

# BUREAU OF INDIAN AFFAIRS' CAPACITY AND MISSION

---

---

## HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

OVERSIGHT HEARING TO REVIEW WHAT THE BIA IS BEING ASKED TO  
DO BY CONGRESS AND WHETHER THE PRESENT ROLE OF THE BIA IS  
APPROPRIATE FOR THE CURRENT STATE OF INDIAN COUNTRY

---

APRIL 28, 1999  
WASHINGTON, DC



U.S. GOVERNMENT PRINTING OFFICE

56-464 CC

WASHINGTON : 1999

---

For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402  
ISBN 0-16-058724-7

COMMITTEE ON INDIAN AFFAIRS

BEN NIGHTHORSE CAMPBELL, Colorado, *Chairman*

DANIEL K. INOUE, Hawaii, *Vice Chairman*

FRANK MURKOWSKI, Alaska

JOHN McCAIN, Arizona,

SLADE GORTON, Washington

PETE V. DOMENICI, New Mexico

CRAIG THOMAS, Wyoming

ORRIN G. HATCH, Utah

JAMES M. INHOFE, OKLAHOMA

KENT CONRAD, North Dakota

HARRY REID, Nevada

DANIEL K. AKAKA, Hawaii

PAUL WELLSTONE, Minnesota

BYRON L. DORGAN, North Dakota

PAUL MOOREHEAD *Majority Staff Director/Chief Counsel*

PATRICIA M. ZELL, *Minority Staff Director/Chief Counsel*

# CONTENTS

	Page
Statements:	
Campbell, Hon. Ben Nighthorse, U.S. Senator from Colorado, Chairman, Committee on Indian Affairs .....	1
Conrad, Hon. Kent, U.S. Senator from North Dakota .....	2
Gover, Kevin, Assistant Secretary for Indian Affairs, Department of the Interior .....	3
Inouye, Hon. Daniel K., U.S. Senator from Hawaii, Vice Chairman, Com- mittee on Indian Affairs .....	11
Jackson, Jr., Jack, Director, Governmental Affairs, National Congress of American Indians .....	26
Martin, Tim, Executive Director, United South and Eastern Tribes, Nash- ville, TN .....	26
Swimmer, Ross O., Tulsa, OK, Former Assistant Secretary for Indian Affairs, Department of the Interior .....	15
Teba, Bernie, Executive Director, Eight Northern Pueblos, San Juan, NM .....	21

## APPENDIX

Prepared statements:	
Allen, W. Ron, President, National Congress of American Indians (with attachments) .....	
Gover, Kevin (with attachments) .....	31
Swimmer, Ross O. (with question and responses) .....	52
Teba, Bernie (with attachments) .....	66
Additional material submitted for the record:	
Martin, Tim (with questions and responses) .....	135



# BUREAU OF INDIAN AFFAIRS' CAPACITY AND MISSION

WEDNESDAY, APRIL 28, 1999

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

The committee met, pursuant to notice, at 9:34 a.m. in room 485, Senate Russell Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Inouye, and Conrad.

## STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The Senate Indian Affairs Committee will be in order.

Today, we will begin the long process of taking a frank look at the Bureau of Indian Affairs [BIA] reviewing what the BIA is being asked to do by Congress and just as important, what it is capable of doing. We will also discuss whether the present role of the BIA is appropriate for the current state of Indian country.

As the agency charged with primary responsibility for carrying out the United States trust responsibility to Indian tribes, the BIA has continuing obligations to protect Indian assets and Indian people. We are here today to find out how, if at all, those obligations have changed since 1970 when President Richard Nixon initiated the Tribal Self Determination policy.

As of this year, more than one-third of all Indian tribes operate under self-governance compacts. They perform services for their members that used to be managed entirely by the Federal Government such as health care, law enforcement and natural resource protection. Self governance allows tribes to administer Federal programs and services provided by the BIA and the Indian Health Service and has resulted in higher quality services, more skilled tribal personnel and political and economic self determination among tribes. I believe everyone here would agree self determination has been the Government's most successful policy toward Indian tribes.

At the same time, as more tribes enter self governance, we are hearing from the agencies and our colleagues that self governance and the withdrawal of resources is having an impact on the residual capabilities of the Bureau to remain viable and to continue providing services.

Today we are asking what the BIA's mission should be in this new era of tribal self governance. Should it be a service provider, should it be strictly a technical assistance provider and can it continue to be both? In many cases, ever since the Bureau was transferred from the War Department to the Department of the Interior, there has been somewhat of a love/hate relationship with Indian tribes.

From the first days of its existence, the Bureau has been analyzed and reorganized numerous times. That is not the sign of failure. A good government is responsive to the changing needs of its people.

Indian country and the Bureau are at a crossroads and I hope to hear from the witnesses their views on what will be the BIA's mission and should be in the years ahead and what resources are required to fulfill those obligations.

While we are waiting for Senator Inouye, Senator Conrad, did you have an opening statement or comment?

**STATEMENT OF HON. KENT CONRAD, U.S. SENATOR FROM  
NORTH DAKOTA**

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

I want to thank you for holding this hearing. I think it is critically important that we go through this process.

I'd also like to welcome Kevin Gover, who in my opinion has done an excellent job as Assistant Secretary of Indian Affairs. This is not an easy job. The challenges are immense. I believe Kevin Gover has done an absolutely superb job trying to meet these challenges.

I'd also like to welcome former Assistant Secretary Ross Swimmer. We are glad to have him here as well.

This morning we're discussing the mission and capacity of the BIA. I just want to share very briefly the comments I get from back home because tribal leaders back home are saying to me, first of all, make more of the decisions as close to the location where the decision is going to affect peoples' lives as is possible. That's the first message I get repeatedly. In every area of the country, there are different conditions and it is much easier if the decisions are being made as close to the reservation that is affected as is possible.

The second observation from my tribal leaders is the concern that as we move to more contracts, more 638, more arrangements like that, there are less resources available for those who don't choose to engage in self governance at this point or they have limited self governance and they are counting on BIA to provide these services.

This is something that I hear repeatedly. I think one of the great challenges we have is balancing this move toward greater self determination, contracting and the provision of services for those who are not yet prepared to direct these activities themselves. I think that is a great challenge we face, balancing this area.

Final comment. Nobody knows this better than our Chairman. The conditions in Indian country, while improving, and I can look around my State and I do see improvements, I think one of the key reasons is tribal colleges. I am a great advocate of tribal colleges because I think they are really making a difference. We all know

there are areas of immense unmet need, housing conditions that are deplorable.

I wish many times that as the cameras focus as they should on the refugees from Kosovo and the suffering of those people that they would take just a few moments to come to Indian country and see the suffering there because it is housing, health care, education situations that are totally substandard, and yes, in law enforcement. All of these areas, we have a responsibility and frankly, that responsibility is not being met. It's not being met by the Administration and it's not being met by us here in Congress.

We could have these hearings every year and look at the situation and deplore the conditions and do next to nothing. It's my fondest wish that at some point we turn the corner. I believe the exposure of the American people to what is happening in Indian country would lead to a change. If they saw how people are living, the conditions in which they are expected to raise a family, there would be an outcry just like there is when they see night after night the suffering of the people who are being ejected from their homes in Kosovo because in Indian country, there is suffering that is as deep and as dramatic as anything that is seen in Kosovo.

We have an epidemic of suicide on reservations in North Dakota, an absolute epidemic and the reason is there is hopelessness, there is a sense that there is no future. Just like those poor people that are being torn away from their homes in Yugoslavia, we have people who have that same sense that there is no future, that there is no hope.

We have an obligation to help turn that around and I hope this hearing is a beginning.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. The Senator's comments are well taken.

Before we start, I would like to introduce a group that is our future, Senator Conrad. That is these Indian youngsters standing at the back of the room who are from the Wind River Reservation. I know you couldn't find a chair back there but hopefully you'll stay with us as long as you can. We're happy you are here at this committee hearing. We're very proud of you and we want you to know that.

With that, I'm happy to see my friend and colleague, Kevin Gover, as our first person to testify. Why don't you proceed?

**STATEMENT OF KEVIN GOVER, ASSISTANT SECRETARY FOR  
INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR**

Mr. GOVER. Thank you, Mr. Chairman.

Let me begin by acknowledging and expressing my personal sorrow and certainly that of all the employees at the BIA at the tragedy that has taken place in your State.

The CHAIRMAN. Thank you.

Mr. GOVER. As it happens, one of our employees actually had a child at the school on that day and, thank God, he survived unharmed. Our hearts certainly go out to those children and their parents at what has happened.

I want to offer any assistance that we can muster. If the committee can think of some way that the BIA might be of assistance, we are anxious to do what we can.

I'm going to go on just a little longer than I usually do today because we've got a lot of ground to cover.

The CHAIRMAN. I might tell you that since two of our witnesses could not make it this morning and we won't use the light on you, Mr. Assistant Secretary.

Mr. GOVER. I appreciate that, Mr. Chairman.

First, let me introduce my friends here. Michael Anderson is the Deputy Assistant Secretary for Indian Affairs and Hilda Manuel is the Deputy Commissioner for Indian Affairs. Hilda is in charge of the operations of our agency and Michael assists me in developing the policy.

First of all, thank you for your opening statement and Senator Conrad the same. I think you've captured some of the dilemmas that we have in leading the BIA. It is a very complex agency, an agency that has a difficult history, a history that very much reflects the checkered past in the relationship between the United States and Indian tribes.

When the BIA was formed in 1824 as the Office of Indian Affairs in the Department of War, the policy being pursued by the United States with regard to the Indian tribes was that of removal. We were literally removing tribes from their ancestral homelands and moving them to far distant places. Today, a policy of that sort would be called ethnic cleansing.

Within a few decades, the centerpiece of policy toward the tribes was really treaty-making, treaty-breaking and warfare, again, with the Office of Indian Affairs and the Department of War being at the center of the execution of this policy.

After the military defeat of the tribes, we entered the reservation era. During that time, the BIA basically provided the daily bread for these tribes that had been deprived of their ordinary means of subsistence and prosperity and instead became entirely dependent on the United States. This is the era when the stereotype of the crooked Indian agent was very much a reality where these folks would take the treaty goods that were supposed to be provided to the tribes, sell them on the black market and then provide inferior and even dangerous goods to those reservation Indians.

As you well know, the reservation era did not last particularly long because the new policy became allotment. In a single century, there were four dramatic policy shifts in how the United States chose to pursue its relationship with Indian tribes.

The allotment policy was based on a notion of assimilation. The idea was that given the proper incentive, the tribes and Indian people would literally blend themselves into the larger population that had come to surround them. The way that policy was executed was to take two-thirds of reservation lands and transfer them out of Indian ownership, take much of the remainder and transfer that to individual Indians, again on the theory that some miracle of private property ownership would take place and the tribes and these individual Indian people would somehow become like their non-Indian neighbors.

The policy, in my opinion, was really much more directed at getting at those lands and that while I do believe some actually believed that an assimilationist policy was in the best interest of the tribes, that it was far more common that the motive behind this policy was to get those lands.

In the 1900's after the dramatic failure of the allotment policy and after 90 million acres of land had moved out of Indian ownership, we entered a more enlightened policy era very much consistent with the New Deal policies of the time that became known as the reorganization policy. Developed and implemented by the great John Collier, the tribes were encouraged to reorganize these governments.

Understand how difficult that must have been. The BIA for the last 40 years had been charged with destroying those tribal institutions. That was their job. They were suppressing religions, they were taking children out of their homes and sending them to boarding schools that they might become more like the non-Indian citizenry. Suddenly in 1934, they were told, stop destroying tribal governments and rebuild them.

That they did and the reorganization policy began to show some dramatic, positive impacts as for once, United States policy was based on the proposition that tribes know what is best for them.

Unfortunately, that policy lasted only two decades before there was a dramatic policy shift again, in the 1950's, we see a policy of termination, meaning the withdrawal of the United States from the Federal-tribal relationship. Termination had a devastating effect on the many communities that were affected by it and again, the BIA, after having spent two decades trying to rebuild tribal governments, was told to dismantle them once again.

Happily, termination did not last long and two decades later, we entered the current policy era of self-determination and self-governance but here again, the Bureau is asked to completely change directions and move away from its job of identifying tribes who are supposedly ready for a termination of the Federal trust responsibility and again go back to rebuilding tribal governments and increasing their capacity to handle these matters for themselves.

The back and forth in policy over nearly 200 years, the BIA is 175 years old, creates a lot of baggage. The Chairman accurately described the relationship between the tribes and the Bureau as a love/hate relationship. The Bureau over these two centuries has been responsible for carrying out some of the most dreadful and terrible policies ever conceived in the treatment of a people and at other times, has been asked to rebuild these communities, work with them and treat them as partners and really conduct a government-to-government relationship.

So the relationship between the tribes and the Bureau reflects the back and forth in Federal policy over the years. It also explains a lot of the baggage this agency carries because certainly it is true that some of the things the Bureau has done over the course of two centuries were terrible things to do to anybody. Yet, in each case, they were carrying out what they were told to do in the prevailing Federal Indian policy.

We are in a much different day at this time. At this point, there are 558 federally-recognized tribes. The BIA provides services ei-

ther itself or through contracts with tribes and tribal organizations to 1.2 million reservation Indians in those 558 tribes located in 32 different States.

We provide a broad range of services most directly comparable to the services that a State is charged with providing, everything from educating 53,000 Indian children in BIA schools to providing law enforcement, to assisting in the management of timber resources, water resources, mineral resources, oil and gas, the entire range of natural resources, to basic social work and assistance in placing children who are in need, assistance to elderly people and, of course, a great deal of assistance to the many Indian people who still live in poverty.

That creates a very, very complex service mission, complicated more by the fact that Congress has chosen, and it is a policy with which we absolutely agree, to say the tribes can receive these services in virtually any form and any combination they choose. They can allow the Bureau to continue to provide services directly or they can contract some or all of those programs, or they can go to the new self-governance program which, in essence, is a block grant program that allows the tribes to take federally-appropriated money and use it for a broad variety of programs as they see fit without the approval of the BIA and with really very little responsibility to ask us for any sort of permission. That clearly is the correct policy at this point in time.

Again, this has created some real challenges for our agency. We are one of the few agencies, I think, that has been told very clearly we want you to work yourself out of most of your jobs. The policy of self-determination really is centered on the notion, as Senator Conrad pointed out, that those decisions need to be made at the tribal level by tribal people. Our job really has changed a lot from the time when we were all things to all Indians to a time when we are backing out of a presence at the reservations as fast as we can and letting the tribal governments be the ones who are in charge of those decisions. That is clearly the correct policy.

Every time in our history, we have tried to withdraw from the tribal-Federal relationship or ignored the wishes of tribal governments and even tried to destroy those institutions, the results have been dramatically bad. So today's self-determination policy is a reversal of that. Yes, we'll pull the Bureau out of your day-to-day decision-making, but we will do no harm to the ongoing Federal-tribal relationship and furthermore, we want the tribes making the decisions about how these resources are allocated.

We have some special guests with us today that, with your indulgence, I would like to introduce. The people of the BIA sort of take a pounding in many circles. It is often said this is a large and tough bureaucracy, but the reality is that most of our employees are engaged in providing services directly to the tribes. We wanted to honor some of those employees today by introducing them to the committee.

First, let me introduce Gloria Gorman, who is from our area office in Juneau, AK. Gloria has had an outstanding career with the Bureau and has been chosen as our social worker of the year. We are very grateful for her work.

I'd also like to introduce Jim Stiers. Jim is the Deputy Director of the BIA's Fire Center. He is a fireman and he does an outstanding job in his position. He's been chosen as the outstanding employee in that part of our organization.

Next is David Pennington. Dave is from the Billings Area Office. He is our natural resources worker of the year and has a broad experience in protecting and defending tribal resources.

Next is Brandt Johnson who is from the boarding school on the Navajo Reservation. Brandt is our teacher of the year. It is little known that nearly one-half of our employees in the BIA are teachers and we're very proud of all of them.

Finally, Mr. Chairman, another major service element in our program is law enforcement. We have with us, John Yellowhawk who is the Chief of Police at Truxton Canyon Agency in Arizona.

These folks are out there every day bringing new meaning to the term public service. I wanted to say for all to hear just how proud I am of not just these five folks but of all the people in the BIA. They work extremely hard. I've had many experiences in both the public and private sector over the years in many different offices and with some very outstanding people, but I will say this. I have never encountered a group of people that are as talented and most of all, as dedicated to what they are trying to do against very difficult odds than the people in the BIA. I am grateful for their work, I'm very proud of them and I am absolutely honored to be given the opportunity to lead them in their efforts.

Mr. Chairman, you asked the key question, what is left to the BIA if we fully implement this policy of self-determination and self-governance? I think the answers are really before us.

First of all, before we will see the full implementation of self-determination and self-governance, we have to see more funding. When we talk to these tribes about what we need to do to encourage them to take on more self-determination contracts or to enter into the self-governance program, they say we need more resources. They do not wish to take on a program that cannot succeed due to a lack of resources.

First and foremost, if we're to see the ultimate implementation of the vision of self-determination and self-governance, it's going to require more funding. Again, I want to point out that we are an unusual agency. The more money we get, the smaller we get because the tribes will take on more and more of these responsibilities. So we, once again, make that plea that the Congress needs to help us by helping these tribes.

Let me also say one of the great myths of our time is that the BIA spends 85 to 90 percent of its funds on bureaucracy. It just ain't so. Our basic operating account is our operation of Indian programs. This chart shows how much of our total budget actually is contracted out. As you can see in the blue bar, it is well over half of our budget. So it's simply not possible for us to be spending all that money on administration.

You will also see that the self-determination and self-governance policies have had a dramatic effect on the number of BIA employees in just the last 20 years. In 1981, we had almost 17,000 FTEs; in fiscal year 1999, we will have about 9,600 employees. So we've

lost nearly half of our employees and those have become tribal employees.

Nor may it be said that we have unusually high administrative costs. We took some time to compare some of our administrative costs to some of the other agencies in Interior. Certain things are very stark in this comparison. First of all, 70 percent of our annual budget is contracted out, almost all of it to tribes and tribal agencies, but some to private Indian-owned organizations.

Second, our personnel costs are lowest in the department by several orders of magnitude. That's because our agency has become quite small and we rely much more on tribal contracting and other contracting to meet the requirements of Indian country.

Finally, we really want to put this myth to rest. We did some calculations on how much of our money actually goes to administration. What we did was add up all the positions that could even conceivably be called administrative and indulged every presumption against ourselves in terms of our administrative costs, and found that at most, it's 10.1 percent.

That assumes that people like me and Hilda Manuel, make absolutely no provision of services to the tribes, that we're strictly administrators which is not the case. Even if you assume that, 90 percent of our funds go to services in Indian communities. That is as it should be.

If we implement this policy of self-determination to its logical conclusion, there will still be a place for the BIA. I see four major areas in which we need to enhance our capabilities in order to meet what those responsibilities are still going to be.

First, there is the trust responsibility. The Bureau will continue to be responsible for the primary trust obligation to produce and enhance Indian assets. That is why right now we are engaged in this great effort called the Trust Management Improvement Program to overhaul all of those systems. We've asked the Congress for a lot of money to implement that program. If we succeed, we will have set the Bureau on the proper course for the next two decades in terms of meeting its trust responsibilities.

Second, there is an accountability function, both our internal accountability to this Congress for the money that we use as well as the accountability of the tribes to the Congress. It is clearly desirable that most decisionmaking be made at the local level but when you do that, it's axiomatic that increases the need for oversight, that the central function of our office then will become oversight and making sure appropriated funds are used for the appropriated purposes.

We're not very good at that right now but we are working on overhauling our administrative systems as well. We brought in the National Academy of Public Administrators and asked them to look at our administrative systems and make recommendations to us on how to improve our administrative performance.

We believe that by going deeper into these administrative areas and doing a better job on each of them that we can feel freer and be more credible in coming to you and saying, if you give us a dollar, it will be extremely well spent.

Third, we must continue our role in policy development and coordination. It is a very good thing that right now more and more

corridors of the Government are being opened to tribes. I am, on a month-to-month basis, amazed at the different agencies who come to us asking for assistance in developing a relationship with tribal governments.

Just to pat ourselves on the back for a moment, I think the Clinton administration has made one very important improvement in Indian affairs and that is to express to all Federal departments that they have an obligation to the tribes that is independent of that of the BIA, and that they are no longer allowed to tell a tribal leader go away, go talk to the BIA, that they too have responsibilities. That has been a very important and dramatic change.

Finally, you spoke about technical assistance and that would be the fourth primary function that would remain to the Bureau. These days, any government needs a large amount of scientific expertise available to it. Yet, given that we have 558 tribal communities, not every one of them needs a full-time archaeologist, a full-time hydrologist, a full-time road engineer, et cetera but the BIA can maintain that capability and make it available to the tribes.

I have asked my area directors to go out and talk to the tribes and find out what we anticipate in terms of scientific expertise that is going to be needed in these communities so that our area offices will slowly but surely convert to a technical assistance mission and much less of a line authority mission.

There are several areas that in all candor, we're not going to make a lot of progress on in the next couple of years but loom as large problems. Right now, as you know, we're involved in litigation over a trust fund management system that had been ignored for many years.

It was a lawsuit in my opinion that needed to be brought. I believe in combination with the Congress and with the administration, we're going to be able to deal with this issue and put it on a path to resolution within the next two years.

There are several other areas where quite frankly some enterprising lawyer is going to realize that we are extremely vulnerable. Let me describe some of them

One is in the area of law enforcement. We have very specific responsibilities to enforce the law on the reservations. Right now, we don't have enough officers to get it done. We know from a recent Justice Department Study that if you are a Native American, you are 2.5 times as likely to be a victim of a violent crime. That's unacceptable. It's absolutely dreadful and we need your help in addressing that issue.

Second, as Senator Conrad referred to, we have the issue of our schools. I live in absolute dread that one day we're going to wake up to some terrible disaster in one of our schools and it won't involve a situation like we saw in Littleton. Instead, it will involve something that is absolutely preventable. That is that our facilities are falling apart. They are dangerous to these children and I find it difficult to explain to these young people why it is their schools don't look like the other schools they see on television. Why it is their schools are falling down. Why it is areas of their schools get roped off because they are dangerous. We've got to do better.

Next is safety of dams. We have several hundred dams we're responsible for. We are like the little dutch boy at this point, running

around trying to deal with the greatest crisis in dam safety while knowing other dams are deteriorating at an alarming rate. We believe we would need around \$40 million a year to really make a dent in the backlog on our dam renovation needs.

Next is the area of irrigation. Our irrigation systems are falling apart. They are old and decrepit. We don't generate enough money to properly maintain those systems. Of course it's the allottees who pay for that. Their lands become unproductive, they cannot be economically farmed because of the condition of these systems. More than anything we would like to be able to turn these systems over to the tribes but the tribes are saying to us, we're not crazy and we're not going to take over a system that is so broken down, we'll never be able to fix it. That's another area we have to target within the next few years.

I believe that is the essence of my comments today. Again, we thank the committee. This is an important and timely hearing. While we face many challenges, I don't have much doubt this agency can successfully resolve them.

In all candor, we're going to have to no longer take the approach of trying to solve all the problems at once. I think the Bureau has been fighting a losing battle for many years trying to take on very, very daunting problems and trying to do them all at once.

Instead, we're going to have to take a different approach which is to really gather a number of our resources and attack one or two problems at a time. That's going to take some years to finish. The two problems I want to deal with before I leave are trust and our administrative functions. So we are concentrating our resources in those two areas in order to get those on a proper and stable footing before we move on to some of these other very important problems we face out there.

If we can do that, then I believe the next Assistant Secretary will have an opportunity to address some of the other issues I've described this morning.

With that, we thank you very much and thank the committee for your time and patience with that lengthy explication. We'd be grateful to answer any questions you have.

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

The CHAIRMAN. Thank you for that very complete comment. I was taking some notes while you were talking.

I noted with interest the reduction of the employees at the Bureau. At the present rate, you may be the last one working there. As someone said, don't forget to turn out the lights.

You gave a very fine, short history of the failed policies and misguided decisions this Government has made. I appreciate you doing that because I think a lot of people don't know what the Reorganization Act was, or the what the Allotment Act was. I guess the only one you missed that I thought as another failed policy was the assimilation process the Government thought they were doing some good and did bad.

In my view, Kevin, one of the major reasons why a lot of these policies have failed is because they never asked the Indians. They were all done here through some kind of infinite wisdom without ever asking the tribes what they thought or what they wanted or how it would affect them. They put the policies in place and sort

of dumped them on the tribes, sometimes policies completely foreign to their thinking including the original Reorganization Act, totally foreign to their form of government, trying to make a clone government from what we're doing here in Washington out of all of the Indian tribes who had totally different systems of government.

I often compare it to how people would feel in the United States if a foreign country came into this Nation and by force or whatever means, told us we had to abandon our form of government that we've had for the last 220 years and implement a totally different form of government based on what they thought was the proper form of government. That's basically what happened to the Indian tribes.

There is no question it left the two cultures without direction and all of that has manifested itself in the high suicide rate as Senator Conrad mentioned and a lot of lost people along the way. So I appreciate that very fine statement you made.

You're in a tough job and you wouldn't have gotten the support of this committee if we didn't think you can handle it but I know as Ada Deer found out and Ross Swimmer, Eddie Brown and many others, that's not an easy job. So I admire you for the heat you have to take in doing that.

With that, Senator Inouye, did you have a statement you'd like to make before we ask a few questions?

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

Senator INOUE. Yes; first of all, I would like to apologize for my lateness. Second, I would like to commend the Assistant Secretary for his most compelling statement. I am sorry I was not here to hear your opening remarks and I would like to commend the employees.

Over 3 years ago, we began discussions with the then Secretary of the Indian Affairs, Ada Deer, regarding the subject matter we're discussing this morning. We did so because we believed it was time the American public, especially the Congress, developed a better understanding of the BIA.

For too many years, the Bureau has been one of the most underrated and overly criticized agencies in the Federal Government. It is the agency that Indian country and appropriators love to hate. In recent years, the administrative capabilities of the BIA have been decimated by Government downsizing, early retirement authority and most importantly, diminishing resources.

Nonetheless, we continued to charge the Bureau with an ever increasing and wider range of responsibilities in furtherance of the United States trust responsibilities while failing to provide the Bureau with the resources any agency would need to carry out these duties.

Add to that, the impact of self-determination contracting and self-governance compacting on the ranks and functions of the Bureau, and it is a small wonder that this agency is perceived by its critics to be operating under siege and unable to meet its tasks.

Today, the Bureau has some of the most highly respected and imminently capable leadership and we've just met a few of them,

people who come from Indian country and know well the landscape of challenges that Native people are facing in most of our tribal communities. The Secretary of the Interior has taken a personal interest in some of these challenges and has committed himself to changing what has been for far too long a bleak and dismal horizon.

There can be no doubt that there are grave, endemic problems that leaders and citizens of Indian country face on a daily basis. I'm glad we will hear from the former Assistant Secretary, Ross Swimmer, and I'm certain he'll tell you those dynamics have not changed a great deal over time.

How do we foster economic growth in Indian country? We've been talking about this for decades now. How do we begin to stabilize the social climate in which young Indian people are trying to grow and learn? How do we address the scourge of drugs and alcohol and gang violence and child abuse that plague many poor communities across this Nation, be they tribal communities or non-Indian ones? How do we assure that Indian youth have safe schools in which to learn and a path to a promising future? How do we protect Indian lands and resources, rights to water and rights guaranteed under our treaties?

Mr. Chairman, these are just a few of the challenges that the BIA attempts to address on a daily basis with the most meager of resources, so I am glad you called this hearing and I commend you for that. I am certain that we will focus today on the contemporary realities and the future the BIA is charged with helping to shape.

I want to commend Mr. Gover once again for your compelling statement and I can assure you I join the Chairman in doing whatever we can to be of assistance.

The CHAIRMAN. I might mention since you did talk about the increased need of money resources, last year the Bureau's budget was about \$2.4 billion for the complete year. I note that we've spent about \$6 billion in Kosovo so far or on the refugee problem or the war, whether you use that word or not, the war effort. Just this week, the administration asked for another \$6 billion to get through September.

It just seems to me if we can find that much money to fight somebody else's civil war, we ought to have more money that goes into the war on poverty and drugs, the homeless and housing and everything else we face on a daily basis on Indian reservations.

Let me ask you just a couple of questions, Mr. Assistant Secretary. When we talk about self-governance with tribes, one of the things I've noticed is, at least in the beginning and maybe not so much now but on the part of some there is sort of a fear that if you go more toward self-governance programs, that somehow that is sort of a back door way of the Federal Government getting out of their trust responsibility. I was wondering if you had some idea of how we could induce tribes or at least dilute that fear that some people have?

Mr. GOVER. Thank you for that question, Mr. Chairman. I think we have to continually be clear with tribal governments that the fact that we are encouraging them to take over many of these—basically what they are afraid of is that we're going to pull out the rug from under them. After we get them to take on all of these pro-

grams and do all this work, that suddenly all the Federal assistance is going to disappear.

We have to be very constant in saying that the trust responsibility continues to exist and that these funds are going to continue to be available to them. In my opinion, it is that the tribes, because of this history we've had, this back and forth and the several attempts of the United States to withdraw from the Federal-tribal relationship, act out of their fear of that happening again. The only way to overcome that fear is for us to be very constant in saying the United States will never again attempt to withdraw from that relationship and the United States is going to continue to support these communities as long as there is a United States. A promise that is meaningful is one that means the most.

The CHAIRMAN. In some cases, law enforcement is an example. Some tribes have taken it on themselves and found it didn't work for whatever reason and gone back to have the Bureau take over that program. I guess part of it might be that we need to get the message to them this is not an absolute, finite deal, that they can opt in and opt out and if it doesn't work, they still have that reserve safety net that they can come back in.

Mr. GOVER. They absolutely have that right. It does create some problems for us because we are sort of on pins and needles each year if a tribe turns a program back to us, we have to scramble to get the personnel in place to provide the service, but that is their right. We are not looking to withdraw from that responsibility.

The CHAIRMAN. Speaking of law enforcement, in fiscal year 1999, law enforcement dollars were taken out of the tribal priority allocation account and put back under the central authority of the Bureau. Does that signal a trend toward refederalization of Indian programs?

Mr. GOVER. Hopefully, it doesn't represent a trend at all. I think there are times when the Congress, who certainly always has the power, but there are times when it also has the inclination to establish priorities for Indian country. This is one of those times.

The Congress has said to us, we'll give you the extra money you've asked for in law enforcement, but we want to be sure it's spent only on law enforcement. It seems to me that is a reasonable approach. We would like to see law enforcement returned to TPA. In a way it doesn't matter because it doesn't affect how we distribute the funds. On the other hand, TPA has become symbolic of the self-determination policy and we really ought to be consistent with how we're administering those programs.

The CHAIRMAN. Senator Inouye had to go to another meeting but he did leave half a dozen or fewer questions. Rather than try to ask them as eloquently as he can, I'm going to submit those to you. Could you answer those in writing to Senator Inouye?

Mr. GOVER. Yes, sir.

The CHAIRMAN. I'd appreciate that.

Those are all the questions I have. Before you leave, let me tell you that in my view, many of the members of this committee are doing their very best for Indian country but believe me, we are stymied too. As we get into some of these very difficult negotiations between States and tribes, dealing with gaming is an example, frankly, this Senator, and I'm sure I speak for several others, we're

really at our wits end trying to find a solution to problems when we would like the States and tribes to negotiate their differences and then come to us and say what they both can live with which would benefit both tribal people and the people in the State in which they reside.

Any help you can give us in trying to find some of those solutions would be greatly appreciated.

Mr. GOVER. We are doing one thing that may become a model for the future. As you may know, we recently issued some new proposed regulations on the acquisition of trust lands for the tribes. As part of our consultation process, we thought it would be a good idea to bring several different interests together to talk about those issues, both to educate us but also to educate one another.

In early May, we're going to be conducting a meeting with tribal representatives, representatives of the Governors, representatives of the attorneys general, representatives of local governments and representatives of private enterprises who feel they are affected by Indian trust land decisions to see what common ground there is.

The real issue in tribal negotiations is both parties have to have some leverage. There has to be some incentive to negotiate. In my judgment, it is our job at the Bureau and at the department to be on the tribes' side and to lend our weight to their side of that effort. That's a function I didn't mention but I hope it goes without saying that's whose side we're on when it comes to these sorts of matters.

The CHAIRMAN. And I'm sure the committee appreciates that. From my view though, Indian tribes are not always right in some of those decisions because boy, we hear it all the time from the local 7-Eleven dealers who had a thriving business until the tribe acquired some land near them, put it in trust and opened a 7-Eleven across the street and sell their goods at a cheaper rate. Believe me do we get it from State governments and from private businesses who feel they cannot compete and that they are competing against an unfair entity, that is, the Federal Government. So it's not an easy answer.

Mr. GOVER. That is when we do not envy you your job.

The CHAIRMAN. Thank you for your appearance today. We appreciate it.

The CHAIRMAN. We will now go to the second panel which will consist of: Former Assistant Secretary Ross Swimmer; Bernie Teba, Executive Director, Eight Northern Pueblos and Tim Martin, Executive Director, United South and Eastern Tribes from Nashville.

Your complete written testimony will be included in the record so you may speak freely or abbreviated, if you like. It's nice to see you again here, Ross. It's been a while and welcome back to the hallowed halls of Congress. You were the Assistant Secretary from 1985 to 1989 under President Reagan, and from 1975 to 1985 were the Chief of the Cherokee Nation. You did a wonderful job in both those capacities.

**STATEMENT OF ROSS O. SWIMMER, TULSA, OKLAHOMA,  
FORMER ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DE-  
PARTMENT OF THE INTERIOR**

Mr. SWIMMER. I don't know about that, Mr. Chairman. I sometimes question one's sanity of dealing in this particular subject matter. You're to be commended and Senator Inouye also for his fine leadership. This has been a committee that, for many, many years, has had excellent leadership on both sides of the aisle and is to be commended for the attitude of working together. I think this exemplifies a lot of what we need in Indian country, a policy from the Congress that is consistent, that is bipartisan and directed at solving the problems.

I appreciate the opportunity to be here today, to speak to the committee, for the invitation I received. I'm always one to give advice.

I particularly appreciated Assistant Secretary Gover's comments. I felt that if I were to come back into the Bureau today after 10 years, about the only thing I might miss is I would have 5,000 fewer employees. I admire the job he is attempting to do, given that situation as well as the financial situation that he's faced in Indian country.

He is doing an excellent job. I appreciate his leadership and having a fellow of his character in this position, as is the job being done by the other 9,000-plus Bureau employees. I want to echo his comments regarding that.

When I was here, I have never worked with a more dedicated group of people who were attempting to do the right thing 99 percent of the time with 99 percent of the people. As Kevin so well articulated, the difficulty often is simply figuring out what the mission is because the mission changes. I have noticed that it changes about every 20 years, about every two decades.

So the mission of the Bureau is to advocate whatever the policy of the day is that comes from Congress and to try to administer that policy, laws and regulations as it comes from Congress to the tribes and to Indian country. That is a very difficult job in trying to change one's mindset from what one was doing yesterday to a whole different plan of action tomorrow, whether it's removal, trying to encourage people to move away from Indian country, trying to encourage people to move back to Indian country, trying to retribalize Indian country, trying to take away tribes from Indian country is extremely complex.

The Bureau is challenged with the mission of a lot of things it never intended would happen. I mention in my testimony a lot of that history. Certainly the trust fund's management issue is one that plagues the Bureau now as it did when I was there and as it did for years before because that wasn't part of the mission, or at least it wasn't designed to be the mission of the Bureau in the sense that it has become today where there are hundreds of thousands of individual Indians who are receiving, in some cases, nickels and dimes as their fractionated share of lease moneys from tribal lands or individual Indian lands and putting that into accounts, trying to put interest on it, trying to allocate it back to the individual with resources that were designed to do the job in a much less complex era 20, 30 or 40 years ago. I also address this in my writ-

ten testimony, the difficulty of trying to get technology up to date in the BIA to manage this.

I bring to the committee's attention that it was an attempt of mine to privatize the accountability of trust funds going forward with contracts to outside agencies that would in fact have the capability, that do have the capability of accounting for those kinds of funds in extremely small shares and being able to handle the trust fund accounting.

This we attempted to implement and it was strongly opposed by Congress. It was opposed by Congress because it was believed at that time that this was the responsibility of the BIA, and by golly, the BIA should do it.

It's easy to say the BIA should do it, but if you don't have the resources, you can't do the job. If you don't have the people that are qualified to do the kind of work necessary to get the maximum amount of return for tribal and individual funds, it can't be done. That's part of what we face today.

The mission of the Bureau today is as much as it was 10 years ago and even 20 years ago. As Kevin mentioned, mission is schools, it's trust accounting, it's land leasing, protection of resources, acting as trustee for both individual Indian citizens and the tribes, administering a plethora of Federal programs. What should the mission of the Bureau be?

It was my belief coming from the leadership of a major Indian tribe that tribes were on the verge of being able to take on the responsibility for their governments, that in many instances, tribal government was sufficiently adept and strong and in place long enough that it didn't need the guardianship of the BIA.

I felt that if tribes could take over more of the financial resources the Bureau had and dedicate those to areas of tribal need rather than perceived Federal Government need, more things could be done. I pushed for the policy of self-governance and the law of self-governance which instead of self-determination and 638 allowed the tribes to take on specific programs, self-governance would literally let the tribe take the Bureau's budget. If the tribes took the Bureau's budget, they would then program that money and return to the Bureau a budget so they could be held accountable for how that money was spent. The tribes would be better off for it and the Bureau eventually may downsize and go away.

There are a couple of caveats with that. At the time, it seemed to me that if tribes are going to engage in self-governance, they have to accept the responsibility, they cannot have the BIA wait in the wings and simply say, well, we decided we don't really want to do that, we're not getting enough money, we've got a political problem here, we're going to retrocede and you, the Bureau, must come in just like you were before and take over this entire function, be it law enforcement, school administration, programmatic efforts, whatever it might be.

That's unrealistic. It can't be done in the first place, plus Congress is never going to put up the money to prepare the Bureau to be able to move into those areas once the tribe has taken them over.

If the tribes are going to take this approach and truly become self-governing, they also have to take the responsibility and figure

out how they are going to manage. What happens if they have to retrocede? We have a problem in our own tribe right now that nobody could have foreseen where the constitution has been trampled on, where the leadership just has ignored the basic tribal law.

Is it the Bureau's responsibility to solve that problem? I don't think so. I think it's a tribal problem to solve and the tribal processes have to work those things out. We've seen around the country where these kinds of issues are prevalent. What do you do, what is the answer when a tribe falls apart so to speak?

Well, I can tell you in our own State of Oklahoma, nothing to be proud of, a lot of our supreme court folks have gone to jail, we've indicted and sent Governors to jail, law enforcement people have gone to jail, and I suspect probably half the States, maybe more in the Union, have had the same problem. These things happen. It's a political institution, but there are mechanisms in Indian country, in tribes and each one may be different, to work out these problems.

I think the theory of tribes assuming certain responsibilities is good and self-governance can work if the tribes understand this isn't just a program, this isn't just money, you are responsible for your tribal government.

We get into a lot of other issues. This is where the policy really has to be thought out. In my mind, it has never been thought out or discussed in any great length and perhaps it's because it's such a touchy subject that nobody simply wants to talk about it.

That is, not all tribes are the same. If you compared a recently recognized Indian tribe of 350-plus members, that has an income currently in excess of \$1 billion from gaming revenues to the Navajo Nation or to the Cherokee Nation in Oklahoma, you would immediately see the role of the BIA is split three different ways. It should be, it's totally different. The role of the Federal Government toward the smaller tribe with \$1 billion of revenue, virtually no unemployment, no problems, no social needs, no housing needs and yet by law, at least as I understand recently, the BIA is still required to provide certain services to that tribal organization. Well, why? Why should they?

On the other hand, when we look at Navajo, we're looking at a much more unified government, we're looking at a government that in itself is in control of some 19 million acres of land that has extensive natural resources, is quite wealthy, that is capable of hiring and does hire some of the best consultants, attorneys and help available, yet the Bureau spends enormous resources on that reservation as well, as they should perhaps, but is there a different approach that should be made to that tribe?

The tribes in Oklahoma, my own tribe, we're in a situation where we were out of business for 70 years. Until 1970, there was no reason to have tribes in Oklahoma, they'd been terminated, but with the advent of the Great Society, you didn't get money if you didn't reorganize, so we all reorganized. At that time, I will also tell you that very, very few services were provided to the Indian people in Oklahoma.

Indian people lived in remote areas of Oklahoma, eastern, southeastern, what we call Little Dixie. The State didn't pay any attention to them, the tribal presence wasn't there, the BIA was admin-

istering trust land responsibility for individual Indians and had no relationship to Indian tribes because there weren't any.

With the reorganization of the tribes, it was the first time that there was real attention paid to the nearly 10 percent of the State's population which was American Indian. Through that reorganization and through the funding those tribes received for mainly social service programs, it has helped the people considerably.

Yet, as far as trust responsibility, there is a little bit of money the tribes own in trust with the Bureau, but not a great deal of land, hardly any natural resources that are left with the Indian tribes in ownership, so there is very little in that sense, in the trustee sense that the Bureau administers there. Only recently did they get into a law enforcement function and most of that was due to Supreme Court decisions that determined the tribes had jurisdiction after 70 years of not having it.

The California tribes, you have 100 tribes, some small as a couple dozen people, some not living on reservations, but having reservation of land of 20, 40, 60 or 80 acres.

My point is that if you look at all of Indian country, you see it is virtually impossible to have a one policy fits all. self-determination, self-governance or trusteeship or total guardianship, one policy doesn't work.

It's my opinion that the tribes need to sit down with the Bureau, with the Congress and at some point reach those tough decisions about the role of the Bureau, about their role. The mission of the Bureau today is a buffer between the Congress and the tribes. You all don't want to deal with 558 tribes. You don't want to have 558 separate appropriations, but in truth that's what needs to be done. That's the way appropriations are made to other governments, to our territories and what have you.

Maybe in some instances, that's what needs to be done, direct appropriations to tribes and then some kind of accountability. I think, as Kevin mentioned, that's a key word, the tribes must be accountable.

I will also add one other thing. I contend it's not just more money that will make things right in Indian country. It may create a few more jobs, but it's essential that tribes be able to build an economy to support a level of population that can be gainfully employed and as they move into this direction, and if the Congress could agree it can be done, then people will get jobs on those reservations and once people are employed and educated, they have choices and those choices then will determine the size of the reservations.

If the tribes are doing the job they should, then people will stay. If they are not, then the people will leave. Presently, the people have no choices. They are there because subsistence living on the reservations is available to them and it's not available elsewhere. That's a sad state of affairs. By a few changes in the tax code, by a few incentives to the private sector, we could have employment, true employment on Indian reservations but this takes a major commitment to allow this to happen. I don't really understand why.

You have mentioned the expenditure of Federal funds in other places. I can tell you there are whole lot of people who get a lot of tax breaks out there. If the tribes were able to offer these kinds of incentives to the private sector, the private sector would locate

there. You can't get the private sector there by building a few industrial parks, providing some roads and what have you. It's expensive for the private sector to go to Indian country and build business.

If the Government would cover that cost instead of the current cost of the welfare programs that have to be administered for our people, I think it would go a lot further.

I will also echo what was said earlier. One of the things we have to do in the Federal Government is get away from this idea that the BIA is the trustee in the Federal Government.

One of the more difficult dilemmas I faced, and I'm sure that Kevin Gover faces, is competitiveness within the Department of the Interior. We are constantly having to defend tribes and tribal reservations, tribal lands from the rest of Interior. The Park Service, the Bureau of Reclamation and all the other agencies of Interior are quite competitive and it takes somebody of Kevin Gover's stature to be able to negotiate that competitiveness.

Beyond that, however, the entire Federal Government is the trustee, the entire Federal Government should be looking at Indian country. As I mentioned in my written testimony, virtually every social program the BIA operates is currently operated by an agency of the Federal Government, whether HUD, Department of Labor, Department of Commerce, or some other agency. Somehow, these need to be tied together either with the BIA offering technical assistance to these other agencies to help them spend their money better or have the agencies give their money to the BIA and let the BIA administer those social programs on the Indian reservations.

The capacity of the Bureau is such that given the responsibilities that currently exist within the Bureau to be able to take over, take back, retrocede, any program that is provided to tribes, to oversee the programs operated by tribes, to do the accounting, the capacity is not there in terms of resources, manpower, technology or anything else. It wasn't there 10 years ago and I would say it is not there today.

The tribes themselves are having to go outside of the Bureau in many cases in order to evaluate their private contracts on leasing, negotiations, mineral development and that sort of thing. When those agreements come back to the BIA for approval, oftentimes we have an area director and agency superintendent who hasn't a clue as to whether that is the best thing in the best interest of the tribe, but yet they are expected to approve those agreements. In the event the tribe doesn't do well with that agreement, then they are likely to be sued for breach of trust and have to make up whatever the lost profit was.

I would say the capacity of the Bureau, if it's expected to do what it's trying to do today, is lacking in terms of resources, technology and specific personnel. I would say the mission of the Bureau needs to be constructed from this point forward in some way that recognizes the differences in Indian country and is able to move those tribes that are capable into self-governance and hand off those governments and let them operate somewhat if not totally independent and then provide the technical assistance and oversight where necessary of the very small tribes that don't have that ability to manage their governments.

I would also recommend strongly that the Congress, where necessary, adopt legislation that allows for further compacting with States and local governments, with Indian tribes and that the tribes look locally to the extent they can for the services, some of which are being provided by the Federal Government. Some of the tribes in Oklahoma, for instance, entered into a tax compact on gasoline tax with the State of Oklahoma. It has provided a significant amount of revenue and it solved the competitive problem that exists with tribes trying to get into the business and put the local folks out of business.

With that, I will end my testimony and once again, offer my thanks for the opportunity to be here and say a few words.

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

The CHAIRMAN. Thank you. I was taking notes as fast as I could on your comments and tried to read some of them in addition to listening to you. I appreciate your progressive attitude toward trying to help tribes become self sufficient.

It seems to me there is some inherent problems in dealing with tribes that you don't face in other areas of the private sector. I certainly agree tribes are not alike. One of the things it seems has prevented some tribes from using some of the natural raw materials they have are cultural differences. Some people within the tribes simply don't believe in plowing the ground or digging, mining, cutting timber and sawing as you probably know. It creates a real problem within the tribe when the councils try to move forward and do timber or mining or things with their natural resources.

In addition, you did say that we should move toward trying to develop economies that would support the level of population. Some of those tribes have, and I visited one a couple of months ago, one-fourth of the whole enrollment is under 16 years of age. With that kind of growth rate among youngsters, they will never reach a point, at least in my opinion, where they can support their population. They can't. There will just be too many people in 20, 30 or 40 years to be able to sustain it. The types of business you could provide on the reservation will never keep up with the growth rate. I don't know what we'd do about that, frankly. I don't think anybody else does either.

You also mentioned that tribes should be more like other agencies, if you do something wrong, by golly, you go to jail. I support that, I think you ought to. Unfortunately, in my view, tribes are very reluctant to prosecute wrongdoers within the tribe and a lot of people simply get off the hook when they've mismanaged money or simply skimmed money or taken it or done something. They slap their hands and gossip about them or talk about them but don't put them in jail, unfortunately. I think that's one of the basic weaknesses that allows people to get away with things within tribal governments that they couldn't on the outside.

When you mentioned us supporting compacts, in many cases, compacts are already in place and already being pursued within tribes and States, cigarette sales compacts, gasoline tax and I'm sure you're aware of that.

One of the problems we've had facing this committee is when a tribe refuses to pay after a compact has been entered, their portion

of a sales tax as an example, on gasoline and cigarettes. So we're framing a bill and introducing it that would set up an arbitration board that would deal with States and tribes to try to help find a solution so they wouldn't have to simply fight it out in court or come here because that's what they're doing now. You might want to look at that bill.

The issue of the trust fund money, I wanted to ask your opinion. Your background in the private sector is really in banking and investments, isn't it?

Mr. SWIMMER. Yes.

The CHAIRMAN. I'm sure you followed the missing \$2.4 billion, although they say it's not missing, it's somewhere in there, we just can't access it for the people that actually own the money and that's the basis of the lawsuits.

Senator Murkowski introduced a bill that I cosponsored that would allow tribes to invest trust money privately where they would earn higher returns rather than keeping it in the not so secure deposit box of the Federal Government. I'd like you to look at that bill and give us some feedback. We'll make sure you get a copy of it. Because of your background, I think you could be a valuable resource to the committee.

The second bill we are framing now is a bill that would allow private institutions to take over the straightening of the trust mess. They say there is 100,000 missing documents they may never find. It may never be straightened out, I don't know, but I know this committee reviewed some of the photographs that were taken over the years of how the clerical work has been done, receipts and things kept in garbage bags and old boxes and piled up and the rats eating them and things of that nature. I never saw such a mismanaged form of keeping accounts in my life. I certainly believe the private sector could have done it better. Clearly that creates the other problem of fear as I mentioned earlier.

This bill would allow private sectors to take over the straightening up of the accounts and then there would be a sunset provision that it would go back under the auspices of the Bureau after it was straightened out. That would take some of the pressure off the Bureau too.

If you would review that too, we'd get that to you. Give us some thoughts about how we can fulfill things we want to do using both those bills. If there is something you think wouldn't work, I'd appreciate it if you would tell us that too.

With that, I really have no further questions. I do appreciate you being here. It was very nice of you to take time to come to Washington.

The CHAIRMAN. Mr. Teba, why don't you go ahead and proceed? As I mentioned, your complete testimony will be included in the record, so you can abbreviate if you like.

**STATEMENT OF BERNIE TEBA, EXECUTIVE DIRECTOR, EIGHT  
NORTHERN PUEBLOS, SAN JUAN, NM**

Mr. TEBA. Thank you, Mr. Chairman.

My name is Bernie Teba and I'm Executive Director for the Eight Northern Pueblos Council in New Mexico.

The Eight Northern Pueblos is a consortium of eight Northern Pueblo tribes in New Mexico. In some ways, we're a microcosm of tribes from throughout the country. We have small tribes, large tribes, tribes who have natural resources, tribes who are considered poor in that they have no resources and no gaming, four gaming tribes and we have one tribe that is a self-governance, compacted tribe which is the Pueblo of Santa Clara.

I'm here today to advocate for change. I have submitted written testimony for the record which further details what I'm proposing. Essentially, I'm proposing we modernize the BIA budget process. There's a number of issues we've identified in our testimony and why the current resource allocation process does not work, primarily because the allocation process essentially pays the bureaucracy first.

In 1997, we conducted a resource allocation assessment and we found that 19 cents on the dollar was coming to our tribes in the Northern Pueblos in the form of services. Approximately 62 percent of those resources essentially remained within the bureaucracy.

The approach we took was a customer-based approach, essentially asking the Bureau, who is your customer and how much time and resources do you spend servicing those customers. We found that 62 percent of the resource essentially was to perpetuate the bureaucracy and to serve itself and other agencies within the Government.

All of this is not new information. We presented much of this information before. A 1993 study was also conducted and we presented that information to the BIA Reorganization Task Force. In that study, we found that 12 cents on the dollar of Albuquerque Area Office resources were being provided in the form of services to the tribes in the Albuquerque area.

Therefore, one of the recommendations was that we needed to somehow invert this resource allocation model because centralized, top-down, resource allocation models do not work. We had proposed that the majority of the funding come down to the tribe-agency level.

We spent a great deal of rhetoric on that issue, so we've come to the point where we have to propose a model. The eight Northern tribes in New Mexico are proposing a pilot demonstration model that we work in concert both with the Assistant Secretary as well as Congress and the Northern Pueblo Tribes in defining a needs based budget model.

This is important because Congress passed the Omnibus Appropriations Act and in that act, there is section 129 which requires the BIA to develop a needs-based distribution method for tribal priority allocations. We strongly feel the BIA is not going to do justice to the tribes in identifying a needs-based budget.

We've been identifying a needs-based budget for the past 3 years, so we have the data to support a needs-based budget. So we are proposing to Congress through Senator, Senator Pete Domenici, hopefully through his assistance, that we get authorizing legislation to identify our project as a pilot demonstration, needs-based budgeting process.

Part of that process does include an accountability model. We feel currently the Bureau is not accountable and there are a num-

ber of reasons for that, one of them being just the process itself. It's based on whatever base budget they have, percentages are added to that and in a lot of ways there is no correlation between that budgeting process and tribal needs.

Secondarily, managers within the BIA are rewarded for expending and obligating Federal funds. Whether they meet tribal needs or not, there is no consequence, so they are not accountable for identifying which tribal needs have been met. In our model, we do propose an accountability model where we quantify what needs will be met, with the resources available.

Our model also proposes to identify all resources and begin to match resources with tribal needs and essentially go through a deduction process where we identify the alphabet soup of Federal programs that are out there, match those resources with tribal needs and what's left over becomes an unmet need. Our process is a 3-year process, so that unmet need carries over into the budget year. Whatever we can identify in the budget year that can be met, we negotiate that need through the budgeting, appropriating process. Whatever is left over becomes a planning target for the third year.

Essentially, we have a 3-year budget planning and appropriations process. Hopefully by going through this process, we begin to address tribal needs. Certainly there are needs out there that will require substantial funding. Unless we identify a process to begin to identify tribal needs, we're going to continue to receive anywhere from 19 to 32 cents on the dollar in which case, tribal needs will never be met.

By this process, we're also updating the database. A good example is the stewardship agreement which the BIA is proposing to enter into with the Federal Highway Administration to administer the transportation program. The BIA currently for the Northern Pueblos is using 1974 and 1978 relative need information and the relative need formula essentially drives the funding for transportation projects.

How can we meet needs when we're using 1974 and 1978 relative need information, so a lot of project has to do with updating the tribal needs database.

The section 129 report in itself compels us to provide the information in order to justify, at least for the Northern Pueblos, the need within the eight Northern Pueblos.

With that, I want to conclude my testimony. As I mentioned, we did provide quite a bit of written testimony with attachments to support our pilot demonstration model. We will be working hopefully with the assistance of our Senator to introduce authorizing legislation to identify our project as a pilot demonstration program and identify the resources necessary to implement our pilot demonstration program.

We strongly feel that unless tribes take the initiative and become proactive, the bureaucracy basically will be an employment agency and whether they meet tribal needs or not, it's been demonstrated they are not, so it's up to tribes at this point to take that initiative and identify the resources in order to meet those needs and at the same time, become accountable to Congress and the agencies.

We're recommending that the mission of the BIA be one of oversight and trust compliance, to work with us as tribes, to ensure

that we're utilizing the resources to assist the Bureau to meet its trust obligation.

Thank you, Mr. Chairman.

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

The CHAIRMAN. Before I ask you a question or two, something did come to my mind after reviewing some of your comments, Ross, about perhaps changing the tax code to encourage industry to move on reservations and provide some jobs. That was done in 1993 and we made some changes. I think that has helped a little bit but we continually look for ways that we can encourage relationships between business and tribes.

In just moving around as I talk to businesses about why they don't move on the reservations and why they don't go out there because they have the kind of thing most industries look for which is a land base, a population base, not real strong union representation, what a lot of industries look for, the things they tell me they worry about before they move on there is, in some cases, unstable government. They sign a contract, sign a deal and the next tribal council backs out or changes it.

We have approached that by saying maybe the tribes could self-insure and that way in case there is a conflict, the industry would not lose their investment.

The other thing they say is that very often they have to comply with too many other local things like the building of roads, putting in electrical lines, paying additional taxes—they are taxed by the tribe after they are on there.

Third, they say that sometimes after the original contracts are signed, there are additional demands made afterwards that they can't comply with or can't come up with.

I did want you to know that we continually try to do that in this committee, try to find ways we can encourage business to work with tribes.

Mr. SWIMMER. There is no doubt that it is more expensive, not just for those reasons but transportation, remoteness and others, for the private sector to do business but I do believe that private contracts can be made with tribes that are enforceable. I know industry has a fear because of horror stories they read in the paper but usually it's because of the failure to protect themselves as they can, if they want to and should.

I think in foreign countries that are, in many cases more unstable than Indian tribes, we have companies doing business there and it's not natural resource. Tribes with technology today, there are dozens of different kinds of industries that could be looked at. Those industries that want to go there because of inherent advantages have had no trouble. The natural resource industry, the waste industry and the gaming industry. Those were all pushed from the outside to Indian tribes. The Indian tribes didn't stand up and say, by golly, there's an industry we want.

So what I'm simply saying is that if the incentives are there for other industries—technology, computers, assembly, light manufacturing, the kinds of things that are very adaptable to Indian country and do not use natural resources, don't take a lot of space, but do employ people—those industries are available but they are available at a price. We've got to make it competitive.

I think tribes can do that. We've seen it happen with tribes, so I know it can be done. I think it's a bit of a myth for us to say that it's just too difficult. In a sense, what we're saying is that the Indian people are going to have a culture of poverty from now on and that's what we've got to figure out how to work with. I just don't believe it. I think we can do better than that.

The CHAIRMAN. And should. Thank you.

Bernie, your statement indicates that the Northern Pueblos received 20 percent of the resources provided to the BIA for service delivery. Does the Santa Clara Pueblo also receive about that same 20 percent?

Mr. TEBA. Yes; from the Northern Pueblos agency, this is all tribes within the Northern Pueblos receive 19.9 percent of the resources in the form of services. That's an average of all eight tribes.

The CHAIRMAN. Under the model you talked about, what percent does the Santa Clara expect to eventually be able to govern themselves or take over from the Bureau? Do they have a long range plan?

Mr. TEBA. I don't know at this point, Mr. Chairman, but they are a compacted tribe and they do receive their proportionate share. We can get that information.

The CHAIRMAN. If you would provide it, I would appreciate it.

Your statement also advocates that the BIA area office become a technical assistance center. What kind of technical assistance would you think they could best provide?

Mr. TEBA. A good example would be real property management and those kinds of services. They do have land records at the area office. That would be a good service they could provide. Other services could be archaeology, they do have an archaeologist at the area office. Although we're also a proponent of utilizing the private sector for procuring those services, especially in the technical areas, in some ways it doesn't make sense to have a full-time individual employed when tribes utilize that service sparingly. A better, more cost efficient method might be to utilize the private sector and allow tribes to have that resource, control that resource and direct that resource in order to procure that expertise or professional service.

We did go through an exercise during the BIA Reorganization Task Force days where the tribes identified what a tech center could look like for the Albuquerque area office. That documentation needs to be updated. Since the end of the Task Force, that study is still on the shelf.

We would welcome the opportunity to revisit that reorganization study.

The CHAIRMAN. Let me ask you something a bit unrelated. The Santa Clara Pueblo is really noted for what may commonly be called home industry with the world reknown quality of their potters. It just came to my mind because a number of them are friends of mine—Joe Lone Wolf and the Youngblood family. Some of them are known for years and years and there are many other fine people there.

Have any of the services, or do you envision any of the services that the tribe could take over from the Bureau being of advantage

to the people in those so-called industry industries and marketing, whether it's overseas or domestically?

Mr. TEBA. Frankly, Mr. Chairman, those artists and craftspeople will survive and have survived.

The CHAIRMAN. They are very successful now without Government help.

Mr. TEBA. Simply because they are well known. One of the things we do is we provide the annual eight Northern Pueblos arts and crafts where we feature our Northern Pueblos artists and craftspeople. Many of them have gone on to become famous. So, yes, we are continuing to export the artists and craftspeople.

The CHAIRMAN. I know the Bureau has a directory of artists and craftspeople under the Indian Arts and Crafts Board but I think that's the only service they provide. I didn't know if there was some way of also taking over from the Bureau in an effort to promote. The famous ones have it made but there must be many young and upcoming people interested in doing that as a living that don't know how to market, but I just mentioned that.

Mr. Martin, if you would go ahead with your statement. If you can abbreviate, your full statement will be included in the record. Would you like to introduce whoever is with you there?

**STATEMENT OF TIM MARTIN, EXECUTIVE DIRECTOR, UNITED SOUTH AND EASTERN TRIBES, NASHVILLE, TN, ACCOMPANIED BY JACK JACKSON, JR., DIRECTOR, GOVERNMENTAL AFFAIRS, NATIONAL CONGRESS OF AMERICAN INDIANS**

Mr. MARTIN. Yes; I would, Mr. Chairman.

Accompanying me today is Jack Jackson, Jr., Director of Governmental Affairs, National Congress of American Indians.

As indicated earlier by the Assistant Secretary, certainly the panel and myself send forward our heartfelt prayers and condolences to the citizens of your State as they come to grips with the tragedy that happened most recently.

Mr. Jackson and myself are here this morning at the request of Mr. Ron Allen, who could not be with us today, to present testimony on behalf of the National Congress of American Indians on the mission and capacity of the BIA.

The beginning of our remarks will be conducted by Mr. Jackson who will give an overview of the capacity and the mission. I will then return at the closing of our remarks to speak specifically about several initiatives that are currently on-going and a report that will be coming to this committee as well as to the balance of Congress regarding the TPA allocation.

Let me begin by turning over the microphone to Mr. Jackson and I will conclude with some final remarks.

The CHAIRMAN. I might tell you we have about 20 minutes before we have to close the hearing down, so you might want to abbreviate if the two of you are going to speak.

Mr. JACKSON. Mr. Chairman, on behalf of President Allen, who you know was not able to make it today, I'd like to thank you for this opportunity to provide these comments. I will make them brief.

We are also still working on our testimony, our written statement and will provide that to the committee as soon as we get further comments from our member tribes.

We know the status of tribal governments has changed dramatically over the last century and even more so over the last few decades. The economic and governmental self-sufficiency has increased throughout Indian country due in large part to enactment of self-determination and self-governance. Many tribes are now capable of assuming Federal resource authorities and responsibilities over Federal Government programs and services that benefit Indian tribes.

According to the BIA, their mission is to fulfill its trust responsibility and promote self-determination on behalf of tribal governments, American Indians and Alaska Natives. Assistant Secretary Gover's statement on the future of the BIA supports this mission. However, constructive policy actions to meet these goals have been inconsistent.

Recently, Mr. Gover provided some insight on his vision of the Bureau at our 55th annual session in Myrtle Beach, yet some of the actions taken are contradictory. Mr. Gover stated, in his vision that,

we must pursue the Congress to fully fund tribal programmatic needs. The primary obstacle to universal tribal contracting and compacting for service programs is a shortage of money.

However, NCAI feels, and some of our tribes feel, that while the BIA has made improvements by providing increased budget authority and involvement of tribal governments in the budget formulation process, recent policy and budget actions indicate a reversal to the old way of doing business.

For example, there has been no general increase in TPA. There has been an emergence of "line-item" specific appropriations restricting tribal government discretion and the movement of certain programs out of TPA such as law enforcement. The BIA has also been unable to defend and use tribal reporting data and information regarding use of funds.

The BIA response to tribal concerns regarding this reversal is that both the House and Senate Appropriations Committees have made it clear that it will not support requests for general increases. Clearly these administrative efforts do not support advancement and empowerment of tribal governments.

Finally, while funding issues is certainly a major consideration for tribes regarding assumption of programs under contract or compact, it is not the primary obstacle. Flexibility to redesign programs to meet tribally-determined needs is certainly a more significant factor in the tribal government decisionmaking process.

Mr. Gover also stated

the BIA must be redesigned to effectively and efficiently carry out its responsibility to protect and enhance tribal trust resources.

However, we all know that the BIA has a history of mismanagement and unaccountability of trust funds. The pursuit of those assets lost to Indian people is an issue of vital concern to NCAI and tribes nationwide and is a violation of the trust responsibility.

We urge the Congress and the Administration to fulfill its fiduciary duty to Indian nations and people and to uphold that responsibility.

Another statement by Mr. Gover is "For far too long the Bureau has lagged behind other Federal agencies in carrying out its re-

sponsibilities as an agency of the United States. I have initiated a systematic management review of all BIA operations.”

The BIA has engaged in a joint process with tribes to identify their inherent Federal functions and associate residual funding levels. The determination of inherent Federal functions and tribal shares remains an integral part of the implementation of self-determination and self-governance. This process has clearly stalled within the BIA.

There is incomplete and inconsistent information throughout the BIA and area agency office. Further, the self-governance negotiation regulations on this matter are still not completed.

Mr. Chairman, these comments I just conveyed are not meant to bash the BIA. These concerns have been expressed in several forums and Mr. Martin will highlight some of those concerns as conveyed by tribes.

Thank you.

Mr. MARTIN. As the Assistant Secretary stated in his comments and as the tribal panel continued to state, the task facing the Bureau is enormous. We're here today to offer some constructive criticism, not to bash them, as we said, because I think they are making some great strides, but a lot of the things you're hearing, you've heard before.

In 1994, the Joint Task Force with the BIA and Department of the Interior made 21 recommendations. Those recommendations are still poignant today. Of those 21, only 5 of those recommendations have been fully implemented. One of the main ones that you heard reiterated today from the Assistant Secretary, from Bernie, from the former Assistant Secretary, is the term accountability but what is that?

Tribes want to be accountable. I think tribes can be accountable. The problem is there is a breakdown of communication between what the tribes are reporting to the Bureau and the capacity of the Bureau to do comprehensive data collection, that can report accurately to the Congress how tribes are spending the money appropriated.

We reiterate the recommendation from that 1994 task force, and from the current TPA task force. I'd like to talk about the tribal work group on the TPA allocation. Again, we reiterate the need for an accurate data collection system whereby the BIA can comprehensively report what the compacting tribes do with their money, what the direct service tribes are doing with their money, what the 638 contracting tribes are doing with their money.

There are success stories out there but we are not telling it. Because we are not telling it, we are then left to the generalization. As Former Assistant Secretary Swimmer said, you have tribes that are successful. Therefore, their relationship with the Federal Government should be different than a tribe that has not been able to advance economically. Too often, we see the generalization—oh, a tribe here is doing very well, then all tribes must be doing well. That is not the case.

I believe as you read through the report that will be submitted to you from the tribal perspective on the TPA Task Force that we clearly show that there is a substantial unmet need across Indian country. Yes, there are some tribes that are doing well, but that

is not the norm. The fact of the matter is that the norm is we have tribes that lag behind mainstream America in almost every category that mainstream America counts as its indicators of the well being of American people.

I think our Task Force report will also answer the question asked in section 129, what is the BIA historically been funding in TPA? Our report clearly shows yes, tribes are at different levels of funding but there are legitimate reasons why that is and it is not mismanagement.

Is there one single factor? No there is not. There are many factors, so you have to follow the history of each of those tribes. A great part is due to the Government itself and its initiatives, start and stop initiatives, why tribe A may have more money in a law enforcement program, where tribe B does not.

What the tribes want, as reiterated throughout today's testimony, is the flexibility to make those decisions at the local level and to address their needs. No one tribe is alike and should not be alike. That does make an enormous managerial problem for the BIA.

If I assessed where the BIA is now, if you look at a diamond and turn it on its head, whereas the use of the BIA was direct operation, therefore there are economies of scale. Now, you have the total spectrum of a direct operation and a reverse spectrum of self-governance compact. We are at the furthest point I believe of that diamond. We will be that way for a while until more tribes go either contracting or compacting of their services.

As indicated by the Assistant Secretary, they are downsizing but we are not far enough along yet to take the economies of scale that comes from contracting/compacting.

We are not advocating to push all tribes to contracting and compacting. It is just as much an inherent right for a tribe to continue to be a direct service tribe as it is to compact. We support those efforts.

In conclusion, the BIA is the primary agency with the sole responsibility to advocate and advance the empowerment of tribal government to serve its members. It's purpose is twofold. First, the Bureau primarily should advocate the administration and Congress for the empowerment of tribal governments to improve the services to their tribal communities. Second, the BIA should be the chief advocate to communicate the concerns, the desires to Congress and other agencies, to the State and local agencies, to the private sector.

To me, the vision of the Bureau in the future should be a tech center as Bernie talked about, to be able to advocate and be able to sell tribal communities to the private industries and say, yes, these tribes are open to do business with you and your investment can be safe there.

While we have a desire to have improvements in the Bureau, we're not here to bash them. I do not believe it is in the best interest of any tribe to have the BIA abolished.

With that, Mr. Chairman, we will answer any questions you may have for us.

The CHAIRMAN. Thank you.

We do have several questions submitted on behalf of several of the members. We are going to submit those to you in writing because we are running out of time. I do appreciate all of you being here.

This hearing record will remain open for 2 weeks for any additional comments.

With that, this committee is adjourned.

[Whereupon, at 11:23 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

---

## APPENDIX

---

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

---

**Statement of  
Kevin Gover, Assistant Secretary - Indian Affairs.  
Department of the Interior**

Good morning, Mr. Chairman and members of the Committee. I appear before you today to provide you with an overview of the status of the Bureau of Indian Affairs' (BIA) capabilities, several changes we are making at the BIA, and my thoughts on the BIA's evolving mission and my expectations for its relationship with Indian people.

#### I. HISTORY

The BIA was established in March 1824 within the War Department. In the last two centuries, the Congress has passed more Federal laws dealing with Indian Tribes and Alaska Natives than any other group of people in the United States. While the Snyder Act, the Indian Self-Determination and Education Assistance Act of 1975, and the Indian Education Amendments of 1978 provide the primary budgetary authorities for the BIA's activities, numerous statutes, court decisions, treaties and other authorities (including those passed in the early 1800s regulating trade with Indians) continue to guide the BIA's mission, operations, and administration. The diversity of these mandates frequently requires the BIA to balance the inherent conflicts and problems created by more than 200 years of shifting and evolving federal Indian policy.

All federal agencies face competing demands, but few have faced the conflicting demands placed on the BIA. When the Office of Indian Affairs was formed in the War Department in 1824, the federal policy towards Indian Tribes was to relocate them from their ancestral lands to clear the way for white expansion into those lands, to "protect" the Indians from encroachment by the Americans.

Within two decades, federal policy took a radically different direction, turning to treaty-making, treaty-breaking, and warfare with the Tribes as the country's westward expansion continued. The Office of Indian Affairs led the way in giving the solemn guarantee of the United States to the Tribes that Tribal homelands would be protected for all time, only to renege on that commitment over and over and enforcing the breach of those promises by force of arms.

When the Tribes finally were defeated militarily, it was the BIA that provided for their needs as they attempted to adapt to the restrictions of reservation life. The BIA suppressed their religions, punished real or perceived transgressions by withholding rations and other provisions, and provided schools and missions intent on replacing cultural values learned over millennia with the cultural values of the whites. It was in this era that the stereotype of the crooked Indian agent, who sold treaty goods on the black market for his own profit while giving the Indians inferior goods, was all too real.

The promise of permanent homelands did not last long, and by the turn of the twentieth century, the BIA was busily allotting lands to individual Indians and selling "excess" lands to non-Indian settlers, destroying traditional institutions of Tribal governance, and ripping children from their families that they might be sent to boarding schools to learn the language, culture, values, habits, and industries of white Americans. BIA was charged by Congress with the duty of protecting allotted Indians from sharp dealing and outright theft of their lands, a duty breached more often than honored with the implied and express approval of the Congress. Ninety million acres of land left Indian ownership in less than forty years, and the Indians were left destitute. Allotment left a legacy of impoverishment that remains the inheritance of Indian communities today.

With the New Deal era came another wild swing in Indian policy: the Indian Reorganization Act. Once again, the BIA charged forward to implement a new policy with which the institution had no previous experience. Indian agents accustomed to dictating to Tribal leaders suddenly were expected to defer to Tribal governments, even to help re-create the institutions of Tribal government they had only a few years earlier been instructed to destroy.

In less than two decades, Congress reversed course again. The BIA was set to work identifying Tribes as to which the federal trust responsibility should be terminated. The BIA dutifully prepared lists of Tribes for termination, an aptly-named policy designed to destroy Tribal communities under the guise of "freeing" them from federal "domination." No thought was given to whether the Tribes wanted this; confident in its ability to know what was best for the Indians, the United States abandoned these communities.

Only two more decades passed before we entered the current policy era of Self-Determination and, more recently, Self-Governance. Like the reorganization policy, the Self-Determination policy is built on the notion that the Indian people themselves, through their Tribal governing bodies, are best to determine what is best for them. This is clearly the correct policy, and though the BIA has been successful in implementing the policy, there remain institutional barriers to its complete implementation.

The history of the BIA, then, reflects the historic shifting of federal policy towards the Tribes. All three branches of government must bear the blame for the disgraceful and tragic history of our country's dealings with the Tribes, and the BIA must bear the primary burden. The BIA carries the baggage of every failed policy initiative, every racist assumption about Indian people, and every naive assistance program ever developed for the Tribes. Given this history, none should wonder why the relationship between the Tribes and the BIA is described as a "love-hate" relationship.

Two extremely important lessons can be drawn from this review of federal Indian policy: first, each time the United States has attempted to withdraw from the government-to-government relationship with the Tribes--a relationship established in the earliest days of our national existence--it has produced catastrophic harm to Indian communities. Second, every time we fail to honor the wishes of Tribal governments in formulating policy or, worse yet, to dismantle these institutions, matters are made worse.

These dual realities present a perpetual challenge, implying as they do both federal power to carry out the responsibilities it has assumed and the Tribe's power to govern themselves as they see fit. This inherent conflict between the trust responsibility (and power) of the United States and Tribal sovereign powers must be acknowledged in all our discussions of federal Indian policy, but it need not be debilitating. The Federal-Tribal relationship should be dynamic and sufficiently flexible to meet the needs and respect the capabilities of each of the 558 Tribal governments with which we deal.

After all of this history, the BIA's most basic responsibilities are its trust obligations and facilitating Tribal self-determination. However, while the protection of trust resources is our most fundamental responsibility, Tribes struggling to meet the basic needs of their communities must compete for the same limited resources the BIA uses to protect trust resources. The BIA's success relies on judiciously balancing these competing mandates.

## II. CURRENT CAPABILITIES

Today, the BIA provides services directly, or through Self-Determination contract, grant and compact agreements with Tribes, to more than 1.2 million American Indians and Alaska Natives of 558 federally recognized Tribes in 32 states. The scope of BIA programs is extensive and covers virtually the entire range of state and local government services. In addition, the BIA administers more than 43 million acres of Tribally-owned land, more than 11 million acres of individually owned land held in trust status, and 443,000 acres of Federally owned land. BIA's programs are funded and operated in a highly decentralized manner with 90 percent of all appropriations expended at the local level, an increasing amount of which are operated by Tribes and Tribal organizations under contracts or self-governance compacts.

While the BIA's role has changed significantly during the past two decades with the implementation of Tribal self-determination, Indian Tribes still look to the BIA for a broad spectrum of critical and complex programs. Among these are an education system for an estimated 53,000 elementary and secondary students; 26 BIA-funded Tribally controlled community colleges; law enforcement and detention services on more than 200 reservations; social service programs for children, families, the elderly, and the disabled; management of forest, mineral, fishery and farmland resources; the maintenance of more than 25,000 miles of roads on rural and isolated reservations; economic development programs in the most depressed areas in the U.S.; the development and implementation of legislated land and water claim settlements; the replacement and repair of schools and detention centers; and the repair of structural deficiencies on high hazard dams.

In the last twenty years, BIA funding in nominal dollars has increased nearly 70 percent. However, in dollars adjusted for inflation, BIA funding has fallen over 22 percent. While the downward trend in real funding spans many years, the most significant reduction came in FY 1996, when the BIA funding dropped \$160 million. The percent reduction in real terms was nearly 12 percent in one year. Not until the FY 1999 appropriations was the BIA funding returned to the same level as FY 1995 level in nominal dollars, but in real terms, the funding is still 10 percent below FY 1995.

There is a prevailing myth that most of BIA funding goes to BIA administration costs, with some claiming that as much as 90 percent of BIA funds go to "the bureaucracy". This is simply not correct. BIA's FY 1998 financial statement, audited by the Inspector General, shows that 54.6 percent of all funds obligated in our Operation of Indian Programs and Construction accounts go directly to the Tribes under Public Law 93-638 contracts or compacts, and Public Law 100-297 grants. The other accounts for loan guarantees, a land consolidation pilot, and land and water settlements have even higher proportions moving directly to individual Indians and Tribes. The remainder goes to Tribal communities in the form of services provided directly by BIA personnel.

In our FY 1999 appropriations, if you assume that all of the activities of the Area and Central Offices are administration, the amount spent on administration is only 10 percent. So when people claim that 90 percent of all funding goes to the BIA bureaucracy and 10 percent to the Tribes, they have their proportions reversed.

The BIA is unique in the Department of the Interior in a number of ways. In the FY 2000 President's Budget, BIA is projecting that well over two-thirds of its funding will go to contracts, compacts, and grants (including commercial contracts, primarily with Indian businesses). For DOI's land management bureaus, the level of contracts and grants range from 15 to 20 percent of their total funding. While for most of the Department's bureaus half to two-thirds of their funding go to personnel related costs, BIA will spend only 23 percent for personnel and benefits in FY 2000. BIA spends significantly more than any other bureau on benefits to former employees because of the continual process of laying off Federal employees as Tribes take over programs. But in nearly every other purchase category (such as travel, transportation, rent, communications and supplies), BIA spends a smaller percentage of its funding than other bureaus in DOI.

Our reliance on contracting is reflected in the reduction of our work force. In 1981, the BIA had 16,868 FTEs. This year, we have 9,563 FTEs, and we project that in 2005 that number will drop by at least 600. The best way to reduce the number of BIA personnel is to increase BIA funding, thereby encouraging more Tribal contracting.

### III. CHALLENGES

Shortly after I took office, I began working with the BIA Central Office Directors and the Area Directors, asking them about the condition of the BIA and the changes they believed needed to be made. After a great deal of discussion and thought, a vision of the BIA and how it should work in the future began to emerge.

Currently, the BIA is delivering 90 percent of its resources directly to Tribal communities through Public Law 93-638 contracts, self-governance compacts, and direct services. This number is something to be proud of, and the BIA employees are doing a good job. Due to the implementation of the Self-Determination and Self-Governance policy, within the next 10 or 15 years, the BIA will be mostly out of the business of providing direct services to Tribal communities. Virtually all services provided to reservation residents will be provided by the Tribes themselves with funds

appropriated through BIA.

If BIA's presence in Indian country is going to be so severely diminished, we must ask what is the future of the BIA. I am confident that the BIA will remain a vibrant and necessary part of federal Indian policy far into the future if it can prepare itself now for the demands it will encounter in the new century. Five things must be done to prepare the BIA for the 21<sup>st</sup> century.

#### **A. FUNDING**

First, we must have adequate funding for Tribal programmatic needs. The primary obstacle to universal Tribal contracting and compacting for service programs is a shortage of money. For the self-determination and self-governance policies to fully succeed, necessary resources must be provided through appropriations. Ironically, the more money the BIA receives, the smaller the number of Federal employees it will employ, because if we receive adequate resources to operate programs, the Tribes will take over more and more of these functions.

#### **B. TRUST MANAGEMENT**

Second, the BIA must be redesigned to carry out efficiently and effectively its responsibility to protect and enhance Tribal trust resources. That is why we are implementing the Secretary's Trust Management Improvement Project (TMIP). This project, agreed upon by the Secretary, the Special Trustee, and the BIA, will overhaul all key aspects of our trust management system. The result will be a state of the art computerized information system that will allow Tribes and the Department to effectively manage Indian trust resources.

The Trust Management Improvement Project requires an enormous amount of staff time to accomplish. The BIA holds major responsibilities for the Trust Asset and Accounting Management Systems (TAAMS) project, the review of our current policies and procedures for evaluating appraisals; the redesign of the system of Indian probates; and the clean-up and redesign of our trust records management functions.

##### 1. TAAMS

TAAMS alone involves more than 200 BIA staff. The system will include an asset management system with the following functions: title office, land and lease management, and accounts receivable. The objective of the TAAMS automation effort is to acquire and implement a standardized, commercial-off-the shelf general trust asset management system and replace the integrated records management system (IRMS) and the land records information system (LRIS), thereby providing a standardized, integrated data base capability and eliminate redundant entry of resource management data.

##### 2. APPRAISALS

The appraisals portion of the TMIP fulfills the Federal Government's trust responsibility to protect and preserve Indian trust land and resources. This sub-project includes an assessment of the present

BIA appraisal program's policies and procedures, workloads, staff qualifications, and adherence to Uniform Standards of Professional Appraisal Practices. This program assessment will ensure compliance with universal appraisal standards and assist in eliminating appraisal backlogs and developing corrective action plans, where needed.

### 3. INDIAN PROBATES

We are also involved in the Department of the Interior's Probate Reinvention Lab, which is reviewing the existing probate process, beginning with our Aberdeen and Anadarko Area Offices. In addition, the probate backlog planning group and the appraisal program planning group will finalize viable solutions to reduce processing delays.

### 4. TRUST RECORDS MANAGEMENT

Another part of the TMIP includes Indian trust records management, storage, access, control and disposition. The activities involved within this effort are varied, with emphasis on: (1) providing an oversight authority to provide day-to-day Federal Records Act, Federal Privacy Act, and Freedom of Information Act support to Central Office, Area Offices and Agencies; (2) "swat team" visits to every area office and agency during a three-year period to clean up any existing records retirement backlog; (3) development of a plan for potentially hazardous impacts to records, including electronic records, and establishment and maintenance of viable vital records programs; (4) training for all levels of management and administrative staff in basic records management, privacy, and FOIA requirements and practices; (5) compliance with National Archives and Records Administration requirements for scheduling office automation electronic source documents for preserving electronic office automation records in electronic format where appropriate; (6) creation of an Indian trust desk guide in a convenient and attractive format incorporating the history, laws, various processes, and (7) comprehensive record keeping requirements for the program; and document imaging.

There is much work to be done, and in order to succeed, we need legislation authorizing settlement of Tribal claims without litigation for the mismanagement of trust funds, and legislation to address the continuing problem of fractionated interests. Without the enactment of legislation addressing fractionated interests, the systems reforms will be severely hindered. If Congress will do its part, we can do ours, and between us we can resolve a problem that has festered for decades.

## **C. ACCOUNTABILITY**

### 1. BIA ACCOUNTABILITY

The BIA, of course, must be accountable to Congress, the Department, and the Tribes for its management and administration of appropriated funds. We have initiated a systematic management review of all BIA accounting and administrative operations. When this process is completed, we will bring forward our proposal for reorganizing BIA management and administration. Let me make clear we are not talking about restructuring BIA service programs, only BIA's administration of its internal affairs in matters of accounting, property management, records management, personnel, and the like.

The BIA falls under several federal laws and regulations concerning the administrative systems and financial management system compliance. These include the Chief Financial Officers Act of 1990; Debt Collection Improvement Act of 1996; Credit Reform Act of 1990; the Prompt Payment Act; and the Federal Financial Management Improvement Act. I am sorry to report that the BIA is failing to meet its obligations under these laws. Because of this failure, the BIA will not receive an unqualified audit opinion for FY 1998.

I see several reasons for this failure. First and foremost, because the BIA is a human services agency, and because human need in Indian country is so vast, BIA managers probably believe that internal controls and administrative processes are unimportant when compared to Tribal services, and administration has taken a backseat. Second, the FY 1995 appropriations law prompted the 1996 reduction-in-force (RIF) and had a devastating effect on the BIA. During this time period the BIA lost 1,200 people through the RIFs and buy-outs of employees.

Nevertheless, our administrative performance is not acceptable. I am appointing senior managers to head up work groups on each material weakness identified in our 1998 audit. Each work group will prepare an action plan to resolve the material weakness for the consideration of Deputy Commissioner Hilda Manuel, Assistant Secretary for Policy, Management and Budget John Berry, and me. Our objective will be to obtain an unqualified audit opinion no later than FY 2000.

In addition, on March 19, 1999, I issued a memorandum to the BIA Directors to alert them that the National Academy of Public Administration (NAPA) would be visiting BIA sites to obtain a first-hand view of the BIA's managerial and administrative services. I have asked NAPA to study the BIA's managerial approaches, practices, and processes as well as administrative services with the goal of identifying and recommending comprehensive remedies for longstanding problems in the BIA's internal management. I am confident that this study will result in findings and recommendations that will improve the long-term quality, efficiency and cost effectiveness of the BIA's administrative management.

## 2. TRIBAL ACCOUNTABILITY

On a closely related issue, we must also be able to say that Tribal contractors are using federal funds in an efficient and lawful way. This means we will insist that Tribes meet the fundamental obligations of users of federal funds in such areas as compliance with single audit requirements, use of federal excess property to carry out federal contract programs, and the investment of advance funds. Fairly or not, when one Tribe fails to meet its obligations in this regard, all Tribes suffer.

### Improving Compliance with the Single Audit Act

The BIA awards about \$700 million annually in contracts and grants to Indian Tribes and Indian organizations. The Tribes are required to submit audited financial statements and reports on internal controls and compliance with all relevant laws and regulations to the BIA. While the majority of Tribes regularly submit the required reports, when I took office about 140 Tribes who were seriously delinquent in submitting audits. These Tribes were contacted last August and notified that the BIA would impose sanctions unless the delinquent audits were submitted.

In January, those Tribes that remained out of compliance were placed on monthly drawdowns. As of last week, all but 48 Tribes had met the requirements we established last August. Almost 60 percent of those still out of compliance are small villages in Alaska or rancherias in California. Our next step will be to consider non-emergency program reassumptions for continued failure to comply with the statutory requirements.

It seems to me that cases like this don't have many shades of gray: a Tribe either has or has not submitted the required audit. Yet, the statute places on the Secretary the burden of proving that the Tribe has not submitted the audit. For fiscal years beginning on or after July 1, 1998, the Single Audit Act stipulates that audits are to be submitted within nine months of the end of a grantee's fiscal year. While we would not support an automatic cut off of BIA funds at the end of this nine month period, it would seem reasonable that the Committee consider amending the Self-Determination legislation to prohibit additional awards if we have not received the audits within, say, 18 months following the end of the Tribe's fiscal year. We do not believe we should have to go through a hearing and appeal process in this type of situation.

#### Repayment of Mis-Spent Federal Funds

As you know, there are enormous needs in Indian Country. In an effort to provide additional help, Congress has authorized us to provide lump sum payments of awards to Tribes and schools and has also allowed full Tribal discretion on spending the interest earned on these advance payments. In some cases, the extra cash on hand for BIA programs has resulted in Tribes using these funds for non-Federal purposes. This matter first came to light with Self-Governance Tribes, probably because those Tribes were the first to receive all of their money in one payment. Initially, some of the Self-Governance Tribes maintained that the Self-Governance statute allowed them to use BIA funds for any purpose they deemed appropriate. That matter was put to rest by a memorandum from the Associate Solicitor for Indian Affairs issued a year ago last February. Some Tribes took the position that they were only required to "repay themselves" for misapplication of Federal funds, because the Self-Governance legislation failed to reference that portion of the 638 statute which requires repayment to the Secretary. Congress last year amended the Self-Governance Act, which now requires that Self-Governance Tribes also repay the Government for any amounts they use for purposes other than those included within the terms of the compact and annual funding agreements. We are working with our field staff to assist them in informing the Tribes and Tribal organizations of the limitations on their authority to spend and to invest advance funds in order to ensure that Congress' purpose in authorizing such advances is fulfilled.

#### Strengthening the Government-to-government Relationship

There is one last matter in this area that I would like to mention. Current statutes for both School Grants and Self-Determination awards require the BIA to make awards to Tribal organizations if the organization obtains a resolution from the Tribal government. Once the organization has such a resolution, the laws give Tribal organizations the same standing as Indian Tribes in terms of management and administration of BIA-funded programs. Thus, Congressional policy makes little distinction between an intertribal fish commission or a local school board and an Indian nation. This places the BIA in the middle of Tribal affairs as federal officials negotiate the awards with the Tribal

organization rather than with the Tribe, and the Tribal organization must answer to the federal official rather than to the Tribe with respect to its management of federal programs and expenditure of federal funds.

It would be more appropriate to place the responsibility and authority with the Tribal government to oversee the activities of Tribal organizations. In the case of either school grants or Self-Determination contracts, the Tribal government could issue sub-grants or subcontracts to the Tribal organizations or schools. Such an arrangement would reinforce the responsibility of the organization to the Tribe and similarly it would make the Tribe more accountable for the operations of those organizations sanctioned by the Tribe. As an added benefit, the Federal administrative responsibilities would be substantially reduced.

We would encourage you to consider federal self-determination policies in terms of our relationship to Indian Tribal governments. We believe that the Tribal governmental structure would be strengthened by requiring that Tribal governments be the applicants, rather than allowing Tribal organizations to stand on virtually an equal footing in their dealings with the BIA.

#### **D. Policy Development and Coordination**

The BIA must assume a stronger role in coordinating federal Executive Branch policy towards the Tribes. The Clinton Administration has worked hard to open up all departments of the government to Tribal leaders, but we can still improve greatly in ensuring consistent federal agency acknowledgment of their agencies' responsibilities to Tribal governments. That is why Secretary Babbitt and the White House Domestic Policy Council established the Working Group on American Indians and Alaska Natives. The Working Group is chaired by the Secretary and meets quarterly to coordinate the activities of the various departments and agencies having responsibilities to the Tribes.

The BIA should be the information clearinghouse and source of expertise on any matter of Indian policy, with the exception of Indian health and housing. In addition to serving as trustee, the BIA has been the historic key link to Indian Tribal governments for 175 years and therefore has the most institutional knowledge on Indian related activities, with the exception of Indian health and housing issues. Currently, we are aware that the following agencies have recently adopted or soon will adopt an Indian consultation policy: the Department of Defense, the Department of Energy, the Department of Justice, the Department of Housing and Urban Development (HUD), the Environmental Protection Agency, and the Department of Agriculture. We will continue to cooperate with other Federal Agencies on issues that Tribal leaders have brought forward to have us take more involvement in and open new avenues for change. One such issue is mortgage lending and HUD's and Treasury's joint effort to establish "one-stop shopping" for home lending. Another is the joint Justice/Interior effort to address the law enforcement crisis in Indian Country.

All of these agencies have responsibilities to Tribes. None of them, however, have the responsibility for the numbers and diversity of programs as the BIA and the Interior Department. As Trustee for

Indian lands, the BIA will continue to be needed for its experience and the expertise of its staff in working with Tribal governments.

#### **E. Scientific Expertise**

Finally, the BIA must redefine its service mission. Ultimately, the Tribes will be responsible for virtually all service programs for reservation residents. The role that is left for the BIA to play is technical support to Tribal contractors. For example, not every Tribe needs or can afford full time hydrologists, engineers, archeologists, and other scientists to support their programs. The BIA can and should take the responsibility for making such scientific expertise available to the Tribes.

### **IV. CHALLENGES**

The hardest part of this job is seeing so much that needs to be done, and knowing there simply aren't enough resources to do it all. If Indian people continue to rely on the federal government, there will never be enough time, manpower, or money to make all the things happen that need to happen in Indian country. Indian people have a lot to share with America and the world. Our culture, our traditions, and our sense of being a part of the natural world instead of controlling it are lessons the rest of this country and the world must learn. We need jobs. We need physically, emotionally, and spiritually healthy citizens. Here are just a few of the challenges we must overcome.

#### A. Economic Development

Another change we have made is within our economic development program. On Indian lands across the country, there are rampant social problems directly related to the lack of opportunities. Research shows that when business and economic development come to a reservation, amazing things happen. The social problems that Tribes have been struggling with start to diminish as the employment rate and opportunities for Indians increases. The Tribes themselves will lead the way in the effort to bring businesses and opportunities to Indian country, but the BIA also has an important role to play. Our Guaranteed Loan Program can assist in providing capital for much needed job creating businesses that otherwise may never be established. Our technical resources will be channeled into the most cost-effective projects, and the BIA staff will continue to work with Tribal leadership to identify and eliminate internal barriers to sound business practices.

It seems that when Tribes do move forward and try to improve the lives of their people they are met with opposition from every possible source. We are now moving forward to tear down the barriers at the BIA, and move quickly on economic development projects. The BIA has created a Credit Committee that meets monthly to consider every completed application within 30 days. We have also developed a CD-ROM training program and Internet tools to help prospective guaranteed loan applicants develop business plans, fully outline the responsibilities and requirements of participating in the program, and help prepare the application.

On August 6, 1998, the Administration held the first ever White House Conference on Indian Economic Development. At this conference, President Clinton directed the Department of the

Interior, the Department of Commerce, and the Small Business Administration to develop, in consultation with other interested parties, including tribal governments, a strategic plan for coordinating existing Federal economic development initiatives for Native American and Alaska Native communities. On December 17, 1998, these agencies presented a report to the President. This report noted that one of the most important factors for successful economic development in Indian country is the ability to access information and assistance. DOI continues to work with these and other Federal agencies to better coordinate economic development assistance in Indian country.

We also have the Public Law 102-477 (477) program. The 477 law authorizes a unique federal program, that allows Tribes to receive funding for training and employment programs from 3 different agencies and 12 different programs through the BIA in one lump sum. The 477 program has substantially reduced reporting requirements and administrative procedures, allowing Tribes to shift administrative costs into actual program dollars. We are committed to at least 44 new grantees in the next five years so that employment and training opportunities can be expanded. We estimate that this expansion can result in 5,000 new job opportunities for Indian people.

Currently, forty-nine percent of the Indian population is not working. Without jobs, programs for home loans and the welfare-to-work movement are stalled before they start. None of us should be content until there is a job for anyone who wants to work on the reservation.

#### B. LAW ENFORCEMENT

We are facing a crisis of major proportions with law enforcement in Indian country. The Departments of Justice and Interior produced a joint study and report on Indian country law enforcement, and its findings were frightening and all too real for Indian country. Our communities are receiving only one-fourth of the resources for law enforcement as are received by comparable sized rural communities, as BIA has fewer officers per resident. Far too many of our police are going out alone. In the last year, three Tribal and BIA officers have lost their lives in the line of duty.

The U.S. Department of Justice, Office of Justice Programs' Bureau of Justice Statistics issued a document in February of this year entitled American Indians and Crime. The report says that the rate of violent victimization of Indians is well above that of other U.S. racial or ethnic subgroups and is more than twice as high as the national average. The rates of violence in every age group are higher among American Indians than for all races. Almost one-third of all American Indian victims of violence are between the age of 18 and 24.

Twenty million dollars were added to the BIA law enforcement budget for FY 1999. These dollars allow us to put more police officers on the reservations, give them new cars and equipment, and provide more training. But this money alone is still not enough. We have a good partner in the Department of Justice, and we have come back to Congress this year to request an additional twenty million dollars for more police officers, because Indian communities deserve to be just as safe as the rest of America.

### C. EDUCATION

Indian children are getting good classroom instruction at the BIA-funded schools. Test scores for all grades and subjects are up, schools are being wired to the Internet, and our children are working extremely hard. The students at these schools are learning and preparing well to be leaders for future generations. With all of these good things happening, I'm sorry to report that the BIA schools are literally falling down around them. BIA schools are older, in worse condition, and pose more safety risks than inner city schools. We are putting new roofs on and adding portable classrooms to schools we should be tearing down and building anew. Our children are receiving a 21<sup>st</sup> century education in 19<sup>th</sup> century buildings. It's not right, it's not fair and our children deserve better. For this reason, we have requested \$108 million for school construction in our FY 2000 budget. For the first time, the Administration has proposed a mechanism to leverage private funds to repair or rebuild their schools. Of the \$108 million requested, \$30 million is sought to bring about this leveraging.

Currently, the Deferred Maintenance Backlog of Deficiencies for 28 million square feet of 3,600 education/administrative and 3,700 housing structures and associated infrastructure managed by the BIA is \$962 million. An automated deficiency listing by structure has been used to manage the construction, improvement and repair projects for nearly 20 years. To improve the BIA's ability to manage and report deferred maintenance needs in the future, the current automated system is being modernized and the backlog of deficiencies for all structures is being field validated.

Over half of the existing structures are 30 years old, while 20 percent are over 50 years old. Student enrollment has increased 16 percent over the last nine years resulting in more adverse impacts on buildings. In the last 9 years the funding levels for operations and maintenance have increased a total of 16.6 percent while just the additional new inventory additions have increased plant size by a total of 21.1 percent. Excluding inflationary cost increases, the already 50 percent underfunded maintenance program has fallen behind another 4.5 percent for the same time period. We continue to lose ground.

### SAFETY OF DAMS

The BIA is responsible for 116 high or significant hazard dams. The Safety of Dams (SOD) Program funds are requested by the BIA, and appropriated by Congress, based on the need to repair, rehabilitate, and modify those dams with verified deficiencies where if current operations continue, loss of life and/or property due to catastrophic failure could result.

The total deferred construction necessary to complete the repairs on all BIA dams is estimated at \$484 million. This information was provided recently to the Department as part of the five year deferred maintenance initiative by the Assistant Secretary - Policy, Management, and Budget. Each year, approximately \$80 million of corrective action activities are ready for funding.

Up through FY 1997 the BIA received \$18 million for the SOD program. In FY 1998, the BIA SOD program received a \$2 million increase to \$20 million in funding, and \$20 million was also received in the FY 1999 appropriations. At current levels, it will take almost 25 years to complete the necessary dam repairs. A funding level of \$30 million which would reduce the completion time to

just over 10 years.

#### IRRIGATION PROGRAMS

The BIA has been constructing, operating, and maintaining Indian irrigation projects and systems since the mid 1800s starting with the Colorado River Indian Irrigation Project in 1867. Originally, the program was administered through the Indian Irrigation Service (IIS). The IIS provided centralized program direction, oversight, and monitoring, including irrigation construction, coordination with other Federal agencies (i.e., Bureau of Reclamation), and direct supervision of the operation and maintenance of all Indian irrigation.

There are over one hundred Indian irrigation projects and systems. Eighteen are supported by statute. Approximately \$9 million are provided in recurring appropriated funds to supplement some of the projects and systems for water storage, and other costs as directed by court actions, treaties, or other legal mandates. The combined irrigation and power program generates approximately \$65 million in revenues from water and power users.

The deferred rehabilitation construction backlog to rehabilitate the projects to present day operating standards and provide efficient delivery of irrigation water was recently estimated at \$1.5 billion. Because Congress has long considered irrigation a low priority, construction funds have not been requested by the BIA since 1983.

The BIA is taking pro-active steps to work with the irrigation Tribes towards contracting or compacting of the projects. Some of the Tribes have expressed their desire to take over the projects on their respective reservations, but are reluctant due to the deteriorated condition of these facilities. A more direct relationship with the irrigation Tribes through a consolidated management structure will provide an opportunity to implement consistent policy and procedures in working with the Tribes to accomplish this.

#### **V. CONCLUSION**

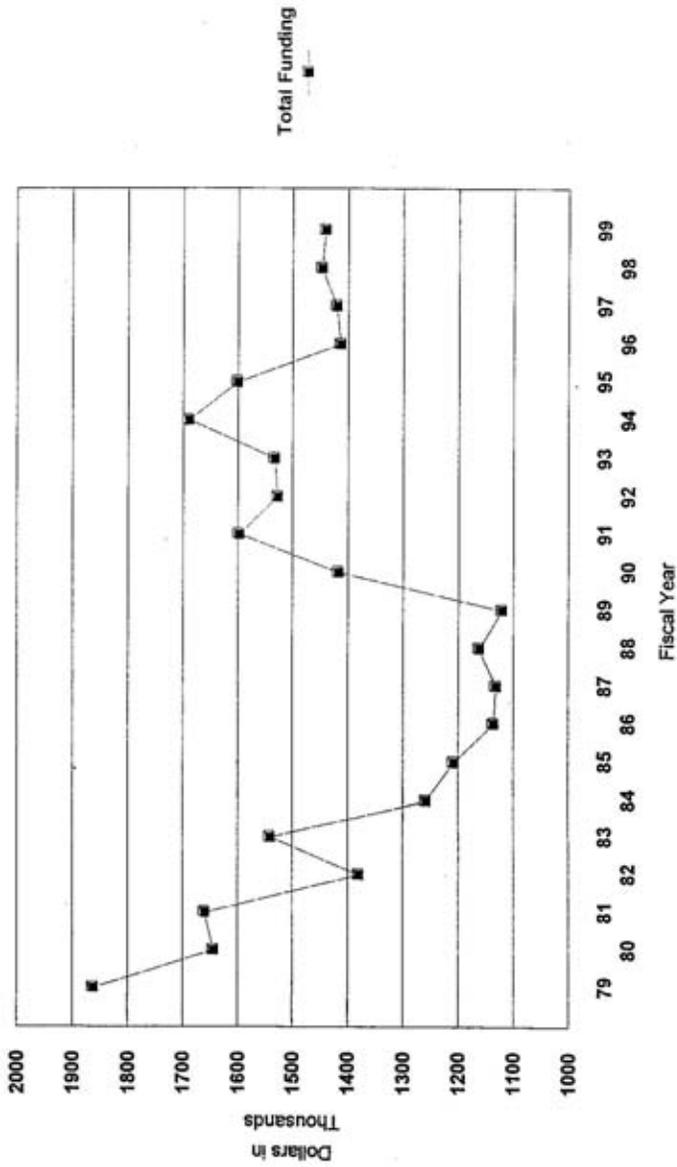
That is my report to you on where we are and where we are headed. My hope is that, when the next administration assumes office, it will inherit an agency with a clear direction and a unified purpose, an agency with a strong and deep alliance with the communities it serves, an agency prepared to meet the challenges of the new century.

Let me close on a personal note. When I was first being considered for this position, many close friends told me I should not do it because there is no way to do this job without disappointing many friends. That has proven to be true. In fact, the hardest part of this job is on those occasions when I am unable to grant a request from a Tribal leader. Believe me, I take no pleasure in saying no. Hopefully, I only say no when I have no choice, or when the larger interests of Tribal governments nationwide require that outcome. Like you, I have had to make some tough decisions, and we are not always right. Many people say that this job is the toughest job in Indian country. But I have never believed that, because I know that being a Tribal Leader is more difficult. When I make a

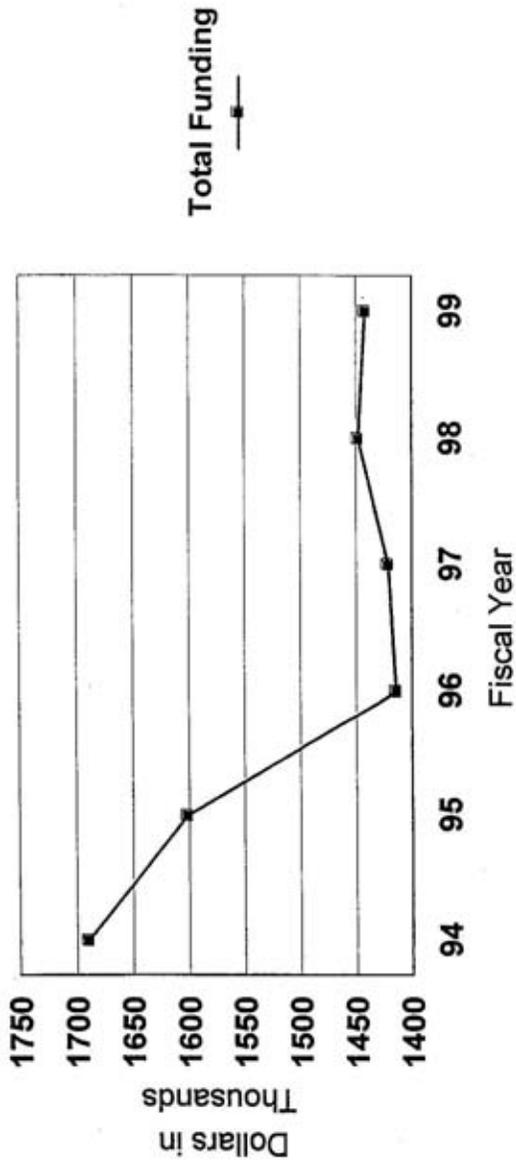
difficult decision, even if I am certain I am right, I get to go home and think about the problem. When a Tribal leader makes a tough decision, even if she's certain she is right, she goes into her community and lives the problem. I close therefore by expressing my profound respect for the Tribal leaders of Indian America and the work that they do.

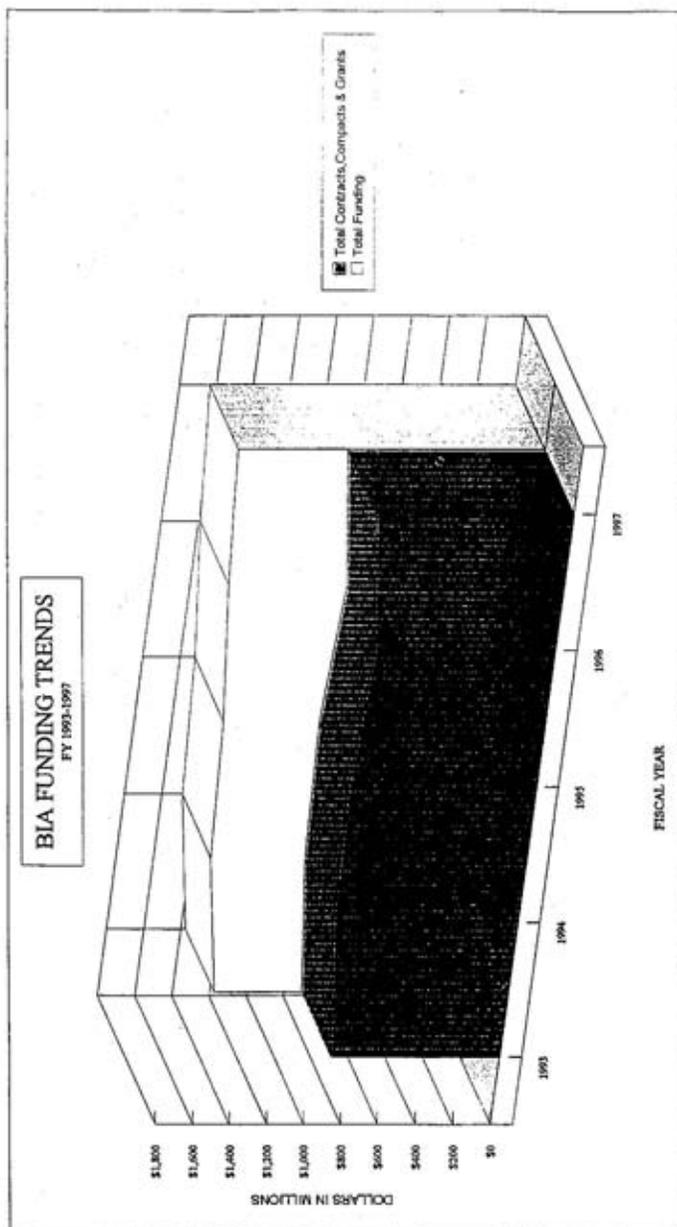
Mr. Chairman, I would be pleased to respond to any questions the Committee may have.

### Bureau of Indian Affairs Funding Constant Dollars



## Bureau of Indian Affairs Funding Constant Dollars





BUREAU EXPENDITURES  
Fiscal Year 1999

Account/Activity	Program Totals	Administration	Percent of Total
Operation of Indian Programs			
Tribal Priority Allocations	699,008	22,164	3.2%
Other Recurring Programs	542,039	0	0.0%
Non-Recurring Programs	64,150	0	0.0%
Central Office Operations	45,739	45,739	100.0%
Area Office Operations	42,940	42,940	100.0%
Special Programs and Pooled Overhead	190,248	58,064	30.5%
Total Operation of Indian Programs	1,584,124	168,907	10.7%
Construction	123,421	7,851	6.4%
Guaranteed Loan and Land Consolidation Pilot	10,001	500	5.0%
Land and Water Claims Settlements	28,882	0	0.0%
Total, Bureau of Indian Affairs	1,746,428	177,258	10.1%

## FY 2000 President's Budget

Dollars in Millions

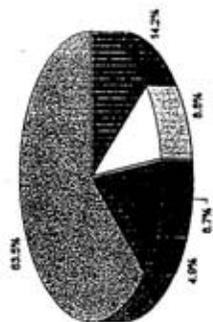
## Bureau of Indian Affairs



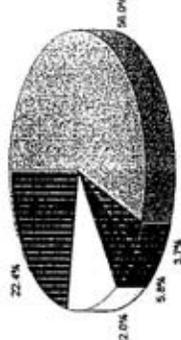
## National Park Service



## Bureau of Land Management



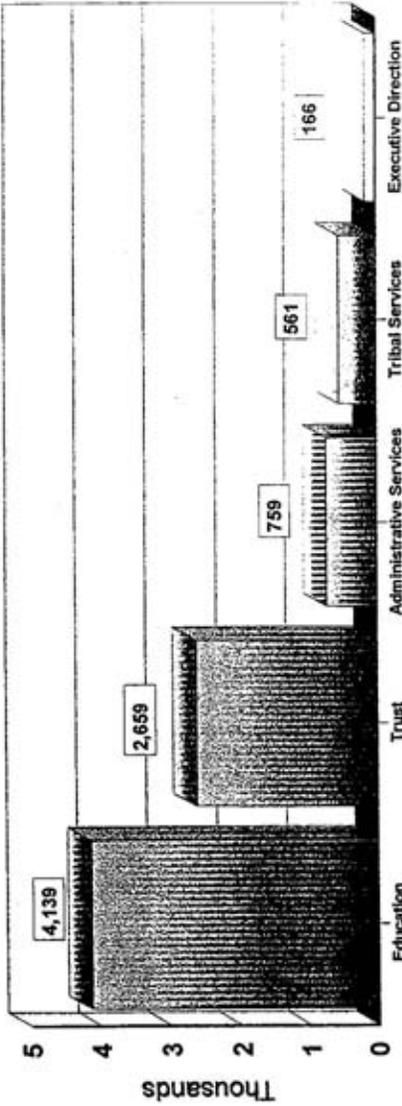
## Fish and Wildlife Service



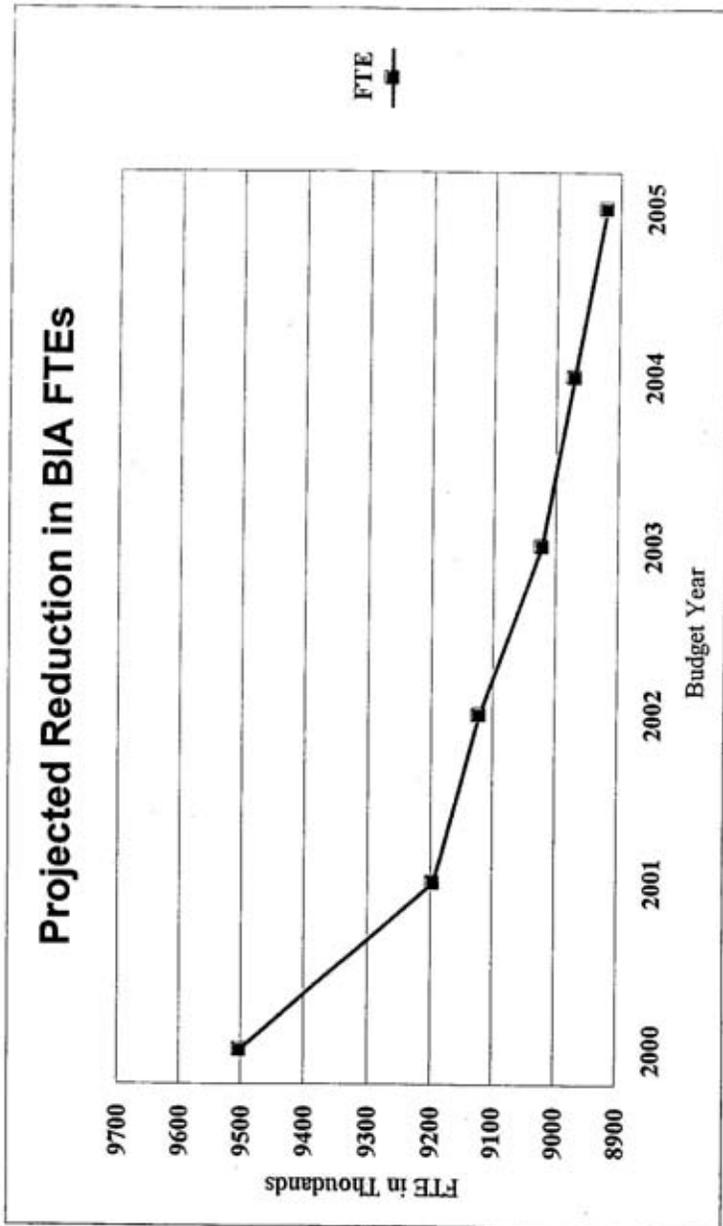
# Bureau of Indian Affairs

## FTE by Category

April, 1999



Education	4,139	50%
Trust	2,659	32%
Administrative Services	759	9%
Tribal Services	561	7%
Executive Direction	166	2%
<b>TOTAL</b>	<b>8,284</b>	<b>100%</b>



TESTIMONY OF ROSS O. SWIMMER, FORMER ASSISTANT SECRETARY OF THE  
INTERIOR, INDIAN AFFAIRS - 1985-1989  
PRINCIPAL CHIEF, CHEROKEE NATION OF OKLAHOMA - 1975-1985  
CAPACITY AND MISSION OF THE BUREAU OF INDIAN AFFAIRS

PRESENTED BEFORE THE UNITED STATES SENATE COMMITTEE ON INDIAN  
AFFAIRS

APRIL 28, 1999

MISSION

The mission of the Bureau of Indian Affairs has changed dramatically from its intended mission 150 years ago to what it has become today. In fact, the mission of the Bureau has changed on average about every 25 years as American Indian policy has changed. Simply stated, the mission of the Bureau is to promote and execute the policy of the day of any given Administration and Congress dealing with American Indians and their governing organizations.

Many people believed that the "Indian Wars" would be the end of the Indian problem and that Indian reservations would isolate the few American Indians from the rest of the population so that the "savages" would be kept under control and, thereafter be of no harm to themselves or anyone else. The Bureau of Indian Affairs was established to be the overseer of these reservations, hence the name, superintendent, was used as the title for the Bureau managers. During this time, the mid-19th Century, the Indian tribes continued to govern themselves through traditional forms of governance, but superimposed over these traditional systems were the contemporaneous federal policies which generally controlled what did or did not happen on the reservations. Just as there was almost total assimilation of the tribes in the East, it was believed that assimilation would eventually subsume the rest of the Indian population once the West was fully colonized.

Many tribes such as my own, the Cherokee Nation, were subject to the removal policies of the early to mid-1800's. The intent was to relocate the tribes in one area of the country to make room for new developments in the East and West and provide a safe haven for the tribal members to live until they were gone or fully assimilated. Of course, this required uprooting people, moving them over great distances without adequate preparation, and locating them next to unfriendly groups in alien environments. But, the policy of removal was a campaign pledge by President Andrew Jackson and was not to be denied. As the military garrisons moved out, the Bureau of Indian Affairs moved in to provide the superintendency functions necessary to maintain the peace and help manage the affairs of the tribes.

Following the Civil War, great progress was made in closing the western frontier. Railroads were laying lines, the United States was giving away land to encourage settlers to move west and the tribes were still in the way. Also, nothing perceived as particularly good by federal policy makers

was happening on Indian reservations, so it was time for a change in policy. Speech after speech was given deploring the effects of reservation life and imploring Congress to make a change. That change did come in the form of the general allotment acts that were intended to complete the process of assimilation. By providing every Indian individual with an allotment of land, Indians would surely flourish, become farmers and ranchers and live in peace with their neighbors. At some point they could even buy and sell land and make choices like the rest of the people. The Bureau of Indian Affairs would change its mission to one of superintendency over the people instead of the tribes. It would now be certain that the allotments were fair and that those Indians of greater degree of blood (which indicated incompetency) would be protected in their estates from the greed and avarice of the non-Indians. In Oklahoma, allotment was carried out with but a few acres of land left to the ownership of the Indian tribes. In this instance, little regard was paid to tribal organizations because the assets had been transferred to individuals and the mission was to protect those assets. This clearly put the Bureau in the role of trustee as its primary function. In most areas outside of Oklahoma, allotment was stopped before it was completed and many tribes retained some land base, although tribal organizations were severely weakened. The primary beneficiaries of the allotment period were those who took advantage of the allottees' lack of knowledge about land ownership and managed to get the title transferred from the Indian allottee to a non-Indian. In Oklahoma, it is estimated that 80% of the land of some tribes was transferred from Indian ownership within five years of allotment. Since competency was generally based on one's degree of Indian blood, the Bureau was only "protecting" those of one-half degree of blood or more, and often unsuccessfully.

After statehood of Oklahoma, Indian tribes virtually vanished from the scene. All the reservations in Oklahoma had been terminated and the Five Civilized Tribes were subject to the 1906 Act, an act to wind up the affairs of the Five Civilized Tribes and terminate their governments. It also was during this time that the mission of the Bureau became more confused. In Oklahoma, it was almost exclusively for the protection of the individual Indian while other areas still had a superintendency function involving tribal estates as well as allottees. Yet federal policy was singular and did not distinguish between Indian areas. Although the state of Oklahoma assumed some of the legal jurisdiction over its Indian population, there was still federal control over certain aspects such as probating restricted Indian estates, approval of oil and gas leases, sale and leasing of land and accounting for funds derived from Indian lands. Not until the 1970s did Indian tribes begin to reassert their sovereignty in Oklahoma, aided in great measure by the federal funding policies toward Indian tribes and various U.S. Supreme Court decisions.

Policy again changed in the early part of the 20th Century. Too much Indian land was leaving Indian ownership and former reservations were beginning to be occupied by more and more non-Indians. The following excerpts from *The Historian, XLIII (May 1981)* reflects on the work of Lewis Meriam in his famous investigative report directed by the Secretary of Interior Hubert Work in 1926. "Fieldwork began on November 12, 1926, and the Meriam team completed its report in February 1928. It was hailed as "the most important single document in Indian Affairs since Helen Jackson published her *Century of Dishonor* fifty years ago." The report detailed the deplorable living conditions of the Indians. "An overwhelming majority of Indians are poor,

extremely poor," the report began, "and they are not adjusted to the economic and social system of the dominant white civilization." The Problem of Indian Administration went on to indict the Indian Service in 872 pages that reported many Indians literally dying because of neglect, Indian children abused in government schools, and tuberculosis and trachoma so prevalent that the survey members feared the risk of their spreading to whites. Contrary to the rhetorical statements of the Indian Service, the study concluded that with the Indians having an average annual per capita income of only \$100, there was "altogether too much evidence of real suffering and discontentment to subscribe to the belief that Indians are reasonably satisfied with their condition. The amount of serious illness and poverty is too great to permit real contentment."

Meriam went on to say, "I have always regarded the complete reorganization of the headquarters the key to the whole situation because it controls everything else." He understood at the very outset that the Indian Service would be extremely difficult to reform because of "its age, its size, its diversity of subject matters, its dispersion over twenty-six states with more than two hundred tribes, its political ties, and its low state of efficiency." The Meriam Report was also critical of the allotment system established under the Dawes Act. "It almost seemed," the study conjectured, "as if the government assumed that some magic in individual ownership would in itself prove an educating factor." "Critical of the land allotment system, Collier (John Collier, later to be named Commissioner of Indian Affairs) and the Indian Defense Association urged a radical shift in Indian policy away from individual land ownership to corporate tribal ownership."

The answer was to help tribes reorganize. Thus, the 1934 Indian Reorganization Act and the follow-up 1936 Oklahoma Indian Welfare Act were enacted into law. There was a process for adopting constitutions, forming economic development corporations and borrowing money from the Bureau of Indian Affairs. Within limits, the tribes were free to do as they chose and the Bureau would provide financial and managerial support. The mission had changed again. Overnight the Bureau was supposed to change from being the superintendent to an educator and promoter. Its goal was now self sufficiency of these newly reorganized tribes. Some even thought that this would be the end of the Bureau as it would soon no longer be needed. However, with new federal programs to administer to assist with tribal self sufficiency and the need to be ever vigilant for the individual restricted Indians, the Bureau became even stronger.

Perhaps World War II was the greatest leveling event for Indian affairs. Many Indian people distinguished themselves during the War and there was a growing belief that these people did not need the protection of the U.S. government. In addition, the Cold War, anti-Communism era led to a backlash against what were perceived as socialist tribal governments and promotion of the termination/urban relocation movement. As a result of this and other changing circumstances, Indian policy changed again about 1950. The Bureau was tasked with the mission of assimilating individual Indians into every day life. Reservations were too isolated, the new governments that were organized were seen as unsatisfactory for solving problems and protecting individual rights, and they were too isolated. The answer was to promote an Indian relocation policy and encourage tribes to seek termination. Money was poured into the Bureau to subsidize anyone who wanted to leave the reservations and move to the cities. The jobs were in the cities and job training, housing,

and other assistance was available for those who would "buy in." As a result, nearly one-half the Indian population took advantage of this opportunity and moved. Of course, many found more problems in the cities than they experienced on reservations, but most stayed. The Bureau's mission also changed and was directed at urban Indians to help them survive in their new environment with the help of government programs largely administered by the Bureau.

The culture wars of the 1960's and the American Indian Movement brought the plight of the American Indian to the front pages once again. Indian people were not doing well in the cities and needed the culture of their tribes to nourish them and get them on their feet. For the most part, tribes and tribal land had been devastated by the federal policies in the West of damming rivers to provide water to people who wanted to farm, development of the energy business on many reservations and exploiting the other natural resources of Indian tribes. However, during the "Great Society" days, money from the federal government and private foundations began to flow in great quantities to Indian tribes and the tribes soon learned that government funding was a numbers game. The more people in need, the greater the funding. Indian people were discouraged from leaving the reservations; those who left were encouraged to return and the Bureau once again faced a changing mission. From the role of superintendent, it now became a role of provider. Housing, health care, education, economic development, trustee and social work became the new mission of the Bureau.

Soon, however, it was believed that tribes could better administer many of these functions. As a result, President Nixon and Congress enacted the "Indian Self Determination and Education Assistance Act." Self determination for Indian tribes was to make tribes independent of the Bureau for the administration of social programs and many people believed we were finally seeing the twilight of the Bureau. However, something else had happened during the early 1970's. The most lucrative jobs on reservations were in the Bureau of Indian Affairs. Thousands of Indian people were now employed by the Bureau and it could not go away quietly. Anytime there was talk of dismantling the Bureau, the tribes would rise to be its greatest defender, while shortly before they were its greatest critic. Even when tribes "contracted" to manage Bureau programs, the Bureau remained available so that the programs could always be returned to the Bureau if a tribe tired of operating a program. Most often the people who worked in the Bureau continued working under tribal contract. The mission of the Bureau was now employment. The schools saw a dramatic increase in "teacher aides" and other nonprofessional staff and many training programs trained Indians for jobs that were nonexistent.

Many believed that self determination would provide tribes with the resources to establish sound fiscal controls and establish quality governments. This has been true only to a very limited extent. The mission of the Bureau in the last 20 years has been obfuscated. While some believe it should exercise more discipline over wayward tribal leadership, others believe it should leave the tribes alone to work out their own problems. Of course, all the tribes believe it should continue to send money to them unencumbered. When I was Assistant Secretary and had a situation regarding tribal leadership accountability, I was accused of heavy-handed tactics for letting the federal and tribal prosecutors do their jobs. The Bureau is often put in a "no-win" situation when these

controversies arise. Is the mission of the Bureau to protect tribal leadership, defend the tribal constitutions, protect federal assets, develop tribal assets or preserve tribal assets, or all the above?

The mission of the Bureau of Indian Affairs is to follow whatever policy is issued from the Administration and whatever laws are enacted by the Congress. In other words, the mission changes from year to year. Yet many Bureau employees have worked in the Bureau for a lifetime and are expected to be experts at whatever the mission of the day is. The trust activity of the Bureau has recently been under assault. It was never the mission of the Bureau to undertake the trusteeship for several hundred thousand individual Indian people. Nor was it intended that tribes would be investing billions of dollars through the Bureau. This mission of investment officer and advisor grew over 150 years with little or no guidance or resources from the Congress. As additional work load was added in the form of new dollars or Indian heirs, the Bureau tried to cope by using systems designed for a fraction of the work load to manage the new responsibility. My own initiative of privatizing the investment function of the Bureau during the late 1980's was met with intense resistance from Congress. We knew the Bureau did not have the resources to manage these funds and we also knew that by the time we were able to get through the federal procurement system to purchase the computers necessary to perform the tasks of tracking of hundreds of thousands of transactions, and the federal hiring system to bring on people with the expertise to run the computers, we would be long gone from office and not able to oversee the actual implementation of a workable trust funds management system. The best we could do was to encourage some innovation in the types of investments tribes could make to enhance the return on their deposits. The most obvious approach was to encourage tribes to withdraw their money and do their own investing. But fear of loss of the funds through inept tribal leadership was a greater fear of most tribes than the Bureau. However, when one tribal leader was recently asked if his tribe had any money in trust with the Bureau, he said he would not be the tribal leader if he did. Fractionated ownership of individual Indian lands has made the job an almost impossible task.

Today, most of the programs traditionally operated by the Bureau are also found in other agencies. The health care function was removed to the Department of Health and Human Services some years ago. The Department of Housing and Urban Development builds far more houses on reservations than the BIA repairs and replaces and the Department of Education provides greater funding for educational programs on most reservations than the BIA, with the exception of the boarding schools. The Department of Labor programs far outclass the BIA employment assistance programs in Indian country. In other words the BIA is continually in search of a mission. While some tribes are operating casinos and bingo parlors that generate tens of millions of dollars, they remain "entitled" to receive thousands of dollars in BIA program support. It is obvious that not all tribes are the same. However the BIA is expected to treat them the same even when the outcome is means more inefficiencies or worse.

I came to see the mission of the Bureau during the late 1980's and even today, as a buffer between Congress and Indian tribes. The Congress does not want to deal directly with these sovereign nations. The Congress enacts laws and mandates that the BIA execute these laws. In many

instances, the laws require regulations and the Bureau spends years drafting these proposed regulations. It then tries to implement the laws and regulations as though all tribes are the same. The tribes also view the Bureau as something to attack and often challenge the credibility of the Bureau before Congress, implying that the Bureau is not doing what it should to protect the resources of the tribes. In fact, tribes are often the ones who implore the Bureau to waive regulations that they perceive hamper the tribes' ability to use their resources. An example is when leasing regulations require that the BIA not lease surface agricultural land at less than appraised value. When no one is willing to pay appraised value the land goes unleased and the tribe receives no revenue, although the land could have been leased for an amount minimally under the appraisal. If the BIA were to lease for less than the appraised value, the tribe could sue for breach of trust and ask the government to pay the difference. Thus, by not leasing and losing revenue for the year, the BIA is actually fulfilling its trust responsibility. Why should the BIA be the middle man? If tribes are capable of making multimillion dollar decisions regarding casinos, why are they not capable of leasing their own land?

As described earlier, the mission of the BIA is wholly dependent on contemporary federal Indian policy. We cannot determine the BIA mission without a context which is the federal policy. My goal of bringing "self-government" to the front of the agenda was to allow tribes to withdraw from the BIA entirely by taking whatever money and resources that were being used by the BIA and attributable to that tribe away from the BIA budget and have it go directly to the tribe. In that way the tribes were not forced to operate the same failed programs but rather could use the money and resources in a more effective way to address whatever the need was on their particular reservation. The plan was simple. If all tribes exercised their right to do this, the BIA simply would no longer exist except in name. There is no function the BIA performs today that could not be performed by the tribes. But are all tribes alike? Are all tribes capable? What about a recently recognized tribe of 300 members who have a billion dollars of revenue from a casino as compared to the Navajo Nation of over 200,000 population who still live in third world country conditions? Should the same policies apply to both? Should the BIA fund programs for both? It is difficult to describe the mission of the BIA because federal Indian policy is in a state of transition.

Twenty years of self-determination and self government are just about up, so it is probably time for a change in policy. The recent movement has been toward tribal sovereignty, more independence and more tribal government. The courts continue to rule in favor of tribal sovereignty and tribal courts and legal systems appear to be coming of age. The recent headlines over trust fund management would mitigate in favor of more people taking their funds out of trust as well as tribes moving to do their own investing. If Congress chooses to support these initiatives with legislation, it would appear that the mission of the Bureau should or will be greatly reduced if not eliminated. As mentioned previously, its program function has been usurped by other agencies and it is viewed by many as a hindrance to economic development on reservations rather than a help. Businesses would rather work directly with tribes and not have to wait for the lengthy approvals needed from the BIA after the agreements have already been negotiated. So as not to fall into the one-category-fits-all trap, there are tribes that do not have the population, resources or skills to provide all the governmental services the law requires on their reservations. In these

instances, some presence of the Bureau will be needed until such time as the tribe is able to contract for services from other units of government - state, local or federal - for such things as law enforcement, education and health care.

The trustee mission will have to be phased out over time. The principal reason for many individual Indian people to remain restricted is to avoid income tax on their earnings from tribal land. This could be changed by simply removing this kind of income from taxation. The greater problem caused by remaining restricted is fractionated ownership of land and minerals. Congress could eliminate this problem by enacting a law that would streamline probates and allow individual heirs to go into state and tribal court as well as before Administrative law judges to get the probates completed. As for tribes, there is no excuse for a tribal government to have money invested through the BIA. The laws requiring this can and should be changed and some basic guidelines such as those used by federal, state and local governments should be sufficient to protect the assets. This is an excellent opportunity for Indian people to become involved in the investment industry and to organize firms to support the transition from Bureau investing of tribal funds to private investing. One such firm, Native American Investment Advisors, located in Tulsa, Oklahoma is Indian owned and has already developed an excellent track record of exceeding returns achieved by the largest investing houses.

### CAPACITY

Most of this testimony has to do with the mission of the BIA. Without knowing the mission now and in the future, it is difficult to assess the capacity of the BIA to meet its mission. As it stands today the mission is to promote self-government, be a trustee for natural resources, defend the tribes from intrusions of other Department of Interior agencies, jointly oversee programs such as education and law enforcement on reservations, maintain land record titles, enforce mineral and surface leasing regulations, make loans to tribes, individuals and tribal businesses, recognize new groups desiring to become Indian tribes, oversee gaming on reservations, collect and invest monies from tribes and individuals and promote a host of conflicting policies governing Indian country.

What is the Bureau's capacity to do these things. One thing that stands out in the Bureau of Indian Affairs is its employees. During my tenure at the head of the Bureau, I was extremely impressed with the quality and dedication of an overwhelming majority of Bureau employees, most of whom are American Indian. As I explained to many of the employees at that time, my only regret was that they were not working directly for the tribes they were serving. When tribes achieve the confidence level to manage their own affairs, they should look first to Bureau employees for their work force and incorporate these seasoned veterans in everything they do. Educators are performing miracles in buildings that should have been demolished twenty years ago and with resources that are dedicated to everything but teaching. Land men are trying to help tribes generate income from tribal lands by administering laws and regulations that are out of date and the Bureau continually is forced to deal with the complexity of trust funds management with equipment and systems that became obsolete years ago. Reorganization will not help this

situation. A gradual downsizing of the Bureau with specific targeted planning as to how and when its authorities and operations will be transferred to tribes is needed. The tribes are not encumbered by antiquated purchasing and procurement systems or personnel systems as the federal government experiences. Decisions can be made more quickly and if the expertise of the Bureau employees can be transferred to tribes it is likely that tribes will do much better. Eventually, individual Indian people have to become sufficiently educated and employed so as to have choices about where they live. If tribes are doing their job, many of their members will remain on the reservations because of the strength of culture, language and family. If tribes are not able to provide a quality environment on reservation, these people will be forced to move.

The Bureau probably has the resources to operate credible schools on reservations, but it does not have the capacity to do that in the context of a jobs program. It is my belief that the Bureau has done an adequate job of collecting and investing money belonging to tribes and individuals, but it has not done a very good job of records management. It does not have the capacity to manage accounts for hundreds of thousands of individual Indians. It is lacking in resources - both people and technology. But people and technology are readily available in the private sector and should be utilized for this task as long as the task is there. I was once presented with a dilemma from an area director who was being called upon to use his judgement in approving or disapproving a major coal lease. The tribe had retained several experts as well as lawyers and had engaged in intensive negotiations over several months. The tribe and the company had come to terms and were presenting a very long and complex deal to the area director, as the law required, for his approval. His question to me was how can I or my staff possibly evaluate this agreement? To do this properly, he would need to hire the same kind of experts that the tribe had already retained and spend several months evaluating the deal. He had no money in his budget for this kind of activity and the deal might be jeopardized by the length of time it would take for his decision making. On the other hand, if he approved it without this kind of diligence, the United States would likely be sued by the tribe for breach of trust by the BIA if it did not get what it anticipated from the deal.

The Bureau, like all federal agencies, is subject to the same employment and procurement laws as everyone else. When we assessed our technology need in 1988 to upgrade the trust funds management accountability, we were told by our procurement staff that purchasing the computer equipment and software necessary to get the job done would take a minimum of two to three years. Since 1988, we all know that equipment purchased then would have been replaced at least twice with the technological advancements that have been made in the last ten years. The government simply does not move that fast. We have seen the same thing happen with Bureau schools on reservations. The condition of many schools is deplorable. If these were state schools, they would have been demolished and new schools built. However, the Bureau must wait for congressional funding and is fortunate to get one or two new schools or school improvements a year when the need is several dozen. In the private sector and non federal governmental sector, there are innovative ways of financing school projects. Unfortunately, this innovation has not caught on with the federal government yet.

In summary, the mission of the Bureau is constantly changing. In today's environment one has to question seriously whether the BIA should continue to exist, at least as it has in the past. Tribes are much more sophisticated, courts have given more autonomy to tribal government and the federal Indian policy is leaning toward more independence of tribal action. Programmatic functions of the BIA could easily be moved to other agencies. The trust function for investment of funds should be phased out and in the interim, private institutions should be retained to manage the funds left with the BIA. The budget of the BIA should be allocated by some formula to the tribes with strict accountability standards. New laws allowing greater flexibility with tribal compacting between tribes, states and local governments should be enacted and more flexibility created by new laws regarding use of Indian and tribal land and other resources. As an aside, the Indian health care system also needs similar attention. Funding always lags behind need and as a consequence, Indian people never have the resources to meet current need. Indian people need to have access to quality health care from any source available, not just Indian health service.

As Indian people have choices, the face of Indian country will change. This means establishing some form of economic capacity on reservations. This is not done through the creation of more federal jobs. The private sector can be brought to Indian country with the right incentives, but these incentives must be directed at the private sector businesses that tribes want to have on their reservations and not simply to job creation programs of the BIA or Department of Labor. A simple change to the tax code allowing direct subsidies to American and foreign businesses that establish satellite businesses on reservations could end unemployment on reservations and give Indian people the choice of staying or leaving. If that need is satisfied, government intervention from the BIA or other agencies will not be needed. It is not enough, however, to suggest an end to the BIA. That is too simplistic and irrational. Not all tribes are the same or have the same needs. New tribes are created every year and need support to develop governing systems. Instead of looking at the problems of the past, my suggestion is to look forward to a five, ten and twenty-year plan for the evolution of the BIA into what it should be (once that is decided) and stay on course. It is a plan that should be developed jointly by Congress, tribes and the BIA with a review of where it is today and where it needs to be tomorrow. Such a plan could be a blueprint for the future of not only the Bureau but Indian policy.

I thank you for the opportunity of speaking to you today and I wish you great success in your quest for enlightenment as to the BIA's capacity and mission.

Submitted by:

Ross O. Swimmer

## THE CHEROKEE GROUP, L.L.C.



Ross O. Swimmer  
*President*

May 10, 1999

The Honorable Ben Nighthorse Campbell  
United States Senate  
Committee on Indian Affairs  
Washington, D.C. 20510-6450

RE: Responses to Written Questions

Dear Senator Campbell:

The following are responses to questions arising from my written and oral testimony of April 28, 1999. Thank you for the opportunity of appearing before the Committee. Please advise if you have any further questions.

Question No. 1 regarding "farming out" functions of the BIA to other agencies.

In many instances, the functions performed by the BIA have been usurped by other agencies already. This is particularly true in housing, employment assistance, economic development loans and grants, education and welfare. However, the regulations that apply to other agencies were generally developed for the population at large, not just the Indian population and therefore, often do not "fit" well in Indian country. My suggestion is either to move the money from the other agencies to the BIA so that the BIA can provide all of the services offered by the federal government or move the people from the BIA who administer small programs to the other agencies to help rewrite regulations and administer the programs of those agencies in a more functional way than is now being done in Indian country. If we were to follow Kevin Gover's outline of the future, the BIA would be a technical service entity not only for the tribes but also for the other agencies of government. Since the BIA budget is very small compared to the other agencies, it would appear that merging or "farming out" the work the BIA is doing in these areas would make more sense. It also would make sense to continue downsizing the BIA.

One caveat to the foregoing is that tribes would have to have the same right to the funds of the other federal agencies in order to continue their move toward self-governance. In effect, what we would have is a form of revenue sharing. A portion of the federal programs budgets would be transferred to the tribes for their use according to strict budgets and performance standards as to how the money is going to be spent.

1560 East 21st Street ♦ Suite 300 ♦ Tulsa, Oklahoma 74114  
Telephone: (918) 747-1770 ♦ Fax: (918) 747-3420

Question 2. Should the goal of the BIA be to build capacity within the tribes?

Absolutely. Tribes, however, are going to have to be treated differently according to their size and capacity. For instance, a tribe of a few dozen members cannot and should not be expected to have a large tribal government, administer law enforcement and courts and provide all the other trappings of a government. There should be some minimum distribution of funds to the smallest tribes to have some level of government. If there is poverty on their reservations they should have access to a share of the poverty programs - housing, labor and health care to help them remedy the poor conditions. If they are so small they cannot have a functioning administration, then the Bureau could provide technical assistance to the individuals to help them get the federal services they are entitled to. Even the smallest tribe has enormous economic clout because of its sovereign status and therefore the ability to do certain kinds of economic deals. This is an area the Bureau could help them evaluate. Larger tribes that control large amounts of territory or people need technical assistance from time to time, but more important, there needs to be accountability for how they spend their federal dollars. It is just as easy for these larger tribes to find consultants outside the government when they need "capacity" building as it is within the government. More and more the tribes are looking to outsiders for help in building capacity.

Question 3. My statement about phasing out the trustee status.

The federal government's role as trustee evolved during a time when it was believed that Indian people were incompetent to manage their own affairs and that tribal governments could not be trusted to manage resources on their reservations. A trustee, by definition, cannot be a risk taker. A trustee must be concerned with maintaining the assets and accounting for increases and decreases. The investment policy mandated by federal law for trust funds of tribes, necessarily requires that the Bureau place funds under its control in the safest investments, which, of course, pay the lowest rate of return. Similarly, land and other resources are administered for their safest usage and lowest return. As tribes mature, they are going to want to take more control of their assets. In some instances they will make mistakes, but that is the privilege of self governing. In my opinion, either the tribes have to be able to take control and operate as independent governments representing their people or the Bureau has to be a trustee which means a loss of independence for the tribes and very little meaningful decision making. Many individual Indian people do not hold their leaders accountable because they believe if the tribal leaders fail, the Bureau will "bail them out."

A second trustee role is the responsibility of the entire federal government to meet its treaty obligations to tribes and to protect the tribes from the federal government itself. This role is one that should endure until the tribes have received satisfaction for the taking of tribal property and other assets by the federal government and compensation in some form has been paid. This includes such things as water rights, protection of hunting and fishing rights, payment of legitimate claims for taking of tribal assets without compensation. Within the Interior Department, even today, I am certain, there are constant battles to protect the domain of Indian tribes from encroachments by the Bureau of Reclamation, Mines, Park Service, etc.

Question 4. The BIA does so many things it cannot do all of them well, is this a problem?

My comments dealt with the capacity of the BIA to do all then things that were mentioned. When I was the Assistant Secretary the level of employment at the Bureau was approximately 15,000 FTE. According to Assistant Secretary Gover, the number is now about 9,000 FTE. Although I am sure that many of the 6,000 people have transferred to direct tribal employment to perform contracted functions, the BIA is still left the requirement of administering the same programs to those tribes who have not contracted. I doubt that the Bureau can do the job that needs to be done under these circumstances. A truly radical idea would be for the Bureau to look to larger tribes to provide services to the smaller tribes. If the decision were made to be a technical assistance agency, the programs could all be contracted out and those tribes too small or unwilling to assume responsibility to administer the programs could be contracted to self governance tribes to do the work the BIA used to do.

---

### **Questions from Senator John McCain**

Question No. 1. What is the best direction for Congress to take the BIA to make it more effective?

This is a very difficult question and I would welcome the opportunity to have a frank discussion with the Administration, Congressional leaders and tribal leaders to debate and consider it. I will try to answer but so much goes into our consideration of this issue that it is beyond any one person to determine the answer.

Until the Congress can decide which way to go with Indian policy, the question is even more difficult. If the policy of self-governance is to continue, then the direction of the BIA is to downsize and provide technical assistance to the tribes to enable the tribes to deliver necessary governmental services, ie, law enforcement, education and infrastructure development to the tribes with reservations. The tribes then, must make the decision as to whether they will provide these services directly or contract with private companies or the states to help provide the services. The level and quality of services will then be dependent on the tribes not the BIA. These tribes and tribes without reservations already receive contracts for services from the other federal agencies, so the role of the BIA is minimal. The Congress should enact legislation making it easy to compact between tribes and states, not only on tax issues but all others as well. Part of the theory of self governance is to move decision making to the local level and let tribes determine how to spend federal dollars appropriated for their general benefit.

In the nonprofit world, there is a new mantra being touted as a way of doing business. It is called "outcome funding" and "results oriented" accounting. It applies to governments as well as nonprofits and has been used by business as defining the bottom line. This is where the policy issue plays a role. Is it our intent to keep Indian people on reservations? The corollary question is whether it is our intent not to allow people to leave the reservation? My opinion is that an educated, well-fed, employed people will be able to decide for themselves. Unfortunately, most of our poverty programs mitigate against migration on and off reservations. The programs create a dependency both at the tribal level and person level which is very difficult to overcome. At the

tribal level, the tribes survive on indirect cost from operating the programs which means the bigger the program the more money the tribe will receive. If we disconnect this dependency, then tribes will have a motive for "results." At the person level, the dependency is such that a person can never acquire the resources to leave the reservation in search of something better, so to get food, housing and some income, he/she has to stay. Of course, many will take exception and say that people stay because of the culture, etc. In fact, what we see in many instances is a culture of poverty, not one of tradition or tribalism. I recognize that many tribal economies will never support the high birth rate and large populations on their reservations. They do not need to. They do need to provide a high quality education system and create the best economy possible for the area, but the tribes also have to look beyond the reservation boundaries for jobs for the Indian people and provide transportation if necessary for the people to get to the jobs. It is quite possible then that the reservation will achieve a balance with members moving on and off at various stages of their life as their needs dictate. This is not meant to dictate removal again, but rather personal freedom which can only be achieved by an educated, employable person.

This leads me to the conclusion that education is the most important result to achieve in Indian country and perhaps should be the main thrust of the BIA unless the tribes are willing to take it on as well. In either event, this requires adequate funding for the school buildings, community colleges, scholarships for college bound students, adequate teacher preparation, changing schools from employment centers to education centers, forming compacts with states and local education districts and accountability standards for reaching results. The second result is to bring industry to the reservations through tax and financing incentives. Once the work force is educated and the cost of doing business on a reservation is covered, the jobs will be found. As Indian people develop their skills, many will leave the reservations, while others will remain to become the managers and entrepreneurs of new businesses.

Question No. 2. What are my views on reorganization of the BIA based on legislation introduced last year?

Unfortunately, I am not familiar enough with the legislation to comment adequately on it. I would be glad to review the legislation and make comments if you wish. My general attitude is the old saying about rearranging chairs on the Titanic. I think the important thing would be to determine the best role for the BIA, eliminate everything else and get on with doing what the job. S739 is an excellent start on the trust funds issue.

Question No. 3 Should the Congress do anything before restructuring the BIA?

Yes, the Congress should agree on an Indian policy so that the restructuring can be done in a way that fits the policy to be implemented. If you are satisfied with the policy of self-governance, then the restructuring should be in the direction of technical assistance to the tribes with contracts going to private firms, Indian tribes or other federal agencies to perform the functions now being performed by the BIA. The BIA would be oversight, monitoring and accountability. It might also be time to consider looking at tribes from a different perspective such as a tiering system. Large tribes with large land bases would be one group. Large tribes with little land base, another, small tribes with large land bases and small tribes with little land base

could be a different category. I think it would be productive for Congress to have a working session with a few of each of these different tribes represented in order to give you some insight for Congressional action.

Question No. 4. Is it time for a new policy?

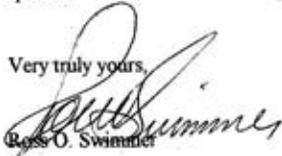
My statement in the earlier testimony was in part facetious. I was simply making the point that about every 20 years policy changes and tribes and the BIA are expected to adapt. I am very supportive of self-governance. Now, after seeing what my tribe has done, I would add, self-governance with accountability. If a tribe fails to be accountable, the money should be removed from the tribe. Instead of losing the program, perhaps legislation could allow the federal agency to file an action in federal court to have a special trustee appointed to operate the program until such time as the tribe had accounted for the money or proved it has the ability to account for it now. If self-governance achieves its objective, most funds and most employees of the BIA will be transferred to the tribes and employed by the tribes to perform those services needed on the reservation.

---

I apologize for the rambling and hope that my answers are helpful in resolving the course of Indian policy in the future. There is a lot to be done in Indian country and tribes are going to have to take the initiative rather than using the BIA as an excuse for not making good things happen on their reservations.

If you have any questions about my answers, please let me know and I will try to be more specific.

Very truly yours,



Ross O. Swimmer

Testimony by Bernie Teba, Executive Director  
Eight Northern Indian Pueblos Council  
to the  
Senate Committee on Indian Affairs  
April 28, 1999

Good Morning Mr. Chairman and members of the Senate Committee on Indian Affairs. My name is Bernie Teba, I am the Executive Director for the Eight Northern Indian Pueblos Council. The Eight Northern Indian Pueblos Council is a consortium of the Northern New Mexico pueblos Tribes of Taos, Picuris, San Juan, Santa Clara, San Ildefonso, Nambe, Pojoaque and Tesuque.

The Northern New Mexico Pueblo Tribes consist of four gaming-compact tribes, five small tribes with less than 300 members, three relatively large tribes with over 1800 members, tribes with natural resources and tribes with no marketable natural resources or gaming activity. We also have one tribe - the Pueblo of Santa Clara - a self-governance compacted tribe. The Northern Pueblo Tribes are served by the Bureau of Indian Affairs Northern Pueblos Agency. In some regards the Northern Pueblos are a microcosm of tribes from through out the country.

I am here today to express the concerns of the Northern Pueblos relative to the Bureau of Indian Affairs Mission. More specifically, the resource allocation process. Please bear in mind that criticism of the Bureau of Indian Affairs is an exercise in futility. The policies and practices of the BIA are firmly entrenched and recalcitrant to change. I speak from experience. I have worked for tribes and tribal organizations for the past twenty-three (23) years. I also served throughout the duration of the DOI/BIA/Tribal Task Force on Reorganization of the Bureau of Indian Affairs. As I had expressed and predicted to the Task Force members and tribes - the BIA would not and will not change regardless of the Task Force recommendations, tribal concerns and good management practices. I am still a proponent of Congressional action through legislation to mandate the BIA to change -such as the BIA Re-organization legislation introduced by Senator John McCain a few years back.

Quite often it is a double-edged sword to either criticize or request a mandate from Congress to change the Bureau of Indian Affairs. Either the BIA will passively resist and let time erode any attempts to change, or, because of our frustration - Congress will micromanage the BIA- both are not conducive to the effective delivery of services at the reservation level.

In this regard I am here today to advocate for change.

The fundamental problem is the lack of an adequate resource allocation and accountability model.

Annually tribes go through a meaningless exercise in providing comment on the BIA budget planning and allocation process for the resources to support the BIA mission. This year two tribal representatives from each of the twelve area offices are provided five minutes to identify priorities, concerns and issues. The Eight Northern Indian Pueblos Council has mandated that we think outside of the box called the BIA Budget process.

We want to offer today a budget process and accountability model that will involve tribal governments in identifying tribal community needs and establish quantified outcomes at the community level. This proposed process will address the issue of accountability to Congress on accomplishments with funds appropriated by Congress.

The ENIPC model is based on the concept that in order to be accountable, Congress must first acknowledge that there are indeed tribal needs that must be addressed over a period of time. Tribal needs are many, however, if the process is clearly identified to address needs then there is a clear expectation as to what is going to be addressed. The process does not foster the funding of the federal bureaucracy nor does it reward managers for expending funds.

The need for budget reform in the Bureau of Indian Affairs dates back over two decades. Since announcement of the Indian Self Determination Policy in 1970 and initiation of the "Tribe/Agency" component of the budget in the mid-1970's, little change has occurred in the methods by which the BIA develops their budget. Tribal input is at best token input. The amounts and number of programs subject to Tribal priority setting are seriously eroded, and the budget forwarded to Congress each year fails to address Tribal needs or priorities adequately.

Currently more and more tribes are contracting BIA operations under Self-Determination contracts as a consequence of improved tribal governmental operations. The past twenty years have seen the development of vital tribal government management and administrative capacities. Major portions of federal services are presently being delivered through tribal governments. The longer-term question is whether to target the direct distribution of funds to tribes for the delivery of essential services without eroding the Federal government's trust obligation and responsibility rather than trying to re-define or re-invent the bureaucracy.

**The existing budget process and why it does not work:**

- The current process is not based on service needs as defined by the tribes. Instead it is based on the BIA interpreting the needs first as a means of perpetuating the BIA, and secondly, services to the tribes.
- Managers are rewarded for expending funds. Accountability for meeting tribal needs does not exist.
- The budget process is based on historical levels of funding the agency, which may or may not have any correlation to tribal needs.
- The budget system, by design, pays the bureaucracy first and the tribes second.
- The Albuquerque Area Office spends 80% of budgeted funds for federal employee personnel costs.
- The process does not provide appropriation expenditure type accountability to the tribe(s).
- The budget process is designed to meet the needs of the BIA organization, which in most instances have a limited relationship to tribal needs.
- The process does not provide accountability to the Congress on which tribal needs are met or not met.
- Participation in the budget process is a frustrating exercise since tribal leaders' decisions are lost as they proceed up through the BIA Area and Central Offices, Office of Management and Budget, Interior Department and on to Congress.
- The capability for tribal leaders to track their decisions does not exist.

The existing Federal BIA budget process does not fulfill the Federal government's trust responsibilities to the Indian tribes. The budget process makes the mission meaningless relative to resource allocation decisions based on tribal needs and accountability for meeting needs.

Examples that the current process does not work include the following:

**1997 BIA Northern Pueblos Resource Assessment**

The following summary is taken from page 3 of the 1997 BIA Northern Pueblos Agency (BIA-NPA) Resources Assessment (Attachment A) conducted by the Eight Northern Indian Pueblos Council.

Of the \$3.197 million received by the BIA-NPA, 62.6% of the \$3.1 million was utilized to provide services to other governmental entities while only 37.4% of the resources were provided to meet tribal services. Tribal governments received 19.9% of resources for services. Of the 19.9% of

resources to tribal governments, the Northern Pueblo Tribes received 15.8% of resources. Indian individuals, Indian organizations and Indian Companies received 17.5% of resources for services. If tribes received only twenty cents on the dollar for services how can tribal needs be addressed. Or, to put it another way how can the BIA meet its mission if only 20 to 37 percent of the resources are being allocated to provide tribal services. Their biggest customer is the bureaucracy.

A similar Resource Allocation Assessment was conducted on the BIA Albuquerque Area Office in 1993. In that survey we found that twelve cents on the dollar was allocated to Area tribes for services. The 1993 assessment was one of the reasons why the Area Tribes wanted to reorganize the Albuquerque Area Office to a technical assistance center to allow the majority of resources to be allocated to the tribe/agency level.

### **Tribal Priority Allocation (TPA)**

Congress annually appropriates Tribal Priority Allocation (TPA) account funds with the perception that Tribes are the direct beneficiaries. Since by definition TPA funds are to be used for essential tribal services. This is not the case at the Albuquerque Area Office where approximately two million dollars is allotted for BIA Area Office operations. The rationale being that tribes receive TPA services from the Area Office. TPA services can be more effectively and efficiently addressed directly by the tribes. Professional services and expertise can be procured either through a joint cost sharing effort by tribes or through the private sector for such services as transportation planning and design, school construction planning and design, environmental assessments, archeology, property appraisals and the list goes on. In the current environment, personnel costs, pay increases, personnel benefits, etc., must be paid regardless of services being provided or needs met. As I stated earlier, the bureaucracy pays itself first.

The FY 1999 Omnibus Appropriations Act directs both a report to Congress on alternative distributions of Tribal Priority Allocation (TPA) funding, based on tribal needs as well as revenue, and a report on a survey of tribal insurance coverage.

The TPA provision, included as Section 129 of the Omnibus Appropriations Bill, requires the BIA, working with the Standard Assessment Methodology Work Group, to develop alternative methods to fund TPA base programs in future years which will consider tribal revenues and relative needs of tribes and tribal members. No later than April 1, 1999, the BIA is to submit a report to Congress containing its recommendations and other alternatives.

The TPA study will attempt to offer important information regarding the continuing overwhelming needs in Indian country, in contrast to the economic success of a relatively small number of tribal governments.

The Northern Pueblo Tribes strongly feel that the section 129 report to Congress will not do justice to tribes in defining tribal needs. The current BIA Budget and Appropriation processes do not target scarce resources to meet tribal needs.

### **BIA Transportation**

The Stewardship Agreement between the Bureau of Indian Affairs Albuquerque Area Office and the Federal Highway Administration to administer the development of adequate transportation systems for the Indian reservation, Indian lands and communities in the Albuquerque Area is another example. Indian Reservation Roads funding is based on a Relative Needs Formula (RNF). The BIA is utilizing RNF information and data that was developed in 1974 and 1978. The basis for determining tribal transportation needs and the subsequent resource allocation should not be based on information that is more than twenty years old.

I could cite additional examples of the lack of timely and accurate information which is currently being used to justify budget planning and appropriations requests. However, I think that the point has been made that if the BIA is to meet its mission an adequate resource allocation process needs to be implemented.

**A Proposed Solution – Northern Pueblos Budget and Accountability Model**

The proposed Northern Pueblos Needs-based budget and accountability model is based on the following concepts:

- Bases the budget formulation process on a tribal needs assessment system.
- Tribes will identify all resources for addressing tribal needs. The “alphabet soup” of federal and State resources will be accessed.
- Tribal enterprise revenues will be considered as a resource for meeting tribal needs.
- The tribal needs will be determined by the respective tribal leaders and tribal governments.
- The tribal leaders will have an opportunity to update their needs assessment at the beginning of each year.
- The tribal needs assessment system will be by tribe and based on common assessment factors.
- Annual appropriation expenditures can be evaluated by comparing the planned to actual needs met using the tribal needs assessment system.
- Semi-annually the planned needs met will be compared to actual needs met with the results being reported to the AS-IA and used to update the tribal needs assessment system.
- A comparison of actual needs met to unmet needs will replace the budget base that is currently used to formulate the BIA budget.
- The tribal needs assessment system will maintain the unmet needs as Budget Year and Planning Year.
- The met and unmet needs status will be input to the budget justification and formulation process.
- The BIA will account to Congress using tribal needs as opposed to funds obligated.
- The Congress will have access to planned needs met, actual tribal needs met, planned versus actual needs, and tribal needs status to fund expenditure comparisons.

Currently the Eight Northern Indian Pueblos are in the process of developing a Needs Assessment Database. The intent of the Eight Northern Pueblos is to propose a process that will begin to modernize the Federal budget process as it pertains to the Pueblo Indian governments. The model can be replicated through the 89 BIA Agency offices. The proposal addresses the evolving frustrations of Pueblo Indian Leadership and the United States Congress. Attachment B provides an overview and diagram of the entire process.

This initiative transforms the budget process into one that is responsive to the tribal government needs while providing the accountability measures required by Tribes and the U.S. Congress. It brings both parties closer to a realistic Government to Government relationship.

The fundamentals of the proposal are:

- The Northern Pueblos will adopt a three-year Budget cycle using a dynamic needs base system.
- The Pueblo governments will assume all service delivery responsibilities and decide how each will be provided based on availability of funding.
- The Assistant Secretary for Indian Affairs (AS-IA) will approve the initial Needs Assessment study and the Needs Data Based system.
- The AS-IA will provide an oversight function that will protect the interests of the Federal Government.
- The Agency Superintendent will become the Trust Compliance Officer who will work with the Pueblos to ensure that trust responsibilities of the Federal Government are enforced.
- The Trust Compliance Officer will serve as the government's P.L. 96-638 contract authority.

To date the Eight Northern Pueblos Council and the Pueblo of Nambe have met with the Office of Management and Budget (OMB) and the Assistant Secretary for Indian Affairs

In conclusion, in order to effectively address the issue of the Bureau of Indian Affairs mission, Congress must mandate significant changes to the BIA resource allocation process.

### **Request to Congress**

The process, as it pertains to the Federal and Indian government relationship, needs to be modernized. A prerequisite to the modernization effort would be the transformation of the paternalistic bureaucracy from a service provider to an oversight and trust responsibility compliance function.

- The Eight Northern Indian Pueblos Council is requesting authorizing legislation to establish the Northern Pueblos Budget and Accountability model as a pilot, demonstration project.
- Resources would be identified and allocated based on tribal needs.
- Resources/appropriations would be earmarked to meet tribal needs over a three-year appropriation, budgeting and planning period.
- The Northern Pueblos, the BIA and AS-IA would clearly define measurable outcomes.
- A report to Congress would be provided which would quantify and account for which tribal needs have been met with the resources appropriated.
- Resource allocation and accountability data would be information driven.

In closing I am requesting that Congress consider the Northern Pueblos Budget and Accountability Model as a pilot, demonstration project and approve authorizing language to implement this pilot project for a three year demonstration period. We are also requesting that Congress earmark appropriations for this project in the current appropriation bill presently making its way through the appropriate Congressional committees.

With the assistance of Senator Pete V. Domenici we will provide specific language and funding amounts for consideration.

Mr. Chairman and members of the Senate Committee on Indian Affairs I want to thank you for this opportunity to provide this information and request.

**Northern Pueblos Agency - Organization**

	<b>Superintendent</b>	
	Federal Government Representative Contract Monitoring	
	<b>Federal Program Manager</b>	
<b>Administration</b>		<b>Social Services</b>
General Admin.		Financial Assistance
Financial Mgmt.		ICWP and Protection Services
Budget Services.		
Property Mgmt.		
Acquisition Svcs		
	<b>Housing</b>	<b>Real Estate Services</b>
	General Mgmt. & Admin.	Administration
	Contract Monitoring & T/A	Contract Monitoring
	Training	Direct Services
	Repairs, Renovation,	Tech. Assistance
	Enlargement and Const.	Agency Representation
	of Structurally Sound Dwellings	
	<b>Roads</b>	
	General Administration	
	Contract Monitoring	
	Survey and Design	
	Const. And Maint.	
<b>Natural Resources</b>		<b>Law Enforcement</b>
General		Administration
Program Administration		Technical Assistance
Contracts and Grants		Contract Monitoring and Oversight
Education - NR Disciplines		
Farm and Ranch Planning		<b>Tribal Government</b>
Soil Investigations		Administration
GIS Services		Tribal Operations
Water Resources		
Other Responsibilities		
	<b>Forestry</b>	
	Scaling	
	Silviculture	
	Inventory and Mgmt. Planning	
	Tribal Forest Management	
	Timber Sale Management	
	Fire Management	
	Woodlands and Utilization	
	General Forest Management	

Resources and Services Summary

Staff and Funding Resources Northern Pueblos Agency Fiscal Year 1997

Staff	Central Office Operations	Area Office Operations	Tribal Priority Allocation	Recurring Non-recurring	Other	Total
53	\$187,500	\$305,008	\$1,894,237	\$143,227	\$667,158	\$3,197,130

Customer Service Profile Percentages

DOI ASIA	CO	AAO	NPA	OIEP	Federal State Local	Other Government	AAO Tribes	Other Tribes	Indian Individuals	Indian/Tribal Organizations	Indian/Tribal Companies		
1.3%	.5%	10.5%	18.2%	17.8%	2.1%	6.5%	4.2%	1.5%	15.8%	4.1%	9.8%	5.7%	2%
Interior and BIA													
50.4%													
\$1,611,353													
Government													
62.6%													
\$2,001,403													
Indians													
37.4%													
\$1,195,727													
Individuals/Orgs./ Companies													
17.5%													
\$559,498													

**Agency Superintendent**  
**Staff and Funding Resources** **Fiscal Year 1997**

Staff	2	Central Office Operations	0	Area Office Operations	136,533	Tribal Priority Allocation	0	Recurring Non-recurring	0	Other	0	Total	136,533
-------	---	---------------------------	---	------------------------	---------	----------------------------	---	-------------------------	---	-------	---	-------	---------

**Customer Service Profile**

DOI ASIA	CO	AO	AGCY	OIEP	Other	NPA	Indian Individuals	Indian/Tribal Organizations	Indian/Tribal Companies
5%	11%	40%	1%	4%	28%	1%	8%	1%	

**Service Functions**

**Federal Government Representative** **55%**  
 Serve as the DOI/BIA representative responsible for protecting and managing the tribes land and natural resources held in trust for the Indians; improvement of the Indians' social and economic status; government-to-government relationship with the tribes.

**Federal Program Manager** **5%**  
 Line management responsibility for: Agency operational planning, staffing and budgeting; Federal funds accountability; compliance with Federal law, regulations, DOI/BIA policies, guidelines and delegated authorities. Administers the Agency Imprest Cash Procurement fund. Responsible for processing credit card applications and maintaining files related to credit card utilization.

**Contract Monitoring** **40%**  
 Serves as the Agency Contracting Officer's Representative (COR) on all PL 93-638 Contracts and Grants.

Administration

Staff and Funding Resources Fiscal Year 1997

Staff	5	Central Office Operations	0	Area Office Operations	0	Tribal Priority Allocation	\$286,109	Recurring Non-recurring	0	Other	0	Total	\$286,109
-------	---	---------------------------	---	------------------------	---	----------------------------	-----------	-------------------------	---	-------	---	-------	-----------

Customer Service Profile

										Percentages		
DOI ASIA	CO	AAO	NPA	OIEP	Other	Federal	State	Local	Indian Individuals	Indian/Tribal Organizations	Indian/Tribal Companies	
		15%	35%	40%	10%							

Service Functions

General Administration 40%

Management and administration of internal Agency level activities; coordination of Agency administrative support needs with the Albuquerque Area Office management and administrative support service; ensure that Agency operations are accomplished in accordance with federal regulations, BIA policies and procedures, Albuquerque Area Office policies, and Agency Superintendent decisions and policies

OMB circular A-123, Financial Managers Integrity Act, fund resource utilization reporting; preparation of special financial status reports; provides technical assistance pertaining to BIA central computer system access and processing. Advise employees on retirement, life and health insurance, thrift savings plans, leave sharing, disciplinary actions, adverse actions, grievances, etc.

Process applications for Government Credit Cards; maintain card utilization files; serve as liaison between card supplier and employees.

**Service Functions**

**20%**

**Financial Management**

**Implementation**

Monitor and resolve differences identified between the fund allotment/sub-allotment sub-systems of the Federal Financial System (FFS) with the budget formulation data; enter sub-allocation transactions supporting the Area and Agency financial programs.

**Execution**

Provide obligation/expenditure oversight and technical assistance ensuring funds are expended pursuant to enacted appropriations and applicable regulations and policies.

**Accounting Authority**

Serve as the Agency accounting authority providing technical assistance.

**Journal Voucher Processing**

Journal voucher preparation prior to submission to FFS for processing.

**Analysis and Reporting**

Review accounts status and formulate corrective action recommendations; compile special reports for management.

**Obligation Document Processing**

Review all documents requiring the obligation of funds; ensure all documents are complete; encode all documents into FFS; resolve Agency level FFS accounting type error conditions.

**Budgeting Services**

**Planning**

Technical assistance, guidance, statistical collection, analysis, and consolidation of information, which supports the national budget strategy reporting and presentation.

**Formulation**

Preparation and distribution of funding data, other than Tribal Priority Allocations, as provided by the President's budget; coordinate the preparation of impact analysis statements.

**10%**

**Service Functions**

**Property Management** **12%**

**Motor Vehicle Management**

Develop and disseminate procedures for the assignment and use of vehicles.

**Personal Property**

Ensure compliance with applicable Agency property acquisitions and accountability policies and procedures.

**Mail Processing**

Provide mail room services according to 362 DM 2.

**Procedural Assistance**

Provide assistance to Agency staff, tribes, and PL 93-638 contractors.

**Acquisition Services**

**18%**

**Action Processing**

Process procurement and receiving actions.

**Natural Resources**

**Staff and Funding Resources** **Fiscal Year 1997**

Staff	10	Central Office Operations	0	Area Office Operations	0	Tribal Priority Allocation	\$336,700	Recurring Non-recurring	\$55,827	Other	0	Total	\$392,527
-------	----	---------------------------	---	------------------------	---	----------------------------	-----------	-------------------------	----------	-------	---	-------	-----------

**Customer Service Profile**

DOI	ASIA	CO	AAO	NPA	OIEP	Other Federal	State	Local	NPA Tribes	Other Tribes	Indian Individuals	Indian/Tribal Organizations	Indian/Tribal Companies
			13%	20%	17%	10%	5%	5%	10%	10%	15%	10%	

**Percentages**

**Service Functions**

**General** **15%**

Coordination and review of all natural resource plans and inventories; provides leadership supporting the Area Interdisciplinary Resource Management Team; serve as the quality control function for Albuquerque Area Agriculture, Soils, Environmental Protection, Geographic Information Systems, Range, Fisheries, Wildlife, Archeological and Recreation programs; maintains interagency agreements with other natural resource agencies and organizations; monitor lease and permit services; conduct field level evaluation of resource potentials.

**Program Administration**

**5%**

Procurement of program supplies and needs; budget preparation and reconciliation with FFS reports; provide training and attend meetings; supervise field crew; ADP coordinator for agency; assistant LAN administrator.

**Contracts and Grants**

**8%**

Technical assistance and contract monitoring for PL 93-638 grants and contracts; COR (Contracting Officer Representative) for Taos Agriculture/Range Management Contract, Bison contracts at San Juan, Picuris, Nambe, Taos, San Ildefonso, and Pojoaque, San Juan Technical Assistance Grant, Taos Solid Waste Disposal Contract, and Taos Natural Resources Planning Grant, San Ildefonso, and Pojoaque, San Juan Technical Assistance Grant. Responsible for annual and/or quarterly review meetings of PL 93-638 contracts, grants, and processing of financial status reports. Serve on the Agency Contract Review Committee.

## Service Functions

### Education – Natural Resource Disciplines

1%

Conduct natural resource information and education presentations to tribal administrations and their members regarding service and conservation information. Attend career day presentation at local high schools and colleges to promote interest in the field of natural resource management.

### Farm and Ranch Planning

37%

Farm and Ranch Planning services, Noxious Weed Control program, Prairie Dog Control activities, hydrologic surveys and flood hazard evaluations.

### Soil Investigations

5%

Develop AAO water and soils policies and procedures, and monitor all related activities; formulate AAO standards for water-shed improvement, soil erosion control, and water pollution; provide liaison services to the National Cooperative Soil Survey Committee; ensure that sound soil and water management practices are enforced on Indian land.

### Agriculture Surveys and Reports

6%

Periodic updates of aerial photography; annual crop surveys reports for fruit, vegetable, grain and hay production; Natural Resources Information System Inventory and Production Reports (NRIS).

### Geographic Information System (GIS) Services

15%

GIS coordinator; provides coordination between tribes and agency branches, Area Office and other federal agencies; provide technical assistance to tribes and other agency branches for the Arc/Info GIS System; provide GIS services to tribes and other agency branches for analysis and hard copy output of existing and new thematic layers; provide local data input through global positioning systems, digitizing and COGO.

### Water Resources

3%

Provide coordination and assistance for issues related to water. Involves assistance with monitoring plans, sampling for monitoring and coordination for water rights issues. Review water rights proposals for litigation and settlement with the State of New Mexico.

**Service Functions**

**Other Responsibilities**

**5%**

Provide technical assistance to the tribes; interpret federal and EPA regulations; coordinate partnership activities with state and/or local natural resources/environmental organizations; provide support for numerous specialized and unique activities that relate to the entire spectrum of the natural resources and environmental disciplines.

**Roads**

**Staff and Funding Resources** **Fiscal Year 1997**

Staff	Central Office Operations	Area Office Operations	Tribal Priority Allocation	Recurring Non-recurring	Other	Total
10	0	0	\$277,741 *	0	\$338,558	\$616,299

\* O/P - Tribe/Agency Operations - No Year

**Customer Service Profile**

**Percentages**

DOI	ASIA	CO	AAO	NPA	OIEP	Other	Federal	State	Local	NPA	Other	Indian	Indian/Tribal	Indian/Tribal	Companies
				5%	30%	5%	5%	12%	5%	13%	13%	Individuals	Organizations	Organizations	30%
				10%								Tribes			

**Service Functions**

**General Administration**

Procurement of program supplies and needs; budget preparation and reconciliation with FFS reports; provide training and attend meetings; supervise field crews.

**30%**

**Contract Monitoring**

**30%**

## Service Functions

### Surveying and Design

10%

Preliminary and final project design evaluation; prepare contractor bid proposal estimates; acquire final project design concurrence from the tribe, the Agency and from FHWA; provide technical support to the contract specialist and the Contracting Officer completing the contracting process; conduct on-site inspections of contractor performance and compliance; review the capital equipment acquisition and capitalization process; verify contractor performance, compliance and quantities; process contractor inefficiencies and/or failures through the contracting officer; provide technical assistance in testing material sampling and testing methods, use of nuclear gages; monitor radiation badges, badge evaluation and corrective action procedures.

### Construction and Maintenance

30%

Formulate project budgets in response to projects submitted by the agencies; identify FHWA funding requirements pertaining to each project; assist the agencies in preparation of the Transportation Improvement Program Control Schedules; submit schedules to the BIA Central Office for concurrence and submission to the FHWA; process project approvals, notify agencies and distribute funds based on BIA funding formula; monitor project performance and progress; evaluate the use of funds and reconcile the financial status of each project; coordinate road construction activities with the state, county, tribal governments and other federal agencies.

- \* Provides technical assistance, training and oversight supporting the agencies maintenance management systems and emergency relief procedures, pavement sealing, snow and ice removal, and safety considerations; provide budget formulation and execution oversight; provide coordination services between the agency and the contracting officer; perform budget reviews as required.

**Forestry**

**Staff and Funding Resources** Fiscal Year 1997

Staff	9	Central Office Operations	\$7,500	Area Office Operations	0	Tribal Priority Allocation	\$215,000	Recurring Non-recurring	\$32,400	Other	\$328,600	Total	\$593,500
-------	---	---------------------------	---------	------------------------	---	----------------------------	-----------	-------------------------	----------	-------	-----------	-------	-----------

**Customer Service Profile** Percentages

DOI	13%	ASIA	5%	CO	5%	AAO	5%	NPA	5%	OIEP	5%	Other Federal	8%	State	5%	Local	5%	NPA Tribes	20%	Indian Individuals	15%	Indian/Tribal Organizations	18%	Indian/Tribal Companies	15%
-----	-----	------	----	----	----	-----	----	-----	----	------	----	---------------	----	-------	----	-------	----	------------	-----	--------------------	-----	-----------------------------	-----	-------------------------	-----

**Service Functions**

**General Administration** 40%

Coordination and review of all forest and woodland plans and inventories; provides leadership supporting the operation and management of Agency forestry programs; supervises staff and advises the Agency Superintendent

**Scaling** 2%

Scaling Program  
Perform scaling as needed, maintains Agency records; enforces standards according to the National Forest Service Scaling Handbook.

Quarterly Audits  
Audit Timber Ledgers, IIM special deposits, reports audit findings to Agency Superintendent and the Area Office Forester, use Forestry Management Information System (FORMIS) to validate audit calculations.

Scaling: Expert Witness Services  
Appears in court as an expert witness in cases where timber purchasers are contending sale issues.

## Service Functions

**Silviculture** 5%  
Certifies Agency silviculturist, reviews silvicultural treatments, such as, cutting practices, thinning, TSI, and reforestation; provides silviculture training; serves on Silvicultural Certification Boards.

**Inventory and Management Planning** 5%  
Ten Year Management Plans

Develop professional level plans pertaining to forested land and lands classified as woodlands for each reservation; work with the tribes in support of plan approvals and the seeking of funding needed for forest and woodland management.

Environmental Assessments Supporting the Ten Year Plans

Develop environmental assessments supporting each tribe's Ten Year Plan.  
Forest Histories

Maintain forest histories, which are frequently updated; record all cuttings and timber sales; serve as the Contracting Officer Representative (COR) on all contracted Forest History compilation.

Permanent Inventory

Maintain plots consisting of continuous forest inventories; measure all plots as required by BIA policy.  
Area Forest Management Data Base

Conduct inventory analysis; calculate allowable cut determinations update the Forest Management Data Base.

**Tribal Forest Planning** 5%  
Provide assistance to the tribes necessary to maintain tribal forest in a perpetual productive state in accordance with tribal law and tradition; identify the tribal level linkage that supports the integration of tribal plans with Federal Government inventories and plans.

**Service Functions**

<p><b>Timber Sale Management</b>  Sale Preparation Services  Develop sale alternatives through the formulation of interdisciplinary team.  Timber Sale Packages  Compile Timber Sale Package, which contains environmental assessment, Forest Officer's Report, appraisals, advertisement, prospectus, and proposed contract; submits package to the Area Director for signature.  Timber Sale Administration  Monitors harvest operation for contract compliance, waste scaling, log movement control, scaling, purchaser billing in advance of cutting and maintain records on volume and value.  Contractor Appeals  Information and technical expertise in support of contractor appeals.</p>	<p><b>10%</b></p>
<p><b>Fire Management</b>  Fire Suppression  Technical expertise supporting the Area Director to approve the Normal Fire Year Plan (NFYP) compiled by each Agency; formulates request for capitalized equipment funding, monitors the expenditure of funds and reports to BLM; carry out fire prevention programs, Smokey Bear, school programs, etc.  Prescribed Burning and Fire Planning  Provide technical assistance and staff support concerning approval of control burning, special fire planning (GIS), and case documentation related to "out of control" fires resulting from prescribed burning; fire severity and on-going fire data collection for submission to the Boise Fire Center through the Area Director.  Fire Fighters  Maintain and update fire fighter roster including individual fire fighter qualifications, training completed and training needed.</p>	<p><b>10%</b></p>
<p><b>Wood Lands</b>  Pinon-Juniper resource development and management planning by tribe; long term demonstration areas and stocking studies in response to tribal initiatives; assist tribes with enterprise development; fuel wood yards, pinon nut harvesting, post and pole, viga sales, etc.; prepare and submit request for woodland development grants; conduct audits related to the use of woodland grants and contracts; provide guidelines and assistance in support of developing grant and contract initiatives.</p>	<p><b>3%</b></p>

**Service Functions**

<b>Forest Products Marketing and Utilization</b> Development of Indian land and associated value-added industries; approve contracts with tribal enterprises; appraise and approve stumpage rates to tribal enterprises; approve special instruments of payment and waive tribal enterprise performance bonds; conduct special market studies for pulpwood or fuel wood for submission to tribes.	<b>2%</b>
<b>Forest Pest Management</b> Define and oversee long and short range forest management projects designed to execute silviculture prescriptions.	<b>10%</b>
<b>General Forest Management</b> Manage a perpetual productive state in accordance with the principle of trust responsibility; support compliance with tribal law pertaining to Indian forest land; regulate water run-off and minimize soil erosion.	<b>8%</b>

Housing

**Staff and Funding Resources** **Fiscal Year 1997**

Staff	Central Office Operations	Area Office Operations	Tribal Priority Allocation	Recurring Non-recurring	Other	Total
2	0	\$55,000	0	0	0	\$55,000

**Customer Service Profile** **Percentages**

DOI ASIA	CO	AAO	AGCY	OIEP	Other Federal	NPA	Other Tribes	Indian Individuals	Indian/Tribal Organizations	Indian/Tribal Companies
	2%	8%	20%	10%	10%	10%	10%	25%	25%	

**Service Functions**

**General Management and Administration** **27%**

Includes budget, finance, property and procurement management and reporting.

**Contract Monitoring and Technical Assistance** **10%**

Monitor tribal PL 93-638 contracts and provide technical assistance required to assure the tribes comply with the provisions of their contracts.

**Training** **3%**

Provide training and guidance for the tribes and individuals regarding housing eligibility requirements.

**Repairs, Renovation, Enlargement of Structurally Sound Dwellings** **50%**

Assure the necessary repairs are completed properly and on time without exceeding \$20,000 per individual dwelling.

**Construction of Structurally Sound Dwellings** **10%**

Assure the new housing financing provisions do not exceed \$45,000 per individual dwelling.

**Law Enforcement**

**Staff and Funding Resources** **Fiscal Year 1997**

Staff	Central Office Operations	Area Office Operations	Tribal Priority Allocation	Recurring Non-recurring	Other	Total
7	0	0	\$335,950	0	0	\$335,950

**Customer Service Profile**

**Percentages**

DOI ASIA	CO	AAO	NPA	OIEP	Other Federal	State	Local	NPA Tribes	Other Tribes	Indian Individuals	Indian/Tribal Organizations	Indian/Tribal Companies
	25%	20%	5%	5%	10%	10%	5%	15%	10%			

**Service Functions**

**Administration**

Coordinate the program support requirements with the BIA Director of Law Enforcement (Albuquerque COW), includes budget, finance, property and procurement management and reporting. **15%**

**Technical Assistance**

Approve law and order codes; provide law enforcement training and technical assistance; monitor law enforcement personnel training progress; conduct quarterly law enforcement meetings for Police Chiefs; submit to the Area Director weekly law enforcement highlight reports. **5%**

**Investigations**

Provide assistance to agency and the tribes supporting the law enforcement and prevention programs; assure that enforcement programs maintain a high level of effectiveness and comply with program standards. Coordinate between AAO/BIA law enforcement and the US Attorney, other federal, state, county and tribal law enforcement authorities. **75%**

**Service Functions**

**Contract Monitoring and Oversight**  
Provide assistance to the agencies and tribes.

5%

Real Estate Services

---

Staff and Funding Resources

Fiscal Year 1997

Staff	2	Central Office Operations	0	Area Office Operations	\$55,761	Tribal Priority Allocation	0	Recurring Non-recurring	\$55,000	Other	0	Total	\$110,761
-------	---	---------------------------	---	------------------------	----------	----------------------------	---	-------------------------	----------	-------	---	-------	-----------

Customer Service Profile

DOI ASIA	CO	AAO	AGCY	OIEP	Other Federal	State	Local	NPA Tribes	Other Tribes	Indian Individuals	Indian/Tribal Organizations	Indian/Tribal Companies	Percentages
10%	3%	15%	6%	37%	2%	7%	10%	10%	10%	10%	10%	10%	

Service Functions

**Administration** 10%  
 Coordinate the program support requirements including budget, finance, property and procurement management and reporting.

**Contract Monitoring PL 93-638** 40%  
 Five of the Pueblos have contracted for the realty program and one has assumed the program through their self-governance compact. Provide technical advice as required by the five contracted programs. Evaluate and report the tribes performance to the Agency Superintendent and the AAO Real Estate Services office.

**Direct Services** 30%  
 Provide the full range of real estate services to government representatives and individual tribal members of the Pueblos of Picuris Nambé.

**Technical Assistance** 10%  
 Provide real estate expertise and assistance to the Agency management and staff, also individual Indians regardless of tribal affiliation.

**Service Functions**

**Agency Representation**

10%

Respond to information requests from State and County government, real estate and title companies, financial institutions, respond to requests from the BIA Area Office, Central Office and other federal agencies or representatives.

**Social Services**

**Staff and Funding Resources** **Fiscal Year 1997**

Staff	4	Central Office Operations	0	Area Office Operations	0	Tribal Priority Allocation	\$243,737	Recurring Non-recurring	0	Other	0	Total	\$243,737
-------	---	---------------------------	---	------------------------	---	----------------------------	-----------	-------------------------	---	-------	---	-------	-----------

**Customer Service Profile**

DOI	ASIA	CO	AAO	NPA	OIEP	Federal	Other	NPA	Other	Indian	Indian/Tribal	Indian/Tribal	Indian/Tribal
			10%	20%	6%	10%	2%	2%	5%	10%	10%	25%	Companies

**Service Functions**

**Administration** **20%**  
 Coordinate the program support requirements including budget, finance, property and procurement management and reporting.

**Financial Assistance** **36%**  
 Analyze historical expenditure patterns and prepare Quarterly Analysis of Funds Report for submission to the Area Office; compute NPA funding needs; project funding needs for next fiscal year.

**Indian Child Welfare Program and Protection Services** **17%**  
 Provide training and serve as the program coordinator with other government organizations. Interpret regulations in response to state judiciary authorities; compile statistics concerning ICWA inquiries and proceedings. Provide consultation services between all government agencies; conduct awareness sessions and training. Serve as the ACOR for ICWA PL 93-638 contracts.

**Alcohol and Substance Abuse Coordinator** **1%**  
 Coordinate the AAO programs, Indian Health services, tribal programs and interfacing with other government programs.

**Service Functions**

**Social Services Automated System (SASS)**

3%

Coordinate area-wide activities pertaining to the application of automated informational resources.

**Contract Monitoring**

23%

**Tribal Government**  
**Staff and Funding Resources** **Fiscal Year 1997**

Staff	Central Office Operations	Area Office Operations	Tribal Priority Allocation	Recurring Non-recurring	Other	Total
2	\$180,000	\$57,714	\$199,000			\$437,614

**Customer Service Profile** **Percentages**

DOI	ASIA	CO	AAO	NPA	OIEP	Other	Indian Individuals	Indian/Tribal Organizations	Indian/Tribal Companies
	5%	15%	30%	20%		Federal	15%	5%	
						State	AOO Tribes		
						10%	15%		
						Other	Other Tribes		

**Service Functions**

**Administration** **12%**  
 Coordinate the program support requirements including budget, finance, property and procurement management and reporting.

**Tribal Operations** **88%**  
 Conduct Secretarial Elections supporting tribal constitutional changes; conduct Judgment Fund distributions; approve tribal budgets and amendments, tribal ordinances, tribal membership, tribal judicial codes, tribal enactment's, Trust Funds withdrawals, attorney contracts and fees, tax codes, inter-governmental agreements, gaming agreements and PL 93-638 tribal courts; establish CFR courts; direct assess to the Field Solicitor.

**Federal Budget Process Modernization Proposal**

submitted by the

**Eight Northern Indian Pueblos of New Mexico**

**February 1999**

#### Existing BIA Budget Process:

- The current process is not based on service needs as defined by the tribes. Instead it is based on the BIA interpreting the needs first as a means of perpetuating the BIA and secondly service to the tribes.
- Managers are rewarded for expending funds. Accountability for meeting tribal needs does not exist.
- The budget is based on historical level of funding or base, which may or may not have any correlation to tribal needs.
- The budget system, by design, pays the bureaucracy first and the tribes are second.
- The Albuquerque Area Office spends 80% of budgeted funds for federal employee personnel costs.
- The process does not provide appropriation expenditure type accountability to the tribe(s).
- The budget process is designed to meet the needs of the BIA organization, which in most instances have a limited relationship to tribal needs.
- The process does not provide accountability to the Congress on which tribal needs were met or not met.
- Participation in the budget process is a frustrating exercise since tribal leaders' decisions are lost as they proceed up through the BIA Area and Central offices, Interior Department and on to the Congress.
- The capability for tribal leaders to track their decisions does not exist.

#### The Proposed Northern Pueblos Needs Based Budget Process:

- Bases the budget formulation process on a tribal needs assessment system.
- The tribal needs will be determined by the respective tribal leaders.
- The tribal leaders will have an opportunity to update their needs assessment at the beginning of each year.
- The tribal needs assessment system will be by tribe and based on common assessment factors.
- Annual appropriation expenditures can be evaluated by comparing the planned to actual needs met using the tribal needs assessment system.
- Semi-annually the planned needs met will be compared to actual needs met with the results being reported to the Assistant Secretary for Indian Affairs and used to update the tribal needs assessment system.
- A comparison of actual needs met to unmet needs will replace the budget base that is currently used to formulate the Bureau budget.
- The tribal needs assessment system will maintain the unmet needs as Budget Year and Planning Year.
- The met and unmet needs status will be input to the budget justification and formulation process.

The eight northern Pueblos are in the process of developing a Needs Assessment Database. Nambé Pueblo, assisted by Eight Northern Indian Pueblos (ENIPC) staff is serving as the model. The Nambé effort is entering the final Pueblo Council approval stage. The intent of the eight northern Pueblos is to propose a process that will begin to modernize the Federal budget process as it pertains to the Pueblo governments. The proposal addresses the evolving frustrations of Pueblo leadership and the United States Congress.

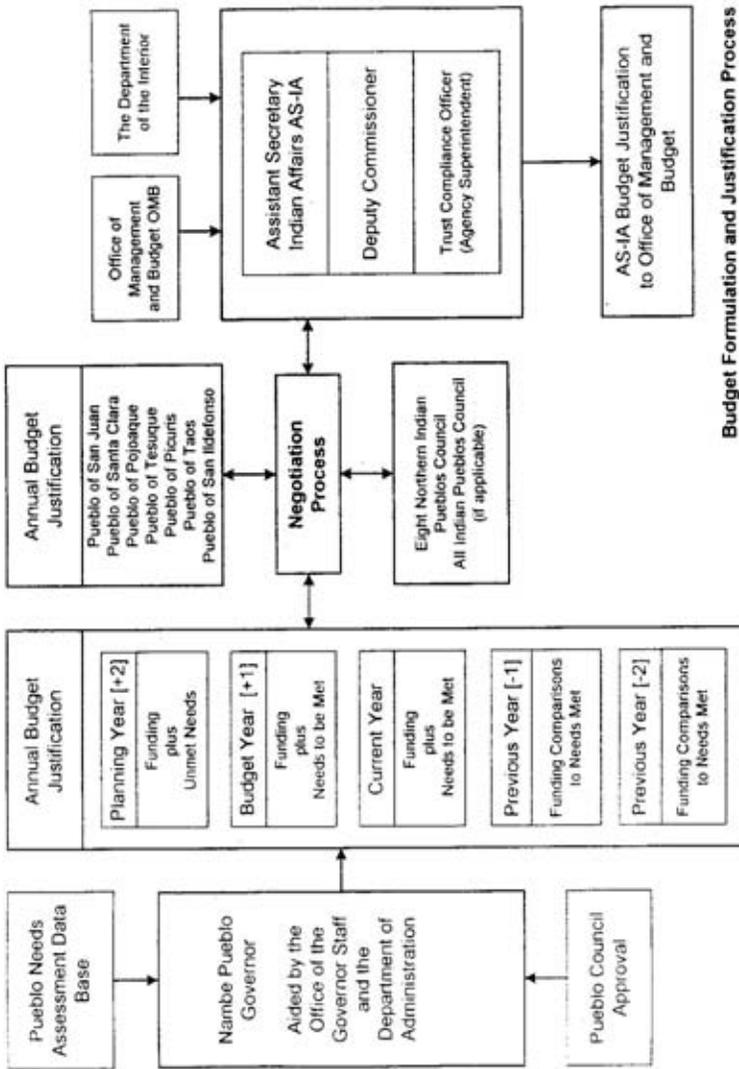
This initiative transforms the budget process into one that is responsive to the tribal government needs while providing the accountability measures required by the U.S. Congress. It brings both parties closer to a realistic Government to Government relationship.

The fundamentals of the proposal are:

- The Pueblo Governments will adopt a Three-year Budget Cycle using a dynamic Needs Data Base system
- The Pueblo Governments will assume all service delivery responsibilities and decide how each will be provided based on the availability of funding.
- The Assistant Secretary for Indian Affairs (AS-IA) will approve the initial Needs Assessment Study and the Needs Data Base system.
- AS-IA will provide an oversight function that will protect the interest of the Federal Government.
- The Agency Superintendent will become the Trust Compliance Officer who will work with the Pueblos to ensure the trust responsibilities of the Federal Government are enforced.
- Also, the Trust Compliance Officer will serve as the government's PL 93-638 contract authority

To date, the ENIPC Executive Director, the Nambé Pueblo Governor, the Nambé Project Leader, and the ENIPC staff have met with representatives of Office of Management and Budget (OMB) and the AS-IA. The proposal was well received. The Executive Director, ENIPC presented the proposal concept to the Albuquerque Area tribes at the area-wide budget meeting and received the endorsement of those tribes that were represented.

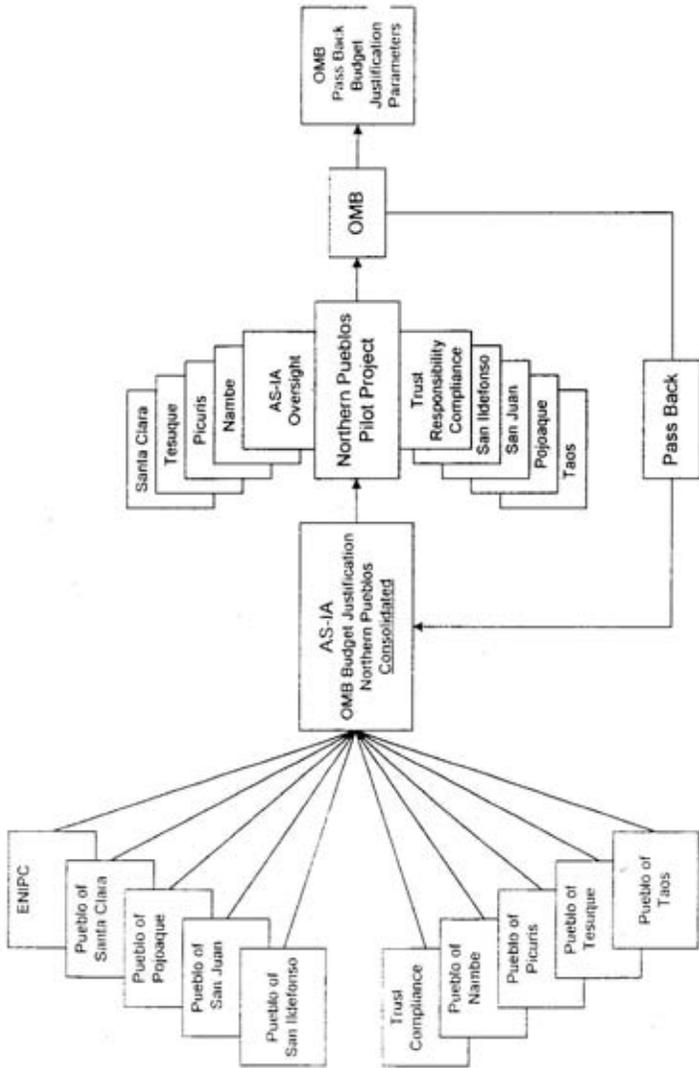
The following diagrams attempt to provide a visual overview of the proposed process.

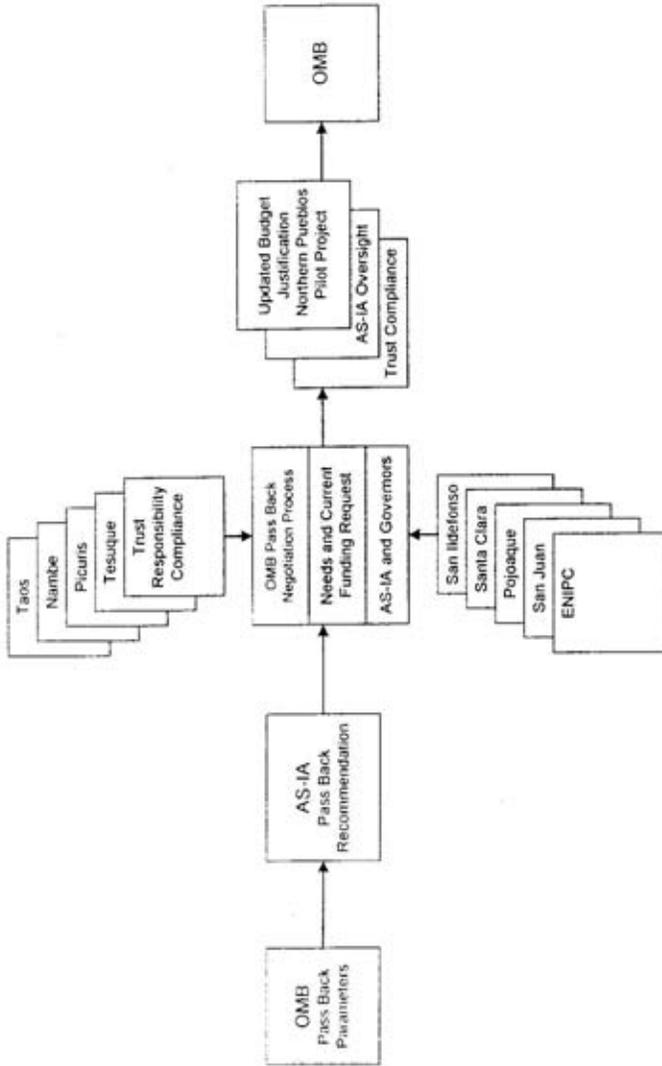


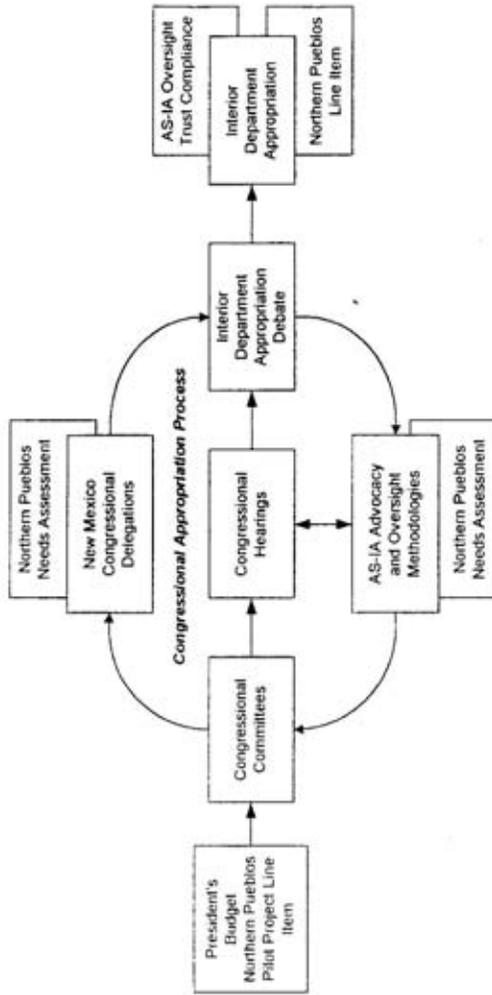
**Budget Formulation and Justification Process**  
Page 2

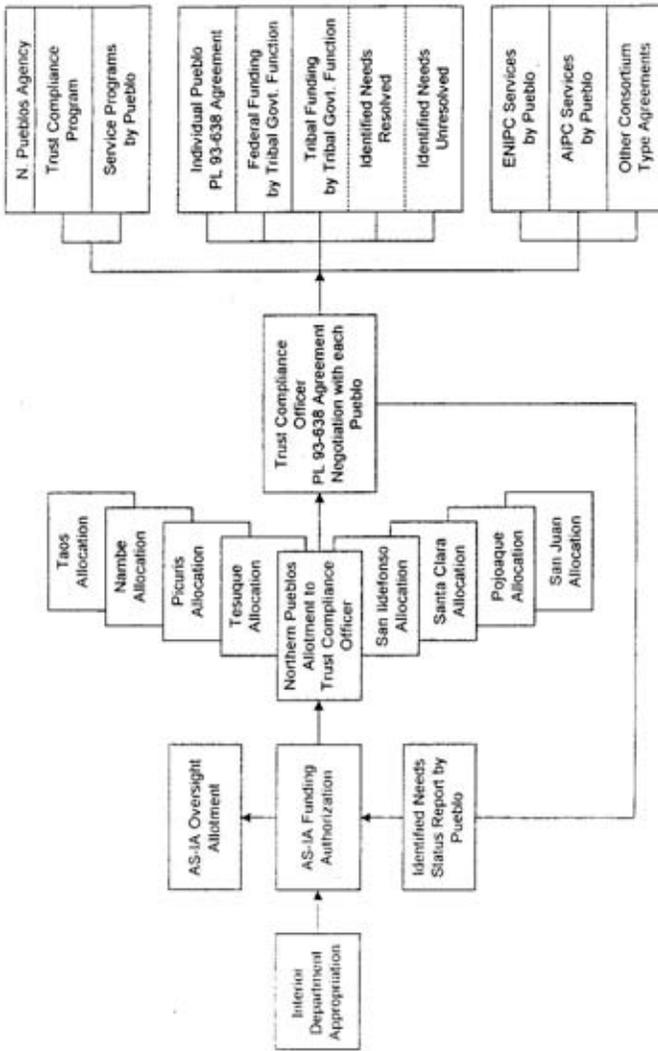
Prior Year	Current Year	Budget Year
<p>Disbursements [paid invoices]</p> <p>Employees Paid</p> <p>Employee Benefits Payments</p> <p>Cash</p> <p>Checks</p> <p>Credit Cards by</p>	<p>Personal Services</p> <p>Employees</p> <p>Permanent</p> <p>Temporary</p> <p>Salary</p> <p>Benefits</p> <p>Honorariums</p>	<p>Government Cost</p> <p>Employees</p> <p>Benefits</p> <p>Honorariums</p> <p>Operations</p> <p>Assets + or -</p> <p>Other:</p>
<p>Accrued Expenditures [Unpaid invoices]</p> <p>Staff Basic Pay</p> <p>Staff Benefits</p> <p>Assets Acquisition</p> <p>Training and Travel</p> <p>Other (explain)</p>	<p>Tribal Projects</p> <p>Project Description</p> <p>Prior Year \$</p> <p>Current Year \$</p> <p>Est. Completion Date</p> <p>Function Served</p> <p>Accomplishment:</p>	<p>Projects</p> <p>Program/Function</p> <p>Tribal New/Current</p> <p>Cost \$</p> <p>Description</p> <p>Other New/Current</p> <p>Cost \$</p> <p>Description</p>
<p>Funds Brought Forward</p> <p>Obligated</p> <p>Contracts</p> <p>Undelivered Orders</p> <p>Unobligated</p> <p>Salary Lapse</p> <p>Other (explain)</p>	<p>Contract Projects</p> <p>Project Description</p> <p>Contractor</p> <p>Prior Year \$</p> <p>Current Year \$</p> <p>Est. Completion Date</p> <p>Function Served</p> <p>Accomplishment:</p>	<p>Services</p> <p>Program/Function</p> <p>Cost \$</p> <p>Description</p> <p>Comparison to</p> <p>Current Year Level</p>
<p>Assets Acquisition</p> <p>Equipment</p> <p>New or Surplus</p> <p>Useful Life</p> <p>Cost</p> <p>Functional Use</p> <p>Other Equipment</p> <p>Buildings</p> <p>Land</p> <p>Other</p>	<p>Equipment and Supplies</p> <p>Office</p> <p>Vehicles</p> <p>GSA</p> <p>Other</p> <p>Equipment</p> <p>Operations</p>	<p>Justification</p> <p>Goals</p> <p>Methodology</p> <p>Timing Factors</p> <p>Comparison to</p> <p>Current Year Level</p> <p>New Initiative</p> <p>Council Resolution</p>
<p>Cash Status</p> <p>Funds Received</p> <p>Funds Not Received</p> <p>Cash On-hand</p> <p>Imprest or Petty</p> <p>Bank by Account</p>	<p>Management</p> <p>Travel</p> <p>Employee</p> <p>Council</p> <p>Travel</p>	<p>Justification</p> <p>Goals</p> <p>Timing Factors</p> <p>Use of Prior Year Funds</p> <p>Current Year Funds</p> <p>Council Resolution</p> <p>Governor's Signature</p>

AS-IA  
Budget  
Justification  
Submission











**EIGHT NORTHERN INDIAN PUEBLOS COUNCIL, INC.**

P.O. Box 969  
San Juan Pueblo, New Mexico 87566  
(505) 852-4265

May 12, 1999

Senator Ben Nighthorse Campbell, Chairman  
United States Senate  
Committee on Indian Affairs  
Washington, D.C. 20510-6450

Dear Chairman Campbell;

This is in response to the information requested in your letter dated April 30, 1999, which was a result of testimony provided on April 28, 1999.

- Attachment A addresses follow-up questions requested by you during the April 28, 1999 hearing.
- Attachment B addresses written questions by you.
- Attachment C addresses written questions by Senator McCain.

Should you have additional questions please contact my office at 505-852-4265. Your attention on this matter is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bernie Teba".

Bernie Teba, Executive Director

Encl.: Attachments A, B & C

## Attachment A

The statement "...that northern Pueblo tribes receive 15.8% of the services available from the Northern Pueblos Agency..." is not intended to contradict the Assistant Secretary's position concerning the percentage of the TPA funding that is available at the Tribe/Agency level.

The Assistant Secretary's presentation was based on the available TPA funding. The northern Pueblo Governors do not challenge the distribution of TPA funds, but they do have concerns pertaining to the level of services resulting from the expenditure of these funds.

The 19.9% service level that represents the customer type services provided to the northern Pueblos and the other Albuquerque Area tribal governments limits the capability of the tribal leadership to formulate comprehensive, coordinated and accountable level of services in support of their respective communities.

The 37.4% level of service to Indians, although lower than anticipated, is recognized as a legitimate BIA responsibility. The Governors do believe that these services could be better coordinated if they were provided through the tribal government. This would keep the duplication of effort at a minimum.

The Governors recognize that the 62.6% service level associated with a federal government function like the Northern Pueblos Agency should be expected. The Agency staff has little discretion when it comes to performing activities such as EEO, employee relations, budget formulation, accounting, procurement, property management, research and reporting, records management, etc. But when you consider the redundancies that exist between the Area and Agency Offices the 62.6% level is a concern. The concern is the Agency portion of this redundancy is paid for using TPA funds.

It is the position of the northern Pueblo Governors that the TPA funding resources could be better utilized if the budget justification, distribution and expenditure process was based on Tribal Need Assessments compiled by the tribal communities and their leaders. Also, an Assessment based budgeting process would provide a basis for evaluating service delivery efficiencies and resource accountability measures.

The attached Customer Service Profile was compiled through management authorized interviews with the Northern Pueblos Agency staff and supervisors. The completed profile was presented to the Agency Superintendent and the branch level managers. The managers were provided an opportunity and did provide additional information that either supported or disputed the results.

The completed Customer Service Profile was not presented to the Governors until the Agency Superintendent, the current Superintendent, concurred that the results were representative of the services provided by the Northern Pueblos Agency.

<b>BIA Northern Pueblos Agency 1997 Customer Service Profile</b>		
<b>Presentation Nomenclature</b>	<b>Description</b>	<b>Customer Factor</b>
DOI	Department of the Interior - offices and bureaus	1.3%
ASIA	Assistant Secretary - Indian Affairs	0.5%
CO	BIA Central Office - Washington or Albuquerque	10.5%
AAO	BIA Albuquerque Area Office	18.2%
NPA	Northern Pueblo Agency - San Juan Pueblo, NM	17.8%
OIEP	BIA - Office of Indian Education	2.1%
Other		
Federal	Federal authorities other than the BIA	6.5%
State	State of New Mexico or other States (Colorado & Arizona)	4.2%
Local	County and municipality governments	1.5%
NPA Tribes	The eight northern Pueblos of New Mexico	15.8%
Other Tribes	Other Albuquerque Area Tribes	4.1%
Indian		
Individuals	All Indians entitled to BIA services	9.8%
Indian/Tribal		
Organizations	Entities such as ENIPC, Housing Boards, etc.	5.7%
Indian/Tribal		
Companies	Economic "for profit" enterprises - Private and Tribal	2.0%
<b>Summary</b>		
Indians		37.4%
	Tribal Government	19.9%
	Individuals-Organizations-Companies	17.5%
Government		62.6%
	Interior and BIA	50.4%
	Other Government	12.2%

## Attachment B

Senator Ben Nighthorse Campbell Questions of April 30, 1999

1. *Your statement indicates that the Northern Pueblo receive 20% of the resources provided by the BIA for service delivery. Does the Santa Clara Pueblo, as a self-governance tribe, receive the same amount in terms of services?*

The Santa Clara Pueblo self-governance compact does not include all the BIA service programs. In those cases where the BIA is responsible for providing services to Santa Clara Pueblo the 20% customer service factor does apply.

2. *Your statement advocates that the BIA Area Office become a "technical assistance center". What kind of technical assistance would the BIA provide?*

The Albuquerque Plan submitted, by the Albuquerque Tribes, to the Joint Tribal, BIA, DOI Task Force on BIA Reorganization defined the services to be provided by the Technical Assistance Center. A Tribe Agency Decision Profile process defined the Technical Assistance Center service functions.

The Decision Profile Process involved the Tribes working with the Agency staff in deciding how and when the Area Director authorities and Area Office services could be effectively moved to the Agency level as a means of enhancing tribal consultation, planning and service delivery.

In 1994 the Area Office had the administrative funding and staffing resources, according to the Tribe Agency Decision Profiles, that could supplement the Agency resources thereby making each Agency administratively self-sufficient. The Tribe Agency Decision Profiles program funding and staffing requirements exceeded those assigned to the Agency Office and complimented by the Albuquerque Area Office resources. The Technical Assistance Center was the alternative formulated by the Tribes, as a means of overcoming the lack of adequate programmatic resources to comply with the requirements identified by the Tribe Agency Decision Profiles.

Originally the Area Office was to be reduced from 145 to 34 employees. The 34 employees would comprise the Technical Assistance Center. The professional and staff support service disciplines were:

- Employee Relations (labor-management relations, grievance resolution, and health and retirement plans)
- Archeology
- Bridge Design and Engineering
- Real Estate Appraisals
- DOI Field Solicitor Coordination
- Tribe/Agency Superintendent Decision Appeal Arbitration

The Technical Assistance Center defined in 1994 may not be applicable today. The Tribe Agency Decision Profile would need to be updated and matched against the current Area and Agency Office funding and staffing resources before a current Technical Assistance Center requirement could be defined.

3. *Your proposal seems to be that the Bureau and the Northern Pueblos Agency enter what really is a "compact" for full funding to be provided to the Eight Northern Pueblos as an entity. Can't you accomplish this by having the pueblos enter a "compact" as a consortium under P.L. 93-638?*

The proposal is to modernize the BIA budget formulation and justification process to one based on an individual tribal formulated Needs Assessment. The objective is to transform the BIA service delivery system into one that is based on tribally defined needs, with an emphasis on customer service based accountability.

An Eight Northern Pueblos consortium compact would not resolve the ineffectiveness of the outdated budget process. The consortium approach maybe a long term solution once the budget process has been modernized and the BIA has made the transition to a customer service motivated organization.

4. *Can you outline the Northern Pueblos model and what it would mean to your member tribes?*

The Northern Pueblos Model is a comprehensive Needs Assessment that defines a comprehensive Tribal Government as perceived by each community.

The eight Needs Assessments, individually approved by the respective tribal councils, will provide a comprehensive and dynamic definition of the service requirements that will enable the individual Pueblo Governments to function as self-sufficient and accountable entities.

The assessment will provide a sound basis for Pueblo Government planning and common service needs, which will support the formulation of responsive methodologies, designed to optimize the utilization of limited resources.

Considering the needs assessment quantitative and self-evaluating values to the individual Pueblo governments it makes sound management sense to use this resource to strengthen the partnership between the Federal and Pueblo Governments.

**BIA Albuquerque Area TPA Funding Distribution FY 1999**

Organization	% of Org.	FY 1999 TPA Funds	Organization Total	% of Total
Albuquerque Area Director	18%	276,544		
Albuquerque Area Field Operations	82%	2,112,300		
Albuquerque Area Office			2,388,844	7.1%
Southern Pueblos Agency - SPA	45%	3,863,500		
Acoma	10%	815,600		
Cochiti	2%	179,200		
Isleta	9%	761,700		
Jemez	4%	326,000		
Sandia	3%	210,300		
San Felipe	4%	339,200		
Santa Ana	2%	160,700		
Santa Domingo	8%	646,900		
Zia	2%	178,500		
Ysleta del Sur	11%	920,300		
Total			8,401,900	25.6%
Laguna Pueblo Agency		2,080,500	2,080,500	6.3%
Northern Pueblos Agency - NPA	45%	2,131,700		
Nambé	3%	157,200		
Picuris	4%	187,300		
Pojoaque	8%	358,500		
San Ildefonso	7%	318,700		
San Juan	11%	502,900		
Tesuque	3%	173,056		
Taos	19%	884,800		
Total			4,714,156	14.4%
Southern Ute Agency - SUA	27%	504,300		
Southern Ute Tribe	73%	1,354,500		
Total			1,858,800	5.7%
Ute Mountain Ute Agency		2,102,100	2,102,100	6.4%
Jicarilla Apache Agency		2,034,800	2,034,800	6.2%
Mescalero Apache Agency		3,090,600	3,090,600	9.6%
Zuni Pueblo Agency - ZPA	25%	698,000		
Zuni Pueblo Tribe	75%	2,148,200		
Total			2,846,200	8.7%
Ramah Navajo Agency		2,227,200	2,227,200	6.8%
Albuquerque Area Total		31,745,100	31,745,100	96.8%
Santa Clara Pueblo Self-Governance Compact			1,071,648	3.2%
		Overall Total	32,816,748	100%

## Attachment C

Senator John McCain Questions April 30, 1999

1. *I have heard criticism from the tribes that Area Offices tend to operate by an area office official's judgement on priorities rather than by identified tribal priorities. Do you find this to be true in your area office?*

Yes, the current BIA management accountability process does not hold the Central Office Program Directors, the Area Director or the Agency Superintendent responsible for addressing the tribally defined service priorities or the mandated trust responsibilities.

Neither Interior Secretary nor the Assistant Secretary for Indian Affairs levies consequences on BIA management for non-compliance with tribal service priorities defined through so called consultation sessions. Once the annual fund appropriation is allotted the primary management motivation is to obligate all the funds to ensure the next year appropriation is not reduced. Tribal priorities are a consideration when justifying BIA funding requirements to the Congress, but are not considered when funds are expended. Accountability between the BIA funding justification and expenditure processes is virtually non-existent.

2. *Do you believe there is adequate resources available to the Area Offices to provide the necessary direct services provided to the Indian tribes out of the Area Offices?*

Don't know, since the "necessary direct services provided to the Indian tribes out of the Area Offices" is an unknown factor.

During the tenure of the Joint Tribal, BIA, DOI Task Force on BIA Reorganization attempts were made to decentralize the Area Office. The Albuquerque tribes attempted to make the Agencies self-sufficient service delivery organizations. The tribes' analysis found that the administrative service resources were adequate while the program services needed an additional \$2.5 million. It was this analysis that led to the Albuquerque tribes to formulate the Technical Assistance Center alternative.

A complete analysis of the integrity of the Area Office Operations and the Field Operations funding needs to be undertaken. The Albuquerque Area Director retains 7% of the Tribal Priority Allocation funds at the Area Office level. The Albuquerque tribes have never supported the Field Operations function being funded with TPA funds.

Currently the Albuquerque Area Office is funded as follows:

Program Function	Area Office Operations	Field Operations (TPA)
Tribal Government	57,914	84,700
Human Services	88,826	200,500
Public Safety and Justice	60,093	212,300
Community Development	52,903	51,100
Resources Management	185,133	660,200
Trust Services	259,477	903,500
General Administration	<u>2,336,094</u>	<u>0</u>
Total	\$3,041,140	\$2,112,300

The Albuquerque Area Office fiscal year 1999 financial program is \$5,153,440. Considering the Area Director's control over the recurring and non-recurring, the Area Office Operations and the Field Operations funds the Area Office is the largest and most well funded organization within the BIA Albuquerque program.

The Congress originally created the Area Office Operations and the TPA fund designations as a means to discipline the size and role of the BIA Area Offices. If the Area Offices were required to operate within the Area Office Operations funding limitations the Congress would have been successful. Since the BIA can distribute the funds as they deem appropriate the attempt by the Congress to limit the size and role of the Area Office has been unsuccessful.

The Albuquerque Area tribes have continuously questioned the Area Office use of TPA funds, but to date their efforts have had no affect.

3. *What are your views on the legislation I proposed to restructure the BIA according to tribal priorities?*

I served on the Joint DOI/BIA/Tribal Task Force on Re-organization of the BIA for the four-year duration. I was a proponent/advocate of Congressional legislation to require the DOI and BIA to implement the recommendations contained in the final report. I provided testimony to support the legislation introduced by Senator McCain. History has shown that many of us were unfortunately right in stating that the BIA would let the passage of time eliminate the need to respond to the Task Force report recommendations. The Task Force final report is still applicable today in that most of the recommendations included reforming processes and systems that have not and do not work.

Without authorizing legislation to mandate the DOI/BIA to implement change we will continue to struggle with an unresponsive bureaucracy whose mission is self perpetuation and maintenance of the status quo.

**W. RON ALLEN, PRESIDENT  
NATIONAL CONGRESS OF AMERICAN INDIANS  
TESTIMONY ON THE MISSION AND CAPACITY OF  
THE BUREAU OF INDIAN AFFAIRS  
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS  
WASHINGTON, D.C.  
APRIL 28, 1999**

**I. INTRODUCTION**

Good morning Chairman Campbell, Vice Chairman Inouye and distinguished members of the Senate Committee on Indian Affairs. My name is W. Ron Allen. I am President of the National Congress of American Indians (NCAI) and Chairman of the Jamestown S'Klallam Tribe located in Washington State. On behalf of NCAI, the oldest, largest and most representative Indian organization in the nation, I would like to thank you for the opportunity to discuss the mission and capacity of the Bureau of Indian Affairs (BIA). NCAI was organized in 1944 in response to termination and assimilation policies promulgated by the federal government which proved to be devastating to Indian Nations and Indian people throughout the country. NCAI remains dedicated to advocating on behalf of the interests of our 250 member Tribes on a myriad of issues including whether the Bureau of Indian Affairs (BIA) is fulfilling its responsibility to administer federal Indian policy and to discharge the federal Indian trust responsibility for American Indian and Alaska Natives.

The statuses of tribal governments have changed dramatically over the last century and even more so over the last few decades. Whether providing fundamental services, or programmatic functions that reach out into the community, tribes have learned to overcome the historical impediments to self-sufficiency established and propagated by the federal government. The increased effectiveness of a tribal government to administrate programs and services independent of federal government intervention breaks all traditions of paternalism set forth by the BIA over the day-to-day management of an Indian tribe's operations and activities. Tribal governments are perfectly capable of assuming federal resources, authorities and responsibilities over inherently federal government programs and services that benefit Indian tribes. Moreover, conversion from federal control to tribal control has led to a far greater level of efficiency in administering those programs and services at the tribal level.

As Chairman of one of the original self-governance tribes, I have had the privilege of being able to participate in our effort to streamline the federal system based on what we refer to as tribally driven initiatives. Since 1988, there have been so many tribes who have enjoyed a

great deal of success in implementing such tribal initiatives and feel that exhibiting their accomplishments shows the Congress and the Administration that tribes can take a bureaucratic system and reshape, modify and downsize it into an increasingly effective and efficient government. More important, those federal resources identified in the streamlining process can be transferred directly to the tribes to further increase program and service deliveries.

Economic and governmental self-sufficiency has increased throughout Indian Country, due in large part to the enactment of self-determination and self-governance initiatives<sup>1</sup> over the past several years. Increased tribally-controlled government functions, however, have fostered a natural tendency for tribes to begin critically analyzing the effectiveness of the BIA. This increased tribal autonomy has encouraged sharper criticism of the function of the Bureau, specifically that the administration of federal Indian programs has been consistently both inefficient and ineffective. This condemnation has come from not only tribal governments, but by members of both the House of Representatives and the Senate.

Mr. Chairman, I am pleased that you have provided this opportunity for tribes to voice their opinions on the mission and capacity of the BIA. Tribes are becoming more and more sophisticated everyday, while at the same time, some tribes are barely surviving. We need an agency that can support, at arms length, the advancements of the sophisticated tribes, as well as guide the less sophisticated so that they too can reach greater achievements.

NCAI's testimony will highlight the problems areas of the BIA mission statement and capacity. I hope our testimony will provide the recommendations that are needed to transform the BIA into an agency that will benefit all tribes. I would like to make clear that while we desire reform, we do not believe that the BIA should be abolished.

## II. TRIBAL PERSPECTIVE

In examining the mission and capacity of the BIA, we would like to provide the following perspective from Frank Ducheneaux<sup>2</sup> who depicts the sentiments of many tribal leaders in their relationship with BIA:

*"The BIA is a son-of-a-bitch, but it is OUR son-of-a-bitch!"*

"The first part of the quote is reflective of the tribal evaluation of the inefficiency, incompetency, and insensitivity of the BIA in carrying out the

---

<sup>1</sup>See generally, the Indian Self Determination and Education Assistance Act, 25 U.S.C. §§ 450a - 450n.

<sup>2</sup> President and Partner of Ducheneaux, Taylor & Associates, provided this viewpoint in Client Memorandum No. 96-29, dated November 13, 1996.

varied and difficult tasks assigned to it under the law. As the primary repository for the trust responsibilities of the United States for Indian tribes and the focus of the government-to-government relationship, the BIA and its officials are all too often arrogant and paternalistic in their relationship with tribes and tribal leaders. In carrying out its responsibilities in the area of education, welfare, law and order, and the other non-trust functions, BIA personnel are often inefficient in performance, and unresponsive to tribal needs. Indians have routinely criticized BIA for being an agency of waste, fraud and abuse. All of these Indian criticisms of BIA have been uncritically taken up and repeated by both the friends and enemies of Indian tribes.

It is the second part of the quote, however, that is reflective of the deep insight of tribal leaders into the love-hate relationship between Indian tribes and the BIA. It is an insight that is sometimes missed by our friends in the Congress and the Administration as they support, with all good intentions, proposals to transfer BIA functions to other agencies or to dismantle BIA programs. BIA is more than just an agency which operates programs on reservations, funnels funds to tribes through '638' contracts and self-governance compacts, and administers the trust responsibility. The BIA is the concrete symbol of the continuing commitment of the United States to the trust responsibility and the special, government-to-government relationship.

Since its transfer from the War Department to the Department of the Interior in 1849, the mission of the Bureau of Indian Affairs has changed and evolved as the Indian policies of the United States have changed and evolved, and as the needs and capacities of the tribes have changed and evolved. The one thing that has not changed, however, is the role of the BIA as the administrator, on behalf of the United States, of the special government-to-government relationship with the sovereign tribes. The BIA has functioned as the American Embassy to Indian Country, and as a concrete symbol of the existence and continuation of the special relationship. It may be a son-of-a-bitch, but it is our son-of-a-bitch.

It may be that some would like to see the end of BIA. But, if the non-Indian forces determine there is no longer a reason for the continued existence of BIA, they may also conclude that there is no longer any reason for the continued recognition of Indian tribes. Such decisions were last made in the Termination Era of the 1950's. It is essential, therefore, that we understand very clearly the current status of the BIA and the projections for its future".

### III. THE BUREAU OF INDIAN AFFAIRS

The BIA is the primary federal government agency charged with the responsibility to

administer federal Indian policy and to discharge the federal Indian trust responsibility for American Indian tribes, Alaska Native villages and tribal organization. However, over the last several years, the BIA has been the subject of an onslaught of reorganization, devolution, transfers, downsizing, buy-outs, early retirements, and Reductions In Forces (RIFs). In February 1996, through the acceptance of 864 buy-outs, by not filling those positions as required by law, and by leaving vacant another nearly 1,000 vacant positions that had been funded during fiscal year 1995, the BIA executed a reduction in force. Even after these extreme measures, BIA still either reassigned, downgraded, or separated nearly 700 people.

The majority of the actual "job losses" were in Central Office East (D.C.) and Central Office West (Albuquerque). About 30 to 40 percent of these losses were administrative, clerical or analytical. The first targets were management and elimination of duplication. The most protected programs were basic programs such as law enforcement, social services and education. Among the least protected were positions in the Office of Trust Responsibilities. Personnel for the management of agriculture and rangelands was reduced by 80 percent in the Central Office and 40 percent at the Agency and Area Offices.

To the extent that the Assistant Secretary and BIA personnel are still permitted to participate in policy formulation within the Department, they now lack the technical advice and expertise to effectively make the Indian case against the other interests of the Department which are in conflict with Indian tribal interests.

Today, the BIA provides services directly, or through Self-Determination contract, grant and compact agreements with tribes, to over 1.2 million American Indians and Alaska Natives in 31 states, including the following:

- ▶ Elementary, secondary and post-secondary education
- ▶ Social services
- ▶ Law enforcement
- ▶ Judicial courts
- ▶ Business loans
- ▶ Land and heirship records
- ▶ Tribal government support
- ▶ Forestry
- ▶ Agriculture and range lands development
- ▶ Water resources
- ▶ Fish, wildlife and parks
- ▶ Roads
- ▶ Housing
- ▶ Adult and juvenile detention facilities
- ▶ Irrigation and power systems

A. Assistant Secretary for Indian Affairs.

On November 12, 1997, Kevin Gover, a member of the Pawnee Tribe, took the oath of Office of the Assistance Secretary of Indian Affairs. One of Mr. Gover's first public address as Assistant Secretary was made at the NCAI 54<sup>th</sup> Annual Session in Santa Fe, New Mexico. Assistant Secretary Gover stated that he "looked forward to the opportunity to work with tribes in shaping policies and initiatives that will make the Bureau of Indian Affairs a more effective trustee, a better service provider, and a stronger ally for Indian Country." The Assistant Secretary went on to say that "I approach my new position with a sense of urgency. For some twenty years I have been an outsider looking in. Now I have assumed the role of the insider looking out. Like those who have preceded me, I want to make a positive difference in the way this government carries out its obligations to the tribes, but I realize that I cannot do it alone. I will need the support, assistance, cooperation, and good wishes of all of Indian Country."

A little less than a year later, Assistant Secretary Gover addressed tribes at the NCAI 55<sup>th</sup> Annual Session in Myrtle Beach, South Carolina. Assistant Secretary Gover reported that throughout the past year, he had "seen determination in the eyes of Tribal leaders as they approach problems that seem to be insurmountable", and that "through all the trips, all the travels, all the meetings, and all of the briefings that come with this job, throughout all of these things, I see more clearly the vision for our people that we all share as we approach the 21<sup>st</sup> century." In his vision of an "Indian America where we all stand tall, and our children are proud to declare they are the descendants of a strong, powerful and spiritual people, unified in the common experience of being Indian," Assistant Secretary Gover stated that "there is no way to achieve this vision for our future without making some changes" and that "an obviously needed change is in the way the Bureau of Indian Affairs works." Mr. Gover further stated that "the future of the Bureau of Indian Affairs has become clear. Within the next 10 or 15 years, the Bureau will be mostly out of the business of directly providing services to tribal communities. Virtually all services provided to reservation residents will be provided by the tribes themselves with funds appropriated to BIA."

Assistant Secretary Gover went on to say the five things must be done to prepare the BIA for the 21<sup>st</sup> century. The following is an overview of the Assistant Secretary statement on his outlook for the BIA:

First, we must persuade the Congress to fully fund tribal programmatic needs. The primary obstacle to universal tribal contracting and compacting for service programs is a shortage of money. For the self-determination and self-governance policies to fully succeed, the United States must provide the resources to actually solve problems instead of just maintaining the status quo. That was my purpose in agreeing to the compromise on Section 129 and forming the TPA workgroup.

Second, the Bureau must be redesigned to efficiently and effectively carry out its responsibility to protect and enhance Tribal trust resources. This entails implementing the Secretary's Trust Management Improvement Project, as well as the passage of legislation authorizing settlement of tribal claims for the mismanagement of their trust funds and addressing the crisis of fractionated interests.

Third, the Bureau must be accountable to Congress, the Department and the tribes for its management and administration of federal funds. To this end, a systematic management review of all BIA operations is being undertaken. When this process is completed, we will bring to the tribes our proposal for reorganizing BIA management and administration internal of affairs in matters of accounting, property management, records management, personnel, etc.

Fourth, BIA must assume a stronger role in coordinating federal executive branch policy towards the tribes. This includes insuring consistent federal agency acknowledgment of their agencies' trust responsibility to tribal governments. To this end, we must institutionalize and upgrade the commitment of other departments to the Domestic Policy Council Working Group on American Indians and Alaska Natives, so that whoever the next president may be, this working group continues to exist from this time forward.

Fifth and finally, BIA must redefine its service mission. As I have said, the tribes will be responsible for virtually all service programs for reservation residents. The role that is left for the Bureau to play is technical support to tribal contractors. BIA can and should take the responsibility for making scientific expertise available to the tribes.

Assistant Secretary Gover ended his statement by clarifying that "none of these ideas are mine alone. In fact, most of them can be found in the work of the joint DOI-Tribal reorganization task force". The Assistant Secretary emphasized that "it is time to implement the recommendations contained in the task force report."

B. An Overview of the Joint Tribal/DOI/BIA Advisory Task Force on Reorganization of the BIA.

In August 1994, the Joint Tribal/BIA/DOI Task Force on the Reorganization of the Bureau of Indian Affairs<sup>3</sup> released its final report. This 43-member task force consisted of three DOI

---

<sup>3</sup> Report of the Joint Tribal/BIA/DOI Advisory Task Force on Reorganization of the Bureau of Indian Affairs to the Secretary of the Interior and the Appropriations Committees of the United States Congress, Executive Summary, ES-3, (August 1994) (The task force was chartered by the Secretary of the Interior to develop baseline goals and plans for reorganization to strengthen the BIA's administration of Indian programs

representatives, five BIA representatives and 36 tribal representatives (three from each of the twelve BIA Areas) nominated by the tribes and appointed by the Secretary. The task force spent four years gathering information, developing ideas and concepts, and conducting 22 task force meetings throughout Indian Country, all in an effort to generate a report to the Secretary and the Congress that highlighted the collective recommendations from Indian tribes, the BIA and the DOI on how best to reorganize the BIA. The task force created four leading themes in the reorganization plan – organizational reform, regulatory reform, educational reform and budgetary reform. The following summarizes each of the four themes.

*Organizational Reform* - The current organizational structure of the BIA needed to be clearly defined, with more appropriate roles given to each bureaucratic level. Tribal representatives stressed the need for more operational roles to be located as close as possible to the actual delivery of the programs and services, (in most cases, the tribal or agency office level). The tribes felt that too much of the overall BIA resources were being dedicated and expended at the central and area office levels. The task force recommended that more resources be moved to the tribes and agencies, allowing those resources to be better utilized at the actual levels of program delivery. The task force also realized that each area was unique in its resources and tribal needs. They stressed the importance of having the tribes within each area and agency fully involved in redesigning organizational structures in their areas to ensure that their respective needs were met.

*Regulatory Reform* - BIA decision making authority had been eroded at the organizational levels closest to the tribes. The task force recognized that laws, regulations and internal BIA policies needed to change if an erosion of local decision making authority was to be reversed. Moreover, such erosion tended to usurp inherent tribal authorities. It was the recommendation of the task force that laws, regulations and policies that outlined BIA authority needed to be reviewed to identify and remove obstacles that impeded a tribal government's ability to freely exercise sovereign authorities over decisions which were inherently tribal.

*Educational Reform* - The task force felt strongly that increased emphasis must be placed on BIA education programs due three main concerns:

- the failure to fully implement all provisions of the

---

as called for by Congress in response to tribal concerns that the Department of the Interior was planning to move forward with a reorganization of the BIA prior to an appropriate participation and consultation with Indian tribes).

Elementary and Secondary Education Act (ESEA);<sup>4</sup>

- the indefinite organizational status of education functions within the BIA;
- and the need for a full assessment of the current level of education services within the BIA.

It was also determined that the development of a comprehensive Indian education plan was necessary to ensure that the maximum efficiency and effectiveness in Indian education program implementation were achieved.

*Budgetary Reform* - Processes involving the planning, budgeting and reporting on budget needs were considered to be in serious need of reform. For example, throughout the first 20 years of implementing self-determination policies, tribal participation in formulating BIA decisions regarding the designs of programs and the priorities for funding them actually diminished. Tribes felt that the BIA consistently understated, or even neglected, to report appropriate tribal program funding needs to the Congress. Although tribes had assumed management of about half of the budget resources under various self-determination awards, the BIA and others in the federal government seemed to retain full control, and frequently disrupted the maintenance of funding and services. A new system of planning, budgeting and needs assessment is needed and should be based on federal Indian self-determination policies of dealing with tribes on a government-to-government basis.

Mr. Chairman, as you are aware, many of the task force recommendations were incorporated into legislation introduced in the 104<sup>th</sup> Congress,<sup>5</sup> for which a number of hearings were held by this Committee and a substantial Congressional record developed.

The task force recommendations largely complement and even overlap with Assistant Secretary Gover's own recommendations. Such unanimity inside and outside the BIA give good reason to strategize about the expeditious implementation of these recommendations.

---

<sup>4</sup> Pub. L. 95-561(1978, as amended) (ESEA's Title XI - Indian Education, covers BIA school programs, Pre-K through 12<sup>th</sup> Grade. Although efforts to improve Indian education have continued since the 1994 task force report was released, including Indian Country's development of a Comprehensive Federal Indian Education Policy Statement which was adopted by the Administration through Presidential Executive Order #18083, the Bureau must continue to improve upon its planning and negotiation with tribes over the implementation of BIA school programs under Pub. L. 93-561. With ESEA Reauthorization a planned part of the 106<sup>th</sup> Congressional agenda, tribal leaders and educators are working diligently with the Administration and the Congress to ensure that ESEA reauthorizing legislation includes appropriate provisions to improve the implementation of ESEA's Indian education programs.

<sup>5</sup> S.814 (S. Rpt.104-227) - Bureau of Indian Affairs Reorganization Act, 104<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1995).

#### IV. MISSION OF THE BUREAU OF INDIAN AFFAIRS

##### A. Mission Statement.

*The Bureau of Indian Affairs' mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives. We will accomplish this through the delivery of quality services, maintain government-to-government relationships within the spirit of Indian self-determination.*

##### B. BIA Strategic Plan.

To help determine objectives and performance goals consistent with its mission and ensure that all decisions, operations, and budgets reflect and support one another, the BIA implemented a strategic planning process in 1997. Accordingly, this plan is to help the BIA assess its mission in relation to its budget over a five year period (1997 - 2003). The BIA strategic plan sets forth objectives consistent with the it's current budget framework, objectives which are comparable to "subactivities" in the BIA's budget (i.e. tribal government services, human services, community development, etc.). The objectives establish linkages between measurable performance goals (such as the BIA's annual performance plans, performance reports, and annual budget requests) and the mission statement. The BIA also looks at external factors, such as the federal budget, shifting tribal priorities, self-determination contracting/compacting, measuring results, partnerships, changing state and federal government policies, disasters, and migration, which may influence it's success in achieving it's mission.

##### C. Funding of Tribal Programs.

In 1994, President Clinton pledged to tribal leaders his commitment to fulfill the trust obligations of the Federal Government. Among the President's goals were to help tribes compete economically in the 21<sup>st</sup> century and to invest in Indian education. In 1997, Congress recognized this commitment to tribes by designating the BIA's Tribal Priority Allocations (TPA) as a protected program. The FY2000 budget request for the BIA is \$1.9 billion, an increase of \$155.6 million above the FY1999 level. The TPA request is \$716 million, an increase of \$17 million over the FY1999 level. According to the BIA, their FY2000 request seeks to maintain core existing programs on behalf of it's trust responsibility and commitments to facilitate self-determination for American Indians and Alaska Natives. Since 1998, TPA comprises nearly half of the BIA's operating budget.

It should be noted, however, that in light of all the significant efforts that have taken place to reform the BIA into a more efficient and effective government entity, a critical component is missing – a lack of adequate appropriations. Even today, tribes are faced with the real possibility that their federal Indian program funding may be drastically reduced due to

Congress' conformity with the discretionary spending caps in the historic Balanced Budget Act.<sup>6</sup> Each year, tribes wonder whether Congress will honor the President's TPA requested funding level and assist the BIA in fulfilling its mission. Until Congress and the Administration agree to protect and guarantee the delivery of appropriate funding levels for BIA programs and services, changes to the current BIA system will never achieve their fullest potential in meeting the needs of Indian Country.

D. The BIA/Tribal Workgroup on Tribal Needs Assessments.

In 1998, Congress and the Administration authorized the formation of the BIA/Tribal Workgroup on Tribal Needs Assessment. Over the past year, tribal representatives from throughout the country have met numerous times in order to gather information and data on Tribal Priority Allocations (TPA). Tribal representatives have developed and will be submitting a separate report from the BIA. That Report has been finalized and will be delivered to the Committee by May 14, 1999. General findings and recommendations of the tribes include, among others:

- ✓ Report clearly addresses TPA history of funding, provides an explanation of variances and includes a recommended option for distribution of future TPA general increases.
- ✓ Analysis reveals a tremendous level of unmet need for essential tribal governments and programmatic services.
- ✓ Report strongly opposes any means testing initiative or re-distribution of existing TPA funding bases as it would violate the government-to-government relationship and trust obligation to tribes.

The tribal analysis clearly reveals that the unmet needs for tribal base operations are substantially below mainstream America for similar programs and that the Administration's budget request does not reveal the true needs of our Indian communities.

E. Tribal Trust Assets.

*"The Bureau of Indian Affairs' mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to **protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives.**"*

Pursuant to its recognized trust obligation, the United States government is responsible for the management of tribal assets and funds derived therefrom. These assets and funds are

---

<sup>6</sup> Pub. L. 105-33/34.

derived from a variety of sources that may include: land use agreements, the leasing of Indian lands for grazing, timber and mineral development, including individual allotments; royalties associated with the extraction of oil, gas and coal; as well as income from the investment of tribal judgment funds. It is the duty of the United States, through its role as trustee, to maintain records, to deposit receipts, to make sound investments, and to account regularly and accurately to the beneficiaries on the status of these funds.

The federal government currently holds approximately \$450 million in 300,000 individual trust accounts. Unfortunately, there are reportedly no records for over \$100 million of those dollars. In tribal trust accounts overall \$2.4 billion still remains unreconciled. The General Accounting Office (GAO), the Inspector General of the Department of the Interior, as well as private accounting firms have all issued various reports detailing how the federal government has failed to perform its fiduciary duties and breached its trust responsibility to the beneficiaries of these accounts.

In 1994, Congress passed the American Indian Trust Fund Management Reform Act<sup>7</sup> in an attempt to begin to rectify these long-standing problems. The 1994 Act, among other things, created the Office of the Special Trustee for American Indians (OST) and the Advisory Board on Trust Fund Management Reform. It was expected that the Special Trustee would create an accountable system by implementing the reforms necessary for the proper discharge of the Secretary's trust responsibilities to Indian nations and people. However, since that office was created there have been numerous obstacles in resolving the myriad levels of mismanagement.

On March 3, 1999 the Senate Committee on Indian Affairs and the Senate Energy and Natural Resources Committee held a joint oversight hearing on trust management practices in the Department of Interior. This hearing was part of the Senate's continuing oversight of the trust management issue. Last session, the Senate Committee on Indian Affairs held two hearings on trust funds. This derives out of the Committee's oversight responsibility of Indian trust funds and the 1994 American Indian Trust Management Reform Act.

The hearing focused on the status of the Interior Department's efforts to reconcile its trust accounts, including the \$2.4 billion in tribal funds. According to the BIA, many of the records relating to these funds have been lost over the last one hundred years. Although the BIA is not sure if the money is actually missing, no documents can be found to show the origin of most of these accounts or where they were paid. Many of these records are scattered throughout a number of BIA offices around the country, including the main BIA document center in Albuquerque. Last year, the Interior Department claimed that they could not comply with a court order to produce documents from this location because they were covered in mouse droppings and in a state of disarray. In February 1999, a Federal District Court Judge found Secretary of Treasury Robert Rubin, Assistant Secretary Kevin

---

<sup>7</sup> Pub. L. 103-412.

Gover, and Secretary Babbitt in contempt of court for failing to comply in a full and timely manner with a discovery order in a case involving Individual Indian Monies (IIM). Also, Paul Homan, the former Special Trustee, resigned last year in protest of the what he claimed were attempts to obstruct his efforts to reconcile the trust accounts.

Members of the Joint Senate Committee and tribal witnesses questioned seriously whether the 1994 law has been followed and whether the recent actions of the Secretary and the Special Trustee help or hinder the governments efforts to resolve the trust asset problem. In his statement, former Special Trustee, Paul Homan, claimed that the principle reason for his resignation was the Executive Order issued by Secretary Babbitt to restructure the Office of Special Trustee. According to Homan, "the implementation of the Order deprived the Special Trustee, the Office of the Special Trustee and the Advisory Board of the independence and the authority which was intended by the Reform Act."

For over a quarter century, the BIA has failed to invest in the modernization of their accounting systems. In addition, the BIA's investment activity in general leaves many questions with regard to whether the potential for funds were being properly invested. Hundreds of millions of dollars in potential interest has been lost because money was left in the form of cash for long periods of time. As a result of this and the widespread perception that the BIA is wasteful and ineffective, many in Congress are hesitant to appropriate money to an entity so riddled with apparent financial mismanagement. It is critical that tribes get answers, and given the current fiscal climate, that tribes gain access to vitally needed resources.

For more than thirty years, while tribal resources flowed from the reservations, the BIA's Office of Trust Fund Management neglected basic operating principles. Without an accounts receivable system and with so many leases "missing", the BIA is unable to tell the trust account holders whether all of the income due on their asset leases have been collected. Mineral Management Service (MMS) operations on tribal lands also continued with no system to guarantee that the legal amount due to a tribe or individual on those resources was in fact paid. The pursuit of those assets lost to Indian people as a result of such activities is an issue of vital concern to NCAI and tribes nationwide. Without adequate records and without a clear remedial plan how can the government expect to reconcile such issues? Until these and other issues are addressed, the federal government will continue to violate its trust responsibility and the provisions of the Trust Funds Reform Act.

Mr. Chairman, one of the most troubling aspects of this situation is the fact that the BIA is not mismanaging its own funds, but the funds of others, and comprising the poorest communities in the nation. In another year of potentially serious budget cuts to Indian programs, our people face even darker times ahead. These are not questions of social welfare or government handouts, the funds we speak of are our own: Indian tribes and individual Indians have reposed trust in the United States, but that trust has been violated. Our people, many of whom gave their lives in battle for this country, expect this great nation

to live up to the agreements we have signed.

This issue is about government mismanagement and unaccountability in its worst form. If the degree of mismanagement and unaccountability found within the BIA were discovered in the private sector, there would be a number of people in federal prison. Because of the involvement of Indian tribes and "Indian money", the tribes are once again being denied a full measure of justice. We urge the Congress and the Administration to fulfill its fiduciary duty to Indian nations and people and to uphold that responsibility, which includes the proper management of Indian trust funds. And as we move into the next century, it is the joint duty of the Congress and the Administration to resolve this critical problem. As a nation who proclaims to stand squarely on the principles of freedom, justice and equality, the BIA must fulfill its obligations to tribal governments and Indian people, recognizing those agreements upon which this great nation was founded.

#### F. Economic Opportunity.

The BIA mission statement, in part, asserts that the BIA "is to promote economic opportunity" for Native Americans. In compliance with the BIA mission statement, the Indian Financing Act<sup>8</sup> (IFA) was passed in 1974. As amended, the IFA created the Indian Revolving Loan Fund, the Loan Guaranty and Insurance program, funds for Interest Subsidies and Administrative Expenses, and an Indian Business Grant program within the BIA. This act provided previously unavailable financing, as well as technical assistance, to Indian and tribal businesses. Although the IFA programs have enjoyed many successes over the years, since 1996, only the guaranteed loan program remains.

Economic development conditions on reservations are dire. With welfare reform in full force, sustainable economic development is even more essential. Indian Nations are developing plans for economic development to reduce the severe impacts on tribal members and tribal governments. However, these plans can not move forward, when there is an enormous lack of available equity capital to access financial assistance for business development. Both federal and private lenders have a required minimum equity contributions. For example under the BIA programs, the minimum equity requirement is 20 percent. If the loan is not backed by a government guarantee, then private lenders will usually require matching contributions.

Prior to 1996, under the IFA, Indian Business Development Grants were available. The purpose of these grants was to stimulate and increase Indian entrepreneurship. Moreover, these grants would attract financing from other sources than the BIA. The primary responsibility of monitoring and servicing loans that were supplemented by BIA grants was placed on the private lender, hence the need for additional BIA staff to monitor the loans

---

<sup>8</sup> Pub. L. 93-262.

was not required. This would allow 100 percent of any the funds appropriated to the grant program to go directly to individual Indians and tribes. Knowing that no additional BIA staff would be required and that 100 percent of the funds would go to the tribes, NCAI would highly recommend that the BIA re-institute the Business Development Grant.

Under the BIA guaranteed loan program, loans made by private lenders (usually commercial banks) would be guaranteed up to 90 percent. Unfortunately, under this program the lenders that are suppose to provide the lending are the same lenders that Indian and tribal businesses have had the most difficulty with. Even with the 90 percent guarantee, many lenders remain reluctant or refuse to lend to tribes or individuals Indians.

A study conducted in 1998 by First Nations Development Institute looked at "Banking and Financial Service Needs and Lending Issues in Native Communities." The survey studied a target group of seven states, (Minnesota, Montana, North Dakota, South Dakota, Wyoming, Nevada, and Oregon) with a total of 65 tribes, that would be affected by the Wells Fargo and Norwest bank merger. When asked to prioritize tribal needs, the second most widely expressed need, next to financing for housing, was access to credit and financing for economic development.<sup>9</sup> This seems incongruous given the fact that the only BIA loan program remaining requires tribes to work with lenders who have demonstrated a pattern of discrimination against Indians and tribes.

Successful Indian economic development relies on access to business information and the ability to obtain specific technical assistance. The availability of technical assistance in creating comprehensive business plans is a key factor in increasing the utilization of the BIA guarantee loan program or private funding. By individual Indians or tribes receiving technical assistance the quality of the business proposals would increase, more proposals would be funded, and more jobs would be created in Indian Country. Under the IFA technical assistance is authorized, however, currently it does not exist.

As an Indian trustee, the BIA has a duty to create programs to encourage and promote Indian economic development. The BIA, in promoting economic development should first provide services that actually help bring financing for economic development into Indian Country – for example, re-instituting the Business Development Grant program or creating programs that give tax credits to private or commercial entities, who lend money to individual Indians and tribes. Second, if tribes are made to work with institutions that are adverse to lending to them, the BIA should facilitate the education of the private and commercial sector on BIA programs and the benefits of lending to Indian communities. Third, the BIA should re-prioritize it's funding criteria. Sustainable economic development is not the cure all but it can help change many problems within Indian Country. If the BIA

---

<sup>9</sup> First Nations Development Institute, CRA Query: Norwest and Wells Fargo Findings within a Seven-State Target Group, Banking and Financial Service Needs and Lending Issues in Native Communities, 1998.

obtained increased funding for economic development, the business successes and increased resources would help solve other problems in tribal communities. Tribes want a hand up, not a hand out, and sustainable economic development could be the hand that we need.

#### IV. CONCLUSION

Mr. Chairman, thank you for this opportunity to present this statement in connection with this vital issue. The BIA is the primary Federal agency whose sole responsibility is to advocate and advance the empowerment of tribal governments to serve their members. Its purpose is twofold: First, the BIA is the primary advocate within the Administration to empower tribal governments to improve the services to Indian communities. Second, the BIA is the Administration's chief advocate to communicate the concerns and desires of the tribes with the Congress as well as throughout the Executive Branch.

While reform may be desired, the last thing the Indian people wish to see is for the BIA to be abolished. Because of the historic, legal and moral obligation to American Indian and Alaska Native nations, the federal system must always maintain its ability to advocate, preserve and protect the tribe's unique legal standing and treaty commitments.

\*\*\*\*\*

## NATIONAL CONGRESS OF AMERICAN INDIANS



May 17, 1999

### EXECUTIVE COMMITTEE

**PRESIDENT**  
W. Rex Allen  
*Jonestown / Y'Kolon Tribe*

**FIRST VICE PRESIDENT**  
Ernie Stevens, Jr.  
*Ojibwa Nation of Wisconsin*

**RECORDING SECRETARY**  
Lela Cerkalla  
*Namto People*

**TREASURER**  
Russell (Dad) Mason  
*Three Affiliated Tribes*

### AREA VICE PRESIDENTS

**ABERDEEN AREA**  
Gerald M. Clifford  
*Ojibwa Sioux*

**ALBUQUERQUE AREA**  
Joe A. Garcia  
*Okpay Owingoh  
San Juan People*

**ANADARKO AREA**  
Gary McAdams  
 *Wichita & Affiliated Tribes*

**BILLINGS AREA**  
Earl Oie Person  
*Blackfoot Tribe*

**JUNEAU AREA**  
Steve Gianis  
*Native Village of Fort Yukon*

**MINNEAPOLIS AREA**  
Bernida Charrib  
*Millie Luce Band of Ojibwe*

**MUSKOGEE AREA**  
S. Diane Kellay  
*Cherokee Nation*

**NORTHEAST AREA**  
Michael W. Schindler  
*Jenaca Nation of Indians*

**PHOENIX AREA**  
Ivan Makil  
*Salt River Pima-Maricopa*

**PORTLAND AREA**  
Henry Capry  
*Lummi Nation*

**SACRAMENTO AREA**  
Cheryl A. Seider  
*Tahle Bluff Reservation / Wiyot*

**SOUTHEAST AREA**  
A. Bruce Jones  
*Lumbee Tribe*

### EXECUTIVE DIRECTOR

JoAnn K. Chase  
*Madon, Hidatsa & Arikara*

Honorable Ben Nighthorse Campbell  
Chairman  
Committee on Indian Affairs  
United States Senate  
SH-838 Hart Office Building  
Washington, D.C. 21510

Honorable John McCain  
Majority Member  
Committee on Indian Affairs  
United States Senate  
SH-838 Hart Office Building  
Washington, D.C. 21510

**Re: Responses to Supplemental Questions on the Mission  
and Capacity of the Bureau of Indian Affairs**

Dear Chairman Campbell and Senator McCain:

NCAI appreciates this opportunity to provide further information to the Senate Committee on Indian Affairs (SCIA) hearing record of April 28, 1999 over the mission and capacity of the Bureau of Indian Affairs (BIA) as posed to us in your letter dated April 30, 1999.

### Questions from Chairman Campbell:

1. There are now 207 Indian tribes involved in Self-Governance. The remainder of tribes are "direct services" tribes requiring the involvement of the BIA. Should Congress provide incentives to these tribes to become Self-Governance tribes and if so, what should those incentives be?

While it is true that 207 tribes are currently operating BIA programs under Self-Governance agreements, it is not true that the remainder of the tribes are "direct-service" tribes. Most of the remaining tribes have chosen to operate programs under Pub. L. 93-638 Title I contracts rather than under Title IV Self-Governance funding agreements. According to the FY1998 BIA Annual Report, 90 percent of all appropriations are expended at the local level and nearly 55 percent of the dollars in operations and construction funding programs are operated by tribes and tribal organization through self-determination contracts or self-governance compacts.

Chairman Campbell and Senator McCain, Senate Committee on Indian Affairs  
 Re: *Responses to Supplemental Questions on the Mission and Capacity of the BIA*  
 May 17, 1999 – Page 2 of 6

---

It is the individual and sovereign right of each tribal government to choose whether to operate BIA programs under a self-determination contract, self-governance funding agreement or BIA direct services. While increases in BIA funding for tribal programs, services, functions and activities would provide some incentive for tribal governments to consider operation of these programs under self-determination contracts or self-governance funding agreements, it remains the right of each tribe to negotiate the level of remaining BIA direct services.

A key to the advancement of the Self-Governance initiative is the attitude and strong leadership of the senior policy personnel of the Bureau to address the recalcitrance that has historically impeded this process. The system is threatened by this transfer of federal functions to the Tribes and will always resist it.

**2. It seems to me that the BIA cannot be all things to all tribes. What “core functions” should the BIA continue to perform?**

We agree that the relationship between the BIA and each of the 558 tribes is not the same. However, the BIA is the primary federal agency whose sole responsibility is to advocate and advance the empowerment of tribal governments and to uphold the federal trust responsibility of the United States to Indian tribes. A primary function of the BIA is to assist the tribes by removing bureaucratic impediments to advance their self-determination and self-sufficiency goals. The BIA must have the capacity to interface with the rest of the federal system and Congress to implement this responsibility. The Bureau must have the capacity to present to Congress realistic budget needs to address the Federal government’s obligation to the Indian Nations.

The BIA and tribes have been engaged in a joint process to identify the BIA’s “inherent federal functions” and associated residual funding levels. The determination of these “core functions” is essential to meet and fulfill the BIA’s mission. Generally, such functions would include those activities that can only be performed by federal officials, e.g., federal budget formulation and functions related to the trust responsibility.

Unfortunately, this process to identify BIA fundamental functions and responsibilities has clearly stalled within the BIA Central Office. There is incomplete and inconsistent information throughout BIA Area and Agency offices regarding this process, thus resulting in confusing and conflicting understanding between the tribes and the BIA. We recommend that the BIA continue to work with tribal governments to complete this process.

**Chairman Campbell and Senator McCain, Senate Committee on Indian Affairs**  
**Re: Responses to Supplemental Questions on the Mission and Capacity of the BIA**  
**May 17, 1999 – Page 3 of 6**

---

- 3. Would NCAI support legislation that would require the BIA to continue to safeguard tribal trust assets, but also require that by a date certain, the service function of the BIA would end?**

Yes and No. The position of tribal governments over the federal trust obligation is clear – safeguarding tribal trust assets must be a top priority of the federal government and the implementation of that responsibility by the Bureau of Indian Affairs must improve. Therefore, NCAI would be supportive of legislation that continues and improves this BIA function. However, on the issue of discontinuing the BIA's service function to tribes, there is no consensus position from Indian Country, pro or con, that directs an NCAI position on this issue. Therefore, NCAI cannot support such a legislative initiative until further deliberation among tribal leaders occurs and tribes form an official position within NCAI on whether the BIA's service function to tribes should continue.

As you know, the 1994 Joint Tribal/BIA/DOI Task Force report on reorganizing the BIA did not fully address this issue, nor conclude with a clear directive as to what role the BIA should continue to play in delivering service functions to tribes once a reorganization effort is implemented. Many tribes want direct authority over program and service functions, including a direct and proportionate share of the agency, area and central office funding associated with those program and service responsibilities. This is considered by many tribes to be the true intent of self-determination and self-governance authority. However, many other tribes, especially those with little in the way of a resource base, fear that such a division of funding would leave them vulnerable to a diminishment of BIA program and service delivery from the agency, area and central office level if the tribe cannot, or chooses not to, administer their own program and service functions.

Our member tribes range from the most sophisticated and self sufficient tribal governments to some of the most impoverished, federal government-dependent tribes in Indian Country. Until concerns raised by small and needy tribes over the further expansion of tribal self determination and self governance are more formidably addressed between tribal leaders as well as between tribes and the federal government, NCAI must refrain from supporting or opposing such legislative initiatives.

- 4. If Pub. L. 93-638 were liberalized to allow tribes to contract and compact for other non-BIA, non-Interior programs from across the federal government, would that lessen the ongoing demands placed on the BIA?**

No and Yes. No, because the expansion of 638 and self-governance authority to other federal departments and agencies would not change the relationship or lessen the demands on the BIA. The mission of the BIA has changed and evolved as Indian policies have changed over time. However, the role of the BIA as the primary administrator, on

**Chairman Campbell and Senator McCain, Senate Committee on Indian Affairs**  
**Re: Responses to Supplemental Questions on the Mission and Capacity of the BIA**  
**May 17, 1999 – Page 4 of 6**

---

behalf of the United States, of the special government-to-government and trust relationship with the sovereign tribes has not changed. As efforts to advance the empowerment of tribal governments continue to evolve, this fundamental relationship between the BIA and tribes would remain the same.

Yes, because the expansion of the tribes' access into the other federal departments and agencies programs will lessen the burden on the BIA to have to seek the funds for all the governmental needs of the tribes. One example is the Department of Justice expansion of tribal court and enforcement programs. The additional resources are making a difference, but these resources would be even more effective if they were available through the Pub. L. 93-638 legislative authority.

Questions from Senator McCain:

- 1. What would you describe as some of the necessary functions of BIA that should be retained if BIA is reformed?**

As stated above in response to what "core functions" should the BIA continue to perform, examples include: (1) budget formulation and advocacy; (2) obligation and allocation of federal funds; (3) promulgation of regulations; and, (4) other general discretionary functions vested in federal officials. The bureau must always provide the lead advocacy role for the tribal governments within the federal system and remain the moral conscience for the Administration regarding the historical and legal obligations to the Indian communities. The bureau must have the capacity to provide technical assistance or support as necessary to advance the empowerment of the tribes' goals and governmental capacity.

- 2. Would NCAI support legislation, similar to what I had proposed, for restructuring the BIA according to tribal priorities?**

For reasons previously stated, NCAI has not taken a position on legislation introduced to date which sought to restructure the BIA. We believe that tribes may support such legislative initiatives, so long as appropriate and adequate consultation and negotiations occur between tribes and the federal government over the proper implementation of any proposed changes to federal program or service functions, prior to such changes being implemented. Tribes continue to see that the congressional intent surrounding much of the pro-active Indian legislation enacted over the years is being diminished through the BIA's statutory regulatory process. Much of this diminishment is due to a lack of tribal involvement in the decision making process surrounding regulatory promulgation and decisions involving direct program operation within Indian Country.

**Chairman Campbell and Senator McCain, Senate Committee on Indian Affairs**  
**Re: Responses to Supplemental Questions on the Mission and Capacity of the BIA**  
**May 17, 1999 – Page 5 of 6**

---

As you know, during SCIA hearings in the 104<sup>th</sup> Congress on S. 814, tribal leaders voiced concerns over the lack of tribal recommendations being fully included in the final version of the 1994 Joint Tribal/BIA/DOI Task Force Report. Although tribes worked collectively with BIA and DOI officials from 1990 to 1994 in developing the report, in the end, tribes felt that the report failed to include all of the specific recommendations from the tribal representatives on the joint task force.

We would urge the Committee to continue its outreach to Indian Country to seek additional information and positions on the issue of BIA restructuring. NCAI will also continue to provide the Committee with information shared and positions taken by tribes during its upcoming midyear and annual sessions. Congress must strive to ensure that tribes from all economic levels are protected from any negative impacts associated with restructuring initiatives. We would also urge Congress to include strong enforcement provisions in any BIA restructuring legislation, to send a clear and convincing message to the BIA that tribes must be fully included in the decision-making process surrounding regulatory promulgation administrative implementation of any such enacted BIA restructuring legislation.

**3. Can you report back to this Committee on whether the NCAI and its member tribes still support the recommendations of the Joint Task Force Report to reorganize the BIA?**

NCAI will share this request with Indian Country and urge tribal governments to engage in dialog over BIA restructuring and reorganization initiatives, including a review of the recommendations included in the Joint Tribal/BIA/DOI Task Force Report of 1994. NCAI will also suggest that tribes consider making this a priority issue for discussion at both its upcoming Mid-year and Annual sessions in July and October 1999.

We have briefly highlighted throughout this letter some of the issues raised by Indian Country regarding BIA reorganization legislation introduced in the 104<sup>th</sup> Congress. At this time, we feel that many of these issues remain unresolved and therefore would support the Committee's inquiry as to whether tribes have reached consensus on how these issues may be resolved.

In conclusion, NCAI hopes that these responses are satisfactory in providing additional information on the issues raised in the Committee's follow-up questions to the hearing. The remaining three questions from Senator McCain to Tim Martin, Executive Director, United South & Eastern Tribes, will be submitted under separate cover by Mr. Martin.

**Chairman Campbell and Senator McCain, Senate Committee on Indian Affairs**  
**Re: Responses to Supplemental Questions on the Mission and Capacity of the BIA**  
**May 17, 1999 - Page 6 of 6**

---

If you have further questions, or require additional information, please do not hesitate to contact JoAnn K. Chase, NCAI Executive Director or myself at (202) 466-7767.

Sincerely,

A handwritten signature in cursive script that reads "W. Ron Allen".

W. Ron Allen  
President



**UNITED SOUTH AND EASTERN TRIBES, INC.**  
 711 Stewarts Ferry Pike • Suite 100 • Nashville, TN 37214  
 Telephone: (615) 872-7900 • Fax: (615) 872-7417

May 17, 1999

The Honorable Ben Nighthorse Campbell  
 Chairman, Committee on Indian Affairs  
 United States Senate  
 Washington, D.C. 20510-6450

Dear Chairman Campbell:

Thank you for the opportunity to present testimony to the Committee on Indian Affairs at the April 28<sup>th</sup> hearing on the Mission and Capacity of the Bureau of Indian Affairs. In response to the supplemental questions posed by you and Senator McCain in your April 30<sup>th</sup> letter, I offer the following information:

**Question:** If the BIA were a business and you were the CEO of that business, what would you do to make sure you could compete and make your shareholders happy over the next five years?

**Answer:** A successful Chief Executive Officer (CEO) of any business will have in place a data collection system that monitors its customer. This data collection system should be designed to perform three essential elements which are: 1) provide tribal access to both empower the tribes and stimulate interaction between the BIA and tribes; 2) produce information which would be useful to the Assistant Secretary in strategic planning; and 3) generate valid statistical data to monitor progress.

1) **Tribal Access:** Tribal access and input would empower tribes to the point that they are confident their concerns are being heard and acted upon.

2) **Strategic Planning:** The information provided by the tribes to the BIA through this system would become an essential part of the strategic plan to guide future development.

3) **Valid Data:** Statistical data would be used in the production of comprehensive reports to be provided to Congress to validate appropriations.

Accomplishing these three elements of a complete data collection system will place the BIA in a position to advocate on behalf American Indians and Alaska Natives (AI/AN). This system will ensure Congress that appropriations afforded the BIA is a sound investment resulting in the achievement of stated goals.

***"Because there is strength in Unity"***

**Question:** There's an old saying that "You can do all things, but you can't do all things well." It seems to me that we may be asking the BIA to do too much --or not the right things. What "core functions" would you have the Bureau undertake?

**Answer:** I agree with your assessment, tribes may be asking the BIA to do too much. As tribes continue to take over delivery of services to their members, the BIA has to evolve from a direct service delivery system into an agency of monitoring, policy development and advocacy. Jointly, the BIA and Tribes should develop and adopt a consultation process that will facilitate the prioritization of current and future programs, functions, services and activities (PSFA's) of the BIA. The BIA has undertaken a part of this process already. The BIA needs to continue the tribal share process in consultation with the tribes. The tribal share process will identify the inherent federal functions that should be retained by the BIA and those which can be contracted/compacted by tribes. Ultimately, the tribal share process can dictate the core functions to be retained and performed by the BIA.

**Question:** The coordination of existing resources and programs across the Federal government is a major obstacle for tribes. If self-governance were applied to all Federal agencies, would that lessen demands made on the Bureau?

**Answer:** As tribes continue to contract/compact PSFA's at all levels from the BIA, the infrastructure and capacity to contract/compact PSFA's from other Federal agencies becomes greater. However, if Self-Governance is applied to all Federal agencies the demands on the BIA will not diminish but will change. The BIA's role will change from one of service delivery to one of monitoring, policy development and advocacy. The BIA should initiate a planning process to begin this conversion.

**Question:** I have heard criticism from tribes that Area Offices tend to operate by an area office official's judgement on priorities rather than by identified tribal priorities. Do you find this to be true in your area office?

**Answer:** Absent a tribal consultation process tribes have not been involved in development of priorities of the BIA. Rather, tribes have been asked to go through a budget exercise which is meaningless in priority development due to predetermined budget constraints. Too often priorities have been set by the BIA before the tribes are asked for any input. For many years Area Offices have been allowed to act as autonomous agencies. There is no consistent prioritization of needs BIA wide.

**Question:** Do you believe there are adequate resources available to the Area Office to provide the necessary direct services provided to Indian tribes out of the Area Offices?

**Answer:** The dramatic cut to the BIA budget in 1996, has resulted in two problems: 1) some of the Area Offices do not have sufficient staffing to provide the services needed by many tribes from these areas; and 2) the 96 cuts lead to a reduction in force (RIF) and early retirements for some of the most knowledgeable employees of the BIA.

1) Insufficient staffing: The BIA is still trying to meet requirements for all PSFA's with fewer FTE's.

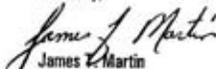
2) Loss of Knowledge: The BIA is going through an employee learning curve. Employees occupy or fill positions, not because of their expertise, but because of the bump and retreat process inherent in the RIF.

**Question:** What are your views on the legislation I proposed to restructure the BIA according to Tribal priorities?

**Answer:** I believe the proposed legislation could help the BIA identify current and future priorities and core functions. The legislative process will ensure tribes have the opportunity to provide input through testimony. Further, legislation will mandate change following specific time lines. Changes to the future of the BIA will mandate changes to specific authorizing legislation. Therefore, your bill will prompt a complete legislative review which will be necessary to effectuate positive changes within the BIA.

I believe the BIA is at the crossroads of its future. I look forward to working with you and other members of the Committee on Indian Affairs as we continue to examine and define the mission and capacity of the BIA. If additional information is needed do not hesitate to contact me.

Sincerely,

  
James D. Martin  
Executive Director

