congress told the Indians under section 175 they may have the U.S. attorney appear to represent them. They have told me definitely I am to oppose."

Shouldn't someone speak for the Indians at that point? Will this legislation provide for an effective Indian voice during decisionmaking?"

Answer. It is precisely to have someone—*i.e.*, the Trust Counsel—speak for Indians with an independent voice that our proposal is designed. The Trust Counsel would certainly be able to intervene on behalf of Indians in such a matter as this.

Although the legislation itself contains no specific provision on this point, we believe that there is amply insurance that Indians will have an effective voice in the Authority's decisions in the fact that Indians will be the Authority's clients. On the other hand, Indians will, of course, have no voice in Justice's decision-making with regard to natural resources because Indian considerations will no longer be part of Justice's responsibilities in that area of the law.

7. "There is considerable doubt as to how effectively the Trust Counsel Authority will be able to operate in its initial years because of the difficulty of recruiting experienced staff knowledgeable in the Indian law field whose opponents will often be experienced attorneys of the Department of Justice. The following questions are suggested to explore this problem:

(a) How will the Trust Counsel Authority be staffed?

(b) What kind of budget will be needed?

(c) How is the Authority to operate effectively in its initial years before it has assembled a staff of experienced personnel?"

Answer. It will be up to the Trust Counsel Authority's Board of Directors to make these decisions concerning hiring, budget, etc. Therefore, our answers here should be read as being no more than surmises on our part. The Trust

Counsel, given the requisite authority and budget, should not have difficulty in organizing and implementing a successful program. Also Section 8 of the bill provides for orderly transition of responsibilities from Justice to the Trust Counsel.

8. "Under Section 11, the Authority is authorized to request assistance from other governmental agencies. Shouldn't the Department of Justice be available to assist the Authority in such matters as the routine filing of papers, etc., in such cases where the Authority thinks this would be helpful?"

Answer. The break between Justice and the Trust Counsel should be clean (see our answer to Question No. 5). It would follow that Justice should not perform professional tasks on behalf of the Trust Counsel. However, Section 11(2) does allow for appropriate cooperation between the Trust Counsel Authority and other Federal entities including the Department of Justice.

9. "Would it be inconsistent with the responsibilities of the Federal Government and the intent of this legislation if the Authority had complete access to the institutional memory of Justice and Interior files, interpretations, etc.—to prevent an adversary relationship arising within the Government? Provide appropriate language."

Answer. From the standpoint of this Department we agree that appropriate "institutional memory" of Interior should be made available to the Trust Counsel Authority. Provision is made for appropriate inter-agency cooperation in section 11(2) of our proposal.

10. "How will the Authority determine the handling of intra-tribal disputes? While Section 5(d) provides for the hiring of special counsel in the event of a conflict between parties requesting assistance, this does not address the situation where a small splinter group of a tribe wishes the Authority to intervene on their behalf against the wishes of the majority of the tribe. In cases involving tribal rights, shouldn't there be a limitation in the bill restricting the authority of the Trust Counsel to intervene against the wishes of the governing body of a tribe?"

Answer. The problems which this question raises are grave. After much reflection, however, we believe that their resolution is best left to the judgment of the Authority's Board of Directors. Like any attorney, the Trust Counsel has the discretion to refuse to take a case. To lay down a hard-and-fast rule ahead of time is not only very difficult (*e.g.*, we question whether there are not cases where the Counsel should be able to sue on behalf of one part of a tribe against another) but would compromise the independence of the Authority. We believe it is most important for the Authority to be untrammled by any other consideration than the good judgment of the Board of Directors in the matter of what natural resource cases to take and how to handle them. Moreover, Justice and Interior are not limited in the way this question suggests. All our proposal does is transfer certain of Interior's and Justice's responsibilities to the Authority, and it is hard to see why the responsibilities themselves should be tampered with because of the transfer.

11. "Nowhere in the bill is there any definite standard as to the kinds of cases that the Authority should take. Shouldn't there be some guidelines expressed in the statute as to the kinds of cases that the Authority should take. Shouldn't there be some guidelines expressed in the statute as to the kinds of cases the Authority is to take in the natural resource area. Should this extend to suits for money damages when a resource has been converted? Provide appropriate language."

Answer. Again, the Authority's vitality depends on its being able, like Justice and Interior today and like any attorney, to choose the cases where it believes its assistance will do the most good. In addition, we believe that the cases likely to come before the Counsel will be variegated that to write useful guidelines for accepting or rejecting them would be virtually impossible. Finally, we believe that the bill as written does authorize the Trust Counsel to sue for money damages.

12. "During the testimony, the Administration indicated that there are 225 cases presently pending on in progress which would be transferred to the Authority. How many lawyers are involved in these cases? other staff? What is the total cost for these cases including salaries, transportation and court costs?"

Answer. We defer to the Department of Justice for this answer.

12. "Senator Abourezk . . . I have one more question before we excuse this particular panel.

In 1955 in order to alleviate what they saw as a conflict between the BIA general counsel and the general counsel of other Interior Department bureaus, the Interior Department made an administrative recommendation to the Appropriations Committee which removed the general counsel from BIA and put his duties into the Interior Department, therefore creating what is now considered to be the conflict of interest that we are trying to legislate away.

Statements made during those hearings, Interior Solicitor testified there should be only one office for the Department of the Interior rather than general counsel for each bureau. Thus, since 1955, the Interior Department has been living with the conflict of interest which they willfully caused and that you now want us to legislate away.

The question is could the Department of Interior provide this committee with a report as to why the change in the structure of lawyers in the Interior Department took place in 1955 and why couldn't this situation now be changed back to where it was before 1955 to partially alleviate the present conflict of interest?"

Answer. Before turning to the factual part of this question as to why the structural change in the Solicitor's Office was made, it is important to stress that this change in no way contributed to the conflict of interest we have been discussing. This conflict is a function of the fact that the Department of the Interior has many responsibilities, and it has nothing to do with the structure of the Department. The conflict predated the change in the Solicitor's Office in 1955 and would survive a restoration of the old arrangement. The only way to solve the conflict, as we see it, is to place the responsibility for litigating Indian natural resource claims in an independent body which would have no conflicting responsibilities. By definition such a body could not exist within the Department of the Interior—or, for that matter, within any Federal agency. A wholly separate existence would be required.

With regard to the 1955 alteration of the Solicitor's Office, it is important at the outset to note that the alteration was Departmentwide and not confined to the Indian area of responsibility. Nor did the change take place because of any conflicts of interest within the Department. The best way to explain the reason for the change is to quote from the report of a special survey team which was assigned the task of assessing the need for a reorganization of the Department's legal activities; this report, dated February 15, 1954, served as the underlying rationale for the reorganization that occurred in 1955. The reasons for the survey team's recommendation that the legal functions of the Department be centralized are as follows:

Should the Solicitor's Office be fully integrated?

It has been stated by many observers that the Department of the Interior tends to be a federation of individual bureaus and agencies rather than a unified department. Historically this was perhaps inevitable because of the manner in which many of these groups first developed as independent agencies and later were transferred in toto to the Department. Consequently there developed legal staffs serving the individual agencies rather than the Department as a whole. That this "federation" sentiment still exists is shown by the fact that some administrators still refer to the "Departmental" level as opposed to the "Bureau" level, and reference to the attorneys in the Solicitor's Office means only those 28 individuals working directly under the Solicitor. The appointment (which occurred several months ago) of Assistant Secretaries with the individual agencies reporting to them will undoubtedly aid materially in integrating and unifying the whole Department. The first question confronting the survey team was, therefore, should the Solicitor's Office also be fully integrated?

Technically it can be claimed that the Office of the Solicitor is already integrated because on August 5, 1953, the Secretary of the Interior issued an order placing all attorneys under the Solicitor administratively as well as functionally. This, however, was integration merely on paper. It has been tried in the past but there was little noticeable change in the operation of the Office. The effect of the recent order has likewise been negligible.

It is the survey team's view that to be effective there must be a "physical" integration. This means that the attorneys must be housed together and that a direct line of authority leads to the Solicitor. The pros and cons of integration have been stated on several occasions, but the compelling reason from the survey team's standpoint is that complete integration is necessary if the Solicitor is to have actual control of legal matters so that there may result unified and uniform

legal policies and consistent interpretations of the statutes and the law applicable to departmental programs. Greatly improved morale among the attorneys should also result. In addition, integration would seem highly desirable from an over-all standpoint because it would help materially in the integration of the entire Department.

Integrating the Washington Office

... Coincident with the physical integration of the Washington staff, a definite clearly defined line of responsibility must be established. The Solicitor has so many calls upon his time that he should be largely freed for policy discussions and for consultations on only the most important legal problems. It is, therefore, proposed that a Deputy Solicitor be named who would handle the bulk of day-to-day legal matters which now confront the Solicitor. Reporting also to the Solicitor would be the Legislative Counsel and also any special Assistants whom the Solicitor would need for special assignments. Under the Deputy Solicitor there would be five Associate Solicitors, and the first four of these would have legal responsibilities comparable to the administrative responsibilities of the three Assistant Secretaries (with two Associate Solicitors supervising the legal work for bureaus and agencies reporting to Assistant Secretary Lewis). The title of "Chief Counsel" would be changed to "Assistant Solicitor".

One Associate Solicitor would have three groups reporting to him; namely, the Assistant Solicitors for the Bureau of Mines, for the Geological Survey, and for Defense Minerals (including the Connally Act). Reporting to another Associate Solicitor would be the Assistant Solicitors for the Bureau of Land Management and Office of Territories. The Assistant Solicitors for Indian Affairs, National Park Service, and Fish and Wildlife Service would report to another Associate Solicitor. Reporting to another Associate Solicitor would be the Assistant Solicitors for Reclamation and the Power Administrations (Bonneville, Southwestern, and Southeastern). Another Associate Solicitor (who would not correspond to any of the Assistant Secretaries) would co-ordinate the work of the Assistant Solicitors in charge of the Bureau of Land Management appeals, other appeals, and administrative and miscellaneous matters. Each Associate Solicitor would have a research assistant, and each Assistant Solicitor would have a staff requisite for his work. A patent attorney for the entire Department would be attached to the Office of the Deputy Solicitor."

The Office of Management and Budget has advised that there is no objection to the presentation of this letter from the standpoint of the Administration's program.

Sincerely yours,

JOHN KYL,
Assistant Secretary of the Interior.

DEPARTMENT OF JUSTICE,
Washington, D.C., July 11, 1973.

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

DEAR SENATOR: Reference is made to your letter of May 14, 1973, submitting a number of questions which have the purpose of eliciting information to supplement testimony presented by the Department of Justice before the Subcommittee on Indian Affairs on May 7, 1973. Several of these questions are identical to those submitted to our representatives during this hearing by the Chairman of the Subcommittee, Senator Abourezk. We indicated at that time that we would be happy to submit written answers to these questions for the record in an effort to expedite the May 7 hearing. So as not to unnecessarily burden the record, we have considered our responses to your questions as fulfilling our responsibility to respond to the subcommittee request.

The questions, with our responses, follow.

(1) Senator Abourezk requested the views of your Department on the feasibility of transferring the Bureau of Indian Affairs from Interior and establishing it as a separate agency.

Answer. In the area of the Indian affairs the function of the Department of Justice is limited to that of furnishing legal counsel in litigation. The feasibility of establishing the Bureau of Indian Affairs as a separate agency involves

questions of fact and considerations of policy which are not within the expertise of the Department. On this subject we defer to the Department of the Interior, the Office of Management and Budget, and the Congress.

(2) Should U.S. attorneys be required to adhere to the views of the Department of Justice—provide appropriate language.

Answer. The Department of Justice does not feel that a problem exists with respect to adherence of United States Attorneys to the views of the Department. On the contrary, the Department feels that United States Attorneys function effectively and efficiently as arms of the Department in their several districts, exercising a measure of autonomy appropriate to this purpose and necessary for proper discharge of their responsibilities. We do not believe that any new law is needed on this subject at this time.

(3) Provide estimated staff and funding levels for the Authority.

(a) If Justice is relieved of all responsibility for litigation.

(b) If Justice is relieved only in those situations involving a conflict of interest.

Answer. The Department of Justice has not developed staff and funding levels for this proposal and we understand that the Department of the Interior has done so. We therefore defer to Interior on this question. We would point out that the Authority would have responsibilities substantially beyond those now vested in the Department of Justice, which are limited to the furnishing of legal counsel in litigation. Further, the Department of Justice is of the view that the institutional conflict of interest that removal of which is the fundamental purpose of the Indian Trust Counsel Authority legislation cannot be effectively removed, and the purpose of the legislation cannot be fully achieved, except by relieving Justice, which has the responsibility for protecting the legal interests of the United States in natural resources, from all responsibility for all protecting the trust interests of Indians in such resources.

(4) What will be and should be the effect of this legislation on 25 U.S.C. 175?

Answer. The mentioned provision places in the Department of Justice responsibility for legal representation of Indian interests, in litigation, in a broad range. The Indian Trust Counsel Authority legislation would supersede the provision insofar as natural resource trust interests were concerned, but the provision would otherwise continue in effect. This would appear appropriate.

(5) Under Section 8 of this legislation, the Department of Justice would be relieved of its responsibilities to represent Indian tribes with respect to their rights or claims to natural resources. Isn't this far too broad? Why should the Department of Justice be absolved of the responsibility in situations where there is no conflict of interest, i.e., where there is some third party invading Indian natural resource rights. It might be argued that in some situations it will be a matter of dispute as to whether or not the Department of Justice actually has a conflict of interest. In such cases, a procedure could be set up to permit the Trust Counsel to intervene at the request of the Tribe or Indians concerned.

(a) Provide appropriate language to limit the relief of responsibility of Justice to those situations involving a conflict of interest.

Answer. Considerable attention was given to this subject in the course of the May 7, 1973 hearing. At the risk of repeating somewhat, we wish to say that relieving the Department of Justice of its present responsibility to represent Indian tribes with respect to their rights or claims to natural resource trust interests does not seem to us too broad. On the contrary, it appears to us a logical concomitant of placing that responsibility in the Indian Trust Counsel. We deem it highly undesirable that the responsibility be divided, and are concerned that Indian interests would suffer through a division. Moreover, the fundamental purpose of the Indian Trust Counsel Authority legislation is to eliminate the institutional conflict of interest which may arise whenever attorneys of the Department which represent the natural resource interests of the United States also represent Indian natural resource interests. In our view, elimination of this institutional conflict of interest can be effected, and the fundamental purpose of the legislation achieved, only by providing that all Indian rights and claims to natural resource trust interests receive single-purposed representation through the independent agency proposed to be constituted by this legislation. We do not believe that any language could limit the relief of responsibility of Justice from representing such interests and still achieve this purpose.

(6) When the decision is made as to whether Justice will prosecute, I refer here specifically to the testimony of Adrian Fisher at page 150 of last Congress' hearing, and I quote:

Mr. Stoddard replied by saying:

"Your honor, I must confess that I am extremely embarrassed because I am wearing at least two hats here. The Attorney General told me unequivocally I am not to oppose the motion for immediate possession to permit the construction of this project to proceed, because he has conferred with the Corps of Engineers who don't want it stopped. On the other hand, the Congress told the Indians under section 175 they may have the U.S. attorney appear to represent them. They have told me definitely I am to oppose."

Shouldn't someone speak for the Indians at that point? Will this legislation provide for an effective Indian voice during decision-making?

Answer. We note, also at page 150 of the hearing, that the Indians were in fact represented by their tribal counsel in the particular court proceeding involved. Enactment of the Indian Trust Counsel Authority legislation would give the Indians the option of being represented by the Indian Trust Counsel, and would eliminate the potential for a conflict of interests which presently exists because of the legal responsibility now devolving upon the Department of Justice of representing Indian natural resource trust interests as well as general interests of the United States. The Authority also could enter into the decision-making process on any matter affecting Indian natural resource trust interests, whether or not litigation might be involved.

(7) There is considerable doubt as to how effectively the Trust Counsel Authority will be able to operate in its initial years because of the difficulty of recruiting experienced staff knowledgeable in the Indian law field whose opponents will often be experienced attorneys of the Department of Justice. The following questions are suggested to explore this problem:

(a) How will the Trust Counsel Authority be staffed?

(b) What kind of budget will be needed?

(c) How is the Authority to operate effectively in its initial years before it has assembled a staff of experienced personnel?

Answer. The Department of the Interior has done some preliminary exploration on staffing and budget of the Trust Counsel Authority, and Justice defers to that Department on those aspects of this question. We are confident that given the requisite money and hiring authority the Trust Counsel Authority should have no particular difficulty in assembling a competent staff. It also should be noted that Section 8 of the bill permits an orderly transition of responsibility from Justice to the Authority.

(8) Under Section 11, the Authority is authorized to request assistance from other governmental agencies. Shouldn't the Department of Justice be available to assist the Authority in such matters as the routine filing of papers, etc. in such cases where the Authority thinks this would be helpful?

Answer. Section 11 is sufficiently broad to permit the Department of Justice to render assistance, as may be appropriate, upon request of the Authority. The routine filing of papers would not seem a matter as to which the Authority would need assistance, however, and there also should be avoided any assistance by Justice which would not be consistent with the fundamental purpose of this legislation: the elimination of any suggestion of conflict of interest.

(9) Would it be inconsistent with the responsibilities of the Federal Government and the intent of this legislation if the Authority had complete access to the institutional memory of Justice and Interior files, interpretations, etc.—to prevent an adversary relationship arising within the Government. Provide appropriate language.

Answer. Speaking solely for the Department of Justice, we point out that its relations with the Indian Trust Counsel would be limited to instances in which an Indian right or claim to natural resources was involved in litigation in which the Department represented some different interest of the United States. In respects as to which adversary interests might be involved, the Federal Rules of Civil Procedure would govern access to information of the litigants. We believe that the language of Section 11(2) is adequate to cover other circumstances.

(10) How will the Authority determine the handling of intra-tribal disputes? While Section 5(d) provides for the hiring of special counsel in the event of a conflict between parties requesting assistance, this does not address the situa-

tion where a small splinter group of a tribe wishes the Authority to intervene on their behalf against the wishes of the majority of the tribe. In cases involving tribal rights, shouldn't there be a limitation in the bill restricting the authority of the Trust Counsel to intervene against the wishes of the governing body of a tribe?

Answer. Inter-tribal disputes unquestionably can pose serious problems. However, we do not believe that there should be a limitation in the bill restricting the authority of the Trust Counsel to intervene against the wishes of the governing body of a tribe. Rather, we would expect the Trust Counsel to act responsibly with respect to inter-tribal disputes as in other cases, and not to support claims which are without reasonable basis of legitimacy.

(11) Nowhere in the bill is there any definite standard as to the kinds of cases that the Authority should take. Shouldn't there be some guidelines expressed in the statute as to the kinds of cases that the Authority should take. Shouldn't there be some guidelines expressed in the statute as to the kinds of cases the Authority is to take in the natural resources area. Should this extend to suits for money damages when a resource has been converted? Provide appropriate language.

Answer. We believe that there should not be placed upon the Authority limitations as to the kind of cases it may take beyond the basic limitations that the legal services which it renders must involve rights or claims of Indians to natural resources within the United States trust responsibility owing to the Indians, and that such services be rendered only with the consent of the aggrieved Indian or Indians. Within these limitations we would expect the Authority not to support claims which are without reasonable basis of legitimacy. The language contained in Section 8 is, we believe, sufficiently broad to encompass suits for money damages where a resource has been converted.

(12) During the testimony, the Administration indicated that there are 225 cases presently pending or in progress which would be transferred to the Authority. How many lawyers are involved in these cases? Other staff? What is the total cost for these cases including salaries, transportation and court costs?

Answer. The estimated 225 cases presently pending are distributed for trial or supervision of trial mainly among the approximately thirty members of the General Litigation Section of the Land and Natural Resources Division of the Department of Justice, and for appellate purposes among several members of the Appellate Section of this Division. On occasion, attorneys of the Land Acquisition Section may be involved. Nearly all of these attorneys are engaged predominantly on cases not involving Indian natural resource trust interests, and in instances other interests of the United States may be involved also, as in a case involving the condemnation of land (including some Indian land) for a Federal project, or the adjudication of Federal rights (including some Indian rights) to water. Additionally, a substantial amount of legal work on Indian natural resource trust litigation is performed by offices of the United States Attorneys, under the supervision of the Land and Natural Resources Division.

The Department of Justice has never segregated the manpower or costs involved in protecting Indian natural resource trust interests, but has attempted to carry out its obligations with respect to such interests effectively at the least possible cost, as with litigation not involving such interests.

We estimate that there are involved in the 225 pending cases which would be transferred to the Authority legal services of the equivalent of the services of seven full-time attorneys and supporting services which would involve approximately the same number of full time persons. Due to the circumstances indicated above we have no way even remotely reliable of estimating other costs of Indian natural resource trust litigation. Moreover, we call attention to the fact that normally much of the preparatory work for the conduct of such litigation occurs now in the Department of the Interior, paid for out of its appropriations, but that some of this work presumably would be assumed by the Authority. Since it is the Department of the Interior which has compiled information upon which to estimate manpower and money needs of the proposed Indian Trust Counsel Authority, we defer to that Department on this matter.

We hope that you will find helpful the information we have been able to give you, and that your Committee will find its way clear to reporting out favorably legislation creating the Indian Trust Counsel Authority.

Cordially,

MIKE MCKEVITT.

Senator ABOUREZK. Senator Bartlett.

Senator BARTLETT. Mr. Chairman, I want to compliment you very much for having these hearings. It is my feeling that it has not been in the best interest of the American Indian that the seven bills that were introduced 2 years ago have not been given proper treatment of consideration.

I realize this particular bill was considered during the last Congress, and I hope, Mr. Chairman, that not only will this committee continue the hearings of the respective bills proposed 2 years ago by the administration and introduced by the chairman and you this year but that the full committee will have the opportunity of considering this legislation and hopefully that it will see fit to give the full Senate the opportunity of voting on it.

I was in Oklahoma 2 weeks ago Thursday and met with a number of the tribal leaders, primarily from the western part of the State, and we reviewed very briefly the bill that is presently under review by this subcommittee, and also those that are yet to be heard.

Most all of them appear to have unanimous support but this particular one very definitely did have. There were many comments to the effect that the dual role of the Justice Department, particularly the BIA in handling legal matters, does not accrue to the benefit of the individual tribe.

So I feel this legislation is legislation that certainly has the endorsement and support of most of the Western tribes in Oklahoma.

Mr. Chairman, a comment on the first question that you raised. It would seem to me that the proper—that the administration has considered a review and reorganization of the executive branch of Government and that that would be the proper time to consider a big change in the BIA.

The argument that you gave in favor of your position there would be the argument that you could give in not considering any of the legislation currently before this subcommittee, and I would think the legislation currently before this subcommittee should be considered, and, my personal feeling is, acted upon and presented to the entire Senate.

On the last questions that you raised, I would like to ask some questions of the panel.

Am I not correct that the Justice Department, Mr. Johnson, would still have its full trust responsibilities under this act that it now has? Other than the natural resources?

Mr. JOHNSON. Well, we would still have our trustee responsibility other than those which are created in the natural resource area. This authority deals exclusively with natural resource law.

Senator BARTLETT. This doesn't relieve you of the other trust responsibilities?

Mr. JOHNSON. No, we would still be involved in a variety of other Indian matters and would pursue those diligently.

Senator BARTLETT. Is it your feeling that relieving the Department of Justice of this responsibility in the area of natural resource rights, that this is the whole goal of the legislation, to do just that?

Mr. JOHNSON. As I perceive the goal of the legislation, it is to provide a vehicle whereby to do away with what is an apparent conflict-of-interest where the Government or the Department of Justice is act-

ing on both sides of the question. We don't want that to be. That is not to say we are not diligent in the pursuit of our duties.

Senator BARTLETT. Do you see difficulties if both the newly created Trust and the Department of Justice continue this responsibility in the natural resource area where there could perhaps be blame given one way or the other, for legislation, as Mr. Kyl said, dropping through the cracks or the Indian tribes or individuals not being properly considered in their desires?

Mr. JOHNSON. From a legal and management standpoint, Senator, it seems more practical to have one agency responsible for all litigation in the same area, as opposed to creating procedures to determine who does what and when.

Therefore, I agree with Mr. Kyl's statement with respect to the desirability of lodging all Indian natural resource litigating authority in a single agency.

Senator BARTLETT. The bill calls for the appointment of special counsel, Mr. Johnson, in the event that there is a conflict between the parties. Am I correct that the bill does not require for special counsel in a general way or at the request of the Board?

Mr. JOHNSON. Senator, the reference to special counsel or experts to assist or represent one or all of the parties does, as I read section 5(d) of the bill apply in the event of a conflict between parties requesting the assistance or representation of the Authority. It is not an across-the-board grant.

Senator BARTLETT. If there is not that conflict between the parties requesting the counsel, then the Board will not be empowered to appoint such counsel, am I correct?

Mr. JOHNSON. I don't read a broader grant of authority in that section of the bill; no, Senator.

Senator BARTLETT. Do you see any need for such an across-the-board authority?

Mr. JOHNSON. Senator, there is another provision in 5(b) which allows the Board of Directors to appoint and fix compensation of special counsel and experts as is necessary. From a practical standpoint, insofar as it applies to specific litigation, it would probably be very helpful to have this broad grant of authority and I can think of no administrative reason which would make it impractical to grant such authority.

Senator BARTLETT. You were referring to section 5(a)?

Mr. JOHNSON. 5(b); the enumeration of one of the powers and duties of the Board of Directors.

Senator BARTLETT. In 5(a), line 23, it says, "The Board of Directors shall appoint and fix the pay of and describe the duties of special attorneys as is deemed necessary after consulting with the Indian Trust Counsel."

So that would be all attorneys, is that correct?

Mr. JOHNSON. I read that as all staff attorneys.

Senator BARTLETT. But that would be staff attorneys, not outside people, is that correct?

Mr. JOHNSON. Staff attorneys.

Senator BARTLETT. Then the Board of Directors shall appoint and fix compensation of such special counsel and experts as it deems neces-

sary. But up to that point there has been no authorization for special counsel, is that the way you read it?

Mr. JOHNSON. That is right.

Senator BARTLETT. Then, (c), attorneys or special counsels appointed under this section. Then (d) authorizes the appointment of special counsel upon determining a conflict between the parties requesting assistance.

Am I reading that correctly?

Mr. JOHNSON. Yes.

Senator BARTLETT. Mr. Kyl, let me ask you a very broad question and respond as you see fit in this same area.

How do you interpret the employment of special counsel and how do you see the need of special counsel?

Mr. KYL. We tried to provide for the specific and the general exigencies that might exist.

In (b), under section 5, you have a special situation which we can anticipate is likely to come. We also provide for special counsels to litigate before any court or commission or any administrative proceeding, recognizing the fact that there are instances in which you need a special expertise, a very special expertise.

We also provided in one of the later sections, sir, that the Board can make the expenditures directly or by contract as may be necessary to carry out its responsibilities.

Now, using the experience of the Indian Claims Commission, there was established an expert witness fund, a fund indidentally which has been very successful. We have never lost any money on it to this point. But in many of these cases you need the services of specialists who on occasion may be accountants, they may be anthropologists, all kinds of special talent in a specific area.

On such occasions we thought it necessary to provide that the Board could hire such experts so that the Indian case could be presented with completeness.

Senator BARTLETT. Mr. Kyl, then am I correct that you interpret this section 5 differently from Mr. Johnson?

Mr. KYL. I think he amended his first comment, there is a broad and specific situation. I know that was my intent and I do not, of course, speak for everyone who had any hand in the preparation of this legislation.

Senator BARTLETT. Mr. Kyl, which subsection in 5 provides the broad authority for special counsel other than (d), in the event of conflict?

Mr. KYL. In (a) thereof—

Senator BARTLETT. Would you think that an amendment there would be necessary if that is the desire of the committee, to specify staff and special counsel?

Mr. KYL. Going on from (a), sir, in (b), you have the Board of Directors shall appoint and fix the compensation of such special counsel and experts as it deems necessary. That was the second part of my response, sir.

Then again at the end of the bill, we have the provision that the Board may make such expenditures as may be necessary to carry out its responsibilities under this act. That is in section 11, sir.

Senator BARTLETT. Should there be a section that says the Board shall have the right—or would the Board have the right to fix the staff counsels' salaries? Is that in the bill?

Mr. KYL. Yes, sir; it is in the bill. In the more specific matters, when I was referring to the estimated budget, we simply suggested some levels, thinking that it might take that kind of an income to provide the kinds of people who ought to represent the Indians.

Senator BARTLETT. Mr. Kyl, I know your interests here are in providing the Indian tribes or the Indians, as the case may be, with counsel that would not be biased. Do you see any danger in over-employment or is there a danger in employing too many special counsel?

The reason I am asking that question, it seems that many attorneys have certainly made out quite well in Indian areas, much more so than the Indians themselves.

I being a geological engineer and not seeing anything in this bill for geological engineers, I am just wondering if perhaps any part of this might be another attorney's bill?

Mr. KYL. Sir, I would anticipate that as the experience develops there will be on occasion geological engineers that might get into this act.

I can only respond in this way. In any bureaucracy there is always the tendency to expand. The Congress has the responsibility of seeing that that does not happen through its annual review of appropriations. And I have full faith in this committee and others and the appropriations committees of the two bodies to see that that isn't done.

Senator BARTLETT. I would disagree rather basically with you on that. The prime responsibility of the administration lies with the administration and with this trust that they not employ excessively special counsel.

My question is—I am concerned about it. I think it should be employed in a proper way, but I can see where it can be overdone to the point of not having any staff.

So is there any way that could be clear to the Congress that there would be special needs for outside counsel to be employed so that it wouldn't run into the ground?

Mr. KYL. Of course, it may be, too, that the experience will show it is cheaper to contract some business than it would be to have on-board attorneys as you move into the future. But this is an independent agency, Interior and Justice can't tell them what to do. The restraint comes from their annual presentation of their case to the Office of Management and Budget and the committees of the two Houses of the Congress.

There is no restraint that can be made on that group by any other department of the Government.

Senator BARTLETT. I was talking about legislation. Do you feel there needs to be any legislation on this matter?

Mr. KYL. Realizing how litigation can consume time, if the Congress saw fit to write into the legislation some kind of a limitation regarding the number of people or the amount of money for contracts, I think the first annual audit by the Congress and OMB would come in sufficient time to give direction.

I don't think very many cases will be suffering from great speed during the first year this agency is in effect.

You will, I think, have time to take a good close look at it. Again, I would want this to be an independent agency and I think if we put too many guidelines into the legislation we can actually cripple the thing before it starts to walk.

Senator BARTLETT. On the other matter, how do you feel about the Justice Department operating jointly with the Trust Counsel Authority?

Mr. KYL. As I said before, we want a clearcut delineation. We don't want things falling between the cracks and we don't think you can anticipate all conflicts of interest when you open a case for litigation.

I should do this at this point. I am not a lawyer and I have to rely upon people around me for these details, but apparently there are a couple of areas in the resource field where there is some question.

They are not matters of the use of land or water or things of that nature, but more obscure things such as Indian wills and so on, which sometimes can be called matters of resource and perhaps there ought to be a little clarification by the Justice Department and the committee on those things which might be exceptions to the general rule of saying the Trust Counsel will have all authority over Indian resources.

They are not significant, but they could be pesky problems somewhere down the line.

Mr. JOHNSON. We would be happy, Senator, to elaborate on what natural resource law is. I think at the same time there is going to have to be a working relationship between the Department of Justice as the authority to determine what jurisdiction is vested with the Department and what jurisdiction is vested in the Trust Authority for the very reasons that Mr. Kyl points out, there are some very esoteric areas of law which may not be the type of case that you handle on a day-to-day basis.

Senator BARTLETT. Mr. Johnson, because your early testimony seemed to be in conflict with Mr. Kyl's concerning several questions about special counsel, would you have any additional comments to make in that regard?

Mr. JOHNSON. I certainly did not mean to conflict with Mr. Kyl's testimony and certainly concur in his interpretation of that particular provision.

Senator BARTLETT. Do you have any concern about the hiring of special counsel by this Trust?

Mr. JOHNSON. In listening to your discussion with Mr. Kyl, Senator, I feel it is appropriate to make one observation.

As I pointed out earlier, the Department of Justice is a Department that has well established lines of authority and well established lines of administration, with the Department here in Washington generally supervising the activities of 96 U.S. attorneys in the various judicial districts around the country.

We have litigating authority and responsibilities within the Department. The U.S. attorneys also have those responsibilities.

The duties of the Trust Authority will pick up, in a way, a hybrid. Some of the things we do and some of the things the U.S. attorneys do for us, as it were. I think it is important from a legislative standpoint to leave enough flexibility in the legislation, with possibly a congressional statement of intent, to allow the authority to develop an administration, a bureaucracy, as it were, which will respond to the needs of this litigation.

In fact, this is a litigating authority and they are going to have specific cases and they are going to have to go into specific courts.

I think whoever is Indian Trust Counsel will have to have enough flexibility to determine how best to address all of the case responsibilities that are piled high on his desk.

As I said earlier, we, of course, at the Department of Justice will want to work closely with the Authority to insure none of the cases fall in the cracks, as it were, during the transitional period.

Senator BARTLETT. Do you have any concern about—I realize you are talking about this, but do you have any concern about the amount of number of special counsel that you might be hiring?

Mr. JOHNSON. Well, again, this is almost a fundamental organizational decision that the Board of Directors will have to make during the early organization stages. As I conceive the mission, and this is my own view, in terms of structuring the Agency, I would think the preponderance of manpower would be an in-house capacity.

Senator BARTLETT. Is that because this would be fairly specialized?

Mr. JOHNSON. Absolutely. In fact, our's is an in-house capacity.

Senator BARTLETT. Mr. Chairman, thank you very much.

Senator ABOUREZK. Thank you, Senator.

I have one more question before we excuse this particular panel.

In 1955, in order to alleviate what they saw as a conflict between the BIA general counsel and the general counsel of other Interior Department bureaus, the Interior Department made an administrative recommendation to the Appropriations Committee which removed the general counsel from BIA and put his duties into the Interior Department, therefore creating what is now considered to be the conflict of interest that we are trying to legislate away.

In statements made during those hearings, Interior Solicitor testified there should be only one office for the Department of the Interior rather than general counsel for each bureau. Thus, since 1955, the Interior Department has been living with the conflict of interest which they willfully caused and that you now want us to legislate away.

The question is could the Department of the Interior provide this committee with a report as to why the change in the structure of lawyers in the Interior Department took place in 1955 and why couldn't this situation now be changed back to where it was before 1955 to partially alleviate the present conflict of interest?

Mr. KYL. Do you want us to respond to that in writing?

Senator ABOUREZK. Well, if you would respond to the second part now and respond to the first part of the question in writing, if that would be possible.

Mr. DRABELLE. I disagree with the premise that that is what caused the Department of the Interior conflict of interest. It doesn't seem that where the lawyer is located in Interior is the question.

The question is how the decision is made. So I don't know how to answer the question.

Senator ABOUREZK. You are saying the conflict doesn't come from the lawyers themselves, it comes from higher up?

Mr. KYL. It is the question of duties. It doesn't matter which office the lawyers are in.

Mr. ROGERS. Mr. Chairman, the conflict of interest comes from the fact that the Secretary of the Interior is given the responsibility for several competing activities.

The Bureau of Indian Affairs, the Bureau of Reclamation and the Park Service compete in some respects on some things at some times. As to whether the Secretary of the Interior's legal advice comes to him from a separate solicitor in each of the sections or whether he gets that advice through a single solicitor, this is an administrative matter.

It might be argued as to which of these two extenuates or minimizes the conflict of interest. But the point, I think, is that the basic conflict of interest comes from the fact that the Secretary has this responsibility for diverse activities.

Senator ABOUREZK. All right.

Thank you.

I have no further questions unless Senator Bartlett does.

Senator BARTLETT. Mr. Chairman, I have one more and either Mr. Kyl or Mr. Johnson can answer it or both if they prefer.

How will it be handled by the Trust Authority if a question between two tribes arose?

Mr. KYL. Would you like me to respond to that, sir?

Senator BARTLETT. Yes.

Mr. KYL. The Board will have the authority to either hire special counsel for both sides or to represent one side. This will be left to the jurisdiction of the Board, which will be made up by statute of two American Indians, at least two, and one can be other than an American Indian. But that Board will decide.

The Trust Counsel will not intervene against the wishes of the tribe.

Senator BARTLETT. You are saying the Board could represent one Indian tribe and appoint a counsel to represent another Indian tribe, as long as both actions were consistent with the desires of the tribe; is that correct?

Mr. KYL. Correct, sir.

Senator BARTLETT. In other words, you are requiring both sides to agree to the proposal? Both tribes will be agreeing not only to the Counsel being hired for one of them, but that the Trust would represent the other; is that correct?

In other words, it is not only their own legal counsel to which they are agreeing but the agreement would cover the representation of the other tribe?

Mr. KYL. There may be instances in which both tribes would want to be represented by the Trust Counsel before the proper jurisdiction. I am assuming, sir, in most cases where you would have a conflict between tribes, that they would probably desire special counsel to represent their interests.

Senator BARTLETT. Would you think it would be a part of this legislation to require that?

Mr. KYL. Require which one, sir?

Senator BARTLETT. Require in case of a dispute between tribes the Board must appoint special counsel in both cases?

Mr. KYL. At this time, sir, at least it is the opinion of those around me and myself, that we would not like to have that written into the legislation.

Senator BARTLETT. All right. I am not sure you quite answered my previous question, but maybe I can get back at it this way.

If one tribe was agreeable to special counsel—if one tribe was agreeable to the Trust representing it and the other tribe also wanted the Trust to represent it, then what should be the requirement on the Board? You would not want the Trust to represent both; would you?

Mr. KYL. I can envision complications in that circumstance.

Senator BARTLETT. Then would that necessitate outside counsel in both cases? In other words, if either tribe wanted the Trust Counsel to represent it, then that would force the appointment of outside counsel for both tribes?

Mr. KYL. No, it would not force special counsel for both sides. The decision would be made by the Board.

Senator BARTLETT. So the Board could show a preference in representing one tribe and hiring outside counsel for the others?

Mr. KYL. It could do that; yes, sir. I don't know if there would be a preference involved, but that decision could be made.

Senator BARTLETT. How could they say there wasn't a preference involved?

Mr. KYL. On the basis of time, perhaps, sir.

Senator BARTLETT. Do you think the Board might be opening itself up to what might be unnecessary criticism if it did that?

Mr. KYL. Permit me to consult here for one moment.

Senator BARTLETT. Certainly.

Mr. KYL. There was one point I wanted to clarify. These cases could be tribe against tribe or one tribe against the Government or two tribes against the Government. But the Board could make the decision and I assume there is some possibility that the Board might be criticised for its actions. I don't know how the Board might avoid that at this point.

Senator BARTLETT. What are the merits in your opinion of the Trust Counsel representing one of the two tribes in a lawsuit against each other?

Mr. KYL. If the suit were brought, even by special counsel, it would be brought in the name of the Trust Counsel.

Senator BARTLETT. But there would still be a difference as to whether there was outside counsel hired and whether it was a staff counsel member, would there not?

Mr. KYL. Yes, sir; there is a difference and I have to tell you frankly this is one of the things that we have discussed at length and it does pose some problems.

But this just seems to be the best way to go, leaving the decision to the Board.

Senator BARTLETT. Mr. Johnson, do you have a comment?

Mr. JOHNSON. I have two observations to make with respect to this issue and indeed it is a thorny one, if you will.

I think it is important to keep in mind that whether it is a special counsel appointed by the Board of Directors or the staff attorney acting for the Trust Authority, that on both occasions they are acting in the name of the United States as trustee.

In effect, they are acting as one party. Now, there is an escape valve that is provided, and that is that the aggrieved party also has the option of hiring outside counsel.

Now, the Board of Directors is obligated to make a fundamental determination as to what is the interest of the U.S. trustee. It may very well be that that decision conflicts with the view of either one or more parties to that litigation.

It is important from that standpoint that the provision which is written into the bill, that is that the parties must consent to the Authority's representing them, may very much play a significant part in this matter.

Senator BARTLETT. Now, when the one party would consent to the Authority representing them, would that be carried down to the individual staff member who would represent them or would that be just the general, broader commitment of the Authority itself?

Mr. JOHNSON. Well, I think the Authority.

Senator BARTLETT. On a broad basis?

Mr. JOHNSON. Yes; on a very broad basis. When a low echelon attorney in the Department of Justice speaks on behalf of the United States, he is speaking on behalf of the United States and it would apply in this case as well.

Senator BARTLETT. When an outstanding counsel is employed by the Trust for one of the tribes, must there be an agreement to that specific counsel?

Mr. JOHNSON. Well, to the specific counsel?

Senator BARTLETT. Yes; or just to the general proposition?

Mr. JOHNSON. As it is pointed out to me, it would again be qualified by this consent factor. The tribe would have to consent.

Senator BARTLETT. To the specific individual?

Mr. JOHNSON. We have a conflict between Departments. If you give us a moment we will reconcile it.

[Discussion had off the record.]

Mr. JOHNSON. Senator, I think we have had a meeting of minds. The tribe need not consent, or the party at interest need not consent to the individual special counsel named, but they must agree to the appointment of special counsel. Should they not approve of the individual named, then indeed the party has the ability to fire its lawyer.

Senator BARTLETT. To hire their own lawyer?

Mr. JOHNSON. Yes.

Senator ABOUREZK. I wonder if it might not be better to allow the tribe in such a case to initially pick the counsel of its choice rather than go through a series of vetoes.

Mr. JOHNSON. Then you are faced with the whole reason for being of this legislation.

Senator ABOUREZK. Well, only in disputes between two tribes.

Mr. JOHNSON. My consensus for the Department of Justice is that it is important to give the Trust Authority the opportunity to review the factual situation and make its decision first, if it is going to be an effective governmental entity.

Senator ABOUREZK. Make its decision to do what?

Mr. JOHNSON. As to the trust interest of the United States involved in the litigation. In other words, it has got to have the policymaking options available to it at the very outset.

Senator ABOUREZK. But I mean a decision to do what? To bring a lawsuit or what?

Mr. JOHNSON. Well, that is what is involved in this legislation; yes, to bring a lawsuit.

Senator ABOUREZK. Assume they have decided that an action does lie and it is between two Indian tribes. Let's take it that far. At that point, isn't it better to allow each Indian tribe to choose its own attorney at the outset rather than having the Trust Counsel start appointing an attorney and then saying if you don't like him fire him. Don't you think it is important to have that initial choice?

Mr. JOHNSON. Mr. Chairman, this legislation, of course, provides a "with consent" feature. It is our view that the Authority must have the initial power to assign and if it doesn't work out, they will be able to make other arrangements. But it is fundamental to the legislative mandate to have that authority.

Mr. KYL. Mr. Chairman, we would agree with that position. The tribe has the option of using the Trust Counsel or not using it. In their discussions as to whether they would use the Trust Counsel or not, I suppose there would be occasions when the tribe would say, "Could a certain lawyer handle the case?" And there would be times, I am sure, when that would be possible.

But because of the involvement of each attorney in cases, they would not want one to be overburdened. We wouldn't want the situation to develop where the same attorney was requested by all of the tribes to handle each of the cases.

Senator ABOUREZK. Wouldn't that take care of itself if a lawyer was asked by more than one client to handle a case, couldn't he just say we couldn't do it during the time in which you want it done, as is now done in the practice of law?

Mr. KYL. Well, of course, the situation would be the same as with that body of practice outside of the Trust Counsel.

I would like to draw your attention to one further fact on this subject which might cause some "mischief" without any bad connotation. It could be that lawyers on the counsel could have been involved in some kind of practice, could have built some basis with the tribe, and he would actually seek the tribe's requests for his services.

I think we should avoid that, too. Therefore, we have to leave the jurisdiction with the Trust Counsel to make the decision. I think the moment we get into the business of selection of lawyers, we get into a pretty sticky proposition.

Senator ABOUREZK. Senator Bartlett.

Senator BARTLETT. In the matter again of the two tribes in a lawsuit, and I can see possibly where both tribes would be agreeable to a staff member of the Trust Authority, a staff lawyer, representing them. But I can also see where they might both want the same one or one of them might be unhappy with that arrangement. I think in writing the tribes agreement with the Trust representing each of them, that might be one thing, but where one might be unhappy with that arrangement, I still don't see why you want to insist that the Trust would have the authority to represent one when the other was not blessed with that.

Does not that leave some kind of preference, one over the other, for perhaps no reason? It would appear to me that the tribe that was not happy would feel that there was preference shown, no matter whether a coin was flipped to make that decision.

Mr. KYL. I think you could be right, but I don't know how to avoid the problem.

Senator BARTLETT. Would you consider it too much of an invasion of the freedom of this Authority to cite that in the legislation, if the litigation was between two tribes and there was not an agreement on the matter of counsel on the staff, then that appointment of outside counsel would be made for both parties?

Mr. KYL. I think our fear here is that once we start providing a guideline, then we go into providing other guidelines and before long we are inhibiting the authority of the Trust Counsel itself.

Senator BARTLETT. One other question. This sort of is in the same direction.

If one of the two members, the Indian members of the Authority, were from a tribe involved in litigation, then what kind of restrictions would you want to place or would you want to place any at all? It seems to me there would be a direct conflict-of-interest. If either one of the two Indian members were members of a tribe involved in this and then there was any preference shown, should there be, in the case of a tribe in litigation before this Trust Authority with one of the two Indian members being a member of that same tribe, should there be some way of having him not involved with his own tribe affairs or not?

Mr. KYL. It is understood that any member of the Trust can disqualify himself from voting.

Senator BARTLETT. Do you think that should be a part of this legislation?

Mr. KYL. I think it is implicit. I don't know if it is essential. I certainly wouldn't want to imply that the legislation is without problems.

You just mentioned the case of an individual Indian from a tribe. You can get into all kinds of problems in that regard. Problems of attitude. I will just mention one and I don't know how to avoid it. Seventy-five percent of some tribal government is not political, it is theocratic. You can get into all kinds of problems because you take a case to court and thus avoid traditional Indian ways of solving something. We are going to have problems with that before we get through with all of this litigation. I don't know how to avoid it.

Certainly this offers a better vehicle for solving the problem than we have had before. I think it is the best kind of solution that has yet been offered.

Senator BARTLETT. Let me say I agree with your final statement very much.

At the same time, I think the Congress must have concern, if it sees some areas of potential embarrassment, where it feels it is not restricting unnecessarily some Board member's activities, I think it would be prudent in making those restrictions. But that is my own opinion.

Mr. KYL. Of course, the confirmation process gives you some control over the kinds of individuals that you have but I want to respond in a little more broad fashion. We sit here today fully cognizant of the fact that we propose and you dispose.

Senator BARTLETT. Our disposal will be much better if your proposals are much better.

Mr. KYL. I don't know how we could make them better at this point, sir.

Senator ABOUREZK. All right.

Thank you. We thank you all for your contributions that you have made today.

We will call the next witness, Mr. Monroe Price, professor of law at the University of California, Los Angeles.

I want to say while Mr. Price is getting prepared to give his testimony, that we are very appreciative of his trip here to Washington to offer his testimony and his advice on this particular matter.

We appreciate his expertise in the field of law and especially in this area.

Mr. Price, you may proceed as you wish.

STATEMENT OF MONROE PRICE, PROFESSOR OF LAW, UNIVERSITY OF CALIFORNIA, LOS ANGELES

Mr. PRICE. Thank you, Senator.

It is a pleasure to testify concerning the legislative proposals you are considering to establish an Indian Trust Authority.

I have been interested in the problem of legal representation of Indians throughout my teaching tenure at the School of Law at UCLA.

I have written about the strategies of lawyers on the reservation and have just published a casebook dealing with American Indian law problems.

I strongly endorse the proposal for an independent trust counsel; such action is a critical step, but only one step in the overhauling and improvement of the administration of Indian affairs by the U.S. Government.

Much depends on the result of these deliberations, and I urge great care in the design of the Trust Authority. For there is the substantial danger that the victory for sovereignty implied in the bill will lead to great losses to the Indians if meticulous attention is not paid to the way in which the Authority is developed.

Nothing short of a symbol would be gained if an inadequately financed and structured, but conflict-free Authority were substituted for the resources of the Department of Justice.

I also hope this committee will view the Trust Counsel as a first step in the rationalization of the administration of this Nation's trust. Litigation is only a small part of that mission; it is a mistake to look at the issue of conflict only through the lawyer's prism.

The fulfillment of the Trust has essential affirmative aspects, involving planning, technical assistance and concern for appropriations.

Often, lethargy, born out of conflict of interest, has impeded the Department of the Interior in the fulfillment of these critical roles.

It would not be wrong for this distinguished committee to envision the Trust Authority as the future embodiment of the Trust responsibility and to request the Department to itemize those of its activities and staff that are critical to the strengthening of the Indian resource base.

What I mean to say there, Senator, is while we start with a litigation proposal, I think we all realize we can look at this solely through a lawyer's prism. The trust responsibility and the conflicts inherent in the responsibility are not a matter of litigation alone. I think there

are other aspects of the Department's fulfillment of the Trust that are pervaded with conflicts of interest and undoubtedly, as the Trust Authority grows, you will be concerned with relocated technical assistance advice, planning aspects of departmental functions within the Trust Counsel.

An attorney or the United States as the trust and as the litigating attorney cannot fulfill its authority solely through the litigation process. It must be involved with its clients on a prelitigation planning basis.

I favor the creation of the Authority with a clear litigation and legal service focus. But at the moment of creation, the larger potential of such a structure should be kept in view.

THE OEO AS PRECEDENT

Some think that it would be difficult to implement the Trust Counsel Authority concept. But, happily, there is already useful experience that provides guidance to the Congress with respect to the need for such legislation and its practicability.

In a halting way, yet sufficiently significant so that lessons can be drawn, the OEO legal services program has acted as a forerunner of an Indian Trust Counsel Authority. Let me give several examples:

1. The California Indian Legal Services sued several water districts in southern California for the possible rescission or modification and enforcement of a contract for the delivery of San Luis Rey River water.

2. The Alaska legal services program, with the assistance of a private law firm, Arnold & Porter, represented Alaska Native villages in an action claiming that the Government permit for a pipeline right-of-way would yield a trespass of their lands without their consent.

3. The Native American Rights Fund, a foundation supported child of legal services, has successfully sued to require the Secretary of the Interior to divert water from the Newlands project to Pyramid Lake.

There are, of course, other examples.

These problems are an example of congressional appropriations to independent legal services programs that have sought to enforce the trust responsibility of the United States.

Several conclusions can be drawn from the 8 years of experience with these programs.

Assistant Attorney General Johnson pointed to the vast machinery he now has at his disposal. I think it would be an illusion if instead of this the Trust responsibility were exercised by a small group of lawyers, perhaps no larger than an OEO legal services program.

The California rural legal assistance is larger than the program outlined by the Department of the Interior for the entire exercise of the Trust responsibility. So I think it behooves this committee to think very carefully whether this is not an illusion if it means that there is a symbol of conflict, free representation with the actuality of significantly less representation.

I also disagree with what I would call the crack theory of the Department of the Interior, that if the Justice Department continued to have the responsibility that certain cases would fall through the cracks.

At the present time OEO funds legal services programs, there are other legal services programs and private attorneys who represent tribes in the defense of natural resources.

Senator ABOUREZK. If I might break in there, Mr. Price, didn't the Interior Department witness say today, if I heard him correctly, that they intended to employ 15 staff attorneys?

Mr. PRICE. That is correct.

Senator ABOUREZK. As you pointed out that is a very small number to litigate nationwide as far as 800,000 Indian people are concerned.

Do you see that proposal plus an attitude of very strong, anxious desire on the part of the Justice Department to wipe out all of their Indian files, as somewhat to shove Indian interests back into the corner so they can all forget about it? Do you see any kind of attempt to do that?

Mr. PRICE. Well, I don't subscribe to a conspiratorial theory and put that onus on the Justice Department—

Senator ABOUREZK. I might say at this point I didn't subscribe to it until just recently, but I am reassessing my position on conspiracies.

Mr. PRICE. I think unknowingly the Department of Justice may be developing an authority that trades. Something substantial where there are conflicts to something that is less significant or conflict free. I think there is an easy solution to this problem, that is the elimination in the bill that would relieve the Justice Department of all responsibility.

Senator ABOUREZK. In the event that were successfully eliminated, would there be an attitude on the part of lawyers in the Justice Department psychologically of having their hands washed of the whole thing? Even if this proviso were eliminated, they would say let the Authority handle it.

Would you think that would be the attitude of the Justice Department?

Mr. PRICE. I would hope it wouldn't.

Senator ABOUREZK. Is there any danger of that?

Mr. PRICE. There is certainly a danger of that. Let me say this: It seems to me it is almost circumsism to eliminate the responsibility of the Justice Department in this sense.

The United States has a trust responsibility with respect to the natural resources. If the Authority were too small to exercise this responsibility, then the United States must, it seems to me and the Justice Department must still maintain its litigating role. So that the Justice Department cannot escape its trust responsibility under the bill by this proviso.

Let me say that the committee could learn a great deal by the experience of the OEO. I think they represent a kind of prototype of the Trust Counsel Authority.

It is a very unusual and excellent thing, I think, over the last couple of years that the Congress has financed independent, federally assisted lawyers who would assert the Trust responsibility of the United States.

I am not sure this has been true throughout the country, but I know that in many States the Office of Economic Opportunity has significantly aided in the fulfillment of the Trust responsibility.

I could cite several examples and I do in my testimony. I don't know whether in Oklahoma the legal services program has had any representation of Indian organizations or trust matters, but they have in California, South Dakota, Nebraska, and many other States.

I think we have learned several things from this experience with the OEO:

(a) There is clearly a need for an independent federally financed authority for the enforcement of the trust obligation. Serious breaches of trust have been identified and, in some cases, remedied by prompt action by the OEO programs.

(b) It was of critical importance that these lawyers be free of conflict and loyal to their clients.

(c) The OEO programs have led, in some cases, to improved functioning and efficiency of the agencies charged with the administration of Indian affairs. The Trust Counsel Authority would have the same benign influence as a check on executive action.

(d) The OEO programs are not able, in a consistent manner, to launch and maintain substantial resource litigation. The San Luis Rey matter that I described above, probably cost the legal services program close to \$100,000 over the life of the suit. It was an important suit that established new principles and new patterns of conduct. But it could barely be sustained by California Indian legal services. And smaller programs never could have brought such actions.

I think the Department of the Interior as Justice indicated here there was mainly the illusion of conflict. Although they are here pressing for this bill, they find it difficult to confess that there is in fact a conflict of interest that has hampered them in the exercise of Trust responsibility. But I think it has been the experience of the OEO and services program that in fact there has been a failure because of conflicts fully to represent Indian resource interests.

The only problem has been adequacy of funds to remedy this. But as I have indicated, the program suggested by the Department of the Interior and the Department of Justice today in scope do not compare favorably with the money provided even by OEO legal services, weak as that may be.

(e) The OEO programs could coexist with the litigation responsibilities of the Justice Department and negotiate with them to assure the maximum use of lawyerly talent in the bringing of cases protective of Indian resources held in trust.

THE CONTINUING RESPONSIBILITY OF THE DEPARTMENT OF JUSTICE

I see absolutely no reason for excusing the Justice Department from all responsibility for the bringing of Indian trust protective litigation. To include the present proviso in the legislation runs the risk of turning the bill into an illusion and snare rather than an effort to implement effectively the President's policy.

Even now, as I have indicated, with the OEO and other independent sources of litigation, there are negotiations with the Justice Department to determine which actions should be brought by whom.

In the Supreme Court, an action has been brought by the United States to enforce the rights of the Pyramid Lake Indian Tribe. That

action was brought after protracted discussions with OEO and foundation-supported counsel.

In Maine, the Attorney General has brought an action on behalf of the Passamaquoddy as a result of pressures from the Pine Tree legal services. The Justice Department has intervened before the Federal Power Commission to represent Indian resource interests as a result of discussions with California Indian legal services.

This kind of cooperation and division of labor must continue if trust resources are to be adequately protected. It would be a sham if the bill completely deprived the Justice Department of its responsibilities to litigate with respect to natural resources.

Two additional arguments buttress this conclusion.

First, as written, the statute can lead to unnecessary litigation, doubt, and confusion.

(a) Does the act implied repeal 25 U.S.C. subsection 175, which states that "The U.S. attorney shall represent reservations or allotted Indians in all suits at law and in equity"?

There has been a good deal of debate over the full meaning of that provision and the legislative history. One of the areas that is most important has been in the representation of Indian interests in the natural resources area. I would hate to see that view in the future time as implying repeal of section 175 and I would hope the committee makes it part of its record that there is no intention of repealing existing executive responsibility as set forth in the U.S. Code.

Particularly there is no intention to repeal 25 U.S.C., section 175—

(b) Does the act modify the scope of section 345 which provides jurisdiction in Federal courts in actions to enforce or protect a right to an allotment?

(c) Does the proviso deprive the Justice Department of the power, oftentimes employed, of protecting reservations and allottees from the wrongful assertion by States or counties of local property taxes?

I do not think it is the intention of the bill to modify these powers. But the ambiguous language of the proviso means that litigation on these issues, including motions to dismiss whenever the Justice Department sues on behalf of Indians, will be likely. And the Department of Justice may relegate Indian affairs to a lower priority when issues are raised that are arguable resource related.

Second, the proviso language is unnecessary. Whatever responsibility the Justice Department has under the trust concept is a duty of the United States. Even without a proviso, affirmative action by the Trust Authority pro tanto relieves the Justice Department of responsibility.

By the extent the Trust Authority does not completely carry out the trust duty, the language in the act does not relieve the United States of its obligation.

THE SOLICITOR GENERAL

One special aspect of the relationship with the Justice Department should be addressed.

The legislation does not speak to the responsibilities of the Solicitor General specifically. Without amendment, the rule that the Solicitor General's Office controls access to the Supreme Court would apply.

Section 7, precluding executive interference is not sufficient clarification of this issue. Yet the Solicitor General's Office is a source of great conflict and great importance.

The Court, in many ways, has been an important guardian of the Trust in the last 20 years. This access to the Court is central to the successful work of the Trust Authority.

In a recent case before the U.S. Supreme Court, *Mason v. United States*, the Solicitor General confessed its conflict in the arguing of a critically important point, whether *West v. United States* should be overruled. The conflict was between the general principles governing tax law and the specific exemptions for Indian trust assets.

The distinguished Mr. Griswold stated to the Supreme Court his hope that the Trust Counsel would be established thus relieving his office where there is a conflict of interest.

I think there should be specific language in the act allowing the Trust Counsel to take a case to the Supreme Court.

Indeed, in the *Davis v. Morton* case, described below, there was another instance of conflict. For Indian interests, the principle established by the circuit court has been awesomely wrong. But for the Solicitor General, it was an inappropriate case for testing the scope of the Environmental Policy Act.

Nothing in this bill suggests that the Trust Authority can go to the U.S. Supreme Court by itself. I would hope somewhere in the report you would indicate that the Trust Counsel has the authority to go to the U.S. Supreme Court.

The Solicitor General himself has discussed the danger of conflicts that arise in his representation of conflicting interests before the U.S. Supreme Court and only in the last few weeks in an argument before the U.S. Supreme Court, *Mason v. United States*, the Solicitor General stated it was his fondest hope that the Trust Counsel would be established so that in the future he would not be placed in the embarrassing position of having a conflict of interest before the Court.

The Trust Counsel Authority must have the important——

Senator BARTLETT. On that point you made, I understand you feel this legislation should empower the Trust Authority to appeal directly to the Supreme Court?

Mr. PRICE. The Trust Authority will be exercising the litigating duties of the United States as trustee.

It will be carrying legislation into the district court and courts of appeal. It seems to me as a lawyer it is essential that the Solicitor General be able to make the decision whether or not to go to the U.S. Supreme Court.

Any private lawyer representing a beneficiary would consider it essential that he have the power to decide whether or not to petition the Supreme Court by writ of certiorari.

Senator BARTLETT. On page 8 you say you think there should be specific language in the act allowing the Trust Counsel to take the case to the Supreme Court. I didn't read all the rest of it. Are you saying this would be done through the Solicitor General or just that the Authority have the right to do it directly?

Mr. PRICE. I have done a little research on this question and it is my understanding that independent agencies established by the Con-

gress must clear with the Solicitor General the decision to appeal the case to the U.S. Supreme Court or to petition for certiorari.

It would seem to me in this case the Trust Counsel should be excused from that general obligation. The Trust Counsel should himself be permitted to make a decision as to whether or not he petitions for certiorari or final appeal in the U.S. Supreme Court.

Senator BARTLETT. Aren't we having a very difficult time now with the Supreme Court or the Court is having a very difficult time keeping up with the load it has and would this not tend to, in case the Trust happened to be of a mind to take every case in which they were reversed or attempted to to the Supreme Court? Why would this be in the best interest of the Indians and all the people in the country?

Mr. PRICE. I think what we are trying to do with this bill is eliminate the danger of conflict of interest. One of the areas where there is a conflict of interest at the present time is in the Solicitor General's Office. The Solicitor General is aware of that conflict and has so stated publicly in the argument before the U.S. Supreme Court and has indicated that it is the desire of the Solicitor General's Office to be relieved of his conflicting obligation which weighs heavily on any lawyer's mind.

We aren't trying, I think, by this bill or the purpose of the bill is not to increase litigation but to reduce conflict. I think as the Trust Counsel matures, it will have the same standing in the Supreme Court as the Solicitor General does not with respect to Indian questions and it will certainly learn that if you want a case heard by the Supreme Court, you must bring only those cases that are meritorious before it, otherwise you lose credibility with the Court and the Court will not respect the arguments that you make.

In my testimony I have two other suggestions that I think merit consideration.

One is the fulfillment of the responsibility of the Department of the Interior under the 1968 Civil Rights Act to modify and revise the treaties begun by Felix Cohen in the early 1940's. There is a danger that affecting the 1968 revision of that treaty would also be urged now and I would urge that when the Trust Counsel Authority is developed and created that the carrying out of that congressionally imposed responsibility be transferred to the Trust Authority.

I would also suggest that the committee consider what might be viewed as a peculiar problem of responsibility that relates to the Trust Territories of the Pacific. The Trust Territory of the Pacific is as remote to us now as the Dakotas were in mid-19th century.

We don't intend to think of the problems of conflict of interest respecting natural resources in the trust territory at the present time. But there are significant problems they are now warming up.

I would urge that perhaps the Trust Counsel be given authority to exercise the same kind of responsibility with respect to the natural resources in the trust territory that it dies with respect to the Indian lands in the continental United States.

Those are the major points in my testimony.

Senator ABOUREZK. I wonder if you would like to expand, Professor Price, about the relationship between legal services funded by the OEO and this particular program that we are discussing today?

Mr. PRICE. First of all, I think we have learned a great deal from the OEO legal services in terms of the need for an independent federally assisted Counsel to fulfill the Trust responsibility.

In many cases tribes that thought they were being fully represented by the United States and by the Justice Department determined that there were needs that had been unmet.

I think that the legal services program over the last 5 years have strengthened tribal government and improved the utilization of national resources and have tried to attribute to the improved functioning and efficiency of the Federal executive departments charged with Indian affairs.

Another thing that occurred to me as a result of the testimony this morning, Senator Bartlett talked about the need for annual budgetary review and I think you did as well, Senator Abourezk. But we did learn from the history of OEO legal services that there are some dangers involved when Congress seeks to review the budget of a litigating agency.

The main responsibilities of which is suits against the Government. There are some dangers involved where, it seems to me, if the Trust Authority does its job extremely well and thinks of itself as doing its job extremely well, that it will run into great difficulty when it returns to Congress for its annual budget review. That certainly has been a problem with OEO legal services.

Senator ABOUREZK. I don't know if you understand the difference between authorization and appropriations committee functioning.

What I propose, and I didn't hear Senator Bartlett, but I assume he agrees with that, that agencies under the jurisdiction of this committee ought to come back periodically and explain what they have been doing.

We always run that risk of disapproving what they have been doing. I am thinking of it in terms of them not doing enough, others may think in terms of them doing too much.

We have had the Bureau of Indian Affairs, for example, which has never been authorized since the Snyder Act of 1921. They never have had to come before the Interior Committee for authorization. As you can probably see we have suffered from not doing enough in the field of Indian affairs as a result of that. Because there was no leverage that this committee could exercise to get them to do something.

Mr. PRICE. I agree there should be congressional oversight. I did want to point out that where Congress has been financing litigation against the U.S. Government, at times that has led to friction and to controversy and a different kind of ethical problem.

The other question, the other conclusion that I think one can draw is this: The Justice Department has maintained its responsibility at the same time there have been OEO-financed programs. There have not been difficult problems of negotiation and cooperation between all those agencies.

So I think the argument made by the Assistant Attorney General today and by the Department of the Interior that there would be friction and problems of cases falling through the cracks is not a true danger.

I think the OEO legal services program experience assists us in seeing that it would not be a problem to maintain Justice Department responsibility.

I think it is an important point that we keep Justice Department responsibility and we do have experience showing that you can have other independent counsel funded by the Federal Government coexisting and there can be cooperation and negotiations among all of them.

Senator ABOUREZK. I tend to agree with that particular viewpoint. I want to give you another hypothetical. Let's say that the Seneca Tribe came into conflict with the State of New York. I see no reason at all why the full weight of the Justice Department, under its responsibility, should not be behind the tribe. I would hate to see the Justice Department abrogate and do away with its responsibility in that regard. I would like to hear your comments on that.

Mr. PRICE. Well, we are not talking about the duty of the Trust Counsel, or to Justice Department. This is the duty of the United States as a whole. If the Trust Counsel doesn't do its job, the United States hasn't acquitted itself of its duty. It is still chargeable as the trustee.

The Justice Department, it seems to me, has the obligation, if the Trust Counsel doesn't act, to continue to represent the Indians as trustee with respect to these natural resources.

I don't think the United States can escape its responsibility by virtue of the proviso in this bill.

Senator ABOUREZK. What difficulties, if any, do you see in this bill with respect to the access by the Authority to the U.S. Supreme Court?

Mr. PRICE. It seems to me there could be an argument that the Trust Counsel has to go through the Solicitor General. I think there should be clarification as to whether or not the Solicitor General will continue to control access to the Supreme Court by this agency.

Senator ABOUREZK. Do you think it ought to be expressed in the bill that permission of the Solicitor General need not be attained before the case is appealed?

Mr. PRICE. The bill provides there will be no interference by any executive agency. It is possible that would be sufficient, but it seems to me for the record in the committee report it should say this includes the Solicitor General.

Senator ABOUREZK. I think I will direct the staff to include that statement in the report so far as the chairman is concerned.

Do you know of any other aspects to the existing departmental functions that could be transferred to the Trust Authority?

Mr. PRICE. The Secretary of the Interior established an Indian water rights office as a kind of prototype for the Indian Trust Counsel Authority and I think it should be transferred to the Trust Counsel Authority when that was created.

Now, the water rights office got only litigates but provides technical assistance to tribes and again I think it is important to recognize that the Trust Counsel Authority, to be a good legal representative, must provide preventive assistance as well as litigating assistance to the tribe.

Senator ABOUREZK. Should that be legislated in the bill?

Mr. PRICE. Yes. That might be sufficient. It would seem to me it would be wrong, when the Board was convened, if the Board thought

it was constrained to litigation and litigation was the primary or exclusive function of the Authority. Because we know a lawyer's best duties are really in advance of litigation, in demonstrating the rights of a tribe and showing the tribe how to use those rights effectively and not waiting until non-Indians, for example, come in and use those rights and there is dispute or controversy.

The other existing agency, as I indicated, would be the Indian Civil Rights Task Force. The idea of keeping that function independent. That may seem like a small matter. The Federal Indian Law Handbook has a kind of significance almost as a matter of law that I think is peculiar to this field.

I think it is important that independence surrounds it production.

There may be some danger that when drafts of the report are prepared by the Secretary of the Interior or other agencies in the Department of the Interior would want to censor the material to make sure there aren't statements that conflict with their mission.

I am thinking, for example, of the definition of Indian water rights, where a draft might be prepared and other parts of the Department of the Interior would say, well, we don't want publications of the U.S. Government to say that is an accurate statement of the Indian rights.

Senator ABOUREZK. Any other Departments that you might want to include in that recommendation?

Mr. PRICE. No.

Senator ABOUREZK. Let me say the record will be open for a short time, if you do happen to think of any later on we would appreciate hearing from you in writing.

Will the Trust Authority need to hire nonlawyers such as economists or other professionals, in your opinion?

Mr. PRICE. I think it would be a fortunate expenditure of the Trust Counsel to think of itself as providing technical assistance in the development of natural resources.

In fact, it seems to me that rather good strategy for developing a useful exercise of the Trust responsibility is to begin with the lawyer and perhaps to think about supplementing the Trust Counsel Authority in other ways so that ultimately it becomes the real embodiment of the Trust Authority.

I am thinking in line with your earlier comments, that this may become the depository of the Bureau of the future.

Senator ABOUREZK. In the situation where a dispute that might arise is solely intertribal, do you feel that the credibility of the Trust Counsel Authority would be better served if the Authority itself did not become involved but rather paid for the independent legal services of each tribe as requested?

Mr. PRICE. I think there will be a certain amount of prosecutorial discretion by the Trust Counsel Authority just as there is by the Justice Department.

As the trustee, it will have to identify those issues that are significant and those problems that are significant and also it will have to think of the best way to allocate its own resources.

I think obviously it could be in terms of being beyond reproach if the Trust Counsel itself did not represent one tribe against another tribe and engaged special counsel in such a case.

Senator ABOUREZK. Thank you.

Senator Bartlett.

Senator BARTLETT. Mr. Chairman, Mr. Price. You mentioned the OEO as showing the need for legal aide programs and I certainly believe that they did show a need.

I also feel that they showed some of the areas in which federally supported legal programs should not go. I am just wondering what your thinking is on that?

I know that in my own State there were some partisan political activities and ideological approaches pursued by OEO supported attorneys which created a small part to what I considered to be the downfall of that program.

Now, do you agree that there were some actions on the part of some lawyers where they were, with case law, trying to change existing law rather than just representing litigants?

Mr. PRICE. Let me say first of all that I think the OEO lawyers and the Trust Counsel lawyers are bound by the same kind of ethical principles that bind Justice Department lawyers and perhaps the same kinds of delicate problems of a political nature.

I think, speaking for the Indian legal services program, they were very influential and important in developing the new Indian law doctrine.

For examples, cases that went to the U.S. Supreme Court.

Senator BARTLETT. If I could, I would like to get an answer on the OEO only, because I feel in some areas your testimony sort of tying this to OEO could hurt.

Do you feel that the OEO did get into predicaments that were embarrassing to it that it should not have gotten into it?

Mr. PRICE. Well, let me see if I could avoid some of that—

Senator BARTLETT. Is there anything wrong with a yes or no answer to that?

Mr. PRICE. I would say the best part of OEO should be looked into and that is where the areas of legal services program identified problems in the representation of Indian trust and Indian resources under trust by the U.S. Government.

I think although the people from Justice and Interior today indicated they had been doing a full and adequate job, it seems to me quite clear that the legal services programs did demonstrate there was a significant need for additional representation to insure that Indian resources were fully and fairly protected.

The *Pyramid Lake* case is a good indication of the kind of activity and interests that these legal services have shown.

Senator BARTLETT. Do you envision the Trust Counsel getting into some of the predicaments that the OEO got itself into?

Mr. PRICE. I hope that it doesn't.

Senator BARTLETT. Do you believe class action suits are appropriate as a function of the Trust Counsel Authority?

Mr. PRICE. I don't see in the mandate that there will be a need for class actions. What the Trust Authority will be doing is looking at particular natural resources of the tribes and of the individual Indians and see how those can be protected.

Senator BARTLETT. So you wouldn't see class action suits as appropriate?

Mr. PRICE. Let me give an example where there have been some actions that could be so characterized.

Recently the State of Arizona attempted to impose an income tax on all Indians living on Navajo reservations earning income from reservation sources. The U.S. Supreme Court recently ruled that action was an invalid one. I think that action may have been brought in the name of all persons who would be affected by the Arizona order.

Let us say, for example, that a county, as many counties have done, attempted to impose a local property tax on Indian resources and I can think of a number of cases which arose in the State of Oklahoma like that.

It seems to me that the Trust Authority might be under an obligation, as the Justice Department is now, to protect Indian Trust land-owners from actions by counties that they consider adverse to those resources.

Now, as an economical measure they may sue in the name of a number of persons who are affected by a local county order.

Senator BARTLETT. Also you speak out for a continuing responsibility of the Department of Justice. Yet I think one of your main arguments for the Trust Authority is to eliminate the conflict of interest that now exists.

Would that not continue the conflict of interest and in addition create a confusion between the authority of the Trust and the authority of the Federal Government?

Mr. PRICE. I think the problem here, and this is a problem that has been identified by a number of tribal spokesmen and people interested in this legislation is that they want to eliminate the conflict of interest but they do not want to be left with a Trust Counsel which is not adequate enough financed to perform the job that needs to be done. The question is providing a Trust Counsel that can act in a conflict of interest by allowing the full range of resources to be available where there isn't a conflict and where the natural resources to be available where there isn't a conflict and where the natural resources needs of the Indian beneficiaries ought to be protected.

Senator ABOUREZK. Would you, Senator, yield. I just want to follow up on that for a minute.

Senator BARTLETT. Sure.

Senator ABOUREZK. Getting back to the concept of conflict of interest, even the departmental witnesses testified today that the conflict does not come from where the attorneys are placed, whether they are in different agencies in Interior or in the Justice Department.

The conflict comes from the decision made by the Interior Secretary and that would be abolished, eliminated, that particular conflict with the establishment of a separate authority and the authority would then make the decision as to whether the Justice Department should be called in and used.

I just wanted to make that comment.

Mr. PRICE. I agree with that. I think that the Trust Counsel itself should always be sure that an important resource need be met. The main difference would be that you would have the Trust Counsel making that decision and not the Agency that has a conflict of interest. By the way, I would hate to have the Trust Counsel with the

thrust of the OEO. I meant to allude to the OEO, which I dearly loved, only to demonstrate how it identified natural resource protected needs.

Senator BARTLETT. Well, I think the question of class action suits is not to exclude their use altogether, but merely to prevent the misuse as a tool of partisan politics.

In some cases and ideological goals to legislate new law via the courts.

In other words, to be on the offensive and take action to bring about the change, thus bypass the basic responsibilities of legislators and Members of Congress.

I think this is the real concern that a lot of people have. That is why I wanted to sort of pin you down because the OEO to me showed a real use for proper legal aid to the poor and destitute and those not having access to attorneys.

Unfortunately, it wasn't used that way enough and it was misused too much to the extent that it has a lot of opponents whom I believe would really be advocates if it had been properly used.

I would hate to see that happen in this case.

Mr. PRICE. Let me say in the Indian area, I think there has been great success by the legal services programs. In South Dakota, the Roosevelt legal services programs had its inadequacies, but it has been an effective tool in Indian interests.

Senator BARTLETT. Now, to get back to the matter mentioned a moment ago of keeping the Trust Authority pure and unrelated to the Justice Department. You raised a question of some concern that it might not be big enough or sufficient to do the job. It would seem to me in fulfilling that concern by continuing the authority of the Justice Department, you would hazard continuing a program that hasn't worked satisfactorily.

It seems even though in the first year it might not be funded to the extent it should be, yet there would still be the right of the tribe to have access to their own counsel or other counsel, but it would not get into the area, as the OEO did, of offending people and it would seem since the main thrust of the arguments in favor of it are to prevent or eliminate the dual responsibility or conflict of interest, that that is one thing that we would want to definitely rule out of the new way of going, so it was a pure trial period of a pure entity which could be judged on its basis and if it was not sufficiently financed, that could be recommended.

So I guess I see some concern here with the dual approach that, then if things don't go well, there would always be great tendency for either side to blame the other.

Therefore, we would have a great idea here that would be torpedoed right off the bat for the same reasons we tried to create it in the first place.

Mr. PRICE. It would be an illusion if we say we are going to try to arrive at a situation where we would have complete purity. Your comments earlier indicated the danger of conflicts between tribes. I think there is also the problem of the annual budget going through the OMB process.

Always there is a possibility that there will be some conflicts that arise because of the fact that the Trust Authority has to go through the normal budgetary process.

What I think the intention of the administration has been is to minimize conflict, to reduce it to a bare minimum. The idea of having an Indian Trust Authority which itself is pure is a tremendous step in that direction.

But it seems to me one does not have to, at the same time, destroy the availability of the Justice Department. Where there is a conflict the Trust Authority, pure as the driven snow, can take the case. Where there isn't a conflict and where the Trust Authority itself decides there is no conflict, the Justice Department will be available with its 93 U.S. attorneys and full resources of the U.S. Government.

Senator BARTLETT. Thank you.

Senator ABOUREZK. I have one more question of Professor Price.

Would you provide the committee, within a 2-week period if possible, a recommendation for safe level of Trust Counsel Authority that you think will adequately do the job of representing the Indian people in this country?

Mr. PRICE. Thank you, I will be delighted to do so.

Senator ABOUREZK. As early as you can.

Mr. PRICE. I will try to do my best.

Senator ABOUREZK. We can't impose a time limit on you, but we would like to have it as soon as you can do it.

We appreciate your taking the time to come out here today and we appreciate your well-rounded advice.

[The prepared statement of Mr. Price follows:]

STATEMENT OF MONROE E. PRICE
ON S. 1012 AND S. 1339
TO ESTABLISH AN INDIAN TRUST COUNSEL AUTHORITY
BEFORE THE
SUBCOMMITTEE ON INDIAN AFFAIRS
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE
MAY 7, 1973

It is a pleasure to testify concerning the legislative proposals you are considering to establish an Indian Trust Authority. I have been interested in the problem of legal representation of Indians throughout my teaching tenure at the School of Law at UCLA. I have written about the strategies of lawyers on the reservation and have just published a casebook dealing with American Indian law problems. I strongly endorse the proposal for an independent trust counsel; such action is a critical step, but only one step in the overhauling and improvement of the administration of Indian affairs by the United States government.

Much depends on the result of these deliberations, and I urge great care in the design of the Trust Authority. For there is the substantial danger that the victory for sovereignty implied in the bill will lead to great losses to the Indians if meticulous attention is not paid to the

way in which the Authority is developed. Nothing short of a symbol would be gained if an inadequately financed and structured, but conflict-free Authority were substituted for the resources of the Department of Justice.

I also hope this Committee will view the Trust Counsel as a first step in the rationalization of the administration of this nation's trust. Litigation is only a small part of that mission; it is a mistake to look at the issue of conflict only through the lawyer's prism. The fulfillment of the trust has essential affirmative aspects, involving planning, technical assistance and concern for appropriations. Often, lethargy, born out of conflict of interest, has impeded the Department of Interior in the fulfillment of these critical roles.

It would not be wrong for this distinguished Committee to envision the Trust Authority as the future embodiment of the trust responsibility and to request the Department to itemize those of its activities and staff that are critical to the strengthening of the Indian resource base.

I favor the creation of the Authority with a clear litigation and legal service focus. But at the moment of creation, the larger potential of such a structure should be kept in view.

The OEO as precedent

Some think that it would be difficult to implement the Trust Counsel Authority concept. But, happily, there is already useful experience that provides guidance to the Congress with respect to the need for such legislation and its practicability. In a halting way, yet sufficiently significant so that lessons can be drawn, the OEO Legal Services Program has acted as a forerunner of an Indian Trust Counsel Authority. Let me give several examples:

1. The California Indian Legal Services sued several water districts in Southern California for the possible rescission or modification and enforcement of a contract for the delivery of San Luis Rey river water.

2. The Alaska Legal Services Program, with the assistance of a private law firm, Arnold and Porter, represented Alaska Native villages in an action claiming that the government permit for a pipeline right of way would yield a trespass of their lands without their consent.

3. The Native American Rights Fund, a foundation supported child of Legal Services, has successfully sued to require the Secretary of the Interior to divert water from the Newlands project to Pyramid Lake.

There are, of course, other examples.

These programs are an example of Congressional appropriations to independent legal services programs that have sought

to enforce the trust responsibility of the United States.

Several conclusions can be drawn from the eight years of experience with these programs.

a. There is clearly a need for an independent federally-financed authority for the enforcement of the trust obligation. Serious breaches of trust have been identified and, in some cases, remedied by prompt action by the OEO programs.

b. It was of critical importance that these lawyers be free of conflict and loyal to their clients.

c. The OEO programs have led, in some cases, to improved functioning and efficiency of the agencies charged with the administration of Indian affairs. The Trust Counsel Authority would have the same benign influence as a check on Executive action.

d. The OEO programs are not able, in a consistent manner, to launch and maintain substantial resource litigation. The San Luis Rey matter that I described above, probably cost the legal services program close to \$100,000 over the life of the suit. It was an important suit that established new principles and new patterns of conduct. But it could barely be sustained by California Indian Legal Services. And smaller programs never could have brought such actions.

e. The OEO programs could coexist with the litigation responsibilities of the Justice Department and negotiate

with them to assure the maximum use of lawyerly talent in the bringing of cases protective of Indian resources held in trust.

The continuing responsibility of the Department of Justice

I see absolutely no reason for excusing the Justice Department from all responsibility for the bringing of Indian trust protective litigation. To include the present proviso in the legislation runs the risk of turning the bill into an illusion and snare rather than an effort to implement effectively the President's policy.

Even now, as I have indicated, with the OEO and other independent sources of litigation, there are negotiations with the Justice Department to determine which actions should be brought by whom.

In the Supreme Court, an action has been brought by the United States to enforce the rights of the Pyramid Lake Indian Tribe. That action was brought after protracted discussions with OEO and foundation-supported counsel.

In Maine, the Attorney General has brought an action on behalf of the Passamoquody as a result of pressures from the Pine Tree Legal Services. The Justice Department has intervened before the Federal Power Commission to represent Indian resource interests as a result of discussions with California Indian Legal Services.

This kind of cooperation and division of labor must continue if trust resources are to be adequately protected. It would be a sham if the bill completely deprived the Justice Department of its responsibilities to litigate with respect to natural resources.

Two additional arguments buttress this conclusion.

First, as written, the statute can lead to unnecessary litigation, doubt and confusion.

a. Does the Act impliedly repeal 25 U.S.C. § 175, which states that "the United States Attorney shall represent reservations or allotted Indians in all suits at law and in equity?"

b. Does the Act modify the scope of Section 345 which provides jurisdiction in federal courts in actions to enforce or protect a right to an allotment?

c. Does the proviso deprive the Justice Department of the power, oft-times employed, of protecting reservations and allottees from the wrongful assertion by states or counties of local property taxes?

I do not think it is the intention of the bill to modify these powers. But the ambiguous language of the proviso means that litigation on these issues, including motions to dismiss whenever the Justice Department sues on behalf of Indians, will be likely. And the Department of Justice may relegate Indian affairs to a lower priority

when issues are raised that are arguably resource related.

Second, the proviso language is unnecessary. Whatever responsibility the Justice Department has under the trust concept is a duty of the United States. Even without a proviso, affirmative action by the Trust Authority pro tanto relieves the Justice Department of responsibility.

But to the extent the Trust Authority does not completely carry out the trust duty, the language in the Act does not relieve the United States of its obligation.

The Solicitor General

One special aspect of the relationship with the Justice Department should be addressed.

The legislation does not speak to the responsibilities of the Solicitor General specifically. Without amendment, the rule that the Solicitor General's office controls access to the Supreme Court would apply. Section 7, precluding executive interference is not sufficient clarification of this issue. Yet the Solicitor General's office is a source of great conflict and great importance. The Court, in many ways, has been an important guardian of the trust in the last twenty years. This access to the Court is central to the successful work of the Trust Authority. In a recent case before the United States Supreme Court, Mason v. United States, the Solicitor General confessed its conflict in the

arguing of a critically important point, whether West v. United States should be overruled. The conflict was between the general principles governing tax law and the specific exemptions for Indian trust assets. The distinguished Mr. Griswold stated to the Supreme Court his hope that the Trust Counsel would be established thus relieving his office where there is a conflict of interest. I think there should be specific language in the Act allowing the Trust Counsel to take a case to the Supreme Court.

Indeed, in the Davis v. Morton case, described below, there was another instance of conflict. For Indian interests, the principle established by the Circuit Court was awesomely wrong. But for the Solicitor General, it was an inappropriate case for testing the scope of the Environmental Policy Act.

Clarifying the powers of the Authority

The Trust Counsel Authority must have the power to engage in preventative as well as curative protection of Indian resources. In the water rights area, for example, the Act rightly permits the Authority to aid in inventory and planning.

The greatest danger to Indian water rights arises from the failure of the tribes to plan for their use.

There is also danger to those resources because of the failure of the tribes to be participants in regional planning for the allocation of water resources.

And finally, there is a great danger to resources as a result of the failure of the Indian voice to be heard when Congressional decisions are made that lead to the distribution of important water resources.

I agree that the Trust Counsel Authority should be able to engage in all these functions. The Indian Water Rights Office at the Department of Interior, a half-step toward the Trust Counsel, should be studied as an example of the Authority and undoubtedly should be transferred to it. It recommends litigation strategy, but to do that, it must be involved in the planning process, assisting tribes in understanding what water rights they have and how those rights can be used.

The Indian Civil Rights Task Force

There is an additional function the Authority could perform. In the 1968 Civil Rights Act, the Congress wisely required the Secretary of the Interior to prepare a revision of Federal Indian Law, a task of monumental scope and importance. One reason for the legislation was the considerable doubt that the 1958 edition was truly objective or honorably succeeded Felix Cohen's 1942 masterpiece.

The preparation of the new revision must be undertaken in an atmosphere of independence, free of conflict. The Department of the Interior has accepted the importance of editorial freedom by establishing a special Indian Civil Rights Task Force to undertake this Congressionally-assigned task.

But there is always a danger that in the editing and preparation of the revision, conflicting interests within the Department will attempt to alter the restatement of law. In the natural resources area, that danger is particularly great. How the Winters doctrine is restated is a matter, for example, of no small moment in a volume that, in a sense, has the force almost of law.

I would recommend, then, that the duty of revision and restatement be assigned to the Indian Trust Counsel Authority, and that the staff of the Indian Civil Rights Task Force be transferred to the Authority.

Independence is particularly important because of the critical role that the book, Federal Indian Law, plays in day to day interpretation and litigation. I know of no other area of governmental activity where a treatise is prepared by the government. And, certainly, there is no other area of government activity where a single work is treated with so much respect and deference.

On appropriate occasions, determined by the Authority at the invitation of the tribe, the Trust Counsel should be empowered to defend actions against tribes or aggrieved individual Indians where trust resources are endangered.

And clearly the Authority should be encouraged to represent the Trust interest before Congress and in administrative proceedings.

The Trust Territory of the Pacific

The United States has a trust responsibility involving the natural resources of the Trust Territory that is much like the trust responsibility relating to Indian land and water. And as in the case of Indians, the exercise of the Trust is fraught with conflicts of interests. I urge the Committee to give serious attention to including within the mandate of the Trust Counsel the power to vindicate the trust obligation owed to the people of Micronesia. A careful study will disclose, I think, that such action is merited now before the United States is found wanting in domestic courts and at the United Nations.

* * * * *

In these hearings, opponents of the legislation, opponents of the bill have constantly asked for specific examples of conflict of interest. I think my colleague,

Professor Reid Chambers, has adequately demonstrated in his report to the Administrative Conference, the existence of numerous examples.

I should like to add some general concerns that reinforce the need for a new approach.

The penchant for reorganization, the failure of the existing structures, flows from the constant difficulties in carrying out the government's conflicting mandates, in fulfilling changed ideas about what federal Indian policy should be. The history of the administration of Indian affairs is a history of conflict. Conflicts of interest are not isolated to natural resources, they are not necessarily emblems of venality or the fault of particular bureaucrats.

There have always been conflicts. In the 1830's there was the conflict between the government's obligations to the Cherokees and its commitment to the state of Georgia. In the mid-century it was between the peace policy and the military policy, between the civil departments of government and the Department of War. In the late nineteenth century, the conflict was between the urge for settlement, the move westward and the trusteeship as to land.

The often stated strategy of "civilizing" the Indian people was, for decades, seen as wholly inconsistent with strengthening the tribes.

The increased Indian use of natural resources on the reservation was always seen as inconsistent with the greater federal strategy of ending tribal existence.

In the nineteenth century it was thought that too much land and too many resources would ruin the Indian people. Abundance, it was thought, would lead to idleness and a failure to learn the ways of the settler.

Thus conflicts of interests are not of recent origin.

But the passionate expression of interest, at the present time, to strengthen the federal defense of Indian resources springs from important characteristics of our own time. I should like to mention three of these characteristics: a renewed commitment to tribal government; increased competition for Indian natural resources, and the impact of environmental concerns.

1. Our renewed commitment to tribal government. In the last decade, there has been a tremendous federal investment in the strengthening of Indian leadership and the support of Indian tribal government. Tribal governments are, at least for the moment, accepted parts of the American political landscape.

But strengthening the tribes means that conflicts of interest will become more obvious. Actions of the past that aided in the destruction of tribal economies will be

increasingly the subject of dispute. Policies that have led to non-Indian use of water, for example, will be seen as increasingly unacceptable as tribal governments are strengthened.

2. Increased competition for natural resources. In the nineteenth century, when resources were needed for non-Indian purposes, the lands could be called surplus and opened for settlement. That approach is no longer palatable. It was the weakness, in a sense, of the termination legislation of the 1950's. Yet competition for scarce resources, and the federal government's interest in the rational management of resources, is as great as it was in the nineteenth century.

The conflict has been apparent, for example, in the working out of the reclamation ethic. The Bureau of Reclamation's emphasis on the harnessing of rivers, the construction of great irrigation systems, has conflicted with a protective attitude toward reserved Indian waters.

3. Perhaps the newest source of conflict arises from environmental concerns, though thus far these conflicts have often been amicably resolved. The conflict here is between allowing the tribal governments and individual Indians to develop land in ways they wish, or subjecting them to tests which other landowners and local governments must not pass.

Let me cite several examples. The Tenth Circuit, in Davis v. Morton, has recently held that the Secretary of the Interior must prepare an impact statement before he approves a lease of trust land on an Indian reservation. That requirement may mean a drastic revision in the exercise of the Secretary's approval power over leases. He may, henceforth, take more time, take into account more considerations, look at the environmental impact of the lease not only on the reservation but on the neighboring state.

Some may view this as good. And good it may be. But it clearly places the Secretary in a conflict of interest position. He does not represent solely the best interests of the Indian lessor.

The Alaska pipeline provides a similar example. I do not know what the position of the Alaska Natives is on the impact of the pipeline on their lands. My guess is that there are a variety of views, reflecting the needs and ambitions of particular groups of Indians and Eskimos in that state. What is clear, however, is that the Native interests are not necessarily congruent with Administration policy. The Natives are not independently represented within the councils of government in the preparation of the impact statement for the pipeline or the preparation of policy generally with respect to the pipeline.

My sympathies are with this Committee in its arduous assignment of bringing order to the administration of the federal trust responsibility. The road is well-trod.

Virtually one century ago, in 1968, a special Commission reported on proposals for the placement and structure of the Bureau of Indian Affairs. What that Commission said then is of clear and continuing importance today:

"We believe the Indian question to be one of such momentous importance, as it respects both the honor and interests of the nation, as to require for its proper solution an undivided responsibility." */

A decade later, in 1879, a distinguished Committee of the Senate concluded "We are of opinion that the Indian Bureau should be a distinct department . . . This will aid much in the solution of future complications in Indian affairs.**/

Reorganization is a trying and frustrating task. . . . Carl Schurz, testifying on reorganization in 1879, said "There is no duty more burdensome, more perplexing and more thankless than the management of Indian affairs. Whenever things go well, nobody takes any notice of it; but whenever

*/ 1868 Report of Commission of Indian Affairs, 48.

**/ Senate Report 693 (p. XVIII) 45th Cong., 3d Sess.

anything goes wrong, it is charged to the account of the Department So, if a man has any ambition to distinguish himself, he ought not to seek this line of duty. */

It is easy to tire of the trust and to favor termination of the duty in the false name of equal treatment for the Indian people. I am glad that this Committee is seeking to ensure that the Trust Council Authority is adequately structured and financed so that it becomes a real, rather than chimeric exercise of the Trust.

*/ 45th Cong., 3d Sess., Senate Report 693, p. xl.

[Subsequent to the hearing Mr. Price submitted the following information:]

UNIVERSITY OF CALIFORNIA, LOS ANGELES,
SCHOOL OF LAW,
Los Angeles, Calif., June 22, 1973.

HON. JAMES ABOUREZK,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ABOUREZK: I am glad to have the opportunity to supplement my statement in response to specific questions by the Committee. I do not have answers to each of the questions asked.

How can one calculate the staff and funding levels for the Indian Trust Counsel Authority?

(1) I think one measure is to determine the value of property held in trust by the United States and then determine what a conservative private institutional trustee considers to be the normal expense of administration.

(2) Another approach is to conceive of a state corollary. If one took all Indian resources for which the United States is responsible, what state of the union is most comparable? Then one might look at the staff of the Attorney General of that state and the staff available to him to protect state resources.

(3) Third, one might wish to look at the resources that are presently dedicated to the protection of Indian resources by the Department of Justice and use those as a baseline for the Trust Counsel Authority.

(a) The Authority should have the power to sue for money damages when resources have been converted. The United States presently has this power and it must be exercised by the Justice Department when alternate relief is called for. In some cases, the Authority would be placed in an awkward position if it were confined to non-pecuniary relief. The restriction on relief might affect the strategy the Authority could pursue and might yield the surrender of important rights by the client. In any event, confining the Authority to one form of relief would yield divided and duplicative litigation.

(4) One should take into consideration the massiveness and the complexity of the legal issues involved. One might say that the Indian Claims Commission represents the cost of failure to have an Indian Trust Counsel Authority and use the combined total of the Justice department, Claims Commission staff and Indian counsel as a ceiling on the staff that should be available for the Trust Counsel. There is some "opportunity cost" theory that could be applied here.

(a) The Authority should definitely be empowered to testify before Congress. As the Authority develops and grows in stature and responsibility, I am certain that it will have institutional views that will be of great importance to the Congress. Furthermore, through its experience, it will be able to bring to bear important information to questions that Congress is considering. The Committee might wish to ensure that the Authority is empowered to present its own position, rather than an administration position before Congress. Its value as a spokesman will be reduced if it must clear a statement with the Office of Management and Budget.

(b) The Authority should be permitted to participate in Executive decision-making as are other entities that have a significance in the outcome of the decisions. The Secretary of the Interior, for example, should normally solicit the Director of the Authority as decisions are reached. But I do not think it wise to require any federal agency to consult with the Authority (as opposed to notifying the Authority when a significant action is taken that affects Indian trust resources). The Authority should be part of the federal government but apart from it. It should have the kind of independence that allows it to help shape federal policy but does not always implicate it in the policy that is adopted.

Sincerely yours,

MONROE E. PRICE,
Professor of Law.

Senator ABOUREZK. The next witness is Mr. Thomas J. Cavanaugh. Apparently he has decided not to testify and his statement will be submitted in its entirety into the record.

**STATEMENT OF THOMAS J. CAVANAUGH, GENERAL COUNSEL,
PUBLIC LANDS COUNCIL**

Mr. CAVANAUGH. My name is Thomas J. Cavanaugh. I reside at Falls Church, Va., and serve as general counsel to the Public Lands Council, a voluntary organization of Western livestock producers.

This statement is made on behalf of the American National Cattle-men's Association and the National Wool Growers Association as well as the Public Lands Council.

The membership of the three organizations I have named have an interest in the legislation now being considered by the subcommittee, S. 1012 and S. 1339, because many of them have either acquired land in the Western States from the Federal Government, or are users of public lands in the West.

We feel that most of the claims which will be processed by the proposed Authority will be claims to land and water resources in the Western States which have either been granted by the Federal Government to third parties or remain in Federal ownership.

We do not argue with the objectives of the legislation. We are concerned, however, that it could become a vehicle for constant harassment of both the Government and others through the filing and prosecution of nonmeritorious claims.

As the bills are now written, there are no time limitations either upon the existence of the Authority or upon the prosecution of claims by the Authority. Nor is there any requirement that the Indian tribe applying to the Authority for assistance demonstrate financial inability to prosecute such claims as they may have without the assistance of the Authority.

Most of the claims which would be processed by the Authority are now known. The few claims which may not be known, could be detected within a reasonable time. We therefore believe that a reasonable time limit should be placed upon the filing of claims with the Authority for processing.

We believe that the prosecution of claims by the Authority ought to proceed with diligence. The time within which such claims can be prosecuted to a final decision cannot, of course, be entirely within the control of the Authority.

However, we believe that a reasonable time limit placed upon the life of the Authority will assure that, for its part, prosecution of the claims filed with it will be carried on with diligence.

We suggest that the Authority be prohibited from accepting any claim for processing unless that claim has been filed with it within 5 years after the effective date of the act.

We further suggest that the Authority terminate 10 years after the effective date of the act. This would give the Authority a minimum of 5 years in which to prosecute any claim filed with it. Such limitations would, we believe, go far toward encouraging diligence in the prosecution of claims and assuring that only claims of merit would be considered by the Authority for prosecution.

The language of section 8 of both the pending bills seems to suggest that the Authority would take the initial steps in asserting a claim. We do not believe that the Authority should seek out claims for pros-

ecution and it seems to us that to suggest that the Authority to do so runs counter to accepted legal ethical standards.

It is, therefore, our suggestion that the words "with the consent of an aggrieved Indian * * *" appearing in the first line of section 8 in both bills be stricken and the words "upon the request of an aggrieved Indian * * *" be inserted in lieu thereof.

It may well be that many of the claims asserted by the Authority on behalf of Indians will be claims to public lands or public land resources. The lands and resources to which such claims may be made may also be under lease or permit to third parties.

Inasmuch as the Government is not compelled to defend such claims, we believe that the legislation should specifically provide that whenever a claim to federally owned lands or resources is asserted by the Authority on behalf of any Indian or Indian tribe, any person holding a lease, permit or other authorization to use such lands or resources from the Federal Government shall be named as a defendant in any action brought to prosecute the claim and shall be entitled to defend such action by asserting the validity of such person's lease, permit or other authorization to use the lands, notwithstanding the failure of the Government to defend such action.

We also believe that, as a minimum, any Indian or Indian tribe or group of Indians applying to the Authority for assistance should be required to file an assurance of financial inability to prosecute such claim with such assistance.

Senator ABOUREZK. The hearing is adjourned until 9 o'clock tomorrow morning.

[Whereupon, at 5:10 p.m., the hearing was recessed, to be reconvened at 9 a.m., Tuesday, May 8, 1973.]

INDIAN TRUST COUNSEL AUTHORITY

TUESDAY, MAY 8, 1973

U.S. SENATE,
SUBCOMMITTEE ON INDIAN AFFAIRS,
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met at 9 a.m. in room 3110 Dirksen Office Building, Hon. James Abourezk, chairman, presiding.

Present: Senators Abourezk, Metcalf, Bartlett, and Jackson.

Also present: Jerry Verkler, staff director; Forrest Gerard and James Beirne, professional staff members.

Senator ABOUREZK. The Indian Affairs Subcommittee is now in session.

The first witnesses this morning are Mr. Philip Sam Deloria, executive director of the American Indian Law Center in Albuquerque, N. Mex., accompanied by Thomas Fredericks, president of the American Bar Association and Fred Ragsdale, Indian law student at UCLA.

Mr. Deloria, we are happy to have you here this morning along with your panel. We welcome your testimony, and please proceed.

STATEMENT OF PHILIP SAM DELORIA, DIRECTOR, AMERICAN INDIAN LAW CENTER, ALBUQUERQUE, N. MEX.; ACCOMPANIED BY THOMAS FREDERICKS, PRESIDENT, AMERICAN INDIAN BAR ASSOCIATION; AND FRED RAGSDALE, LAW STUDENT

Mr. DELORIA. Thank you, Mr. Chairman. We appreciate the invitation and the opportunity to testify before the committee and we thank you and the chairman of the committee for this opportunity.

I would like to point out, before we proceed with testimony on the bill, that the three of us were assisted in our law school studies through a Federal funded program to create Indian lawyers, funded now by the Bureau of Indian Affairs, and we think this is one example of the impact this program will have. We hope it will be a good impact.

We are generally very pleased to be interested in the administration problem of conflict of interest that the Federal Government sometimes has, in exercising this trust, the recognition of this conflict and the desire to do something about it.

We do, however, feel there are some problems with this particular bill as presently structured and we would like to discuss some of the problems. Perhaps some of the problems we point out may be difficult to deal with in the legislation, but we would like to raise the questions for the record.

I would like to start by turning this over to Mr. Fredericks for some comments.

STATEMENT OF THOMAS FREDERICKS, PRESIDENT, AMERICAN INDIAN BAR ASSOCIATION

Mr. FREDERICKS. Well, I, too, Mr. Chairman, would like to thank you for giving us this opportunity to testify before your committee.

I would like to speak to the issue of the bill as it is presently posited. We feel it is too broad in relation to the conflict of interest. We say it is too broad because it goes too far in the litigationary area, by relieving justice of the litigation responsibility.

We feel that there are other alternatives that would better meet the interest of the Indian in the area of conflict of interest. I think the bill in its present posture seems to conclude that anytime there is a natural resource problem in Indian Affairs, there is a conflict of interest and, therefore, the Justice Department should not be obligated in any way.

We feel that a viable alternative may be to have the Trust Counsel Authority have the right of first refusal in a particular problem.

As you know, in many cases, the Government or the Justice Department is bringing actions on behalf of the various Indian tribes and there are private attorneys or legal service attorneys representing the individual tribes merely as intervenors in the action, and I would think that if the Trust Counsel Authority could have the right of first refusal, say if the problem arises, the Trust Counsel Authority would look at it and determine whether or not there is a conflict of interest here. I think that the Authority definitely should have that responsibility. Provided, if they determine that the particular litigation will not involve a conflict of interest, then I would say that the reason for turning it over to the Justice Department—or they would be justified in turning it over to the Justice Department.

I think this would solve the problem of the financial end of whether or not this Trust Counsel Authority would be adequately financed, if they had this opportunity to turn over some of the responsibilities when they determine there is no conflict.

Senator ABOUREZK. I wonder if I might break in for just a minute, Mr. Fredericks. You were not here yesterday for the testimony presented by the administration, were you?

Mr. FREDERICKS. No. I was not.

Senator ABOUREZK. Let me repeat in essence what they said. They, of course, would oppose any move to amend the bill to keep the Justice Department as any kind of a legal force representing the Indian people. They consider it as a wash of the hands, this particular Trust Counsel Authority.

Second, the administration is going to recommend the establishment of a 15-attorney staff that would take care of all the litigation problems that the Indian people have throughout the country, which would include a 225-case backlog that is now in the Justice Department.

Now, it was pointed out by one witness, following the administration's testimony yesterday, that a 15-man staff of attorneys is less than the California Indian legal services has. Since you weren't here yester-

day, I just wanted to bring out that testimony and ask for your comments on that.

Mr. FREDERICKS. Well, I think the 15 attorneys within the Trust Counsel Authority, that is about 18 tribes per attorney, if there are approximately 270 tribes in the United States. So it seems very high to me, especially with the backlog of 225 cases or whatever it is.

I would think, if we are dealing with the conflict-of-interest thing, that the Trust Counsel Authority should have the responsibility of determining whether there is a conflict and once they make that determination, they should have the right to call on Justice to take on the responsibility here.

I think a 15-man Trust Counsel Authority is not going to be adequate to take on the responsibilities that the bill is calling for.

Senator ABOUREZK. Do you see—any of you can answer this question. Do you see this as a move on the part of the administration to give the appearance of doing something for the Indian people, yet at the same time, as a practical matter, setting up this Trust Counsel Authority and getting the Justice Department clear out of the Indian business and then, in effect, overloading the circuit so that nothing or a lot less will be done for the Indian people than is being done right now? Do you see it like that?

Mr. DELORIA. Far be it for us to question the motive of the administration, Senator, but I think the selling of this piece of legislation is quite a different story.

The legislation is being sold as a conflict-of-interest legislation to deal with questions where there is a conflict of interest within the Federal Government. As it is presently written, it does not deal only with conflict-of-interest situations, it gives Indian resources litigation to the Trust Counsel Authority, not when there is a conflict of interest, but all such litigation.

Our feeling is that that goes too far. We realize if the legislation were written in such a way that only conflict-of-interest legislation would go to the Trust Counsel Authority, then you would have quite a complicated task of certifying which questions, in fact, involve the conflict of interest, and it would take some administrative machinery and some kinds of regulations to determine when Justice would have a case taken away from it or when Justice should handle something and that could be quite cumbersome.

We feel that is preferable, because the notion that one attorney can handle the natural resources problem of 18 tribes we find on its face ridiculous, it can't be done.

Mr. FREDERICKS. The only reason, Senator, that I can see any reason for abrogating Justice's responsibility in the natural resource area is probably to sort of avoid buck passing between the Authority and Justice. But, I think, you know, with the Trust Counsel Authority having the primary responsibility of determining the conflict, I think that sort of avoids any buck passing that would take place. Hopefully, the Trust Counsel Authority would have the interest of the Indians at heart and would make these determinations in good faith.

We have every reason—we don't question the responsibilities of the Trust Counsel Authority or the good faith of the Trust Counsel Authority, I think if they make the determination of the conflict of inter-

est, they will in fact make these determinations adequately and if they would have the right of intervention, say, if a case was not being processed through the Justice Department adequately. I think this happens all the time.

I work for a legal service type organization and we have intervened many times on behalf of an Indian tribe where Justice is handling it or has primary responsibility on the case.

Just to continue on, we feel, too, that the bill as it is presently written, does not go far enough. It goes too far in some respects and not far enough in others.

We feel that being a lawyer does not only mean representing individuals in litigation. You have to advise your clients, you have got to avoid the litigation. You have to give them advice on quasi-judicial decisionmaking at the administrative level. I just would not be able to support any kind of abrogation of the responsibilities on the part of Justice.

We feel also that there are conflicts of interest within the Solicitor's Office in giving advice to the administrators at the various levels within the administration. This possibly could be remedied by having a separate solicitor for the Commissioner.

STATEMENT OF FRED RAGSDALE, LAW STUDENT, UCLA

Mr. RAGSDALE. I don't have much to say, but the thing that bothered me most about this bill when I first read it and I talked to Professor Price about it, is that I am teaching in Federal policy in UCLA. One of the things that becomes apparent when you study policy is everything that comes down the tubes also appears to be a panacea and this will be a solution. When you read the bill at first it seems to be a very useful and important thing. Because most Indians feel the natural resources are the only resources we have left. The general waiver of sovereign immunity is a very attractive carrot to support this bill. If you are going to go into litigation you realize the sovereign immunity problem is very difficult to get over.

The second thing is that Indian litigation is very expensive. Professor Price talked about water suits, we have a lot of similar suits we would like to bring but we can't afford to bring them. The hydrological costs, just to attempt a law suit, is \$100,000 to build a test well. There is no way in the world in an Indian tribe of 400 people who could afford that litigation.

Their only means of subsistence is farming and there is simply no water. There is nothing they can do about it. I spent a long time corresponding with people in the Justice Department and they all refused to act.

I am sort of at a loss for words because I have a hard time saying I cannot support this particular piece of legislation, but I know if it goes to 15 lawyers, especially the Indians on the west coast of California, they are simply not going to get representation.

Most of the tribes in California are very small and poor and could not possibly afford to come to Washington with their complaints. They feel, and I think justly, that the U.S. Government has written them off, that they are unimportant any more, footnotes or monographs in historic texts, but not human beings.

I feel, if this bill is passed and funded at a level of 15 lawyers to work out of Washington, the Indians would not be represented at all.

Senator ABOUREZK. I have some questions that I would like to pose to any of the members of the panel who would like to respond.

With respect to intertribal disputes, what should be the position of the Authority? For example, should it represent one tribe or remain independent and pay for the outside services contracted which each tribe might require in that particular dispute?

Mr. FREDERICKS. Of course, you know being Indian attorneys, I think it is a very difficult question for us when you talk about intertribal disputes. We are faced with it all the time in our program. However, I feel that the bill does have some provisions in it for hiring other outside counsel for these kinds of intertribal disputes. I think that would be the more appropriate way to handle it.

I just feel if the Authority is going to get into the intertribal disputes, you are going to get a lot of tribes that will no longer utilize the services that the Trust Counsel is desiring to offer to them. I do not know, that is just my feeling. I really do not know that that would take place, but I think that is possible.

Mr. DELORIA. Politically, it would seem to me, it would not be very wise for the Trust Counsel to decide it should represent one tribe and hire another counsel for the other tribe.

Senator AROUREZK. All right. What should be the continuing role of the Justice Department and the Interior Department when no conflict arises from another Federal agency?

Mr. DELORIA. Do their job.

Senator ABOUREZK. Should they continue to represent the Indians as they are now obliged to do?

Mr. DELORIA. As they are now obliged to do; yes.

Mr. RAGSDALE. They have to. You talk about a staff of 15 people. It seems inconceivable—I do not know how large the Bureau is, but, there is no way that 15 attorneys can possibly function as required to properly provide the services Indians need.

As Tom pointed out, the function of a lawyer is much more than a crises orientation. Most Indians' problems only arise in a crises situation. If proper advice is given in many instances the litigation problem would never arise. If we look at the Pueblo in New Mexico, it is a good example of people poorly advised.

I think the Bureau should attempt to function more in an advisory capacity or management capacity. I think the Bureau has to continue doing its job Congress has directed and doing a much better job than they are doing now and provide more information for the tribe.

I was at a meeting in Colorado and the major complaint is that we have a problem involving natural resources and we have no where to go to ask for advice. Who can the Navajos go to for coal gasification complaints? There is not a sole in the world.

Who can Indians go to and ask for water rights when hydrologists cost in excess of \$25,000 to \$35,000 a year. There is nowhere they can go.

I know the people I talked to in Colorado felt they were really all alone.

Senator ABOUREZK. Along that line, what would you envision as the complete role of the Authority. Should it extend past its role of litigant to encompass testifying before Congress and participation in executive decision making when natural resource rights are involved?

Mr. RAGSDALE. Yes, sir; what I envisioned the Trust Counsel as being was an attorney for some tribes to perform some of the functions that Justice performs and some of the functions that OEO is performing. I believe Justice failed to do its duty. I would like to get away from crises orientation, that for the Trust Counsel to be really effective, has to do some sort of lobbying on Indian resources. Money damages aren't worth a damn when your land is filled with water and you want to farm.

Mr. DELORIA. In answer to that question, I think there could be some problems in having the Trust Counsel participating in the decision-making, because then you start the conflict of interest all over again. If they are in other processes of executive decisionmaking and if they have to pull out of it and turn around and be an advocate again, you are just playing games and moving the conflict of interest around. I think some kind of separate solicitor's office, either for the Bureau of Indian Affairs or the Assistant Secretary for Indians if that goes through, and if that is established, it might be one way to try to deal with the problem which is not dealt with at all in this bill, and that is the legal advice that is given to the people in Interior about what the law is and what they should do.

But I don't think you could combine the litigation role, the advocacy role for Indians and the role of participating in decisionmaking and giving advice to the bureaucrats in one office, if you do, you start the problem all over again. That doesn't mean I don't think that the Trust Counsel lawyers should not be in on meetings or have a chance to say what they think should happen, but their role in those meetings should be very clear that they are there as lawyers representing Indian interest and they are not there as Government lawyers advising the bureaucrats about what they should do. Unless those two roles are completely separated, you are back where you started. You have not accomplished anything in the bill.

Senator ABOUREZK. The bill authorizes a three man Board of Directors to be appointed by the President with the advice and consent of the Senate and that Board is directed to govern the Trust Counsel Authority. Do you consider this Board to be large enough and, if not, what would be your recommendation for an adequate number on the Board?

Mr. FREDERICKS. I feel that the number is probably inadequate because of the climate for the Indians who are scattered throughout the United States. There is different interest in the Southwest as opposed to the Southwest when it comes to natural resources or the Midwest where I am from.

Water rights is not a problem in some areas, it is of the utmost importance to the arid land of the Southwest. I feel there should be members at least from these particular areas on the Board so that all interests are represented in the decisionmaking or the administration of the Trust Counsel Authority.

Senator ABOUREZK. In line with that, then, do you think a more adequate representation would be had on the Board if, say, one person

on the Board were elected from each BIA area? There are 11 areas, I understand, if there was one person from each area elected to this Board, would that be a better way to do the job?

Mr. FREDERICKS. Again, this would be difficult. The larger the Board would get the more conflicts you could have within the Board. I would feel that would probably be too many. I would think five, six, or seven would be more adequate because then I think you can represent areas that are broader than the BIA geographic areas at this time.

I would not think there would be that much difference, as an example, between the Navajo area and the Phoenix area of the BIA or the Aberdeen area and the Minneapolis area in our area.

Mr. RAGSDALE. I know people in California, we look at it not only as a particular natural resources problem, but also as a political problem. If you just attempted to divide up the Board into areas that have specific natural resources problems, we feel you may end up ignoring the smaller political tribes and we believe we should have a say if something—because we feel if we don't have representation on the Board, our problems are not going to be considered the same way the Navajo or the Great Sioux Nation will have.

I think the Board has to be representative of the different political structures that exist on the reservation, not just the geographical areas.

Senator ABOUREZK. We talked about the proposed staffing level that has been proposed by the administration of 15 members. You indicated you think this is too small a staff to do the job. I do not expect you to provide the answer to this question today and if you do not have the answer, which I do not think you probably will, would you provide it within a couple of weeks time to the committee, if you would.

What staffing level of attorneys do you think would be adequate to do the job properly?

Mr. DELORIA. Is this with Justice relieved of all responsibility or with Justice still in the picture?

Senator ABOUREZK. I think you have to assume that Justice should stay in the picture, to be called upon when the Trust Council thinks it is needed. But you can provide the answer either way.

Mr. DELORIA. Yes; we will do that.

Senator ABOUREZK. The committee would appreciate it.

[The material was not received in time to be incorporated in the record.]

Mr. DELORIA. I think, Senator, one of the concerns that we have is that, knowing a little bit about how the bureaucracy operates, on the one hand I feel personally that there has not been a careful enough analysis of how this conflict of interest operates. In some respects I think the conflict of interest may operate in favor of the Indians. In the sense that in day-to-day decisionmaking within the Interior Department and the Justice Department, it may be that the decision-makers who might otherwise not feel a conflict are pulling their conscience somewhat. It may be that relatively small decisions that could have a great cumulative effect tend to be resolved, if not in favor of the Indians, at least taking account of Indian interest.

The drift, if a Trust Authority is created, the tendency of these decisions may be more in the area of resolving questions against the Indians in the knowledge that if they do not like the result they can always sue the Government through the Trust Counsel. I think that is a consideration that should be taken into account.

I do not think anyone has really studied the effect of this conflict of interest, to see where it hurts, where it operates and where it may be to the advantage of the Indians by somewhat tying the hands of the bureaucrats. I think that is a very important consideration. That goes to the question of the role of lawyers within the Government in advising what the law is and what the Government's Trust responsibility is, which we think should be preserved and which the Trust Counsel Authority will not really affect.

Senator ABOUREZK. Mr. Deloria, you have a sizable class of Indian law students at Albuquerque, as I understand it. If you are of a mind to do this, the committee would appreciate it if the law students that you have in your department down there, would do a paper to be submitted to the committee on this whole question of conflict of interest?

Mr. DELORIA. We would be delighted.

Senator ABOUREZK. That would be an official request on behalf of the committee to your students.

Mr. DELORIA. We would be most happy to do it.

[The material was not received in time to be incorporated in the record.]

Senator ABOUREZK. Senator Metcalf.

Senator METCALF. I have no questions. I am delighted that we are again taking up this important legislation, I have long been an advocate for additional counsel.

In many areas I have appeared before utility and regulatory agencies and so forth, and it seems to me that while we have a special situation with Government attorneys, they are a little different relationship than just that of client and lawyer. Nevertheless, there should be independent counsel for many Indian Affairs, independent interest even of the men of good will who are over at the Bureau of Indian Affairs and the Department of Justice.

So, I think it is most important and it is most important to hear these witnesses experienced in Indian affairs. Thank you very much.

Senator ABOUREZK. Thank you.

Senator Bartlett.

Senator BARTLETT. Mr. Chairman, gentlemen, as I understand the bill setting up the Trust Counsel Authority, as it sets it up it would not be concerned with intertribal disputes unless the disputes involved the Federal Trust responsibility, in which case it could represent one party or what I would like to see it do, it could probably appoint two outside counsel. Is this the way you understand the bill as it is written?

Mr. DELORIA. Yes.

Senator BARTLETT. And this, as I understand it, also, am I correct, is the present limit of the Authority that is followed by the Justice Department?

In other words, they do not provide legal services beyond the Trust limits or the treaty limits?

Mr. DELORIA. I believe it goes beyond treaties, there are also agreements that the tribes have with the Government and legislation, Executive order reservations. There are a number of sources of the Trust other than treaties.

Senator BARTLETT. What are they?

Mr. DELORIA. For example, the interest that a tribe would have in an Executive order reservation which is not based on a treaty between the tribe and the Federal Government, but there is still a trust relationship.

Senator BARTLETT. How much of the activity of the Justice Department is in the other areas, the areas other than treaty rights with the Federal Government?

Mr. DELORIA. In areas other than treaty rights or in areas other than Trust questions?

Senator BARTLETT. Well, both, I think they go together, do they not?

Mr. DELORIA. Treaty rights are associated with the Trust, but not all Trust questions are associated with treaties. So there are different categories and I would not be able to answer your question. I have no idea of the percentage of Justice Department time on the question.

Senator BARTLETT. As I understand, in wanting a larger staff, you are wanting the lawyers of the Trust Counsel to provide legal services not now available from the Justice Department, is that correct?

Mr. RAGSDALE. I believe it is not necessarily those that are not available, I think what we are more interested in are providing the services that are available that are presently not provided, if that makes any sense.

Senator BARTLETT. Well, I am not sure that I understand it. Why don't you try again?

Mr. RAGSDALE. For example, 25 United States Code 175, says the U.S. attorney shall represent Indians and Indian tribes in all suits in equity. I think Professor Price pointed out yesterday that that has turned into a discretionary statute. We feel that should not be a discretionary statute but anytime the Indians have some sort of legal problem that relates to their status as Indians, in a particular trust relationship, that the U.S. attorney should represent that particular piece of litigation, whether that involves a water suit or a private landowner. We feel the Trust Counsel itself has an obligation to protect that land. When you talked earlier to Mr. Deloria about trust obligations and treaty rights, in California there are no treaties, so all of the litigation in California is an evolution. It is an evolution of a traditional concept.

I feel, personally, that the Trust obligation that the Supreme Court has delineated extends much greater than is presently being provided the tribes. It should encompass many of the roles that the tribes are forced to give now.

Mr. DELORIA. As I understand the question, even if the Trust Counsel Authority only performs those legal tasks in litigation that the Justice Department now performs for Indian Trust interests, we feel that the staff is inadequate. Because there are nearly 300 federally recognized tribes, as we understand it. I do not know what the exact figure is, but it is a big number, anyway. You have 1 lawyer for anywhere from 15 to 20 tribes. We feel that is too much of a burden, even if you take a narrow view of the role of the Trust Counsel Authority.

We are also making a point that there are a number of other areas associated with the Trust responsibility where the conflict of interest hurts Indian interests, such as, for example, the area of ad-

vising the various executive departments as to what the law is. The area of advising the tribes as to what their various legal rights and responsibilities and duties that they have in order to manage their land properly. For example, advising the tribes as to the legal consequences of their entering into a particular development scheme and what obligations will fall upon them, such as a long-term lease for residential development which has developed into a jurisdictional nightmare in the State of New Mexico, partly because, or largely because neither the tribe nor the Interior Department, we feel, were fully aware of the consequences of entering into a large scale residential development with non-Indians living in the development. The jurisdictional implications of who is going to regulate and tax that particular development. Those are all areas not fully met.

Senator BARTLETT. Would you see in that last area you described an area of responsibility for tribal attorneys?

Mr. DELORIA. Absolutely, but one of the problems in some past developments is that either the tribal attorneys did not advise the tribes or did not advise them adequately or were themselves unaware of the problems that come out of this for sometimes the tribes were not represented by counsel and that means they just lose.

Senator BARTLETT. Your concern that you were talking about when I first came in, to continue the Justice Department as a sort of partner in some relationship, at least available for legal services for Indian tribes, the main purpose for that, or is your main reason for that because of your concern of not having a sufficient number of attorneys as contemplated in this bill or is it because you prefer having available the know-how of the attorneys as you know them at Justice, available.

Mr. DELORIA. I think it is both. An additional consideration that we would have is that we would want that "lookover" in the Justice Department. We want lawyers in the Justice Department who deal in Indian issues every day. If Justice handles Indian litigation where there is no conflict of interest, then there will be a number of lawyers within the Justice Department who think in terms of Indian resource protection.

We want to do everything we can to prevent this unconscious but almost inevitable drift of people in Interior and Justice if the Trust Counsel is created of resolving questions against Indians with the knowledge that they can be sued by the Trust Counsel if they are wrong.

We feel that would lead to a lot of unnecessary litigation, to a crisis mentality, panic button mentality and it would perhaps make the Federal district courts a little weary of seeing Indian lawsuits before them.

Senator BARTLETT. If you separate the two reasons, size and the consideration you have for lawyers in the Justice Department, how much weight would you put on the latter, the caliber of the Justice attorneys? Would that be most of it?

What I am getting at is it seems to me the size is an academic thing that can certainly be worked out by Congress over a period of time. I am certainly not saying what I feel I would know at this point, or I doubt at the time we pass legislation, I doubt if I would have an

opinion and maybe a lot of others do not have one either, of assurance that it was properly sized. That could be done in time, I think you would agree to that.

The other part that becomes more important to me as far as the legislation is concerned, gets into the concern I have of a divided leadership which is somewhat similar to a conflict of interest. Because of the conflict of interest, as I understand it, Indians have not been well represented or have not been represented. Because of divided leadership at the top over a group of attorneys, I could see very well where the same could happen and where each could blame the other side for its failure to meet the situation. Because naturally, one would have certain responsibilities. One would be supposedly in charge and the other would have its authorities, too. I see a lot of potential concern, sort of a two-headed monster kind of concept. Do you see concern?

Mr. DELORIA. Yes; we talked about this. It could be an administrative headache and it could be the occasion for a good deal of buckpassing with the Trust Counsel putting off taking over a case because Justice says they are going to handle it, but Justice never gets around to it.

In fact, in the past testimony on previous years on this legislation before this committee, a good deal of specific instances of conflict of interest involved the Justice Department procrastinating year after year after year. That is a problem and it is a serious problem.

In thinking about it, however, we feel that it is still important to keep that book planted in the Justice Department. Even if there are sufficient attorneys and staff with the Trust Counsel Authority, we feel that the Justice Department should still have the burden of responsibility and the other questions can be resolved administratively.

Senator BARTLETT. Do you see a bigger problem of getting at the size if Justice is involved as compared to if Justice is not involved.

In other words, I can see how testimony before this committee could bring a lot of attention to the need for additional attorneys for the Trust Counsel because of various tribes not being properly represented as they should be. It may be difficult to bring to bear that need on Justice as far as the Indians were concerned and as far as those attorneys are concerned who are supposed to carry out whatever burden Justice was supposed to carry out. Do you see a problem there?

Mr. FREDERICKS. I think in time you would be able to determine the size. I think time is the only way we are going to be able to adequately or with any degree of reality determine the size that the Trust Counsel should be.

If the Trust Counsel Authority only handles those cases where they determine there is a true conflict of interest, it appears, at least looking at it administratively, they could make these kinds of determinations and still effectively utilize what Sam has called a "hook" in the Justice Department. They could transfer cases from the Trust Counsel Authority to the Justice Department when the Trust Counsel Authority determines that there is not a conflict of interest that they would feel merits their taking the case.

Senator BARTLETT. My concern is that with this setup, the Justice Department would not have the clear-cut authority and responsibility.

It would be a sort of escape valve kind of operation and it would give an escape valve kind of responsibility. It would not be providing its best attorneys.

I think the nature of the Justice Department would be that this would get a back seat kind of attention and not a primary concern and they would not have primary responsibility, I presume, in the way you set it up. So it could very well be that the Trust Counsel could, perhaps in trying to give representation, where they perhaps felt they did not have enough lawyers, and maybe some of the lawyers felt they were overworked, so they would turn to the Justice Department in cases where there might be a conflict of interest, even though the Trust Counsel would say no, there is not.

Yet, a conflict of interest, I think, sometimes can be a little bit subtle. What bothers me is, I think in this one thing that we want to accomplish in this kind of legislation, if we fail on size that does not bother me nearly as much as failing on creating an entity that is going to do as good a job as it possibly can do in avoiding conflicts of interest and in giving good representation to the Indians and having good, highly qualified attorneys. Not that I mean I do not think all of Justice's attorneys are good, but I think some are better than others and some are going to be more interested in this particular field than others and I can see where it will become a real problem.

Whereas, this Trust Counsel, as far as the selection of attorneys are concerned, obviously they are going to have attorneys who want to be in this field and in this area of specialization.

Mr. DELORIA. I had been looking at the bill the other way, Senator, partly in response to the characterization of the bill and the need for the bill by the administration. I understood that the purpose of the bill was to provide independent counsel in cases where there was a conflict of interest and my understanding of that would be that the basic responsibility for representing Indian trust interests in litigation would be with the U.S. Department of Justice and in those instances where there was a conflict of interest in the Federal Government, the Trust Counsel Authority would represent the United States.

That would mean the main duty is on Justice and when conflict arises the pressure of the escape valve is the Trust Counsel Authority, so it would be the other way around.

I think that we got the main lawyers for the Government feeling the basic responsibility for the Indians and not feeling they are getting the leftovers. The cases that the Trust Counsel Authority did not want to handle.

Mr. FREDERICKS. The problem here is determining who determines the conflict of interest. As you pointed out, the conflict of interest could be subtle and, I think, this is the difficulty that we would have with the administration of the Trust Counsel Authority.

Senator BARTLETT. You agree that the Trust Counsel does determine that authority in the bill?

Mr. FREDERICKS. Yes.

Mr. RAGSDALE. When Senator Abourezk talked about yesterday's testimony he said the administration wishes to turn over 200 some odd cases to the Trust Counsel right away. Implicit in that statement is

to say the way they are viewing it is not the way Sam is saying. They are wanting to turn them all over. Sam is viewing the bill as saying the Trust Counsel comes into play only when there is a conflict of interest.

I think the bill is different. If you viewed it in Mr. Deloria's way, that you only come into play when a definite conflict of interest exists, then you can talk about a manageable size of attorneys of 15 people perhaps. But if you view it the way the administration views it, you are talking about a great many attorneys and a large staff.

Contrary to the testimony of last year when Mr. Wilson talked about having a small group of people, that I think is unrealistic.

Senator BARTLETT. Thank you.

Senator ABOUREZK. Thank you.

I have one more question before I finish. Do you believe that lawyers for the Trust Counsel Authority should be kept in Washington in a central office, or should they be put out in the field or both?

Mr. RAGSDALE. I think they should have both. Again, being from California it is a 5-hour flight from here and a very expensive one. I cannot imagine very many of the tribes coming to Washington every time there is a problem. I think that you have to have some sort of regionalization if you want to really handle the problems that exist all through the United States.

Senator ABOUREZK. How would you suggest that run, along area lines or some other lines?

Mr. RAGSDALE. It can run along area lines to a degree, but for example, California and Nevada have similar problems and relatively small tribes. Their problems are very similar. They are both poor and have few resources. The Navajos can afford to come here and they are not as concerned with regionalization.

If you put 15 people in Washington, though, it is going to turn into a big tribe legal service and is not going to adequately represent a small tribe.

Mr. DELORIA. Fifteen people are not going to go very far regionally. Two hundred and twenty-five cases, that is 15 presently pending cases for each lawyer. And that is just the beginning.

Senator ABOUREZK. Thank you.

The chairman of the full committee has joined the subcommittee just now and wants to make a statement at this time.

Senator JACKSON. Might I first of all express to you my appreciation for undertaking the hearings, at such an early hour.

Rather than take up the time of the subcommittee, I would like to have my statement included in the record at this point.

STATEMENT OF HON. HENRY M. JACKSON, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator JACKSON. Mr. Chairman, throughout the history of our Nation, the basic posture of our Government toward American Indians has assumed a variety of forms. In the most sweeping terms, these have ranged from according tribes the full dignity and respect as separate and sovereign nations to treating the Indians in a demeaning and paternalistic guardianward relationship.

Underlying these various relationships is a large and still-growing body of treaties, court decisions, and laws. They provide the juridical basis and the historical background which supports the longstanding and unique relationship between Indians and the Federal Government.

Although this relationship has sometimes been criticized by the Indian community and others, it, nevertheless, carries with it certain benefits which Indians value, and even consider critical to the continued survival of their culture and their identity as a people. These benefits are, first, the Federal Government's special responsibility for the protection of Indian lands, resources, and rights; and second, the provision of basic community services to Indians under specified conditions.

The legislation being considered today and tomorrow addresses the first of these benefits, that of the Federal Government's trust responsibility for the preservation and protection of Indian natural resources. I believe that the philosophy which we should adhere to was expressed by Mr. Arthur Lazarus during the hearings conducted last Congress on this same measure. "I have never understood why the protection of an Indian reservation or the upholding of a treaty isn't also in the public interest." It is the obligation of the Federal Government to actively fulfill its trust responsibilities, not because it is the trustee for some private interest but rather because the preservation and protection of Indian natural resources is a part of our national interest.

It should not be incumbent upon the Indians to see that the Federal Government fulfills its responsibilities, it should not be the duty of protection of Indian natural resources is a part of our national interest. have been relegated to the lower echelons of decisionmaking. The purpose of this legislation is to assure not only the Indian peoples, but also ourselves, when decisions are made which affect Indian natural resources that a strong and effective voice will represent them, and if the Federal Government violates its trust responsibility, that a strong and effective counsel will represent them in the courts. The protection of water rights and other natural resource rights does not usually result in monetary returns, and this legislation will insure that a tribe or other Indian group will not be deprived of effective counsel because they cannot afford to employ lawyers. It is the Federal Government's responsibility to see that the national interest includes the protection and preservation of Indian natural resources.

I believe it is important to state at the outset of these hearings that neither the Department of Justice nor the Department of the Interior will be relieved of its responsibility as trustee to preserve and protect Indian natural resources. That responsibility remains, and this legislation should not be construed as a mandate to those agencies to disregard Indian interests and to overwhelm those interests. What we seek to accomplish with this legislation is to insure that the Indian interests are represented at the highest levels of decisionmaking.

A basic responsibility of any trustee is to be loyal to his trust, to conserve trust property and to avoid self-dealing with trust assets. This legislation seeks to promote that responsibility which both Departments will still be required to fulfill.

I did want to express to you my appreciation for moving ahead on the various bills which are very important.

Senator ABOUREZK. Thank you.

Well, that is all the questions I have for this panel.

Senator Bartlett.

Senator BARTLETT. Can you think of the natural resources question which could be handled by Justice which does not involve a conflict of interest?

Mr. DELORIA. Is this a riddle or what?

Senator BARTLETT. Well, we are trying to make a point of fact that the natural resources questions are going to be involving a conflict of interest in the various departments.

Mr. DELORIA. Well, I think that any issue that involves, for example, well a State building a road across the trust land and the State trying to condemn the trust land for a road. That is an example of a natural resource. Unless you are considering natural resources to be such things as water and minerals and timber and not just the land itself.

But it seems to me that there are many areas where there is a need for protection of a natural resource that Indians own, where there is no other Federal interest. Just the title of land that may be in dispute or the Indians claim it, non-Indians claim it, but one of the non-Indian claimants of the land is another Federal agency. That seems to be one example.

A State building a road. Someone adversely possessing Indian land. Questions of tax and regulation of Indian land we think go to the Trust responsibility and may involve litigation and may involve the use and control of natural resources and do not involve another Federal agency. I think there are a wealth of such questions.

We would be glad to put that in the paper that we develop, if you would like.

Senator BARTLETT. Yes. I would just make one final comment, I was agreeing with you on your concern about having too many members on the Trust Authority. I think that money for a trust member would be better spent for an active attorney and also to increase that number it would probably reduce the flexibility and the activities of the Trust Counsel.

Mr. DELORIA. One final comment to the subcommittee, that is we feel there is a need for clarification precisely what the Trust role of the Federal Government is which will not be done by this Trust Counsel Authority. For example, in the name of trusteeship, we understand a general theory of trusteeship, we understand that the administration was considering overthrowing the duly elected tribal government of the Oglala Sioux Tribe. Indian families are broken up by the children being sent away to boarding schools without a hearing in the name of a general theory of trusteeship.

The Interior Department frequently involves itself in tribal politics in the name of the general theory of trusteeship. These questions, because they do not deal with natural resources, certainly have an effect on the future development of Indian society and the use of Indian resources are very important to clarify the limits of the trusteeships.

It seems unfair to limit the notion of trusteeship in the natural resources and the standard notion of trusteeship like the kind banks have over property and, on the other hand, to allow the Interior De-

partment to claim some broad notion of trusteeship going to some paternalistic oversight on the development of Indian society.

Senator ABOUREZK. We want to express our gratitude for you coming to Washington from New Mexico and California and Denver to provide your opinions and views on this legislation. We hope we can ask you again when we have hearings on various other pieces of legislation, as well as general oversight hearings which we intend to have into the Federal-Indian relationship, that we can once again call upon you for your views because I do not need to tell you they are highly regarded by the members of this committee. We certainly thank you.

Mr. DELORIA. Thank you.

Mr. FREDERICKS. Thank you.

Senator ABOUREZK. The witness from the National Congress of American Indians is running late, so I would like to ask the third witness on the list, Mr. George Crossland if he is prepared at this time to present his testimony.

Mr. CROSSLAND. Yes.

Senator ABOUREZK. Mr. Crossland is Executive Director of the Indian Legal Information Development Service in Washington, D.C. Mr. Crossland has been with the Bureau of Indian Affairs, he has done a great deal of legal work in the area of Indian water rights and Indian natural resource development, and we would like to express our thanks to you, Mr. Crossland, for offering your testimony, and I would like to ask you to proceed at this time, if you would.

**STATEMENT OF GEORGE CROSSLAND, EXECUTIVE DIRECTOR,
INDIAN LEGAL INFORMATION DEVELOPMENT SERVICE (ILIDS)
WASHINGTON, D.C.**

Mr. CROSSLAND. Thank you, Mr. Chairman. Before I get into my prepared testimony, I would like to address myself to some questions that you and Mr. Bartlett raised that I did not deal with in my testimony.

There was a question with regard to trust relationship that does not arise out of treaty. I think this can be handled very simply. The Pyramid Lake Tribe in Nevada, that particular reservation was created back in 1859 by an Executive order and there was never a treaty between the United States and that tribe, because they were at war at that time. However, the superintendent in that area at the time was very farsighted and did determine to establish a reservation for the tribe where they traditionally lived.

Down the road, the attitude of the United States and the Government toward the Indian tribes changed rather from just a treaty to a relationship involving other things. Even though it is an Executive order the Solicitor General last year filed an original complaint in the Supreme Court asking the Supreme Court to hear the argument that the States of California and Nevada are injuring the tribe by attempting to divert water upstream and depriving the tribe of some valuable and precious water.

So, as a consequence, in regard to this other thing, the trustee relationship which does not arise out of treaty can arise out of other

kinds of legal relationships such as water rights and the Northern Cheyenne Act of Congress legal reservation.

One other question from yesterday with regard to class action. The fact of the matter is that most cases brought on behalf of a single tribe would amount to what one might term a class action. For instance, the *Winter's* decision back in 1908. That was brought by the United States on behalf of the Fort Belknap Tribe. It proclaimed at the time the reservation was created, there was reserved to that tribe water in quantity sufficient to meet its needs. This particular Supreme Court decision has been used down through the years for every tribe in the United States west of the Mississippi.

It is a very far-reaching decision and it just about amounts to a class action. Such as the recent case in Texas. This case is very binding on the tribe and that is why it is very important to bring the best factual suit possible.

The pleadings have to be very narrow. Also in regard to this, it does not turn out the other way with regard to Indians, this class action, the Trust Counsel, I can assure you, will not be attempting to make new law through the Court, what it will be attempting to do is get the Department of the Interior to abide by the laws Congress has already put on the books.

This is one of the primary things the Trust Counsel will be doing and where the tribes have attempted to get the Justice Department to enforce those laws. They have chosen over the years to ignore them. I was rather surprised yesterday by Mr. Kyl trying to describe the aspect of consent as an important part of this particular bill.

The tribes for years have been trying to give their consent to the Justice Department to take action and trying to give their consent to abide by the law. This just has not been the case.

One other feature, the question of two tribes in conflict is a very thorny issue. How should the Trust Counsel approach this, they certainly should have worked out something prior to this occasion arising. It has been my experience in dealing with water rights that whenever you do have tribes in conflict—let me back up.

First off, once you become involved in this particular area and you gain some sort of an overview of the issues involved and you travel around the country, you kind of back off and you see recurring matters, legal as well as factual, you begin to get an idea that will project you down the road, to the future.

It has been my experience that what one has to do is to attempt to elect to take that case to further the interest of all of the tribes, because these cases are overreaching and do reach to other tribes. Therefore, where you do have a dispute between two tribes and the question arises as to which one the Trust Counsel would represent, in my view the Counsel would represent that tribe which presents the facts that would further the interest of all the tribes.

How the other tribe would be handled would have to be something up to the Board of Directors. Whether they hire special counsel or let the tribe bring their own counsel, I do not know. But I would think some expertise will be developed so that they can sit down and weigh the merits of both sides and come to some determination as to which side they will represent because of the far reaching effects this case would have down the road and how it would fall out on other things.

Mr. Chairman, thank you for this opportunity to testify before the subcommittee on S. 1339, which, I understand, was submitted by the administration. It is my belief that there is no need to rehearse the necessity for the Indian Trust Counsel Authority; for not only is the need apparent, it is well documented. All the necessary parties, the legislative and executive branches and the Indians, are in agreement that such an agency is long overdue. Therefore, the question remains: Will the language of S. 1339 accomplish the needed protection and preservation of the natural resource rights of the American Indian? Are all the elements included which are essential for the Authority to accomplish the task it will face? So that there can be no misunderstanding, I would like to list what I consider to be those essential elements.

It is my thinking that the Authority must be authorized to prepare, file, and prosecute a case to final judgment in all courts of the United States and of the several States as well as before all Federal, State, and local commissions or agencies in their administrative proceedings.

The Authority must be authorized to act in the name of the United States whenever it is appropriate, including the authority to file an original complaint before the U.S. Supreme Court.

The Authority must be authorized to render all legal services to the Indians which are necessary in fulfilling the Authority's responsibility to protect and preserve the natural resource rights of the Indians.

The Authority must be authorized to intervene in any suit or administrative proceedings where the natural resource rights of the tribes may be affected.

The Authority must have the cooperation of other Federal departments, agencies, or instrumentalities. The effectiveness of the Authority will be gutted if other departments, agencies, or instrumentalities may elect if or when they will cooperate with the Authority.

The United States must waive its sovereign immunity in connection with litigation initiated by the Authority.

The Authority must be independent of control by any executive department.

The Authority must be free from the regulations of the Civil Service Commission in the appointment or the dismissal of the professional members of its staff.

It is essential that a majority of the Board be Indians and that the Chairman be an Indian to whom the Indian Trust Counsel will be accountable.

The order in which I address my attention does not necessarily mean that I rank the elements in that order of importance. On the contrary, all of the elements, to some degree, depend on each other.

I recommend that the Board members be increased from three to at least five or seven for the reasons stated before. The watershed, the drainage basin system of the Columbia River and the tribes there have different problems than the tribes in the desert Southwest. The same is true for the Missouri River Basin and the upper Colorado River. These people share—such as the Missouri Basin, you have a number of tribes along the system there. Their problem right now is not one of scarcity of water. They have a problem that will arise in the future. The stream now of the Missouri River is quite adequate to meet the demands now placed on it. However, unless the tribe begins to plan

and formulate their plans fairly soon, it is my belief that they will down the road be hurting in trying to play catchup football.

In the Columbia Northwest there is the problem of continued inundation of the tribal lands due to the over abundance of water in the Northwest. Of course, in the desert Southwest there is also the problem of scarcity. Therefore, I would recommend increased membership of the Board in order that all of these problems of a varied and multiple nature be expressed and understood by interested and hopefully very concerned members of the Board.

Section 5 of the bill as I now read, I think it should read "to the extent that the professional staff members of the Trust Counsel Authority should not be protected by civil service regulations." The committee probably knows these lawyers will be placed into one of the most highly controversial fields of law in the Western United States and that is the protection of Indian resources.

This, as I see the Authority, cannot become a haven for old line bureaucrats in the Justice Department, the Interior Department and the Indian Claims Commission. These people are going to have to realize that mediocrity will not be rewarded by promotion, but by dismissal.

In working with the Office of Water Rights 1 year, I found it very frustrating to find attitudes, people rather lathargic, they did not seem to have the fire or gumption necessary to get into these highly controversial areas.

I feel people who are going to become members of this Authority are going to have to be people who are willing to wade into a fight to protect those natural resources because they will be confronted by some very professional people.

The bureaucracy seems to sustain itself in the face of controversy. So I feel this particular Authority should be made very clear that the professional staff members that come to work there are going to have to live by their wits and how they produce.

In section 11, that is another thing. It seems to me in addition to section 5, yesterday the thought was put forward by Mr. Kyl that they hire 15 lawyers and the budget would be around \$3 million. If you noticed yesterday, whenever Assistant Secretary Kyl and Johnson rose to leave, I counted 20 Federal people arising at the same time. This seems to be rather incongruous and I was rather shocked by it.

In section 11, there is the terminology there that other departments and agencies and instrumentalities of the Government are authorized to cooperate and comply with the Authority. My experience in the Office of Water Rights became very frustrating due to the fact that I could not get officials in other agencies to cooperate with me based on my time schedule. There were times when I did not have the luxury of waiting around until they got around to complying with one of my requests.

At that time I threw over any kind of form and decided to move in under extraordinary channels and I used to go to the assistant secretary's office who had jurisdiction over the agency. After a while I dealt with the deputy, but I refused to deal with the division head or the people. They just did not move fast enough for me and as I said, we had a small staff and did not have the time.

So, I would urge strongly that the language be changed to read "shall cooperate and shall comply to the extent provided by law."

In addition, I would urge the committee to draft a new section which was brought to the attention of the committee by Mr. Wilkinson last year and that is the predecision notice on the part of departments and agencies who would notify the Authority prior to a decision or the intent to make a decision which might affect Indian resources. To give one example, at this time, the tribe in Montana is undergoing one of the most critical periods of its whole history. Leases have been given on that land and approved by the BIA which is not in the best interest of the tribe. The reason being, is that superintendent failed to comply with certain protection in order to provide protection to the environment necessary to reclaim that land.

Had the leases been forwarded into the Interior Solicitor's Office to be reviewed, it is my feeling that this would never have arisen.

I think this should be compelling, the interest is compelling here to provide that people will notify the Authority prior to any decisions that will affect Indian resources.

As to sections 8 and 9, in talking with other lawyers around the country, since this bill has been out for a long time, it is my estimation and that of others that this is an example of some of the slope questions draftmanship we have ever encountered. It seems that one quip is that whoever the Justice Department was who was assigned to water down Bill Reader's original draft just blew his mind and all he did was throw in a few legal incantations and he was hopeful this would take care of everything.

I would offer a change in section 8. If we are talking about legal services, it seems to me that it could be reduced in ambiguity. It is not clear at all. I would just like to read what I have inserted as suggested language:

The Authority upon request by an Indian, Tribe, band or other identifiable group of Indians shall render all legal services to the Indians including, but not limited to those legal services now rendered by the Department of Justice and the Interior to the Indians with regard to natural resource rights.

Because whenever you are speaking of legal service you are speaking about permitting the Authority to give legal advice to a tribe about how it should proceed in a particular manner short of going to court or even to the point of having to develop the water or land inventory study in order to provide the basis of evidence in a particular suit.

Rather than the mumbo-jumbo that goes in section 8 now, I do not know where it leads to. If you are talking about legal services, why not limit it to legal services.

Senator ABOUREZK. If I can interrupt you for a minute, Mr. Crossland, in looking over section 8, I would tend to agree with you about the draftmanship of this particular section. Reading the whole thing in context, you cannot make head or tails of it, frankly.

I would say your point is well-taken.

Mr. Crossland. It seems to me the language here "shall render," one of the things—I use the words shall render all legal services including but not limited to. It is that the Department of Justice never has worked for the Indians. They work only at the behest of the Secretary of the Interior with regard to Indians. A tribe cannot write

to the Department of Justice and get any kind of response. What they will do is refer them to the Commissioner and you go through the channels and all of this. Also, as far as the Solicitor's Office, in the Interior, they never have worked for the Indians. Their job is to advise the Department and the Secretary and the Commissioner.

This was highly underscored in a meeting between the Northeastern Cheyenne and Congressman Melcher from Montana, and an Associate Solicitor Bill Moss.

Mr. Moss has informed Mr. Melcher he did not represent the Indians, his client was the Department and the Secretary and he felt constrained to issue an opinion to the Secretary. Al Peters repeatedly stated that the Winter's doctrine limits the tribes' rights of water to irrigation which is totally unrealistic. You certainly would not want the tribe to limit its lands to agriculture when there are other possibilities.

There are other issues here in this language "shall render," as opposed to the draft in section 8 now. The question is would this mandatory language paralyze the Trust Counsel Authority. My answer to that is twofold.

No. 1. I think the Trust Counsel Authority should, as soon as possible, come to know the magnitude of the problems they are going to be facing. There is no reason to arbitrarily limit that particular boundary of those problems and those issues before they even get started. So paralyzed, I do not think so. Because my experience is with that, in working with water rights, one of the things that becomes apparent after a while was the repetition of issues, generally with different tribes with different facts only to the extent that the names of the creeks and rivers were different and the names of the people.

But the fact pattern seemed to repeat itself and it seems to me after a small period of time people should become very understanding of the issues involved in certain areas and it would not be that long a period of time in order to respond to a particular request of a tribe. I do not find that all that difficult.

In regard to section 9, I do have a question there and I think I just prefer to read from this. It is only about two or three pages long.

That Authority must be clear and simple, not forced or strained like the verses of a second-rate poet. I recommend that the Indian Trust Counsel Authority be authorized to advocate for the Indian people in the following manner:

The Authority, upon request by, or with the consent of, an Indian, Indian tribe, band or other identifiable group of Indians, acting in the name of the United States as trustee, may prepare, initiate, and prosecute in courts of the United States, suits against the United States, its officers, and its employees; and in all courts of the United States, or of the States, suits against any agencies, or against all persons and corporations, public or private all actions in law and equity; and in all Federal, State or local administrative commissions or agencies proceedings against parties over whom said administrative commissions or agencies have jurisdiction, necessary for the protection, preservation, utilization, conservation, adjudication, or administration of the natural resources or interests held or claimed by the Indians, including but not limited to, rights to land, water rights, minerals, timber, and fishing and hunting rights. The United States waives its sovereign immunity from suit or proceedings commenced or undertaken by the Authority under this Section.

Because I believe that the above language speaks for itself, I will limit my remarks to section 9.

First, does the language, "acting in the name of the United States as trustee," give the same authority to the Indian Trust Counsel that the Attorney General, or the Solicitor General, has under section 518(a) of title 28 to file an original complaint before the U.S. Supreme Court?

Second, it is my belief that the Indian Trust Counsel must have the discretion of deciding if and when he will go to court. As a purely administrative matter, if nothing else, he must have the discretion. Also, he must have the authority to design and to follow that strategy which he believes will win his case. Hopefully, this discretion will be reviewed and analyzed by an interested Board of Directors, who may dismiss him if he abuses or wastes that discretion.

Last, but certainly not least, there remains that part of section 8 which would relieve the Department of Justice of its trust responsibilities to the Indians in regard to their natural resource rights. I do not know how this is going to be taken by my people, but yesterday Mr. Johnson was very proud of the fact that they are handling 225 cases which would come under the jurisdiction of the Authority and there has been some discussion about dumping that off on 15 lawyers. I say this somewhat facetiously, but also somewhat seriously.

I think out of the 225 cases, probably three or four lawyers can handle them because I would say around 200 of them are going to be intertribal in regard to disposition of lands and I would say that the other cases probably are not going to hurt off-reservation interests.

In other words, to try to redefine a certain rule of law. Only one or two, such as the Pyramid Lakes, the original complaint filed before the Supreme Court, only one or two are going to be difficult cases.

Another thing, if you relieve the Justice Department of its trust responsibilities in this regard, it seems to me you are just going to be making honest men of them because they relieved themselves of this responsibility for years and years.

Whether it is in or out, I do not think it is going to make that much difference for this reason: The cases that the Justice Department has taken which people point to and say this is a really good case and look what they did for us here, and Mr. Reader handled a number of those cases, and I think the Justice Department is glad that they had Mr. Vetter around because occasionally the facts that were presented to them in a particular case they could not turn down. The facts were so overwhelming that they could not squirm out.

However, whenever they have cases that have question, it has always been resolved, not in favor of the tribe, they have been able to squirm out of it. I think if we carefully read the cases, and facts like the Pyramid Lake suit was one that they could not turn down unless they came away from the Supreme Court with more than egg on their face.

Also, those cases they have taken would be ones that would not adversely affect reservation interests. I think, as a practical matter, most of the suits the Trust Counsel files will be against the Secretary of the Interior. So they are going to be on the opposite side of the case anyway. You are not really giving up anything here. So when you start looking at the facts of the case, that they had to take them, the fact that they have to abide by existing law, I do not see where we are giving up that much.

As a matter of fact, it might even be to our advantage to get rid of the Justice Department comments on resource rights laws.

That concludes my statement.

Senator ABOUREZK. I thank you very much for some excellent testimony. You covered in your testimony just about all of the questions that I had prepared, except for a couple.

Do you think the size of the Board is adequate? You said five or seven, as I recall, so we covered that.

What do you think is an adequate professional staff level for the Trust Counsel Authority, assuming that the Justice Department does pull out and then again assuming that it does not pull out of this area?

Mr. CROSSLAND. I would offer my comments right now. Immediately there is going to be a lot of waiting around and trying to get everything squared away before you can understand it. You are probably going to break down administratively with water rights here, mineral interests here, timber, a number of things like that.

You are going to try to break them down. Some tribes come under certain statutes such as in the mining area, the Crow, the Black Feet, and Osage, I think, are exempt from certain statutory provisions. So what you are going to do is be sorting this out. It is going to take a few people, as a matter of fact. So I think at the inception that if Justice is relieved, although I do not think that is that big a deal, if not 30, if they are, 50. Just to start off with as an experimental run-through and see where you are going to end up at the end of the year.

Senator ABOUREZK. But in your mind there is no question that 15 is not even a good experiment, is that about right?

Mr. CROSSLAND. No; it could not be. There is just no way. One of the things that would be very important, though, at the beginning, as I see it, is trying to set up the administrative aspects of it, who gets what and who has experience in what area, if any at all. And trying to keep from running over each others toes if you have too many in there. Maybe 30 is too high, maybe 50 is too high. Maybe 35 is a more realistic thing in order to have the shakedown crews and you gain a cadre of people who become very knowledgeable about this because they are intensely involved.

But in the shakedown crews there might be the potential of everybody running over each others feet.

Senator ABOUREZK. What about the feasibility of keeping the Authority lawyers in Washington or keeping them out in the field?

Mr. CROSSLAND. I think you need them in both places. They almost ran us ragged, as a matter of physical concern, the few staff members we had at the Water Rights Office. I would have much have preferred to have been in Denver at that time so I would have access to tribes on a short notice. But I think there should be at least two if not three field offices.

Senator ABOUREZK. That is all the questions I have.

Senator Bartlett.

Senator BARTLETT. Mr. Crossland, I would be interested in your reasons for, turning to the testimony, for having the Trust Counsel created in such a way that it would not rely at all on justice?

Mr. CROSSLAND. Well, Justice has never been there to be relied on in the first place and I do not think it would be anything new and shocking.

Senator BARTLETT. You do not think anything would be lost?

Mr. CROSSLAND. No. There is nothing there in the first place. Like I say, anytime Justice has taken a case of any significance, it was because the facts did not permit them to do otherwise. The facts were so blatant and obvious that they could not turn it down.

In the other areas, like down in the Gila River in Arizona, you have a situation that is kind of sticky. You have Kennicott and Anaconda Copper upstream taking water out of the river. Downstream you have this tribe who has an entitlement of 280,000-acre feet of water annually. They never have seen that water because these people upstream have been diverting it for their use in developing this copper. That is fine. Why didn't they come down and negotiate with the tribe in order to purchase the water for a limited period of time to put it to a more higher beneficial use and release it later. This is mainly economics.

However, it becomes complicated because apparently the Bureau of Indian Affairs Area Director down in Phoenix has not seen fit to enforce through the Justice Department the tribe's rights in order to make the copper companies come down. So, like I say, there are shady instances here where it can go either way. Like I say, in those cases where it is close, they have never been there, not even to hold your hand. Only when the facts do not permit them to do otherwise.

Senator BARTLETT. Did you see any problems with the dual responsibility at the top between the Trust Authority created using some of the Justice lawyers in areas of no conflict?

Mr. CROSSLAND. One of the thorny issues there is who is going to determine that there is no conflict. Like I say, there are cases where the nuances there is such that it is difficult to determine whether there is or not.

However, I would think where there is a situation where there is no conflict, where they would not have to defend the Secretary or the Commissioner or what have you, I think it should be just turned over to the Justice Department. I think the lawyers themselves are very competent and very honest. But it is the decisionmaking levels where you have your problems.

Senator BARTLETT. So you think the Justice Department could perform the service?

Mr. CROSSLAND. Definitely so.

Senator BARTLETT. How much of the total volume of legal activities do you consider would exist with the Justice Department?

Mr. CROSSLAND. The way I characterize it, possibly 20 to 25 people. Hopefully more, but that is just being rather cynical, to be very honest with you.

Senator BARTLETT. Those are all the questions I have, Mr. Crossland, thank you very much, we appreciate your appearance before the committee.

Mr. CROSSLAND. Thank you.

[The prepared statement of Mr. Crossland follows:]

STATEMENT OF GEORGE M. CROSSLAND (OSAGE) ON S. 1339
THE INDIAN TRUST COUNSEL AUTHORITY

Mister Chairman, thank you for this opportunity to testify before the subcommittee on S. 1339 which, I understand, was submitted by the Administration.

It is my belief that there is no need to rehearse the necessity for the Indian Trust Counsel Authority; for not only is the need apparent, it is well documented. All the necessary parties--the legislative and executive branches and the Indians--are in agreement that such an agency is long overdue. Therefore, the question remains: Will the language of S. 1339 accomplish the needed protection and preservation of the natural resource rights of the American Indian? Are all the elements included which are essential for the Authority to accomplish the task it will face? So that there can be no misunderstanding, I would like to list what I consider to be those essential elements.

It is my thinking that the Authority must be authorized to prepare, file and prosecute a case to final judgement in all courts of the United States and of the several states as well as before all Federal, State and local commissions or agencies in their administrative proceedings.

The Authority must be authorized to act in the name of the United States whenever it is appropriate, including the authority to file an original complaint before the United States Supreme Court.

The Authority must be authorized to render all legal services to the Indians which are necessary in fulfilling the Authority's responsibility to protect and preserve the natural resource rights of the Indians.

The Authority must be authorized to intervene in any suit or adminis

trative proceeding where the natural resource rights of the tribes may be affected.

The Authority must have the cooperation of other Federal departments, agencies or instrumentalities. The effectiveness of the Authority will be gutted if other departments, agencies or instrumentalities may elect if or when they will cooperate with the Authority.

The United States must waive its sovereign immunity in connection with litigation initiated by the Authority.

The Authority must be independent of control by any executive department.

The Authority must be free from the regulations of the Civil Service Commission in the appointment or the dismissal of the professional members of its staff.

It is essential that a majority of the Board be Indians and that the Chairman be an Indian to whom the Indian Trust Counsel will be accountable.

The order in which I address my attention does not necessarily mean that I rank the elements in that order of importance. On the contrary, all of the elements, to some degree, depend on each other.

It has been suggested by other witnesses at prior hearings on the ITCA that the Board of Directors be composed of more than three members. It has been alleged that such a small Board would be highly susceptible to political pressure from all sides. Be that as it may, it comes to my mind that the integrity and intellectual capacity of the members of the Board will determine whether or not they will be susceptible to political pressure, not the number of members on the Board. I would suggest another reason for expanding the membership of the Board to at least seven members.

While a staff member of the Office of Indian Water Rights in the Bureau of Indian Affairs, an Office which is mistakenly thought of as sort

of a "mini" Trust Counsel Authority, I travelled extensively to the reservations throughout the western United States. Quite soon it became apparent to me that the problems which confront the tribes are different in kind, usually according to the physical characteristics of the area.

For instance, due to the rate of population growth within the drainage systems of the Salt-Gila and the Lower Colorado Rivers, as well as the low average rainfall annually, the southwestern tribes are confronted with a different kind of problem than that which will confront the tribes situated within the drainage system of the Missouri River with its huge water storage projects. Daily there are encroachments on the water rights of the Arizona tribes due to the heavy demand placed on the scarce resource. The tribes within the Missouri River Basin must firm their plans for the amounts of water they will use in the future, for the day is not too far off when they too may find themselves caught in the same vise, the same squeeze, that the desert tribes now find themselves.

There exist innumerable examples of the different kinds of problems that face the tribes in the drainage systems of the Rio Grande, Upper Colorado, and Columbia River Basins. However, I feel that the suggestion of the issues serves to reveal the necessity of having Indian representation from the different regions described above. In addition, I recommend that a majority, if not all, of the members of the Board be Indian. Most certainly the Chairman must be Indian.

Based on my experiences while in the Office of Indian Water Rights, I urge in the strongest terms possible that the professional staff members of the Authority be appointed without the tenure provisions of the regulations of the Civil Service laws. While certainly the staff attorneys of the Authority should not be subjected to petty harrassment by the members of the Board or by the Trust Counsel, it is my firm belief that the

Authority will be ineffectual if staff attorneys are ever permitted to hide behind Civil Service regulations. The staffing of the Authority will be most important to its success. I would hate to see it staffed by the old line bureaucrats from the Departments of Justice or Interior or the Indian Claims Commission. Just as insufficient funding will gut the Authority's effectiveness, so will staffing it with people who are just serving out their time until they retire. If a lawyer wishes to join the professional staff of the Authority, then he or she must be forewarned that mediocrity will not be rewarded with promotions or pensions but with dismissal.

I urge the Committee to consider the fact that the Authority's attorneys will become engaged in one of the most volatile, controversial fields of law in the western United States -- the protection of tribal resources. Off-reservation interests, powerful and influential, will not like it at all: they are too accustomed to taking from the Indians on their own terms. In addition, old line bureaucrats will not like having lawyers "looking over their shoulder," especially lawyers whose job it is to make certain that tribal resources are not mismanaged by the trustee. I would go even further and urge this Committee to consider making the BIA an independent agency, stripping BIA policy makers of Civil Service protection.

Once again, based on my experience as a water rights specialist in the Office of Indian Water Rights, I must object to the language in Section 11 which only authorizes other Federal departments, agencies or instrumentalities to cooperate with the Authority. Throughout the one year that I was at the Water Rights Office, I was almost constantly expending my time urging, cajoling, pleading and even demanding that a person in another agency send me the materials which I had previously requested. Even armed

with a directive from the Secretary of the Interior ordering all agencies within the Department to cooperate fully with the Water Rights Office, I eventually found that the best course of action, or strategy, was simply to go to the Assistant Secretary's office who had jurisdiction over the agency I had requested materials from. The tension was finally relieved to the extent that I had to deal only with Assistant or Deputy Commissioners, but I refused to observe normal channels.

Perhaps one might ask why I was forced to resort to such tactics. I submit for your consideration the fact that, except in rare cases, my job was to undo what had been done before. In other words, no one within the Departments of Justice or Interior was about to help me develop facts which would reveal the mismanagement of the trust resources of the Indian. It would be naive, and perhaps even tragic for the Indian, for the Congress to believe that the Departments would cooperate with the Authority more than they would with me or Mr. Veeder. If anything, they will close ranks in order to conceal the past due to the farreaching powers that this bill would grant to the Authority.

I urge you to make the language mandatory: "shall cooperate."

At this very time, the Northern Cheyenne Tribe of Montana is going through one of the most critical periods in its history. In 1970, the BIA Superintendent at the Northern Cheyenne Indian Agency approved certain coal leases between the tribe and Peabody Coal Company. The tribe had entered the lease arrangement with the belief that their Superintendent had provided the tribe with all the protection necessary to reclaim the land after it had been mined. To their sadness and frustration, they now realize that the Superintendent did not fulfill his trust responsibilities to the tribe and also probably failed to comply with a Secretarial regulation which

required him to make certain studies in order to determine what requirements would be necessary for the Peabody Coal Company to meet in order to insure restoration of the land. The tribe has requested that the Secretary set the leases aside due to the failure of the Superintendent to comply with the mentioned regulation. It is expected that the Secretary will give his decision on this matter prior to June 2.

However, if prior notification of the Superintendent's decision to approve the leases had been given to an agency such as the Authority, or even at least to the Interior Solicitor's Office in Washington, this intolerable predicament in which the tribe now finds itself-facing the probable destruction of its landbase-would have been avoided. I strongly urge that the Committee add to S. 1339 language which would require all departments, agencies or instrumentalities of the federal government to give notice to the Authority of their intent to make a decision which would affect the natural resource rights of the Indian.

In discussing Sections 8 and 9 of S. 1339 with other Indian lawyers, it is agreed that rarely have we seen such sloppy draftsmanship. One quip was that the Justice Department lawyer who was assigned the task of watering down the language of Bill Veeder's draft became so bogged down with the intricacies of Bill's draft that he threw in a little bit of this and a little bit of that in hope that the legal incantations would make everything all right. As these two sections now stand, they are unnecessarily ambiguous and should be rewritten simply and to the point.

It is my opinion that Section 8 should be limited to that language which will authorize the Authority to render those legal services to the Indian which are appropriate to the function of the Authority. My suggested language would be:

The Authority, upon request by an Indian, Indian tribe, band or other identifiable group of Indians, shall render all legal services to the Indians, including, but not limited to, those legal services now rendered by the Departments of Justice and the Interior to the Indians in regard to their natural resource rights.

This language is broad enough to authorize the Authority to give legal advice to Indians and even to prepare a land or water inventory if needed. If this language doesn't seem substantial enough to the Committee, I direct your attention to the fact that the Justice Department acts only upon the request of the Secretary of the Interior in regard to Indian problems. Justice does not move at the behest of an Indian, a tribe, a band or others. So nothing is being given up.

In addition, the Associate Solicitor for Indian Affairs in the Interior Department has never worked for Indians. His legal services have been rendered to the Secretary or the Commissioner. They in turn have dealt with the Indians.

To explain my point, recently Associate Solicitor for Indian Affairs, Mr. William Moses, stated point blank to Congressman John Melcher of Montana that Indian are not his clients. Mr. Moses informed the Congressman that the Secretary and the Department were his clients. I might add that Mr. Melcher took strong exception to Mr. Moses' disregard for the trust responsibility which the Congress has delegated to the Interior department and of which he is an official.

I want to note that the language I recommend is mandatory: "shall render." Some will say that such language will paralyze the Authority due to the innumerable requests that will be made of it by the Indians. I have three answers to that objection.

First, the magnitude of the resource rights problems of the Indians should be personally know by the Board, the Trust Counsel, his deputy and

the staff attorneys. Only personal communication with the Indians, free and open, will describe the boundaries of those problems. To use the present language of Section 8 -- "The Authority is authorized to render legal services" -- is, in my mind, a device which will unnecessarily limit the Authority's knowledge and understanding of the issues.

Secondly, if the Counsel is overwhelmed with requests for assistance, the answer is an increased budget and a larger staff, not to permit the Authority to be selective about which Indians it assists.

Thirdly, it was my experience while in the Water Rights Office that fact situations tend to be repeated by the requests submitted by the tribes. I found that I was able to answer correspondence within a relatively short period of time, once I became familiar with the issues, the regulations governing the BIA, and the applicable statutes. In addition, the increasing and accelerated demands being placed on Indian resources throughout the western United States in order to meet market demands of goods and services do not permit a leisurely approach to what the Authority must accomplish.

Mr. Chairman, before I turn my attention to Section 9 of S. 1339, which all are agreed on is the heart of the matter, I would say that we must be honest and admit that we, the Indians, do not have the resources to fight the western states and the powerful private interests who would encroach upon the natural resource rights of my people. How does the small tribe of the Gila River Pima-Maricopa Community of Indians in Arizona stave off the daily usurpation of their water rights by Kennecott and Anaconda Copper with the apparent blessing of the BIA's Phoenix Area Director? In South Dakota, what resources will the Rosebud Sioux Tribe use in order to cope almost weekly with the State Engineer in Pierre who callously refuses to recognize that he has no authority to approve a water-use project within the original boundaries of an Indian reservation? How may the anguished

voices of the Pueblos of San Felipe and Santo Domingo be heard in court to protect their water rights when the Justice Department, and the State of New Mexico and the City of Albuquerque oppose their efforts to intervene in a suit which will directly affect their supply of water. In the effort of the Northern Cheyenne Tribe to protect their land, to whom will the Secretary listen, the Tribe or Peabody Coal? It is unrealistic to think that Congress will turn its attention to these matters on a daily basis. Therefore, it is absolutely essential that we have the means by which to halt the daily encroachment on our rights by off-reservation interests. We must have the vehicle by which to enter our complaints before the judicial branch of this nation's government. That authority must be clear and simple, not forced or strained like the verses of a second-rate poet. I recommend that the Indian Trust Counsel Authority be authorized to advocate for the Indian people in the following manner:

The Authority, upon request by, or with the consent of, an Indian, Indian tribe, band or other identifiable group of Indians, acting in the name of the United States as trustee, may prepare, initiate, and prosecute to final judgement, including appeals, or intervene in, in courts of the United States, suits against the United States, its officers, and its employees; and in all courts of the United States, or of the States, suits against any of the States, their subdivisions, departments, and agencies, or against all persons and corporations, public or private, all actions in law and equity; and in all Federal, State or local administrative commissions or agencies, proceedings against parties over whom said administrative commissions or agencies have jurisdiction, necessary for the protection, preservation, utilization, conservation, adjudication, or administration of the natural resources or interests held or claimed by the Indians, including but not limited to, rights to land, water rights, minerals, timber, and fishing and hunting rights. The United States waives its sovereign immunity from suit or proceedings commenced or undertaken by the Authority under this Section.

Because I believe that the above language speaks for itself, I will limit my remarks to Section 9.

First, does the language --"acting in the name of the United States as trustee"-- give the same authority to the Indian Trust Counsel that the Attorney General, or the Solicitor General, has under Section 518(a) of Title 28 to file an original complaint before the United States Supreme Court?

Second, it is my belief that the Indian Trust Counsel must have the discretion of deciding if and when he will go to court. As a purely administrative matter if nothing else, he must have the discretion. Also, he must have the authority to design and to follow that strategy which he believes will win his case. Hopefully, this discretion will be reviewed and analyzed by an interested Board of Directors who may dismiss him if he abuses or wastes that discretion.

Last, but certainly not least, there remains that part of Section 8 which would relieve the Department of Justice of its trust responsibilities to the Indians in regard to their natural resource rights. This part of the bill has provided the source of a great deal of discussion, some would say controversy. What I am about to say will undoubtedly be disapproved of by my people. However, I believe that I speak the truth.

To me, this part of this bill is very mild. For the Congress to relieve the Justice Department of its trust responsibilities in regard to the natural resource rights of Indians is merely to make honest men of them. They have always, on their own, relieved themselves of this responsibility, even though they didn't have Congressional authority.

Some will say that I am ignoring numerous cases where Justice advocated in behalf of the tribes; that we should keep the Department and its resources available. My answer is that, in reading carefully those cases where the Justice Department did advocate for the Indian, one finds that

it did so simply because the facts of the case would not allow the Department to do otherwise. In other words, the Department would have ended up in the Supreme Court with more than egg on its face. My personal feeling is simply -- if we must have war, then let it begin now. However, the matter is now for the decision of the Congress.

S. 1339

(Sec. 1: same)

Sec. 2. The Indian Trust Counsel Authority, hereinafter referred to as the Authority, is established as an independent agency in the executive branch and shall be free from control by any executive department in the exercise of its functions.

Sec. 3. The Authority, upon request by an Indian, Indian tribe, band, or other identifiable group of Indians, shall render all legal services to the Indians, including, but not limited to, those legal services now rendered by the Departments of Justice and the Interior to the Indians in regard to their natural resource rights.

Sec. 4. The Authority, upon request by, or with the consent of, an Indian, Indian tribe, band, or other identifiable group of Indians, acting in the name of the United States as trustee, may prepare, initiate, and prosecute to final judgement, including appeals, or intervene in, in all courts of the United States, suits against the United States, its officers, and its employees; and in all courts of the United States, or of the States, suits against any of the States, their subdivisions, departments, and agencies, or against all persons and corporations, public or private, all actions in law and equity; and in all Federal, State, or local administrative commissions or agencies, proceedings against parties over whom said administrative commissions or agencies have jurisdiction, necessary for the protection, preservation, utilization, conservation, adjudication, or administration of the natural resources or interests held or claimed by the Indians, including, but not limited to, rights to land, water rights, minerals, timber, and

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fishing and hunting rights. The United States waives its sovereign immunity from suit or proceeding commenced or undertaken by the Authority under this section.

Sec. 5. The powers of the Authority granted by this Act shall extend to sections 1346 (a) (2), 1362, 1491, and 1505 of title 28, United States Code: PROVIDED, That such powers shall not extend to the filing or prosecution of or intervention in any action, claim, or other proceeding against the United States relating to any matter as to which a claim has been filed or could have been filed under the Indian Claims Commission Act of 1946, as amended, or any other special statute authorizing a claims suit to be brought by Indians against the United States: PROVIDED, HOWEVER, That the Authority may assist any Indian tribe requesting such assistance in its claim pending before the Indian Claims Commission.

Sec. 6. The Authority is authorized to request from any department, agency, or independent instrumentality of the Government any information, documents, personnel, services, or materials it deems necessary to carry out its functions under this Act; and each such department, agency, or instrumentality shall cooperate with the Authority and shall comply with a request to the extent permitted by law, on a reimbursable or nonreimbursable basis.

Sec. 7. Ninety days prior to a decision which may affect the natural resource rights of the Indians, all departments, agencies, or independent instrumentalities of the Government shall give notice to the Authority of their intent to make such a decision. Such notice shall include, but not be limited to, the nature of the decision, the facts upon which the decision will be made, and the Indians who may be affected.

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Sec. 8. (a) The Authority shall be governed by a Board of Directors composed of seven members to be appointed by the President by and with the advice and consent of the Senate.

(b) A majority of the members of the Board of Directors shall be Indians.

(c) The terms of office of members of the Board of Directors shall be four years, except that, of the first seven members appointed, three shall be appointed for a two-year term, two shall be appointed for a three-year term, and two shall be appointed for a four-year term. [Add the remainder of Sec. 2 (d).]

(d) The President shall designate one of the Directors to serve as Chairman at his pleasure. The Chairman shall be Indian.

(e) [Insert Sec. 2 (f).]

Sec. 9. [Insert Sec. 3.]

Sec. 10. [Insert Sec. 4.]

Sec. 11. [Insert Sec. 5. Change 5 (d), p. 4, line 11, to read "section 3 or 4."]

Sec. 12. [Insert Sec. 6.]

Sec. 13. [Insert Sec. 11, deleting 11 (2), and changing 11 (3) to 13 (2) and 11 (4) to 13 (3).]

Sec. 14. [Insert Sec. 12.]

Senator BARTLETT. Mr. Trimble, I understand you have a very brief statement and we would like to hear it.

Mr. Trimble is the executive director, National Congress of Indians, Washington, D.C.

STATEMENT OF CHARLES TRIMBLE, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, D.C.

Mr. TRIMBLE. I am Charles Trimble, executive director of the National Congress of American Indians. On behalf of NCAI, I express appreciation for this opportunity to appear before the subcommittee to present our position regarding this important legislation to create an Indian Trust Counsel Authority.

The National Congress of American Indians has supported, in full convention, the concept of the Indian Trust Counsel Authority in 1971 at Reno, Nev., and again in its annual convention in Sarasota, Fla., in October 1972.

Mr. Chairman, I submit copies of those resolutions for inclusion in the official record of this hearing.

Senator ABOUREZK. They will be included in the record.

Mr. TRIMBLE. The creation of an independent Government agency charged with the responsibility of, and given the full authority and resources to fully protect and preserve the natural resources rights of the American Indian, including the Native peoples of Alaska, is long overdue.

There is no question of the U.S. Government's trust responsibility to Indian tribes. This trust responsibility is an obligation freely assumed by the U.S. Government and was in almost every case a quid pro quo transaction. It has been reaffirmed and interpreted by the courts, the Congress, and the executive branch of the Government. It has been defined and interpreted by cases, congressional enactment, and Executive regulation.

The question here is, has the Federal Government, through the Interior and Justice Departments charged with that Trust protection of Indian lands and rights, fully lived up to that Trust responsibility? The answer Mr. Chairman, unequivocally, "No."

In testimony on S. 2035, a proposed bill for the creation of the same Trust Counsel Authority introduced in the 92d Congress. NCAI, the National Tribal Chairmen's Association, and numerous tribal attorneys all cited case after case in which the U.S. Government failed in its responsibility to Indian tribes and people.

Cases were cited in which the Justice Department, under extreme pressure from high officials in Western States, actually watered down, if I may use a pun, forceful petitions filed on behalf of Indian interests in water rights cases.

A case was cited in which files containing proof positive of erroneous surveys of lands belonging to an Indian tribe was allegedly misplaced or destroyed by the Interior Department resulting in the loss of some 12,000 acres of land forever by that tribe.

This failure on the part of the Government to meet its trust responsibilities results not only in the loss of land and water and natural resources rights of Indian people, Mr. Chairman, it also prevents the

tribes from using their full financial resources to develop their reservations and improve the sad lot of Indian people on the reservations.

Mr. Richard Wilson, the chairman of the Oglala Sioux Tribe in South Dakota expresses the problem in a statement of the press during the confrontation at Wounded Knee, and I quote from his statement:

As in any democratic government process, the tribal government is slow. But one must realize that tribal governments have carried the additional burden of a reluctant and paternalistic bureaucracy, years of hostile Congresses, and constant threats of seizure of our lands and water rights by greedy white citizens and industries.

Our tribal governments have faced constant threats of encroachment by States and counties to tax our unproductive and underdeveloped lands, and threats of losing our lands by default when we are unable to pay those taxes.

Tribal governments have had to fight, year in and year out, for hunting and fishing rights, and we have spent millions of dollars fighting for our treaty rights in the U.S. Courts. We might have spent that money for badly needed development of our lands and human resources.

Tribal governments, Mr. Chairman, are here to stay and they need the support of legislation to help them protect their vital interests of land and water rights so that they can devote their full resources and time to improve their governments, their lands, their resources, and the lot of their people. Such help could come from the Trust Counsel Authority proposed in S. 1339.

Mr. Chairman, the National Congress of American Indians joins the National Tribal Chairmen's Association and other Indian organizations in supporting the passage of this vital legislation. We offer our resources and staff to work with you in revising the bill to include the concerns of the tribes and organizations that have testified here.

We submit for consideration by the subcommittee and the staff our recommendations for amendments to the bill.

Mr. Chairman, that concludes the testimony of the National Congress of American Indians. Thank you.

Senator ABOUREZK. Thank you.

Senator BARTLETT. Could I ask Mr. Trimble one question, please?

What are the areas of coverage by the amendments that you have submitted? You mentioned that you submitted considerations by the subcommittee and staff amendments to the bill.

Mr. TRIMBLE. Consideration of the extension of the makeup of the Board from three members to six or seven members. That would be acceptable to other organizations and parties.

Senator BARTLETT. The chairman informed me that he has not seen the amendments, have they been passed in at all?

Mr. TRIMBLE. No, sir; I am submitting them here. These were entered in last year's testimony, also.

Senator ABOUREZK. We will insert those in the record and we will ask the staff to provide a photocopy for the ranking member of the subcommittee and myself.

Senator BARTLETT. Thank you very much.

Senator ABOUREZK. Thank you very much, Mr. Trimble.

Mr. TRIMBLE. Thank you.

[The prepared statement and additional material submitted by Mr. Trimble follows:]

PREPARED STATEMENT OF CHARLES TRIMBLE, EXECUTIVE DIRECTOR NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, D.C.

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"Our tribal governments have faced constant threats of encroachment by States and counties to tax our unproductive and underdeveloped lands, and threats of losing our lands by default when we are unable to pay those taxes.

"Tribal governments have had to fight, year in and year out, for hunting and fishing rights, and we have spent millions of dollars fighting for our treaty rights in the United States courts. We might have spent that money for badly-needed development of our lands and human resources."

Tribal governments, Mr. Chairman, are here to stay and they need the support of legislation to help them protect their vital interests in land and water rights so that they can devote their full resources and time to improve their govern-

ments, their lands, their resources, and the lot of their people. Such help could come from the Trust Counsel Authority proposed in S. 1339.

Mr. Chairman, the National Congress of American Indians joins the National Tribal Chairmen's Association and other Indian organizations in supporting the passage of this vital legislation. We offer our resources and staff to work with you in revising the bill to include the concerns of the tribes and organizations that have testified here.

We submit for consideration by the subcommittee and the staff our recommendations for amendments to the bill.

Mr. Chairman, that concludes the testimony of the National Congress of American Indians. Thank you.

RESOLUTION No. 9—INDIAN TRUST COUNSEL AUTHORITY

Whereas, there has been through the President's message and other pronouncements a recognition within the administration of what the Indian tribes have known all along, namely that there is a significant conflict of interest within the Justice Department, the Solicitor's office and in fact within the entire Department of the Interior, by which neither the Justice Department nor the Solicitor's office nor any other Federal attorney's have been able effectively to represent Indians in their tribal and reservation rights, and

Whereas, there has been introduced Senate Bill 4165 and House Resolution #18727, to establish the Indian Trust Counsel Authority which would in effect set up a department employing attorneys to their special fields to represent Indian tribes and reservations in lawsuits and other litigation to protect their legal rights, particularly with regard to Property, Hunting and Fishing Rights, Water Rights, Law and Order problems and other Indian issues and rights, and

Whereas, the present bills exist at the present time as a proposal and do not yet reflect the suggestions and possible amendments that will come as they are discussed by Indian organizations,

Now therefore be it resolved, that National Congress of American Indians hereby approve and recommend the concept being proposed by Senate Bill 4165 and HR 18727 to establish an Indian Trust Counsel Authority and request early hearings so that after appropriate amendments have been suggested and incorporated to reflect the suggestions and proposals of the Indians themselves, it be enacted and placed in effect as soon as possible.

NATIONAL CONGRESS OF AMERICAN INDIANS,
Anchorage, Alaska.

NCAI RESOLUTION No. 72-22—TRUST COUNSEL

Whereas, the President of the United States in his promises to Indians stated that he would seek legislation providing for a Trust Counsel for Indians because of the conflict of interest within the various departments of government.

Now, therefore be it resolved, That the National Congress of American Indians, in annual convention, assembled in Sarasota, Florida on October 16-20, 1972, again endorses the concept of a Trust Counsel Authority and that this expression of support includes the assumption that the bill, as now proposed be suitably amended to correct deficiencies previously pointed out by the National Congress of American Indians.

PROPOSED NCAI AMENDMENTS TO THE INDIAN TRUST COUNSEL AUTHORITY BILL

1. Section 2(b). Strike the word "three" and insert in lieu thereof the word "five". After the word "members" insert the phrase ", no more than three of whom shall be of the same political party,".

A three member board is not sufficiently large to provide the diversity of interest and experience necessary to adequately represent the spectrum of Indian tribes and people. Perhaps even five is not a sufficient number to achieve this goal. The enlargement of the Board coupled with the limitation regarding political parties as proposed above would also reduce opportunities for political pressure being brought to bear on the Board.

2. Section 2(c). Strike the word "two" and insert in lieu thereof the word "three". Strike the word "Indians" and insert in lieu thereof the phrase "enrolled members of a federally recognized Indian tribe".

The first part of this amendment is necessary to conform to Amendment No. 1. We feel that the second part of this amendment is necessary for two reasons. First, the provision for at least a majority of the Board to be Indians was included to insure that an understanding and awareness of Indian problems and thinking would be adequately represented in the decisions and deliberations of the Board. A President or his advisers could easily defeat the intent of this proviso by dredging up a political crony who might claim, legitimately or otherwise, an infinitesimal degree of Indian blood [as over half the American population probably could] and who would have no knowledge of Indian law, history, administration, or culture.

Second, the further limitation to membership in a federally recognized tribe is, obviously, in line with the purposes of the act. The act would provide better legal protection of the trust assets of Indian tribes to whom the United States owes a trustee obligation, giving rise to the federal relationship and recognition. If the Indian board members are to provide this kind of representation, they should have some knowledge of the trust relationship.

3. Section 2(d). Strike the word "three" where it appears for the first time and insert in lieu the word "five". Strike the word "one" where it appears for the first and second time and insert in lieu thereof the word "two".

These amendments are necessary to conform to Amendments 1 and 2. Query: How does the last sentence in this subsection square with similar provisions in the enabling acts of other independent agencies in the Executive Branch, such as TVA.

4. Section 2(e). Query: Is there any necessity to more explicitly spell out the duties and responsibilities of the Chairman.

5. Section 2(f). After the word "day" insert the following phrase "including any day or portion of a day in travel status,".

Travel time in the course of carrying out the business of the Authority will take a Board member away from his normal livelihood no less than the actual deliberations of the Board.

6. Section 3. In the second sentence, after the word "shall", insert the phrase "make a public".

Unless the report or portions thereof fall within the exceptions to the Public Information Act, this information should be available to the scrutiny of the public as an added safeguard in the protection of Indian trust assets.

7. Section 4. While not prepared to offer language, NCAI feels that there should be at least some minimal statutory requirement set regarding the qualifications and abilities of candidates for the positions of the Indian Trust Counsel and the Deputy Indian Trust Counsel. These men will be responsible, directly, for the protection of billions of dollars in trust assets of Indian tribes and, in a very real sense, the actual continued existence of these tribes. While we hope that Indians could and would be placed in these positions, we feel that the critical responsibilities of these positions would transcend our desire in this regard. The desired end might be accomplished by amending the bill to make specific qualifications a part of the act or by requiring the Board of Directors to set such minimum standards prior to selection of the chief counsel and his deputy and by making such standards subject to the approval of the President.

8. Section 5(a). Strike the phrase "after consulting with the Indian Trust Counsel" and insert after the word "shall" the phrase "upon the recommendation of and in consultation with the Indian Trust Counsel".

If the Indian Trust Counsel is to be the chief executive officer of the Authority, he should have the right, subject to the approval of the Board and in conformance with any personnel procedures they may set, to select the cadre of attorneys he will need to carry out his duties.

9. Section 5(b). After the word "shall" insert the phrase "upon the recommendation of and in consultation with the Indian Trust Counsel".

Same reasoning as for Amendment No. 8.

10. Section 5(d). Strike the word "requesting" and insert in lieu thereof the phrase "lawfully entitled to". Strike the word "hire" and insert in lieu thereof the phrase "retain and reimburse". Strike the period at the end of the subsection and insert the phrase "including reimbursement for the reasonable expenses of such assistance or representation."

The first part of the proposed amendment just makes us feel better. The rest of the amendment is to make it clear that the Authority may pick up the reasonable costs of insuring an adequate legal representation to an opposing party or parties

in such conflict situation. In some states, the court will appoint an attorney for an indigent accused and then allow him \$50 to pay the costs of such representation. This is clearly unjust and we wish to preclude this from occurring in the instant case.

11. Section 6. Reward Section 6 to read as follows:

"The Indian Trust Counsel shall, subject to the provisions of Title 5, United States Code and under the direction of the Board of Directors, appoint such employees, as he deems necessary in exercising the powers and duties of the Authority; *Provided, however*, that the provisions of 25 U.S.C. 44 and 45 shall be applicable to appointments made hereunder."

The amendment would take the personnel selection power from the Board and place it in the Indian Trust Counsel, under direction of the Board. The reasoning here is the same as in Amendment No. 8. The proposed amendment makes specific provision for an Administration Officer. This is to insure that the chief counsel and his deputy are not burdened with administrative matters and can devote their time to legal duties. Finally, the proposed amendment would permit appointments under this subsection to be made under the "Indian preference" law.

12. Section 8. Insert the phrase "or ownership" after the word "use" where it appears for the first and second time. Strike the word "and" before the phrase "rights to hunt and fish," where that phrase appears for the first time and insert after such phrase the phrase "and any intangible rights appurtenant thereto." Strike the word "and" before the phrase "rights to hunt and fish" where it appears for the second time and insert after such phrase the phrase ", and any intangible rights appurtenant thereto".

The right to use water, timber, and minerals may be a much different right than the right to ownership of these assets and, probably, a less valuable right. The first part of this amendment would insure protection of the ownership as well as the use of these resources. The second part of the proposed amendment would recognize that there may be intangible rights derived from and appurtenant to the listed rights which are as fully entitled to the protection of the trustee as the listed rights. The exemption from taxation of trust land and income derived therefrom might be an example of such an intangible right.

Spokesmen for the Administration have stated that, in response to strenuous objection from the Indians, the absolution granted the Justice Department in the original version of the bill had been revised and limited in the 1971 draft. We can see no such substantive change although the language has been doctored. What services, other than legal protection of Indian trust assets and the tribal entity, does Justice provide Indian people? They do enforce and prosecute certain crimes on Indian reservations, but this is for the benefit of the United States rather than the tribes. It appears to us that the absolution granted Justice is as complete under the new version as it was under the old. We stand ready to be corrected if in error. If we are correct, the question of whether Indians would be better off accepting this complete absolution of Justice in return for the Trust Counsel bill or whether we would be better off remaining under the tender mercy of Justice is one which should be fully explained to the Indian people.

13. Section 9. Redesignate the section as Section 9(a). Query: Is it wise to require the trustee, i.e., the Authority, to obtain the consent of the beneficiary before taking action to protect the corpus of the trust? It would appear the United States would be accountable for failing to fulfill its trust obligation regardless of any instructions it might receive from the beneficiary.

14. Add a new subsection 9(b) as follows:

"The Authority may provide such assistance to any Indian, Indian tribe, band or other identifiable group of Indians as it deems appropriate in seeking administrative relief to insure the adequate protection of Indian trust assets by federal agencies charged with fulfilling such trust obligation."

History has shown, all too painfully, that Indian trust assets and rights are often administratively compromised, with irreversible legal effect, before a controversy ever reaches a formal administrative hearing or judicial review. All too often, the United States makes good its failure as a trustee with money rather than through a restoration of the Indian to his rights. This proposed amendment attempts to guarantee that the Authority can engage in 'preventive medicine'.

15. Add a new subsection 9(c) as follows:

"The Attorney General of the United States shall cooperate to the fullest extent with the Authority in the transfer of authority and responsibility from the Department of Justice to the Authority, including the transfer of such documents, records, files and other supporting material and data as is necessary to permit the Authority to carry out its duties."

The proposed amendment is an awkward attempt to facilitate a smooth transfer of authority. Such a transfer might require the availability of certain Justice personnel and records to the Authority. In addition, perhaps some provision should be made for the continuation or other disposition of pending actions at the time of transfer being prosecuted by Justice.

16. Section 10. Strike the proviso at the end of the section and add the following:

"Provided, however, That the Authority may provide legal assistance to any Indian tribe, band, or other identifiable group of Indians in any claim against the United States brought in the Court of Claims under authority of Section 89(a) of the Act of May 24, 1949 (63 Stat. 102; 28 U.S.C. 1505) if the Authority is satisfied that such tribe, band, or group is unable, for lack of funds or other valid reason, to retain counsel in such claim; *Provided further, however,* That the Authority may assist any Indian tribe requesting such assistance in its claim pending before the Indian Claims Commission."

Section 10 is very badly written. The language before the proviso would prevent Authority involvement in any claim brought under authority of the Indian Claims Commission Act, as amended. This includes claims which have been filed or could have been filed under such authority. It also prevents Authority involvement in claims brought under any special jurisdictional act for Indian claims. We assume this includes claims brought under authority of 28 U.S.C. 1505. The last clause before the proviso, reading "... but shall not include suits that could be brought under the provisions of section 1346(a)(2) and 1491 of title 28, United States Code: . . .", is extremely ambiguous. We can't determine whether it is meant to exclude Authority representation in cases arising under these sections or to permit such representation. It should be cleared up.

28 U.S.C. 1505 give the Court of Claims specific jurisdiction to consider claims by Indian tribes against the United States which claims arose after the deadline set by the Indian Claims Commission Act. Our amendment which adds a proviso would permit the Authority to undertake representation of such claims if it is satisfied that such claim is not frivolous and the tribe has been unable to secure counsel.

17. Add a new Section 17 as follows:

"Nothing in this Act shall be construed or interpreted to diminish, reduce, impair, abrogate, cancel, or otherwise adversely affect the trust relationship existing between the United States and any Indian or Indian tribe, band, or other identifiable group of Indians or the trust obligation and responsibility growing out of such relationship."

If no one intends that the Act should have such an effect, they should not object to inclusion of this explicit disclaimer.

Senator ABOUREZK. The next panel of witnesses is Mr. Robert Jim, chairman of the Yakima Tribal Council of Toppenish, Wash., accompanied by Louis Cloud, Johnson Meninck, James B. Hovis, and Robert Dellwo and somebody else. For the benefit of the court reporter, I wonder if you would identify yourself from the left to the right.

Mr. JIM. With your permission, Mr. Chairman, might I identify them for you?

Senator ABOUREZK. Please, if you would.

Mr. JIM. Mr. Chairman, members of the committee, I would like to introduce, from my left, the chairman of the Long Order—excuse me, the member of the Washington delegation of the Yakima Tribe, Mr. Johnson Meninck. Mr. Louis Cloud, chairman of the Law and Order Committee of the Washington Delegation of the Yakima Tribe,

a selected appointment by the tribal council and on my right is Bob Dellwo, who probably has more high powered attorneys here than we care to mention. Bob is the chairman for the Coeur d'Alene Tribe and Spokane Tribes and he along with Jim has been the kind of people that we look to for protection to let us know about all the Indian rights. Mr. Bob Dellwo has been the attorney for these tribes about 23 years and Mr. Jim Hovis has been our tribal attorney for going on 20 years or over and I am Robert Jim.

Mr. Chairman, with your leave, we will present our testimony. Senator ABOUREZK. Please feel free to do so.

STATEMENT OF ROBERT JIM, CHAIRMAN, YAKIMA TRIBAL COUNCIL, TOPPENISH, WASH.; ACCOMPANIED BY LOUIS CLOUD, TRIBAL MEMBER, JOHNSON MENINCK, TRIBAL MEMBER; JAMES B. HOVIS, LEGAL COUNSEL; AND ROBERT DELLWO, LEGAL COUNSEL

Mr. JIM. Before we start out there I wanted to thank you very much, Mr. Abourezk. I certainly read your testimony and your statement with regard to Wounded Knee and I think that it is one of the finer commentaries on behalf of Indian tribes. I would like to say we could not have said it better.

As a matter of fact, when Marvin Franklin said the other day that we had to pay from Bureau funds, \$6 million from the BIA sacking and Wounded Knee, then he started to raise objections to all of us and I know when they begin to consider these things, they are in a fight because when they had walks and other things, they did not take it out of other people, they had an appropriation and they should not take it from the reservations. I want to thank you on that statement that you made on Wounded Knee, to prosecute the guilty who had broken the law.

Now, I want to read that I am the chairman of the Yakima Tribal Council and I appear here today to present the joint statement of the Yakima delegation. In the interest of time we have prepared a joint statement. However, all members of the delegation are available to be of further service to the committee.

We appeared before in hearing on similar bills S. 4115 and S. 2305 in 1971. At that time, contrary to most of the testimony presented, we voiced some serious reservations about such legislation. Those reservations were presented in spite of our recognition of a definite need and in spite of our approval of the basic concept.

S. 1339, as introduced, is an improvement on S. 2305 but again though we approve of the basic concept of this bill, we have some qualifications that we wish to discuss with you.

We would be most surprised if this committee considered this legislation if proponents speak only in generalities and state that everything has been fine in the past, but that there would be problems. It has been our experience that this committee with its many emergent problems is not prone to try to solve fears of what might happen or merely fanciful problems.

Therefore, let us give you a few specific examples:

In *United States v. Moody Charley*, District Court Eastern Washington, 1959, and in *United States v. 10.69 Acres of Land* (425 F. 2d 317, 1970), the Department of Justice represented the Army Engineers and the Department of Transportation in suits to condemn Indian lands. In neither case were they successful. In both cases the positions of the United States was found to be without foundation in law. It is disappointing to us to have the Department of Justice bring unfounded actions against parties they have the duty to protect. In both of these cases, however, we had the support of the Solicitor's Office of the Department of the Interior.

For example, we could not have been more pleased with the dedication of William Veeder in the case of *United States v. Ahtanum Water District*. However, there were many problems that existed before the case ever got to trial. Few cases of inaction and delay are better documented than this one.

Ahtanum Creek is often considered as the cradle of irrigation in the State of Washington as the Indians were irrigating from this creek in the early 1800's. In 1855 we entered into the treaty of 1855 with the United States and this creek constituted the northern boundary of our reservation.

In the early 1860's lands north of the creek were occupied by settlers. The water was needed by parties on both sides of the creek to successfully cultivate adjoining lands. Serious conflicts regarding the use of this water between non-Indians and Indians developed shortly after 1900, the first record of a request to the Justice Department to protect our rights was August 23, 1906. It was almost a half-century later before any action was taken.

This period is replete with evasions of responsibilities stemming from conflicts with the Federal Government and with politically powerful non-Indian landowners. A moderate review of these conflicts can be found in the opinion of the Ninth Circuit Court of Appeals at (236 F. 2d, 328 et. seq.). A less moderate view could be obtained from the Indian people who had their living severely hampered due to the diversion of Indian water by non-Indians. In our statement, we err in favor of the more moderate documented statement.

In 1907 the Supreme Court enunciated the *Winters* doctrine (207 U.S. 564). In 1908, the Ninth Circuit Court in *Conrad Investment Company v. United States* in applying the *Winters* doctrine, declared that the Indians' rights to the use of water could be exercised, " * * * not only for present uses, but for future requirements" on the reservations for future economic development.

Consternation flowed from the pronouncement of the *Winters* doctrine and its application in *Conrad*. Oddly enough the biggest concern came from those who were supposed to be protecting the Indians. The U.S. attorney on instructions from Washington postponed any litigation to protect the Indian water now that it looked like the law was on our side, and the then Chief Engineer of the Indian Service guided the Secretary of the Interior into a 1908 agreement that gave 75 percent of the Indian water to the non-Indians on the north side of the creek.

Because of this agreement, agriculture on the south side of the creek became almost impossible after July of each year. When our

leaders realized what had been done and that they had rights under the *Winters* doctrine, they almost immediately began to petition for legal action. In spite of the fact that at times there were almost open hostilities over the water between the Indians and non-Indians, Justice refused to act.

When some Indians directly involved brought action against the United States to protect their rights, Justice successfully moved to have the case dismissed for want of jurisdiction. After over 40 years of delay and no water, Justice finally instituted an action to quiet our title to these waters.

In excess of 55 years after the agreement the circuit court held that the 1908 agreement was improper and that the Indians were entitled to a much greater share of the water.

However, even during the final stages of the litigation there were repeated pressures to settle the case and it was necessary for us to appear amicus in order to present the issues our tribal attorney and the trial attorney felt important to the appeal.

Now, all this later action regarding the appeal and settlement may have been in our best interests, but it is very difficult for us to be without doubt when the very person who is resisting our claim for the improper agreement is privy to Justice discussions and is in the same division of Justice.

The picture is not all bad. We have appreciated the help of the Justice in *United States v. Oregon* (302 F. Supp. 899, 1969), and other fishing cases. They are also assisting us and other tribes in *United States v. Washington*. In spite of built-in conflicts and extreme political pressure, the dedication of the many individuals in the Department of Justice and Department of the Interior cannot go unmentioned. We want more of their help. While they have never been on the winning side when they have filed a suit against us, they have never been on the losing side when they have been with us. It is only half facetiously, that we say that the simple answer to our need is to have them in their legal wisdom to be with us and never against us.

While we feel it is fair to state that in some cases, Justice has been less than zealous in the exercise of their statutory responsibility to represent Indians, we do object to that portion of S. 1012 and S. 1339 that in section 8 relieves Justice of this responsibility in certain cases. While the Trust Authority may have primary responsibility we wish Justice to be required in the bill to assist the Authority to the extent practicable. Not only will this afford better protection to the Indian people, but because of the location of the U.S. attorneys, throughout the country, will save a great deal of expense as well.

These district offices can handle appearances, calendar calls, et cetera, from their local offices at much less cost than having attorneys from the Trust Authority travel many miles for this purpose.

In previous questioning it was brought out that Justice will still be a referee between departments. That there would still be conflicts that exist even in the Trust Authority, and that the Trust Authority would still be subject to pressure and budget limitations.

We would be serving no purpose to sideline an existing aid to the Indian cause only to find that this new Trust Authority also had conflicts and that the Authority did not have adequate appropriations to handle these Indian cases as well as Justice can?

Also, since we feel that there is conflict in the legislative history as to where the authority would operate that the bill itself must be definitive in its direction toward correcting these problems, we propose the following amendments to sections 8 and 9 of the bill:

Section 8, the Authority, with the consent of an aggrieved Indian, Indian Tribe, and, or other identifiable group of Indians, acting either in the name of the United States, in the name of the Indian or Tribe, or in its own name, is authorized to render all legal services, now authorized to be rendered by the Department of Interior or the Department of Justice, necessary to preserve and protect natural resource rights of Indians, including, but not limited to rights or claims of the Indians to natural resources, such as rights of water; and rights to hunt and fish. The legal services authorized to be performed pursuant to this section include but shall not be limited to, the investigation and inventorying of Indians' land and water rights; the advocacy of the policy favorable to Indians within the Executive Branch; the initiation and prosecution to final judgment, in all Courts of the United States, and of the States, against the United States, its departments, agencies, officers and employees, or against any of the States, their subdivisions, departments and agencies, or against persons and corporations public or private, all actions in law and equity for the protection, preservation, utilization, conservation, adjudication, or administration of natural resources or interests therein had or claimed by the Indians, including but not limited to, rights of land, timber and minerals; rights to the use of water; and rights to hunt and fish; the defense in any and all courts of the United States and States, of all action in law and equity which might affect claims or rights to resources owned or claimed by Indians; the prosecution and defense of appeals in all courts of the United States and of the State; and the institution of and participation in actions in any Federal, State or local administrative proceeding in order to protect the natural resource rights of Indians. The United States waives its sovereign immunity from suit in connection with litigation initiated by the Authority under this section.

Section 9. The legal services rendered pursuant to Section 8, hereunder, shall in no way absolve the Department of the Interior and the Department of Justice of their responsibilities to the Indians, including those which derive from the the trust relationship and any treaties between the United States and any Indian or Indian tribe; provided that in determining the litigation position of the Department of Justice on any matters affecting the rights of Indians or Indian tribes, the Department of Justice shall consider and give due deference to the obligations of the United States deriving from the trust relationship and any treaties between the United States and any Indian or Indian tribe.

Other amendments to the bill are also in order. The next proposed amendment would be to allow the Authority to hire or appoint outside counsel and experts to assist it in its work. This can be used to facilitate the trial of cases and to save money as well. Many times it would be more economical to have local counsel handle particular matters rather than have someone travel from offices of the Authority.

It may also be necessary to have local counsel so that the attorneys for the Authority can practice in the applicable court. Also, it is proposed that it be made clear that all attorneys of the Authority should be granted the right to practice before all Federal courts.

Thus we suggest that section S(B) be amended to read:

(B) The Board of Directors may, at the request of the Trust Counsel, hire or appoint special counsel and experts which it deems necessary to assist the Authority in performing its duties. The Board of Directors shall appoint and fix the compensation of such special counsel and experts as it deems necessary. All counsel of the Authority shall have the rights to practice before all Federal courts in the same manner as any attorney of the Department of Justice.

Another suggested amendment relates to the Authority's ability to demand rather than request certain information, personnel, services or material it deems necessary to carry out its functions. As now

drafted, section II (2) merely authorizes the Authority to request services, et cetera, from other agencies. We suggest the following addition to section II (2):

Provided, That in any suit initiated or defended by the Authority, any letter, paper, document, map, or record, in the possession of any office or department of the United States, or certified copies thereof, may be used in evidence, and the Department of the Government of the United States shall give full and free access to the attorney or attorneys of the Authority to such letters, papers, documents, maps, or records as may be useful to said attorney or attorneys in the preparation for trial or trials of such suit or suits.

In most cases it is the cost of field preparation as well as the trial costs that make litigation prohibitive to the Indian people.

Also, we would suggest that the provision of section II that suggests that the Authority may charge fees is improper. This, as brought out by questioning by the committee previously, causes ethical questions of improper solicitation or improper law practice by the Government.

Even more importantly, it may tend to lead the Authority to be more interested in bringing suits for the more affluent tribes rather than for those that are in greater need of the assistance. Adequate funding of the Authority is vital to its proper functioning. If the Authority is not to be properly funded, then let us not enact this legislation. It would be a cruel hoax to again raise the hopes of the Indian people only to find that they have the name but not the game.

It is therefore submitted that section II(3) be amended by the addition of the following proviso:

Provided, That nothing herein shall authorize the Authority to charge fees for its services.

Another amendment which we feel would strengthen the bill is the expansion of the Board of Directors to nine members rather than three. This would reduce the possibility that political pressures would influence the operation of the Authority.

For example, if two of the three members of the Board happen to be from the Southwest, Indians located in other parts of the country might feel deprived of adequate representation. We believe the Authority will more quickly capture the confidence of the Indians if the Board of Directors represents a more representative cross-section of the American Indian community. This suggestion would amend section 2(B).

Another suggestion relates to the addition of a section providing that the Authority be informed on any proposed action by any executive department or agency which might affect Indian natural resource rights. It is our experience that many problems which have resulted in long litigation could have been solved easily had all parties been informed of the proposed actions initially. Thus, to assure that the Authority is notified of proposed actions of executive departments and agencies, we suggest the following amendment:

Sec. 12. Any executive department or agency of the United States shall, with respect to any proposed action which might affect or impair the rights or claims of any Indian, Indian tribe, band or other identifiable group of Indians to natural resource rights of land, timber and minerals; rights to the use of water; and the rights to hunt and fish within the United States trust responsibility owing to the Indians:

One, give notice to the Authority and to any and all affected Indians or Indian tribes, bands and groups of the proposed action; and

Two, afford the Authority and all affected Indians or Indian tribes, bands and groups a reasonable opportunity to submit comments upon the proposed action and, where an oral hearing is required by law, or where the department or agency deems it appropriate to hold a hearing, an opportunity to participate therein. Upon taking action with respect to such proposed action, the department or agency of the United States involved shall give notice to the Authority and all affected Indians or Indian tribes, bands and groups of the final action taken.

The addition of this amendment would necessitate changing the present section 12 to section 13.

This prenotification section would permit the Authority to urge independently the position most beneficial to the Indians at the policy-making stages of the decisionmaking process and in our opinion go a long way to solving the conflict of interest problem without any litigation at all by the Authority.

Finally, we believe that adequate funding of the Authority is vital to the proper functioning of the Authority. As noted, in the dual role of the Authority, the key to the effective representation of natural resource rights of Indians will be the funds authorized and appropriated by Congress to support the Authority.

Mr. Chairman, I think that is built in here, with and without saying. There have been many statements with regard to the conflict of interest, many statements with regard to the protection, that the Department of the Interior and the Department of Justice are the other signers of the treaty. They have an obligation and we as wards want that protection that we do not think we can survive without. Because when we gave up this country in the treaties, it went without saying that we gave it up to protect the people, as we say in Yakima, for the Yakimas yet to come, the Yakimas yet unborn.

We earnestly solicited the experience and the protection of your committee when you consider these bills to take with the greatest consideration those treaties and my Indian people.

So with that, Mr. Chairman, I would like to have Mr. Hovis start and then Mr. Dellwo, and if there is anything further these gentlemen from the tribal delegation—

Senator ABOUTREZK. You mean they each have a statement to make?

STATEMENT OF JAMES B. HOVIS, LEGAL COUNSEL, YAKIMA TRIBAL COUNSEL

Mr. Hovis. I think I could more adequately respond to questioning, Mr. Chairman, than to say anything. The only thing I might be able to add is that lawsuits seem to be becoming ever more complicated.

We have all of these discovery proceedings, that seem to shorten them up, but seem to make them longer. Just last week in a case I was interested in, an expert witness, a deposition was taken for 4 long days. It is not unusual for me to have in one case a total file drawer of documents. Just stacks of them in pleadings. I sometimes think the lawyers in the courts in trying to make justice more simple has made it more complicated. But all of these cases take a considerable amount of time.

Day by day matters to keep advising tribes so they do not get into difficulties that require litigation or even to shortstop things at the legislative level is also very important. I cannot overemphasize, I

think, the amount of personnel or budget that will be necessary in this Trust Authority to do an adequate job for the Indian people in this country.

Senator ABOUREZK. I was always under the impression that the purpose of discovery proceedings was not to simplify justice, but to make it more just, if that is possible, which we find increasingly more difficult.

But I think I understand your point, that it is becoming complicated and the need for competent legal counsel is ever more present. I agree with you. I want to pose a question to you.

Do you think that the recommendation by the administration of a staff of 15 attorneys to begin with will be sufficient even to start out this new Authority?

Mr. HOVIS. I just think that is not even adequate at all. That does not come close to it. For example, the *Ahtanum Water* case which was not a complicated water case took 167 days of trial. The *Arizona* case took much longer at trial. So when you start talking about 167 days of trial for one case and for every hour you put into trial you have to have about 4 hours of preparation, if it is like going to college and for every hour in class you have 4 or 5 hours out of class.

When you start thinking about that, there are two attorneys working on that together with 10 or 12 assistants, geologists, hydrologists, this is not an easy field. When they are talking about 15 attorneys, I see the National Indian Rights Fund, they have 11 attorneys down there. The cases they are in are complicated. They have a lot of places to go and they are not even scratching the surface in that field.

In my firm we have five. Just for one tribe we put in about a man a half-year. Just for one tribe and there are more services needed just for that tribe. So when they are talking about 15 attorneys, that would really be a hoax on the Indian people to say, hey, you have got one kind of a theory, you know, some sort of tokenism that you can point to and it really gets everybody's hopes up and when their hopes are not realized they become more discouraged and disgruntled. That is the thing that concerns me.

Senator ABOUREZK. If it cannot be adequately staffed and funded, would you just as soon see it stay the way it is rather than build up people's hopes?

Mr. HOVIS. Well, that is not my decision to say, sir.

Senator ABOUREZK. Well, you have to understand, if this bill becomes law, that the Justice Department will waste no time in getting out of the Indian business. They have served notice on that. They talked about phasing out their case load.

They were awfully anxious yesterday in the testimony to say that they wanted no more of this kind of trust work at all. So you have to understand, once this bill becomes law, if it does, the whole load is going to be dropped on the Trust Counsel Authority.

Mr. HOVIS. I think that is the position of my people. They would rather not have some hopes built up if they are not going to be adequately funded. The people I represent.

Another thing I want to say about Justice, when you work with Justice, you have to prepare your case before you go to Interior. Sometimes, if you are going to get the assistance of the Federal Govern-

ment in cases and lots of times you need them, you need the name of the United States on behalf of Indian people, but the tribal attorneys job is first to go sell the regional solicitor, then you have to come to Washington and sell the regional solicitor here. Then you have to go over and sell Justice. Lots of times you try your case four times before you ever get to trial.

If they are going to do an adequate job, the Trust Authority has to be able to go out and look at the problems and not only take cases from tribes that have tribal attorneys that can come in and point out the legal issues for them. Because this is where—I might say, Mr. Chairman and members of the committee, this is where I think the people are really getting hurt. The smaller tribes that do not have a counsel and do not have funds for even their leaders to be informed, to go around and travel and be informed.

These are the people who really need someone to be there and find out about their problems, rather than sitting in Washington and having someone come in to make a presentation. Sometimes it is only the larger tribes we are getting the cases from. We had fairly good service from the Department of Justice, but it is only because you are there and making your presentations to the Department of Interior.

That is fine where you are able to do it. If you set up, and I think the Department in its testimony, when they are talking about their budget, they are talking about what they have in various other things and they come up with, I think \$3 million. They are talking about 15 attorneys. They are talking about what it takes now where somebody is doing all the work and coming and making the presentation. What you need is the Authority for these people to be out and working with the tribes and coming up with the problems and protecting them.

Senator ABOUREZK. That is a good point and we appreciate that.

Mr. DELLWO. I have represented the tribes for a period of 20 years. It is a privilege to appear with the Yakimas, we have appeared with them many times during the years. They mentioned they are the cradle of irrigation, they are also the cradle of litigation and we appreciate the antonym case.

I want to retain, if I can, Mr. Chairman, the privilege of within a week filing a written statement which I do not have prepared today, but will mail it in and suggest amendments to this bill somewhat along the lines of what Mr. Hovis and Mr. Jim has suggested.

Senator ABOUREZK. Without objection your statement, when it arrives, will be submitted in its entirety in the record.

STATEMENT OF ROBERT DELLWO, LEGAL COUNSEL, YAKIMA TRIBAL COUNSEL

Mr. DELLWO. I will restrict my comments to a few overviews. I want to mention at the present time the Spokane Tribe is in the middle of the *Chemakum Creek* case. It began 5 years ago and it was just filed a year ago through a campaign within the Department of Justice.

At the present time there are two lawyers in my law office and there are four other counsel representing the United States working on the *Chemakum Creek* case which emphasizes the complications of a simple water rights case of a small tribe in the Northwestern part of the United States.

I think our view on this bill is let's get started. If we can have a single amendment, just one amendment which will retain the responsibility of the Justice Department. Let's get started even with 15 people, because we know the demands of the situation will exemplify everything that Bob and Jim has said, that it will have to be enlarged and increased to cover the problems of the tribes. They will be satisfied with work before they even get started. But we must retain the responsibility of the Justice Department.

In our experience in representing three tribes, I think we can keep an assistant U.S. attorney busy all the time in our particular district, working on the routine day by day trespass and other resource questions the flow of routine cases goes in which there is no real conflict of interest.

For example, the other day the Spokane Tribe enacted a hunting and fishing program to enforce the hunting and fishing rights of the Spokane Tribe on Roosevelt Lake. We are looking to the Justice Department and the local court commissioner and the U.S. attorney to help us enforce that. The tribe does not have the resources to do so.

Let me mention two other things. The main reason I am in Washington at the present time is because of an opinion the Solicitor's Office is producing regarding the rights of the tribe and Roosevelt Lake behind the Grand Coulee project. We have an advocate in the Solicitor's Office who is working on this opinion. Yet, this opinion is not available to the tribes, even in its birth and consideration, until it has been circulated to who we consider the enemies of our potential case, namely, the Bureau of Reclamation, the Army Engineers, the Park Service, and so forth.

In other words, you can have an advocate in the Solicitor's Office, yet he himself is under the control and discipline of his supervisors. The opinion he has produced and drafted is not available to us until it has been circulated, passed the Bureau of Reclamation and the Park Service who are the adversaries in the eventual case.

This demonstrates the conflict of interest within the Department.

Let me point out one other thing that I do not think has been mentioned by any previous witnesses. We have a situation of a Trust Counsel that will be saturated with work on behalf of Indians even before they start up. Let's work through the tribal governments and the established counsels and protect the tribes from so-called aggrieved parties known as disorganized groups or critic groups within the tribe taking over in effect, a large part of the resources of the Trust Counsel in embattling the tribes themselves in litigation in which the Trust Counsel could conceivably be representing two dissident groups within the same tribe.

As the act now reads, it would be definitely possible for any aggrieved member of any tribe to solicit and obtain the services of the Trust Counsel in litigation against the tribe itself. I think this should be eliminated, I think the Trust Counsel should work only, in cases of that kind, on the side of the tribe and at the request of the tribe.

The balance of our remarks on behalf of the tribes we represent and of other Northwestern tribes we will cover in a written statement which we will provide within a week, Mr. Chairman.

[Subsequent to the hearing Mr. Dellwo submitted the following:]

DELLWO, RUDOLF & GRANT,
Spokane, Wash., May 14, 1973.

Re S. 1339, Spokane, Coeur d'Alene and Kalispel Indian Tribes

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

DEAR SCOOP: When I was in Washington, D.C. I testified orally in the May 8, 1973 hearing of the Indian Subcommittee on S. 1339 in behalf of the tribes I represent, the Spokane Tribe of Washington, the Kalispel Tribe of Washington and Coeur d'Alene Tribe of Idaho. At the conclusion of my testimony I was encouraged to file a supplemental statement for inclusion in the record. Would you please consider this letter my supplemental statement.

Oral and prepared testimony of the Yakima delegation, James Hovis, their attorney, and myself did, I believe, when taken together, constitute a complete and fair presentation of the qualified support of the Yakima Tribe, the Tribes I represent and in fact most of the Tribes of the Northwest, of S. 1339.

The Tribes support the proposal of the Indian Trust Counsel Authority with two important qualifications. They are:

1. Section 8 of the Bill, as well as Section 9, provides that the "Authority with the consent of an aggrieved Indian, Indian Tribe, band or identifiable group of Indians" is authorized to render legal services or initiate and prosecute to judgment actions for the "protection, preservation, utilization, conservation, adjudication, or administration of natural resources, etc."

As drawn, any aggrieved Indian or identifiable group within a tribe or reservation would be entitled to this legal representation.

The tribes I represent and, I believe the various tribes of the Northwest, object to this provision unless, in those instances where the "aggrieved Indian" or "identifiable group" has a matter involving tribal and general reservation resources, rights, etc., they would be required to have the consent of the tribe in order to proceed with the Trust Counsel Authority.

We suggest the following amendments:

The first portion of Section 8 be amended to read:

"Section 8. The Authority with the consent of an aggrieved Indian Tribe or band or of an individual Indian or identifiable group of Indians (acting with the consent and authorization of the tribe if tribal rights or resources are involved) is authorized to render legal services, etc."

The first portion of Section 9 should be similarly amended.

My oral testimony dealt in some detail with the reasons for this proposed amendment. It is not realistic to expect that the Trust Counsel will be funded and staffed so that it can go out to the grass roots and begin representing thousands of Indians and "identifiable Indian groups" in countless controversies that arise from the inner politics of the various tribes. Almost every tribe has a "critic group" disagreeing with everything the elected governing body is doing and threatening reprisals of every nature such as lawsuits or recall elections. Without this proposed amendment the time and resources of the Trust Counsel Authority could become completely taken up with these tribal controversies.

Current laws and regulations as well as Bureau of Indian Affairs requirements have resulted in almost every tribe having a governing body which is elected by tribal members just as school board members, city councilmen, etc. are elected in non-Indian government. It has been an increasing policy of the United States Government to deal and work with tribes through their elected representatives and not to go behind those officials and represent dissident groups or rump organizations against or at the expense of the tribes. It is assumed that most of these problems are of a political nature, subject to recourse and correction at the ballot box in the annual tribal elections.

The Indian Trust Counsel Authority should follow the same policy of working through the elected tribal governments.

2. The last portion of Section 8 wherein it would relieve the Department of Justice of responsibility should be deleted. The tribes I represent and I personally agree with the amendments proposed by other tribal groups, including the Yakimas, re the deletion of this provision and the reasons for its deletion.

Our law firm is currently involved in litigation and administrative hearings and consideration in the field of Indian water rights. These actions, while pushed by the Tribes, are really the United States of America fulfilling its trust re-

sponsibility through the Office of the Solicitor and the Justice Department. It is the United States that is the principal plaintiff and the local and national resources of the Justice Department are active in support of the tribe. It would be calamitous if the Justice Department, with its conflicts of interest vis-a-vis the Bureau of Reclamation etc., could not only remove itself from our cases but effectively line up on the other side.

Also, these cases exemplify the fact that the Trust Counsel could not possibly fulfill the United States role as trustee in handling the mass of cases of this type. In the Spokane Tribe's Chamokane Creek case, the local United States Attorney, while not a water rights specialist, is extremely valuable in the local implementation of the case, calendar calls, motions, etc. and especially in pretrial meetings with the United States District Judge. We think this method of legal process should be retained and that the Trust Counsel should exist as an additional or supplemental resource, available to tribes but not at the expense of closing the legal assistance and support of the Justice Department.

Conclusion. The Spokane, Coeur d'Alene and Kalispel Tribes heartily support S. 1339 if the above suggested amendments are included. If they are not included, then I believe that on reconsideration these tribes and many others will oppose the bill.

Respectfully submitted,

DELLWO, RUDOLF & GRANT
By ROBERT D. DELLWO,

Attorneys for Spokane, Coeur d'Alene and Kalispel Tribes.

Senator ABOUREZK. I want to discuss, just for a minute, with any of you who want to talk about this. The legislation is not entirely clear with regard to which group or tribe or whatever it is you want to call them, shall be eligible for representation by the Counsel Authority. It is not delineated within the legislation. Have you read section 8?

Mr. DELLWO. Yes; that is a section that concerns me. In our tribes, any attorney that represents a tribe is familiar with the dissident groups within almost any tribe.

One of our neighboring tribes has been in the pendulum of determinations for years. There is a group that is bound to terminate that tribe if it can. This would be an identifiable aggrieved group of Indians that would be entitled under the law to have the Trust Counsel help terminate that group; to lead this tribe into litigation. This would be true of any tribe that I know of.

Senator ABOUREZK. Do you see this Trust Counsel Authority going beyond the tribal rights and protection of the Indian people? You are talking about a group suing the tribal council or the tribal chairman for some reason or another outside or beyond the protection of the trust rights?

Mr. DELLWO. I would say any conceivable case brought by an identifiable group would qualify because it would have to do with the natural resources of the tribe. Their conservation, their sale, their lease, their management. I think it would come squarely within the definition of the act. I think we could list hundreds of possible cases in which this could possibly be true.

Senator ABOUREZK. If there is a case that can be brought by any kind of a group, even a dissident group within a tribe, why do you want to limit those people from bringing a lawsuit?

Mr. DELLWO. You have to draw the line someplace and we have the body politic, the political system in which the Indians, through their votes, elect their tribal council and these are the responsible spokesmen.

For example, these men here representing the Yakimas would go through the elective process. Some way there has to be a determination of who represents the local Indians at the local level.

Senator ABOUREZK. What happens to the Indians if a recognized, solidly established tribal group, begins to exploit the land belonging to all the Indian people. How do you find a remedy to say you want to limit the right of those people?

Mr. DELLWO. I do not think the Trust Counsel is deemed to be the answer of everybody's prayers. I think it cannot possibly cover the field of Indian rights anyway. So let's eliminate that one section from the Trust Counsel.

Senator ABOUREZK. I would submit that in my experience in South Dakota, the tribes, in a great many cases, are the ones which exploit the Indian people. I know of one or two cases where the Trust Counsel could have come to the rescue of Indians, the members of the tribes as opposed to the chairman of the tribal council.

I do not know about your jurisdiction, but it represents a significant portion of the defense of Indian trust rights. That of protecting the Indians from the elected leaders themselves.

Mr. DELLWO. This is true of other segments of the American political scene which is a political question and should be resolved by the Indians themselves politically and judicially, if need be.

Senator ABOUREZK. How do they afford it if you are going to deny them the use of the Trust Counsel Authority?

Mr. DELLWO. My answer is I do not think the Trust Counsel can fulfill all of the needs of the Indians that cannot afford legal services. In this area, I think, the danger of the existing tribal government would be too great that the better practice would be to recognize the elected tribal government and not to involve a Trust Counsel in conflicts within the tribe itself.

I think that is where it should stop. It may be that in a hypothetical case there might be a dissident group who could not fend or afford legal counsel. I do not think the Trust Counsel can provide that. There are innumerable cases in which there are dissident groups which are well financed and the tribe is underfinanced. More often than not, it is the dissident group that has the alien group supporting it, an off-reservation group, which is threatening the existence of the tribe.

Senator ABOUREZK. Senator Bartlett.

Senator BARTLETT. On the point that you are making now, do you see any parallel here that might develop similar to that that did develop with the OEO legal aide group where attorneys would seemingly and, I think, in our area did attempt to become involved in politics and ideology, attempting to make laws and changes in the laws by case law rather than legislative, action in the legislature or the Congress.

Mr. DELLWO. We applaud that OEO program. We are familiar with it and have worked with it. I have a son who works fulltime as a lawyer in this kind of activity for a tribe in which he represents individual members, sometimes against the tribe. It is a need that should not be fulfilled by the Indian Trust Counsel.

We frequently have lawyers before the council working with an individual Indian on individual cause. Nine times out of 10 we can work it out. But in a case of real adversary proceedings, in which there is a dissident group, inimical of the tribe itself, I cannot see how the Trust Counsel can become a wedge within the tribe.

Senator ABOUREZK. At that point you say there is a need for somebody to represent individual members of the tribe or dissident groups in the tribe? There is a very real likelihood that President Nixon will soon abolish the legal aid program.

Mr. DELLWO. It would be a great mistake.

Senator ABOUREZK. I agree with that, but we have to face reality and it is very likely that he will do so and the Congress cannot override any kind of veto that he might place upon the continuation of that program. In that event, your suggestion would strip, very frankly, individual Indians, individual dissident groups, from having the legal sources to defend themselves at all against exploitation by members of the tribe or the Bureau of Indian Affairs.

Mr. DELLWO. There are other programs, hopefully this program will be retained. I might say in a single area requiring the services of three attorneys in one council, the Trust Counsel could not possibly fulfill this need anyway.

Our local bar association——

Senator ABOUREZK. I would like to know why they cannot? You keep saying that but you have not said why they cannot.

Mr. DELLWO. Well, you speak of 15 men, have 150 men working the Trust Counsel Authority and we will keep them busy on the legitimate questions of tribal resource protection.

Senator ABOUREZK. Then if we really wanted to do the job, wouldn't it be better to provide that many men than to restrict a great many people from utilizing the Trust Counsel Authority? That is like saying you are going to overload the court dockets. That is no real argument at all, if you provide legal services at all you are going to overload the dockets. That is no argument.

The purpose of the court is to provide some justice to the people. In this case, the Indian people.

Mr. DELLWO. We tried to explain that the purpose of the Trust Counsel is within the purposes of the tribal council. Now you are proposing a Trust Counsel that will have a conflicting interest within a tribe.

In other words, you are working yourself out from the national conflict of interest level, you are working yourself out of that into an internal conflict of interest level.

Senator ABOUREZK. There has been some discussion in the last 2 days here that in the event of a conflict between two tribes or two groups within a tribe, that the Trust Counsel Authority provides independent counsel by contract to those two conflicting groups rather than the counsel itself trying to represent one or the other. I am going to yield to Senator Bartlett, he has to leave and he has another question he would like to ask.

Senator BARTLETT. In the testimony of Mr. Jim, I was impressed with it and you gave some very good reasons for wanting a different provision for providing legal counsel for Indians. There were good reasons, conflict of interest and lack of interest.

I was surprised that with those reasons you still want to have the Justice Department involved?

Mr. JIM. Well, Mr. Bartlett, I think with regard to Mr. Abourezk's point, also, that they are the other side. They represent the United States of America. The other signers to our treaty ratified by the

U.S. Senate and signed by the President Buchanan. Now, they have a responsibility when they took on that treaty because they took over our land. So the treaty to us means that.

Now, built within the Department of Justice they have their conflict of interest. However, we cannot find a better ally to have with us than the highest and best legal Department in the world, the U.S. Department of Justice.

Now, let me take an instance, this was what they call—the chairman was talking about the conflict of interest of two parties within a tribe. Now, this is easily solved in the Yakima Nation. If they do not like me in office, they will vote me out and they will put somebody in there that carries the majority and will be the official elected officer. But let me tell you, dissident groups subsidized by outside interests who want to steal the \$1,300,000 Yakima Nation has taken us to court at least twice, twice to the Ninth Circuit Court and once to the Supreme Court of the United States, once on enrollment to allow anybody to be enrolled under the 1946 act passed by your Congress.

The second time, the Department of Justice, along with the State of Washington, was going to condemn and make an interstate highway across the tribal lands of the reservation and we had only one attorney versus the Justice and the State and we were able to stop them. They cannot condemn tribal lands today, regardless of who they are.

Senator BARTLETT. I would like to just ask a question or no question to get a feeling on how you gentlemen feel.

If you have a choice between trying to improve the Justice Department in some way to better handle your cases, or this Trust Authority with amendments, which would you rather have, the Justice Department or a Trust Authority set up as a separate legal entity under the leadership of at least the majority of Indians?

Mr. JIM. Well, we would rather have the Trust Authority that could tell the Department of Justice how to protect us. Because today they make up their own minds. Now we would like to have somebody tell them that they have an obligation. We did not give this country away for nothing, you know.

Mr. HOVIS. One of the things of it is—

Senator BARTLETT. If you don't mind, I have to go, I am curious as to whether you would rather see a separate trust counsel set up as legal counsel or would you rather see something done in the Department of Justice to make it better.

Mr. DELLWO. If the bill relieves the Justice Department of all responsibility in this field, we would oppose the bill and would rather have the status quo.

Senator BARTLETT. Is that also your opinion?

Mr. HOVIS. Yes, that is the opinion of the Yakima Nation.

Senator BARTLETT. Thank you.

Senator ABOUREZK. Thank you, Senator Bartlett.

Mr. JIM. Might I get back for the record to have Mr. Cloud make his statement?

Mr. CLOUD. Mr. Chairman, I know we have consumed considerable time already, but I would like to concur with the statement presented

before the committee and I think it is of great importance. I think all the points have been covered and I would like to say as a member of the official delegation to the Washington, D.C. area, I support the statement.

Senator ABOUREZK. Thank you very much.

STATEMENT OF JOHNSON MENINCK, TRIBAL MEMBER, YAKIMA TRIBE

Mr. MENINCK. Mr. Chairman, I believe that we have heard all of the testimony that was given here before the committee, and I concur with the statement, but further I want to say that anytime we have been delegated down here, we have elected powers, the powers that we carry is the powers that is recognized in our membership roles. We have to be a member of a particular tribe before we are elected into this position and a spokesman for the people we represent.

Now, I recall the question of why the Trust Counsel could not really solely protect us is because we do not hire or elect anybody who is not a qualified member of the tribe and he must be known to live on that reservation and have a quantity of blood that qualifies him to be a spokesman for the people he represents.

This is the reason why these internal matters can only be settled in that tribe and I do not think there should be a responsibility of that tribe to interfere with that problem until the spokesman has come up and expressed his feelings. But there is also a position in the tribe itself, the constituent takes the position they can impeach a person or recall them. So, this is one of the points that was missing and I have nothing else to say except thank you for the opportunity.

Senator ABOUREZK. What if an elected tribal council, the majority of the council, started dealing away water rights or mineral rights or grazing rights, or whatever else might be connected with the land that belongs to all of the tribal members and what if the election isn't until a year away? What if somebody came around and paid off the members of the council or the tribal chairman and bribed them or whatever? If you don't allow individual members to have access to the Trust Counsel, what remedy do they have?

Mr. MENINCK. Well, they have a remedy, we have an age bracket for voting of 18. All people over age of 18 can circulate a petition and get 25 signatures to start a process and get the general council underway, an emergency council if there was a great need for this particular matter. We just can't take any cases at all.

Like you say, there was a sell out, OK, this is a great need.

Senator ABOUREZK. What if you cannot prove the sell out unless you go to court and have some attorneys? I know how the allegations go on a reservation. Somebody gets charged with something and the guy who is charged denies it, that is natural. What do the people know? We are just taking a hypothetical case which, by the way, happens quite often.

Mr. MENINCK. Well, I think you charged a difficult situation there. First you are talking about the elected officials beyond such matters as was a tribal matter. Now you are talking about the conduct of a person, is that it?

Senator ABOUREZK. I am talking about the trial officials selling out the trust rights of an entire tribe. Just say this is happening, it is alleged by dissident members of the tribe but they cannot really prove it, they don't have the means or resources to prove it and the impeachment process will not work because many people don't believe what they charge. The only real remedy is to bring a lawsuit and make an effort to prove the sell out, the dealing away of the trust rights or water rights or whatever their rights might be in the land.

The only way to do it is through a lawsuit, there is no other way of doing it. What you are advocating is that those rights essentially be taken away from the individual members of the tribe. If you take away the right of an attorney provided by the Trust Counsel Authority, you have taken away their right of remedy against the tribal council itself.

Mr. MENINCK. All right, I will leave that to Bob Jim to answer.

Mr. JIM. Mr. Chairman, the question you posed was partly answered by Mr. Meninck. If I were to sell out our tribe or dispose of our water rights or fishing rights or other things, because I am under oath when I am elected, I have taken an oath to support the treaty rights, et cetera, of my tribe, 25 members of my peers who are my Yakima Nation enrolled members over 18, 25 members can have a recall petition, they can call a general council, a meeting and then if they convince the majority of those people with their statement in that meeting, they do not need a court in our case, that is law. They don't need a court. They go before our people, submit their charges and then if they convince a majority, then it gives me 15 days to respond to that. I respond in 15 days and then it is up to the tribe. But too many instances, like the time we spent good tribal money defending ourselves. Too many instances people over in Tacoma or Portland or Seattle, away from the reservation, will try to speak for us or come here to Washington, D.C., to testify against the official delegation or try to sell out the tribe.

When a Puerto Rican, for instance, is in Puerto Rico, he can vote for that Government and he can elect the officials. But when he ends up in New York and a bunch of them getting together, they don't speak for Puerto Rico. That is why we say elected officials who come up for election regularly respond and speak for the tribe.

Senator ABOUREZK. I am afraid you missed my point, Mr. Jim, but I won't pursue it any further.

Mr. HOVIS. I would like to make one comment. Who does the United States have the Trust with? They have the Trust with the tribe, not with the individual Indian.

Senator ABOUREZK. Well, it is all the Indians. The case just decided in California has stated that, as a matter of fact. Even though the Bureau of Indian Affairs has attempted to restrict it to reservation tribes, it has been expanded.

Mr. HOVIS. But the case that just came down on March 27 talked about the inherent sovereignty of this group and reiterated that which was decided in 1879. The responsibility, the sovereign is the one that the United States has the responsibility to. The Bureau of Indian Affairs may have responsibilities with individual Indians, but the Trust relationship, because of existing legislation, the Trust relation-

ship is between two sovereigns. The treaty relationship is between two sovereigns.

Mr. Jim was talking about the case of Puerto Rico, for example. Within this committee the United States has a relationship with Puerto Rico and they deal with the Puerto Rican Government. But when the people of Puerto Rico go up to New York, then they are dealt with with other concerns, with HEW and so forth and so on.

I think this is one of the other things which we don't want to bite off for this committee more than it can chew. We spend an awful lot of time with brush fires that go on that hamper positive programs and if you allow the Trust Counsel to get into that they will be spending a lot of time on brush fires rather than establishing some of the rights for the tribe.

Senator **ABOUREZK**. I have one or two comments to respond to that.

This is an interesting discussion and I hope you take it as that. Brush fires are perhaps necessary in a democracy such as we have. If you do not allow brush fires you soon have a forest fire. If you don't backfire something you are going to burn the whole forest down and that is what we want to try to prevent.

That is the purpose of all of this activity we are engaging in now, I assume.

Second, I am very much opposed to the idea myself of saying once you have elected somebody, then you blindly go along with everything he says. I think the recent Watergate scandal will point out better than anything I can say that you ought not to do what I just suggested, as some people think we ought to do.

In other words, the suggestion is now, and I am not saying the President had anything to do with the coverup or anything, I don't know that. The evidence is going to come out later on. But you have people saying, such as Secretary of Defense Laird, that even if we do find that the President is guilty, we should not know about it, we ought to let it go, we ought to be blind, we ought to continue to be sheep. I am not sure that is part of the representative democracy we want to pursue in this country.

But if I read your testimony correctly, that is what you are suggesting. You elect the tribal counsel and let him do anything he wants to to the people. That is like saying let Mr. Nixon do anything he wants to to the people because he is elected. I do not believe that.

I come under a lot of criticism in my state when I do something and I should. But I defend myself when it is false criticism.

Nevertheless, that ought to be retained. I do not think it is proper to cut off people from money for their resources or legal help or whatever it is. Now, that is my speech for today and I want to thank you for your testimony.

Mr. **MENINCK**. I have one question. You said for all Indians, but how do you determine who is an Indian? Do you have a roll system or census system or fingerprint?

Senator **ABOUREZK**. That is the only way that has been determined, who has been enrolled and if he has any kin of blood quantum at all. There is no statutory definition, as far as I know. Do you know of any?

Mr. **DELLWO**. Most lawyers have a definition. Perhaps this proposal should be amended to have a definition.

Senator ABOUREZK. Not a definition of an Indian, no. A definition of who might be eligible, yes.

Mr. DELLWO. That is what I say, yes.

Mr. JIM. If there is nothing further, we want to thank the committee for the courtesy and opportunity to appear before you.

Do I understand now you are going to add immunity here, too, for the tribal chairmen?

Senator ABOUREZK. As I take it, that is what you are asking for. I have no power to grant immunity.

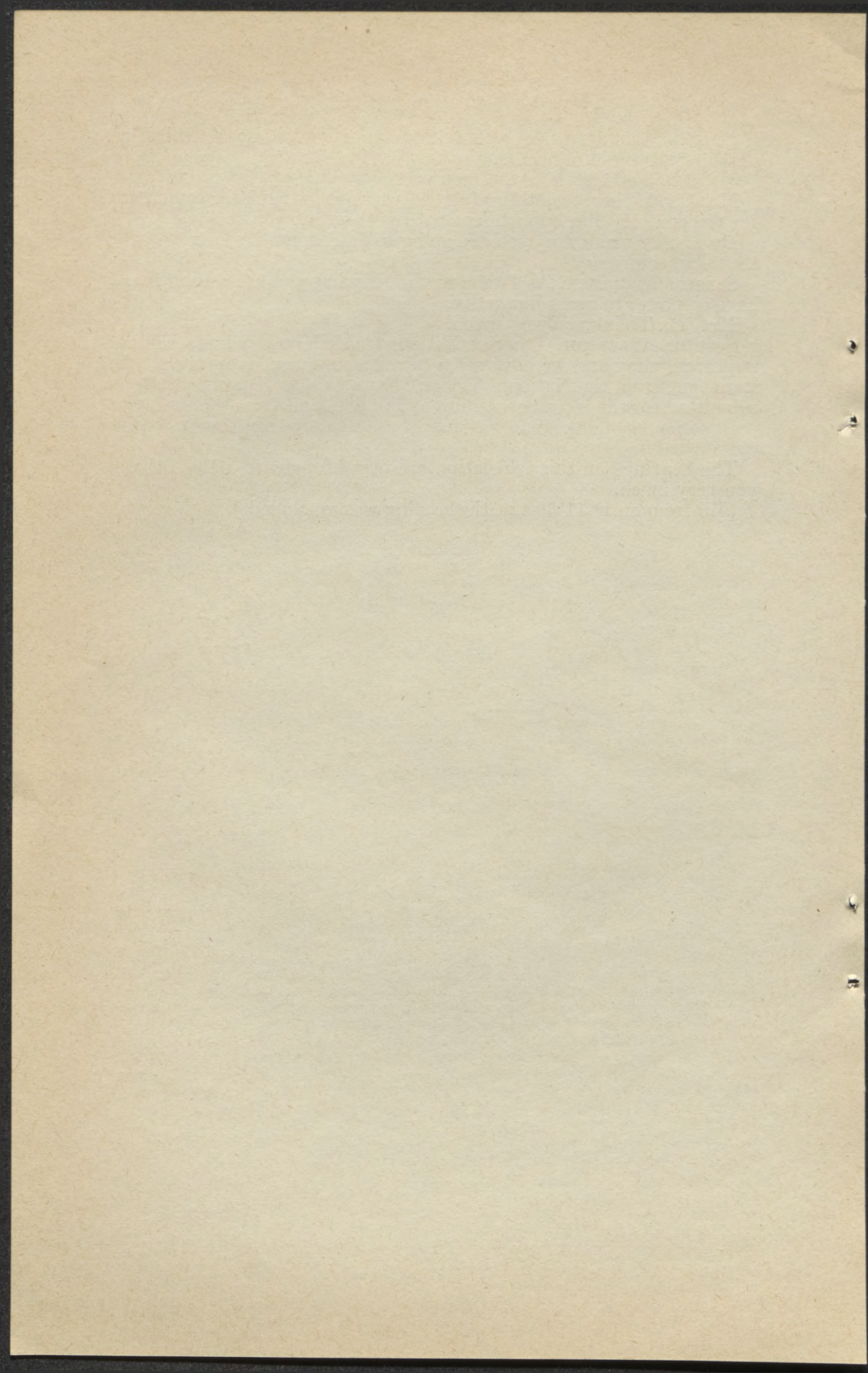
Mr. JIM. Thank you very much.

Senator ABOUREZK. The Six Nations Confederacy witness has not appeared today and we have not received a statement from them. The statement from the National Tribal Chairman's Association has been submitted for the record or will be, as I understand from the staff.

[The material referred to above was not received in time to be incorporated in the record.]

The hearings on this legislation are now brought to a close, thank you very much.

[Whereupon, at 11:50 a.m. the hearing was concluded.]



APPENDIX

[Under authority previously granted, the following statements and communications were ordered printed:]

WILKINSON, CRAGUN & BARKER,
Washington, D.C., May 15, 1973.

Hon. JAMES ABOUREZK,
*U.S. Senate,
Washington, D.C.*

DEAR SENATOR ABOUREZK: By this letter, we wish to present the views of this law firm on S. 1339, a bill to provide for the creation of the Indian Trust Counsel Authority. A similar bill, S. 1012, is also before your subcommittee, but our comments refer only to S. 1339.

For more than 35 years, our firm has been involved in representing American Indians, Indian tribes and Indian organizations. We now represent 21 Indian tribes in claims against the United States, four Indian tribes as general counsel—the Three Affiliated Tribes of the Fort Berthold Reservation, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, the Arapahoe Tribe and the Quinault Tribe—and the Hoopa Valley Tribe as special counsel. We are also general counsel to the National Congress of American Indians and to the NANA Regional Corporation, Inc. (of Alaska). We believe that our long contact with Indians and Indian tribes, our interest in their welfare and our daily observations of the problems the United States government has experienced in serving as trustee for the Indians especially qualify us to comment on S. 1339.

We write this letter to support the concept of an Indian Trust Counsel Authority or some similar organization which will be able to provide legal services for Indians and Indian tribes both in the policy-making area and for those Indians or tribes unable to obtain legal representation through usual channels because such individuals or tribes may not have funds to allow them to retain attorneys (and may have just causes where contingent fee arrangements are impossible or impracticable), so that valuable property rights allegedly owned by such individuals or tribes will not forever be lost because of inability to obtain legal representation.

Few of us doubt that the United States, as a government and as a people, is interested in the welfare and advancement of the American Indian. The main problem, as in the case of much public administration, is failure to translate that feeling of interest and concern into effective action by the persons and the agencies responsible to act for the United States and its people. Sometimes, immediate pressures of conflicting interests within the government prevent effective action. Some of these conflicts of interests exist in the very structure of the government agencies charged with protecting the interests of Indians. President Nixon noted this anomaly when he proposed legislation such as that now before this Committee. In his July 8, 1970 message, he said:

"The United States Government acts as a legal trustee for the land and water rights of American Indians. These rights are often of critical economic importance to the Indian people; frequently they are also the subject of extensive legal dispute. In many of these legal confrontations, the Federal government is faced with an inherent conflict of interest. The Secretary of the Interior and the Attorney General must at the same time advance *both* the *national* interest in the use of land and water rights *and* the *private* interests of Indians in land which the government holds as trustee.

"Every trustee has a legal obligation to advance the interests of beneficiaries of the trust without reservation and with the highest degree of diligence and skill. Under present conditions, it is often difficult for the Department of the Interior and the Department of Justice to fulfill this obligation. No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute; yet the Federal government has frequently found itself in precisely that position. There is considerable evidence that the Indians are the losers when such situations arise. More than that, the credibility of the Federal government is damaged whenever it appears that such a conflict of interest exists.

"In order to correct this situation, I am calling on the Congress to establish an Indian Trust Counsel Authority to assure independent legal representation for the Indians' natural resource rights. . . ."

As indicated in that statement, if a law firm or a bank or trust company sought to represent clients with conflicting interests, there would be justifiable public criticism. Yet, our governmental agencies undertake to represent conflicting interest in the field of Indian affairs on a regular and continuing basis. As a government function it seeks to advance the national interests and, at the same time, it undertakes to be trustee and protector of the American Indians. Often, the interests of the Indians in the preservation and enhancement of their natural resources are in direct conflict with the programs, proposals and the objectives of the Bureau of Sport Fisheries and Wildlife, the Bureau of Reclamation, the Corps of Engineers, the Forest Service or other government agencies. Most of these functions are under the supervision of the Secretary of the Interior who is also charged with the primary responsibility of being guardian and trustee for the Indians.

The lawyers representing the government are usually in the Department of Justice. These lawyers are charged with the responsibility of defending the United States in litigation. At the same time, they have a responsibility to guide legal policy and represent the United States in carrying out its duties as trustee for the Indians. In many circumstances, this places the Department of Justice in an almost untenable position.

We well remember one glaring example of the conflicts which frequently face government lawyers. When we became general counsel for the Klamath Indian Tribe more than 25 years ago, we undertook a study of the past dealings between the tribe and the United States. We became aware that the United States, near the turn of the century, had granted to the California-Oregon Power Company (COPCO) permission to build a dam on a river which had long furnished valuable salmon to the Klamath Tribe. The permission was accompanied by a requirement that adequate fish ladders be installed so that the Klamath Indians would not be deprived of their supply of salmon. The ladders did not operate effectively from the beginning or soon became inoperative.

It was too late for the tribe to sue because it would be faced by a defense based on the statute of limitations. That statute would not apply against a suit by the government on behalf of the tribe. We requested that the government institute such a suit asking for money damages and installation or repair and maintenance of adequate fish ladders. The Department of the Interior agreed and requested that the Department of Justice proceed. A capable attorney was assigned to the case by the Department of Justice and he spent considerable time in preparation of background material and a complaint to be filed in appropriate federal court. We made our research available to him and cooperated in all possible ways. However, the case was never filed because the Department of Justice at that time came face to face with cases where it was on the other side—tribes were suing the United States for loss of fish and fishing rights arising from construction of dams by the United States. Anyone can appreciate the inconsistent position forced on the Department of Justice if it pursued the COPCO case. It would be asserting a principle and measure of damages in that case directly contrary to its assertions in the other cases. Thus, the trust obligation owed to the Klamath Tribe was buried by the weight of government self-interest.

This is but one example. There are others, and there will always be others so long as the United States remains in the conflicting position in which it now finds itself.

WATER RIGHTS

President Nixon gave prominence to protection of Indian water rights. Over the years, the Indians have felt it most urgent that their rights in the waters of

western streams be asserted and established. Economically, there is no more valuable commodity than water in the arid west. The Indians have felt that the United States, as their trustee and guardian, has failed to act adequately to assert and establish the water rights which were recognized by the Supreme Court of the United States in *Winters v. United States* (207 U.S. 564 (1908)). Many of us have watched with amazement, for many years, as the United States has allowed opportunity after opportunity go by to protect the Indian water rights. This was especially true in the early phase of the Colorado River litigation.

All competent observers realize that the Secretary of the Interior, the Cabinet officer charged with administering Indian affairs, is the umpire of a tug-of-war in his own department. The Bureau of Indian Affairs frequently with commendable zeal, tries to protect the interests of the Indians (including their water rights), but the Bureau of Reclamation, has, as its mission, the development of reclamation and irrigation projects, many of which require that Indian water rights be strictly limited to those which are economically feasible as determined by the Bureau of Reclamation. We don't read this limitation in the *Winters* case. But it is only reasonable to ask how the trustee may act fairly amid such conflicts.

S. 1339

S. 1339 would create a separate entity outside of the Department of the Interior to promote the rights, claims and interests of the Indians in their natural resources, unfettered by the other programs, aims and ambitions of the agencies and bureaus within the Department of the Interior. An earlier, identical version of this bill in the last Congress elicited much discussion and constructive criticism from the Indian community. S. 1339 is still in need of the same modifications suggested then.

Rather than burden you with a lengthy discussion of the bill and its various provisions, which will undoubtedly have been covered by others, I will move immediately into the areas of the bill which we believe should be amended to have the bill fulfill the needs of the Indians.

We have attached, as Attachment A, a list and explanation of four technical amendments which we believe should be made for purposes of clarification.

More major amendments which we feel should be made are as follows:

SECTIONS 8 AND 9—POWERS AND DUTIES OF THE AUTHORITY

Our suggestion involves extensive changes in language and the exact means by which the Authority will accomplish the purposes for which it is to be established. Sections 8 and 9 are the meat of the bill, outlining the exact services and functions the Authority may perform in carrying out its purpose—the preservation and protection of Indian natural resource rights. We believe that the plan proposed by these two sections is somewhat confusing.

Section 8 authorizes the Authority to perform "legal services," and Section 9 authorizes it to sue "for the protection, preservation, utilization, conservation, adjudication, or administration of natural resources or interests" had or claimed. We remain unsure why the Administration thinks that the two sections are necessary. We interpret Section 8 as authorizing the Authority to take over the role of the Departments of Justice and Interior in the area of the protection and preservation of Indian natural resource rights, as the lawyer for an Indian tribe or individual, for the purposes of prosecuting claims and urging Indian interests against third parties. In other words, one role of the Authority would be to replace the Departments of Interior and Justice in rendering legal services involving private parties or corporations, states, their officers or employees, to Indians and Indian tribes on claims to and rights in natural resources, especially where a governmental policy might affect the judgment of the Secretary of the Interior or place him in a conflicting position.

We see the role of the Authority under Section 9 as that of an adversary against the United States or its departments or agencies, states or subdivisions thereof, or corporations, public or private. In this role, the Authority will bring legal actions on behalf of Indians or Indian tribes, often in opposition to the Department of Justice.

We believe that both the language of the two sections and the existence of the two separate sections outlining the duties and powers of the Authority lead to unnecessary and undesirable ambiguities. For example, from those sections it is unclear whether the Authority may bring suits against third parties for money

damages. Since Section 10 authorizes suits against the United States pursuant to 28 U.S.C. §§ 1346(a) (2) and 1491, it would seem that the Authority may sue the United States for money damages. This uncertainty should be clarified. The amendment we have suggested would permit suits for money damages only if the suit meets the standards set out in the amendment.

Another ambiguity arises because neither Section 8 nor 9 makes clear the scope of power the Authority has to preserve and protect Indian natural resource rights. For example, is a suit for a tax refund from a state a suit for the protection and preservation of Indian natural resource rights as defined in the bill? We think not. We believe that very few cases involving claims for money damages are actually for the preservation and protection of natural resource rights of Indians as the term is used in the purpose clause of the bill. A claim for money damages usually arises when a resource has been lost, not for its protection or preservation. Moreover, the need for the Authority may not exist in a suit for damages. In such a case, a fund will or may be produced and may serve as a basis for employment of private counsel on a contingent basis.

Finally, the bill does not make clear whether the Authority may defend suits, or intervene in actions in the name of the United States. The bill does provide that the Authority may sue in the name of the United States. We believe that the Authority should be permitted to "act" in the name of the United States in prosecuting, defending and intervening in suits for or relating to Indian natural resource rights. For example, pursuant to the recent decision of the Supreme Court in the *Eagle River* case, some western states may attempt to force Indian tribes to enter state proceedings allocating water rights. In these situations, pursuant to 43 U.S.C. § 666, the United States will enter on its own behalf. However, the Authority should be permitted to enter on behalf of the Indian tribes in the name of the United States, since the United States holds the tribes' water rights in trust.

In an attempt to clarify some of these ambiguities, to define clearly the powers of the Authority and to focus more definitely on the areas in which the Authority should exercise these powers, we suggest that Sections 8 and 9 be amended to read as follows:

"Sec. 8. The Authority, with the consent of an aggrieved Indian, Indian tribe, band, or other identifiable group of Indians, acting either in the name of the United States, in the name of the Indian or tribe, or in its own name, is authorized to render all legal services, now authorized to be rendered by the Department of the Interior or the Department of Justice, necessary to preserve and protect natural resource rights of Indians, including, but not limited to, rights or claims of the Indians to natural resources, such as rights to land, minerals and timber; rights to the use of water; and rights to hunt and fish. The legal services authorized to be performed pursuant to this section, include, but shall not be limited to, the investigation and inventorying of Indians' land and water rights; the advocacy of the policy favorable to Indians within the executive branch; the initiation and prosecution to final judgment, in all courts of the United States, and of the States, against the United States, its departments, agencies, officers and employees, or against any of the States, their subdivisions, departments and agencies, or against persons and corporations public or private, all actions in law and equity for the protection, preservation, utilization, conservation, adjudication or administration of natural resources or interests therein had, or claimed by the Indians, including but not limited to, rights to land, timber and minerals; rights to the use of water; and rights to hunt and fish; the defense in any and all courts of the United States and States of all actions in law and equity which might affect claims or rights to resources owned or claimed by Indians; the prosecution and defense of appeals in all courts of the United States and of the States; and the institution of and participation in actions in any Federal, State or local administrative proceeding in order to protect the natural resource rights of Indians. The United States waives its sovereign immunity from suit in connection with litigation initiated by the Authority under this section: *Provided, however*, that in exercising its discretion in selecting the Indians and Indian tribes for whom legal services shall be rendered under this section, the Authority shall consider whether the Indian or tribe will be plaintiff, defendant, or intervenor; the nature of the right or rights, claim or claims, involved; the nature of the issue presented; the ability of the Indian or Indian tribe to afford or otherwise acquire legal representation; and whether the claim can best be brought in the name of the United States in the particular situation involved.

"Sec. 9. The legal services rendered pursuant to section 8, hereunder, shall in no way absolve the Department of the Interior and the Department of Justice of their responsibilities to the Indians, including those which derive from the trust relationship and any treaties between the United States and any Indian or Indian tribe: *Provided*, that in any case in which the Authority has undertaken to perform legal services for an Indian or Indian tribe pursuant to section 8 hereof and the Authority is opposing the Department of Justice, or the Department of Justice is in a position of conflict, the Department of Justice shall be relieved of its responsibility to provide legal representation for any Indians or Indian tribes involved in said suit: *Provided further*, that in determining the litigating position of the Department of Justice on any matter affecting the rights of Indians or Indian tribes, the Department of Justice shall consider and give due deference to the obligations of the United States deriving from the trust relationship and any treaties between the United States and any Indian or Indian tribe."

The suggested amendment is not as extensive as it appears at first blush. We have attempted to express more clearly the powers and duties of the Authority to fill the need we believe the bill attempts to fill. Based on the stated purposes of the bill and the transmittal letter from the Acting Secretary of the Interior, the services to be performed by the Authority relate to the protection of natural resource rights of Indians. The Authority would have the power to influence governmental policy in its assigned area of responsibility, free from conflicts of interest. It would be free from pressures exerted on decisionmakers now in the area of Indian affairs. In the appropriate case, it could undertake legal representation.

We understand that the Authority is not designed to become the source for processing claims for money damages on behalf of Indians and Indian tribes. We do not interpret the bill as intending to set up an agency to perform free legal services for all Indians and Indian tribes with respect to all of their legal problems. We interpret the bill as intending to fill the area which all seem to agree needs to be filled—the protection and preservation of Indian natural resource rights—both at the policymaking level and, if necessary, to represent the Indians in court.

There is an urgent need in that area. From a practical point of view, much of the litigation involved with Indian resource rights involves injunctions, declaratory judgments, and other nonrevenue-producing actions. Thus, a tribe without funds cannot retain legal assistance. Also, it is difficult or impossible for a law firm to take a case for injunctive relief on a contingent basis. Accordingly, in the past, Indians and Indian tribes without funds to hire counsel have been required to rely on the Departments of Interior and Justice to protect their claims to Indian natural resource rights, even through these Departments, who represent the interests of the government, often face conflicts with the interests of the Indians.

This is why there is an urgent need for an Indian Trust Counsel Authority or similar agency to represent strenuously and actively the Indian interests in these vitally important, but nonrevenue-producing, claims involving natural resources. The amendment would, we believe, help to assure that protection and preservation of Indian natural resource rights are the primary reasons for the existence of the Authority.

At this point we believe a caveat is in order. We believe that the worst course to follow to protect and preserve Indian natural resource rights would be to provide for the creation of a huge bureaucracy under the guise of "helping" the Indians. Our view of the Authority is that it would be an office of modest size staffed with capable men knowledgeable in the area of Indian law, not a new bureaucracy to carry the cross of Indian rights into courts all over the country. We do not believe that the Authority should be an institution to which all Indians may come to get legal representation on any and all grievances. The major role of the Authority should be to affect government policy and decisions on Indian resources by actively urging, free from conflict, the Indian point of view within the executive branch prior to any governmental action; failing that, litigation on a limited, selective and discretionary basis. If it is not made clear that the major role of the Authority is in the policymaking and nonrevenue-producing litigation areas, then the demand on the Authority for its services will be overwhelming and its effectiveness will be limited because it will be spread too thinly.

As the President noted in his July 8, 1970, message, the main function of the Authority would be to remove the conflict of interest with respect to Indians' resource rights out of the Departments of Interior and Justice and provide for the Indian an independent voice not influenced by other conflicting national considerations. We believe that this function can best be accomplished by making clear that the scope of power of the Authority, as far as litigation is concerned, shall emphasize the preservation and protection of Indian natural resource rights and not undertake claims for money damages unless the claim is deemed important and private counsel is not forthcoming. Thus, we believe the Authority should exercise a great deal of discretion in choosing which cases to litigate, for the Authority will be unable to institute every action which it is requested to bring to protect and preserve Indian resource rights.

This brings up the question of guidelines or standards to indicate to the Authority the intent of Congress which actions relating to Indian resource rights should be given priority. We do not believe that the discretion of the Authority should be unlimited. Because we believe that the Authority is not designed to perform all legal services for all tribes and that it will be constrained somewhat by its budget, we believe that the statute itself should contain some specific standards. As we note below, the insertion of standards also clears up the question of whether and in what limited circumstances the Authority can or should bring actions for money damages.

We believe that the standard should balance the potential benefit to Indians or tribes of a particular action against the ability of the Indian or tribe to obtain its own counsel in that action. Thus, the major considerations in the Authority's decision to accept a case should be the nature of the issue and the ability of the tribe to obtain its own legal counsel. For example, where the case involves facts and questions affecting only one Indian or tribe, the ability of that Indian or tribe to afford counsel or to have counsel represent it on a contingent basis, should be given great weight by the Authority in deciding whether to pursue the case. However, where the tribe can obtain its own counsel, but the issue involved may affect many tribes, such as an involved water rights question, then the Authority should be able to intervene to urge the position which is most beneficial for the Indians. The Authority should also be permitted to bring or intervene in suits for damages where a suit satisfies these criteria.

Another consideration is that often actions could only be brought under section 9 because the statute of limitations may have run against the Indians or tribe. When that situation exists, the Authority should be able to authorize a suit in the name of the United States and represent the Indian or tribe either alone or in conjunction with the tribe's counsel. The ability of the Authority to avoid the bar of the statute of limitations should, when relevant, be a consideration in deciding whether to accept a case.

The suggested amendment to section 9, also attempts to clarify the roles of the Departments of Interior and Justice. It exempts the Department of Justice from the trust responsibility in only those cases where it actually opposes the Authority or where it faces a conflict. We do not see a need to exempt either department from any trust responsibility merely because the Authority is acting as the arm of the government representing Indians in one suit.

The suggested amendment to the bill would authorize the Authority to act in the name of the United States in all instances, i.e. as intervenor or in agency proceedings, not merely as a plaintiff. In addition, the amendment permits the Authority to act in its own name or in the name of the Indian or Indian tribe.

Our proposed amendment also omits the language providing that any suit against the United States should be tried before a judge without a jury. When a jury trial is available and permitted under law, we believe the Authority should be permitted to choose whether to seek a jury trial.

Our last comment relating to our proposed amendment to sections 8 and 9 is that under section 9 as the bill is drafted, the Authority cannot initiate but may only intervene in "any Federal, State or local administrative proceeding in order to protect the rights of the Indians." Our amendment gives the Authority power to initiate such administrative proceedings. We believe the Authority should have this power.

SECTION 10—CLAIMS UNDER THE INDIAN CLAIMS COMMISSION ACT

The second major area which we feel needs amendment is to clarify the meaning of section 10. Section 10 provides that the Authority may not file, prosecute

or intervene in any action, claim or other proceeding against the United States relating to any matter as to which a claim has been filed or could have been filed under the Indian Claims Commission Act or any other special statute authorizing claims by Indians against the United States. However, as now drafted, it also provides that, "the Authority may *assist* any Indian tribe requesting such *assistance* in its claim pending before the Indian Claims Commission." (Emphasis supplied.) Confusion could arise because of the apparent inconsistency in prohibiting the Authority from "the filing or prosecuting of or intervention in any action" before the Indian Claims Commission, but permitting it to assist a tribe requesting assistance in its claim.

We will explain. All of the claims filed before the Indian Claims Commission do not relate specifically to the protection and preservation of Indian natural resource rights, but rather to money damages for past wrongs. Thus, such claims are really outside the Authority's bailiwick. However, experience has taught us that investigation of a present day dispute often reveals facts helpful in an "historical" Indian case. Thus, we suggest that the language following "*Provided, however,*" in section 10, be deleted and the following language substituted:

"*Provided, however,* That the Authority may work in conjunction with attorneys for tribes with claims pending which were filed pursuant to Section 2 of the Indian Claims Commission Act or any other special statute authorizing a claims suit to be brought by Indians against the United States and may freely exchange information with such attorneys, at the request of the tribe and attorneys."

SECTION 5—OUTSIDE COUNSEL AND EXPERTS

The third major area we feel should be changed to help in carrying out the purpose of the bill is an amendment to subsection (b) of section 5 to authorize the Authority to hire outside counsel and experts whenever it sees fit, not merely when there is a conflict in the interests sought to be represented. This will assure that the Authority will be able to provide effective representation. This is especially true in the beginning years of the Authority. Thus, we suggest that section 5(b) be amended to read:

"(b) The Board of Directors may, at the request of the Trust Counsel, hire special counsel and experts which it deems necessary to assist the Authority in performing its duties. The Board of Directors shall appoint and fix the compensation of such special counsel and experts as it deems necessary."

SECTION 2—BOARD OF DIRECTORS

Another amendment which we feel would strengthen the bill is the expansion of the Board of Directors to nine members, rather than three. This would reduce the possibility that political pressures would influence the operation of the Authority. For example, if two of the three members of the Board happen to be from the southwest, the Indians located in other parts of the country might feel deprived of adequate representation. We believe the Authority will more quickly capture the confidence of the Indians if the Board of Directors represents a more representative cross-section of the American Indian community. This suggestion would amend section 2(b).

SECTION 11—DOCUMENTS

Our suggested amendment relates to the Authority's ability to demand rather than request certain information, personnel, services or material it deems necessary to carry out its functions. As now drafted, section 11(2) merely authorizes the Authority to request services, etc. from other agencies. We suggest the following addition to section 11(2):

"*Provided,* That in any suit initiated or defended by the Authority, any letter, paper, document, map, or record in the possession of any office or department of the United States (or certified copies thereof) may be used in evidence, and the departments of the Government of the United States shall give full and free access to the attorney or attorneys of the Authority to such letters, papers, documents, maps, or records as may be useful to said attorney or attorneys in the preparation for trial or trials of such suit or suits."

This language is familiar to most attorneys dealing in the field of Indian law, for it appears in many jurisdictional acts. For example, see the Act of July 30, 1946, 60 Stat. 715, sec. 5.

We have one final comment regarding section 11(2). We believe the legislative history should make clear (or the bill amended, which we feel would be unnecessary) that under section 11(2) the services of the Department of Justice would be made available to the Authority in those cases where the Authority is taking the place of the Department, i.e., in all cases other than where the Authority is opposing the Justice Department. Some specific services are: (1) help from the United States attorneys in filing papers and pleadings; (2) detailing of Justice Department attorneys to assist the Authority on particular cases; and (3) assuring that the files of the Department of Justice are readily available to attorneys for the Authority.

PRENOTIFICATION PROCEDURE

Another suggestion relates to the addition of a section providing that the Authority be informed on any proposed action by any executive department or agency which might affect Indian natural resource rights. It is our experience that many problems which have resulted in long litigation could have been solved easily had all parties been informed of the proposed actions initially. Thus, to assure that the Authority is notified of proposed actions of executive departments and agencies, we suggest the following amendment:

"Sec. 12. Any executive department or agency of the United States shall, with respect to any proposed action which may affect or impair the rights or claims of any Indian, Indian tribe, band or other identifiable group of Indians to natural resource rights to land, timber and minerals; rights to the use of water; and the rights to hunt and fish within the United States' trust responsibility owing to the Indians:

(1) give notice to the Authority and to any and all affected Indians or Indian tribes, bands and groups of the proposed action; and

(2) afford the Authority and all affected Indians or Indian tribes, bands and groups a reasonable opportunity to submit comments upon the proposed action and, where an oral hearing is required by law or where the department or agency deems it appropriate to hold a hearing, an opportunity to participate therein.

Upon taking final action with respect to such proposed action, the department or agency of the United States involved shall give notice to the Authority and all affected Indians or Indian tribes, bands and groups of the final action taken."

The addition of this amendment would necessitate changing the present section "12" to section "13".

This pre-notification section would permit the Authority to urge independently the position most beneficial to the Indians at the policy-making stages of the decision making process and in our opinion go a long way to solving the conflict of interest problem without any litigation at all by the Authority.

Finally, we believe that adequate funding of the Authority is vital to the proper functioning of the Authority. As noted, in the dual role of the Authority, the key to the effective representation of natural resource rights of Indians will be the funds authorized and appropriated by Congress to support the Authority.

Sincerely,

WILKINSON, CRAGUN & BARKER.

ATTACHMENT A TO LETTER OF WILKINSON, CRAGUN & BARKER

MINOR SUGGESTED AMENDMENTS TO S. 1339

AMENDMENT TO § 2(B)

In Section 2(b), change "three" to "nine" so the section reads:

"The Authority shall be governed by a Board of Directors composed of nine members, to be appointed by the President by and with the advice and consent of the Senate."

REASON

We believe that this amendment will aid the Authority in more quickly gaining the confidence of the Indians across the country by permitting a greater

cross-section of representatives to be on the Board. The increase in number will also help insulate the Board from political pressures. This change requires a few other technical amendments. First, in Section 2(c), change "At least two" to "A majority," and second, in Section 2(d), change "three" in line 10, page 2, to "nine," and change "one" in line 11, page 2, to "three," and both times "one" appears in line 12, page 2, change it to "three."

AMENDMENT TO § 2(E)

In Section 2(e), add the words "Indian members of the Board of" between "the" and "Directors" on line 21, page 2, so the section would read:

"(e) The President shall designate one of the Indian members of the Board of Directors to serve as Chairman at his pleasure."

REASON

We believe that this amendment will also make the Board more responsive to the needs of the Indians.

AMENDMENT TO § 5(D)

Change Sec. 5(d) to read:

"(d) The Board of Directors shall, in the event of the possibility of a conflict of interest within the Authority in its activities under this Act, hire special counsel and experts, if necessary, pursuant to paragraph (b) of this section to assist or represent one or all of such potentially conflicting interests."

REASON

As the bill is now drafted, it seems that the Board "may" hire special counsel when there is a conflict between parties "requesting" assistance under § 8 or § 9. We believe that there should be no discretion and that where a potential conflict of interest appears, the Authority should immediately hire special counsel. If the Board has discretion not to hire special counsel where a potential conflict appears, the problem sought to be cured will be perpetuated.

Second, the mandatory language requires the other change in language so that the Board is not required to appoint special counsel whenever there is a conflict between requesting parties. The Board should not be required to appoint special counsel when it is requested to perform services, but decides not to undertake performance of them for some reason.

AMENDMENT TO § 10

Section 10 should be amended by adding sections 1362 and 1505 of Title 28 of the U.S. Code, so lines 23 and 24, p. 6, would read:

"... could be brought under the provisions of Section 1346(a) (2), 1362, 1491, and 1505 of title 28, United States Code..."

REASON

These additions merely make complete the sections of Title 28 pursuant to which tribes may bring suit against the United States. Section 1505 specifically identifies any tribe, band or other identifiable group of American Indians (including Alaska Natives) as proper plaintiffs. It is more or less a subsection under § 1491 and should be mentioned in the bill so that the bill is not interpreted as not authorizing the Authority to sue under that provision.

Section 1362 provides:

"The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States."

Under that section tribes may seek declaratory and injunctive relief in the district courts. This section should be included again so as not to permit the inference that the Authority may not sue under this section.

STATEMENT OF THE U.S. COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights supports in principle the creation of an independent Indian Trust Counsel Authority in the Executive Branch of the Government to carry out the United States' responsibility to represent Indians or Indian tribes in the assertion or protection of their natural resource rights. This statement will assess the need for an independent Indian Trust Counsel Authority, particularly as shown by the Commission's own investigations of the failure of the Federal Government to adequately protect the all important water right of Indians in the Southwest. The statement will also discuss the provisions of S. 1339 and recommend changes which the Commission believes will strengthen that proposal.

President Nixon described the need for an Indian Trust Counsel Authority in Message to Congress on Indian Affairs of July 13, 1970. The President stated:

"The United States Government acts as a legal trustee for the land and water rights of American Indians. [These rights are often of critical economic importance to the Indian People; frequently they are also the subject of extensive legal dispute. In many of these legal confrontations, the Federal government is faced with an inherent conflict of interest. The Secretary of the Interior and the Attorney General must at the same time advance both the national interest in the use of land and water rights and the private interest of Indians in land which the government holds as trustee.

"Every trustee has a legal obligation to advance the interests of the beneficiaries of the trust without reservation and with the highest degree of diligence and skill. Under present conditions, it is often difficult for the Department of the Interior and the Department of Justice to fulfill this obligation. No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute; yet the Federal government has frequently found itself in precisely that position. There is considerable evidence that the Indians are the losers when such situations arise. More than that, the credibility of the Federal government is damaged whenever it appears that such a conflict of interest exists."

The Commission believes that the existence of the conflict of interest in the Federal Government's protection of Indian natural resource rights is indisputably clear. The Department of Interior is not only charged with the responsibility to manage Indian affairs but is also charged with the often conflicting responsibility to administer the public lands, mines, fish and wildlife, reclamation projects, national parks, and the petroleum conservation on behalf of the United States. The Solicitor of the Department of Interior serves as both the attorney for the Bureau of Indian Affairs and to the Bureau of Reclamation and the Bureau of Land Management and other agencies of the Department of Interior whose interests conflict with Indian natural resources rights.

Such clear conflicts of interest also exist with regard to the Department of Justice. The Department handles the litigation of all Federal agencies. In this capacity it must act not only on Interior Department requests to undertake litigation to protect Indian natural resources rights but must also pursue recommendations from the same Department to litigate potentially conflicting issues on behalf of the Bureau of Reclamation and the Bureau of Land Management. The Department of Justice also represents other Federal agencies in litigation opposing the natural resources interests of Indians. In fact, the Department defends the United States against claims brought by Indians before the Indian Claims Commission.

The Federal conflict of interest in fulfilling the United States' trust responsibility to Indians is perhaps most apparent and most alarming when water rights are at stake. Water is all important in the West, particularly in the arid regions where many Indian reservations are located. The herds Indians graze, the crops they raise, and the recreational facilities they operate on their reservations all depend on water. In fact, Indians may continue to maintain and develop their tribal lifestyles only if their water rights are fully protected.

The Supreme Court has defined the extent of these rights. In *Winters v. United States*, 207 U.S. 564 (1908), the Court declared that when the Indian Tribes ceded their lands to the United States they retained the right to the use of sufficient water to meet their present and future needs. Unfortunately, the conflicting responsibilities of the Departments of Interior and Justice have often meant that Indian rights under the *Winters* doctrine have not received the full protection that the United States' trust responsibility requires.

The Commission on Civil Rights has recently investigated examples of the failure of the Federal Government to adequately protect Indian water rights. As

part of a nationwide study of civil rights problems of American Indians, the Commission conducted investigations in New Mexico and Arizona which culminated in public hearings held in November 1972 in Albuquerque, New Mexico, and Phoenix, Arizona.

Based on these hearings and investigations the Commission has prepared *The Southwest Indian Report* scheduled for release on May 14, 1973. Those portions of the report dealing with Indian water rights and the United States' trust responsibility are included as an appendix at the end of this statement.

In the *Southwest Indian Report*, the Commission made the following conclusions concerning Indian Water rights:

The ability of the tribes and the Pueblos in New Mexico and Arizona to ascertain the quantity of water to which they have a legal right is crucial to the development of reservation lands, the upgrading of life and in some cases the preservation of an Indian or tribal life-style. It is the responsibility of the Federal Government as trustee for Indian lands to protect these rights. This the Federal Government has failed to do.

The responsibility for the protection of Indian water rights rests largely in the Department of Interior. Much of the Federal responsibility for the development of a conflicting variety of water programs also rests with the Department of Interior. Although different bureaus within the Department are charged with these responsibilities, the conflict of interest is fundamental and usually operates to the derogation of Indian interests. The Department of Justice, which functions as the "government's lawyer," has a concomitant responsibility to Indians, a responsibility which is often severely compromised by similar conflicts of interest.

Testimony presented by Arizona and New Mexico Indians, as well as other witnesses, depicted the prolonged and unsuccessful efforts by Indians of this region to obtain a determination of their water rights by appropriate court or legislative action on the part of the Federal Government. In the meantime, the Southwest has undergone significant growth and development. This development has been based on water, water which might have been used to develop Indian lands. Unless Indians obtain a proper assessment of their water rights, continuation of this growth pattern will inevitably be accompanied by the further erosion of Indian rights.

The Commission's conclusions are based on numerous specific examples of the failure of the Federal Government to adequately fulfill its duties as trustee for Indian water rights. To execute its duty to preserve the property of the trust, the Indian water rights, the United States must do at least two things: (1) clearly identify and inventory the property which is the subject of the trust and (2) vigorously defend that property against any encroachment which will diminish the value or extent of the property. Testimony at the Albuquerque hearing by both Indians and representatives of their trustee, the United States Government, amply demonstrated that the trustee has not faithfully done either.

For example, Domingo Montoya, a Sandia Pueblo Indian who is a member of Six Middle Rio Grande Pueblo Irrigation Committee and was formerly Chairman of the All Indian Pueblo Council, testified that the Council forwarded a resolution to the Secretary of Interior and the Commissioner of the BIA requesting their assistance in inventorying New Mexico Pueblo water rights in 1965. Not until five years later in 1970 when Louis R. Bruce, then Commissioner of Indian Affairs, came to New Mexico did the Federal Government respond and apparently agree to undertake the task. But as of now a serious comprehensive study of the water needs of the Pueblo tribes has not been made.

Mr. Hubert Velarde, President of the Jicarilla Apache Tribe, testified that his tribe's attorney had written to the BIA in 1958 requesting an inventory. Mr. Velarde told the Commission that the tribe had never received an answer to the 1958 letter.

Testimony at the Albuquerque hearing also showed that it was only recently that the BIA provided funds (\$50,000) to the Confederation of Colorado River Tribes to do a study which would include an inventory of water. Likewise, the government only recently funded several central Arizona tribes to do a study of their water needs in order to make their case for water allocations from the Central Arizona Projects irrigation system.

In addition to examples of the United States failing to inventory the property for which it is trustee, the Albuquerque hearing also produced Indian allegations that the Department of Interior failed to act to protect Indian rights

because of direct conflicts of interest. Veronica Murdock, representing the Colorado River Tribes, described a situation involving the Fort Mojave Tribe. She alleged that the Bureau of Reclamation had originally made a commitment to the tribe to provide a block of electric power when the Parker Davis Dam Project was built. According to Ms. Murdock, the Bureau of Reclamation has not lived up to this commitment. The Tribe has attempted to get the Bureau of Indian Affairs to assert their interest against the Bureau of Reclamation. The Secretary of Interior has taken no action, however, and the tribe has received no word from the Bureau of Reclamation.

A striking example in which the government admitted that a conflict of interest prevented it from filing suit on behalf of Indian natural resource rights was provided by the testimony of Paul Smith, President of the Salt River Pima-Maricopa Indian Community Council. Mr. Smith stated that when a river made up the boundary to a reservation dried up, non-Indians moved onto Indian land. It took 20 years for the Indians to convince the Bureau of Land Management to survey the boundary. Then the Indians, their attorney, and staff from the Department of Interior's Solicitor's Office in Phoenix asked the Department of Interior and the Department of Justice to file suit against the trespassers. The Indians received a telegram from Interior's Assistant Secretary, Harrison Loesch, informing them that the Department would not recommend such a suit to the Justice Department. Secretary Loesch's telegram contained this shocking admission:

"I best [sic] agree that as far as the question of seeking damages from third parties ultimately resulting from a mistake in factual assumption that existed in this Department for decades is concerned, the situation appears to present a classic example of the conflict of interest which this Department has often faced . . ."

Based on the findings of its investigation and on the testimony received in its Albuquerque and Phoenix hearings concerning the inadequate protection of Indian water rights the Commission on Civil Rights included the following among its recommendations in *The Southwest Indian Report*:

"Congress should act favorably upon the proposal for the establishment of an Indian Trust Counsel Authority, or enact other appropriate legislation to establish a separate agency with the sole duty of preserving and protecting Indian property rights, including water rights, so that a conflict of interest in this area no longer prevails. *This agency must be guaranteed sufficient staff and funding to compete with the legal staff of the Interior Department.* (emphasis supplied.)"

The Commission on Civil Rights believes that enactment of S. 1339, the Administration's proposal to establish an Indian Trust Counsel Authority, would go a long way toward meeting the Commission's recommendation in *The Southwest Indian Report* and toward fulfilling the United States' trust responsibility. S. 1339 proposes a Trust Counsel Authority to be governed by a three-person Board of Directors including at least two Indians appointed by the President with the advice and consent of the Senate. The President would appoint the Chairman of the Board of Directors. The bill provides that the Trust Counsel Authority shall be free of control by any Executive Department. The Authority would be authorized to render legal services with the consent of an aggrieved Indian or Indian Tribe with regard to Indian natural resource rights. S. 1339 would absolve the Department of Justice from providing legal representation to Indians with regard to their natural resources but would not diminish the Department of Interior's or the Department of Justice's other trust responsibilities or treaty obligations.

Indian groups and Indian spokesmen have generally supported the administration's proposal. They have, however, expressed some reluctance and suggested changes in the bill. The Commission believes that this reluctance is quite understandable. Too often in the past Indians have accepted proposals which appeared to be in their best interests only to find that they were ineffectual or even detrimental when implemented. Too often they have seen Federal Indian policy fluctuate between the equally unacceptable extremes of termination and Federal domination. In establishing an Indian Trust Counsel Authority, the Congress should make all efforts necessary to allay this Indian skepticism.

The major reluctance to wholeheartedly endorse the Indian Trust Counsel Authority stems from Indian fears that the Authority may not be given adequate support to effectively protect Indian natural resources, particularly if, once the Department of Justice is relieved of its duty to represent Indian natural

resource interests, the Department and the Department of Interior should become active adversaries of Indian natural resource rights. Although S. 1339 provides that "nothing in this Act shall absolve the Department of the Interior and the Department of Justice of their responsibilities to the Indians, including those which derive from the trust relationship and any treaties between the United States and any Indian or Indian tribe," that provision alone will not remove Indian doubts. The Commission believes that the Congress should take two further major actions.

First, every conceivable effort must be made to insure that sufficient funds are appropriated to enable the Trust Counsel Authority to function effectively on an adequate scale. It would be a cruel deception to create a Trust Counsel Authority to represent American Indians, only through the budget process to strip the Authority of whatever resources it needs to do its job. Although S. 1339 cannot in its own provisions assure sufficient appropriations, the Subcommittee on Indian Affairs should make certain that the legislation clearly indicates a Congressional commitment to provide adequate funds for the Authority.

Second, the Commission believes that some guarantee should be provided that other legal representation will be available to Indians asserting their natural resource rights if the Authority is unable or unwilling to assert their claim. Section 5 of the bill does provide for the hiring of special counsel or experts, particularly in the event that the Authority receives requests for assistance from Indian groups whose interests conflict. The utilization of special counsel and experts, however, would be limited by the finite appropriation of the Authority. Two amendments to S. 1339 would help to further insure legal representation.

Section 8 of S. 1339 as presently drafted completely relieves the Department of Justice from its responsibility to represent Indians or Indian tribes with regard to their rights to natural resources. The Commission believes that this provision should be amended to leave a residual responsibility within the Department of Justice to represent Indians concerning their natural resource rights when requested by the Trust Counsel Authority. Such a residual responsibility would help to insure that the Department of Justice remained sensitized to its trust responsibilities and would provide for representation when the Trust Counsel Authority was for some reason unable to do so. In those instances where there was no conflict in fact between the interest which the Trust Counsel Authority was unable to represent and the other litigation duties of the Department of Justice, there should be no objection to giving the Department residual responsibility. However, even in those situations where conflicts of interest may be present it is preferable that the Department of Justice still have the duty to represent Indian interests rather than providing no representation at all.

Another change in S. 1339 which would help guarantee that Indians would not totally lose the opportunity to assert their natural resource rights if the Trust Counsel Authority were unable to represent them would involve amending Section 9. Section 9 includes the provision that the Authority may bring suit in the name of the United States as trustee for the Indians against the United States, its officers, and employees. The United States waives its sovereign immunity from suit in connection with litigation initiated by the Authority under the section. The Commission believes that this waiver should be extended to authorize suits against the United States brought by Indians or Indian tribes through their private counsel. Such a change would enable the Indians or Indian tribes to attempt to protect their natural resource rights at their own expense if the Trust Counsel Authority were unable to do so.

In addition to these changes the Commission on Civil Rights would recommend a number of other improvements in S. 1339 which would help the Authority more effectively fulfill the United States' trust responsibilities. These recommendations would include the following:

The Board of Directors of the Authority should be expanded with a majority of the Directors required to be Indian. By expanding the Board of Directors it will be possible to provide wider geographical and tribal representation in the control of the Authority and in so doing to reassure Indians that all of their interests will be represented.

Sections 8, 9, and 10 defining the powers granted to the Authority should be clarified to clearly indicate that the Trust Counsel may not only initiate suits on behalf of Indians against Federal, State and local agencies but may also defend actions, sue third parties for damages and other relief, and intervene

in both court and administrative proceedings in the name of the United States as trustee.

The authority should be explicitly authorized to appeal, defend, and intervene in cases before the Supreme Court in the name of the United States as trustee for Indians or Indian tribes. At present all litigation in the Supreme Court on behalf of Federal agencies is controlled by the Solicitor General. Unless the Trust Counsel himself can appear before the Supreme Court, the same conflicts of interest within the Department of Justice which in the past have prevented the full presentation of arguments in support of Indian natural resource rights will continue to block effective advocacy of Indian rights before the Supreme Court.

Section 11 of the bill should be amended to require departments, agencies, or independent instrumentalities of the Federal Government to comply with the Trust Counsel Authority's requests for information and materials it deems necessary to carry out its functions. Only if the Authority is provided with such materials as documents and technical information can it effectively engage in highly complex natural resources litigation.

A new provision should be added to S. 1339 to require that all Federal executive agencies considering any actions which may affect Indian natural resource rights notify the Trust Counsel Authority and afford it a reasonable opportunity to participate in the agency's deliberations. This provision would enable the Authority to resolve many issues without resorting to litigation.

The Congress should consider expanding the jurisdiction of the Indian Trust Counsel Authority to include the representation of the other natural resources trust responsibilities of the United States such as those to the inhabitants of the Trust Territories of the Pacific.

CONCLUSION

There is clearly an immediate need for the establishment of an independent Trust Counsel Authority to fulfill the United States Trust responsibility to protect the natural resource rights of American Indians. Too often in the past conflicts of interest have prevented the United States from meeting this duty. The United States Commission on Civil Rights supports S. 1339 as a step toward remedying this situation. The Commission hopes that its recommendations and suggestions for further strengthening the proposed Indian Trust Counsel Authority will be of assistance to the Subcommittee on Indian Affairs in developing truly effective Trust Counsel Authority legislation.

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, D.C., June 18, 1973.

HON. JAMES ABOUREZK,
*Chairman, Indian Affairs Subcommittee, Senate Interior and Insular Affairs,
New Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: We have reviewed S. 1012 and S. 1339, the two bills before your Subcommittee providing for the creation of an Indian Trust Counsel Authority.

Prompted by comments from the Alaskan Native community, I would like to give my views on two provisions of these bills.

Subsections 2(b) and (c) provide that the Authority shall be governed by a Board of Directors of three members, at least two of whom must be Indians. I believe a three man board would be too small to govern effectively, given the wide diversity of the National Indian Community. I do not believe it would be possible for two individuals, no matter how conscientious and qualified, to represent adequately Indians from throughout the United States. Because of the many important issues facing the Authority, and the important responsibilities of the Board of Directors, a three man board would be just too small to govern effectively. I urge the Subcommittee to consider amending these provisions to expand the Board of Directors to a size that will provide enough directors to govern the Authority effectively. A larger Board of Directors could also give greater representation to the National Indian Community. A Board of Directors including, but not limited to, a representative from each Bureau of Indian Affairs Area Office has, I understand, been suggested. Such a proposal would ensure adequate representation for Alaskan Natives. I believe it is most important that Alaskan Natives receive representation on the Board of

Directors. I believe it is also important that the Board of Directors not be limited solely to American Indians but that the President by and with the advice and consent of the United States Senate, be given the discretion he needs to appoint experts from various fields to the Board.

Second, the proviso in section 8 relieving the Department of Justice of its responsibilities over Indians and Indian tribes should, I believe, be amended as per the consensus of the Indian community to permit the Department of Justice to continue many of the functions it performs for the Indian communities presently.

I request that this letter be made a part of the official hearing record on this legislation.

Thank you very much.

With best wishes,

Cordially,

TED STEVENS, *U.S. Senator.*

DEPARTMENT OF JUSTICE,
Washington, D.C., July 2, 1973.

HON. HENRY M. JACKSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: Further response is made to your request of May 25, 1973, to the Attorney General that he furnish to the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs a detailed list of pending Indian cases. Such a list has been prepared and two copies are attached.

The attached sheets contain information in three of the four categories requested in your letter. They do not include an estimate of the lawyer man-hours spent on each matter for the reason that the Department does not have data from which such an estimate could be prepared.

After discussing the matter with members of your staff, we have made an estimate of the time spent on Indian matters by attorneys of this Division. In the Appellate and General Litigation Sections there are 46 attorneys. It is estimated that they spend 20% of their time, or the equivalent of 9.2 attorneys, on Indian matters. We have no basis for making an estimate of the amount of time spent on Indian matters by attorneys in the Office of the Solicitor General or by the offices of the various United States Attorneys.

We have omitted from this report all matters before the Indian Claims Commission or Court of Claims being handled by the Indian Claims Section of this Division and all condemnation cases brought by the United States in which an Indian or an Indian tribe may be a defendant. Such condemnation actions are handled by the Land Acquisition Section of this Division.

If we can be of further assistance, please do not hesitate to call upon us.

Sincerely,

WALLACE H. JOHNSON,
Assistant Attorney General,
Land and Natural Resources Division.

Enclosure.

Name of case and court	Nature of Department's involvement	Subject matter	Status and remarks
1. United States v. Glenn M. Clarke, et al., U.S.D.C., Alaska.	Department brought suit on behalf of individual Indian allottee.	Action to enjoin trespass on allotment. The trespass consists of an unauthorized road.	United States has filed a motion to reconsider an adverse judgment. The judge held that the United States was estopped to enjoin the trespass, since it was tolerated for many years.
2. Hobbs, Joseph Daniel	Department is prosecuting suit on behalf of Department of Agriculture.	Forest Service claim for fire suppression costs and resource damage incident to fire allegedly caused by Hobbs, a member of the Klamath Indian Tribe. The amount demanded is \$19,144.08.	A final demand has been given to Mr. Hobbs as of May 16, 1973. If refused as anticipated, a complaint will be filed.
3. Wooding v. Morton, et al. U.S.D.C., W.D. Washington.	Department is defending Secretary of the Interior and counterclaiming on behalf of Indian defendants.	Suit seeking to enjoin Secretary of the Interior from increasing rent on lease of Indian lands on Muckleshoot Indian Reservation and from terminating lease for failure to pay rent. Counterclaim for possession and damages.	Complaint filed May 2, 1972. Answer and counterclaim filed Aug. 15, 1972.
4. Helen Mitchell et al. v. United States, U.S. Ct. Cls.	Department is defending the United States.	Logging contracts claim. A claim that logging contracts arranged by the United States were administered by the United States in such a way as to fail adequately to protect the interests of the allottees and the tribe, and that the arranging of the contracts and their administration were in breach of the defendant's fiduciary duty to the allottees and the Tribe resulting in their failing to receive fair market value for their timber.	There have been two pretrial conferences and discovery is to proceed informally if at all possible.
5. Helen Mitchell, et al. v. United States, U.S. Ct. Cls.	do	Queets unit claim. The Queets unit of the reservation comprises about 45,000 acres, was put up for logging bids and none were received, with logging consequently done on an allotment by allotment basis. The claim is made that there was a failure to arrange for proper logging, and thus a breach of a fiduciary duty owed the plaintiffs, which resulted in it is claimed less than fair market value for the timber and the Indians selling their land to non-Indians.	All 4 cases are being handled together, with 2 pre-trials so far in the cases as a whole.
6. Helen Mitchell, et al. v. United States, U.S. Ct. Cls.	do	Reforestation claim. It is claimed that the defendants' management of the plaintiffs' land, to the extent that it failed to arrange for proper rehabilitation and reforestation of cutover land, and for proper care of growing timber, was in breach of its fiduciary duty to the allottees and the tribe.	Do.
7. Helen Mitchell, et al. v. United States, U.S. Ct. Cls.	do	Accounting claims. Here the plaintiffs ask for an accounting of all moneys handled by the defendant relating to all the timber on the reservation.	On Feb. 2, 1973, the court ordered that the defendant's motion to dismiss be granted to the extent that it asks for an accounting before the defendant's liability has been ascertained. For other details see above i.e. 2 pretrial conferences.
8. Claim of U.S. against Orville L. Rosemore as personal surety on a performance bond.	Department is attempting to collect claim.	Mr. Rosemore obligated himself as an individual surety in the amount of \$775 for guaranty of performance under a farm-pasture lease by and between 2 individuals and the Indian owners of property described as Walker River allotment No. 196.	A direct reference case to the U.S. attorneys' office, branch office in Reno, Nev. We have received no indication of action yet taken because of a heavy criminal docket.
9. Shaw v. Rogers C. B. Morton, et al., U.S.D.C., Montana.	Supporting administrative decision of the Board of Indian Appeals, Department of the Interior.	The plaintiffs seek to set aside the hearing examiner's order affirmed on rehearing, and the decision of the Board of Indian Appeals, disapproving devices of restricted Indian land made by a deceased Crow Allottee to the plaintiffs,	An injunction is in effect as to that land which the plaintiffs claim to prevent its distribution as ordered by hearing examiner. The rest of the land has been distributed. The plaintiff filed a brief and the

10. Nettie S. Crowe, a member of the Eastern Band of Cherokee Indians, v. Eastern Band of Cherokee Indians, Inc. and the United States of America, U.S.D.C., W.D., N.D.
- Defense of the United States -----
- Department is defending a Federal official defendant.
- contending the disapproval is arbitrary, capricious and an abuse of the authority granted to the Secretary of the Interior to approve wills. Plaintiff seeks certain division of her father's possessory interest in tribal lands owned by the United States in trust for the Indians that is contrary to that established by the tribe.
- defendants have filed a motion to dismiss or for summary judgment. Nothing has been decided as yet. The motions of the Eastern Band of Cherokees, Inc., and the United States to dismiss were denied. A nojury trial of the matter should begin at any time.
11. Navajo Tribe of Indians v. Westward Manufacturing Inc., et al. (defendants and 3d-party plaintiffs). Yakah, the United States, et al. (3d-party defendants), U.S.D.C., Arizona.
- Department is prosecuting suit on behalf of Colville Confederated Tribes.
- Suit by tribe, United States not a party -----
- Terminated Ute Indians, under the terms of the Ute Partition Act of 1954, formed a corporation, Ute Distribution Corp. (UDC), which was to handle the undivided interests of the terminated Indians in the mineral resources of the Unintah and Ouray Reservation. Each terminated Indian was given 10 shares in the UDC. The shares could not be sold by the terminated Indian for 10 years, unless it was first offered to the Ute Tribe and unless cash was paid for the share. A number of terminated Indians sued the United States and the First Security Bank of Utah and certain bank employees, alleging that they had been permitted to sell their shares of the UDC so as to be financially harmed. The district court sustained the complaint; the court of appeals reversed (431 F. 2d 1337). The Supreme Court sustained the court of appeals as to the United States but reversed it insofar as it had held the bank and bank employees would not be liable (460 U.S. 128).
12. United States v. William Boyd Walton, et ux, and State of Washington, U.S.D.C., E.D. of Washington.
- Department is prosecuting suit on behalf of Colville Confederated Tribes.
- Suit to enjoin unauthorized diversion of water of Coleville Indian Reservation.
13. Colville Confederated Tribes v. William Boyd Walton, et ux., U.S.D.C., E.D. of Washington.
14. Anita Reyes v. First Security Bank of Utah, U.S.D.C., Utah.
- Westward filed 3d party complaint against the United States and others. Against the United States saying if it is liable, the United States is liable as the Interior Department approved the agreement that the tribe is attempting to rescind. The 1st 2 such 3d party complaints were dismissed. On the 3d the U.S. Federal defendants were dismissed. The United States continued to represent a present BIA official who was used in his actions as a tribal official before he was a Government official. Westward alleges that certain members of the tribe induced the company to make the offer of sale it did by unfair representations. At last report, settlement negotiations were being conducted and it was anticipated the case would be settled without further litigation. Complaint filed Mar. 15, 1973. Allegation in this suit similar to United States v. Bel Bay Community, et al., U.S.D.C., W.D. of Washington.
- This suit involves the same subject matter as United States v. Walton, and the 2 suits will probably be consolidated. Other than the collection of some \$4,000 in costs, the involvement of the United States is at an end.

Name of case and court	Nature of Department's involvement	Subject matter	Status and remarks
15. <i>Affiliated Ute Citizens v. United States, Ct. Cls.</i>	Department is representing the United States.	Indians terminated pursuant to the Ute Partition Act of 1954 brought this Court of Claims' action contending they did not get their fair share of the assets of the Uintah and Ouray Reservation. The Court of Claims dismissed most of their claims on the basis of the statute of limitations; but left for further briefing the claims that the terminated Indians had not been compensated for their water and timber rights and any other miscellaneous claims.	Commissioner Lydon has asked the plaintiffs to specify what claims they still have against the United States. Thereafter, it is intended to either stipulate as to the controlling facts or to have a trial.
16. <i>United States v. Elizabeth Hackford, et al., U.S.D.C., Utah.</i>	The Department is representing the United States as the plaintiff.	In 1959 BLM issued a patent to defendants which appears to convey both the mineral and surface states. The patent is for lands within the Uintah and Ouray Reservation, Congress in enacting the Ute Partition Act of 1954, 68 Stat. 888, specified that minerals from the reservation should be retained by the United States and administered so that the beneficial interests were shared by terminated Ute Indians and those remaining as members of the tribe. The United States asserts the patent was issued pursuant to the Ute Partition Act, and should be construed as only conveying the surface estate.	The United States has filed a motion for summary judgment which is pending for decision.
17. <i>Cherokee Nation v. Oklahoma, U.S.D.C., District of Oklahoma.</i>	The United States appeared as amicus on the court of appeals and Supreme Court levels.	The Cherokee Nation, and the Choctaw and Chickasaw Nations claimed ownership of the bed of the Arkansas River from its confluence with the Grand River proceeding easterly to the Oklahoma boundary. The State of Oklahoma had assumed it owned the river bed and had leased it for oil and gas development. The Supreme Court decided that title was in the Indian Nations. 357 U.S. 620.	The U.S. involvement is completed but the Department of Justice file has been kept open since there are still district court proceedings having to do with division of funds accrued by the State of Oklahoma and with the precise location of the Arkansas River. No request has been made for the United States to appear in these proceedings. There is pending in Congress a bill which would permit the Cherokee, Choctaw and Chickasaw nations litigate inter sese as to their respective ownership of the bed of the Arkansas River. The 10th circuit refused to undertake jurisdiction of disputes between the Indian nations because of their sovereign immunity.
18. <i>Gunsight Mining Corp. v. Morton, U.S.D.C., District of Arizona.</i>	Department is representing the Secretary of the Interior.	In connection with clearing the Papago Indian Reservation, Ariz., of invalid mining claims, Interior initiated an administrative contest proceeding. Ultimately, the Interior Board of Land Appeals determined a number of mining claims held by Gunsight Mining Corp., were invalid. Gunsight has asked for judicial review of this decision.	Cross-motions for summary judgment are pending for decision by the district court.
19. <i>Starlie Lomayeklewa, et al. v. Morton, et al., U.S.D.C., District of Arizona.</i>	do	W as Interior's approval of a coal lease in 1966 on Hopi Indian tribal lands valid? Plaintiffs contend the Hopi Tribal Council which approved the long-term coal lease was not properly constituted. Plaintiffs also contend the Hopi Tribal Constitution prohibits coal leases which will desecrate lands of religious significance to members of the Hopi Tribe. The Secretary's approval of the leases is allegedly invalid because he failed to recognize these inadequacies.	A motion to dismiss for failure to join an indispensable party, the Hopi Tribe, was sustained at the district court on Feb. 15, 1973. The decision is on appeal to the 9th circuit.

20. Archie L. Mason, et al. v. United States, Ct. Cls. The Department is representing the United States.
21. Edmund K. Wilson, et al. v. United States, Ct. Cls. -----do-----
22. United States v. State of Oklahoma, U.S.D.C., W.D. Oklahoma. The United States is the plaintiff.
23. Mercy N. Clincher, et al. v. United States, Ct. Cls. Department is representing the United States.
24. United States of America v. Idaho Forest Industries, Inc. U.S.D.C., Idaho. Department is prosecuting trespass and quiet title action.
25. Elverna Yevonne Clairmont Bacarelli v. Rogers C. B. Morton, U.S.D.C., N.D., California. Department is defending Secretary of the Interior.
26. Tract 512, LeFlore County, Okla. -----quiet title action-----
27. United States v. Mary Daniels, County Assessor of McCurtain County, Okla. et al. Choctaw-Chickasaw Termination Act Case-tract 1108, U.S.D.C., E.D., Oklahoma. Department is bringing action as guardian for the Choctaw-Chickasaw Nation pursuant to an act of the 59th Cong. 34 Stat. pt. 1, secs. 18 and 27, pp. 144 and 148 respectively approved Apr. 26, 1905.
28. United States, et al. v. State Tax Commission of the State of Mississippi, et al., U.S.D.C., S.D., Miss. Brought by United States on behalf of the Mississippi Band of Choctaw Indians, and its subsidiaries and instrumentalities, Chata Development Co. and Choctaw Housing Authority.
- On June 4, 1973, the Supreme Court reversed the decision of the Court of Claims which had held the United States to be liable.
- A motion to dismiss the petition has been filed on the basis of the Supreme Court decision in the United States v. Mason, decided June 4, 1973, which held that under these circumstances there was no breach of the fiduciary relationship.
- Although the Supreme Court decided in United States v. Mason on June 4, 1973, that the United States did not breach its fiduciary responsibility to the Osage Indians by paying such estate taxes to the State of Oklahoma, it left open the question as to whether or not its earlier decision, West v. Oklahoma Tax Commission, 334 U.S. 717 (1948) which held estate taxes to be payable was still binding. The Supreme Court said that at least the fringes of the West decision had eroded in view of later Supreme Court decisions. Interior has been asked whether it desires for us to proceed with this litigation.
- An answer denying liability has been filed and a motion to join the States of Montana and Arizona filed since the States were the ultimate recipients of the wages withheld.
- Complaint filed on July 17, 1972. Settlement negotiations are in progress.
- The district judge entered an order on Aug. 27, 1971, denying relief. Plaintiff filed notice of appeal on Oct. 22, 1971.
- Matter is now before the ninth circuit.
- This case is being held for filing until the land descriptions have been worked out in the Cherokee Nation v. State of Oklahoma, the Choctaw and Chickasaw Nations intervenors, Civ. No. 6219, U.S.D.C., E.D., Oklahoma. Any lawsuit prior to that time would likely be a fruitless endeavor, since this tract is also along or near the Arkansas River.
- Case was filed on Mar. 30, 1973. Some of the defendants have answered and a motion to obtain service by publication upon defendants whose addresses are unknown was filed on May 24, 1973.
- On May 22, 1973, the U.S. district court enjoined the defendants, State Tax Commission of Mississippi etc. from collecting taxes under certain provisions of the sales tax law on the price of the construction work or materials.
- Plaintiffs alleged the United States breached its fiduciary responsibility to Osage Indians by paying estate taxes to the State of Oklahoma.
- Class action claiming liability of the United States for payment of estate taxes to the State of Oklahoma respecting deceased Osage Indians.
- Action filed against the State of Oklahoma to recover estate taxes paid in the past by the United States with respect to the estates of Osage Indians.
- Class action seeking to hold the United States liable for withholding wages for State taxes from Indian employees working on Indian reservations.
- This is an action arising out of a timber trespass upon Grassy Mountain, Coeur d'Alene Indian Reservation, Kootenai County, Idaho. In the same suit we are seeking to quiet title to the land on which the trespass occurred.
- This is an action to compel the Secretary of the Interior to issue an order that plaintiff be allowed to share in distribution of tribal property (allotments) of the Confederated Salish and Kootenai Tribes. The tribe has denied plaintiff membership.
- Quiet title action.
- Quiet title action and enjoining the county assessor from listing said lands for taxation the tax rolls of McCurtain County, and from advertising these lands for sale because of supposed delinquent taxes.
- Sought to enjoin certain provisions of the Mississippi sales tax law as it applies to the Indians especially as it related to their federally funded housing project.

Name of case and court	Nature of Department's involvement	Subject matter	Status and remarks
29. Soderman, et al. v. Kackley, et al., District Court of the 8th Judicial District of the State of Idaho, in and for the county of Caribou.	Department is defending the United States.	Water adjudication covering among other bodies of water, Gravel Creek, Lincoln (Harrison) Creek, and Wayne Creek on the Fort Hall Reservation.	The United States filed a motion to dismiss as an unconsented suit against the United States. This was never acted upon. The United States also filed a motion for clarification to exclude Gray's Lake from the adjudication which would eliminate the need to litigate the claims of Fort Hall Reservation and a wildlife refuge. This motion was never acted upon.
30. Tony Zagar, tract 199, lots 5, 6 and 9.	If requested to do so the Department will bring suit on behalf of the Indians.	Quiet title actions on 3 different lots along the Arkansas River.	These 3 cases are being held in abeyance at the request of Mr. William Gershuny, Associate Solicitor for Indian Affairs, Department of the Interior, until the trial of Choctaw and Chickasaw Nation v. Tibbetts, the latter delayed until jurisdictional legislation can be obtained which will permit the tribe to quiet their claims to the land in the Tibbetts case.
31. Alvin Anderson, et al. v. Rogers C. B. Morton, et al., U.S.D.C., N.D., California.	Defending 7 Cabinet and sub-Cabinet officials as well as the United States.	Complaint for injunction, declaratory judgment, and damages arising out of termination of the Robinson Rancheria under 72 Stat. 619 as amended 78 Stat. 390, and dealing specifically with the alleged inadequate nature of the community's water supply and sewage and waste disposal facilities.	This case has been consolidated with Mable Duncan, et al. v. Rogers C. B. Morton, et al., in the same court, which also relates to the Robinson Rancheria. Since these actions were instituted the Indian Health Service, HEW, drilled 2 test wells with the hope of developing a source of water additional to that originally provided and which plaintiffs claim to be unsatisfactory. The 2 tests proved unsatisfactory. There are no settlement possibilities because plaintiffs then want relocation. Discovery is to continue until June 30, 1973, a further pretrial conference in July or August 1973, at which time a trial date is to be set, and legal positions briefed. Defendants have begun to answer. Proof is being developed and being readied for trial. 1 pretrial conference held. No date for trial.
32. The United States v. Barbara J. Anderson, et al., U.S.D.C., E.D., Washington.	Suit brought on behalf of the Spokane Tribe of Indians.	This is a water rights adjudication suit to establish the Indian Tribe's rights to certain amounts of water in Chamokane Creek, 1 of the Reservation's boundaries.	Complaint filed Nov. 14, 1972. Argument on motion to dismiss set for June 21, 1973.
33. United States v. Akin, Mary, et al., U.S.D.C., Colorado.	Department seeks to have water rights of Ute Southern Ute Tribes adjudicated.	Water adjudication case. United States seeks to have rights of Southern Ute Tribes to waters of the Mancos, La Plata, Animas, Florida, Los Pinos, Peidra, Navajo and San Juan Rivers declared. All water is located in the State of Colorado.	Complaint filed Nov. 14, 1972. Argument on motion to dismiss set for June 21, 1973.
34. Coeur d'Alene Tribe, Idaho. (No formal request for action.)	None at this time.	Water adjudication suit. Tribal Attorneys made inquiry as to procedure for requesting United States to initiate suit on behalf of Tribe. Suit would involve adjudication of rights to use of waters of Hangman Creek Drainage Basin, Idaho.	Complaint filed, Feb. 2, 1967 in original case. The trustee in bankruptcy has filed his final report listing the assets available and recognizing the priorities of the United States. If other creditors do not file objections, it is assumed that the trustees report will be approved and the assets distributed to the United States.
35. United States v. Harn Corporation, U.S.D.C., SD., New York.	Department is collecting a judgment from a bankrupt creditor.	Harn Corp., agreed to develop a factory on Indian land. The corporation became delinquent on payments due for rent and payments on a promissory note. The case went to judgment by default and defendant was adjudicated bankrupt.	Complaint filed, Feb. 2, 1967 in original case. The trustee in bankruptcy has filed his final report listing the assets available and recognizing the priorities of the United States. If other creditors do not file objections, it is assumed that the trustees report will be approved and the assets distributed to the United States.

36. Adams, et al. v. Rogers C. B. Morton, et al., U.S.D.C., Montana. Department is defending Secretary of the Interior and other named Federal official defendants.
37. Azure, et al. v. Morton, et al., U.S.D.C., Montana. do
38. Agua Caliente Band, Superior Court, County of Riverside, Calif. The Department of Justice has appointed a special assistant to the U.S. Attorney to protect interests of members of Agua Caliente Band in State court conservatorship proceedings.
39. United States v. Martha Haaker, U.S. v. Raymond Haaker, U.S. v. Dick Byers, et al., and Thomas Baker, U.S.D.C., C.D. Calif. Department is bringing action on behalf of Indians to eject trespassers from reservation.
40. Barrackme, et al. v. Morton, U.S.D.C., Arizona. Department is defending Secretary of the Interior and other Federal defendants.
41. Frank Battese, et al. v. Louis K. Bruce, et al., U.S.D.C., Kansas. do
42. Harold Blake, et al. v. Simpson, et al., and Harold Blake, et al. v. John Brunello, et al., U.S.D.C., N.D. California. Department is defending various Federal official defendants.
43. Lavina Beckman Crane, New York. Department is monitoring dispute on the Onandaga Indian Reservation.
44. Eskra v. Morton, U.S.D.C., Wisconsin. Department is defending the Secretary of the Interior and other Federal defendants.
45. Proposed action to collect loan from Anthony S. Felix, No Court, Arizona. Department will bring suit at request of Department of the Interior.
46. Maggie Gohene v. Morton, et al., U.S.D.C., E.D., Washington. Department is defending Secretary of the Interior and various Federal defendants.
47. Hagerman v. The Confederated Tribes of the Warm Springs Reservation, U.S.D.C., Oregon. None as yet.
48. Holloway v. United States, U.S.D.C., N.D., Washington. Defending the United States.
- Plaintiffs seek to share in tribal judgment fund. Secretary of the Interior has determined that they are not eligible under 84 Stat. 64.
- State conservancy proceedings were brought to manage the affairs of "incompetent" Indians. Abuses developed and the special assistant to the U.S. Attorney was appointed to protect the Indians interests since the United States still holds the land in trust for the Indians.
- Ejectment actions to regain possession of lands lying along Colorado River in California for Indians.
- Plaintiff tribal council members seek an order of the court compelling the Secretary to recognize plaintiffs as the validly constituted tribal government.
- Plaintiffs, some members of the tribal council of the Prairie Band of the Pottawatomie Indians, seek an order of the court compelling the Commissioner of Indian Affairs to recognize the tribal council as constituted, and enjoining an election called by the Commissioner.
- Plaintiff brought action to enjoin the use of an alleged trespass road across his allotment and damages for past use by lumber companies.
- Dispute as to the disposition of the estate of a tribal member. Mrs. Crane contends her "dead feast" was an effective disposal of the estate, while the tribal government contends that a competing dead feast was effective to dispose of the property.
- Plaintiff seeks to overturn administrative decision that she is not entitled to share in the estate of a deceased Lac Courte Oreilles Indian because she is illegitimate.
- Proposed defendant is an Indian who received a loan from the BIA. He has defaulted on the loan.
- Plaintiff seeks to set aside administrative decision approving the will of a deceased member of the Yakima Tribe. Plaintiffs contend that the Secretary violated 25 U.S.C. 607 when he approved the will disposing of real property to non-Yakima enrollees.
- Plaintiff was injured at a resort operated by tribe. Plaintiff served the Attorney General. Interior has been requested to inform this Department whether the Department should undertake the defense of the tribe.
- Plaintiff contends she was defrauded of her allotment by statements of an official of BIA.
- Complaint filed Apr. 24, 1973. Awaiting litigation report from the Department of the Interior so that an answer may be filed.
- The defendants will file a motion for summary judgment shortly.
- The special assistant to the U.S. Attorney appears weekly in State Court and will continue to do so until all the conservancies are terminated.
- One of the cases is close to settlement, while the others will shortly be settled or go to trial.
- Set for trial, June 15, 1973.
- Judge ruled that plaintiffs had an appeal pending to the Secretary of the Interior and that no ruling had been made on that appeal. He stayed all proceedings for 120 days for administrative determinations to be completed.
- Complaint has been filed and litigation report has been received. A motion to dismiss will be filed in the near future.
- The Department has taken no action other than to monitor development of the requests of the Department of the Interior.
- Case is submitted on cross motions for summary judgment, and awaiting judgment.
- Case has been referred to the U.S. attorney for action.
- Case will be set for trial in the near future.
- Complaint served May 21, 1973.
- Case is being held in abeyance pending passage of a private bill for her relief. United States has filed a motion to dismiss which has not been ruled on.

Name of case and court	Nature of Department's involvement	Subject matter	Status and remarks
49. United States v. Stanley G. Jones, U.S.D.C., W.D., Washington.	Department is representing plaintiff United States.	This is an action brought to recover a grant for fishing equipment made to an Indian. The grantee died before he could expend the money.	Complaint filed Dec. 27, 1972. Defendants answered on Jan. 12, 1973.
50. Lawrence v. Jourdain, U.S.D.C., Minnesota.	Department is defending tribal officials and Federal official defendants.	Plaintiffs are members of the Chippewa Tribe of Minnesota. They contend that because of favoritism in the administration of a tribal credit program they were denied the opportunity to get loans.	The B/A has voluntarily complied with the relief sought by plaintiffs, tighter supervision of the credit program. The case is in advance pending completion of arrangements with Roger Jourdain, the tribal chairman, for the repayment of his loans. Action has been referred to U.S. attorney for action, but filing has been delayed due to press of other business.
51. Proposed action against Mission Golf Club, South Dakota.	Department will bring action at request of Department of the Interior on behalf of Rosebud Sioux Tribe.	Action to enjoin sale of liquor on the reservation without a permit from or payment of taxes to the tribe.	Complaint and answer have been filed. Case is in advance pending until Interior determines whether the Indians are agreeable to an administrative partitioning.
52. Nelson, et al. v. United States, U.S.D.C., W.D., Washington.	Department is defending the United States and 21 named Indian defendants.	Plaintiff, a non-Indian, owns an undivided half interest in an allotment. The remainder is held by the 21 Indian defendants. Plaintiff seeks a partitioning of the land.	Complaint and answer have been filed. Case is in advance pending until Interior determines whether the Indians are agreeable to an administrative partitioning.
53. Proposed action against Pilot House Cafe, No Court, Idaho.	Department has requested Interior to decide if action should be brought at all, and if so, whether a civil or criminal action.	Proposed action to enjoin or criminally punish liquor sales on the Fort Hall Reservation, Idaho.	Interior has been requested to recommend a course of action.
54. George Reed v. Morton, et al., U.S.D.C., Montana.	Department is defending Secretary of the Interior and various Federal official defendants.	Plaintiff sought an order enjoining distribution of the estate of a deceased Indian. Plaintiff is father of the deceased and alleges that the administrative determination that the deceased had two illegitimate children who took under the decision is erroneous.	A temporary restraining order was granted even though the distribution of the estate had already occurred. The U.S. attorney will shortly move to dismiss the action as moot.
55. County of Thurston v. Morton, U.S.D.C. Nebraska.	-----do-----	County is seeking an order of the court compelling the Secretary of the Interior to pay taxes on allotted land within the county pursuant to 36 Stat. 348 and 39 Stat. 865 which authorize taxation of allotted land within the county.	Complaint filed Mar. 23, 1973. A litigation report has been requested from the Department of the Interior.
56. United States v. Ben Ruby & Sons, et al., U.S.D.C., W.D., Wisconsin.	Department is prosecuting suit on behalf of Lac Courte Oreilles Indian Tribe.	This action seeks to quiet title to 3 school sections within the outer boundaries of the reservation in the tribe.	2 defendants, including the State of Wisconsin, have filed a motion for summary judgment. A briefing schedule has not yet been set.
57. Donna Grosz, et al. v. Morton, et al., U.S.D.C., W.D., Washington.	Department is defending Secretary of the Interior and various Federal official defendants.	Plaintiffs seek to enjoin the improvement of an alleged trespass road on their allotment and seek damages for past use of the road.	Complaint filed. Litigation report requested.
58. Eunice Vaile v. Morton, U.S.D.C., W.D., Washington.	Department is defending the Secretary of the Interior.	Plaintiff sought to reverse the decision of the Secretary to reopen an Indian probate proceeding and allow proof of a later will that disinherited plaintiff.	Defendants' motion for summary judgment was granted. Plaintiff appealed. Briefs have been submitted to the 9th circuit.
59. Stanley Johnson Lower Elwha Tribal Community, U.S.D.C., W.D., Washington.	Department is defending the tribal government.	Plaintiff alleged he was deprived of an assignment of land on the Elwha Reservation without due process of law by the tribal council.	The defendant moved to dismiss and the motion was granted. Plaintiff appealed to the 9th circuit. Currently awaiting decision.
60. Ellsworth Brown v. United States, et al., U.S.D.C., South Dakota.	Department is defending the United States.	Plaintiff sought to enjoin a tribal elector and to require reapportionment of voting district on the Cheyenne Sioux Reservation.	Court granted preliminary injunction. Tribe appealed to 8th circuit. Currently awaiting decision.
61. Mary Daly v. United States, et al., U.S.D.C., South Dakota.	-----do-----	Plaintiff sought to enjoin a tribal election and to require reapportionment on the Crow Creek Reservation.	Court granted relief sought. Tribe appealed to 8th circuit. Currently awaiting decision.
62. United States v. Herbert Rittell, U.S.D.C., South Dakota.	Department is prosecuting suit on behalf of the Interior Department.	Plaintiff seeks to evict Indian defendants for nonpayment of rent.	Waiting for trial date to be set.

63. *Boggs et al. v. Rogers C. B. Morton, et al.*, U.S.D.C., N.D., California. Department is defending Secretary of the Interior, other Federal officials and the United States.
 64. *Lawson Brooks and the Tuscarora Indians, et al. v. United States, U.S. Court of Claims.* Department is defending the United States. . . .
 65. *Lizzie Rogers Threat, by and through her next friend and legally appointed guardian, Euleida Murphy v. County Treasurer of Pittsburgh County, Oklahoma, et al. (including the U.S.) Dist. Ct. of Pittsburgh, County of Oklahoma.* Department is defending the U.S. Federal Farm Mortgage Corporation.
 66. *Lutheran Social Services of South Dakota v. United States, U.S.D.C., South Dakota, W.D.* Department is defending Secretary of the Interior.
 67. *Samuel Sawyer Creek, NB-1224, proposed action to set aside deed of restricted lands.* Secretary of the Interior, Division of Indian Affairs has requested we sue grantee, divorced wife of Indian to regain a lot of restricted land granted her as part of alimony decree.
 68. *Constance Frye Baker, et al. v. State of California, U.S.D.C., N.D., California.* Department is defending the Attorney General and Secretary of the Interior in petition to seek their assumption of suit against California and Humboldt County, Department of the Interior has requested we sue in trespass as trustees of restricted Indian lands.
 69. *United States v. Elmer I. Lorentson, et al., U.S.D.C., Western District of Washington.* Defendant is member of Five Civilized Tribes. Secretary of the Interior by direct reference requested U.S. Attorney to defend Indians.
 70. *Harry Veal v. Pipkin P. Gibson, U.S.D.C., E.D., Oklahoma.* Department is prosecuting suit at request of Secretary of the Interior.
 71. *United States v. William Billy, U.S.D.C., E.D., Oklahoma.* Department has been requested by California Indian Legal Services to bring suit against Paul Bunyan Lumber Co.
 72. *Proposed action against Paul Bunyan Lumber Co., U.S.D.C., E.D., California.* Department is awaiting recommendation of Department of the Interior before initiating action.
- The Government filed an amended answer in December 1971. No discovery or notices of readiness have been filed.
- The Court of Claims granted on June 1, 1973, the United States motion to dismiss for lack of jurisdiction saying that all 4 prayers were for declaratory relief or mandamus, both of which are outside the court's jurisdiction.
- This case was removed to U.S.D.C., E.D., Oklahoma. The United States then filed a motion to dismiss as to the Federal defendants. On May 7, 1973, the U.S.D.C., E.D., Oklahoma dismissed this "cause" as to Department of the Interior, through the Office of the Solicitor, Department of Treasury, through the Federal Land Bank of Wichita and its predecessors in interest, the land bank Commissioner and the Federal land bank, and the Department of the Army through the U.S. Army Corps of Engineers. The remainder of the case was then remanded to State court from whence it was removed.
- We are awaiting a disclaimer authorization from Department of the Interior and will file answer on receipt, denying any U.S. interest in the land.
- Report made May 3, 1973, to U.S. attorney, Oklahoma City, to commence suit to quiet cloud on title to land of Indian.
- Secretary of the Interior has recommended that the Department not represent the Indians under 25 U.S.C. 175.
- Trial was set for June 11, 1973, but has been continued to July 30, 1973.
- Awaiting trial on agreed statement of facts. No trial date set as of June 15, 1973.
- Plaintiff's motion for summary judgment was filed May 8, 1973.
- Department is awaiting recommendation of Department of the Interior before initiating action.
- A claim for an injunction, declaratory judgment, and damages arising out of the termination of the Scotts Valley Rancheria under 72 Stat. 619 as amended by 78 Stat. 390 without provision of adequate water and sanitation facilities.
- 4 things: (1) direct Congress to repeal the Lumbee Act of June 7, 1956, 70 Stat. 254, (2) a declaratory judgment that the plaintiffs are ethnologically Tuscarora Indians, (3) order the North Carolina Legislature to repeal its Lumbee bill, and (4) order to Secretary of the Interior to conduct an investigation of the plaintiffs' complaints.
- A redemption of land with an accounting for rents, profits, etc. over the years since sold at a tax sale which plaintiff is attempting to set aside because of her incompetency, under provisions of Oklahoma law.
- Plaintiff, a grantee of a church organization seeks to set aside a presumed reversionary interest in restricted lands deeded under Public Law 80-543 (42 Stat. 248).
- Restricted land of Indians was awarded divorced wife of Indian in divorce decree. Divorce court did not have power to alienate land. We are filing suit to quiet title to the land.
- Indians claim State of California and Humboldt County took lands of members of Hoopa Band of Indians for State and county road.
- Defendants claim title to restricted Indian land. Controversy where land boundaries actually lie.
- Suit by former lessee of restricted Indian land to enjoin Indian lessor from using or leasing improvements put up on land during lease and not removed upon expiration of lease.
- Action to recover possession of certain real property owned by the United States in trust for the Creek Tribe of Indians and presently occupied by defendant.
- Alleged illegal use of a right-of-way across Indian land in Lassen County, Calif., for which damages are sought.

Name of case and court	Nature of Department's involvement	Subject matter	Status and remarks
73. Richard Janson, et al. v. Rogers C. B. Morton, et al., U.S.D.C., Alaska.	Department is defending Secretary of the Interior and other Federal officials.	Alaska Natives seek revocation of tentative approval by Secretary of the Interior of State selection of lands by State of Alaska, injunction against further tentative approvals, and recognition of rights based upon aboriginal title.	By memorandum and order filed Oct. 4, 1972, court held in abeyance for 60 days decision of defendant's motion to dismiss pending receipt of additional briefs. Although defendants filed an additional brief, and plaintiffs declined to do so, court has continued to hold the matter in abeyance. Judgment in favor of plaintiff tribe filed Nov. 14, 1972 has been appealed to 9th Circuit Court of Appeals.
74. The Northern Cheyenne Tribe v. William Hollowbreast, et al., U.S.D.C., Montana.	Department is representing single Indian defendant in class action by Indian tribe against its own members and others.	Class action by tribe pursuant to act of July 24, 1969, against individual Indian allottees, their heirs, devisees and assignees, to establish validity of reservation to tribe of minerals title to which, but for the act, would have become vested in individual allottees.	
75. United States v. City of Pawhuska, Oklahoma, U.S.D.C., N.D., Oklahoma.	Department is prosecuting suit on behalf of Osage Tribe of Indians.	Tribe seeks compensation for oil and gas underlying lands the surface of which was taken by defendant through condemnation proceedings for use in connection with a municipal dam and reservoir project.	Trial was held on May 25, 1973, after which the court permitted further briefing of the legal issues. Further oral argument is anticipated.
76. Martin J. Sampson v. United States, U.S.D.C., W.D., Washington.	Department in defending the United States; is in effect, defending action of the Secretary of the Interior.	Plaintiff Indian seeks to compel Secretary of the Interior to create individual allotment of land selected by plaintiff nearly 50 years ago.	Defendant moved for summary judgment in April 1973.
77. United States v. Southern Pacific Transportation Co., et al., U.S.D.C., Nevada.	Department is prosecuting suit on behalf of Walker River Paiute Tribe of Indians.	Protective suit to quiet title to land included in railroad right-of-way, to compel removal of railroad line and to recover damages for alleged unauthorized construction and maintenance of railroad across Indian reservation for past 90 years.	Complaint was filed July 17, 1972. Government has sought postponement of pretrial conference set for June 28, 1973.
78. Proposed action against Southern Pacific Transportation Co., U.S.D.C., Nevada.	Department has been requested by Department of Interior, to file suit on behalf of Pyramid Lake Paiute Tribe of Indians.	Indian tribe seeks quieting of title, ejectment and recovery of trespass damages in connection with an abandoned railroad right-of-way across the Pyramid Lake Indian Reservation.	Filing of complaint has been held up pending further recommendations from Department of the Interior in light of suit already filed by tribe upon same factual basis.
79. United States v. Wichita Industries, Inc., et al., U.S.D.C., W.D., Oklahoma.	Department is prosecuting action on behalf of two Choctaw Indians.	Action seeks to compel payment of additional royalty on production from oil wells as determined to be due by the Department of the Interior.	Plaintiff filed a motion for summary judgment on Apr. 17, 1973.
80. Donald E. Miller v. U.S., et al., U.S.D.C., N.D., California.	Department is defending United States; Secretary of the Interior, and the Secretary of Agriculture.	This suit seeks an allotment of certain land in Six Rivers National Forest, Calif.	Submitted to the court on plaintiffs' motion for summary judgment.
81. Evelyn Sybil Conroy v. Gerry Conroy, et al., U.S.D.C., South Dakota.	Department is defending Secretary of the Interior and Commissioner of Bureau of Indian Affairs.	Plaintiff seeks a $\frac{1}{2}$ interest in all trust lands acquired by defendant Gerry Conroy during the course of his marriage to plaintiff.	Submitted to the court on the U.S. motion to dismiss filed on Feb. 6, 1973.
82. Gilbert Nolan, et al. v. Richard P. Carlsberg, et al., U.S.D.C., E.D., California.	The Department is defending the United States.	This suit seeks to settle a boundary dispute, quiet title, enjoin a nuisance, and review a survey. The United States is joined because of its title interest in plaintiffs' restricted land and because the Bureau of Land Management of the Department of the Interior conducted a resurvey of the land.	This case is awaiting the setting of a trial date.
83. William Burrell, et al. v. Ellis L. Armstrong, et al., U.S.D.C., E.D., California.	The Department is defending the United States and officials of the Department of the Interior and the Office of Emergency Preparedness.	Plaintiffs seek damages not in excess of \$10,000 for damage to their embankment on Ena Creek in Siskiyou County, Calif., allegedly caused by Federal defendants' work on the channel of Ena Creek.	Submitted to the Court on defendants' motion to dismiss filed on Aug. 11, 1972.
84. U.S. v. Fremont C. Woller, et al., U.S.D.C., Wisconsin.	Department is suing on behalf of individual Indians. The United States is the named plaintiff.	This is an action to quiet title to restricted Indian land belonging to the heirs of an allotted Indian.	On Feb. 19, 1971, the district court quieted title in the heirs of the allotted Indian, subject to restrictions against alienation in the United States. The decision was upheld on appeal.

85. Robert N. Greenwalt, Jr., et al. v. Rogers C. B. Morton, et al., U.S.D.C., Alaska.
This suit, brought by 5 Alaska natives on their own behalf and on behalf of a class, seeks to obtain allotments on Tongass National Forest, Alaska, under the Native Allotment Act, as amended 43 U.S.C. 270-1 and 270-2.
On June 2, 1972, the district court dismissed the complaint. On July 28, 1972, plaintiffs filed a notice of appeal to the U.S. Court of Appeals for the 9th circuit. The case is submitted to the Court of Appeals and is awaiting oral argument.
86. Kenneth M. Kale v. U.S., et al., U.S.D.C., C.D., California.
This is a suit claiming that the Secretary of the Interior illegally denied plaintiff's application for an allotment in Coachella Valley, Riverside County, Calif. The Secretary of the Interior awarded some of the same lands to Everett L. Cord as holder of homestead rights originally issued to Civil War Veterans, pursuant to 43 U.S.C. 274 and 278.
The district court granted the United States motion for summary judgment on Jan. 18, 1973, in the U.S. Court of Appeals for the 9th circuit reversed, holding that Cord was not entitled to a patent pursuant to 43 U.S.C. 274 and 278. The case is now pending on Cord's petition for rehearing. Argument in the petition for rehearing is set for Aug. 9, 1973. The Department is awaiting a litigation report from the Department of the Interior.
87. Blackpipe State Bank v. U.S., U.S.D.C., South Dakota.
Plaintiff seeks damages for a breach of a Bureau of Indian Affairs' job training contract with the Sioux Nation Industries, Inc.
The case has been tried and is awaiting a decision of the court.
88. U.S. v. Evert Prescott, et al., U.S.D.C., Idaho.
This is an action seeking to quiet title to land allotted to an Indian.
A motion to dismiss will be filed on behalf of the United States.
89. Rosebud Sioux Tribe v. Knapik, et al., U.S.D.C., South Dakota.
The parties are currently trying to settle this case.
90. U.S. v. Donnelley, et al., U.S.D.C., California.
This is an action to quiet title to restricted Indian land.
The parties are currently trying to agree on a proposed pretrial order.
91. Drimmond, et al. v. Johnson, et al., U.S.D.C., North Dakota.
This is an action to quiet title to restricted Indian land.
A motion to dismiss has been filed on behalf of the defendant.
92. Todachneene v. Lyngholm, Trial Court of Navajo Nation, New Mexico.
This is an action by an individual Navajo Indian against a BIA employee for damages growing out of scuffle in the BIA office.
93. Dillon v. Antler Land Co., et al., U.S.D.C., Montana.
This is an action to set aside a fee patent and deed to Antler Land Co. and for damages against the United States.
94. National Indian Youth Council, et al., v. Bruce, et al., U.S.D.C., Utah.
This is an action seeking to close Intermountain Indian School and to open a school on the Navajo Indian Reservation.
95. Quechan Tribe v. Rowe, U.S.D.C., California.
This is an action to enjoin Imperial County officials from interfering with the enforcement of tribal hunting and fishing ordinances.
96. Wilson, et al., v. Morton, et al., U.S.D.C., South Dakota.
This action seeks to require allotted Indian land to be sold at public auction.
97. Ward, et al., v. Morton, U.S.D.C., Illinois.
This is an action for breach of contract and for an accounting.
98. Snow Bird v. McClung, et al., U.S.D.C., North Dakota.
This is an action by an Indian inmate of a Federal prison seeking an accounting of his BIA account.
99. Armstrong, et al., v. Howard, et al., U.S.D.C., Minnesota.
Tribal election case. Plaintiffs seek to set aside the results of an election and to have the court order new elections.
100. U.S. v. Sessions, Inc., U.S.D.C., California.
This action seeks ejectment from Indian owned land after the cancellation of a lease.
101. Delaware Tribe of Indians v. Morton, U.S.D.C., Oklahoma.
Plaintiffs seek to compel the Secretary of the Interior to distribute judgment funds.
102. Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana v. U.S., Court of Claims.
The plaintiffs seek damages for the forfeiture of 10 percent of the amount plaintiffs bid on a proposed land sale by the Secretary of the Interior.
103. Coast Indian Community, et al. v. U.S. Court of Claims.
The plaintiffs seek damages as a result of the granting a right-of-way across tribal land.
- Pretrial discovery has been completed.
- Answer has been filed and settlement negotiation are currently being attempted.
- The defendant's answer is due July 10, 1973.
- Answer has been filed and settlement negotiation are currently being attempted.

Name of case and court	Nature of Department's involvement	Subject matter	Status and remarks
104. U.S. v. The State of Michigan, U.S.D.C., Michigan.	Department brought this action on behalf of the Bay Mills Indian Community.	This is an action to have the court to declare that the Bay Mills Indian Community has the right to fish in Lake Superior unregulated by the State.	An answer has been filed and the case is ready for pretrial conference.
105. Pickner v. Atkins, et al., U.S.D.C., South Dakota.	Department is defending tribal judge who is a Federal employee.	Plaintiff seeks to have a restraining order and order to show cause issued by the tribal court set aside.	Answer has been filed and a motion for summary judgment will be filed soon.
106. Clio Church, et al. v. Morton, et al., U.S.D.C., Kansas.	Department is defending the Secretary of the Interior.	Plaintiffs, Indians, seek to have statute providing to whom judgment fund will be distributed declared unconstitutional and to enjoin the Secretary from making distribution pursuant to the act.	Answer has been filed and an effort is being made to stipulate to the relevant facts.
107. U.S. v. Pawnee Business Council, et al., U.S.D.C., Okla.	Department is representing the Secretary of the Interior.	This action seeks to have the court to declare that Congress has delegated to the Secretary the authority to approve tribal offices and to enjoin defendants from proceeding with an action in State court.	The court has recently denied the defendants' motion to dismiss and the case is expected to proceed to trial.
108. Alvarado v. Morton, U.S.D.C., California.	Department is defending the Secretary of the Interior.	Plaintiff seeks to set aside the cancellation of an Indian lease by the Secretary of the Interior.	Defendants have filed motion to dismiss which are pending before the court.
109. Cameron v. Whirlwindhorse, et al., U.S.D.C., North Dakota.	Department is defending several named Federal officials.	The plaintiff, an Indian, seeks reinstatement in an Indian school.	Currently pending before the court is plaintiff's motion for new trial.
110. Sessions, et al. v. Morton, et al., U.S.D.C., California.	Department is defending various Federal official defendants.	Plaintiff sought to set aside the cancellation of an Indian lease by the Secretary of the Interior.	Judgment has been entered in favor of the defendants and plaintiff appealed.
111. Mancari, et al. v. Morton, U.S.D.C., New Mexico.	Department is defending the Secretary of the Interior.	Plaintiffs sought to have 25 U.S.C. 44, 46, and 472 declared unconstitutional and to enjoin the Secretary of the Interior from giving a preference to Indians in filling vacancies in the BIA.	Judgment in favor of plaintiffs has been entered and the Secretary has been enjoined. An appeal has been recommended.
112. Freeman v. Morton, et al., U.S.D.C., District of Columbia.	-----do-----	Plaintiff sought to have the court to hold that 25 U.S.C. 44, 46, and 472, requires that Indians be given a preference in filling vacancies in the BIA no matter how created and a preference in training.	Judgment in favor of plaintiff has been entered except as to training. An appeal has been noted. An expedited briefing scheduled has been requested and granted.
113. Leech Lake Band of Chippewa Indians, et al. v. Herbst, U.S.D.C., Minnesota.	This action was filed by the Legal Aid Society of Minneapolis.	Both of these cases sought to have the court to declare that the Indians had the right to hunt, fish, trap and gather wild rice within the boundary of the Leech Lake Reservation without being regulated by the State of Minnesota.	Judgment was entered in favor of the plaintiffs except on the question of the right being exclusive. The defendant appealed. The plaintiff filed cross-appeals. The cases were subsequently remanded to the district court and a consent judgment has been presented to the court for approval.
114. U.S. v. State of Minnesota, U.S.D.C., Minnesota.	This action was brought by the United States on behalf of the Chippewa Indians.	This is an action for damages for a trespass on the Resignini Rancheria.	The Department is awaiting a litigation report from the Department of the Interior.
115. U.S. v. John Rycraft, et al., U.S.D.C., California.	Department brought this action on behalf of the Coast Indians Community.	-----do-----	The case is currently being held in abeyance on the court's order pending the outcome of another case.
116. U.S. v. Maine U.S.D.C., Maine-----	Department brought this action on behalf of the Passamaquoddy Tribe.	This is an action for damages for a trespass.	The case is being held in abeyance on the court's order pending the outcome of another case.
117. United States v. Maine, U.S.D.C., Maine.	Department brought this action on behalf of the Penobscot Tribe.	-----do-----	This case has become moot by administrative action and its dismissal is expected soon.
118. Campbell, et al., v. The Department of the Interior, et al., U.S.D.C., California.	Department is defending the named Federal defendants.	This is an action to enjoin the distribution of the assets of Sherwood Valley Rancheria.	Motion for summary judgment has been granted in plaintiff's favor and the defendant has appealed.
119. U.S. v. State of Colorado, U.S.D.C., Colorado.	Department brought this action on behalf of Indians attending Fort Lewis College.	The action sought to test the legality of tuition assessments against Indians attending Fort Lewis College.	

120. Tahdooahnipah, et al., v. Thimimg, et al., U.S.D.C., Colorado. This action was filed by the private counsel of the plaintiff and consolidated with U.S. v. Colorado brought by the Department.
121. Committee to Save our Fish v. U.S., et al., U.S.D.C., Washington. Department is defending the U.S. and other Federal defendants.
122. U.S. v. State of Washington, U.S.D.C., Washington. Department brought this action on behalf of the Puyallup Tribe.
123. Confederated Tribe of the Unatilla Indians Reservation v. Froehle, et al., U.S.D.C., Oregon. Department is defending the Federal officials.
124. Dillon v. Morton, et al., U.S.D.C., Montana. Department is defending the Secretary of the Interior.
125. Hosteen v. Jonas, et al., Trial Court of Navajo Nation, New Mexico. Department is representing the defendants who are employees of the BIA.
126. Oyate, Inc., et al. v. Morton, et al., U.S.D.C., District of Columbia. Department is defending the Secretary of the Interior.
127. Kelly, et al., v. U.S. Department of the Interior, et al., U.S.D.C., California. Department is defending the named Federal defendant and the named members of the tribe.
128. Madrigal v. County of Riverside, et al., U.S.D.C., California. Department brought this action on behalf of the Santa Ysabel Indian Tribe.
129. U.S. v. County of San Diego, U.S.D.C., California. Department is defending the Secretary of the Interior.
130. Bert Taunah, et al., v. Udall, U.S.D.C., Oklahoma. Department is defending the Indian defendants.
131. Spake v. Wapato, et al., Chelan County Superior Court, Washington. Department is considering bringing this action on behalf of the Yakima Tribe.
132. Proposed Action against the State of Washington. Department proposes to bring this action on behalf of the members of the Table Mountain Rancheria.
133. Proposed action against Donald L. Leach, et al., California. Department is defending Indian allottees.
134. Smith, et al. v. Lavender, et al., U.S.D.C. Department is defending the Federal defendants and named tribal members who are defendants.
135. Frank, et al. v. Morton, et al., U.S.D.C., District of Columbia. Department is prosecuting on behalf of the Colorado River Indian Tribes.
136. United States v. Clark, et ux., U.S.D.C., C.D., California. Motion for summary judgment has been granted in favor of plaintiffs and the defendants have appealed.
- A motion to dismiss was filed on behalf of the defendants and has been granted but the order has not been received.
- Judgment in favor of the defendant has been entered and an appeal has been recommended.
- The defendants have been preliminarily enjoined but the court stayed its order to allow parties time to work out a settlement of the case.
- The case has been dismissed but no order has been entered.
- A motion to dismiss has been filed on behalf of the defendants.
- Department is awaiting a litigation report from the Department of the Interior.
- The court has enjoined the defendants pending the publication of new regulations.
- The case has been dismissed and plaintiff has appealed.
- The Department is awaiting a litigation report from the Department of the Interior.
- The case has been settled administratively and an effort is being made to dismiss it.
- The defendant is currently in the process of taking depositions of potential witnesses in the trial of this case.
- The Department will decide within the next week whether to proceed with the action.
- The U.S. Attorney's office in Sacramento, Calif., has been requested to file a complaint.
- Judgment has been entered for plaintiffs and defendants have appealed.
- The case was recently filed. A litigation report has been requested from the Interior Department.
- Pretrial hearing set for June 25, 1973; possibility of settlement being explored.

Name of case and court	Nature of Department's involvement	Subject matter	Status and remarks
137. <i>Cullmer v. Valle, et al., Superior Court for the State of California, County of San Diego.</i>	Department is representing Sycuan Indian Tribe.	This action involves the right of Sycuan Indians to the use of a road.	Department of the Interior officials are attempting to negotiate settlement.
138. <i>Cocopah Tribe v. Morton, U.S.D.C., Arizona.</i>	Department is defending the Secretary of the Interior.	Action involves administrative determination of reservation boundary.	Resolved administratively; dismissal of action remains.
139. <i>United States v. Sunny Valley Citrus, U.S.D.C., Arizona.</i>	Department is prosecuting case on behalf of Colorado River Indian Tribes.	This action seeks to remove plaintiff from agricultural lease disapproved by the Secretary and for damages.	Awaiting decision on plaintiff's motion for summary judgment.
140. <i>United States v. County of San Diego, U.S.D.C., S.D., California.</i>	Department is prosecuting case on behalf of Mesa Grande Band of Mission Indians.	Action for damages arising out of construction and use of road.	Preparing for trial.
141. <i>United States v. City of Los Angeles, et al., U.S.D.C., C.D., California.</i>	Department is prosecuting case on behalf of Colorado River Indian Tribes.	Action for damages arising out of the construction of an infiltration gallery (trench) on tribal lands.	Possibility of settlement being explored.
142. <i>Moursund v. Brauen, et al., District Court of Osage County, Oklahoma.</i>	Department is representing Osage Indians who are tenants in common with plaintiff.	Action involving dispute between lessor and lessee concerning use and possession of restricted Osage Indian land.	Lower court dismissed action. Awaiting decision of Supreme Court of Oklahoma.
143. <i>United States v. City of San Diego and Helix Irrigation District, U.S.D.C., S.D., California.</i>	Department is prosecuting case on behalf of El Capitan Grande Band of Mission Indians.	Action for damages arising out of construction and use of road.	Motion to dismiss to be heard July 6, 1973.
144. <i>United States v. State of California, U.S.D.C., C.D., California.</i>	Department is prosecuting case on behalf of the Torres-Martinez Band of Mission Indians.	Action for possession and damages arising out of construction and use of road.	Pretrial hearing set for Aug. 13, 1973; settlement offer being considered by Interior and Band.
145. <i>United States v. Denhan, U.S.D.C., C.D., California.</i>	Department is prosecuting case on behalf of Colorado River Indian Tribes.	Action for ejectment and damages arising out of trespasses on tribal lands.	Complaint filed; awaiting answer.
146. <i>Sunny Valley Citrus v. Morton, U.S.D.C., Arizona.</i>	Department is defending Secretary of the Interior.	This action involves interpretation of terms of agricultural lease.	Defendant's motion to dismiss denied.
147. <i>Chambers v. United States, Court of Claims.</i>	Department is defending United States.	Action arises under depredation clause of Shoshone and Bannock Treaty of 1868 for damages arising from acts of "bad men," subject to the authority of United States.	United States has filed motion for summary judgment.
148. <i>Yazzi v. Randolf, U.S.D.C., Arizona.</i>	Department is defending BIA officials.	Plaintiff, a Navajo, seeks damages arising from his arrest resulting from alleged trespass on Hopi Reservation.	Hopi Tribe and plaintiff considering settlement.
149. <i>United States v. Coachella Valley County Water Dist., U.S.D.C., C.D., California.</i>	Department is prosecuting suit on behalf of Torres-Martinez Band of Mission Indians.	Action for damages arising out of construction and maintenance of storm drain channel.	Preparation for pretrial.
150. <i>United States v. County of San Diego, U.S.D.C., S.D., California.</i>	Department is prosecuting case on behalf of San Pascual Band of Mission Indians.	Action for damages arising out of various trespasses which occurred on the reservation.	Do.
151. <i>United States v. Curtis, et ux, U.S.D.C., C.D., California.</i>	Department is prosecuting case on behalf of Colorado River Indian Tribes.	Action for ejectment and damages involving tribal lands.	Settlement offer being considered by Interior and tribes.
152. <i>United States v. Brigham Young University, et al., U.S.D.C., C.D., California.</i>	Do.	Do.	Do.
153. <i>United States v. Lonesome Valley Land Co., et al., U.S.D.C., C.D., California.</i>	Do.	Do.	Pretrial hearing scheduled for July 9, 1973.
154. <i>United States v. Smith, U.S.D.C., C.D., California.</i>	Do.	Do.	Summary judgment as to possession granted in favor of tribes; issue of damages remains.
155. <i>United States v. Atlee, et al., U.S.D.C., C.D., California.</i>	Do.	Do.	Do.
156. <i>United States v. Briggs, et ux, U.S.D.C., C.D., California.</i>	Do.	Do.	Do.

157. United States v. Allen, et ux., U.S.D.C., C.D., California. Do.
158. United States v. Garrett, et ux., U.S.D.C., C.D., California. Do.
159. United States v. Tredway, et ux., U.S.D.C., C.D., California. Do.
160. United States v. Harry Woodward, et ux., U.S.D.C., C.D., California. Do.
161. United States v. Rymer, et ux., U.S.D.C., C.D., California. Do.
162. United States v. Aranson, et al., U.S.D.C., C.D., California.
163. United States v. Shaw Sales and Service Co., et al., U.S.D.C., C.D., California.
164. Proposed action to quiet title to portions of bed of Missouri River, Fort Peck Reservation, Montana. Prosecuting case on behalf of Assiniboin and Sioux Tribes. Do.
165. State of New Mexico, et al. v. United States, et al., D.C., New Mexico. Department is protecting water rights of Indian Pueblos. Action to quiet title to bed exposed by avulsive change in Missouri River in the tribe.
166. Rincon Band of Mission Indians, et al. v. Escondido Mutual Water Co., et al., S.D., California. Defended against action for mandamus following which Department is asserting rights of Indians in suit brought in name of United States. Department brought suit on behalf of Lummi Indians. Water adjudication suit in which rights of several Indian Pueblos to use of water from tributaries of Rio Grande are in issue. Oral argument June 15, 1973, on motion for summary judgment on limited issues. Court has taken motion under advisement. Writ of mandamus denied. Case consolidated with United States v. Escondido Mutual Water Co., et al., for determinations of rights of Indians to use of water under contracts and for damages. Complaint filed and a pretrial conference has been held.
167. United States v. Washington, U.S.D.C., W.D., Washington. Defendants motion for summary judgment has not yet been decided by the Court.
168. Ames, et al. v. Walter Hickel, et al., U.S.D.C., N.D., California. Motion for leave to file in Supreme Court denied without prejudice. Suit in Federal District Court of Nevada is being prepared.
169. United States v. Nebraska and California, U.S. Supreme Court, original jurisdiction. A partial final special master's report has been entered.
170. New Mexico v. Aragon, et al., District Court of Arriba County, New Mexico. Complaint and answer filed. Pretrial conference will be held shortly. Settlement negotiations are also underway. Defendants have ceased pumping for all but domestic uses.
171. United States v. J. Ed Smith and Producers Mineral Corp. U.S.D.C., Arizona. Motion to dismiss filed by a defendant was argued on June 21, 1973. It announced he would enter order granting motion on grounds that adequate remedy is available in State courts.
172. United States v. Akin, et al., U.S.D.C., Colorado. A defective judgment was entered. An amended decree has been prepared and it is being circulated for approval. When the amended decree is filed, the case can be closed.
173. State of Washington 2.63 acres of land in Skagit County, Wash., unknown heirs of Harry Moses, et al. U.S.D.C., W.D. of Washington at Seattle. Condemnation of restricted Indian lands owned by individuals. Action to adjudicate the Federal reserved water rights in 8 rivers in Colorado.

Name of case and court	Nature of Department's involvement	Subject matter	Status and remarks
174. Oklahoma Turnpike Authority v. 181.38 acres of land in Noble County, Okla., the United States of America, et al., U.S.D.C., W.D. of Oklahoma.	Department is representing interests of United States, as trustee, and Indian land owners.	Condemnation of restricted Indian lands owned by individuals.	The case is at issue and it will be tried in due course to determine the issue of just compensation.
175. Oklahoma Turnpike Authority v. 34.62 acres of land in Noble County, Okla., the United States of America, et al., U.S.D.C., W.D. of Oklahoma.	do	do	A consent judgment was entered and case can be closed as soon as the funds on deposit in the registry of the court can be withdrawn and paid to the area representative of the Bureau of Indian Affairs.
176. State of Alaska v. 6,363 acres, more or less, United States of America, et al., U.S.D.C., for the District of Alaska.	do	do	The U.S. attorney at Fairbanks, Alaska is negotiating with the plaintiff for a settlement in this case.
177. Oklahoma Turnpike Authority v. 120.42 Acres of Land in Pawnee County, Okla., United States of America, et al., U.S.D.C., N.D. of Oklahoma.	do	do	The U.S. attorney at Tulsa, Oklahoma is negotiating with the plaintiff for a settlement in this case.
178. County of Del Norte, Calif. v. 55.777 Acres of Land, more or less, United States of America, et al., U.S.D.C., N.D. of California.	do	do	This case is at issue and it will be tried in due course to determine the issue of just compensation.
179. Oklahoma Gas and Electric Co. v. certain lands in Pottawatomie County, Okla., United States of America, et al., U.S.D.C., W.D. of Oklahoma.	do	do	Judgment has been entered and case can be closed as soon as the funds on deposit in the registry of the Court can be withdrawn and paid to area representative of Bureau of Indian Affairs.
180. The State of Washington v. 27.98 Acres of Land in Skagit County, Wash., Bertha George Dam, et al., U.S.D.C., W.D. of Washington at Seattle.	do	do	The U.S. attorney at Seattle, Wash., has been authorized to enter into a stipulated settlement with plaintiff. The necessary arrangements should be concluded in the near future.
181. Public Service Co. of Oklahoma v. a 100 foot wide easement over and across certain lands in McCurtain Okla., the United States of America, et al., U.S.D.C., E.D. of Oklahoma.	do	do	This case is at issue and it will be tried in due course to determine the issue of just compensation.
182. Public Service Co. of Oklahoma v. a 130 foot wide easement over and across certain lands in Nowata County, Okla., the United States of America, et al., U.S.D.C., N.D. of Oklahoma.	do	do	Final judgment has been entered and funds covering amount of judgment have been disbursed. Case will be closed shortly.

This case is at issue and it will be tried in due course to determine the issue of just compensation.

183. Public Service Co. of Oklahoma v. 130 foot wide easement over and across certain lands in Rogers County, Okla., Malenda Williams, et al., U.S.D.C. N.D. of Oklahoma, 1973.
184. Trustees of Fort Cobb, Okla., Irrigation Fuel Authority v. a right-of-way over certain lands in Caddo County, Okla., the United States, et al., U.S.D.C., W.D. of Oklahoma, 1973.
185. A. C. and Letha E. Hankins v. A way of necessity across certain lands in Caddo County, Okla., the United States of America, et al., U.S.D.C., W.D. of Oklahoma, 1973.
186. Coachella Valley County Water Dist. v. 55.72 Acres of Land, more or less, in Riverside County, Calif., the United States, et al., U.S.D.C., C.D. of California, 1973.
187. Arkansas Louisiana Gas Co. v. A right-of-way across certain lands in Pittsburg County, Okla., the United States, et al., U.S.D.C., E.D. of Oklahoma, 1973.
188. Sycamore Valley Asso. v. S. California Edison Co. and Commissioners of FPC, U.S.D.C., California, 1973.
189. Richard Davis, et al. v. United States, Court of Claims, 1973.
190. United States v. Escondido Mutual Water Co. and Vista Irrigation District, U.S.D.C. California, 1973.
191. Rincon and La Jolla Bands of Mission Indians v. Vista Irrigation District, U.S.D.C. California, 1973.
192. United States v. Coleen C. Peterson, U.S.D.C. E.D. of Washington, 1973.
193. Altna v. Doyon, U.S.D.C. Alaska, 1973.
194. Cook Inlet Region Inc. v. Morton, U.S.D.C., Alaska, 1973.

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The U.S. attorney at Los Angeles, Calif., has filed an answer contesting the right of the condemning authority to appropriate a fee simple estate. We contend that all that is required is a flowage easement.

Complaint filed on or about Apr. 30, 1973, and Commissioner's report filed May 15, 1973. Settlement negotiations are in progress. An early settlement is expected.

Action dismissed on June 17, 1971, and plaintiffs appealed to 9th circuit on questions of United States as indispensable party and primary jurisdiction. Argument set for July 1973.

Action stayed pending disposition of identical claims before FPC.

Initial pleadings and responses all filed and most preliminary motions heard. Settlement discussions continue while pretrial order is being drafted and technical studies completed.

Consolidated with above case.

U.S. attorney notified of performance bonds available and for collection of judgment debts, assets of judgment debtors.

Settlement negotiations almost completed.

Do.

Plaintiffs organized to take possession of assets of Cold Springs Rancheria if and when termination occurs, seek ejectment and damages for power lines and roads across Indian trust lands.

Companion case to Sycamore Valley above, for damages from transmission lines across Cold Springs Rancheria.

United States seeks to reform contracts re: water rights and obtain damages for trespass on lands of Mission Indian Bands, and clarify rights of Indians to water of San Luis Rey River.

Action for damages for appropriation of Indian water rights and to declare void contract under which defendant obtains water.

Action for lease rentals, interest and assessments due. Judgment for \$4,280.50 and \$2,038.98 plus interest.

Plaintiff, unhappy with the Secretary's boundaries, seeks to compel arbitration of new boundaries and to delay other decisions of the Secretary under the act.

Plaintiff contends that the Secretary is required to make larger land withdrawals under the act.

Name of case and court	Nature of Department's involvement	Subject matter	Status and remarks
195. Lucille Albers v. Rogers C. B. Morton, U.S.D.C., E.D., California.	Department represents the Secretary of the Interior.	Plaintiff contests the effect of Rancheria termination on entitlement to benefits based upon status as an Indian.	Complaint filed Mar. 20, 1972. Answer filed Oct. 11, 1972. Discovery in progress.
196. American Indian Information and Action Group v. Rogers C. B. Morton, U.S.D.C., E.D., Wisconsin.	do.	Plaintiffs seek to have reservation residence requirement eliminated as a condition to entitlement to housing improvement program funds.	Complaint filed December 1972. Motion to dismiss filed on June 14, 1972. Argument expected shortly.
197. California Indian Education Association v. Rogers Morton, U.S.D.C., E.D. of California.	do.	Plaintiffs seek to review the decision allocating education grants under the Johnson-O'Malley program.	Complaint filed Mar. 15, 1972. Motion to dismiss filed on June 14, 1972. Discovery proceeding.
198. Edith Croy v. Rogers Morton, U.S.D.C., E.D., California.	do.	Plaintiffs seek to have reservation residence requirement eliminated as a condition to entitlement to housing improvement program funds.	Complaint filed Dec. 2, 1971. Answer filed in timely fashion. Motions for summary judgment filed by all parties are now under submission. Decision may be contingent upon Supreme Court resolution of Ruiz v. Morton.
199. Franklyn Fireshaker v. Elliot Richardson, U.S.D.C., New Mexico.	Department represents the Indian Health Service of the Department of Health, Education, and Welfare.	Plaintiffs seek to have reservation residence requirement eliminated as a condition to entitlement to medical services generally provided on a contract basis.	Complaint filed November 1972, and amended in March 1973. Pretrial conference held May 31, 1973. No trial date.
200. Julia Martinez v. George Romney, U.S.D.C., District of New Mexico.	Department represents the Secretary of the Department of Housing and Urban Development.	Plaintiffs seek to invalidate tribal ordinances on the basis of sex discrimination under the Civil Rights Act. Ordinances from the basis of eligibility to participate in housing subsidies administered by the tribe.	Complaint filed Sept. 22, 1972. Motion to dismiss submitted with leave to amend. Amendment not received.
201. National Indian Youth Council v. Rogers Morton, U.S.D.C., W.D. of Oklahoma.	Department represents Secretary of the Interior.	Plaintiffs contend that expulsion procedures practiced at Indian school violate constitutional guarantees of due process.	Complaint filed in December 1971, along with motion for preliminary injunction. Settlement discussions now pending based upon proposed changes in Bureau of Indian Affairs' regulations. Motions for summary judgment and to dismiss now pending.
202. United States v. Northern States Power Company, U.S.D.C., W.D. of Wisconsin.	Department represents Chippewa Indians.	Quiet title action to approximately 30 acres of lake-front property omitted from original survey.	Complaint filed on July 22, 1970. Answer filed August 1970. Discovery conducted. Case ready for trial.
203. United States v. Oran B. Phillips, U.S.D.C., Nebraska.	Department represents Omaha Tribe of Indians.	Quiet title action concerning approximately 600 acres of farm land adjacent to the Missouri River. Case concerns issues of accretion and reemergence.	Complaint filed July 17, 1972. Answer filed October 1972. Motion pending for a separate determination of pivotal legal issues.
204. Pit River Indian Tribe v. Rogers Morton, U.S.D.C. E.D. of California.	Department represents Secretary of the Interior.	Plaintiffs seek to compel Secretary of the Interior to designate beneficiaries of 10,000 acres of land known as the X-L Ranch acquired in 1934 for the benefit of "such bands of the Pit River Indians as the Secretary may designate."	Case is in abeyance pending conclusion of administrative proceedings to designate the beneficiaries of X-L Ranch.
205. Peters v. Morton, et al., U.S.D.C.	Department is defending officials of the Department of the Interior.	Plaintiff Indian seeks a declaration that the Secretary is empowered by 25 U.S.C. 465 to receive land from plaintiff and hold it in trust for his benefit.	Motion to dismiss filed May 30, 1973, on grounds that plaintiff has not exhausted administrative remedies.
206. Gomez v. Morton, et al., U.S.D.C., New Mexico.	do.	Plaintiff seeks to compel Federal defendants to release water from lake on Jicarilla Apache Reservation.	Awaiting litigation report from Department of the Interior.
207. Cocopan Reservations, Arizona	Assistance of Department has been requested.	Department has been asked by Indian Tribe to help secure water rights for part of reservation.	Information has been requested from Department of the Interior.
208. Gemmill, et al., v. United States	Department is defending suit to quiet title and damage action against various Federal officials.	Plaintiff Indians seek damages arising from a demonstration in Shasta County, Calif., during October 1970, and a declaration that certain national forest lands belong to the Pit River Tribe.	These cases were stayed pending disposition of criminal actions arising from the same facts. The criminal actions have been concluded but plaintiffs have not moved to reinstate the civil cases.

209. Duncan, et al. v. Morton et al., U.S.D.C., N.D. of California. Department is defending officials of the Department of the Interior.
210. Donahue, et al. v. Butz, et al., U.S.D.C., N.D. of California. Department is defending various Federal officials.
211. Oakes, et al. v. Oceanic California and United States, U.S.D.C., M.D. of California. Department is defending quiet title action.
212. Leclair, et al. v. Mitchell, et al., U.S.D.C., South Dakota. Department is defending various Federal officials.
213. Aguilar v. United States, et al., U.S.D.C., S.D. of California. Department is defending officials of the Department of the Interior.
214. Wilkinson, Ernest L. v. Morton, U.S.D.C., D.C. U.S. Court of Claims, D.C. Circuit. Department is defending Secretary of the Department of the Interior.
215. Washington State Sportsmens Council, Inc. v. Washington Department of Fisheries, Washington State Court. Department is participating as amicus curiae to protect Indian treaty fishing rights.
216. United States v. State of Washington, U.S.D.C., Washington. Department is prosecuting suit to protect Indian treaty fishing rights.
217. Settler v. Yakima Tribal Court, U.S.D.C., Washington. Department has filed amicus brief in support of Yakima Tribal Court.
218. Morton v. Ruiz, U.S. Supreme Court. Department is defending Secretary of the Interior.
219. Rockbridge v. Morton, U.S.D.C., Maryland. Department is defending Secretary of the Interior and BIA officials.
220. Littell v. Morton, U.S.D.C., Maryland. Department is defending Secretary of the Interior.
221. Edwardsen v. Morton, U.S.D.C., D.C. Department is defending Secretary of the Interior and other officials.
222. Simmons v. United States, U.S.D.C., N.D. of Texas. Department is defending United States which is protecting rights of Indians in accreted oil lands.
223. Cheyenne-Arapaho Tribes v. United States, Court of Claims. Department is defending United States.
224. Cheyenne-Arapaho Tribes v. United States, Court of Claims. do
225. Navajo Tribe of Indians v. United States, Court of Claims. do
- A motion to dismiss was filed in this case on the ground that plaintiffs did not allege membership in a recognized band of Indians.
- A motion to dismiss was filed on the ground that Indian title to the lands in question has been extinguished.
- An answer has been filed in this case asserting defenses of sovereign immunity and lack of jurisdiction.
- An answer has been filed and the underlying dispute is being negotiated between the Bureau of Indian Affairs and county officials.
- Awaiting litigation report from the Department of the Interior.
- Plaintiffs recovered judgment in the district court and the matter is now on appeal.
- Case is being held in abeyance pending outcome of United States v. State of Washington, and Puyallup Tribe v. Washington, the latter case pending in the Supreme Court.
- Case is being held in abeyance pending outcome of Puyallup Tribe v. Department of Game, State of Washington, pending in the Supreme Court.
- Matter has been held under advisement and we are awaiting word of disposition.
- Certiorari has been granted and case is pending in Supreme Court.
- Case was decided in favor of plaintiffs by court of appeals and is pending on remand to district court.
- Case is pending upon the merits and we are awaiting assignment by the court for oral argument.
- Government's motion for summary judgment was granted in part and case is awaiting further proceedings.
- Compromise has been accepted which is satisfactory to all parties. Case is awaiting implementation of settlement.
- Matter is pending on discovery proceedings.
- Plaintiff Indians seek a declaration that they were improperly included in a distribution list which terminated their right to Federal Indian services.
- Plaintiff Indians seek a declaration that they are entitled to exclusive use of certain lands within a national forest.
- Plaintiff Indians seek a declaration that the Poma Tribe is the owner of certain patented lands in California.
- Plaintiff Indians seek an order requiring Federal officials to collect compensation from Tripp County, S. Dak., for taking of part of an Indian allotment for highway widening.
- Plaintiff Indians seeks an order compelling Federal officials to restore her fee-patented land to trust status.
- Plaintiffs, a law firm, seek to recover \$290,000 out of funds held on deposit for Osage Indians. Plaintiffs seek payment for their claim for attorneys' fees although they did not represent the individual Indians for whom the funds are held on deposit.
- Plaintiff is suing Department of Fisheries to oppose fishing regulations which protect Indian treaty fishing rights.
- Department is prosecuting suit to protect Indian treaty fishing rights.
- Suit to enjoin tribal court from prosecuting plaintiff for violation of tribal fishing regulations.
- Action to require Secretary to make welfare payments under Snyder Act to Indians who do not live on Indian reservations.
- Action to require Interior to issue regulations regulating trading on Navajo Reservation.
- Action to require payment of approximately \$2,500,000 claimed by plaintiffs as attorney fees for representing Navajo Tribe.
- Action by Alaska Natives to obtain declaratory judgment and other relief recognizing their alleged rights to North Slope area of Alaska.
- Action to recover damages for claimed trespass by United States which leased lands which plaintiff now claims.
- Action to recover damages for alleged maladministration of tribal judgment funds by not paying highest interest rates thereon.
- do
- do

Name of case and court	Nature of Department's involvement	Subject matter	Status and remarks
226. Navajo Tribe of Indians v. United States, Court of Claims.	Department is defending United States.	Action to recover damages for alleged maladministration of tribal judgment funds by not paying highest interest rates thereon.	Matter is pending on discovery proceedings.
227. Coeur d'Alene Tribe of Indians v. United States, Court of Claims.	do.	do.	Do.
228. Coeur d'Alene Tribe of Indians v. United States, Court of Claims.	do.	do.	Do.
229. Indians of California v. United States, Court of Claims.	do.	do.	Do.
230. Indians of California v. United States, Court of Claims.	do.	do.	Do.
231. Quinault Allottee Association v. United States, Court of Claims.	do.	do.	Government's motion for summary judgment was argued and we are awaiting decision.
232. Manchester Band of Pomo Indians v. United States, U.S.D.C., N.D. of California.	do.	do.	Case is awaiting decision.
233. Hamilton v. MacDonald, U.S.D.C., Arizona.	Department is observing proceedings since United States is mere stakeholder.	Action by Hopi Indian Tribe to enforce division of lands of reservation in Healing v. Jones—Hopi-Navajo controversy.	Case is pending for decision.
234. Bighart v. Pappan, U.S.D.C., Oklahoma.	Department is defending BIA officials.	Action to reverse decision of Secretary of the Department of the Interior in approving will of restricted Indian.	Case is pending in Court of Appeals.
235. Curtis v. United States, U.S.D.C., Arizona.	Department is defending United States.	Action to require United States and individual defendants to pay plaintiff her claimed pro rata share of tribal trust funds.	Case is awaiting decision.
236. Parker v. Pappan, U.S.D.C., Oklahoma.	Department is defending BIA officials.	Action to reverse Secretary's decision in approving will of restricted Indian.	Case is awaiting trial setting.
237. Crow Tribe of Indians v. United States, Court of Claims.	Department is defending the United States.	Action to recover damages for alleged maladministration of tribal judgment funds by not paying highest interest rates thereon.	Matter is pending on discovery proceedings.
238. Crow Tribe of Indians v. United States, Court of Claims.	do.	do.	Do.
239. Hoopa Valley Tribe of Indians v. United States, Court of Claims.	do.	do.	Do.
240. Akers v. Department of the Interior, U.S.D.C., Montana.	Department is defending BIA officials.	Action to reverse Secretary of the Interior approval of Indian will.	Case pending in Court of Appeals.
241. Jessie Short v. United States, Court of Claims.	Department is defending United States.	Suit by 3,323 Yuroks to recover pro rata share of timber proceeds on Hoopa Valley Reservation. For many years those proceeds have been paid only to Hoopa Valley Indians.	Case was argued June 8, and we are awaiting decision.
242. Edmund D. Kahn and Kathleen M. Kahn v. Arizona State Tax Commission, Supreme Court.	Brief, amicus curiae, in response to order of the Court of May 22, 1972, inviting the views of the United States.	State taxation of income of non-Indians living on a reservation. Appellant seeks to overturn decision of State supreme court holding him liable for State income tax based on his salary as an attorney for a tribe, while living on the reservation.	On Apr. 23, 1973, the court dismissed the appeal for want of a Federal question.
243. Leonard Tonasket v. State of Washington, Supreme Court.	Brief, amicus curiae, in response to order of Apr. 3, 1972, inviting the views of the United States.	Appellant an Indian seeks to overturn State supreme court decision holding that although he operates a store on allotted Indian land, the tribe has submitted itself to State jurisdiction under Public Law 280 and accordingly, the tribe and its members are subject to State sales tax and business regulations.	On Apr. 24, 1973, the court remanded the case to the State supreme court for reconsideration in light of the opinion in <i>McClanahan v. Arizona State Tax Commission</i> , Supreme Court.

244. *Ricci v. Riverside County, California*. Amicus in favor of Indian trust allotted's immunity from county building code controls.
245. *Settler v. Lameer* C.A. 9, No. 71-2364. Amicus curiae in favor of off-reservation enforcement of tribal fishing limits by Yakima Indian Nation.
246. *O'Cheskey v. Hunt, New Mexico* State Supreme Court, No. 9705. Amicus curiae in favor of immunities from State income tax and State gross receipts tax claimed by individual Pueblo Indians.
247. *Satiacum v. Washington* U.S. S. Ct. Amicus memorandum on petition for certiorari.
248. *Duncan, et al. v. Morton, et al.*, U.S.D.C., N.D., California. Department is defending Secretary of the Interior and various Federal official defendants.
249. *Truvido v. Morton, et al.*, U.S.D.C., N.D., California. Department is participating as amicus curiae for the Indian.
250. *Mattz v. Arnett*, U.S. Supreme Court. Department is defending the United States.
251. *Ira Sylvester Godfrey, et al. v. U.S. of America and Miami Tribe of Oklahoma, et al. v. United States of America*, U.S. Supreme Court. Department is defending criminal convictions for illegal introduction of alcohol into Indian country.
252. *United States v. Martin Dewalt Magurie, et al.*, U.S. Supreme Court. Department filed at the request of the court and the Department amicus brief on behalf of an Indian who was seeking a divorce from the State court.
253. *State ex rel. Mary Iron Bear v. District Court of the 15th Judicial District of the State of Montana*, Supreme Court of the State of Montana. Department will submit a brief as amicus curiae.
254. *The Oneida Indian Motion v. The Courts of Oneida, New York and the County of Madison, New York*, U.S. Supreme Court. Two Indian tribes, relying on three treaties and the Non-Intercourse Act of 1790, challenged a 1795 sale of tribal land. The 2d circuit affirmed the dismissal of the Indians' action for want of jurisdiction because of the "well-pleaded complaint" rule.
- A "280" State, claiming jurisdiction over Indian county granted by Public Law 280, 28 U.S.C. 1360(b), authorizes its counties to impose building codes and land-use contracts. The question is whether such county controls can affect trust-allotted land on land of an Indian tribe where the United States trusteeship and control has not fully terminated.
- Plaintiff, a Yakima Indian who was net fishing in Washington State off the Yakima Reservation, was convicted in Yakima tribal court for violation of tribally enacted fishing ordinance. Plaintiff claims his activities were beyond territorial reach of tribal law. United States, as amicus claims the tribe may regulate fishing by its members outside the reservation under the treaty with the Yakimas.
- New Mexico seeks to tax income and gross receipts of individual Indian members of Pueblo of Laguna for activities conducted within the Pueblo's confines. The Pueblo is a self-governing Indian community, subject to control only by Congress.
- Indian convicted for fishing violation. State court held that Indian reservation had ceased to exist. United States urging remand on grounds that reservation question was not material to this case.
- Plaintiff Indians seek injunction, declaratory judgment and damages arising out of termination of Rancheria.
- do
- State criminal proceeding against Indians fishing with nets. The issue is whether subject area within Indian country. Attorneys for the Indiana Miami Tribe dispute the apportionment of fees by the Indian Claims Commission.
- Appellants, non-Indians, are seeking to overturn criminal convictions for violation of 18 U.S.C. 1154, by U.S. District Court for District of Wyoming. United States is defending validity of the criminal convictions on appeal.
- Divorce proceeding in State court involving an Indian.
- do
- Decision has been reported in Law Week but not yet reviewed in Department. Apparently the Government's position prevailed. We supported the Indians' position that the State court had jurisdiction to render a divorce in the absence of an Indian tribal court which could grant the relief sought. Certiorari granted June 9, 1973, No. 72-851.

Briefed in late 1972, and argued March 1973. Awaiting decision. Consolidated with two other appeals: *Rincon Bank v. San Diego County*, C.A. 9, No. 71-1927; *Madrigal v. Riverside County*, C.A. 9, No. 71-2043.

Awaiting decision in C.A. 9. Briefs were submitted in early 1972. Opinion in prior appeal: 419 F. 2d 486.

Indian taxpayer prevailed in New Mexico State Court of Appeals. Thereafter the State supreme court granted certiorari on petition of the State revenue commissioner. Briefs were submitted in April 1973. Case is still pending. Grant of certiorari still pending before S. Ct.

Pretrial scheduled for July 15, 1973.

Trial set for September 18, 1973.

Case decided in favor of Indian.

The Indiana attorneys have petitioned the Supreme Court for a writ of certiorari to the Court of Claims seeking to overturn the decision of that court appointing the Indian Claims Commissioner's appointment. U.S. brief due June 11, 1973, and oral argument scheduled for July 11, 1973.

Decision has been reported in Law Week but not yet reviewed in Department. Apparently the Government's position prevailed. We supported the Indians' position that the State court had jurisdiction to render a divorce in the absence of an Indian tribal court which could grant the relief sought. Certiorari granted June 9, 1973, No. 72-851.

Name of case and court	Nature of Department's involvement	Subject matter	Status and remarks
255. A & B Rot-Away Rentals v. Crow Tribe of Indians, U.S.D.C., Montana	Department is monitoring litigation as tribe has private counsel.	Plaintiff rental company seeks damages from tribe for failure to return rented equipment.	Complaint filed on July 29, 1971. Awaiting results of litigation.
256. Bristol Bay Borough matter	Department represents Alaska Native.	Attempts by local government to levy and collect taxes on necessary interest in land and on personal property of Alaska Native.	Prelit discussions set with local authorities. Motion to dismiss pending.
257. Martha George v. Rogers C. B. Morton, et al., U.S.D.C., W.D. of Washington	Department is defending Secretary of the Interior, Bureau of Land Management officials and Tribal Council.	Action to have tribal court's actions vacated and to mandamus a "proper" hearing before an "impartial" court.	Action dismissed by district court.
258. Charles Kimball, et al. v. John Callahan, et al., U.S.D.C. for Oregon	Department is monitoring litigation as neither the United States nor officials are parties.	Action by individual Indians against state officers alleging violations of Indian hunting and fishing rights in Oregon.	Complaint and answer filed.
259. Corrine Makris v. Squamish Tribal Council, et al., U.S.D.C., W.D. of Washington	Department is defending the Bureau of Indian Affairs officials and Tribal Council and members of the Tribal Council.	Action for damages for illegal imprisonment by Bureau of Indian Affairs police officers who were engaged in the enforcement of a tribal court order.	Case removed from State court to Federal court and answer has been filed. Prior to removal, lower court dissolved TRO against construction.
260. Town of Fort Edwards v. Wisconsin Dells Housing Authority, et al., Circuit Court, Wood County, Wisconsin	Department is defending the housing authority which is owned by the Winnebago Tribe.	Action to enjoin construction of housing project.	Awaiting Bureau of Indian Affairs report concerning continuing trespasses of defendant. Defendant has served 30 days for contempt involving prior trespasses.
261. United States v. Wilfred Seguna, U.S.D.C. for New Mexico.	Department represents the Pueblo of Cochiti.	Action to stop trespass of defendant on lands of Cochiti Pueblo.	The U.S. attorney has been directed to file suit.
262. Fred. A. Drummond/Osage Indian Tribe matter.	Department represents Osage Indian Tribe.	Request of Indian tribe for action to enjoin surface owner from interfering with mineral lessee's rights of access to his leasehold.	Damage claims against Secretary of the Interior dismissed. Answer filed, awaiting trial.
263. Jake v. Morton, U.S.D.C. for New Mexico.	Department is defending Secretary of the Interior.	Suit for restoration of allotment and damages.	Suit was originally filed to force the Department of Justice to represent Pauma Band. Both Department of the Interior and Justice decided that the band's claims had merit, so we are representing them in the suit against State defendants.
264. Pauma Band of Mission Indians v. Kleindienst and County of San Diego, U.S.D.C. for California.	Department represents the Pauma Band of Indians.	Suit for damages against County of San Diego for construction and use of road through Indian reservation without permission of the tribe.	Motion for summary judgment filed on behalf of the Secretary of the Interior, plaintiffs have not replied.
265. Locklear v. Morton, U.S.D.C. for the District of Columbia.	Department is defending the Secretary of the Interior.	Suit for declaratory judgment that "Lumbee Indians" are entitled to Indian Reorganization Act benefits.	Answer filed, defendant's motion for summary judgment being prepared.
266. Squamish Indian Tribe v. General Services Administration, U.S.D.C., E.D. of Washington.	Department is defending Administrator of General Services Administration.	Suit for declaratory judgment that Indian tribes are entitled to excess property pursuant to the Federal Property and Administrative Services Act of 1949, 42 U.S.C. 471 et seq., and suit for mandatory injunction to have General Services Administration to reconsider Bureau of Indian Affairs's request.	Do.
267. Skokomish Indian Tribe v. General Services Administration, U.S.D.C., E.D. of Washington.	Department is defending Administrator of General Services Administration.	Suit for declaratory judgment that Indian tribes are entitled to excess property pursuant to the Federal Property and Administrative Services Act of 1949, 42 U.S.C. 471 et seq., and suit for mandatory injunction to have General Services Administration to reconsider Bureau of Indian Affairs's request.	

268. *Red Lake Band of Chippewa Indians v. The United States, et al.* Department is defending the United States. \$6,000,000 taking and breach of trust claim against the United States. Plaintiff alleges that unspecified units of the armed forces fired .50 caliber machine gun bullets into trees of the Red Lake Reservation Forest, making the trees unmarketable. The United States has answered, denying liability. The suit is in the discovery phase.
269. *United States v. Edmund Tucker, et al., U.S.D.C. for South Dakota.* Department represents the United States as plaintiff. The court has entered a preliminary injunction enjoining foreclosure on the 3 houses. The question as to the validity of the liens remains. A motion for summary judgment has been filed on behalf of the United States contesting the validity of the liens. The court has not ruled on the motion.
270. *Norvell v. Morton, et al., U.S.D.C. for New Mexico.* Department represents the defendant, Secretary of the Interior and other Federal officials. The case has been briefed and is ready for trial. The Department of Justice takes the position that the State cannot exercise jurisdiction over the development because it is located on Indian lands.
271. *Joint Tribal Council of the Passamaquoddy Tribe, et al. v. Morton and Richardson, U.S.D.C. for Maine.* The State of Maine has intervened; the Federal defendants have filed a motion to dismiss which is pending. Discovery is proceeding. The Court entered a preliminary injunction ordering the Federal defendant to file a "protective complaint" against the State of Maine, which complaint has been filed.
272. *McCurdy v. Steele, U.S.D.C. for Utah.* Federal defendants' motion to dismiss for lack of jurisdiction was denied. The case is awaiting trial. There is a remote possibility of settlement.
273. *Muckleshoot Tribe v. General Services Administration, District Court for the Western District of Washington.* The Government's motion for summary judgment was denied. One of the 3 parcels involving have been given to the Bureau of Indian Affairs for use of the Tribe. The second parcel may also be given to Bureau of Indian Affairs for use by the tribe. Answer filed; motion for summary judgment being prepared.
274. *Houston Bus Hill v. Morton, District Court for the Western District of Oklahoma.* Defendant has paid a portion of his debt. Some property was sold at foreclosure sale. Judgment for plaintiff in the amount of \$450.
275. *United States v. Buzzard, District Court for the Eastern District of Oklahoma.* Suit to collect Indian debt and foreclose mortgage. Defendant had received a Bureau of Indian Affairs loan.
276. *United States v. Thermo Dyne Corp., District Court for the Western District of Oklahoma.* Suit for damages for appropriation of easement for pipeline across a Kiowa Indian allotment.

Name of case and court	Nature of Department's involvement	Subject matter	Status and remarks
277. Avalos v. Morton, District Court of New Mexico.	Department represents Secretary of the Interior.	Class action suit to establish that members of the Tiwa Tribe are entitled to benefits under the Snyder Act, 25 U.S.C. 13. Secretary of the Interior takes the position that the Tiwa Tribe is not a federally recognized tribe and is therefore not entitled to Snyder Act benefits.	Answer filed, no further action taken.
278. Tiwa Tesque v. Morton, et al., District Court for New Mexico.	Department is defending the Department of the Interior officials.	Suit to cancel Secretary of the Interior's approval of 99-year lease to Sangre de Cristo Development Corp. on Pueblo of Tesque land. Plaintiffs allege that the planned development would adversely affect the environment of the pueblo, that the tribal council was misled as to the terms of the lease, that the negotiations were fraudulent, that the pueblo's legal counsel had a conflict of interest; that Federal defendants' approval of the lease violated NEPA, was arbitrary and capricious and a breach of Federal fiduciary obligations to Indians.	A motion to dismiss the litigation has been filed by the Federal defendants, alleging failure to join as indispensable parties the United States and the Pueblo of Tesque, failure to state claim and other defenses. The court has not acted on our motion.
279. 37 Claims filed pursuant to sec. 20(c) and 20(d), Alaska Native Claims Settlement Act. The following are the claimants: Arctic Slope Native Assn.; Alaska Fed. of Natives, Inc.; Alaska Fed. of Natives, Wash. Chapter; Belli, Ashe, Ellison & Choulos; Belli, Ashe, et al.; Bering Straits Native Assn.; Boyko, Edgar Paul; Central Council of the Tlingit, etc.; Connor, Roger G.; Cook Inlet Native Assn., Inc.; Cornell, Howland, et al.; Culp, Dwyer, et al.; Dixon, Paul T.; Fosso, H. C.; Gordon, Guy G.; Green, Donald H.; Hendrickson, John W.; Innova Corp.; Jackson & Fenton; McCutcheon, Stanley J., et al.; McCutcheon, Stanley J.; Miller, Lester W.; Nicholls, Hugh; Par-meter, Adrian; Paul, Frederick, & Davis, etc.; Paul, Weiss, et al.; Paul, William L., Sr.; Preston, Frank M., et al.; Sonosky, Marvin J.; Tallman, James K.; Tallman, James K.; Tallman, James K.; Weissbrodt & Weissbrodt; Weissbrodt & Weissbrodt; Wyman, Bautzer, Rothman, & Kuchel; Wilkinson, Cragun & Barker, Court of Claims.	The Department of Justice is an "interested party" as stated in sec. 20 of the act.	A total of \$2,600,000 has been set aside from the Alaska Native Fund for payment of Native groups lobbying costs and attorneys fees. The Chief Commissioner of the Court of Claims is responsible for determining the validity of the claims.	The United States is not an adversary party in these proceedings. The Department of Justice is advising the Chief Commissioner on its view as to the proper handling of the claims and as to the requirements of sec. 20 of the Alaska Native Claims Settlement Act.

MAY 3, 1973.

HON. MIKE GRAVEL,
U.S. Senate, New Senate Office Building,
Washington, D.C.

DEAR SENATOR GRAVEL: The Cook Inlet Native Association would like to thank you for the information you sent us concerning the hearings on legislation affecting our Indian people.

We would like you to submit testimony in our behalf. For the hearings on May 7th and 8th, concerning S1012 and S1339, the Cook Inlet Native Association strongly supports these bills. We believe that the establishment of an Indian Trust Counsel Authority, to provide independent legal council and representation for the preservation and protection of the natural resource rights of the Indian people is a very important piece of legislation and we strongly support these bills.

We would like to explain in more detail our position on bill S1339. A recent analysis of expenditures by Indians for lawyers and attorneys reveals that a staggering amount has been paid fighting for awarded rights. Since 1962, the Indian people have paid more than 40 million dollars in legal fees, or four million dollars a year. This money could have funded a multitude of sorely needed programs such as medical care, education, subsistence, and housing programs. The ensuing years will find the Indian people expending even greater amounts of money because of increasing violations of Indian rights and indecisive court decisions only too frequently forming guidelines for more court battles. This will be especially true in Alaska with the recent passage of the Alaska Native Land Claims Settlement Act containing 40 million acres of land. The picture in Alaska is further confused by the struggle the Native people are facing today as they try to reach the same economic and social level of western civilization.

The Cook Inlet Native Association is presenting one amendment for consideration on bill S1339. The amendment would insure that one of the two Indian appointees for the board be an Alaskan Indian. This amendment is put forth because of the extensively confused development anticipated in regards to Indian rights in Alaska.

For the hearings on May 9th, concerning the BIA and Indian Health Service, we recommend that these agencies should not have their budgets cut. We have read that the BIA is going to have their budget cut by approximately \$50 million. CINA hopes that payments on the Alaska Native Claims does not mean that the BIA budget will be cut. The Bureau of Indian Affairs should have a special allocation from the Office of Management and Budget, as an add-on appropriation, to pay off the Alaska Native Claims Bill.

The Cook Inlet Native Association feels that the budget for Indian Health Service should be increased to meet the higher costs of medical care and health services. To keep up the quality of health care, the Indian Health Service needs an increase in their budget. The hospital staff and services for our local Public Health Service are inadequate and have been further reduced because of Federal cut-backs.

The proposed commission could do much in assisting the Indian people to retain awarded rights and release sorely needed funds for programs beneficial to the Indian community.

The Cook Inlet Native Association sincerely appreciates the opportunity provided to voice our concerns and interests and extends you a sincere thank you.

We will keep you informed of our opinions on other upcoming Indian legislation.

Sincerely,

ROBERT W. RUDE,
President, Cook Inlet Native Association.

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