

**REVIEW OF THE BUREAU OF INDIAN AFFAIRS'
MANAGEMENT OF THE \$1.7 BILLION INDIAN
TRUST FUND**

HEARING
BEFORE THE
ENVIRONMENT, ENERGY, AND
NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIRST CONGRESS
FIRST SESSION

—————
OCTOBER 26, 1989
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Printed for the use of the Committee on Government Operations



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1990

31-919 —

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REVIEW OF THE BUREAU OF INDIAN AFFAIRS' MANAGEMENT OF THE \$1.7 BILLION INDIAN TRUST FUND

THURSDAY, OCTOBER 26, 1989

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

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2247, Rayburn House Office Building, Hon. Mike Synar (chairman of the subcommittee) presiding.

Present: Representatives Mike Synar, Albert G. Bustamante, and Craig Thomas.

Also present: Sandra Z. Harris, staff director; Steve Richardson, professional staff member; Michele Ettinger, assistant clerk; Kirk Esherick, minority professional staff, Committee on Government Operations, and Tony Csicseri, GAO detailee.

OPENING STATEMENT OF CHAIRMAN SYNAR

Mr. SYNAR. The subcommittee will come to order.

Today the Subcommittee on Environment, Energy, and Natural Resources will review the Bureau of Indian Affairs management and supervision of the \$1.7 billion Indian Trust Fund.

We will look at the Bureau's continued failure to properly account for the funds in the 300,000 individual and tribal accounts and its recent efforts to contract for certain financial management services for the trust moneys.

The system of trusteeship and Federal management of our Indian funds is deeply rooted in U.S. history. Treaties were the first, and probably most important means by which trust funds were created for the benefit of individuals or tribes.

While the earliest treaties did not specify that the United States retain funds in trust for the tribes, in 1820 the Federal Government adopted the policy of holding tribal funds in trust. Indeed, President Andrew Jackson may have been the first Federal trustee of Indian moneys. Later, the role of trustee was delegated to the Secretary of the Interior.

The Federal Government is obligated to accurately and fully account for Indian trust funds, to properly discharge all of its fiduciary responsibilities, and to maximize the trust income by prudent investment and management. Yet, year after year, report after

report has disclosed an appalling array of management and accountability failures in this program.

Since 1982, the Interior Department's inspector general has issued 31 separate reports detailing numerous deficiencies in the Bureau's administration of Indian trust funds. Sadly, the most recent of these reports documented multimillion dollar account shortages, investment and interest losses, and a total absence of basic financial controls. Unfortunately, a recent audit by Arthur Andersen & Co. revealed similar widespread accounting and management failures by BIA. A trustee in the private sector could not possibly continue such mismanagement and hope to get away with it for very long.

Despite its continued unwillingness to reform its management or to begin to properly oversee and balance these trust accounts, the BIA is now in the process of turning many of the Government's financial responsibilities over to a third party. I am concerned, as are a number of other Members and many tribes, that the Bureau is simply passing off the unbalanced books to someone else.

And the subcommittee is concerned that the BIA appears to be proceeding with implementation of this financial services contract despite repeated and explicit congressional directives that the Bureau audit and reconcile the trust accounts.

Furthermore, many aspects of the contract itself, including the Bureau's procurement procedures and its implementation of the agreement, raise serious concerns about the agency's supervision, management and control of the trust fund.

The subcommittee intends to explore whether BIA's continuing efforts to contract out many of its trust fund responsibilities are within the scope of the agency's authority. We want to know whether this effort is compatible with the most recent congressional directive on auditing and reconciling accounts, and we want to know whether the tribes and individual accountholders want their funds delivered to a third party.

Just as importantly, it is not clear that the contract has been or will be adequately managed or supervised by the BIA. Indeed, there is no guarantee that the BIA's handling of this agreement will result in any measurable improvement in its overall management of the trust fund. There is no commitment that this contract will enable the Tribes to better manage their financial affairs. Nor is it clear that the contract will result in any taxpayer savings.

The way the BIA has handled procurement and implementation of the financial services contract is disappointing, at best. Moreover, the Bureau's manifest refusal over the years to undertake an effective effort to balance its books, would lead any reasonable person to question whether the BIA takes its special fiduciary responsibilities seriously.

As we shall see today, the time may have come for us to consider radical changes in the way that the Indian Trust Fund is managed.

Now, before I turn to my colleagues for their opening statements and before beginning testimony this morning, I would like to ask unanimous consent that a prepared statement from Congressman Sid Yates, chairman of the House Interior Appropriations Subcommittee, be admitted into the record at this point.

[The prepared statement of Mr. Yates follows:]

TESTIMONY OF THE HONORABLE SIDNEY R. YATES
BEFORE THE SUBCOMMITTEE ON ENVIRONMENT, ENERGY
AND NATURAL RESOURCES
COMMITTEE ON GOVERNMENT OPERATIONS
OCTOBER 26, 1989

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to present testimony on the trust fund accounting program of the Bureau of Indian Affairs. My statement will be brief, but I did want to commend you for holding these hearings and reviewing the Bureau's activities with regard to accounting for Indian trust funds. These activities have been of concern to the Appropriations Subcommittee on the Interior and Related Agencies for several years now, and this review by your Subcommittee should be most helpful in providing more information about the serious concerns that have been raised regarding the Bureau's past handling of its responsibilities in this area, and about its plans for meeting these responsibilities in the future.

The House Appropriations Interior Subcommittee first addressed this issue in the fiscal year 1987 Supplemental Appropriations Act, as a direct result of the requests of many tribes. These tribes were concerned that the Bureau was planning to enter into a contract with a private organization, for accounting and investment advisory services for the trust funds, and specifically with the Bureau's failure to consult adequately

with the tribes prior to entering into such an agreement. Therefore, our Subcommittee included language in the Supplemental Appropriations Act prohibiting the transfer of funds under a contract to any private institution, until certain conditions were met. These conditions included completion of an accounting of the funds to be transferred, and provision of the accounting to the affected tribes or individuals; and full consultation with the appropriate Committees of Congress and the tribes as to the terms of the proposed contract. This, or similar language, has been carried in the Interior Appropriations Acts for fiscal year 1988 and fiscal year 1989, and did result in a more complete consultation process before a contract was awarded approximately one year ago. However, the requirement to audit and reconcile all accounts, both tribal and individual, before transferring them under the contract, has not yet been met, and remains a serious concern to our Subcommittee. Despite assertions to the contrary by the Bureau and the Department, it was our understanding that audit and reconciliation could be performed at least to the point where tribal and individual Indian records were no longer available.

On this basis, a modified version of the language previously carried in the Interior Appropriations Acts was included in the fiscal year 1990 Act, requiring that all accounts be audited and reconciled to the maximum extent possible, that is, to the earliest possible date records are available; that an independent third party certify the results of such a reconciliation; and

that the tribe or individual be provided with an accounting of such funds, prior to the transfer of such funds under the contract. We remain concerned with how the Bureau plans to carry out the requirements of this language.

In addition to the issue of reconciling accounts prior to transfer, there are many other issues which we understand may be the subject of your review in this or subsequent hearings, including the status of efforts to date under the contract, especially with regard to systems development and the adequacy of testing and training, and the overall effectiveness, or lack thereof, of project management and direction by the Bureau in this effort to date. We look forward to reviewing the results of your Subcommittee's investigations into these and other related issues, and to working with you to ensure that everything possible is done to carry out fully the Bureau's, the Department's, and the Federal Government's trust responsibility to the Indian people in this, as well as other, areas.

Thank you again for this opportunity to present testimony. I look forward to working with you in the future.

Mr. SYNAR. As everyone knows, there are few, if any, Members in Congress who have been more concerned over the Bureau's management of the Indian trust funds, or more insistent that the BIA live up to its fiduciary responsibilities to Native Americans.

For many years, he and his staff have devoted considerable time and personal attention to efforts to improve the management and accounting of these funds. I might add, also, he's done this at no benefit to himself.

He continues to press the BIA on this issue because he believes it can and should effectively and efficiently carry out its duties and that our unique relationship with Native Americans obligates the BIA to do so.

I could not agree more with Congressman Yates. I'm sorry that Sid wasn't able to join us today, but I certainly share his frustration over BIA's continued mismanagement of the Indian trust funds, and I have great appreciation for what he's done in past years to improve the program.

I'd ask unanimous consent also to enter into the record at this time Mr. Clinger's opening statement, who unfortunately cannot be with us today.

[The opening statement of Mr. Clinger follows:]

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**Congress of the United States
House of Representatives
Washington, DC 20515**

OPENING STATEMENT
OF THE
HONORABLE WILLIAM F. CLINGER
GOVERNMENT OPERATIONS SUBCOMMITTEE ON
ENVIRONMENT, ENERGY AND NATURAL RESOURCES
OCTOBER 26, 1989

COMMITTEE
PUBLIC WORKS AND
TRANSPORTATION
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SUBCOMMITTEE ON INVESTIGATIONS
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SUBCOMMITTEE ON SURFACE TRANSPORTATION
GOVERNMENT OPERATIONS
SUBCOMMITTEE ON ENVIRONMENT, ENERGY
AND NATURAL RESOURCES
MARKING REPUBLICAN
SELECT COMMITTEE ON AGING

Thank you, Mr. Chairman. I want to thank you and the Subcommittee staff for your efforts in calling today's hearing, particularly Tony Csicseri, who will be leaving the Subcommittee and returning to the General Accounting Office at the end of this month. We wish him continued success.

Today we are going to be looking in great detail at the Bureau of Indian Affairs' management of the Indian Trust Fund. As everyone present is aware, proper management of the Trust Fund has been a matter of particular interest to the House of Representatives. In fact, each Interior Appropriations Conference Report passed by the House during the past three years has included language specific to the management of the Indian Trust Fund.

As we listen to testimony, we will hear of past and present problems that have plagued and continue to plague the Bureau of Indian Affairs in its efforts to manage the Indian Trust Fund. I believe that everyone can agree that the problems and concerns discussed today need to be resolved. However, as we listen to the Inspector General of the Department of the Interior and the General Accounting Office articulate what would appear to be accounting and procurement missteps, it is important that we remember

that this hearing has a human impact. We are not just talking about balance sheets and government regulations, we are discussing monies that are crucial to the daily operations of Native American tribes and a source of income to thousands of Native Americans.

I believe the Bureau of Indian Affairs when they say that they are trying to resolve discrepancies in the Trust Fund. I also believe the Bureau when they claim that they are working to the best of their ability. Keeping track of 310,000 individual accounts and 2000 tribal accounts is a management and accounting nightmare. It is no less of a nightmare when one considers the limited financial and personnel resources of the Finance and Accounting Branch of the Bureau of Indian Affairs.

I am hopeful that today's hearing will be helpful to both Members of Congress and the Bureau of Indian Affairs as we work to develop and implement responsible solutions to the problems with the Indian Trust Fund.

Thank you Mr. Chairman.

Mr. SYNAR. Mr. Bustamante.

Mr. BUSTAMANTE. Mr. Chairman, I have no opening statement.

Mr. SYNAR. Mr. Thomas.

Mr. THOMAS. Mr. Chairman, I have no opening statement. But I do want to tell you, as you know, we have a considerable amount of interest in this matter in Wyoming, so I'm pleased to be here and I appreciate the opportunity to listen.

Mr. SYNAR. I'm glad you are here because, as you know, there are over 254 tribes that are affected by this Indian Trust Fund—many in your State, many in my State, and I'm sure that in a bipartisan effort to try to solve this problem we may come to some solutions today.

Our first panel this morning will be Mr. Robert Hunter, the associate general counsel of the U.S. General Accounting Office. He will be accompanied this morning by Mr. Alan Belkin, senior attorney; John A. Carter, senior attorney, and Jerold D. Cohen, assistant general counsel.

If you gentlemen would come forward at this time.

Gentlemen, as you are aware, in order not to prejudice past or future witnesses we request that all witnesses be sworn in. Do any of you have any objections to being sworn?

[No response.]

Mr. SYNAR. Anyone who may be asked to testify or answer questions might want to stand up and take the oath. Raise your right hand.

[Witnesses sworn.]

Mr. SYNAR. Gentlemen, welcome again. We look forward to including your entire testimony as part of the record, and at this time we welcome your summary.

STATEMENT OF ROBERT HUNTER, ASSOCIATE GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY ALAN BELKIN AND JOHN CARTER, SENIOR ATTORNEYS; AND JEROLD D. COHEN, ASSISTANT GENERAL COUNSEL

Mr. HUNTER. Thank you, Mr. Chairman.

John Carter and Alan Belkin are sitting with me; they are the attorneys who are working on our two decisions that you requested. Mr. Cohen is with us also, but not at the table.

We have submitted our prepared statement for the record, and I have a summary here which I will read.

The Assistant Secretary for Indian Affairs, acting through BIA, as you just mentioned, manages approximately \$1.7 billion worth of trust funds belonging to Indian tribes, individual Indians, Alaska Natives, and Native corporations, and irrigation and power projects.

Historically, BIA has performed virtually all trust management functions in-house. That includes the receipt, control, investment, and disbursement of trust funds.

In 1988, BIA initiated a contracting-out study under OMB Circular A-76 to determine whether some or all of these services could be obtained more cost effectively through the private sector.

Security Pacific National Bank was one of two respondents to BIA's solicitation. The BIA concluded that Security Pacific had submitted the best offer from the private sector and also that it was better than the offer that BIA had developed under the A-76 procedures itself and it awarded a contract on September 14, 1988.

You asked us two questions. The first was whether this acquisition should have been conducted under the rules applicable to the acquisition of automatic data processing—the Brooks Act.

We responded in our decision of September 28, which we understand the committee is releasing today. As we said in that decision, the acquisition of ADP equipment and services by Federal agencies is governed by the Brooks Act which gives overall authority for the acquisition of ADP by Federal agencies to the Administrator of GSA.

An agency, normally, when it's going to have procurement requiring significant amounts of ADP, goes to GSA for a delegation of procurement authority prior to beginning the procurement. BIA did not do that in this case because they considered that the ADP portions of this contract were not significant enough to warrant a DPA.

The Brooks Act covers acquisition of services which make significant use of ADP—and that's the key phrase in our opinion.

We conclude in our decision that this particular acquisition does require the significant use of such equipment and services and, therefore, that it should have been conducted under the Brooks Act.

The Bureau's failure to obtain a delegation of procurement authority now leaves it in the position, in our opinion, of holding a contract for which it lacks the appropriate authority.

We recommend in our decision that the Bureau stop work under the contract until it's been able to work out this problem with GSA.

The other issue you asked us to discuss involves BIA's basic authority to contract with the private sector for these services. In particular, you asked whether BIA may contract for the disbursement of Indian trust moneys. We have not completed our analysis of this issue and, therefore, we can't give you a definitive answer today but we can discuss our preliminary views. We will be giving you a written opinion in the near future.

It's BIA's position that its contract with Security Pacific does not involve any management functions of its Indian Trust Fund program. BIA states that "management or decisionmaking functions will continue to be a BIA responsibility."

There are four basic categories of service in this contract.

First is maintaining trust fund accounts.

Second is recordkeeping and reporting.

Third is providing investment advice to BIA.

And fourth is the disbursement function which you asked us to comment on specifically.

We don't expect to have a problem with the first three categories. With respect to disbursement, Security Pacific is going to provide disbursement services only for two accounts: the individual Indian money account and the tribal trust fund account. The

Treasury Department will continue to provide disbursement services for the other accounts that are dealt with in this contract.

Those two accounts, however, are by far the largest that BIA administers, both in terms of money and in terms of the number of accounts and the number of people interested in them.

The problem is that by statute only Government officials who are disbursing officers legally can disburse public money. If it's public money it has to be disbursed either by a Treasury Department employee or by another Government employee to whom that authority has been delegated.

Historically when GAO has looked at issues of what constitutes public money, we've considered trust funds, including Indian trust funds, to be money that's subject to this disbursement requirement.

In this case, Interior and BIA have concluded that since the amounts in these two funds—the individual Indian money and tribal trust funds—are held in trust for specific individuals or tribal entities; in other words, the beneficiaries are known; they, therefore, are not public moneys and, therefore, are not covered by the disbursement by Government officials requirement. BIA and Interior, therefore, take the position that a contractor may handle the disbursement.

This is a position that we at GAO have not addressed before and at this time can't say whether we agree with it or not, but we're considering it right now.

There's one other issue that we're also considering and which we're consulting with the Department of Treasury on, and that is even if it's decided that the trust funds are public moneys, the contract provides that the contractor shall only make disbursements as requested by BIA; so BIA is maintaining some element of control.

Depending on how this provision is implemented, it may be that the essential disbursement function that's required by statute has been retained in BIA and that the contracts would just be carrying our administrative duties. As I say, we're discussing this with the Department of Treasury and also with Interior.

That is the end of my summary, Mr. Chairman. We'd be happy to entertain any questions.

[The prepared statement of Mr. Hunter follows:]

United States General Accounting Office

GAO

Testimony

For Release
on Delivery
Expected at
9:30 a.m. EST
Thursday
October 26, 1989

Bureau of Indian Affairs'
Contract for Management and
Operations of Indian Trust Funds

Statement of
Robert Hunter, Associate General Counsel

Before the
Subcommittee on Environment, Energy and
Natural Resources
Committee on Government Operations
House of Representatives



Mr. Chairman and Members of the Committee:

We are pleased to be here today to discuss the contract awarded by the Bureau of Indian Affairs to the Security Pacific National Bank for accounting, financial, trust and investment services. You previously asked us whether this acquisition should have been conducted under the rules applicable to the acquisition of automatic data processing equipment and services to which we responded in our decision of September 28. You also have asked for our assessment of the Bureau's fundamental authority to contract with a third party for the management and operation of the Indian trust funds. Our testimony today will highlight our decision of September 28 and provide an interim update on the status of our response to your latter question.

The Assistant Secretary-Indian Affairs acting through BIA is responsible for management of the Indian Trust Funds. BIA currently manages approximately \$2.4 billion in trust funds belonging to Indian tribes, individual Indians, Alaska natives and Native Corporations, and irrigation and power projects. The primary sources of the money in the various Indian trust funds are court judgments, income generated from the sale or lease of trust resources such as timber,

oil, gas, rangeland, and water rights, and collections from irrigation and power projects.

We have issued at least 5 reports in recent years discussing the BIA's problems in implementing financial controls and providing effective management of resources. A recent Arthur Andersen & Company audit, issued on March 23 of this year, revealed many deficiencies in the Bureau's management of the trust assets. The objective of the acquisition that is the subject of today's hearing was described by the Bureau as an effort to improve upon its timeliness, accuracy, accountability, control and quality of services to eligible Indian and Native Americans and tribal organizations.

As trustee and manager of the Indian trust funds, BIA historically has performed in-house, with some assistance from the Department of Treasury, all of the trust management functions, including receipt, control, investment and disbursement of trust funds. After BIA determined that private sector institutions might be better able to perform some of the financial trust services BIA has been performing, BIA issued a request for proposals for financial trust services as the first step in the conduct of a contracting-out study under the provisions of Office of Management and Budget Circular A-76. The objective of such a study is to identify and select the most cost effective

method, through a competition between private sector contractors and in-house resources and employees, of obtaining needed services.

The request for proposals issued by BIA stated that the purpose of the contract was to provide BIA integrated external services encompassing cash collection and concentration, investment services, disbursement services, custody of trust fund accounts, distributing earnings, depositing funds into the Treasury, and reporting. The specifications stressed the importance of the vendors' data processing capabilities. Vendors responded with proposals premised on contractual terms and pricing. An in-house proposal was prepared on the basis of the most efficient organization and anticipated costs. The BIA concluded that Security Pacific National Bank had submitted the better private sector offer. The BIA compared Security Pacific's offer to its in-house proposal and concluded that the Bank's offer provided the most cost-effective solution to BIA's requirements. The BIA awarded the contract to Security Pacific on September 14, 1988.

As we noted in our decision, the acquisition of automatic data processing equipment and services by federal agencies is governed by § 111 of the Federal Property and Administrative Services Act, popularly known as the Brooks

Act. The Act gives overall authority for the acquisition of ADP by federal agencies to the Administrator of General Services and provides that the Administrator may delegate this authority. An agency normally would approach the General Services Administration for a delegation of procurement authority prior to initiating a significant ADP acquisition.

The BIA previously indicated that it never considered whether the Brooks Act might apply to this acquisition. In response to a specific question from our Office regarding the applicability of the Brooks Act, the BIA stated that the services requested by the RFP were either transactional or advisory in nature and, therefore, that no delegation of procurement authority was required.

The Brooks Act, as amended in 1986 by the Paperwork Reduction Reauthorization Act, covers the acquisition of services performed making significant use of automatic data processing equipment and makes no exception for what BIA called transactional or advisory services. As we conclude in our decision, this acquisition encompasses services falling within the act, because it requires significant use of automatic data processing equipment, and should have been conducted under the provision of the Brooks Act.

As we also noted in our decision, the Bureau's failure to obtain a delegation of procurement authority from the General Services Administration leaves the Bureau in the position of holding a contract for which it lacks appropriate authority. We reiterate here our recommendation that the Bureau halt work under the contract and explore with the Administrator the resolution of this deficiency.

The other issue you asked us to discuss today concerns BIA's authority to contract with a third party for the management and operation of Indian trust funds. In particular, you asked whether BIA may contract with a third party to disburse Indian trust fund monies. We have not yet completed our legal analysis of this issue and therefore cannot now provide you with a definitive answer to the questions you have raised. However, we are prepared to discuss our preliminary views of these issues based on our analysis to date, and will furnish you with a written legal opinion as soon as it is completed.

The Supreme Court has held that in managing Indian trust funds the United States should be judged by the "most exacting fiduciary standards". Ordinarily, a trustee cannot delegate fiduciary responsibilities that involve the exercise of judgment and discretion. OMB Circular A-76 specifically provides that the "administration of public

trusts" is an inherently Governmental function that should only be performed by Federal employees.

This, of course does not mean that the Government as trustee cannot engage contractors to assist in discharging its trust functions. Indeed, it is BIA's position that its contract with Security Pacific does not involve "any management functions of its Indian trust fund program". BIA maintains that the services it contracted for are nonmanagerial and that "[m]anagement or decision making functions will continue to be a BIA responsibility".

Based on our analysis of this issue to date, we agree, for the most part, with BIA's position. The services BIA has contracted for fall primarily into the following 4 categories:

- 1) Maintaining trust fund accounts, including cash collection and concentrations
- 2) Record-keeping and reporting on trust fund accounts;
- 3) Providing investment advice and executing investment transactions as directed by BIA;

- 4) Making disbursement from trust funds as requested by BIA.

We are not inclined to question BIA's authority to contract for the first three services. First, with respect to the contractor's responsibility to maintain the trust fund accounts and have physical custody of trust fund monies, the Secretary of the Interior, and hence, BIA, is expressly authorized by statute, 25 U.S.C. § 162a, to deposit trust fund monies in such bank or banks that he selects. Second, as a necessary corollary to such authority, the Secretary may require any bank selected as a depository for trust fund monies to keep accurate records of all trust fund transactions and make reports to BIA. Third, while the Secretary of the Interior cannot lawfully delegate his statutory authority under 25 U.S.C. § 162a to determine whether to invest trust funds in public-debt obligations of the United States or other obligations unconditionally guaranteed by the United States to any non-Governmental third-party, the contract does not provide for such a broad delegation of authority. Rather, under the contract, Security Pacific only provides investment advice to BIA; BIA retains full responsibility to make the final trust fund investment decision. Subject to BIA's retention of adequate controls and safeguards to ensure that Security Pacific invests trust fund monies only as instructed, we would not

object to BIA's contracting for investment advice and services.

You also asked us to discuss whether BIA may contract with a third party to disburse Indian trust fund monies. Under the contract, Security Pacific will provide disbursement services only for the Indian tribal trust funds and individual Indian monies (IIM) trust funds while the Treasury Department will continue to perform the disbursement functions for the other types of Indian trust funds covered by the contract. The tribal trust funds are the largest of the Indian trust funds BIA manages, with approximately 1,700 separate accounts for almost 300 different tribes. The IIM trust funds are the second largest category of trust funds covered by the contract, with approximately 300,000 separate accounts maintained for individual Indians, associations of Indians, and Indian corporations.

By statute, only government Disbursing Officers legally can disburse "public money." Historically, we have considered trust funds, including Indian trust funds, to be public money subject to the disbursement requirement. We understand that BIA has now concluded that since amounts in the IIM and tribal trust funds are held in trust for either

specific individuals or tribal entities, they are not public monies.

Further, even if the funds are considered to be U.S. public moneys, we note that the contract provides that the contractor shall only make disbursements "as requested by BIA." Depending on how this provision is implemented, it may be that the essential disbursement function has been retained in BIA and that the role of the contractor is merely ministerial.

Our Office is still in the process of working with the BIA and Treasury to resolve these issues. We will provide you with a copy of our opinion on them as soon as it is available.

Mr. Chairman, this conclude my prepared statement. I will be happy to answer any questions you or members of the Committee may have at this time.

Mr. SYNAR. Thank you, Mr. Hunter. That is very helpful.

Now, your report suggests that the acquisition of services is subject to the Brooks Act if those services are performed making significant use of computers; is that correct?

Mr. HUNTER. Yes, that's correct. I mentioned that the Brooks Act requires a delegation of procurement authority when significant use of computers is going to be made. That was a change that was made in 1986, to broaden the definition and, in our opinion, to express congressional intent that the reach of GSA's authority ought to be a little broader than it had been in the past.

Mr. SYNAR. And you recommend that the Bureau halt work on the contract until they work out the Brooks Act problem with the GSA. I guess the natural question is, why should they halt work?

Mr. HUNTER. Well, there are two reasons. One, the consequence of a decision that they need a delegation of procurement authority means that they entered into this contract without the requisite authority. There's a possibility—I don't know whether its remote or real—that GSA might not provide that delegation of procurement authority when they go and ask for it. That could lead to a decision to terminate the contract. So if you stop work now, you're going to limit potential termination liability. If they continue to work, obviously there will be more liability.

Mr. SYNAR. I guess the question now is, were BIA's requirements accurately stated? In other words, we understand that the winning vendor proposed as a first step that BIA and the vendor sit down and identify exactly what the BIA wants, and that's the usual thing to do, isn't it? How does it work?

Mr. HUNTER. That it's usual for the vendor and the agency to sit down together as a first step?

Mr. SYNAR. Yes.

Mr. HUNTER. Yes, that is usual, particularly in this kind of a situation. The specifications here were drawn in broad, functional terms. That is, in this kind of procurement, not a bad way to draw the specifications because it lets the contractor propose his own approach to solving the problems that he needs to solve. It also avoids the possibility of unduly restricting competition, because the more specific you get, sometimes the more you drive the procurement award to one particular contractor. So this was not an unusual way for this contract to begin.

Mr. SYNAR. Is there any risk involved?

Mr. HUNTER. Well, that's not really a question that we looked at in the Office of General Counsel, but we did discuss this RFP with our technical people at GAO, what they said was that when you have these broad, functional kinds of specifications, sometimes the agency in drafting them might have overlooked potential problems, so that as you get down into the detail, you might find that it's either going to cost more money or take more time.

Mr. SYNAR. Is there any way BIA could have mitigated the risks associated with this situation?

Mr. HUNTER. Well, they are required by the Federal acquisition regulation to perform a risk assessment before they go out with a request for proposals. We understand they did that in this case. We haven't looked at that risk assessment, but we understand that it was done.

Mr. SYNAR. What else could they have done?

Mr. HUNTER. Well, I—

Mr. SYNAR. What else could they or should they have done?

Mr. HUNTER. I guess the problem—and again, this was what our technical people said—was that the risk here is possibly that they underestimated the complexity and, therefore, the amount of time needed to get the project developed.

Mr. SYNAR. Let me see if I can explore this a little bit. When you're real general with your specifications, doesn't that put an additional burden on the agency itself to enforce the contract?

Mr. HUNTER. Yes, I think that's true.

Mr. SYNAR. And if they do not have specific things outlined, then they're going to have to accept more of that burden in managing it, correct?

Mr. HUNTER. That's right.

Mr. SYNAR. And so the BIA really had to sit down with the contractor and either accept more responsibility in the management or almost give it all away and let the contractor ride to where there would be no competition, correct?

Mr. HUNTER. Yes, that's right, except that they state in their correspondence with us, and also in the contract, that they are maintaining decisionmaking responsibility. So, to me, that suggests there will be close and continuing contact between the BIA people and the contractor people.

Mr. SYNAR. I think the bottom line I'm trying to get to is, the decisions you make in this initial meeting really have a tremendous impact on the cost, don't they?

Mr. HUNTER. Potentially, that's certainly true, yes.

Mr. SYNAR. And what would those be? I mean, if there's mistakes made and—

Mr. HUNTER. Well, if it turns out to be much more complicated than you originally envisioned, that's going to have an impact on the ultimate cost. There might be cost overruns that are probably going to impact the schedule, and maybe the schedule is a little too ambitious so it's going to take longer.

Mr. SYNAR. Let me ask you something, Mr. Hunter. What is the historical basis for considering Indian trust funds to be public moneys?

Mr. HUNTER. Well, the Supreme Court has taken the position that when a Federal officer deposits funds held in trust for the Indians in a private bank, that if that money is paid out erroneously or disappears, the United States still owes the money to the person for whom it was held in trust. So when the GAO has looked at that issue in the past, we have concluded that that, therefore, makes the trust funds equivalent to public moneys. The legal concept, is that while those moneys are being held by the Government, the Government holds title to them until they're disbursed to the trustee.

The second reason is that, as I mentioned a minute ago, when an erroneous payment is made, the Government still is under an obligation to pay the proper person. So it makes the trust funds be—for purposes of disbursement and the kind of controls that the disbursement statutes were enacted to put in place—it makes those trust funds very similar to regular Federal funds.

Mr. SYNAR. What is the BIA's position on that?

Mr. HUNTER. Well, the BIA obviously has been looking at this question for a couple of years and they corresponded with the Treasury Department on it. I think their position has evolved. At one point they took the position that all of the trust fund moneys had to be disbursed by Treasury, that you couldn't contract it out. Their position now is, as I mentioned in the summary of my statement, with respect to these two accounts, disbursement can be contracted out because the beneficiaries are already known, so that makes the trust funds not public money.

Mr. SYNAR. Thank you. Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Chairman.

Mr. Hunter, help me just a little bit on some background, which some of the rest of you have and I don't. Just in a word or two, what's the reason for wanting to contract with a private operator?

Mr. HUNTER. Well, they did an A-76 study, where they compared the cost for doing it in-house to the cost for doing it by contractor, and their conclusion, after an analysis of the costs and the amount of manpower needed and so on was that it would be more cost-effective to use a contractor.

Mr. THOMAS. Would likely have better results in the investment?

Mr. HUNTER. Well, I think that's their hope, yes, sir.

Mr. THOMAS. How long has there been troubles in the investing of the funds, in your view?

Mr. HUNTER. Well, I know GAO, over the past several years, has had a number of reports looking at various problems at BIA, and I know that Interior's inspector general has reported similar problems. I don't have a precise fix on how many years it's been, but it has been a longstanding problem.

Mr. THOMAS. So you would think generally this is a good idea?

Mr. HUNTER. I think there's nothing wrong with the idea of contracting this out. There are some procedural problems that need to be solved first.

Mr. THOMAS. So your inquiry is limited pretty much to the procedural aspect?

Mr. HUNTER. Yes, sir, that's correct.

Mr. THOMAS. Have you dealt at all with—I read where there's language in the Interior bills over the last several years which prohibit this sort of a thing. Is that true?

Mr. HUNTER. Well, I don't think they prohibit it. If I understand it correctly, what they do is they say BIA can't transfer any trust funds to the bank until a reconciliation of the accounts, which has been approved by a third party, an accounting firm, has been made. I understand—

Mr. THOMAS. Has that reconciliation occurred?

Mr. HUNTER. I don't think it has, but I think that the plan at BIA is that it will occur before this contract proceeds.

Mr. THOMAS. I see. These are general questions, and I understand that. But, you know, the bottom line is to deliver as many resources as possible to the owners of these trust funds; would you agree with that?

Mr. HUNTER. That's absolutely correct.

Mr. THOMAS. It's been in troubles for some time. How do you think this can come to a happy conclusion, quickly?

Mr. HUNTER. Well, hopefully, once the accounts are reconciled, the—

Mr. THOMAS. How long have they been unreconciled?

Mr. HUNTER. As I mentioned before, I don't have a fix on the time, but it's been a long time.

Mr. THOMAS. That's sort of discouraging, isn't it?

Mr. HUNTER. Yes, it is.

Mr. THOMAS. And what do you propose to do to help that?

Mr. HUNTER. Well, I think what Interior proposes is that by giving this responsibility to a contractor which will devote full time and attention to it, that it will be done more efficiently and more cost effectively, so that the—

Mr. THOMAS. And your role then is to help unravel the problem of getting that done; is that right?

Mr. HUNTER. Well, our role is to assist the Congress in looking at problems that we were requested to look at.

Mr. THOMAS. How about solutions? Do you help with the solutions?

Mr. HUNTER. And to attempt to find solutions.

Mr. THOMAS. That's interesting, and I'm glad we're holding these hearings. But each time we come to this, we hear about the problems. Everyone is an expert on the problems but we have damned few experts on the solution, apparently. So I would hope we could move in that direction.

Thank you very much.

Mr. HUNTER. You're welcome.

Mr. THOMAS. Thank you, Mr. Chairman.

Mr. SYNAR. Thank you, Mr. Thomas. Mr. Bustamante.

Mr. BUSTAMANTE. Thank you, Mr. Chairman.

Mr. Hunter, let me ask you in reference to the bids that were held in September of last year—was that it?

Mr. HUNTER. Yes, sir.

Mr. BUSTAMANTE. There were two bidders?

Mr. HUNTER. That's correct.

Mr. BUSTAMANTE. How come there were only two bidders? I mean, with \$2.4 billion worth of money, there's nobody else that would like to bid on trying to—

Mr. HUNTER. Well, I'm sure that a lot of people would have liked to have bid, and this was publicly advertised, so that anyone who was qualified could bid. I think one possible reason there were only two bidders was that there was a restriction that any bidder had to be a Federal depository, as designated by Treasury. So that someone who might otherwise be qualified to do the work but who didn't qualify as a depository was excluded from bidding.

Mr. BUSTAMANTE. And there were only two, the in-house and—

Mr. HUNTER. Well, there were three if you count the in-house. There was an in-house bid, Security Pacifics, and one other bidder.

Mr. BUSTAMANTE. Are you telling me that there's hardly anybody else that could bid on this contract because they're not a Federal—

Mr. HUNTER. There are many Federal depositories. Why there are only two bidders, I really—I can't give you an answer.

Mr. BUSTAMANTE. Well, when were the restrictions imposed on these bidders? Were they so overly restrictive that people were afraid to bid on this contract?

Mr. HUNTER. No. In fact, it was the other way around. The restrictions were stated very broadly so that a lot of discretion was left up to the bidder to propose how actually to carry out the functions under the contract.

Mr. BUSTAMANTE. So Security Pacific, since a little over a year ago, has had this contract. Was there a time limit where they could come up with a plan?

Mr. HUNTER. There is a schedule in the contract, yes, sir.

Mr. BUSTAMANTE. And what happened to that schedule?

Mr. HUNTER. I'm going to ask Mr. Carter to help me—but I think the schedule is 6 months, is that correct?

Mr. CARTER. I believe that's right. I believe there was a 6-month period for the completion of whatever development or adaptation was involved, and implementation of the system. I understand we're now well past that.

Mr. BUSTAMANTE. And now it's 6 months overdue, or past, the time schedule?

Mr. CARTER. Yes.

Mr. BUSTAMANTE. And what has happened?

Mr. CARTER. To be honest, Mr. Bustamante, we really didn't do an audit on this project. I'm not certain I could tell you what the current status is. We haven't looked at that aspect of it.

Mr. BUSTAMANTE. So would we be premature at this time to be looking at this thing?

Mr. CARTER. No, not at all.

Mr. BUSTAMANTE. How do you then assume that the trust fund is being mismanaged?

Mr. HUNTER. We didn't assume that, Mr. Bustamante.

Mr. BUSTAMANTE. Or that there has been a history. Is that—

Mr. HUNTER. There has been a history that's been documented in a number of reports by independent organizations, including the Interior inspector general.

Mr. BUSTAMANTE. Now, in your testimony, Mr. Hunter, you said "By statute, only Government disbursing officers legally can disburse public money. Historically, we have considered trust funds, including Indian trust funds, to be public money subject to the disbursement requirement." You mention a Supreme Court decision, I believe, also in your testimony.

Mr. HUNTER. Yes, sir.

Mr. BUSTAMANTE. But it also says, "We understand that BIA has now concluded that since amounts in the individual Indian moneys and tribal trust funds are held in trust for either specific individuals or tribal entities, they are not public moneys."

Can you unravel that for me? You say you have a Supreme Court decision that says that they're really public moneys. Is the BIA giving us a different interpretation on that opinion?

Mr. HUNTER. Not of that opinion. The Supreme Court decision wasn't addressing this specific issue, but what it said was that trust funds that were in a bank represented debts to the Government, meaning that the Government would have to make good on paying that money out if it was paid out erroneously or lost. Our interpre-

tation of that is that when you're dealing with funds that place those kinds of responsibilities placed on the Government, that the same controls over those funds that have been established for funds that come out of the Treasury should be applied.

The Department of the Interior has cited other Supreme Court cases that discuss Indian moneys and that have made a distinction between trust funds and public funds. Those cases, though, dealt with situations where you had restrictions on the use of money that the Congress gave for purposes of helping the Indians, where the money would be provided but could only be used for certain purposes.

Mr. BUSTAMANTE. Mr. Chairman, thank you.

Mr. SYNAR. Thank you, Mr. Bustamante.

Gentlemen, again let me thank you and GAO for the outstanding job you always do. Your insight today has helped us move this whole discussion forward. So we really do thank you again, Mr. Carter and Mr. Belkin and all the people that worked on this project.

Mr. HUNTER. Thank you, Mr. Chairman.

Mr. SYNAR. Our next panel will be Mr. James R. Richards, inspector general for the U.S. Department of the Interior, Washington, DC. Mr. Richards, would you come forward.

Mr. Richards, do you have any objection to being sworn in?

Mr. RICHARDS. No.

[Witness sworn.]

Mr. SYNAR. Your entire testimony will be made a part of the record. At this time we welcome your comments.

**STATEMENT OF JAMES R. RICHARDS, INSPECTOR GENERAL, U.S.
DEPARTMENT OF THE INTERIOR**

Mr. RICHARDS. Thank you, Mr. Chairman. I'm a panel of one.

Mr. SYNAR. I saw that after I started.

Mr. RICHARDS. I have a brief statement, and thank you for inserting it in the record. If I may briefly summarize, then I'll be glad to answer any questions the subcommittee has.

The objective of our audit was to determine whether Indian Trust Fund investments of \$1.7 billion as of June 30, 1988, shown in BIA's official accounting records and reported to the U.S. Treasury, were valid. At the same time, a certified public accounting firm, as you have mentioned, had been engaged by BIA to perform a full-scope financial review of tribal and individual Indian trust funds.

Our audit questioned the credibility of BIA's accounting for the \$1.7 billion invested by BIA on behalf of Indian tribes and individual Indians. The audit highlighted four areas basically of deficient accountability:

First, \$17 million of Indian Trust Fund investments could not be accounted for in BIA's official accounting records.

Second, \$12 million of identified trust fund losses had not been recognized in BIA accounts or reimbursed to those Indian account holders experiencing the losses. BIA's practice was not to disclose the losses but to instead wait until the account holders discovered the losses and then filed claims or sued the Government.

Third, BIA did not maintain accountability over \$23 million in guaranteed loans transferred to an outside fiscal agent and, as of today, the status of \$5 million of this amount cannot be determined.

Fourth, \$2.4 million of overnight interest was not earned because BIA underreported deposits to the U.S. Treasury.

We have recommended in the audit report greater centralized management control and authority over all aspects of trust fund operations, including cyclical reviews and periodic reconciliations of trust fund accounting balances. Currently, trust accounting, data processing and investment are all performed by different divisions within the Bureau.

BIA's response to the draft report expressed general agreement with these recommendations. Since issuance of the report, BIA has initiated some actions to improve internal controls, determine the liability of trust fund losses, and resolve the overnight interest problem. However, the Bureau still does not intend to establish procedures to effect reimbursement of recognized losses.

With that summarization, Mr. Chairman, I would be glad to submit to any questions.

[The prepared statement of Mr. Richards follows:]

OPENING STATEMENT OF MR. JAMES R. RICHARDS
INSPECTOR GENERAL, U.S. DEPARTMENT OF THE INTERIOR

OVERSIGHT HEARING ON THE BUREAU OF INDIAN AFFAIRS
MANAGEMENT OF THE FINANCIAL TRUST SERVICES CONTRACT
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT, ENERGY AND NATURAL RESOURCES
COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

Mr. Chairman, members of the Committee, I am pleased to appear before you today to discuss the results of our recent audit of the Bureau of Indian Affairs trust fund activities.

The objective of our audit was to determine whether Indian trust fund investments of \$1.7 billion as of June 30, 1988, shown in BIA's official accounting records and reported to the U.S. Treasury were valid. At the same time, a certified public accounting firm had been engaged by BIA to perform a full-scope financial review of tribal and individual Indian trust funds.

Our audit questioned the credibility of BIA's accounting for the \$1.7 billion invested by BIA on behalf of Indian tribes and individual Indians. The audit highlighted four areas of deficient accountability.

- First, \$17 million of Indian trust fund investments could not be accounted for in BIA's official accounting records.

- Second, \$12 million of identified trust fund losses had not been recognized in BIA accounts or reimbursed to those Indian account holders experiencing the losses. BIA's practice was to not disclose the losses, but to instead wait until the account holders discovered the losses and filed a claim or sued the Government for recovery.

- Third, BIA did not maintain accountability over \$23 million in guaranteed loans transferred to an outside fiscal agent, and as of today, the status of \$5 million of this amount cannot be determined.

- Fourth, \$2.4 million of overnight interest was not earned because BIA underreported deposits to the U.S. Treasury.

BIA's official general ledger and subsidiary accounting records of trust fund investments were considered unreliable to accurately account for the trust funds. As of June 30, 1988, BIA's general ledger accounting balances exceeded confirmed certificates of deposit and other investments by \$17 million. There is a possibility that these missing funds may never be accounted for or recovered. The \$17 million shortage consists of \$3.1 million of certificates of deposit and \$13.9 million of other investments in Government instruments. The primary cause for this unreliable accounting system was that BIA did not perform adequate reconciliations of subsidiary records of actual investments with the official general ledger accounting records. Also, they did not implement effective internal controls or correct long-standing unresolved differences in individual accounts.

BIA has neither recognized investment losses in its official accounting records nor reimbursed accounts, when

appropriate, for losses of invested trust funds. At the time of our audit, identified and recognized investment losses and accumulated interest totaled approximately \$12 million. BIA did not properly account for known losses because it had no formal policy and related procedures for recognizing the loss of invested trust funds. BIA's practice was to not disclose the losses, but rather wait for the account holders to become aware of the losses, if they ever did, and to file a claim or sue the Government for recovery of the funds

BIA did not adequately control Indian trust funds invested by it in Government-guaranteed loans. In 1983, BIA transferred about half of its guaranteed loans to a fiscal agent without documenting the actual number and dollar value transferred. As a result, BIA lost accountability for about \$23 million of guaranteed loans involved in this transfer. BIA is still unable to provide evidence supporting the payoff of loans totaling \$3.5 million maintained by the agent or \$1.5 million of loans it has maintained.

Tribal trust fund accounts for over 200 tribes were not credited with the correct interest for overnight deposits with the U.S. Treasury for the period July 1985 through December 1986. BIA did not earn sufficient interest to reimburse the accounts because it underreported the amount

of daily deposits. Unearned and undistributed interest for the period amounted to \$2.4 million (including interest) that would have been earned through April 30, 1989.

We have recommended greater centralized management control and authority over all aspects of trust fund operations, including cyclical reviews and periodic reconciliations of trust fund accounting balances. Currently, trust accounting, data processing, and investment are all performed by different divisions within the Bureau.

BIA's response to the draft report expressed general agreement with these recommendations. Since issuance of the report, BIA has initiated some actions to improve internal controls, determine the liability for trust fund losses, and resolve the overnight interest problem. However, the Bureau still does not intend to establish procedures to effect reimbursement of recognized losses.

I will be pleased to respond to questions from the members of Committee.

Mr. SYNAR. Thank you very much, Mr. Richards.

What is your overall conclusion regarding the problems which you identified in the trust fund audit?

Mr. RICHARDS. Well, these are not new problems, Mr. Chairman. Over the past 10 years—problems have been identified in trust fund administration by CPA firms, by the GAO, and by our own reports.

What is most disturbing about this, the most disturbing problem, is that there has been virtually no oversight of trust fund administration from BIA headquarters.

Mr. SYNAR. Do you think this report is going to help and that these problems will be corrected?

Mr. RICHARDS. Well, I think we have to use history as a judge. My organization, or its predecessor, which existed prior to the creation of the inspector general at Interior, over the past 20 years has done an historical review of the longstanding, recurring problems of the Bureau of Indian Affairs. At the top of the list of those problems has been not only trust fund accounting but any kind of financial accounting by the Bureau of Indian Affairs. It is not something that they do very well, and history has basically showed that.

Mr. SYNAR. You know, the Bureau is now contracting with a national banking firm to operate its trust fund investment program. Mr. Richards, what is your view regarding turning over these investment responsibilities to a bank?

Mr. RICHARDS. Let me give you a bit of background.

In 1983, my office, in an audit, following up an earlier GAO audit in 1982 showing deficiencies in trust fund accounting, recommended, among other things, that the BIA study the feasibility of contracting out this function. The reason for that was obvious: Because of our longstanding concern that the Bureau of Indian Affairs just wasn't very good at doing this job.

We understood at that time, and mentioned it in that audit report in 1983, that the Bureau already had a contractor to study the feasibility. We posed a number of questions that they should address in that study, including the legal ramifications, what the Treasury responsibility was, and what oversight, effective oversight, BIA would continue to exercise, because the trust responsibility of the Secretary, of course, cannot be delegated to an outside party.

Mr. SYNAR. You also mentioned in your statement this morning that there was \$17 million, I think it was, of Indian Trust Fund investments that could not be accounted for. Could you be more specific as to what happened to those funds? Were they stolen? What happened?

Mr. RICHARDS. Because of the poor condition of the accounting records, we can't tell whether the funds were misappropriated or whether a legitimate transaction had occurred and had not been recorded in the books. In other words, the records were in such a sloppy condition, if I can put it that way, that we simply did everything we could to reconcile their general ledger, which is their official accounting record, against all of the subsidiary ledgers and subsidiary records that we could find. We still found \$17 million simply was unaccounted for. That's the best we could say.

Mr. SYNAR. What does that \$17 million represent?

Mr. RICHARDS. Well, it represents basically the difference between BIA's official accounting records—that is, the general ledger—and what we were able to verify as investments through actual visits to banks and verifications.

Mr. SYNAR. It seems funny to me. I thought the Bureau employees were supposed to be doing these types of reconciliations over the years. It appears to me that you're doing it for them now. Is that a correct characterization?

Mr. RICHARDS. Well, yes, I think probably it is correct. We finally came in when we knew that a contract had been let. We decided that it was time for us to come in and do a thorough audit and see if we could reconcile the accounts. Because in the past, when we had done pieces of the trust fund, for instance, the individual Indian money accounts we had found that they were in horrendous shape.

Mr. SYNAR. So it's impossible for you to do a specific breakdown on the moneys lost to individuals or tribes?

Mr. RICHARDS. We basically have to go back to the beginning of time and try to reconstruct each transaction. Of course, records don't exist that far back.

We did the next best thing. We verified the current investments and then, of those for which we could obtain no verification, we actually went to banks. We visited over 80 banks to verify that there were certificates of deposit, for instance, on file for the trust account. We also verified by mail other investments. That was the best that we could do without, as I say, going back to the beginning of time.

Mr. SYNAR. On page 13 of your report it says, "We believe that the primary reason why Indian account holders were not reimbursed for losses they sustained is because the Bureau did not have a formal policy to reimburse account holders for losses." You go on to say, "From our review, we determined that the Bureau's practice regarding known losses and to wait for the account holders to become aware of the losses of trust funds has been not to disclose the losses (if they ever do) and to file a claim or sue the Government for recovery of the funds."

Now, if the Bureau has no policy on how to identify the losses—did they indicate to you that they had no policy? What did they indicate to you?

Mr. RICHARDS. Well, it evolves through a series of circumstances which led to that inevitable conclusion. The Bureau didn't tell us what their policy was or wasn't, but we found the losses discussed in the report and in reviewing correspondence files and interviewing Bureau employees, we inquired as to whether these losses were accurate—and they were. When we identified a loss, we followed the trail to determine how the Bureau disposed of it. In no case did we find the Bureau had notified the affected parties, or had reimbursed the trust fund account that had experienced the loss.

Once legal attempts to recover the losses from principals or insurers had been exhausted, the Bureau did not pursue the matter further. We therefore concluded that it was the Bureau's practice not to disclose investment losses to tribes or individual Indians.

Mr. BUSTAMANTE. Would the chairman yield?

Mr. SYNAR. Yes, I will.

Mr. BUSTAMANTE. Mr. Chairman, the Bureau is liable, 100 percent, am I correct? So any losses that are incurred on the trust fund, the Bureau has the responsibility to replace those funds; am I correct?

Mr. RICHARDS. I think the lawyers would probably have to answer that, Mr. Bustamante, case by case. For instance, some of the losses I think could fairly be characterized as not the fault of the Bureau. Other—

Mr. BUSTAMANTE. Whose fault is it?

Mr. RICHARDS. Well, let me give you an example. The Bureau invested in certificates of deposit mainly that were insured up to \$100,000 in Federal or State institutions. That's a part of their trust mission. A few of those banks or savings and loans failed. The Bureau did its best to try to collect the deposits back under the insurance but, for instance, no interest was collected because, in a failed institution, you don't get the interest. So I'm posing to you a situation where perhaps it wasn't the Bureau's fault.

So, what we recommended was that the Solicitor of the Department, who is the legal advisor to the Bureau of Indian Affairs, look at these losses case by case and determine whether or not they violated the Secretary's fiduciary responsibility, his trust responsibility, in some of these losses, and then determine the liability case by case.

Mr. BUSTAMANTE. Thank you, Mr. Chairman.

Mr. SYNAR. Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Chairman.

I think you indicated, Mr. Richards, that there had been a private audit undertaken. Is that completed and do you know the results of that?

Mr. RICHARDS. It is, Mr. Thomas. A certified public accounting firm did a report. That audit is completed and it has been submitted to the BIA. We mentioned some of the results of that in our report.

Incidentally, that audit firm found that there was \$19 million unaccounted for as opposed to our \$17 million.

Mr. THOMAS. You need an audit of the auditors apparently.

Mr. RICHARDS. Well, I think they audited as of a slightly different date than we did, and they did their own independent verification.

Mr. THOMAS. Did they feel more successful than you in reconciling these old accounts, or did they choose a period of time—I don't understand how you can complete an audit and not know the answer to—

Mr. RICHARDS. No, Mr. Thomas. You can complete an audit but you qualify the opinion. That's what the auditors do. The opinion of the CPA firm—and I'm sure the subcommittee has a copy of the audit—is highly qualified.

Mr. THOMAS. I see.

Mr. RICHARDS. Because of the inaccuracy of the records.

Mr. THOMAS. Just a little follow up on this matter of payments for losses. It's a little unclear to me. Is the responsibility of the BIA and the Government to guarantee these funds to the participants,

or is it to manage the funds and, therefore, the beneficiaries share, don't they, in bona fide losses?

Mr. RICHARDS. I'm the inspector general, and I'm also a lawyer, Mr. Thomas. That's basically a legal question. But let me pose it to you in general terms.

The Secretary is not just a banker here. The Secretary is the trustee for Native Americans, particularly of the identified trust funds. So he has, similar to a trust department in a bank, a fiduciary responsibility, which is a higher level of care than just an ordinary banker would have, to an ordinary depositor.

Mr. THOMAS. I understand that. But if your trust department invests in a stock that loses instead of gains, you don't expect the trust department to make up the difference, do you?

Mr. RICHARDS. Well, we're not speaking of those kinds of instances. Let me give you an example we used in the audit report.

There were \$23 million of guaranteed loans by SBA, that are permissible investments because they're guaranteed by the Government. Several years ago, the BIA decided that a private agent, approved by SBA, could manage those loans better and collect them than they could, so they transferred half of the loans to a private agent. However, through some foul up, they kept no record of it. There were no accounting records. The subsidiary records apparently were destroyed and no entry was made in the general ledger.

Mr. THOMAS. I understand.

Mr. RICHARDS. So we came along and we said where are those loans, and they said they're with a private agent. We said how much? They said well, we're not sure. We don't know. That's the \$5 million that's unaccounted for.

Now, that is not a standard of care, in my judgment, that a fiduciary would exercise.

Mr. THOMAS. Absolutely.

Is there an alternative, a quicker disbursement of funds to the beneficiaries, rather than managing and holding it in this fund?

Mr. RICHARDS. Let me answer that in two parts, Mr. Thomas. The trust funds we're talking about here are mainly funds managed for Indian tribes who get settlements from the Court of Claims—those are the big items—other kinds of tribal income, like royalties from oil and gas or timber or the leasing of lands.

Mr. THOMAS. I understand.

Mr. RICHARDS. Then the other category of beneficiaries here are individual Indians. About 290,000 of those individual Indian accounts are also managed, and they're managed as a pool and then prorated.

Mr. THOMAS. My question, of course, if this kind of management is unsatisfactory, there are other alternatives to how you do this, aren't there? One would be a disbursement to the tribe to manage their own funds. Is that a possibility?

Mr. RICHARDS. It's a possibility, but I think the law is otherwise. I think the law requires the Secretary—

Mr. THOMAS. The law also requires a number of things that haven't been done here, apparently.

Mr. RICHARDS. Yes. Well, it certainly requires some thing, or at least a standard of care that hasn't been exercised here.

Mr. THOMAS. Thank you very much.

Mr. SYNAR. Mr. Bustamante.

Mr. BUSTAMANTE. I was just asking here about the number of tribes. There's about 254 tribes that participate in this trust fund?

Mr. RICHARDS. I heard the chairman give that number. I've heard the number of a little larger than that. But it's just under 300, I think.

Mr. BUSTAMANTE. What population are we talking about of Native Americans?

Mr. RICHARDS. Well, there are—you mean the overall population of Native Americans?

Mr. BUSTAMANTE. In this trust fund.

Mr. RICHARDS. I don't have the answer to that, sir.

Mr. SYNAR. It's about 300,000 individuals, 254 tribes, all involved.

Mr. RICHARDS. Yes. But there are multiple accounts for the tribes.

Mr. SYNAR. I understand.

Mr. BUSTAMANTE. So we're looking at 300,000 individuals?

Mr. RICHARDS. Individual Indian money accounts, plus just under 300 tribal accounts.

Mr. SYNAR. I think there's 2,000-plus individual accounts in the tribal accounts.

Mr. RICHARDS. To supplement my answer, it is a substantial cross-section of Native Americans, certainly.

Mr. BUSTAMANTE. It's a very healthy trust fund, too.

Mr. RICHARDS. It's unique. I don't think there's anything else like it.

Mr. BUSTAMANTE. To develop an in-house system—somewhere I read in one of the audits that it would take a long time. How long would it take to develop an in-house system, where they could handle it?

Mr. RICHARDS. Before you can develop an in-house system, I think you have to reconcile accounts. You have to make some accounting for these losses, for the unexplained difference between the general ledger and the subsidiary records.

Mr. BUSTAMANTE. Is this why it would be important to go out and contract?

Mr. RICHARDS. Well, that's what we thought back in 1983, that that would be certainly one of the areas that they ought to concentrate on and study, to see if it could be done better on the outside than they had been doing, because basically, even in 1983, we thought they had been doing a poor job.

Mr. BUSTAMANTE. It is obvious that the outside contractor is having difficulty because they were supposed to reconcile some of these difference in 6 months and they have not.

Mr. RICHARDS. Well, the contractor here was prohibited from doing anything because of the congressional restriction. The congressional restriction—and I think the chairman knows the terms of it better than I do—I think it said that no moneys could be transferred to a contractor until the accounts were reconciled.

Mr. SYNAR. It's the language in the Interior appropriations conference report.

Mr. BUSTAMANTE. Chairman Yates.

Mr. RICHARDS. Yes. That's true.

Mr. BUSTAMANTE. Thank you, Mr. Chairman.

Mr. SYNAR. Now, Mr. Richards, in his written testimony, Dr. Brown is going to tell us that in 1982 GAO found that controls over the trust funds were lacking and that accounting records were out of balance by \$25 million; that the following year the IG conducted a followup to the GAO report and, as a result, recommended that the BIA determine the feasibility of contracting out all or a portion of the trust fund activity.

What was the basis of that recommendation and were there any concerns that the IG felt BIA particularly needed to address in studying the feasibility of contracting out?

Mr. RICHARDS. We did recommend that BIA determine the feasibility of contracting out certain trust fund activities. In fact, we noted in the audit report in 1983 that we understood that BIA had already had a contractor studying that feasibility.

We mentioned a number of factors that the BIA should consider when they were studying the feasibility of contracting out, and we noted that two of the questions that we thought should be considered weren't addressed in the contractor's study. These two areas were, one, how would Treasury fit into the picture, because Treasury is a player here—Treasury is the bank here—and second, how much would contracting out cost and who would pay.

Mr. SYNAR. Another of the recommendations that you made concerned fully integrating the accounting system in order to keep track of the trust fund cash collections, the cash disbursements, investments, and the interest earned. Now, with that recommendation, I think you pointed out that such an endeavor would require assurance from BIA management that adequate automated data processing support be available.

Tell us about that, about the level of management oversight that you think is going to be required for a project of this magnitude to be successful.

Mr. RICHARDS. Well, certainly, as I said before, we recognize that the Secretary's trust responsibility cannot be delegated to an outside party, that BIA, as delegee of the trust responsibility, still has the clear responsibility for effective oversight, in order to make sure that ministerial and procedural things that a contractor may do are accurate and valid.

Assignment of this function to a BIA manager would require somebody who is in complete charge and who probably had a background in accounting and in ADP, and reporting directly to the Assistant Secretary.

Mr. SYNAR. You have to have that kind of experience?

Mr. RICHARDS. Yes. That's how we feel about it.

Mr. SYNAR. Here we are. Over 7 years we've got 31 IG reports that point out time and time again the problems we're facing in this program. This has got to be frustrating for you, as the inspector general, to see this pattern over 7 years, isn't it?

Mr. RICHARDS. It is. I haven't been inspector general all that long, but I have a history with the Interior Department, having worked there before. I remarked, when I went back to the Interior Department in 1986 as inspector general, when I sat down at the first staff meeting, the faces were different but the issues were all the same.

The issue of BIA's ability to manage the trust function and, for that matter, to manage a lot of other functions, is not very good. There are some complex and diverse reasons for that which I think perhaps we don't have time to go into today. Suffice it to say that what we do, we try to keep BIA on their toes. We try to keep pointing out the problems and recommending solutions. It does get discouraging and frustrating sometimes, obviously.

Mr. SYNAR. In just a few minutes we're going to hear from the BIA and they're going to tell us in their testimony that this system is so complex, so burdensome, that the only way to solve this problem is to contract out to a private third party.

Now, I'm not saying that may not be part of the ultimate solution, but the fact of the matter is I don't think that we have reviewed the capabilities of the Government. You know, it's amazing to me that we have trust funds throughout this Government, whether it's the IRS, Social Security, the Army—I mean, I can go through a whole host of other trust funds that we're administering. I can't believe that if we can administer those trust funds efficiently and effectively, it can't be done by BIA.

I guess the question is, do you have any thoughts on whether or not contracting out is the only way to go?

Mr. RICHARDS. Well, obviously there's one other solution, and that's just to leave all of the funds on deposit in the Treasury. But that was the situation prior to about 1938, when the Congress that determined you could get a better rate of return and still have Government-insured debentures or loans or guarantees and get a higher rate of return for the beneficiaries.

Let me comment on the trust responsibility generally in Government. I think that I could make a case that this trust fund and this trust responsibility are unique. I don't think there's anything else like it. Also, probably we're the folks, the inspector general or its predecessor, who have examined the ability of the Bureau of Indian Affairs to manage certain functions for years and years. We found recurring and longstanding problems in anything involving accounting and finance. I don't know the reason why. We just have found that. That is a fact.

That's why in 1983, when we learned that the Bureau had a contractor to study the feasibility of contracting out, we encouraged it. We felt that with that kind of a track record, and the sensitive kind of function that they perform it needed somebody with accounting and investment expertise and knowledge who would keep the books and would keep them accurately and would pay on time.

Another thing we haven't mentioned here, the individual Indian money accounts probably will never be fully reconciled because they're ongoing. They're an evolving set of records, as you know. The Secretary probates the estates of all Indians except the five civilized tribes and the Osage. They're behind. They're backlogged in that. That affects the fractionated shares in these individual Indian money accounts as to what is due to whom.

The BIA can't contract that out. They have to provide that data, even if a bank would make the payments. So the BIA still is going to have some enormous responsibilities here. But I hope that gives you a better idea of why we seized upon that feasibility study in 1983 and felt somewhat relieved to know it was being studied, even

despite all the problems that I've heard about here today. I wasn't aware of the problems with the contract. But we think that contracting out is a very viable option.

Mr. SYNAR. Let's explore some other things here before we let you go. You're familiar with the language in the recent Interior appropriations bill prohibiting the transfer of trust fund moneys prior to an audit and reconciliation of the accounts. We're going to discuss this in great detail with the BIA. But it's clear to almost everyone but the Bureau that Congress is concerned that these accounts be put in their best possible order before—I want to underline that—before they are shipped out the door to somebody else.

Do you share the same concern that we have up here, of the Bureau's apparent unwillingness to undertake the real effort necessary to audit and reconcile these accounts?

Mr. RICHARDS. Oh, yes, certainly we do. In fairness to the Bureau, they did retain the CPA firm to try to reconcile accounts, and we started our audit right about that time as well, because we knew that the contracting out was going to become a viable option. So I think we worked in tandem oftentimes with the private accounting firm to see if we could reconcile accounts.

The reconciliation of individual Indian money accounts is another problem, but basically, I think now what we have is a reconciliation of accounts, and I think the bank probably has adequate motive not to take over any accounts until it is assured that the accounts are accurately reconciled and that losses which had previously been incurred are taken care of. I don't think the bank, or any bank, would want to take over that kind of liability.

Mr. SYNAR. That all should be done prior to transfer, right?

Mr. RICHARDS. I think so, yes.

Mr. SYNAR. One final issue. Your recent report identified approximately \$2.4 million of overnight interest which the Bureau did not earn because of deficient reporting to the Treasury. As I understand your report, Public Law 98-451 requires the Bureau to notify the Treasury each day of the amount of unallocated funds in order to invest the money, if I'm reading this law right, and to ensure that it's not just sitting idle. Is that correct?

Mr. RICHARDS. Yes, that's basically correct.

Mr. SYNAR. Now, the Treasury overnight interest is required to be paid to all uninvested trust funds on deposit with the Treasury from the date of deposit until the funds are withdrawn for investment in CD's or some other Government investment; is that correct?

Mr. RICHARDS. I think it's until the check is cashed.

Mr. SYNAR. Until the check is cashed.

Mr. RICHARDS. Yes.

Mr. SYNAR. Now, in essence, we are talking about funds that routinely come into accounts which haven't yet been invested in long-term investments, correct?

Mr. RICHARDS. Yes, that's basically the area covered.

Mr. SYNAR. And the interest earned on those overnight investments is owed to the trust fund accounts and is supposed to be returned to the trust accounts.

Now, if that trust fund, Mr. Richards, is turned over to a private bank for day-to-day management, I assume that the bank will be in

charge of making sure that function is carried out, meaning it will sweep the accounts for unallocated moneys and make the overnight investments; wouldn't that be right?

Mr. RICHARDS. Oh, yes. I think that's a requirement of law.

Mr. SYNAR. Do you know if it would be correct to assume that the overnight interest earned by the bank's investments should go back to the trust fund accounts, like it does now? And, is it clear in the law who it goes to in terms of who's getting it now?

Mr. RICHARDS. I'm not sure I can give you a complete answer to that. I think it would take some legal advise here. But I would observe, that if the Treasury were willing, it wouldn't matter whether BIA or a bank would notify them of the unallocated funds. They would then pay the overnight interest.

What I don't know are the terms and provisions of the contract and how that's covered in there, so it is difficult—

Mr. SYNAR. Have you looked at the Security Pacific contract—it's silent, isn't it, with respect to that?

Mr. RICHARDS. It's such a large contract, and I scanned it, but I'm afraid I didn't focus on that.

Mr. SYNAR. The bottom line is that there's no reason for it not to go to the Indian trust accounts, is that correct?

Mr. RICHARDS. No. As a matter of fact, I think the law—if the Treasury is notified, the law requires that it do so.

Mr. SYNAR. All right.

Mr. Thomas.

Mr. THOMAS. Mr. Chairman, very briefly.

In your examination and inquiry, is the BIA short of resources to do this task? Are they short of people who have the background and training to do the task? Are they short of a will to do the task? What's your observation?

Mr. RICHARDS. Well, it's probably a combination of those things, Mr. Thomas. First of all, there was no headquarters oversight of the function that we could discern over the years. Basically, it was run out of Albuquerque. The people who worked on trust fund administration worked for three different sub-organizations in BIA—

Mr. THOMAS. Excuse me. The whole trust operation is in Albuquerque?

Mr. RICHARDS. Yes.

Mr. THOMAS. I see. Thank you.

Mr. RICHARDS. Let me give you the flavor of this. The branch of investments, which invests the funds, is under the direction of the Office of Trust Responsibilities in BIA. The Office of Administration has primary responsibility for the accounting and the accounting procedures. The Office of Indian Services has the directives and policy for individual Indian money accounts. So you had nobody really in charge. That's why you had so many subsidiary records which weren't reconciled to the general ledger.

Mr. THOMAS. Have you recommended a centralization of this authority and—

Mr. RICHARDS. Yes, indeed. That was our first recommendation in the report and in the previous report.

Mr. THOMAS. Thank you very much.

Thank you, Mr. Chairman.

Mr. BUSTAMANTE. Mr. Chairman.

Mr. SYNAR. Mr. Bustamante.

Mr. BUSTAMANTE. For how many years has the Bureau been doing this, administering the trust?

Mr. RICHARDS. For over 100 years, Mr. Bustamante. I believe maybe 150.

Mr. BUSTAMANTE. For 150 years.

Mr. RICHARDS. But they've only been doing the investment of the funds probably since 1938, so maybe 60 years.

Mr. BUSTAMANTE. The Bureau said they had performed an audit before they contracted out; is that correct?

Mr. RICHARDS. They said they were performing a feasibility study. That's not an audit.

Mr. BUSTAMANTE. It doesn't meet the requirement of an audit.

Mr. RICHARDS. No. The audit that they were doing, they contracted with a CPA firm to do the audit, and that was the audit that Mr. Thomas and I were talking about.

Mr. BUSTAMANTE. So in these thousands of accounts, we could be spending thousands of dollars on accounts that might have, what, anywhere from \$10 to \$100?

Mr. RICHARDS. Well, the individual Indian money accounts, some of them are quite small, that's true, because they're—

Mr. BUSTAMANTE. And there are some of those that are 2,000 or—

Mr. RICHARDS. No, there are about 290 of those. I beg your pardon. It's 290,000. Put some zeros on there.

Mr. BUSTAMANTE. That becomes rather cumbersome.

Mr. RICHARDS. Yes, it is. And the overnight interest, for instance, is allocated to those funds because they're invested as a pool.

Mr. BUSTAMANTE. Thank you, Mr. Chairman.

Mr. SYNAR. Mr. Richards, thank you again.

I want to get it on the record one more time, so that we'll make it very clear. Your opinion, as inspector general of the U.S. Interior Department, is that you have to audit and reconcile these accounts before they are transferred, correct?

Mr. RICHARDS. Yes.

Mr. SYNAR. Thank you. Thank you for being with us.

Mr. SYNAR. Our next panel is a panel of our Native American representatives, the First Nations Financial Project, Ms. Jo Lynn Gentry from the Navajo Tribe, policy specialist, and Ms. Marcella Giles, Creek Tribe, research director.

Representing the National Tribal Chairmen's Association is George E. Tallichief, principal chief of the Osage Tribe and president of NTCA, and Clarence W. Skye, executive director, United Sioux Tribes. If you all would come forward.

As you saw from our previous panels, in order not to prejudice past or future witnesses, we request that all witnesses be sworn in. Do you have objections to being sworn? If not, if you would raise your right hand.

[Witnesses sworn.]

Before we start, I am going to take the chairman's prerogative of welcoming Miss Giles this morning from the Creek Tribe, located and headquartered in the great State of Oklahoma, in the second district, in Okmulgee, my district, and also Mr. Tallichief, who is a

dear and valued friend, whose county and tribe I used to represent and who I still have very close relationships with. We are excited that both of you are here today.

Why don't we start with Mr. Tallchief, and then we'll come to you second.

STATEMENT OF GEORGE E. TALLCHIEF, PRINCIPAL CHIEF, OSAGE TRIBE OF OKLAHOMA INDIANS, AND PRESIDENT OF THE NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION, ACCOMPANIED BY CLARENCE W. SKYE, EXECUTIVE DIRECTOR, UNITED SIOUX TRIBES OF SOUTH DAKOTA DEVELOPMENT CORP.

Mr. TALLCHIEF. Mr. Chairman, I am George E. Tallchief, principal chief of the Osage Tribe of Oklahoma Indians, and president of the National Tribal Chairmen's Association. Thank you for requesting that I testify before your Subcommittee on Environment, Energy, and Natural Resources. I asked Mr. Clarence Skye to be present during the proceedings to answer any questions regarding the Bureau of Indian Affairs financial trust service contract and the Indian Trust Fund.

Before beginning my testimony, I will briefly outline the relationship between the United Sioux Tribes and the National Tribal Chairmen's Association. In 1986, the National Tribal Chairmen's Association closed their offices here in Washington and moved their operations to Pierre, SD. A financial crisis forced the United Sioux Tribes Development Corp. to become a financial and administrative cornerstone in the organization's operations. Consequently, they have agreed to take the NTCA national office under their aegis.

The National Tribal Chairmen's Association shares the concern of all 352 federally recognized tribes and their elected tribal leadership in Indian country. Our purpose as elected officials and leaders is to act as advocates for the tribal governments and Indian reservations throughout the United States.

Members of NTCA are alarmed over revelations in the U.S. Department of Interior's Office of Inspector General's audit report. The report involves the administering of moneys in the Indian Trust Fund accounts by the Bureau of Indian Affairs. The audit report discovered losses of \$17 million, but calculates \$19 million, from the accounting firm's review, of Indian Trust Fund investments remaining unaccounted for in official investment accounting records. Documented investment losses of \$12 million, including interest, are not registered in the official accounting records. Additionally, these deficits in Indian Trust Fund accounts are not reimbursed.

The Bureau of Indian Affairs conduct is irresponsible concerning guaranteed loans of \$23 million. Overnight, an estimated Treasury interest of \$2.4 million goes uncollected because of inaccurate and improper reporting procedures. These procedures reflect poorly on the internal control of the financial management of the trust funds. Therefore, by virtue of the chain of command, the final responsibility for the Bureau of Indian Affairs mismanagement of \$1.7 billion is with the Department of the Interior.

Mr. Chairman, the deficits reported in this portion of the statement were taken from the inspector general's audit report: Selected aspects of Indian Trust Fund activities, the Bureau of Indian Affairs, Report No. 89-117, September 1989.

Mr. Chairman, the National Tribal Chairmen's Association respectfully requests that the Subcommittee on Environment, Energy, and Natural Resources consider the following recommendations:

One, the Indian Trust Fund, by mandate, be audited annually; two, that Native American tribes be annually informed concerning the number of Indian Trust Fund accounts and their amounts by the Bureau of Indian Affairs. Moreover, they must furnish financial statements on the income derived from these accounts.

Three, the BIA must provide information on depositories of Indian trust funds to tribal governments or elected officials. Four, this subcommittee, Mr. Chairman, must force the BIA to annually consult with tribal governments on the progress and development of trust services, accounts, and fund moneys.

Five, that the contract between the Bureau of Indian Affairs and Pacific Security Bank of Los Angeles, CA be immediately terminated until the tribes receive an appropriate balance sheet and are advised of any future negotiations with private sector financial/investment institutions.

Six, the subcommittee must form a commission, and Indian trust authority commission, to guarantee the Bureau of Indian Affairs acts responsibly concerning the financial trust services and trust funds. Elected Native American leaders expect that payments and financial statements be exact and accurate, including the collection of interest rates and procuring the highest rate of return on the principal.

Seven, the National Tribal Chairmen's Association requests that the agencies managing the individual Indian moneys account be provided technical assistance and training to accomplish their prime directive of disbursing moneys to the Native American tribes and individuals from their trust fund accounts.

Eight, NTCA requests that the subcommittee demand the Bureau of Indian Affairs implement certain recommendations in the inspector general's September 1989 audit report. Specifically, recommendation No. 3, page 9, which states the Bureau concurs and stated that action will be initiated to establish a deputy to the Assistant Secretary of Indian Affairs for the trust fund management. The Bureau's pending fiscal year 1991 budget request, if approved, will implement the recommendation No. 9 in the audit of 1989.

I, myself, as an elected leader of the Osage Tribe and administrator within the tribal government, understand the limitations of a Department which is required to perform many operations, but is poorly staffed for high performance. As an example, I'm aware that other tribal chairmen receive complaints from recipients of probates which are 2 years behind in disbursement. The tribes are unable to distribute payment because the executor, the Bureau of Indian Affairs, has not assigned the recipients their probates. A portion of the responsibility of this rests on undertrained and understaffed employees in the Bureau of Indian Affairs.

An automated accounting system was installed to modernize the BIA in their efforts to provide a better system of payment to the trust fund. To date, the automated account system staff needs additional training and expertise in the area of financial trust services. The Bureau of Indian Affairs must refrain from acting as a financial institution and allow more expert personnel to manage the Indian trust funds.

The tribal leaders of the Tribal Chairmen's Association need a simpler bureaucratic system from the Pacific Security Bank to receive and withdraw money from their trust fund. We understand that the Indian Trust Fund contract has not functioned because Pacific Security Bank fails to understand the method of operation of local Indian agencies. The Native American tribes realize that the Bureau of Indian Affairs is expected to accomplish tasks set by the U.S. Government beyond their competency and ability because the funds are not appropriated to expand modernization and technology with the BIA.

Mr. Chairman, once again, I wish to thank you and members of the subcommittee for inviting me and allowing me to testify at this time. Thank you, sir.

[The prepared statement of Mr. Tallchief follows:]



NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

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TESTIMONY
OF
NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION
TO
ENVIRONMENT, ENERGY, AND NATURAL RESOURCES
SUBCOMMITTEE

Washington, D.C.
October 26, 1989

Mr. Chairman:

My name is Mr. George E. Tallchief, Principal Chief of the Osage Tribe of Oklahoma Indians and also President of the National Tribal Chairmen's Association (NTCA) and here with me is Mr. Clarence W. Skye, Executive Director of United Sioux Tribes of South Dakota Development Corporation, Pierre, SD and Acting Executive Director of National Tribal Chairmen's Association. We have been requested to testify before you today by Mr. Mike Synar, Chairman of the Subcommittee on Environment, Energy, and Natural Resources, regarding the Bureau of Indian Affairs (BIA) Financial Trust Services Contract and the Indian Trust Fund.

Before getting into testimony, NTCA closed their office in Washington, D.C. in 1986 so that they could move their operations and national office to Indian country in Pierre, South Dakota. The President, Mr. Richard LaFromboise, asked that United Sioux Tribes of South Dakota Development Corporation take under their wing the national office. We re-established and incorporated under the laws of the State of South Dakota because it would be cheaper to operate in South Dakota. United Sioux Tribes has been sponsoring the NTCA office and handling all activities and finally, after a period of three years, we are happy to say that the national office is getting back on its feet to represent the Federally Recognized Tribes and the elected tribal leadership in this country. We will continue to act as an advocate for the elected Tribal leaders who have no representation without NTCA.

We have talked to Tribal leaders across the country regarding the concerns of Indian people who are the recipients of the Indian Trust Funds where the Bureau of Indian Affairs is mandated by Congress to administer these trust funds for Indian people enrolled on Indian reservations across the country. When we first became involved in the BIA discussions over how they were going to handle the financial trust services to Indian people and the trust fund itself, the Tribal leaders were hesitant to offer any information because they knew very little about how the BIA administers these trust fund accounts. We know the Trust Fund exists, but how it is administered is totally foreign to the tribes because there has not been much information provided by the BIA.

Mr. Skye became involved when he heard that the BIA was turning the Trust Fund over to a bank who at that time was involved with Third World Countries. News reports at that time also indicated there were losses occurring. Later, in 1987, the New Assistant Secretary for Indian Affairs said that he would reopen competition by conducting a new full scale procurement for financial trust services to strengthen the internal management and administration of more than 1.7 billion dollars of Indian Trust Funds. This is taken from the Department of the Interior's News Release, dated March 13, 1987. The tribes at that time complained that the consultation process must take place with Tribal leaders from Indian reservations before the contract is placed on procurement schedule. We have heard that the BIA was involved in discussions with Mellon Bank of Pittsburg where six (6) banks would be competing for the Lock Box services to Treasury to handle the Indian Trust Fund account. At that time, we heard Mellon Bank wanted 4 million dollars to administer the Indian Trust Funds. Later, we heard they increased that amount to 7 million dollars. At that time, the tribes were opposed to the BIA contracting to the private sector to handle their trust funds. We also realize there was pressure from the Office of Management and Budget (OMB) to do an A-76 study under the OMB circular.

The tribes wrote letters to their Congressmen opposing the BIA contracting to these private lending institutions and on March 18, 1987, we received a letter from our Senator indicating that the Select Committee on Indian Affairs was watching the BIA's proposal to turn over management of the Trust Funds to Mellon Bank.

It seemed at that time the BIA was trying to rid themselves of a cumbersome administration activity that they no longer wanted to manage. We realize that the BIA cannot rid themselves of a trust responsibility delegated to them by Congress.

We had no knowledge of the activity and plans that the BIA was developing to contract our sacred Trust Funds. We did not know all the banks that were involved in the Lock Box services. The Sioux Tribes got together and developed a proposal to attempt to contract their Trust Funds.

The Sioux Tribes requested that the BIA send people from Albuquerque, NM, who were handling the trust financial services account. On October 17, 1987, Mr. Jim Parris, Financial Trust Services Department, BIA - Albuquerque, NM, and Ms. Arlene Brown, Special Assistant for Indian Trust Funds, Washington, D.C., attended a United Sioux Tribes Board of Director's meeting and attempted to explain the Trust Fund account and how it was administered by the BIA. The problem that the tribes had with the BIA regarding representatives who were discussing the administration of the Trust Fund, was that no one had enough information to ask the appropriate questions, but the Tribal leaders did the best they could. We are submitting a copy of those minutes as Exhibit A (United Sioux Tribes of South Dakota Development Corporation Board of Director's Meeting, June 17, 1987).

The tribes do not understand that BIA has problems of cash management because they do not see reports regarding the different trust fund accounts. Tribal leaders have some understanding of their trust funds, but do not understand how the BIA can predict budget allocations regarding their own operations. The problem the Tribal leaders have is, where do they fit in to the overall BIA budget, much less figure out where they stand on their Trust Fund account of 1.7 billion dollars. We do not know how much capital the BIA projects for each tribe including the interest rate. The only time the Tribal leaders had an idea of different accounts in the Trust Fund was in the BIA's proposed plans to contract. We do not understand all the different money language that the BIA inserted in the contract.

Most of the reports that the tribes received are not understandable, which means that there is no one at the agency or area levels that can communicate the financial services provided by the lending institutions and the tribes need a full knowledge of how much interest is projected on their trust funds.

The tribes received a question and answer paper from the BIA sent on February 10, 1987, regarding the Trust Fund Contract. The position paper attempted to explain how the contract between BIA, Treasury and Mellon Bank would be handled with regards to the depository, accounting and investment services and the BIA would retain oversight and authority over the Trust Funds.

The tribes were never asked whether they agreed or disagreed with the contract and the BIA consultation process was used in the Federal Register as the consultation mechanism to say they discussed this with Tribal leaders. The BIA was told by tribes that the Federal Register is not a consultation tool that should be used, but that BIA officials must meet directly with tribes and discuss the process of contracting.

The tribes thought that the Trust Funds were audited every year, but now we understand that it has not been audited. The tribes suggest or demand that those trust funds be audited every year and that audit reports be submitted to each and every tribal government involved in trust funds.

A news release of October 7, 1989, from the Rapid City Journal said that 17 million dollars had disappeared. We would demand that those losses be made up and paid by either the Treasury Department or the BIA to the trust fund for the tribe.

We also recommend that the contract the BIA presently holds with Pacific Security Bank be terminated immediately. It is our demand that the BIA no longer contract the tribes trust fund monies to any private sector or commercial lending agency until they devise a plan that would be acceptable to the tribes and receive their consent and also the consent of Congress.

Another recommendation is that in the future the tribes be given the opportunity to decide which bank or investment firm handles their trust funds.

It is also recommended that the BIA establish an Indian Trust Authority Commission to oversee the BIA's financial trust services to make sure the reports are accurate, the cash management is accomplished and that the appropriate interest rates are obtained to minimize tribal trust fund losses. We must make sure that through this commission that the appropriate check and balances occur. This commission would advise the tribes on appropriate investment transactions in the best interest for the growth of tribal governments. This commission would also ensure that each of the tribes' trust funds and accounts and local IIMA (Individual Indian Management Accounts) are audited and provided to the tribes. This commission would be the staff of the Financial Trust Services Department to do trust fund accounting and be responsible for tribal participation in accounting system management. They would monitor and control daily operations and reports for each of the trust funds financial position to the interested tribal participants, BIA entities, Treasury and OMB.

The tribes were told through a BIA position paper that the Automated Accounting System would reduce the cumbersome problems of the BIA administration of the Trust Fund. This Automated Accounting System under the BIA would modernize the reporting system and payments under the current procedures to the tribes. This has not been done adequately as the BIA staff needs financial service management training. We realize the BIA is understaffed and the financial services personnel was to be reduced, but under the present contract, has increased.

** The BIA has a responsibility to the tribes across the country to the U.S. Government to ensure collections, investments and management of those Trust Funds for Indian tribes totalling 1.7 billion dollars. The proposed contract for the overall function of the Trust Services Department and Trust Funds could be better managed with the following three (3) objectives:

- (1) That the private sector institutions could do a more efficient and effective job of management.
- (2) Under this contract, the tribes would obtain a higher rate of return on the Trust Funds.
- (3) The BIA's program cost and FTE requirements could be reduced under the cost effectiveness of the contract.

We understand that in FY1988 there was no contract, but BIA spent \$925,000. on the development for the arrangements of the contract and also spent \$200,000. of the Central Office's Budget from their own Trust Accounting Department. Furthermore, in FY1989, the BIA spent from their budget \$6,820,000. and the BIA was allocated \$1,790,000. for implementation and development of the contract. In FY1990, the BIA was requesting a total of \$9,482,000. for the Financial Trust Services Department and \$4,203,000. was suppose to be used under the contract. The BIA realized an increase in their budget from \$4,616,000. in FY1987 and proposed \$9,482,000. for FY1990 when they were not sure of a contract with any lending institutions. They also authorized a staff increase from 53 to 119. The tribes feel that the contract of the Financial Trust Services and the Trust Fund contract has not been cost effective or resulted in a decrease of personnel. **

It is appalling to find out through the news media that the contract, which was suppose to modernize the trust fund system and provide new mechanisms for an outdated process, has failed.

** This information was taken from the Interior Budget Oversight Hearings on the Bureau of Indian Affairs and Indian Health Service

As tribes, we just do not know enough about the Automated Accounting System to make any conclusive remarks that would provide direction to the Subcommittee. As always, the tribes are the last to hear about what is wrong in the Bureau of Indian Affairs because the newspaper is the first to report.

We would like to thank the members of this Subcommittee for inviting us to the hearing and we hope we were able to convey the concerns and interest of the elected tribal officials.

In 1982 the Osage Tribal Council, becoming aware that incomplete, improper and incorrect Osage Tribal Financial Reports were being furnished by the Bureau of Indian Affairs, found it was necessary for the Osage Council to employ an accountant to insure and verify that all financial information contained in the Bureau's official accounting reports were dependable and accurate. This action has been very costly to the Osage Shareholders.

The Bureau of Indian Affairs has a fiduciary duty to all Indian tribes, requiring that it exercise the most exacting fiduciary standards in managing tribal trust funds. We hold that the Bureau of Indian Affairs has failed to manage tribal trust funds in a manner as should be expected of a prudent administrator. Currently, our accountant is monitoring all Bureau of Indian Affairs financial programs, that affect tribal functions to ascertain that the accountability of Osage tribal funds are as they should be. This monitoring will continue until at such time the Bureau of Indian Affairs can assure the Osage Tribal Council and membership that all tribal trust funds are in balance and accurate.

The Osage Indian Agency employs three different methods of depositing Oil and Gas Lease Royalty, and other mineral income into the into U.S. Treasury for credit to the Osage Tribe of Indians. These are:

- (1) Electronic Fund Transfer (EFT)
- (2) Deposit Ticket, and
- (3) Transfer between Federal Agencies, (SF 1081)A Government Document

A key factor in distinguishing a good cash management system from a poor one is the speed with which incoming cash is moved from point of receipt into an interest-earning account - in other words - converting idle cash into a working asset. The Electronic Fund Transfer method is the most desirable since there is little or no delay between receipt of funds and the availability of funds for investment.

Over ninety percent (90%) of all Oil and Gas Lease royalties and other collections for the Osages are processed by the Electronic Fund Transfer method. Under this procedure Oil and gas producers and purchasers utilize the bank of their choice to transmit proceeds by wire to the U.S. Treasury Department for credit to Osage Tribal Appropriation 14X7386. Collections processed by the Electronic Fund Transfer method are to be invested by the bureau's Investment officer within 24 hours after receipt.

Deposit ticket procedure promotes time-lag between the receipt of cash, the preparation of deposit tickets, and the subsequent notification to the Investment Office of the cash receipt. This has two consequences; first, interest is lost until the date of the deposit ticket; secondly, the opportunity to invest the cash is lost until the Branch of Investment (Albuquerque) receives notification of cash receipts. Numerous errors, detected by our Contract Tribal Accountant, were reported by me, by letter dated April 13, 1987, and addressed to the Osage Agency Superintendent. The Bureau of Indian Affairs responded through the Muskogee Area Director, on July 23, 1987, in regard to Treasury overnighter interest and other items. The Bureau of Indian Affairs target date for recalculation and necessary adjustments as pertains to the abovementioned errors was July 31, 1987. And, the actual distribution of all amounts of interest due and all system changes necessary to correct the unreconciled multiple system problems was to be completed by October 1, 1987. To date, we have not been notified that the adjustments and calculations have been corrected.

During the audits, by our tribal accountant, numerous adjustments were identified and corrections made which were reflected in later financial statements as accumulative adjustments. These errors and related adjustments resulted from a wide variety of procedural weaknesses (some of which are material) in accounting systems and internal control procedures utilized by the Bureau. There are other problems such as inadequate training, lack of adequate supervision of personnel, and extreme shortages of qualified

personnel. Certain of these weaknesses are so pervasive and fundamental as to render the accounting systems unreliable.

The Bureau's computer report "Tribal Funds Interest Calculation Audit Trail" which purpose is to calculate interest earnings, revealed that the Osage Tribe had not been credited with any interest earnings for a total of thirty (30) days during the period just mentioned, even though the Osage Tribe had daily ending balances on each of the omitted days. This report is Bureau-wide therefore, it can be assumed, all Indian tribes under the jurisdiction of the Bureau of Indian Affairs having daily ending balances for those thirty (30) days, may not have received any interest on overnight investments.

Specifically, another finding identified in the abovementioned July 23, 1987 letter, revealed a matter of posting 66.5 percent interest to all of the Bureau's Tribal Accounts that earned overnight interest. The actual interest posted should have been 6.65 percent. Additionally, on page four, summary, of the Bureau's memo reply to our request, it is stated that appropriate adjustments relevant to these findings would be made by July 31, 1987. To date, we have not been notified that the adjustments and recalculation of the 66.60 percent interest has been corrected. This error has cost taxpayers thousands of dollars.

We also requested an explanation as to the reason(s) why overnight interest, for period July 1, 1986, through December 31, 1986, was not credited to Osage Tribal Appropriations. It is estimated by our accountant we should have received approximately \$24,000 overnight interest for our tribal appropriation 14X7386, (plus interest on interest since the tribe has not had the use of these funds). Your tribes may want to investigate "overnight" interest, too.

Another area of contention, relevant only to the Osage, is the matter of Gross Production Taxes: A law, enacted by Congress on March 3, 1921, authorized the State of Oklahoma to collect, and directed the Secretary of the Interior to pay, an annual gross production tax on the royalty interests

of the Osage Tribe in an amount not to exceed 5% of such income. In return, the Oklahoma Tax Commission refunds one percent of this Gross Production tax (5%) to Osage County, one-half to be allocated by the County Commissioner for construction and maintenance of roads, and bridges, and the other one-half to be used for maintenance of schools.

In 1983 it was discovered that the payment of gross production taxes by the Osage Agency, to the State of Oklahoma, was in arrears by \$3,165,748.05. No funds had been withheld from oil or gas royalties to pay this tax for approximately 2 years.

On May 19, 1983, I, as Principal Chief, Mrs. Camille Pangburn, Chairperson Osage Tribal Council Finance Committee and Bert J. Pappan, Osage Tribal Accountant, met with Mr. W.L. McElvany, Director, Gross Production Division, Oklahoma Tax Commission and Mr. M.S. Coleman, Attorney for the Tax Commission to discuss the matter of delinquencies. Subsequently, Osage Tribal funds, made available through an Osage Tribal audit of the Albuquerque Division of Accounting Management records, were used to pay a portion of the delinquent gross production taxes. The check was hand delivered by to the Oklahoma Tax Commission on May 23, 1983.

This, substantially, brought us down to date as gross production taxes are considered current by the Gross Production Division, Oklahoma State Tax Commission, if taxes are paid within 3 months after the close of each quarter.

The delay in paying the Gross Production taxes by the Bureau of Indian Affairs to the Oklahoma State Tax Commission, however, caused a strain to exist between the State and the Tribe whereas before none existed.

Recently, the Osage Tribal Finance Committee and Muskogee Area personnel established procedures for transmitting receipt information to the Branch of Trust Funds Investments in Albuquerque, New Mexico. The procedures were based on an earlier meeting we had with the Branch of Trust Funds in Albuquerque, and it was understood that all persons in attendance, were in

agreement with the process as established.

Apparently, there were some misunderstandings(s) between the office in Albuquerque, New Mexico, and our Area/tribe/agency staff. It was our understanding that a telephone call would be made to the office of Trust Funds Investments Office on or about the 25th of each month informing them of the actual receipt amount to invest rather than relying on their estimate of receipts. It is my opinion that this was also the understanding of the Osage Tribal Finance Committee representatives and we believed that the Albuquerque Office was in agreement with this procedure prior to our departing the meeting.

More recently, however, Mr. Joe Weller, Chief, Division of Trust Funds Management, in Albuquerque, New Mexico, has determined that a telephone call is not acceptable, and that procedures need to be revised. As stated in Mr. Weller's memorandum, Trust Funds Investment will use the actual deposit to treasury as retrieved through the Deposit Message Retrieval System which they purport to utilize on a daily basis. Overnight deposit will be used more than in the past, and since overnight interest rates are favorable to the regular market, the impact to the tribe is negligible. And, too, overnight interest is now being paid out on a monthly basis.

As Weller indicated there should be no negative affect on the Osage tribe's investments, and as the procedures we established, using the telephone "call in" of receipts, will no longer be accepted by his office, all appropriate agency and tribal staff have been advised of the change.

However, the Bureau's Official Accounting Report, "Detail of Trust Funds", which is the report the Osage Tribe uses to manage their funds, as of August 31, 1989, shows that only one investment of \$996,711.46 was made on 8/3/89. This contradicts Mr. Weller's statement that Deposit Message Retrieval System is utilized on a daily basis and further damages their credibility insofar as Osage is concerned.

If you or any other tribes have any questions or need additional information you may wish to contact our tribal auditor. He can be reached mornings, at (918) 287-2495. Ask for Mr. Bert Pappan.

NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

P.O. BOX 5, PIERRE, SOUTH DAKOTA 57501

TESTIMONY: NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION
TO
ENVIRONMENT, ENERGY, AND NATURAL RESOURCES SUBCOMMITTEE

WASHINGTON, D.C.
OCTOBER 26, 1989

SUMMARY STATEMENT

MR. CHAIRMAN, MIKE SYNAR, CONGRESSMAN FROM THE STATE OF OKLAHOMA,
AND MEMBERS OF THE SUBCOMMITTEE ON ENVIRONMENT, ENERGY, AND
NATURAL RESOURCES:

I AM MR. GEORGE E. TALLCHIEF, PRINCIPLE CHIEF OF THE OSAGE TRIBE
OF OKLAHOMA INDIANS, AND PRESIDENT OF THE NATIONAL TRIBAL
CHAIRMEN'S ASSOCIATION. THANK YOU FOR REQUESTING THAT I TESTIFY
BEFORE YOUR SUBCOMMITTEE ON ENVIRONMENT, ENERGY, AND NATURAL
RESOURCES. I ASKED MR. CLARENCE SKYE TO BE PRESENT DURING THE
PROCEEDINGS TO ANSWER ANY QUESTIONS REGARDING THE BUREAU OF
INDIAN AFFAIRS (B.I.A.) FINANCIAL TRUST SERVICES CONTRACT AND THE
INDIAN TRUST FUND. BEFORE BEGINNING MY TESTIMONY MR. CHAIRMAN, I
WILL BRIEFLY OUTLINE THE RELATIONSHIP BETWEEN THE UNITED SIOUX
TRIBES AND THE NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION (N.T.C.A.).
IN 1986, N.T.C.A. CLOSED THEIR OFFICES IN WASHINGTON, D.C.,
MOVING THEIR OPERATIONS AND THEIR NATIONAL OFFICE TO PIERRE,
SOUTH DAKOTA. A FINANCIAL CRISIS FORCED THE UNITED SIOUX TRIBES
DEVELOPMENT CORPORATION TO BECOME A FINANCIAL AND ADMINISTRATIVE

CORNERSTONE IN THE ORGANIZATION'S OPERATIONS. CONSEQUENTLY, THEY HAVE AGREED TO TAKE THE N.T.C.A. NATIONAL OFFICE UNDER THEIR AEGIS.

THE NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION SHARES THE CONCERN OF ALL 352 FEDERALLY RECOGNIZED TRIBES AND THEIR ELECTED TRIBAL LEADERSHIP IN INDIAN COUNTRY. OUR PURPOSE, AS ELECTED OFFICIALS, IS TO ACT AS ADVOCATES FOR TRIBAL GOVERNMENTS AND INDIAN RESERVATIONS THROUGHOUT THE UNITED STATES.

MEMBERS OF N.T.C.A. ARE ALARMED OVER REVELATIONS IN THE U.S. DEPARTMENT OF INTERIOR, OFFICE OF INSPECTOR GENERAL'S AUDIT REPORT. THE REPORT INVOLVES THE ADMINISTERING OF MONIES IN THE INDIAN TRUST FUND ACCOUNTS BY THE BUREAU OF INDIAN AFFAIRS. THE AUDIT REPORT DISCOVERED LOSSES OF 17 MILLION DOLLARS BUT CALCULATES 19 MILLION (PER THE ACCOUNT FIRMS REVIEW) OF INDIAN TRUST FUND INVESTMENTS REMAINING UNACCOUNTED FOR IN OFFICIAL INVESTMENT ACCOUNTING RECORDS. DOCUMENTED INVESTMENT LOSSES OF 12 MILLION DOLLARS (INCLUDING INTEREST) ARE NOT REGISTERED IN OFFICIAL ACCOUNTING RECORDS. ADDITIONALLY, THESE DEFICITS IN INDIAN TRUST FUND ACCOUNTS ARE NOT IMBURSED. THE BUREAU OF INDIAN AFFAIRS'S CONDUCT IS IRRESPONSIBLE CONCERNING GUARANTEED LOANS OF 23 MILLION DOLLARS. OVERNIGHT, AN ESTIMATED TREASURY INTEREST OF 2.4 MILLION DOLLARS GOES UNCOLLECTED BECAUSE OF INACCURATE AND IMPROPER REPORTING PROCEDURES. THESE PROCEDURES REFLECT POORLY ON THE INTERNAL CONTROL AND FINANCIAL MANAGEMENT OF THE TRUST FUNDS.

THEREFORE, BY VIRTUE OF THE CHAIN OF COMMAND, THE FINAL RESPONSIBILITY FOR THE BUREAU OF INDIAN AFFAIRS MISMANAGEMENT OF

1.7 BILLION DOLLARS IS THE DEPARTMENT OF INTERIOR'S. MR. CHAIRMAN, THE DEFICITS REPORTED IN THIS PORTION OF THE STATEMENT WERE TAKEN FROM THE INSPECTOR GENERAL'S AUDIT REPORT: SELECTED ASPECTS OF INDIAN TRUST FUND ACTIVITIES: BUREAU OF INDIAN AFFAIRS: REPORT NUMBER 89-117, SEPTEMBER 1989.

MR. CHAIRMAN, THE NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION RESPECTFULLY REQUESTS THAT THE SUBCOMMITTEE, ON ENVIRONMENT, ENERGY AND NATURAL RESOURCES AND GOVERNMENT OPERATIONS CONSIDER THE FOLLOWING RECOMMENDATIONS. ONE, THE INDIAN TRUST FUND, BY MANDATE, BE AUDITED ANNUALLY. TWO, THE NATIVE AMERICAN TRIBES BE ANNUALLY INFORMED CONCERNING THE NUMBER OF INDIAN TRUST FUND ACCOUNTS AND THEIR AMOUNTS BY THE BUREAU OF INDIAN AFFAIRS. MOREOVER, THEY MUST FURNISH FINANCIAL STATEMENTS ON THE INCOME DERIVED FROM THESE ACCOUNTS. THREE, THE B.I.A. MUST PROVIDE INFORMATION ON THE DEPOSITORIES OF INDIAN TRUST FUNDS TO THE TRIBAL GOVERNMENTS OR ELECTED OFFICIALS. FOUR, THIS SUBCOMMITTEE, MR. CHAIRMAN, MUST FORCE THE B.I.A. TO ANNUALLY CONSULT WITH TRIBAL GOVERNMENTS ON THE PROGRESS AND DEVELOPMENT OF TRUST SERVICES, ACCOUNTS, AND FUND MONIES. FIVE, THE CONTRACT BETWEEN THE BUREAU OF INDIAN AFFAIRS AND PACIFIC SECURITIES BANK OF LOS ANGELES, CALIFORNIA BE IMMEDIATELY TERMINATED, UNTIL THE TRIBES RECEIVE AN APPROPRIATE BALANCE SHEET AND ARE ADVISED OF ANY FUTURE NEGOTIATIONS WITH PRIVATE SECTOR FINANCIAL/INVESTMENT INSTITUTIONS. SIX, THIS SUBCOMMITTEE MUST FORM A COMMISSION, AN INDIAN TRUST AUTHORITY COMMISSION, TO GUARANTEE THE BUREAU OF INDIAN AFFAIRS ACTS RESPONSIBLY CONCERNING THE FINANCIAL TRUST SERVICES AND TRUST FUNDS. THE ELECTED NATIVE AMERICAN LEADERS

EXPECT THAT PAYMENTS AND FINANCIAL STATEMENTS BE EXACT AND ACCURATE, INCLUDING THE COLLECTION OF INTEREST RATES AND PROCURING THE HIGHEST RETURN ON THE FUND'S PRINCIPLE. SEVEN, THE NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION REQUESTS THAT AGENCIES MANAGING THE INDIVIDUAL INDIAN MANAGEMENT ACCOUNTS ARE PROVIDED TECHNICAL ASSISTANCE, AND TRAINING TO ACCOMPLISH THEIR PRIME DIRECTIVE OF DISBURSING MONIES TO THE NATIVE AMERICAN TRIBES AND INDIVIDUALS FROM THEIR TRUST FUND ACCOUNTS. AND EIGHT, N.T.C.A. REQUESTS THAT THIS SUBCOMMITTEE DEMAND THE BUREAU OF INDIAN AFFAIRS IMPLEMENT CERTAIN RECOMMENDATIONS IN THE INSPECTOR GENERAL'S SEPTEMBER, 1989 AUDIT REPORT.

SPECIFICALLY, RECOMMENDATION NUMBER 3, PAGE 9, WHICH STATES, "THE BUREAU CONCURS AND STATED THAT ACTION WILL BE INITIATED TO ESTABLISH A DEPUTY TO THE ASSISTANT SECRETARY - INDIAN AFFAIRS FOR THE TRUST FUND MANAGEMENT. THE BUREAU'S PENDING FISCAL YEAR 1991 BUDGET REQUEST, IF APPROVED, WILL IMPLEMENT THE RECOMMENDATION (9, AUDIT, 1989)."

I, MYSELF, AS ELECTED LEADER OF THE OSAGE TRIBE AND ADMINISTRATOR WITHIN THE TRIBAL GOVERNMENT, UNDERSTAND THE LIMITATIONS OF A DEPARTMENT WHICH IS REQUIRED TO PERFORM MANY OPERATIONS, BUT IS POORLY STAFFED FOR HIGH PERFORMANCE. AS AN EXAMPLE, I AM AWARE THAT OTHER TRIBAL CHAIRMEN RECEIVE COMPLAINTS FROM RECIPIENTS OF PROBATES WHICH ARE TWO YEARS BEHIND IN DISBURSEMENT. THE TRIBES ARE UNABLE TO DISTRIBUTE PAYMENTS BECAUSE THE EXECUTOR, THE BUREAU OF INDIAN AFFAIRS, HAS NOT ASSIGNED THE RECIPIENTS THEIR PROBATES. A PORTION OF THE RESPONSIBILITY RESTS ON UNDER TRAINED AND UNDER STAFFED EMPLOYEES IN THE BUREAU OF INDIAN AFFAIRS. AN

AUTOMATED ACCOUNTING SYSTEM WAS INSTALLED TO MODERNIZE THE B.I.A. IN THEIR EFFORTS TO PROVIDE A BETTER SYSTEM OF PAYMENTS TO THE TRUST FUND. TO DATE, THE AUTOMATED ACCOUNTING SYSTEM STAFF NEEDS ADDITIONAL TRAINING AND EXPERTISE IN THE AREA OF FINANCIAL TRUST SERVICES. THE BUREAU OF INDIAN AFFAIRS MUST REFRAIN FROM ACTING AS A FINANCIAL INSTITUTION AND ALLOW MORE EXPERT PERSONNEL TO MANAGE THE INDIAN TRUST FUND ASSETS. THE TRIBAL LEADERS OF THE NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION NEED A SIMPLER BUREAUCRATIC SYSTEM FROM THE PACIFIC SECURITIES BANK TO RECEIVE AND WITHDRAW MONEY FROM THEIR TRUST FUND. WE UNDERSTAND THAT THE CONTRACT (TRUST SERVICES AND INDIAN TRUST FUND CONTRACT) HAS NOT FUNCTIONED BECAUSE THE PACIFIC SECURITIES BANK FAILS TO UNDERSTAND THE METHOD OF OPERATIONS OF LOCAL INDIAN AGENCIES. THE NATIVE AMERICAN TRIBES REALIZE THAT THE BUREAU OF INDIAN AFFAIRS IS EXPECTED TO ACCOMPLISH TASKS SET BY UNITED STATES GOVERNMENT BEYOND THEIR COMPETENCE AND ABILITY BECAUSE THE FUNDS ARE NOT APPROPRIATED TO EXPAND MODERNIZATION AND TECHNOLOGY WITH THE B.I.A.

MR. CHAIRMAN, ONCE AGAIN, I WISH TO THANK YOU AND MEMBERS OF THIS SUBCOMMITTEE FOR INVITING ME AND ALLOWING ME TO TESTIFY BEFORE YOU TODAY. I AM HONORED, FOR THIS AUDIENCE, AND I SINCERELY DESIRE WE FIND A RESOLUTION THIS MUTUAL CONCERN.
THANK YOU.

Mr. SYNAR. Mr. Tallchief, we appreciate that statement, and also those recommendations. Would you submit that statement to us so that we have a copy?

Mr. TALLCHIEF. It has been submitted, sir.

Mr. SYNAR. Miss Giles.

Ms. GILES. Miss Gentry will give our statement.

Mr. SYNAR. Miss Gentry is going to be testifying?

Ms. GENTRY. Yes.

STATEMENT OF JO LYNN GENTRY, NAVAJO TRIBE, POLICY SPECIALIST, ON BEHALF OF FIRST NATIONS FINANCIAL PROJECT, ACCOMPANIED BY MARCELLA GILES, CREEK TRIBE, RESEARCH DIRECTOR

Ms. GENTRY. I would like to take this opportunity to thank you for inviting us here to submit our views on the BIA's management of the Indian tribal trust funds.

First Nations has worked with tribes to help them achieve a measure of self-sufficiency and to decrease their almost total reliance on Federal programs and Federal assistance. Towards this goal, First Nations has worked to ensure that tribes be allowed to participate in the management and investment of their trust funds. We believe tribes have the legal right to have input into the investment process and to know how the business of the trust is being carried on.

First Nations has developed three alternative models of tribally controlled trust funds. We hope these will eventually become the solutions which this committee is looking for.

The first model is the out-of-trust model. This has proven successful for the Saginaw-Chippewa Tribe of Michigan. Under this model, Saginaw has received a judgment award in 1986. Pursuant to the Judgment Fund Distribution Act, the Saginaw submitted a distribution plan to the Bureau, wherein the \$10 million set aside was to be managed and invested by the tribe for tribal development. The Bureau ignored this distribution plan in favor of their policy of distributing 80 percent of the award in per capita payments and maintaining 20 percent of the award for investment purposes.

The other two models are currently being field tested by First Nations. The first one is the 638 model, wherein tribes would contract with an investment advisor to administer specific or all parts of the management of the investment portfolio. The third model is the in-trust model, and this is similar to the system that is in place now at the Bureau. Under the in-trust model, there would be an explicit trust document which would define the trust relationship and the BIA would be required to provide technical assistance, establish a formal structure to guarantee communication between the trustee and the beneficiaries, and to provide clear and timely reports to the beneficiary.

This communication, technical assistance, and reports are functions which should not need to be spelled out in a trust document. Throughout our work with trust funds, we have researched services provided to beneficiaries by trustees in the private sector. Services such as these are provided as a matter of course to their clients,

and if they're not, the trustee is fired and a new one is put in place.

As part of the BIA trust responsibility to Indian tribes, the Bureau should take steps to ensure tribes are able to provide meaningful and informed input into the ongoing management of the trust funds. Although the Bureau has contracted the management of these trust funds out to a private institution, their trust responsibility to the tribes has not been terminated. The Bureau now has the burden of overseeing the contract services to make sure these basic services are still being provided, or become provided.

In a sincere desire to work with this contractor, Security Pacific, to provide cost efficient and meaningful involvement of the tribes in designing their investment portfolios, we sent a package of training materials and case studies to Security Pacific. Later, in a meeting with Security Pacific, we were told that there was no budget to provide assistance to the tribes and that the materials we had sent to them had been thrown away. They said their client was the Bureau and that they had no obligation to the tribes. We were accused of merely wanting a piece of the money and our materials had therefore been thrown away, although, in fairness to Security Pacific, we did receive a request this week for those same training materials that we had sent on a prior occasion.

We have not included comments in our testimony on the contract or on the bidding process. However, we would like to submit a memorandum later to the committee for the record.

Mr. SYNAR. Under unanimous consent, we will allow that to be done.

Ms. GENTRY. Thank you.

The hearing today is focusing on the mismanagement of the trust funds. This focus then should also consider the money that was lost as a result of the BIA's policy of distributing 80 percent of the judgment awards in per capita payments. This policy serves to destroy the trust as surely as the unreliable accounting systems and possible misappropriations of the trust fund money. To rectify the wrongs done to tribes who had their money distributed under this policy, we feel Congress needs to create a trust fund Court of Claims and authorize class action suits. This would provide a forum to those tribes who suffer as a result of the BIA's mismanagement of their trust funds.

Congress also needs to follow the contract with Security Pacific to make sure the terms of the contract are complied with and that the history of mismanagement is stopped. This could be accomplished through the use of the oversight committee that has been recommended.

This concludes our oral testimony and we're prepared to answer any questions you have.

[The prepared statement of Ms. Gentry follows:]

**FIRST NATIONS FINANCIAL PROJECT**

69 Kelley Road • Falmouth, Virginia 22405 • (703) 371-5615

INTRODUCTION

On behalf of First Nations Financial Project, (FNFP), I want to express our appreciation for this opportunity to testify at these hearings.

First Nations Financial Project (FNFP) was created in 1979 for the purpose of using small-scale economic and enterprise development techniques to enhance existing tribal services and operations. Our objective is to decrease the tribes' almost total dependency upon federal funds and to build business and development capacity into the reservation. It is through our work with tribes at the grassroots level that we became aware of tribe's concerns over BIA management and control of their trust funds.

Our testimony will focus on the needs and rights of Indian tribes.

A basic premise of FNFP is that reservation development must be tailored to the needs of each tribe. This premise can be realized within a national strategy of management such as the BIA Trust Fund. An in-depth analysis of the BIA's trust fund operations supported this premise and encouraged tribal

participation six years ago¹. The Price Waterhouse report encouraged setting investment objectives tribe by tribe and viewed this consultation as consistent with the current federal policy of self-determination.

In order to implement this national strategy, the BIA must actively consult with tribes. In our surveys on almost 100 reservations, tribal leaders have identified a lack of local control, limited pool of expertise and quality technical assistance, and poor or inadequate information as barriers to reservation development. The BIA contributes systematically to every one of these barriers. Tribes are frustrated by the lack of involvement and inadequate information. Our research into the issue of BIA's management of trust funds and the recent bid and contracting process with Security Pacific indicates that the needs of the Tribes remain unmet and the legal rights of the Tribes remain ignored.

Our research had two points of departure - the Tribes and fiduciary trustees. We asked such questions as (1) what were the Tribes experiences and how were their needs being met and (2) were they involved in the investment process. We met with other trustees of mutual funds, estates, and so forth and asked (1) do

¹Price-Waterhouse In-Depth Review of Indian Trust Funds for the Bureau of Indian Affairs, Task V Recommendations, January 11, 1984.

you meet with the beneficiary and (2) what services do you offer.

In every inquiry we made to trustees of various funds the requisite legal obligations are: (1) observe and recognize beneficiaries RIGHT to have input and determination of financial needs and investments, (2) exercise the highest standard of fiduciary obligations to manage money in a manner most relevant to the needs and investment desires of the beneficiary.

Ideally, sovereign Indian nations should expect no less and be provided means to establish budget and financial goals and objectives. First Nations has worked toward these goals with several tribes as well as individual Indians.

NEEDS OF TRIBES

We found that ordinarily, a private investment manager would spend a considerable amount of time with a client determining what type of investment portfolio would best meet the clients' needs. If they refused this very basic service they were fired and a new manager was selected. Very simply, their job was to facilitate a process raising questions as to how much money was to be invested and for what length of time- short, medium, or long-term. These questions needed to be answered before the money manager proceeded with the investment process. So why is this process any different for tribes with regard to investment of their trust funds?

In our August, 1985 discussions with the Investment Branch of the BIA in Albuquerque, we were told that the BIA did not provide technical advice to tribes desiring to form investment plans. Further, the BIA did not have the expertise necessary to provide such assistance. They did have investment coordinators located at many area offices but, in any case, this person had other responsibilities and only devoted a portion of their time to the investment coordinator role. The investment branch personnel candidly noted that only a very few of the tribes, in particular those with substantial resources, had the requisite knowledge to develop investment objectives. There was an unspoken conclusion that the system was adequate because no demands were made of it. In a large part, this is because Tribes did not have the expertise to question it anyway.

Conversely, at an Oklahoma Indian Business Development conference last spring, several tribal representatives confronted the BIA about issues related to trust fund investment. These included: (1) Not being informed about changes in payment schedules for tribal trust fund interest payments; (2) A lack of personnel in both the area and agency offices that could answer questions pertaining to trust fund investments; and (3) Not being able to obtain a copy of the proposed BIA/Security Pacific contract when requesting one. Many tribes did not know who

their coordinators were or found that the coordinators did not have the skills to properly assist them.

In further research into tribal needs, FNFP initiated a meeting with BIA and Security Pacific representatives for the purpose of determining what plans had been set in place by the BIA and/or Security Pacific to enhance the ability of tribes to develop investment goals and objectives. We were informed that both parties had laid the groundwork for improved cash management and accounting systems. But efforts to work with tribes appeared to be minimal.

Neither party could identify plans for providing technical assistance to enhance tribes' investment capabilities. Instead we heard things like "there's no money in the budget" and "no tribe has come forward with a proposal for such assistance." In a sincere desire to work with the contractor in providing a cost-efficient, meaningful involvement of tribes in designing the investment portfolios, we offered a package of training materials and case studies FNFP successfully used through the years in our work with tribes. Mr. Barrett simply threw our materials away and saw no feasible way that the over 500 Security Pacific branches could be called upon to relate to tribal client needs.

We note, however, that section C.4.2 -"Investment

Services" of the BIA/Security Pacific contract expressly requires that the "Contractor will provide advisory services on all phases of investments and portfolio mix." In fact, the principal recommendation of the Price-Waterhouse review was for the BIA to "develop and implement an ongoing process to enable tribes and individuals to participate in the formulation of investment objectives for the Indian trust funds."² This has not been done.

The second major recommendation was to establish an oversight committee. This has not been done. This committee should be established to implement selection and to oversee the management of Tribal Trust Funds. Selection should set criteria for choice, identify potential advisors, solicit proposals, interview and evaluate candidates, and make recommendations. The advisors should be evaluated by two sets of categories: (1) basic criteria for initial consideration, and then, (2) evaluating criteria to compare advisors for final selection.

The committee should oversee and periodically evaluate the management on areas of investment performance, record-keeping, information reporting, relative to tribal clients, costs and overall contractual compliance. Tribal representatives should participate on the committee with investment managers to

²Id.

set broad investment objectives for pooled funds and to express tribal goals and objectives for individual investment portfolios. The committee also should oversee the BIA to evaluate its compliance with tribal objectives.

Three broad questions should be asked of all financial institutions interested in assisting tribes to manage and develop their capital: (1) What social and cultural considerations should a finance and investment service firm offer to tribes? (2) What type of specific financial services beyond portfolio management should the firm offer to tribal clients? and (3) What are some of the key economic objectives underlying a tribe's investment strategy that will impact overall portfolio management?

RIGHTS OF INDIAN TRIBES

The seriousness of the trust funds and the most "exacting fiduciary standards" are at stake. The following statement to the Senate Select Committee on Indian Affairs was made:

"The Indian trust funds represent a legacy for tribes and individual Indians. Indeed, it is not an overstatement to observe that the trust funds represent the residual value of all the land, water, and natural resources which were appropriated from the tribes as the United States expanded from coast to coast. The trust fund investment program then

³Tribes may want to examine their investments for their social impact. For example, tribes may decide not to invest in corporations that are known to discriminate against hiring Indian employees or corporations doing businesses in South Africa or contributing to the devastation of the tropical rainforest.

can be characterized as an effort to manage this important legacy....."

A report by the Inspector General, U.S. Department of the Interior documented in one year a \$17 million loss of Indian trust funds.

The Inspector General emphasized that "stewardship of the trust funds is the purest expression of a BIA trustee." He concluded the BIA had not properly performed its fiduciary duties. Appallingly, the BIA's policy may be described as "wait and see if the victim tribe discovers losses and if they do to then wait and see if they sue or file a claim for recovery of funds." No formal policy to address this issue and no procedural recognition of loss has been reported to tribes by the BIA.

Yet, as of today, the tribes have not received any notice of a reconciliation of their accounts by the BIA or Security Pacific. In the September, 1989 Inspector General's Report No. 89-117, the IG concluded that BIA trust fund accounting was "unreliable because of numerous discrepancies and inaccuracies...and lacked credibility." While multiple accounting systems were "routinely" not tracked to reconcile trust funds, it was the IG's unwavering position that the Bureau is potentially liable for any mismanagement that results in any loss. FNEP supports many tribe's assumption that not only is the BIA legally liable for mismanagement or loss of funds but now

also Security Pacific is directly liable to the tribes.

In this perspective \$17 million does not include the loss of over \$.5 billion by tribes who were forced to receive per capita payments under the Judgement Fund Distribution Act, P.L. 93-134. For a true accounting of the trust, a study should include all money dispersed in per capita payments plus interest.

While the burden is on the BIA to prove competence, FNFP recommends the creation of a Trust Fund Court of Claims to remedy wrongs committed over the past 20 to 30 years. Congress needs to enact legislation authorizing class action suits by beneficiary tribes and to establish the grounds for jurisdiction.

CONCLUSION

Congress, we respectfully submit that there is no mystery to what should be done. It is a matter of demonstration.

In conclusion First Nation's experience has proven that when the needs are met and the rights are upheld, success follows. Let me share a story about one tribe.

It took the Saginaw two years of organizing, testifying before Congress, and political networking to obtain the special legislation whereby control over a \$10 million land claims settlement belonged to the tribe. During this time, and in coordination with these activities, First Nations worked to develop and implement an investment plan for the \$10 million

award.

The Tribe's investment plan had several different stages. Initially, First Nations, in conjunction with the Tribal Council, held community workshops on the advantages of investing the Saginaw settlement award. A comprehensive survey was conducted to identify the community's social and economic needs and to assess their priority for program development.

Preliminary research on commercial, industrial, agricultural, and economic opportunities for economic growth was compiled. Financial experts who could help design a plan and make recommendations on the use and investment of the funds were identified. Training from First Nations prepared the Saginaw Tribal Council and key tribal staff for the selection of a financial advisor.

Equitable and reciprocal relationships with local financial institutions were negotiated and by July 1986, First Nations completed the Saginaw Chippewa Tribal Trust Fund Investment Plan. As a direct result of placing these funds locally, the Tribe worked out an arrangement with a local bank to provide 10% mortgages for tribal members for new housing units financed and constructed on the reservation. Sixteen families have moved into their new homes, and another sixteen will have their homes finished in the near future.

Thank you for this opportunity to share with you our testimony regarding the management of the Indian trust funds. We are prepared to answer any questions the Committee has of us.

Mr. SYNAR. Thank you, Miss Gentry. We appreciate that, and we'll need that copy, or at least a summary of that, for the record.

Ms. GENTRY. OK.

Mr. SYNAR. You all surprised us this morning. What we had and what you gave us were two different things. Also, the models that you mentioned in your statement will be made a part of the record. I might add that, with that kind of creative management, if the BIA had been listening to you, maybe we wouldn't be here today looking at this whole program.

I want to insert into the record a statement by a witness representing the Red Lake Band of Chippewa Indians from Red Lake, MN. A lot of people asked us to testify today. Regrettably, the subcommittee just doesn't have the opportunity to hear from anyone, so we will, under unanimous consent, allow this statement which details some specific problems they've had with the Bureau regarding an apparent shortage of almost \$2 million in their tribal trust funds to be made part of the record. I would ask unanimous consent at this point that that be done.

[The prepared statement follows:]

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

BY

ROGER A. JOURDAIN, CHAIRMAN
RED LAKE BAND OF CHIPPEWA INDIANS

OCTOBER 26, 1989

Good Morning Mr. Chairman:

My name is Roger Jourdain and I am the Chairman of the Red Lake Band of Chippewa Indians of Red Lake, Minnesota. On behalf of the Red Lake Band, I would like to thank you for this opportunity to present our views.

In order to help you understand our recommendations, I would like to take just a few minutes to tell you a bit about the history of our Red Lake trust funds mismanagement problems. Until 1981, the BIA maintained a separate accounting station at the Red Lake Agency office. This accounting station was responsible for the daily management and accounting of cash activities for the various trust funds owned by the Red Lake Band. In 1981, the Tribe learned, rather inadvertently, that the BIA was, and had been, deducting the costs of managing our trust funds from our tribal trust fund accounts. Upon receiving this information, we immediately contacted the BIA and demanded that the practice cease and that we be repaid for the funds which were illegally taken. We also requested a full accounting of our trust fund balances. While the BIA responded by closing the Red Lake Accounting Station, no accounting was received for a number of months. When it did finally arrive, it was incomplete and obviously inaccurate. As a result, the Tribe again, by resolution, requested a complete and detailed accounting.

When this resolution was not responded to, the Tribe contacted then Assistant Secretary for Indian Affairs, Ken Smith, and asked him to intervene. Finally, in October of 1981, after waiting an additional two months and receiving nothing, the Tribe contacted Senator Boschwitz and

asked him to assist us in forcing the BIA to live up to its trust responsibility. He had no better luck than we did.

In May of 1982, the Tribe requested the assistance of the Office of the Inspector General. Their report, dated June, 1982, concurred with the Tribe's opinion that the Trust fund balances were incorrect, and that they should reflect at least several hundred thousand dollars more than the BIA was showing on its records. In addition, they discovered a number of additional adjustments which had been made without the tribe's knowledge. Many of these were undocumented. According to our Tribal CPA, these adjustments appear to have been made to reduce our trust fund balances to the amounts reflected in the BIA Finance System, which were clearly incomplete and inaccurate. After issuing his report, the Inspector General established a deadline of September 1982, for the BIA's response. No response came.

Finally, in 1983, the Tribe sued the BIA, in Federal District Court, over its failure to provide the information it requested and document certain Trust fund balances. As a result of this litigation, the Court ordered the BIA to have all Red Lake Trust Accounts audited. The audit ordered covered a fifteen year period from 1968 to 1984. The results showed that the BIA's financial statements, as reflected in its Finance System records, were understated by more than \$800,000.

Despite these devastating findings, the BIA continues to take the position that this audit report was "just a management tool" and that it will do nothing until it has reviewed the audit report and determined its accuracy. This response is appalling to us, since the BIA picked the audit firm and it was staffed by nationally-recognized certified public accountants.

As a result of the BIA's position, the litigation we started in 1983 is still active, and the Tribe is continuing its efforts to obtain complete and accurate account information, together with corrections to our account balances. To add insult to injury, we learned in January, 1989 that the BIA had unilaterally, and without our knowledge, determined that the tribe's trust funds investments were overstated and transferred some \$1.25

million out of our accounts. Thus, since, we have never received the account adjustment called for in the court-ordered audit, we now find ourselves missing more than \$2 million of tribal funds.

When the Tribe discovered the \$1.25 million adjustment, representatives of the Tribe, including its CPA, traveled to Albuquerque in March of this year to demand an explanation. After reviewing the BIA's records, the Tribe took issue with the BIA's decision and, at its own expense, prepared and presented its position to the Agency in April. After viewing our presentation, the BIA personnel working on our audits acknowledged their agreement with our position, but again took the position that they would have to review our accounting work in detail before they could restore our lost balances. To date, no restoration has been made.

Mr. Chairman, had the Red Lake Band not been in a position to file its mismanagement lawsuit, and had we not a CPA team capable of tearing apart the BIA's records, we would have never known the extent of loss we had suffered. Today, eight years later, after we have expended over \$50,000 in litigation costs, and elected tribal officials and our CPA's have spent hundreds of hours at tribal expense, the BIA has tentatively agreed that our accounting is probably accurate, but we still don't have our money.

In our opinion, there are two issues which should be addressed by this Committee: the current status of tribal trust fund accounts and the proposed third party contract with Security Pacific. These issues are inter-related and cannot, and should not, be viewed any other way. The Inspector General's Report and the Arthur Andersen study have already documented many of the problems which exist in the government's accounting system, but no one has proposed a practical solution. Our fear, quite simply, is that once a third party financial institution becomes responsible for the day-to-day management of these funds, the Congress will lose interest in solving the real problem, the inaccurate balances in our Indian accounts.

While we at Red Lake are capable of continuing our breach of trust litigation and filing additional law suits, we are, to put it bluntly, sick and tired of having to use every penny that we have available to pay lawyers to make the federal government do what the federal courts have already determined is its responsibility. The federal courts made it clear in numerous cases, such as Angle v. United States, that "Where the United States holds funds for Indian tribes, a trust relationship exists unless there is explicit language to the contrary." The courts have, in cases such as Cheyenne-Arapaho Tribes of Oklahoma V. United States, explained that, "the federal government, as trustee must act in a reasonable prudent manner in managing the trust assets and that the U.S. also has the fundamental obligation to protect the Indian beneficiaries' principal... as well as to maximize the trust income from that corpus." I just don't know how much clearer the courts need to get.

The findings of the Inspector General make it crystal clear that the BIA is violating each and every one of those principles. If a private trustee had done what the BIA has done, it would be looking at punitive damages and their officials would probably be facing incarceration. In this instance, however, the best that we can hope for is that we get our money back.

While we have heard all the arguments in support of the policy of limiting government civil and criminal liability, I hope that you can understand the frustration that we feel when we are taken advantage of time and again and our funds are stolen right before our eyes. We, therefore, believe that we are not being unreasonable when we say that we resent having to sit here and beg for the opportunity to be involved in these decisions affecting our own money. While we are thankful to see the press show an interest in this issue, we know from experience that in a few weeks or even days, they will move on to another sensational government atrocity and we will be left alone with our problems. We, therefore, implore you to provide a mechanism to insure that something is done now.

Through our activities, we have learned of some of the problems associated with BIA's trust funds accounting. One major weakness is its

inability to reconcile receipts, disbursements and interest earnings with balances in the U.S. Treasury. We think of the U.S. Treasury as a "bank". All trust funds are initially deposited in the Treasury and long-term investments are made by withdrawing money from the Treasury accounts and investing them in instruments such as certificates of deposit at banks and savings and loan institutions. When these investments mature, they are redeposited in the Treasury, together with the interest they have earned. Disbursements from trust funds are made directly from the Treasury with the use of treasury checks and cash balances in the Treasury which are supposed to earn interest at the prevailing interest rate.

While this all sounds reasonable, the problem is that controls over the receipts deposited into the Treasury are weak, at best, and in some cases nonexistent. In his Red Lake trust funds report, the Inspector General pointed out that some Red Lake receipts which were deposited into the Treasury were never recorded by the BIA on its accounting records. In a private banking situation, these omissions would have been discovered at the end of each month, when deposits are reconciled with the accounting records. Unfortunately, in our case, these reconciliations were never done, probably because Treasury does not prepare monthly statements which itemize individual deposits, withdrawals and interest earned, as a normal bank would do.

Our information leads us to believe that the U.S. Treasury does not maintain its own individual balances on trust funds accounts or keep even an accurate, up to date balance of trust funds on deposit. Several of the reports you have received disclose that the BIA is responsible for notifying Treasury on a daily basis of the amount of Trust funds held by Treasury, and that Treasury uses those figures to calculate the interest earned on Indian trust fund accounts. This is comparable to my bank allowing me to call them each day and paying me interest on whatever amount I say that I have on deposit.

In the Red Lake situation, we have learned that the BIA has utilized as many as five different accounting systems in the past trying to account for our Indian Trust funds, and not one of these systems could be

reconciled to any Treasury balances, nor could any of these systems be reconciled with each other. Different divisions of the federal government take different positions on which of these systems reflects the most accurate record of trust fund accounts. These differences of opinion still exist today. Our staff has, for example, been caught more than once in disagreements between the BIA's accounting and investment divisions when trying to reconcile our Tribal balances in just one Red Lake account.

Another problem exists when the federal government tries to determine the nature of a prior trust fund deposit. Take for example, a single tribal timber sale where one company buys timber from section A, another company buys the timber in section B, and a third company buys the stumpage. One sale, with at least three separate payments. The BIA's accounting division, like most other accountants, uses deposit codes when payments are entered. These codes work very well as long as someone makes adequate notes explaining what they mean. In many cases, however, the BIA had made one single deposit entry for a given sale. Thus, unless someone has and can understand the notes on that entry, or remembers the details of that sale, it is impossible to tell five years later whether, in the case of my example, that entry represents a payment from one, two or three companies.

My point, Mr. Chairman, is simple. The only way that the federal government is ever going to reconcile these balances is by involving the Tribes. We cannot trust the BIA to do the job for us, and as our experience has taught us, and as the private accountants the government has hired to work on our situation have stated, the federal government's information is simply too sketchy and too unreliable to lead to a reliable result. Red Lake's CPAs have spent hours preparing information for everyone from the BIA staff to the Office of the Inspector General, and it is this information, and only this information, which has allowed us to identify the problems in our accounts. The Red Lake Band and the majority of other Tribes are ready and willing to assist in resolving these matters, but to date, our offers have been ignored. We at Red Lake know for a fact that our trust fund balances could never be reconciled without the information we provided to the agency at our own expense. We, therefore, recommend that you consider appropriating enough money to

allow the Tribes to involve their own people in this auditing process, rather than just funding private and government CPA's to try to reconcile books which are missing half of the information.

We also feel strongly that the Congress should appropriate funds to cover all of the shortages identified in Indian trust fund accounts, instead of forcing each and every Tribe and individual owner to file suit. Just last year, Congress appropriated hundreds of billions of dollars to correct the problems created by the mismanagement of numerous savings and loans, even though that mismanagement was not caused by, or the responsibility of, the U.S. government. To the contrary, it has already been established that the shortages in Indian trust accounts were caused by and are the responsibility of the United States government. We, therefore, feel that if you want to truly do something to further Indian economic development, allow us to expend our limited funds for projects in our community instead of filing suits against the federal government to recapture monies for which the federal government already knows it is liable.

On behalf of the Red Lake Band, I would like to thank you for this opportunity to testify here today.

Mr. SYNAR. Obviously, the people at the table here are the beneficiaries, or the victims, of the trust fund itself. We're glad to have you here this morning.

I guess, if I could get you all to briefly tell us maybe, are you satisfied with the internal management of these trust funds, Miss Gentry?

Ms. GENTRY. No. We feel there needs to be more tribal input and accurate reporting from the Bureau to the tribes, so that if this had been done, as was recommended, the auditing would have been caught earlier by the tribes had they had accurate reports and been trained in how to read those.

Mr. SYNAR. Mr. Tallchief?

Mr. TALLCHIEF. Mr. Skye will comment.

Mr. SKYE. Could you state the question again, please, sir?

Mr. SYNAR. Are you satisfied with the way that the trust funds have been managed?

Mr. SKYE. No, we're not, simply because over the years there have been many problems occurring and no direction was taken to correct those problems. One of the things that is important is that the American Indians across the country—you know, the GAO and Inspector Generals Office and FBI and Federal marshals, when a tribal leader or a councilman misspends money or misappropriates funds, he's taken to court and sent to prison. And not for 2 years. Maybe for 15 or 20 years.

Who do we take to court? Who do we talk to? What do we do about this situation? We're not as informed about the reporting system that the Bureau of Indian Affairs has within their own bureaucracy. We receive copied reports of information that you can hardly read. The numbers are partially faded out. We don't know what type of—maybe they're using their GSA copying machine.

Mr. SYNAR. I think you point out something very interesting. If this was the private sector and you got that kind of treatment, you would take your business elsewhere, wouldn't you?

Mr. SKYE. Yes, sir.

Mr. SYNAR. You can't do that in this case, can you?

Mr. SKYE. No, we can't.

Mr. SYNAR. Do you think the tribes have been sufficiently consulted with through this process?

Mr. SKYE. No, sir, they're not consulted with, probably very little. I want to make that clear, a good clarification of that.

We have asked—the Sioux tribes have asked the Bureau of Indian Affairs, in earlier years, going back to 1985, 1986, and 1987, to provide some information about their trust funds and how the trust services department did the reporting. The people that they sent out weren't well informed about how the system worked. Either they were new or didn't know enough about tribes and agencies and how those agencies functions.

Mr. SYNAR. Were they Native Americans?

Mr. SKYE. No, they weren't, sir.

Mr. SYNAR. Miss Gentry, let me ask you a question, if I may.

Are you familiar with the appropriations language that we've been talking about today with the inspector general?

Ms. GENTRY. Yes.

Mr. SYNAR. Would you agree that it is very clear that the BIA has the responsibility to audit and reconcile those accounts before they transfer the assets to a contractor?

Ms. GENTRY. Yes, that type of auditing and reporting—

Mr. SYNAR. Is that the understanding of your organization and most of the tribes?

Ms. GENTRY. Yes.

Mr. SYNAR. The same with you, Mr. Skye?

Mr. SKYE. Yes, sir.

Mr. SYNAR. Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Chairman.

Miss Gentry, you mentioned three alternatives, I believe.

Ms. GENTRY. Right.

Mr. THOMAS. Would you review the first one? I'm sorry, I didn't get that.

Ms. GENTRY. The first one was the out-of-trust model. This is where the tribes withdraw their funds from the Bureau's control and manage them themselves.

Mr. THOMAS. I see.

Ms. GENTRY. The trust responsibility then is passed on to the tribe and the tribal members become the beneficiaries.

Mr. THOMAS. Would your organization or the people you represent generally support the notion of either dissolving or drawing down this trust and putting it in the hands of the beneficiaries to manage for themselves?

Ms. GENTRY. If that's the only way to—

Mr. THOMAS. Isn't that what you're saying?

Ms. GENTRY. That's the one model, yes.

Mr. THOMAS. Would you support that option?

Ms. GENTRY. Yes.

Mr. THOMAS. Mr. Skye?

Mr. SKYE. Yes, sir, I would.

Mr. THOMAS. Really? Has that been proposed? Is that a new idea or is it something that you all have thought about for some time?

Mr. SKYE. Sir, ever since we heard about the Mellon Bank deal with the Bureau of Indian Affairs, the tribes out there in the "sticks," so to speak, are not supposed to be knowledgeable or they're not Harvard lawyers, nor are they investment people. They worked on a package with Shearson Lehman Brothers and tried to develop a 638 package to contract those trust funds from the Bureau. When the people came out to discuss it with the tribes, they weren't able to explain it properly, so nothing was accomplished at that time. It was very frustrating.

Mr. THOMAS. The tribes in Wyoming, I think there are some 8,000 Native Americans in my State that are relatively knowledgeable. I think they do have management structures that seem to me to be quite good.

I have no more questions. Thank you very much.

Mr. SYNAR. Let me thank all four of you.

Miss Giles, did you have something?

Ms. GILES. Yes. If you would indulge me, I'm suffering from a sore throat.

In the success model, in the Saginaw-Chippewa model, the assistance came from the BIA. As our firm provided the technical assist-

ance to the Saginaws, the end result required a special piece of legislation to, in fact, allow the tribe to successfully manage and invest their funds. The local economy was impacted and positive results certainly did result, in spite of the persistence of the Chipewas having to pursue congressional authority.

Mr. THOMAS. May I follow up on that just a second, Mr. Chairman?

Mr. SYNAR. Yes, go right ahead.

Mr. THOMAS. Is that the instance you spoke of where the choice of the tribes to take the corpus of the fund and invest it rather than distribute it on a pro rata basis?

Ms. GILES. Yes. And certainly there is some risk to the sophistication of the tribe to manage this. The other two models are alternatives to 638.

Mr. THOMAS. But the tribes generally would be interested in hiring—most of us are not professional in managing money and you would hire somebody?

Ms. GILES. Yes, sir. The tribes have actively sought out the professional management.

We would like to submit our extensive surveys that our firm has conducted, both with the tribes who have tried to talk with the BIA, I think to summarize and to reinforce Mr. Skye's statement. Basically, we grouped the three responses from the tribes and time and again, as they were trying to talk with the BIA, their results, their reactions, were categorized as not being informed about the changes in payment schedules for the tribal trust fund interest. Again, there was a lack of personnel that was able to assist them in this particular area of expertise and to the trust fund investment program itself. The third category is that they were continually unable to obtain a copy of even the contract. This was over 100 tribes who had not even been provided a copy of the proposed contract.

I would also like to say as well that in our surveys among the private sector we were assured, at least by at least one large fund, that they could buy off the shelf, today, software to manage over one-half million accounts. I think this was analogous to an insurance company. So it was amazing to us that the BIA could not walk across the street or down the street to avail themselves of such software that is available.

Mr. SYNAR. Miss Giles, let me interrupt you. You said something on page 5 that I found very interesting. You all approached Security Pacific with a sincere desire to work with the contractor. You quoted here in your statement, "Mr. Barrett simply threw our materials away and saw no feasible way that the over 500 Security Pacific branches could be called upon to relate to tribal client needs."

Is that correct?

Ms. GILES. That is, sir, and to our amazement—

Mr. SYNAR. That's not very sensitive, is it?

Ms. GILES. It was a direct rebuff. We would like to say that we have a package in response to any—

Mr. SYNAR. We will submit that and the surveys that you mentioned earlier to the record.

Ms. GILES. Thank you, sir.

[The material follows:]



FIRST NATIONS FINANCIAL PROJECT

BUSINESS ALERT

Vol. 5, No. 1

Winter 1990

Trust Funds and BIA Management: A National Disaster

by Marcella Burgess-Giles

The Issues

On October 26, 1989, First Nations presented testimony on Indian trust funds before Congressman Mike Synar's Sub-Committee on Environment, Energy, and Natural Resources. The hearing was to review the BIA's management of the \$1.7 billion Indian Trust Fund and its contractual agreement with Security Pacific National Bank to manage the trust funds. The hearing was the latest in a series of events critical of the BIA's failure to live up to its fiduciary responsibilities in managing the assets of more than 200 tribes and 290,000 individual Indians.

These facts remain. The \$1.7 billion Indian trust fund was found to be grossly mismanaged. Government auditors placed trust fund losses at \$17 million as

of June 30, 1988. A private accounting firm, however, placed the figure at \$19 million. Nearly \$12 million of investment losses have not been recognized in accounting records nor have the accounts been reimbursed for these losses. Furthermore, the BIA does not have accounting control over guaranteed loans of about \$23 million. Because the BIA did not know how to properly report its account balances, it has lost approximately \$2.4 million in overnight interest that could have been earned from the Treasury Department. In sum, individual Indians and Indian nations may appropriately describe their trust funds as a disaster — a national disaster.

The Hearings

Congressman Synar opened the hearings by expressing his concern about the procedural aspects of the BIA/Security Pacific contract. After determining that private sector institutions might be better able to perform some of the financial trust services historically performed in-house, BIA issued a Request For Proposals (RFP) for financial trust services. The BIA subsequently entered into a contract with Security Pacific National Bank for integrated external services encompassing cash collection and concentration, investment services, disbursement services, custody of trust fund accounts, distributing earnings, depositing funds into the Treasury, and reporting.

Congressman Synar emphasized the BIA's failure to reconcile trust fund accounts before con-

(see *National Disaster*, page 10)

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Marcella Burgess-Giles, a Creek from Oklahoma, is
Research Director for First Nations.

A National Disaster

(continued from page 1)

tracting to transfer the funds to Security Pacific. The Inspector General confirmed to Congressman Synar that there was a clear understanding that trust fund ledgers were to be reconciled before any money was to be transferred to Security Pacific. Congressman Sydney Yates submitted a letter to the Sub-Committee stating unequivocally that the BIA had breached its fiduciary responsibilities to the Indian people. In addition, Congressman Craig Thomas expressed his concern about the loss of revenue to the tribes and asked what the advantages would be to have the tribes manage the funds at the tribal level.

A Government Accounting Office (GAO) official testified that while the BIA had the ability to contract with Security Pacific for accounting services, the BIA was first required by federal statute to obtain procurement authority. Having failed to do so, the BIA is now in the position of holding a contract for which it lacks authority. The GAO official stated that Indian trust funds are owned by a specific beneficiary, the tribe or individual, and the

Congressman Sydney Yates submitted a letter to the committee stating unequivocally that the BIA had breached its fiduciary responsibilities to the Indian people.

Indian beneficiary has the right to sue the trustee. Trust funds are distinct from public monies which are owned or collected by the federal government and operate according to a different set of rules. The United States, as trustee for Indian funds, has a fiduciary responsibility to the tribes. This fiduciary responsibility is of the "highest, most exacting standards" solidified in case law. First Nations views this concept as critical. This means the BIA must go above and beyond what private trustees have to do in order to secure for the beneficiaries the rights they are entitled to. It is simply not being done.

There remains a standing requirement to establish an investment planning process that truly meets the needs of tribes as beneficiaries. In 1984, Price Waterhouse issued a report in which they concluded that the BIA should develop and implement an on-going process to enable tribes and individuals to participate in the formulation of investment objectives for the Indian trust fund. Another recommendation was that the BIA establish an oversight committee for monitoring trust fund accounts. Neither recommendation has been implemented.

Chief George Tallchief, Chairperson of the National Tribal Chairman's Association (NTCA) generally agreed with First Nations that tribes had not been informed about the status of their trust funds. No consultation with the tribes, nor explanation of the proposal to contract with a private commercial bank, took place in 1986 when an RFP was issued and Mellon Bank was awarded the contract. Only in response to criticism from Congress and numerous tribes in 1987 did the BIA begin a consultation process to answer tribal questions. This consultation was not with every tribe or individual Indian and, thus, was wholly ineffective. The second RFP that resulted in the contract with Security Pacific was without tribal input regarding needs and requirements. Security Pacific to date has been paid \$1.2 million to design an improved cash management and accounting system. Although this contract is the result of a second RFP, there has been no delivery on the contract.

Dr. Eddie Brown, Assistant Secretary of the Interior, BIA, gave testimony that he was willing to work with Congress, but had been in office only 100 days. Few on his staff seemed to know how to respond to Congressman Synar's question relating to who was directly accountable.

Historical Perspective

How did the United States come to hold almost \$2 billion of Indian trust funds? The issue of trusteeship is deeply rooted in the history of US-Indian relations¹. Early treaties assigned the federal government a passive role of simply making annuity payments².

Subsequent treaties created funds for a variety of activities that included education, future exigencies of the tribe, perpetual funds from sales of ceded lands, and funds specifically to be invested in stocks. By 1850 interest and percentages for annual income were common terms in treaty making.

There are three general types of funds. One is Indian Monies, Proceeds of Labor; a second is Tribal and Individual Indian money accounts; and a third is Tribal Trust Funds. Today, the two major categories are Tribal Trust Funds (TTF) and Individual Indian Monies (IIM). These funds represent judgment claims awarded from Indian Claims Commission cases and revenues from leasing tribal land, and oil and gas royalties, respectively. A former Special Assistant to the Assistant Secretary for Indian Affairs and now consultant to First Nations,

¹ See *Historical and Legal Analysis of the Federal Government's Fiduciary Duties* by Curtis Berkey, Indian Law Resource Center, 1985.

² See the Treaty with Frankshaw, (1804), 7 Stat 83, and the Treaty with Kaokaskia, (1803), 7 Stat 78.

Other Business Alert Articles on Trust Funds

- "Tribal Investment Decisions and Security Pacific," Vol. 4, No. 3
- "The Way It Oughta Be: The Saginaw Chippewa Show How to Manage a Tribal Trust Fund" and "Trust Funds Update: When the Beneficiary Doesn't Benefit," Vol. 4, No. 2
- "BIA Awards Contract to Security Pacific for Assistance in Managing \$1.8 Billion Trust Fund," Vol. 4, No. 1
- "Maximizing Returns on BIA Trust Funds" and "Trust Funds: Tribal Use and Control," Vol. 3, No. 1
- "BIA Management of the Indian Trust Funds," Vol. 2, No. 1

Sam Goodhope, said "It is not an overstatement to say that the trust funds represent the residual value of all the land, water, and natural resources which were appropriated from the tribes. . . . The trust fund investment program then can be characterized as an effort to manage this important legacy."

Because the practice of keeping Indian money in trust evolved in an ad hoc manner through various treaties, statutes, and court cases, unique restrictions apply to a disparate number of accounts. A tribe must first look at specific treaties, judgment plans, or tribal codes over a period of time to decide which restrictions govern.

Historically, the purpose of trusts has changed as well. It evolved from the ancient use of passively making annuity payments to an active role of paying the rents and profits of a specific realty. The present day non-Indian trust is normally invested and reinvested in stocks and bonds. While the modern world of 1990 has moved ahead to use trusts as a device to manage investment portfolios, the management of Indian Trust Funds is caught in a quagmire of outdated laws and legislation dating back to 1804.

Trust Fund and the 1990s

At a Harvard seminar last fall, noted Indian scholars and speakers encouraged tribes to confidently take strides in acts of sovereignty and self-determination. Asserting control, use, and management of trust funds is an act by a sovereign nation.

First Nations has designed three alternative models for trust fund management. Each model may be adapted to varying levels of financial sophistication, experience, and capability for control of trust funds. In preparation for the '90s, the information decade, tribes are more than ever vulnerable to being left behind if state-of-the-art technology is not employed to supply immediate information to tribal governments. Short, medium or long-term planning must be tied to a tribe's investment portfolio mix.

Like other modern trusts, the design of an investment portfolio requires a financial advisor role. This job is distinct from the mere technical, collection, and cash management role the BIA assumed

in the 1800s. New legislation is needed to replace the old regulations that limit the BIA to a cash management role.

Regulating the deposit of trust funds in public debt obligations of the United States or bonds and notes which are unconditionally guaranteed by the U.S. is required by 25 USC 161 (a) and 162 (a). These safe but low interest instruments may not be prudent for a tribe that can afford more risk and diversification. Regulating disbursements of trust funds by Congress is accomplished by 25 USC 123 a,b,c. This statute describes specific expenses and advancements to tribes. BIA says this law governs a tribe's right to take its money out of trust. A more modern policy would assess the advantages of depositing funds at the local tribal level so tribes could leverage from this account. Separate individual funds management can be as creative and protected as pooled federal accounts and economies of scale. On-site technical assistance to aid tribes in developing accounting systems would enable a tribe to determine its daily cash balance. Instead of preventing tribes from taking their money out of trust, BIA could assist tribes with technical expertise to make choices.

Theresa Carmody, consultant to First Nations, stated "Critical questions such as how much money is available for investment, and for what length of time, could be answered on-site. With this type of system in place a tribe would then be able to develop an investment portfolio which would be tied to the tribe's short, medium, and long-term cash needs. Without this type of system, a tribe is operating in the dark, and cannot maximize investment opportunities."

Indeed, not all issues have an immediate answer. Analysis must resolve the manner in which tribal sovereignty and federal trust responsibility is maintained. The two positions can be supportive philosophically and politically. The Honorable William C. Canby, Jr. observed that policy reflects the soul of a nation, or ought to. Individual tribal members need to put in place a structure by which tribal councils in control of trust funds are monitored but still allowed growth.

Ms. Carmody points out there is a choice to be made. The BIA can either work to enable tribes to become actively involved in the management of their trust monies or it can continue to give lip service to the policy of self-determination while continuing to use a bureaucracy to maintain itself, rather than to advance the Indian nations it was established to serve. ■

BIA Management of Indian Trust Funds

For years the BIA has been the subject of increasing criticism for the way in which it has managed Indian Trust Funds. Indian Tribes and individuals alike have expressed their dissatisfaction with the erratic manner in which the Trustee has disbursed their money; the lack of periodic reports which explain how and where the trust monies are invested; the lack of tribal and individual involvement in setting investment objectives; and the inability to place the trust monies in local banking institutions or investment companies if desired.

In a study done by the Comptroller in 1982, the General Accounting Office (GAO) concluded that design and operating deficiencies in the Bureau's automated accounting and finance system had caused the Bureau to lose accountability for hundreds of million of dollars, some of these being trust funds. GAO also concluded that these system deficiencies were so serious that they presented opportunities for improper use of funds.

GAO found that "controls over trust fund receipts and disbursements were lacking and that key trust fund accounting records were out-of-balance by millions of dollars. Detailed subsidiary ledger trust fund accounts differed from summary general ledger accounts over a two (2) year period by more than \$25 million".

This failure on the part of the BIA to improve its management of the Trust exposed the Trustee to legal action on the part of the beneficiaries (Tribes and Indian individuals). In light of this, BIA entered into a contract with the accounting firm of Price/Waterhouse (PW) to conduct an analysis of the management of the Indian Trust Fund by the Department of the Interior.

The report, which was completed in January 1984, and titled "In Depth Review of Indian Trust Fund Management", analyzed and made recommendations on Investment Portfolio Management; Cash Management; and Accounting Procedures.

Since tribes have historically been left out of the Portfolio Management process, the recommendations in this area were of particular interest to tribes. PW recommended that the BIA "develop and implement an ongoing process to enable tribes and individuals to participate in the formation of investment objectives for Indian Trust Funds.

Included in this participation would be an opportunity for tribes and individuals to make proportional assignments of their funds among alternative portfolios designed to meet specific needs. For example, a tribe could decide to place fifty percent (50%) of its money in a long-term security bringing a higher yield, and fifty percent (50%) in short-term security bringing a lower yield but available for immediate tribal expenditures.

This process would require that the BIA develop procedures to assure tribal participation. In addition, field staff would need to be trained and the trust fund beneficiaries would need to be educated about the process.

PW also recommended that a formal oversight committee, with public and private sector representation be established, "...in order to maintain the credibility of the investment process and to provide for policy level decisions regarding portfolio management."

PW also noted that there was a need for enhanced reporting to the beneficiaries of

the Indian Trust Funds and for this reason recommended that the BIA adopt report formats and report frequencies comparable to those in use at financial institutions that have in excess of \$1 billion under management. PW also recommended that the BIA establish formal procedures to structure the interaction between the beneficiaries (tribes and individuals) and the Trustee (the BIA).

On April 15, 1985 the BIA sent out correspondence to numerous banks and investment houses requesting information on the available services which would be helpful in managing the approximately \$1.7 billion Indian Trust Fund. The BIA received fifty eight (58) proposals in response to this correspondence. Then in May, the BIA scheduled four (4) meetings which were held in New York, Chicago, San Francisco, and Washington, D.C. to give those who had shown an interest in this issue a chance to meet with BIA trust fund staff. John Vale, then Chief of the BIA Branch of Investments, presided over the meetings.

Up to this point Tribes and individual Indians had no formal involvement in this process. Tribes were never officially informed about the Price Waterhouse Study and its recommendations. Tribal representatives were not involved in the meetings which took place between the BIA and the bank and investment house representatives. As beneficiaries of the \$1.7 billion under discussion, tribes had every right to be informed about, and involved in, the process.

Then in April, a letter from the BIA informed tribes that the Bureau had begun to gather information on private sector capabilities to assist in the management of Indian Trust funds.

The following chronology of events illustrates what occurred from the time Tribes received the letter of April '85 until March 13, 1987 when the Assistant Secretary of Indian Affairs announced in a press release that the BIA would not be able to proceed with the proposed "Neilon

Contract".

February 10, 1986: Associate Solicitor, BIA issues Opinion to Assistant Secretary Indian Affairs on "Pooling of Tribal Funds for Investment Purposes." Tribal funds whether or not invested as a pool, would have to comply with the terms of 25 U.S.C. 162a. Specifically, investments must be properly insured. In designing accounting and investment for the tribal pool, particular attention needs to be given in meeting the requirements of the insuring agencies."

April 5, 1986: Letter sent to all Tribes informing them that the Assistant Secretary of Indian Affairs was planning to contract "for assistance to improve the Federal management of Indian Trust Funds".

May 27, 1986: Letter from Senator Andrews, the Chair of the Senate Select Committee on Indian Affairs, to James Baker, Secretary of the Treasury. Senator Andrews questions the Treasury's solicitation of bids through a "closed" RFP to six (6) banking institutions said to be a part of the Treasury's "Lockbox Network". Andrews requests that the selection process be postponed (A May 27 solicitation deadline had been set), until questions on Lockbox network criteria and the RFP process were answered.

May 13, 1986: BIA Assoc. Solicitor's Opinion to Assist. Sec.-Indian Affairs on "Investment of Indian Trust Funds". Direct excerpts are as follows: "Questions of possible liability arising from the employment of an outside agent to operate a discretionary account could be avoided by limiting the investment of Indian Trust funds in such an account to those funds whose equitable owners, assuming no minors or others under legal disability are involved, give explicit approval and consent to such investment handling for their funds".

June 25, 1986: Letter to W.E. Douglas, Commissioner of the Financial Management Service (FMS), Department of the Treasury from Assistant Secretary Indian Affairs, Ross Swimmer outlining his reasons for

requesting the collection, concentration, and related services of the FMS.

July 3, 1986: Treasury responds to Senator Andrew's letter of 5/27/86 explaining the working relationship between the Secretary of the Interior and Treasury with regard to the solicitation process for trust management services. The letter was unresponsive to the questions contained in Senator Andrew's letter. In addition, there has been no adequate consultation with tribes and individual Indians to this point.

Sept. 23, 1986: Indian Trust Fund Oversight Hearings held by the Senate Select Committee on Indian Affairs.

Feb. 2, 1987: Letter from Congressman Udall, Williams & Stallings to Secretary of Interior Hodel stating that "While the Mellon contract may well be an appropriate answer to any problems BIA may be having with its trust fund investment and management programs, the manner in which this management is being developed and implemented is needlessly alarming for the following reasons: 1) The scheduling of investments and accessibility to tribal trust funds is critical to on-going tribal government operations, yet tribes have been excluded from the planning and development of the Mellon contract... 2)...the BIA has been placing tribal trust funds in overnight accounts at reduced interest rates to expedite the transfer to Mellon...3) The actual cost of the Mellon contract is yet unknown...4) Thousands of tribal members with IIM accounts have been placed in the insecure position of not knowing how this transfer of management responsibility will affect the status of their individual monies...".

Feb. 4, 1987: Letter to Assistant Secretary of Indian Affairs, from Senators Evans, Murkowski, McCain, Inouye, Melcher, Deconcini, Burdick and Daschle expressing concern over the proposal of the Department of the Interior to shift a very large portion of tribal trust funds to the Mellon bank for future management. Attached to the letter were eight (8) questions

directed at the Department of the Interior regarding the proposed trust fund management contract.

Feb. 10, 1987: Assistant Secretary sends letter to all tribal leaders concerning information on the contract for trust fund services. Also included was a question and answer paper prepared to provide Tribes and BIA employees with information concerning the upcoming contract with Mellon.

March 11, 1987: Petition sent to Congressman Sidney Yates, Chairman of the House Interior Appropriations Subcommittee signed by sixteen (16) tribal leaders requesting that Mr. Yates seek to have statutory language adopted in the FY 1987 Supplemental Appropriations bill to prevent the implementation of the transfer of tribal and/or individual Indian trust funds to the Mellon Bank or any other private institution.

March 11, 1987: Letter from Senator Inouye and Evans to Senator Byrd, Chairman of the Senate Subcommittee on Interior Appropriations, requesting that he include language in the FY '87 Supplemental Appropriations bill "to prohibit the expenditure of any funds appropriated to the Department of the Interior for purpose of implementing any contract with the Mellon Bank of Pennsylvania or any other private banking institution until sixty (60) days after the Department of the Interior has provided this Committee and the House Committee on Interior & Insular Affairs with a copy of the proposed contract and any ancillary memoranda of understanding, and investment guidelines. (Adopted March 19, 1987).

March 12, 1987: Letter from Congressman Udall, asking that language to prohibit the Mellon Contract also be adopted in the '87 Interior Supplemental Appropriations bill.

March 11, 1987: Letter from Congressmen Young (Alaska), Smith (Oregon), Vucanovich, Rlav, Lagomarsino, Rhodes and Gallegly to Secretary of Interior, Hodel, requesting that the contract with Mellon be delayed.

March 13, 1987: Assistant Secretary, Swimmer, issues press release explaining that the BIA will not be able to proceed with the proposed contract stating that "Recently...Treasury officials became concerned about certain technical aspects of the competition including the limitation of competition of Treasury's six (6) primary depositories". The BIA plans to reopen competition by conducting a new full-scale procurement for financial trust services. In addition, BIA will develop a comprehensive consultation plan for publication in the Federal Register that informs and seeks input from tribes and individuals with monies invested in the trust funds.

March 18, 1987: Letter from Senator Inouye to Assistant Secretary commenting on contents of 3/13/87 press release: "I fully support your proposal to develop a comprehensive consultation plan to seek input from the tribes and individuals with monies invested in the trust funds. I think it is important that this consultation process take place before issuance of any RFP and that it enable the tribes and individuals to have input into terms of the proposed contract before the formal RFP is issued". (Continued on page 6)



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Spring 1988

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- Land Consolidation - Still An Issue
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To Our Readers

The Business Alert is a quarterly publication. The format is intended to provide awareness of financial workings. The Alert features policy, legislation, other information on economic and financial activities impacting Indian tribes and individuals. The annual subscription rate for the FNFP Alert is \$10.00.

FNFP will be selling advertising space in the Alert at a cost of \$25.00 for a 2-3/4" x 4-1/2" space per issue. (\$100.00 - 4 issues.) The Alert is published 4 times per year and is distributed to all tribes and inter-tribal councils. The Alert is also mailed to Indian businesses, organizations and individuals. Contact Theresa Carmody, FNFP, at (301) 869-3720 if you are interested in advertising.

OFF WALL STREET Maximizing Returns On BIA Trust Funds by Gel Stevenson

RING . . . RING . . .

"The Bureau of Indian Affairs will accept bids until 11 a.m. Mountain Time on February 16th for February 18th delivery as follows:

35 days, 6 Tribes,

63 days, 4 Tribes,

91 days, 7 Tribes,

119 days, 2 Tribes,

182 days, 8 Tribes,

371 days, 4 Tribes.

FDIC covered institutions should consider hyphen 01 IIM available in all terms.

To place a bid, call 505-766-2975.

The effective yields for Feb. 4th CD purchases are as follows:

21 days, 6.60 to 7.64,

42 days, 6.59 to 7.76,

70 days, 6.50 to 7.79,

91 days, 6.51 to 8.11,

182 days, 7.75 to 8.55,

371 days, 7.75 to 8.75,

2 years, 8 percent to 8.40.

If you have questions, call 505-766-2975."

CLICK.

I sure did have questions. I already knew that this was the weekly recording from the BIA's Division of Trust Funds Management. They do a new one every week announcing the terms of the investments they want to make that week. And I knew that the BIA's trust fund had a good record when it came to getting high returns. But there was a lot more I did not know. Like: What did those number mean, like "35 days, 6 tribes?" What does I.I.M. mean? Just who calls that number? What did the callers do with the information?

So I called the Albuquerque, New Mexico number and talked with Fred Kellerup, financial economist in that office, who was nice enough to explain the process to me. Every week, the BIA has money to invest on be-

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half of tribes and individual Indians, mostly, but also monies from the Alaska Natives Escrow Fund, power systems, irrigation systems, and others like the Papago Cooperative Fund. This money includes new money from Washington, new investments, and maturing investments.

To get the highest rates from very safe investments, the Bureau has instituted a bidding process. Commercial banks, savings and loan associations, credit unions, or money brokers who represent such institutions bid for the available funds. (Fred calls these institutions "the bidding public.") How do they know what they are bidding for each week? That's where the recording comes in.

"35 days, 6 Tribes" means the Bureau has money from six tribes or other Indian institutions to invest for 35 days. It accepts bids until 11:00 a.m. Mountain Time every Tuesday. Then it places the money on Thursday. All investments mature on Thursday's as well. Which explains the fact that all of the terms — 63 days, 91 days, and the rest of those numbers are the terms — are divisible by seven.

According to Kellerrup, the Tribes tell the Bureau what they want to do with the money, and then the Division selects the term. When the recording says "6 Tribes," it means that there is at least \$600,000 to invest at that term, because each Tribe usually has \$100,000 and perhaps much more, even into the millions of dollars.

A bank or other member of "the bidding public" calls in with its bids. He or she will identify the bank (the Bureau accepts bids only from institutions that have been put on their approved list) and describe their bid. For example: "We want \$200,000 of 91 days and will pay 7.2%, compounded daily." Many bid on all the terms. Sometimes they want a limited amount, but other times they will take all that is available.

Why doesn't the Bureau say exactly how much is available? Because it would weaken their bargaining position. If they said they had \$6 million for 91 days, for example, the banks or brokers might think they would have trouble getting rid of all of it and bid a lower rate.

All the investments must have federal deposit insurance. (In some cases, they'll accept collateral, if it is good enough.) That limits the amount of any one Tribe's money in any institution to \$100,000. Before it accepts any bid, the Bureau checks to make sure the Tribe's total funds in that institution do not exceed \$100,000.

To ensure that even the interest is covered by that \$100,000 limit of federal deposit insurance, the Division

buys discounted certificates of deposit (CDs). It will place \$99,000 per Tribe in a 35 day CD, \$98,000 for 63 days, and \$90,000 for one year. That way, the insurance covers the interest they receive. And the Division doesn't have to deal with receiving interest payments every month or quarter.

When all the bids are in, Kellerrup and three other financial officers accept the highest rate first, then the next highest, and on and on. That way they place about \$50 million per week. If all the bids are too low, they won't accept them. Instead, they'll buy Treasury securities and wait until next week.

One last thing. Have you figured out yet what "hyphen 01 IIM" means? IIM stands for "Individual Indian Money." The rest of it — "hyphen 01" — is just for their forms. The Bureau has some \$400 million in "IIM" for 250,000 "IIM's." Detailed records are kept at some 48 disbursing stations around the country. This money is invested a lot like Tribal money, except that up to \$5 million can be put in one bank, since "IIMs" are insured separately, up to \$100,000.

Trust Funds - Tribal Use and Control

Indian Trust Funds, currently amounting to approximately \$1.7 billion, represent the monetary compensation remaining to the American Indian people (held in 254 tribal and 250,000 individual accts.) for the natural resources, water rights and other assets taken from tribes over the course of the past 200 years. For many tribes, these funds are the lifeblood for the present and future existence of their governments; many tribes are dependent on the income from investment of these funds for operation of tribal programs. In addition, individual tribal members rely on these funds to supplement meager personal incomes.

The Bureau of Indian Affairs (BIA) has fiduciary responsibility for managing the trust fund as part of the legislated trust responsibility which exists between the Federal Government and Indian Nations. The legal duties of the trustee in managing these funds include: - exercise of "reasonable management zeal" in obtaining the best rates available, i.e., the government must choose from among authorized investment opportunities to obtain the highest rate of return, and; — the duty to manage the trust according to "applied private trusteeship principles." These principles support a process whereby tribes have the right to be involved in setting investment objectives and to be given a full fiscal accounting for their trust funds.

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However, trust fund management is a function of the BIA that is in desperate need of improvement, as is evidenced by numerous Congressional investigations and federal reports. For instance, in '82 the General Accounting Office (GAO), found that "controls over trust fund receipts and disbursements were lacking and that key trust fund accounting records were out-of-balance by millions of dollars."


In light of this, the BIA began an initiative nearly two years ago that was to end in a contract with a single, private financial institution for management of the Indian trust fund, i.e. accounting for, cash management of, and investment of the fund. But tribes, as beneficiaries of the trust, were not properly informed about, or involved in this initiative. Many issues such as tribal and individual involvement in setting investment objectives, the inability by tribes to place their trust funds locally, and the lack of financial and investment expertise within the BIA were not addressed by this initiative.

For these reasons, FNFP has made a concerted effort to keep tribes informed about, and involved in all pertinent activities related to the contracting initiative. First, FNFP was involved in the distribution of a questionnaire to all tribes to determine whether or not they had been properly informed by the BIA. We found the overwhelming response was that they had not. FNFP then made a presentation at the Native American Finance Officers Association (NAFOA) national meeting to inform tribal representatives about the BIA contracting initiative and to discuss the impact that this would have on management of trust funds. Consequently, tribal representatives began to put pressure on the BIA, calling for tribal involvement and control. FNFP continued to keep tribes informed through articles in the FNFP "Business Alert" and by personal and telephone contact with tribal officials.


The BIA has since held a series of "consultation" sessions with tribes throughout its twelve regions for the purpose of informing, answering questions, and getting input, from tribes. On February 8, 1988 a letter from the Assistant Secretary of Indian Affairs was sent to all tribes to update them on the improvements the BIA is seeking pertaining to trust fund management. Enclosed with the letter is a question and answer document which was compiled in response to those written questions submitted by tribes and BIA superintendents on behalf of their constituent tribes.

The BIA is still planning on issuing the request for proposal (RFP), for procurement of trust fund services, a copy of which will be made available through each tribe's agency superintendent. Any new contracting initiative is supposed to take into consideration the comments and concerns expressed by tribes at the regional meetings. Has true consultation between the BIA and tribes begun?

FNFP continues to see a critical need for a permanent process to be put into place which will maximize tribes' opportunity to control and direct investment of their trust funds. We can conclude from our work in the area of trust funds over the past several years, that if left solely to the BIA, tribes will continue to be excluded from involvement and control in managing their trust funds.



FNFP continues to see a critical need for a permanent process to be put into place which will maximize tribes' opportunity to control and direct investment of their trust funds.



Tribes and individuals as beneficiaries, have the legal right to have their trust funds managed according to accepted reporting and consultation standards followed by private sector investment managers. In direct contrast to this, tribes still exercise little or no control over investment decisions because the particular way in which the Secretary of the Interior has chosen to fulfill the trust responsibility has arbitrarily limited the amount of control tribes are able to exercise. This has serious implications if one considers the fact that trust funds are the chief source of Indian capital and continue to represent a major vehicle in the development of stable tribal economies. Therefore, it remains crucial, that a trust fund policy which upholds tribal and individual rights and objectives, continue to be formulated and moved forward.

Recognizing the aforementioned, FNFP has begun the task of providing tribes with a process whereby they will be able to exercise maximum control over management and investment of their trust monies, and will consequently realize the greatest economic benefit from these funds.

FNFP is seeking to establish three trust fund models whereby three tribes will be given the financial, legal, and technical expertise to establish a process, which will afford them control, within the federally established legal and policy parameters, over their trust funds. Policies and procedures will be set in place so as to define an efficient coordination system between the BIA and tribes or a tribe and a private investment manager. At the same time these working models will

provide an example for other tribes seeking to gain more control over their trust monies.

The White Mt. Apache Tribe will serve as the "in-trust" model, i.e. they will leave their trust monies to be managed by the BIA. They will work with FNFP in developing the framework necessary for receipt of accurate, as well as timely trust fund reports from the BIA. Accurate and timely reports will allow the tribe to become involved in setting investment objectives. The tribal Council, the elected tribal government, wants to be able to make proportional assignments of their trust funds among the available BIA investment instruments. This will allow them to take advantage of higher yields from long-term securities. Currently the BIA only invests in short-term securities.

The Umatilla Tribe will serve as the "out-of-trust" model. Seeking absolute control over management and investment decisions regarding their trust assets, the Umatilla tribe wants to remove their monies from BIA control. The tribe, along with FNFP, is currently identifying the process a tribe must undergo when removing their monies from trust.

The Rosebud Sioux Tribe is the third tribal model and will provide the "contract" model which means that at this time the tribe wishes to leave its funds in trust within the BIA, but would like to contract with the BIA to provide trust fund service(s) for management and investment of these funds. Currently the tribe is in the process of passing a tribal resolution which calls for tribal management of their funds by way of a P.L. 93-638 contract.

Through FNFP's site work, we will be able to develop resource and training materials for continued use at these sites and for distribution to interested tribal governments. Generally, as it pertains to trust funds, FNFP will continue to collect data as it relates to tribes' access, input, and placement of tribal trust funds; conduct educational and training workshops for tribal leaders on the potential investment options and leverage mechanisms related to trust funds; and conduct meetings with appropriate financial, economic and legal experts and tribal leaders to explore policy recommendations for tribal access and input into management of trust funds. If you would be interested in participating with us please contact Theresa Carmody at FNFP, (703) 371-5615.



BUSINESS ALERT 4



FIRST NATIONS FINANCIAL PROJECT

BUSINESS ALERT

Vol. 4, No. 1

Winter 1989

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BIA Awards Contract to Security Pacific for Assistance in Managing \$1.8 Billion Trust Fund.

by Sam Goodhope

On September 14, 1988, the Bureau of Indian Affairs announced that it was awarding a contract for financial trust services to the Security Pacific Bank. The award culminated a five year effort by the BIA to provide trust fund services to tribes and individual Indians which match services generally provided to non-Indian and non-tribal beneficiaries by fiduciaries.

The contract does not relieve the BIA of its trust responsibilities for managing the \$1.8 billion it holds in trust for the tribes and individual Indians. Rather, the contract merely provides an improved set of systems to the BIA by which it can better fulfill its trust fund fiduciary obligations.

At the time of the award, it was announced that the Security Pacific proposal would cost the United States approximately \$22 million over a five year period. According to an inter-agency committee and three tribal consultants, it would have cost the BIA approximately \$25 million to provide, on its own, the same level of trust fund services to tribes and individual Indians. Following the award of the contract, Security Pacific and the BIA held five orientation sessions to discuss the implementation plans for the contract, as well as to respond to tribal and individual Indian questions regarding the contract.

At a minimum, the contract can be expected to improve the quality and quantity of reports received by beneficiaries, the accounting and control systems, and the collection and concentration of funds to be invested. With respect to the accounting, control and reporting systems, tribal and individual Indian beneficiaries will now begin receiving the caliber of services provided to typical, non-Indian beneficiaries. With respect to the collection and concentration services, Indian beneficiaries may realize a slight increase in the yield of their investments due to a marginal increase in the time their funds are actually invested. Indian beneficiaries, however, should not expect any dramatic increases in the income received from their investments.

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The contract – as envisaged by the BIA in its Request For Proposal (RFP) – only provides an improved set of mechanical systems to protect tribal and individual Indian trust funds. Unfortunately, the contract does not provide a means for improving the investment performance of the fiduciary.

Indeed, if the investment restrictions contained in the RFP are fully adopted as Security Pacific begins its duties under the contract, it is possible

The contracting process with Security Pacific has unfortunately missed a great opportunity to allow tribes to become somewhat more financially independent from the BIA.

that investment performance may actually decrease. Currently, as in the past, the BIA was able to capture, for tribes and individual Indians, the significant benefits of being able to invest in any certificates of deposit, (CD's) insured by the FDIC or FSLIC. As long as the CD's were federally-insured, the BIA could invest in them – whether the CD's were issued by a financially strong bank or a financially weak bank. A weak bank, in order to attract funds into its accounts, offers interest rates on its CD's which are significantly higher than those of a strong bank. Because of the federal insurance, the risk in both cases is exactly the same, however. The beneficiary for whom the investments are being made does not, in either case, bear the risk of losing its investment, because the United States guarantees the value of the investment.

Thus, given the exact same level of risk between a strong bank's CD's and a weak bank's CD's it made sense for the BIA to invest in the weak bank – which paid the tribes and individual Indians a higher interest rate – rather than the strong bank, so long as every penny of principal was insured by the full faith and credit of the United States. Under the terms of the RFP and the contract, however, it is unclear whether Security Pacific will be able to similarly take advantage of the federal deposit insurance subsidy which has contributed greatly to tribal and individual Indians' financial wealth over the past ten years.

Furthermore, it is unfortunate that the contract does not enhance the abilities of tribes to develop

investment goals and objectives. Without such enhancement, tribes – the true clients under the contract – cannot meaningfully direct the BIA and Security Pacific as to how they want their funds invested. While there are severe limitations on the types of investments which can be made, (i.e. fully-insured CD's and U.S. agency obligations), there are no statutory limitations with respect to the maturity of the investments. A long-term CD or government obligation pays more than a short term CD or government obligation. Ideally, tribes should be able to establish budget and financial goals over, for example, a five year period and thus be able to establish five year investment goals and objectives. A tribe will then earn a higher income when they can invest as much money as their budgeting goals allow, in a longer term investment. A careful reading of the 1984 Price Waterhouse in-depth review of the BIA's trust fund operations clearly supports this proposition.

Indeed, implicit in the Price Waterhouse review is the proposition that tribes and individual Indians would gain far more from enhanced investment objective-setting capabilities than from the improved mechanical systems covered by this contract. Thus, the contracting process with Security Pacific has unfortunately missed a great opportunity to allow tribes to become somewhat more financially independent from the BIA.

Nonetheless, the contract with Security Pacific would appear to be an important first step in the right direction. It allows the BIA to provide the minimum level of fiduciary services that a beneficiary has the obligation to provide. There has been some criticism that only two banks bothered to respond to the RFP, but that is neither the BIA's nor Security Pacific's fault. It can be readily assumed that Security Pacific competitively bid its proposal.

The contract can be legitimately criticized, however, with respect to the investment management fee. Security Pacific will receive approximately \$16 million per year for five years for custodial services (and presumable accounting services) and approximately \$1.4 million for investment management services. Security Pacific will be earning 8 basis points, i.e. 8/10's of one percent, of \$1.8 billion for making investment decisions – decisions for which the BIA is entirely responsible as a legal fiduciary. The investment decisions, furthermore, are highly constrained as a statutory matter (i.e. CD's and government and agency obligations) and the beneficiaries will not be meaningfully consulted with respect to their investment goals and objectives.

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Under these circumstances, 8 basis points would appear to be too high a price to pay for the investment management fees. In short, Security Pacific will receive about \$1.4 million per year for making extraordinarily simple investment decisions for which they cannot be made legally responsible because of the BIA's overriding fiduciary responsibility. ■

Trust Funds Update

When the Beneficiary Doesn't Benefit

by Theresa Carmody

When one considers how the tribes and Indian individuals might benefit under the proposed BIA contract with the Security Pacific Bank for management of tribal trust funds, setting investment objectives comes immediately to mind. Certainly, given the combined resources of both the Bureau of Indian Affairs and the Security Pacific Bank, one would expect that these two institutions would be able to provide top notch assistance to tribes seeking to plan for wiser investment of their trust funds.

Ordinarily, a private investment manager would spend a considerable amount of time with a client determining what type of investment portfolio would best meet the clients' needs. Questions such as how much money would be invested, and for what length of time—short, medium or long-term—would be critical questions which would need to be answered before the money manager would proceed

with the investment process. So why should this process be any different for tribes, the beneficiaries, with regards to investment of their trust funds?

Unfortunately, for reasons unknown, the BIA and Security Pacific Bank view the trustee/client relationship somewhat differently. For example, in January of this year, FNFP initiated a meeting with BIA and Security Pacific representatives for the purpose of determining what plans, or process, had

FNFP views as critical the need to set in place an investment planning process that truly meets the needs of tribes as beneficiaries.

been set in place by either the BIA or Security Pacific to enhance the ability of tribes to develop investment goals and objectives. We were informed that under the proposed BIA/Security Pacific contract, to be signed sometime in May of this year, that both parties had laid the groundwork for improved cash management and accounting systems.

But efforts to work with tribes to set investment objectives and to develop investment portfolios appeared to be minimal. A cash planning conference is planned for this spring: surveys will be administered by the BIA to tribes to determine investment portfolio mixes, (preliminary preferences), and historical cash flow. Draft investment guidelines will be sent to all tribes outlining limitations, penalties, and withdrawal schedules under the Security Pacific contract.

Our overriding concern at the end of the meeting was that neither the Trustee (BIA) nor the Contractor (Security Pacific) could identify plans for providing technical assistance to enhance tribes' investment capabilities. Instead we heard things like "there's no money in the budget" and "no tribe has come forward with a proposal for such assistance."

(continued on page 13)

DID YOU KNOW

Currently, through the Security Pacific Bank's "Corporate Giving Program," only \$5,000 is going to Indians. Remember Security Pacific will be managing \$1.7 billion in Indian Trust Funds!

A tribe in southern California refuses to work with Security Pacific because of a poor service track record. California is Security Pacific's home base.

The CRA (Community Reinvestment Act, P.L. 95-128) emphasizes that financial institutions have continuing and affirmative obligations to meet credit needs and make loans, in addition to merely taking deposits from their communities. Does anyone know how many loans Security Pacific Bank has made to the Indian community?

Theresa Carmody, a Seneca from New York, is Editor of the Business Alert and Director of Policy & Advocacy for First Nations.

Dear Congressman Yates:

As you know, the Bureau of Indian Affairs (BIA) is planning to contract with Security Pacific National Bank for management of tribal and individual trust funds. We are concerned about the manner in which Security Pacific and the BIA are proceeding with this contract, in that an important piece of the contracting process is missing. To date, no plan to enhance the abilities of tribes to develop investment goals and objectives has been revealed. Without this enhancement, tribes—the true beneficiaries under this contract—cannot meaningfully direct the BIA and Security Pacific as to how they want their funds invested.

Over the past 12 months the BIA and Security Pacific have sponsored orientation sessions during which they have responded to tribal and individual questions regarding the contract. We are aware that many tribes have requested that a process be put in place whereby tribes could become actively involved in the development of investment portfolios. In order for this to occur, tribes must have access to the necessary technical expertise. Neither the BIA nor Security Pacific seems willing to provide this type of expertise.

Ideally, tribes should be able to establish budgetary and financial goals and objectives. Many tribes would be able to earn more from the investment of their trust monies if they were able to determine what portion of their funds could be placed in longer term investments. A careful reading of the 1984 Price Waterhouse in-depth review of the BIA's trust fund operations clearly supports this proposition. Implicit in the Price Waterhouse review is the suggestion that tribes and individual Indians would gain far more from enhanced investment-setting capabilities than from the improved mechanical systems covered by this contract.

We ask that you urge the BIA and Security Pacific to establish a process that recognizes the tribes as beneficiaries, rather than "minors," in this contracting process. Given their combined resources, the BIA and Security Pacific should be able to meet with each and every tribe on a one-on-one basis and plan for investment of these trust funds. In this way, tribes will truly be in control of their trust resources and, at the same time, derive the most benefit from them.

Finally, we are concerned that audits, as prescribed by language in the Fiscal Year 1989 appropriations, (Public Law 100-446: Sept. 27, 1988), are being performed randomly, rather than for All tribes and individuals with trust accounts.

Your attention to the aforementioned matters would be greatly appreciated.

Sincerely,



Rebecca Adamson, President
First Nations Financial Project

Letter to members of Congress

The following is an excerpt from the Department of the Interior and related agencies appropriations bill, Fiscal Year 1989 - Public Law 100-446: Sept. 27, 1988.

...Provided further, That none of the funds in this Act shall be used by the Bureau of Indian Affairs to transfer funds under a contract with any third party for the management of tribal or individual Indian trust funds until the funds held in trust for such tribe or individual have been audited and reconciled, and the tribe or individual has been provided with an accounting of such funds, and the appropriate committees of the Congress and the tribes have been consulted with as to the terms of the proposed contract or agreement...

BUSINESS ALERT

7

Tribal Investment Decisions and Security Pacific

by Joe Gabel

Looking at the new arrangement for tribal trust fund management involving the BIA and Security Pacific Bank, one must wonder whether it is the tribes or the BIA who are really considered as clients (beneficiaries) in the relationship.

At a cash management conference held several months ago in Albuquerque, the BIA introduced its new arrangement with Security Pacific. As with most changes, there are both good and bad features, but in the end, the new system leads tribes to a "Catch-22" regarding investment of their trust funds.

The good news is that by all appearances, the new cash collection procedures will be far superior to current BIA procedures. During the conference, we spoke with many tribal representatives who related stories of the BIA taking up to ninety days to credit deposits to tribal accounts. Also, there were numerous complaints regarding the historical record keeping and audit procedures of the BIA. The new cash collection procedures appear to address most of these problems directly. Security Pacific expects same day or next day delivery of funds into tribal accounts with the new system. Assuming that they finish with the system software and testing, it is possible that tribes can expect this enhanced benefit by late summer, 1989.

Beyond this cash collection level, the system begins to lose its appeal, and one has to ask "Whose priorities are being addressed, those of Indian tribes or those of the BIA?" To understand what stands to be gained or lost, it is necessary to examine a few fundamental factors of the current BIA branch of investments system.

At present, each tribe's money is kept in a separate account with specific securities, specific maturity dates, and specific interest rates. An individual tribe can tell, for example, that they have a \$100,000 CD coming due on August 1, 1989 and that it will earn 8.5% until that date. In planning financial needs, both the income and principal of these moneys are very specific.

The new system will use a "pooled fund" concept. Under this new arrangement, a tribe has three options for investment: short term, intermedi-

Joe Gabel is a member of a team of Tribal Financial Consultants with the investment firm of Merrill Lynch. They are based in Albuquerque, New Mexico.

ate term and long term. All tribal monies will be placed into these pools, which are in effect mutual funds. It is in this aspect that the greatest potential danger to tribal monies can be found.

Because a tribe's money no longer carries a specific maturity and interest rate, a tribe loses a very important factor in the economic planning process. Because government securities are subject to some of the most violent price swings, tribes can expect to see trust funds varying greatly in value, with no real assurance of a specific maturity value or date.

Perhaps it is time for tribes to begin taking control of their own investment decisions, rather than allowing the BIA as trustee to decide tribal priorities.

Also, the "pooled fund" concept means that a tribe will have its money invested with money from all other tribes in that fund. Most tribes find this loss of individuality disturbing. When asked why the tribes had not been consulted about this aspect of the change, the BIA responded that a questionnaire had been sent to the tribes, and few, if any, had responded.

Security Pacific was contracted based on a low cost bid (there was only one other bidder) before the questionnaire was sent. Pooled funding is the most efficient way to manage funds, from a cost standpoint. It follows that this concept was introduced without input from the tribes, apparently as a means of reducing BIA costs, not as a means of enhancing tribal returns and investment management.

In addition, Security Pacific plans to limit the amount of withdrawals and charge a penalty on withdrawals from the intermediate term and long term funds. This makes it very difficult to justify placing money in either of these pools. But left in the short term pool, if the interest rates fall, a tribe will experience a reduction of interest income—a difficult dilemma.

Without economic freedom, there can be no other freedoms. Perhaps it is time for tribes to begin taking control of their own investment decisions, rather than allowing the BIA as trustee to decide tribal priorities. In doing this, tribes can enjoy benefits of comprehensive financial planning and a broader range of investment options. There are many examples of tribes successfully taking control

of and managing their own funds. [Ed. note: See "The Way It Oughta Be: The Saginaw Chippewa Show How to Manage a Tribal Trust Fund" in the Spring 1989 *Business Alert*] Mistakes will no doubt be made along the way, but there are good consultants who understand the unique nature of Indian tribes, and can help guide a tribe through the pitfalls of the investment world. Once a tribe learns its way around these pitfalls, that education will spill over into additional benefits in economic development. But tribes must act quickly to begin this process, or they will be forced into the new system by default.

The BIA's announcement last year that they had decided to contract out their investment responsibilities stated clearly that they expect to save about \$3,000,000 of taxpayer money. We have to ask whether this savings comes at an even greater expense to Indian tribes. But perhaps this confusion of priorities will actually turn out for the good, acting as a catalyst to encourage tribes to take more control of their financial assets and take advantage of the broader investment options available. ■

TRUST: A MATTER OF CONTROL

*A Report on Tribal Trust Fund Management and
Opportunities for Increased Tribal Control*

FIRST NATIONS FINANCIAL PROJECT

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OCTOBER 20, 1988

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ACKNOWLEDGEMENTS

FIRST NATIONS FINANCIAL PROJECT is a 501(c)(3) charitable organization incorporated in 1983 under the laws of the Commonwealth of Virginia. We are supported entirely by private grants and contributions and receive no government funds. All contributions are tax-deductible.

FIRST NATIONS FINANCIAL PROJECT assists American Indian tribes in their efforts to achieve economic self-sufficiency. The goal of this report is to present information on tribal trust funds and encourage tribes to take control of these funds by asserting themselves as investment clients, rather than remaining as beneficiaries dependent on their trustee, the federal government.

FIRST NATIONS FINANCIAL PROJECT would like to thank the following people for their contributions to this report: Marie Monrad and Ellen R. Kemper, Esquire for researching the issue and writing the report; Joe Weller for reviewing the drafts; and Theresa Carmody for overseeing the entire process.

FIRST NATIONS FINANCIAL PROJECT also expresses gratitude to the Charles Stewart Mott Foundation and the John D. and Catherine T. MacArthur Foundation for funding the research and production of this project.

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TRUST: A MATTER OF CONTROL

A Report on Tribal Trust Fund Management and Opportunities for Increased Tribal Control

I. About this Report

Tribal Trust Funds represent approximately \$1.8 billion managed by the Secretary of Interior in fulfillment of the federal responsibility as Trustee of tribal resources. The duty to manage the funds, as it has been carried out by the Bureau of Indian Affairs, has been the subject of increasing criticism over the years.

Indian tribes and individuals alike have expressed their dissatisfaction with the erratic manner in which the Trustee has disbursed their trust money; with the complexity and irregularity of the investment reports; and with the lack of tribal and individual involvement in setting investment objectives.

Tribal Trust Funds should be managed according to the accepted reporting and consultation standards followed by private sector investment managers. Tribes and individual Indians, as beneficiaries of the Trust, have the legal right to substantial involvement in setting investment objectives for their funds and also to assure that understandable updates are available at daily or periodic intervals. The lack of a proper reporting system and involvement in setting investment objectives, consequently affords tribes little or no control over their trust funds.

Tribal Trust Funds are a major source of Indian capital; it could be used as a leveraging tool if placed with local financial institutions. The trust fund money could also be used as collateral for low interest loans to tribal members, business venture opportunities, or tribal development bonds issues. Tribes must assert themselves in setting investment objectives in order to use their trust funds as an economic tool in seeking to stabilize their tribal economies.

First Nations Financial Project (FNFP) seeks to aid tribes in accomplishing this goal by researching and field testing three types of trust fund models. Selected tribes will receive financial, legal, and technical expertise to establish control over their trust funds. Each tribe will establish policy and procedures within the current legal and policy parameters regarding Tribal Trust Funds. And each tribe will develop an efficient system to coordinate their investment objectives with the BIA system or with a private investment manager. These working models will provide an example for other tribes seeking to gain more control over their trust funds.

II. Fundamentals

A. What are tribal trust funds?

Tribal trust funds are moneys owed to tribes or individuals that are collected and managed by the federal government as trustee for the benefit of the Indian and tribal beneficiaries. There are 300,000 separate individual Indian trust fund accounts and 1,950 Tribal Trust Fund accounts managed by the BIA.¹ Although 254 tribes have accounts, 11% of the tribes hold about 75% of

¹Department of Interior News Release: *Cost Comparisons Favor Contracting of Indian Trust Fund Management*, July 27, 1986

the Tribal Trust Fund monies.² Tribes collect from leasing revenues, timber sales, royalties, education expenses, revenue from irrigation and power projects as well as from interest on trust funds. Many tribes have separate accounts for the various income sources.

Under common law principles, a trust is a right of property supplied by a settlor to be held by a trustee for the benefit of the beneficiary.³ Usually a settlor expresses the purpose of the trust property and also names a specific trustee in a legal document. Tribal trust funds, however, are managed by the federal government without specific documents. In fact, there is no law or regulation which expressly created the Tribal Trust Funds. Trust status evolved through various laws, court cases, and assumptions. Trust status is implied whenever funds are held by the United States for the benefit of Indians.⁴ Tribal trust funds are generally governed the same as the common law for private trusts; but, courts will consider each Indian trust fund case individually due to the special responsibility of the federal government, as both settlor and trustee, to its Indian beneficiaries.⁵

There are several sources of trust funds such as:

1. Treaty and annuity payments for land cessions

Many Tribal Trust Fund accounts were first established with payments authorized in land cession treaties of the late 1700's and the 1800's. The treaties often gave the President of the United States discretionary powers regarding investments and annuities based on the assumption that Tribes could not manage their own funds. Other treaties specified explicit purposes for the trusts, such as Indian schools, or specified interest rates that had to be earned.⁶

2. Judgment fund distributions

Judgment funds are the major source of Tribal Trust Funds. They are usually court judgments for millions of dollars, that is, payments mandated by a court of law to be paid by the federal government as compensation to an Indian tribe for losses incurred during the days of land cessions and treaty negotiations. Most of the payments have been made in the last fifteen years, with some land claim cases still pending in the United States Court of Claims.

The Judgment Fund Distribution Act of 1973, as amended, governs the manner in which these payments are distributed.⁷ The Secretary of Interior must prepare a plan which considers tribal plans for economic development. The Secretary is obligated to assist the tribe by providing legal and financial expertise, and to hold a public hearing in the community on the plan. The plan must be approved by Congress, although once approved, the BIA may modify investment objectives as necessary to respond to current market conditions and tribal requirements.

²There are 28 tribes which have accounts totalling over \$10 million. *Summary, Issues and Comments*. Price Waterhouse In-Depth Review of Indian Trust Funds, 1985, pg. 3.

³Quils, *Law Dictionary*, pg. 213

⁴*Cheyenne Arapaho Tribe of Indians of Oklahoma v. U.S.*, 512 F.2d 1390, (Ct. Cl. 1975).

⁵*Coast Indian Community v. U.S.*, 550 F.2d 639, 652 (Ct.Cl.1977); *Menominee Tribe v. U.S.*, 101 Ct.Cl. 10 (1944).

⁶FY 1988 Budget Hearing, 100th Congress, First Session, February 19, 1987, pg. 36.

⁷25 USC 1401-1406 and, as implemented in the regulations, 25 CFR Part 87. The 1973 law was amended in 1982 (P.L. 97-164, Title I, 5160(a)(1), April 2, 1982), in 1983 (P.L. 97-456, §1, Jan. 12, 1983) and in 1987 (P.L. 100-253, §4, Nov. 5, 1987).

Generally the Secretary is obliged to reserve at least 20% of the award for tribal programs. As a result, the common practice for distribution is to deposit 20% in a BIA controlled trust and to distribute the remaining 80% in per capita payments to tribal members.

Tribes complain that they seldom receive adequate legal or financial assistance, or any other encouragement to propose distribution plans. For example, in 1986 when the Saginaw Chippewa tribe proposed a plan to manage its \$10 million judgment award, the BIA continued to pursue a plan for distribution by per capita payments. The tribe had to lobby Congress for special legislation in order to overrule the BIA plan and to achieve its own plan.⁸

3. Natural resource development

Since the United States acts in a fiduciary capacity in the management of tribal natural resources, much of the money collected for natural resource development is deposited in trust accounts. Payments are collected for leasing tribal lands, sales of resources such as timber or fish, and royalties paid for mineral extraction.

4. Power and irrigation projects

Many large scale power and irrigation projects have been built on reservations or cause reservation lands to be inundated with dam waters. Tribes receive revenue from these projects as compensation for the use of tribal land.

B. The federal government has certain duties as a trustee for Indian funds.

There are common law duties of a trustee which have been modified for the Tribal Trust Fund situation.

1. Duty to make a full accounting

Courts have required the BIA to make a full accounting of funds held in trust, clearly specifying "investments made with the (tribes) money, the rate of interest and the amount earned on each investment."⁹

2. Duty to preserve the trust while providing income to the beneficiaries

Every trustee is required to provide income to beneficiaries;¹⁰ but the Federal government is under a greater duty to preserve the trust property.¹¹ This creates a conflict since safe investments preserve the principal but may not provide much income to beneficiaries.

3. Duty to secure maximum returns

The Federal government is held to a very high fiduciary standard. It goes beyond the common law duty to provide income to beneficiaries; the trust must be "properly invested" to secure maximum returns.¹² Courts will consider the investigative practices of the trustee; expert ratings

⁸P.L. 99-346, June 30, 1986. For a more thorough overview of BIA's resistance to the Saginaw's proposal, see Senate Select Committee on Indian Affairs Hearing on S. 2823, August 6, 1984 and Senate Select Committee on Indian Affairs Hearing on S. 1106, July 10, 1985.

⁹*Manchester Band of Pomo Indians v. U.S.*, 363 F. Supp. 1238, at 1248 (N.D. Cal. 1973).

¹⁰This duty is implied when it is not expressly stated. Bogert, George, *Trusts*, Sixth Edition, St. Paul West Publishing Company, 1987, (hereinafter referred to as "Bogert"), §140.

¹¹*Menominee Tribe v. U.S.*, 101 Ct.Cl. 10, 21 (1944).

¹²*Cheyenne Arapaho Tribe of Indians of Oklahoma v. U.S.*, 512 F.2d 1390, at 1396.

and opinions; *the adaptability of the investment to the needs of the particular trust*; diversification; protection against inflation; and, the tax effects on the beneficiaries.¹³

4. Duty to bear administrative costs (specific to BIA)

Usually administrative expenses are borne from trust income and extraordinarily large expenses are paid from trust principal;¹⁴ but with Indian trust funds, courts have held the BIA responsible for the costs.¹⁵ These costs are to be paid out of the BIA budget and not from trust earnings nor from the tribal operating budget. The BIA has in the past expressed the desire to transfer this cost to the tribes by charging for a "service" rather than including the costs as a "trust" function.¹⁶

C. The tribes as a beneficiary of trust funds.

It is the tribe, as represented by the tribal governing body, and not the individual members who are considered beneficiaries of the tribal trust accounts.¹⁷ There has not been much case law pertaining to the tribal role as beneficiary; the courts have relied on the common law of trusts.

1. Right to be informed

The tribe, as beneficiary is entitled to know how the business of the trust is being carried on. The trustee must furnish on demand all information regarding the trust to the beneficiary and permit the beneficiary to inspect trust records, documents, and any legal opinions which the trustee has obtained.¹⁸

2. Right to have input

Common law holds that the trustee is NOT under a duty to obey requests or instructions of a beneficiary as to how trust funds shall be invested. "A trustee who submits every proposed investment to his beneficiaries and secures their written approval is attempting to shift his investment burden to the beneficiaries." If the "trustee makes an improper investment at the request or direction or with the consent of a competent and fully informed beneficiary, he will not be liable for losses as a result of the improper investment. But the consent must be with full knowledge of the facts and of the legal rights of the beneficiaries in order to relieve the trustee from

¹³Emphasis added. Bogen §106

¹⁴Bogen §124.

¹⁵Berkley, Curtis, "Historical and Legal Analysis of the Federal Government's Fiduciary Duties Regarding American Indian Trust Funds" Indian Law Resource Center, Washington, DC, November 1986, pg 33

¹⁶Internal AINB Memo, March 8, 1985, pg 2 AINB states that this is the comment of the then Assistant Secretary of Indian Affairs (John Fritz).

¹⁷Since trust funds represent assets held in common for all tribal members, as well as future members, it is not immediately clear who the legal beneficiaries of the trust are. According to Felix Cohen's Handbook on Federal Indian Law, (1942 Version, Chapter 15, Section 22.C., pg 338). See also, Office of the Solicitor: "Application of Bernice Muskral Under 25 USC 119", 12 Indian Law Reporter 7020, August 1965 where tribal trust funds are considered "communal assets of the tribe".

¹⁸Bogen §§ 140, 141

liability.¹⁹ The BIA, however, has stated that in practice it would not make an investment if the beneficiary tribe objected.²⁰

3. Right to change trustees

Common law does not allow the beneficiary to change the trustee unless the trustee is not acting as a responsible fiduciary or when there is an extremely poor relationship between the beneficiary and the trustee.²¹

III. THE OPPORTUNITY

A. Tribal control over the management and investment of trust funds.

FNFP is proposing that tribes participate in the management and investment of trust funds held for their benefit. Tribal participation can range from total control to cooperative management with the BIA.

This is not a new idea. The Chickasaw Treaty of 1832 included a provision to allow the Chickasaw Nation to withdraw the trust funds after fifty years, if the federal government agrees that the tribe is capable of managing the funds.²²

B. The benefit of tribal control is to demonstrate tribal self-sufficiency.

"Participation by tribes and individual Indians in the setting of investment objectives for funds held in trust for them by the BIA is consistent with the current US Government policy of Indian self-determination."²³ A tribe which has chosen to manage its own trust fund account will make its own decisions; it will set investment goals, plan and manage its portfolio.

C. The risk of tribal control is that funds may be less secure.

At present, BIA invested funds are fully guaranteed by the federal government. This means that there is no risk of losing the principal investment. But low risk investments are typically low yield investments. If the tribes take control of fund management they will have the option of

¹⁹Bogen §102

²⁰Section 16 of the act of June 18, 1934, gives an organized tribe the right to prevent any disposition of its assets without the consent of the tribe. This includes the right to prevent disbursement of tribal funds by departmental officials where the tribe has not consented to such disbursement." *Opinions of the Solicitor, Vol. 1, pg. 685, "Expenditure of Tribal Funds" 10/5/36.* Whether or not this applies to an investment is uncertain, but the BIA does respect tribal objections when clearly articulated. (According to Joe Weiler of the BIA Division of Trust Fund Management Office.)

²¹Bogen, §152, §160

²²See Kappler, *Indian Statutes and Treaties*, Vol. 2, pg. 360, Treaty with Chickasaw 1832, Article XI--"As the expiration of 50 years from this date, if the Chickasaw nation shall have improved in education and civilization, and become so enlightened, as to be capable of managing so large a sum of money to advantage, and with safety, for the benefit of the nation, and the President of the United States, with the Senate, shall be satisfied thereof, at that time, and shall give their consent thereto, the Chickasaw Nation may then withdraw the whole, or any part of the fund now set apart, to be laid out in stocks, or at interest, and dispose of the same, in any manner that they may think proper at that time, for the use and benefit of the whole nation, but no part of said fund shall ever be used for any other purpose, than the benefit of the whole Chickasaw Nation."

²³*Summary, Issues and Comments: Price Waterhouse In-Depth Review of Indian Trust Funds*, 1985, pg. 6.

keeping all their funds in federally insured investments or investing a portion of their funds into higher risk investments such as mutual funds.²⁴ Higher risk investments, of course, may create a monetary loss.

D. Brief descriptions of tribally controlled trust fund accounts.

1. Saginaw Chippewa Tribe

The Saginaw Chippewa Tribe received a judgment award in 1986. The tribe established a 10-year plan to manage the fund out of trust from the federal government. The tribe set aside \$10 million to be managed and invested for Tribal development. At least 10% of the earned income is returned to the principal for those ten years. The fund was split into two separate accounts to be managed by two different investment advisors. Their investment managers must be from the state of Michigan and must guarantee a minimum rate of return. The tribal council was expressly named as the trustee to protect the tribal members as beneficiaries. A special law was enacted to set up the trust, it was introduced two consecutive years following many months of community education and an ongoing disagreement with the BIA regarding the disbursement plan.

2. Cheyenne Arapaho Tribes

In 1967 the Cheyenne Arapaho Tribe set aside \$500,000 portion of judgment fund for the purpose of providing education and scholarships for tribal members through a trust agreement between tribe (as grantor) and "national banking association" located in Oklahoma" (as trustee). The trust agreement was to be authorized and approved by tribal government and approved by the Secretary of Interior. The trust status of the funds is unaffected.²⁵

3. Five Civilized Tribes of Oklahoma

In 1982, a plan was established to name private trustees to manage Individual Indian Money (IIM) accounts for members of the Five Civilized Tribes of Oklahoma. A specific formula for investment was prescribed by regulation in order to minimize the risk involved.²⁶

4. Penobscot Nation and Passamaquoddy Tribes of Maine

In 1980, the Penobscot Nation and Passamaquoddy Tribes of Maine set up a \$13.5 million trust to be administered by Secretary of Interior according to terms set by tribes and approved by Secretary of Interior. The discretion of the Secretary is limited by the provisions of the Uniform Management of Institutional Funds Act. The tribe was required to submit a waiver of liability to go beyond federally guarantees investments or other investments outside statute. The funds remain in trust and remain free from encumbrance.²⁷ Some funds have been set up for private management.

5. Confederated Tribes of Siletz

The Confederated Tribes of Siletz received approval to remove \$1 million from trust to invest themselves on Wall Street. They set up a plan with 40 year projections and hired two separate advisors to manage \$500,000 each.

²⁴ In a Library of Congress Report to the American Indian National Bank the government stated that pooling funds in mutual funds, even of authorized investments, would require an amendment to 25 USC 162a. American Indian Bank, "An Investment Proposal for Indian Tribal Trust Funds," undated.

²⁵ "said funds to be held in trust", 25 USC 1162

²⁶ 25 CFR Part 116, specifically § 116.4(e).

²⁷ 25 USC §1724(b)(1), 1980

6. Navajo Nation

The Navajo Nation has many different investment programs. It returns 12% of tribal income from its \$60 million "Permanent Fund" to the principal and it documented how the remaining income can be spent. A portion is used for a "Nation Building Fund" to be spent by local chapters of the tribal government. The amounts are designated by population in a manner similar to federal revenue sharing grants.

IV. CURRENT BIA MANAGEMENT

This section deals with the BIA management of the Tribal Trust Funds. But note, on September 14, 1988, the BIA contracted with Security Pacific to manage the Tribal Trust Funds. The new systems will begin immediately.

A. How has the federal government managed Indian trusts?

1. Seven types of accounts are managed by the BIA. 1) Tribal Trust Funds (\$1.2 billion of the \$1.8 billion total held in trust for Indians; 2) Individual Indian Monies (IIM); 3) Contributed; 4) Alaska Native Escrow; 5) Irrigation; 6) Power; and 7) Papago Cooperative.

2. The current system is decentralized rather than uniform nationwide.

a) Area offices and agencies.

There is an Investment Coordinator (IC) at each BIA Area Office (12) and some of the 93 Agency Offices. The role of the IC is to help tribes prepare budgets and development investment objectives. They also communicate with the BIA financial headquarters in Albuquerque. Many of these positions are part-time efforts because the individual has other responsibilities. No training or expertise is required.

When the Area Office approves of the tribal operating budgets, it ensures that use of Tribal Trust funds does not violate legal constraints and that the tribe has not requested an amount in excess of the total funds in the account. The fiscal soundness of a tribal operation budget is not necessarily scrutinized.

b) Office of Trust and Economic Development, Division of Trust Fund Management in BIA Central Office West located in Albuquerque, NM.

There is usually a staff of fourteen. Currently on board are the Chief, an economist, three investment officers/financial analysts, three accounting staff positions, three clerical workers, a Trust Fund specialist; and a task management officer.²⁸

The Trust Fund Management Division invests a Tribe's funds according to the tribes instructions; absent instructions, only daily investment will be made until the money is disbursed or instructions are received.²⁹ This Division buys and sells securities; reports monthly on investment to the tribes; advises tribes of each purchase, receives information from Agency offices (not tribes); and sends monthly reports back to the tribes.

²⁸Joe Wellar, of the BIA Division of Trust Fund Management Office, written comments

²⁹Report of Indian Trust Funds for the Fiscal Years 1986 and 1987, Division of Trust Funds Management, p. 4.

c) Division of Trust Funds Accounting

Every six months, the Division of Trust Funds Accounting pays (or posts for restricted accounts) all investments from the pooled IBM accounts. This Division credits and debits accounts. It is responsible for accruing all the interest from the unallotted (that is, uninstructed) accounts, but this task is done at infrequent intervals.³⁰

3. Degree of Tribal Input

Tribes do not have much control over the ongoing management of the Tribal Trust Funds, they may provide investment instructions to the Area or Albuquerque Trust Fund Management office. The BIA permits (and urges) tribes to specify terms of maturities for investments. Tribes are free to visit the Albuquerque office where the investment decisions are made, although in practice, few tribes do visit or provide instructions.

Some tribes have designated local depositories but the BIA hesitates to accommodate tribal requests to deposit funds in local banks because many local banks cannot provide the necessary collateral or sufficient rate of return required of the BIA as trustee.³¹ Many tribes believe that using a local bank will increase the tribes' ability to leverage loans for economic development or for individual loans for tribal members. In practice, this is not necessarily the case.³²

Also, some tribes use leasing or royalty funds annually for tribal budgets. Typically, this money passes right through the BIA into tribal operating budgets. This may adversely affect the tribal budget in years when trust income is lean, for example, if mineral royalties are low.

4. Federal Oversight

A tribe can appeal decisions regarding the BIA management of its trust funds to the Secretary of Interior.³³ The ultimate powers over the Tribal Trust Funds resides in Congress.

B. Accounting and Reporting

Financial reporting by the BIA has been inaccurate, limited in scope and difficult to understand.³⁴ Subsidiary ledgers, maintained on a local level, differed from general ledgers maintained by the Albuquerque office by as much as \$25 million in a two year period of study and were not reconciled in that period.³⁵

³⁰Interest on unallotted accounts has not been accrued (calculated) since 1985.

³¹To receive approval a local financial institution must have collateral for any amount of the tribal deposit in excess of the bank's FDIC (or other) insurance. Five ratios are used (says Joe Wellar, of the BIA Division of Trust Fund Management Office) to determine if a bank is acceptable: 1) percentage of bad loans (equity/assets), 2) percentage of unencumbered capital (liquidity), 3) foreclosure rate/non-performing assets, 4) net income and 5) five-year record.

Local banks could likely bring lower returns and the BIA will not allow that. According to Ross Swimmer, (Testimony to the Senate Select Committee Hearing on the FY 1968 Budget, Feb. 19, 1967, pg. 40) "because it's a trustee relationship, . . . we could not, unless the tribe withdrew the money from our system, allow them to invest the money at a lower rate of interest some place else than what we could obtain."

³²Informal analysis by the White Mountain Apache Tribe showed this result. However, the Saginaw Chippewa Tribe obtained housing loans for its tribal members by placing some funds locally.

³³25 CFR §2: Appeals from Administrative process

³⁴GAO Report to the Congress: Major Improvements Needed on the Bureau of Indian Affairs Accounting System, GAO/AFMD-87-71, Sept. 8, 1987, [hereinafter referred to as "GAO Report"], pg. 13.

³⁵GAO Report, pg. 18, Summary, Issues and Comments: Price Waterhouse In-Depth Review of Indian Trust Funds, 1985, pg. 38. The Albuquerque Division of Trust Fund Management is working to reconcile this amount.

Monthly summary reports on the status of the trust fund are issued from the Accounting Branch. Some tribes claim they do not receive the reports monthly or are late in receiving them. Other tribes criticize the reports as being hard to interpret and do not provide information on investment performance. Monthly detailed investment reports are issued by the Investment Branch. The reports detail where funds are invested, maturity dates, and interest rates.

C. Limitations on Investment Risks

1. Statutory

Generally, the statutes on Tribal Trust Funds share two key characteristics: the Secretary of Interior is given discretion on investments and tribal consultation is not considered. There are no regulations or guidelines drafted defining the boundaries of the Secretary's discretionary powers.

a) 25 USC 160 thru 162a

All Tribal Trust Fund investments must be in federally guaranteed securities. As a result, 80% of the funds are in Certificates of Deposit (CDs) and Treasury bills.³⁶ Most investments have short-term maturities even though the market now favors long term investments over short term investments.

In 1987, according to the BIA's Annual Report, 78% of the total investments were in CDs and the remaining 22% were in government securities and agency issues. For example, \$400 million is invested in government securities, Small Business Administration notes, Postal Service bonds, and Federal National Mortgage participation certificates.

The average rate of return on trust funds invested by the BIA was 7.404%.³⁷ The rate of return exceeded returns to privately managed funds with similar investment authorization during the period from 1976 to 1982.³⁸

b) 25 USC 123 thru 123c

(1) Tribal Trust Funds may be "advanced" to tribes subject to approval of the Secretary of Interior. Although 25 USC 123c does not speak directly to a tribe's right to take money out of trust, the BIA asserts this is the law governing such a situation.³⁹ It authorizes the Secretary to disburse funds to tribes that submit plans or budgets for the use of those funds, without securing Congressional approval each time.⁴⁰

³⁶The BIA is taking advantage of federal subsidies implicit in the FDIC and FSLIC insured CD's and "this subsidy is currently under attack by various financial institution regulators and may not be available long-term" therefore tribes should not assume that high rates of return will continue. *Summary, Issues and Comments: Price Waterhouse In-Depth Review of Indian Trust Funds, 1985, pg. 17.*

³⁷Report of Indian Trust Funds for the Fiscal Years 1986 and 1987, Division of Trust Funds Management, p. 9

³⁸*Price Waterhouse In-Depth Review of Indian Trust Funds for the Bureau of Indian Affairs.*

³⁹Telephone conversations with Duard Barnes, Solicitor's Office, Indian Division, Department of Interior, and Ralph Kneiser, Office of Legislation, BIA.

⁴⁰Prior to the law's passage in 1964, all advancements or expenditures needed to be approved by Congress and this was done through the annual Department of Interior's appropriations bill. This was a relatively cumbersome process.

(2) Expenses that can be paid out of the trust funds are specified: insurance; tribal business; equipment; and tribal travel.

(c) Indian Financing Act

The Indian Financing Act was amended this year to authorize the BIA to invest in guaranteed tribally issued taxable bonds. There is, however, a \$45 million ceiling on the total amount that the BIA can invest. Tribes must compete for these moneys on a first come, first serve basis, thereby creating a competitive, rather than supportive, environment.

2. Case law

a) *Seminole Nation v. U.S.*, 316 US 286 (1942).

Established the principle that the federal government is to be "judged by the most exacting fiduciary standards" when it is dealing with Indians.

b) *Manchester Band of Pomo Indians v. US*, 363 F.Supp. 1238 (DC Cal. 1973)

The Federal Government was held liable for not securing the maximum rate of return on Indian funds and for not exercising high fiduciary standards as a trustee.

c) *Cheyenne Arapaho Tribes of Oklahoma v. US*, 512 F2d 1390 (Ct. Cl. 1975)

Tribal activity funds and court awards deposited in the Treasury are impliedly held in trust. The court held it is "a breach of trust not to reinvest funds within a reasonable time if changed circumstances rendered improper a once proper investment."

D. Investment banks must be approved by the BIA.

There are 600 banks approved pursuant to the following five ratios: 1) percentage of bad loans (equity/assets); 2) percentage of unencumbered capital (liquidity); 3) foreclosure rate/non-performing assets; 4) net income and 5) five-year business record. The Investment Branch holds a weekly bid to see which of those banks are offering the highest rates on those certificates of deposit and then invests different tribes' accounts in the highest bearing banks for the appropriate maturity dates. A bank must be a high bidder for that week to receive the investment.⁴¹

E. Trust fund accounts are often treated like savings accounts.

Theoretically the Area Director could approve a tribal request to draw down their whole trust fund account in one budget year if it is for legitimate tribal purposes, it does not violate judgment plans or other restrictions and it is approved by the Area Director.

F. When there is no tribal input, only daily investments will be made.

Daily funds have more flexibility without penalty payments but less return. The BIA makes an exception for the Consolidated Sioux Fund--the judgment award of \$106 million not accepted by the tribes due to their continuing effort to regain control of the Black Hills of South Dakota. The BIA invests the funds (now over \$200 million) for longer terms because the BIA does not expect any tribal input nor any withdrawals to be made in the next five years.

G. Interest on the daily investments is not accrued on a regular basis. The Division of Trust Fund Accounting has not accrued the interest from the daily investments since

⁴¹ There has been concern that the highest bid the Investments Branch often accepts is from a failing Savings and Loan that is trying to attract investors but may soon need to be bailed out by the Federal Government.

1985. The next accounting for the accrual of interest is not scheduled. This means tribes cannot expect to see an immediate return on their trust fund investments unless they have given instructions regarding BIA management of the funds.

V. FUTURE MANAGEMENT

A. Federal Oversight

The new contract between the BIA and Security Pacific Bank, signed September 14, 1988 was a result of federal investigation and oversight. There were three major studies in this effort.

1) GAO Report to the Congress: Major Improvements Needed on the Bureau of Indian Affairs Accounting System, Sept. 8, 1987

In its report to Congress, the GAO noted design and operating deficiencies in the BIA's automated accounting and finance system. GAO stated that "hundreds of millions of dollars of contracts and grants was lost and the Bureau did not meet its fiduciary responsibility for the trust funds."⁴²

2) Congressional Hearings

Congress has been concerned about the issue of Tribe Trust Funds and has held various hearings over the past few years.⁴³

3) Price Waterhouse Study

The BIA requested that Price Waterhouse review the management of Indian trust funds in 1983.⁴⁴ The principal recommendation made by the Price-Waterhouse review was for the BIA to "develop and implement an on-going process to enable tribes and individuals to participate in the formulation of investment objectives for the Indian trust funds."⁴⁵ The report recommended that a permanent oversight body be established to protect the interests of Indian trust fund beneficiaries and that the BIA initiate improvements by an incremental, step-by-step process.⁴⁶

B. The New Contract

1) Process

The BIA RFP has been controversial because of both substantive and procedural issues. When the BIA first issued its RFP for private management of Tribal Trust fund accounts back in 1986, it did not consult with tribal leadership. Tribes protested loudly. Following Congressional hearings and BIA consultation with tribes, a new RFP was released February 1988. Security Pacific was selected on September 14, 1988.

⁴²GAO Report, pg. i.

⁴³Indian Trust Fund Oversight Hearing, Sept. 23, 1986; Senate Select Committee Hearing on the FY 1986 Budget, Feb. 19, 1987. See Bibliography for other related hearings.

⁴⁴Price Waterhouse In-Depth Review of Indian Trust Funds for the Bureau of Indian Affairs.

⁴⁵Price Waterhouse In-Depth Review of Indian Trust Funds for the Bureau of Indian Affairs, Task V Recommendations, January 11, 1984, pg. 1.

⁴⁶Ibid., pg. 2.

The new procedure is expected to be phased in over the next two years. The BIA has predicted that almost \$3 million could be saved over a five-year period using this private contractor.⁴⁷ It is not clear whether the ancillary services to be provided by the BIA are factored into the cost savings estimate.⁴⁸

2) Function

The private bank contracted to perform many of the tasks now performed by the Albuquerque office, such as: to procure collection, accounting, advisory investment services and custodial services for funds held in trust for Indian tribes, individuals and others. It is a one year contract with four one-year renewable options. The contractor bank must provide deposit, cash management, accounting and reporting services to the BIA as well as investment advice and services. The intent is to speed transactions and to improve accounting, auditing and reporting methods.

3) Procedure

Tribal accounts could be pooled under the new contract. Tribal funds may be invested in short (1-year), medium (5-year), or long-term investments. Tribes will be allowed to make proportional assignments of their funds among these three different ranges of maturity. The BIA states it will retain final authority for all investment decisions and will only use the contractor bank for advice.⁴⁹

Since the contractor will be making investments daily, the BIA is expected to provide guidelines to the bank on appropriate investments to avoid the need for approval of every investment.⁵⁰ The contract does not implement Price Waterhouse's two major recommendations which are to provide greater tribal input and to establish an oversight committee.

FNFP recommends that a committee should be established to oversee the management of Tribal Trust Funds. Tribal representatives should participate in the committee, with investment managers, to set broad investment objectives for the pooled funds and to convey tribal objectives. The committee will also oversee the BIA to evaluate its compliance with tribal objectives.

VI. Tribal Alternatives for the Future

A. How a tribe plans for investment control in its trust fund.

1. Examine limitations in treaty provisions, tribal constitutions, tribal ordinances or judgment distribution plans.

Some treaties, constitutions, tribal ordinances or judgment plans spell out the degree of authority tribes shall have over their trust funds, budgets, and natural resources. Some specify "restricted" accounts, and some specify "unappropriated reserves," each with unique requirements. Most, however, give tribes broad governmental powers but do not specifically address trust fund management issues.

⁴⁷DOI News Release: *Cost Comparisons Favor Contracting of Indian Trust Fund Management*, July 27, 1988.

⁴⁸Joe Weller of the BIA Division of Trust Fund Management Office thinks not.

⁴⁹ Question #134 of the "BIA: Proposal for Financial Trust Fund Services: Questions and Answers", February 8, 1988.

⁵⁰Conversation with Arlene Brown, Special Assistant to the Assistant Secretary for Indian Affairs, Feb. 8, 1988, see also Questions #121 and #107 of the BIA: *Questions and Answers*.

For example, the Saginaw Chippewa Tribe had to modify its tribal constitution in order to allow input for non-reservation members.

2. Examine possibilities for a relatively secure investment which have been suggested in similar situations by the federal government.

Two examples are the special formula for investment written for Indians of the Five Civilized Tribes of Oklahoma⁵¹ and the twelve alternatives suggested in *Cheyenne-Arapaho Tribes v. U.S.*⁵²

3. Establish community support.

Community education is essential. The tribe should determine how many public hearings will be necessary to fully understand community concerns and to educate the community about the long range advantages of investing in a trust versus the short term wealth experience with per capita payments.

4. Develop the necessary tribal management infrastructure.

a) **Tribal staffing.** At the tribal level staff should include the finance officer, bookkeepers, and clerks. There should be training provided and efforts coordinated within the tribal finance department.

b) **Contract expertise** to analyze current portfolio and earnings and to determine investment goals. Strategic financial planning must be founded on an historical analysis and a study of current needs.

c) **Choose an investment manager.** Once investment objectives are established, the tribe must hire an investment manager to maintain tribal income within the parameters of those objectives.

d) **Develop an organizational plan** to address the decision making regarding investment plans. The organizational structure may have to be modified through a constitutional amendment to add an advisory fiscal or financial committee.

5. Designing an investment portfolio

a) **Meeting tribal needs.** Tribes will likely want to invest their money in ways that will assist with economic development on the reservation. A tribe may be more concerned with a steady flow of income to supplement its operating budget rather than increasing its net worth.⁵³

b) **Socially responsible investing.** Tribes may want to examine their investments for their social impact. For example, tribes may decide not to invest in corporations that are known to discriminate against hiring Indian employees.⁵⁴

⁵¹25 CFR 116.4(e)

⁵²See Appendix B

⁵³However, all income portfolios should have some growth investments as a hedge against inflation.

⁵⁴Of corporations doing businesses in South Africa (where tribal conditions are worse than American reservations) or contributing to the devastation of the tropical rainforest (the habitat for many tribal peoples)

B. Issues

1. The tribe will have to institute some changes.

For starters, the tribe will have to develop an infrastructure of trained staff and accounting procedures capable of managing the Tribal Trust Funds. The consequences of poor management are too obvious to ignore.

2. Liability for less than maximum return to be resolved.

The BIA argues that since it is legally responsible for protecting tribal assets under its control, it needs assurances that the tribe is capable of making sound decisions and would assume responsibility for those decisions. Since the BIA itself has been managing trust funds in apparent violation of its standards of fiduciary responsibility in many areas such as accounting and reporting, it is difficult to accept this argument that the liability issue is an obstacle to tribal control of its trust funds.

For newly acquired funds, the tribe could assert that it is actually the "settlor" and therefore can appoint an advisor to the trustee whose advice or consent must be obtained before making certain decisions. The tribe could select the tribe or an investor to be its advisor in order to mitigate the liability issues.⁵⁵

Other problems to consider are: What if tribal officers or investment managers do not act responsibly? What if one tribal council does not support previous council's policy? Could BIA be sued for having respected the original council's input?⁵⁶ What if the council's decision does not represent the wishes of individual tribal members?

3. Burden of administrative costs

The tribe and the BIA would have to come to an agreement designate the responsible parties for various administrative costs. Administrative costs should include a yearly external audit of all investment activities. Although no funds are currently appropriated for these administrative services, it may be possible for tribe to "638" contract these services. Tribes should be prepared to lobby this issue because the BIA is likely to say they are not fiscally responsible for administrative costs.⁵⁷

C. Tribal initiatives

FNFP is field testing tribal initiatives with three different tribes: 1) In Trust Model--the tribe becoming a more active beneficiary, 2) 638 Model--the tribe contracting the management of the trust funds, and 3) Out of Trust Model--the tribe removes its funds from the trust protection and manages it independently from the government. Tribes can examine these three models as a framework from which to design an alternative responsive to their level of sophistication, experience and desire for control. Remember, each initiative will likely be challenged by the BIA to determine whether it can be implemented within the constraints of the federal trust doctrine.

⁵⁵ Some state laws do not hold the trustee liable for investment losses when acting on the advice of an advisor, particularly when that advising is authorized by the trust. Bogert, §106.

⁵⁶ See the Supreme Court case *Seminole Nation v. U.S.*, 316 U.S. 286 (1942) --where BIA was held liable for turning over funds in 1934 to the Seminole Tribal Council when that council used the funds fraudulently.

⁵⁷ Joe Wellar of the BIA Division of Trust Fund Management Office, written comments.

1. IN-TRUST MODEL

FNFP is working with the White Mountain Apache Tribe to establish an in trust model where tribal funds are to be managed and invested by the BIA, but the trust relationship would be defined in an explicit trust document, similar to that governing any private trust. Although the tribe can set investment objectives with the BIA now, this model would require the federal government to provide technical assistance; establish a formal structure to guarantee communication between the federal and tribal governments; and report in a clear and timely manner.⁵⁸

The document could specify many aspects including, but not limited to, the following: the procedure to obtain tribal input, a range of investments deemed appropriate by the tribal government, the degree of reliance on outside investors, the length of trust, and the format for account reporting.⁵⁹

a) Increase of tribal role

The tribe would need to hire staff to work with the BIA. An advisory finance or fiscal committee would also be established.

b) Advantages

- (1) Since funds remain in trust, funds retain the 100% guarantee.
- (2) The BIA will continue to pay administrative costs.
- (3) The design could easily accommodate a limited term of trust with provisions for renewal or severance to give tribes greater control.
- (4) The tribe could name another trustee. (This is especially good for tribes with hostile relationship with BIA but no financial managerial experience.)
- (5) Flexibility allows for differences in tribal expertise and needs.
- (6) Reporting requirements will result in clear and timely accounting designed specifically for the tribe.

c) Disadvantages

- (1) This is only small step toward greater tribal involvement.
- (2) This design is limited in effectiveness due to BIA's decentralized nature.
- (3) Detailed investment objectives may produce a preset plan which is too cumbersome to be economically effective.⁶⁰

⁵⁸This is the very least the government could do, this is right in line with federal policy. There is no good reason to deny this unless the BIA and tribe have extremely hostile relations. (The BIA, via Joe Wellar of the BIA Division of Trust Fund Management Office, claims that this is covered presently without a trust agreement.)

⁵⁹Tribal Trust Funds then become more like an "active trust" where the trustee has affirmative duties to manage and make investments. Bogert §§ 46-47.

⁶⁰Regarding the Penobscot and Passamaquoddy experience--They had no preset plan for the use of the \$84 million, and it is ridiculous to try and set in concrete any kind of formal plan for an ongoing fund. Bank and investment houses make decisions on an hourly and daily basis as to where they're going to be putting their money, and I don't

d) Safeguards

- (1) There would be the same degree of federal oversight presently in place. With clearly understandable reporting, the Tribe will be able to oversee its investment as well.
- (2) The degree of outside advice and counsel is clearly up to the tribe. It can rely on the BIA for investment advice or pay for its own private investment advisors.
- (3) The reporting mechanism would improve due to the design described in the trust document.

2. 638 MODEL

FNFP is working with the Rosebud Sioux Tribe to establish a system where the tribe would contract with the BIA to administer specific or all parts of the management of the investment portfolio.⁶¹ This could include tribal contracting and/or subcontracting of the various services. This model is similar to other Self-Determination contracts with BIA or IHS that have been administered by tribes or tribal organizations.

The government may seek to limit the functions that the tribes can contract by asserting that Self-Determination contracts are used only to contract the implementation and management of trust duties--not to actually make trust decisions. There are analogues in natural resource management (hunting and fishing, forestry or range land) where tribes are not allowed to contract decisions regarding how natural resources should be used can contract to implement those decisions. But since natural resource contracting does not require tribes to have all the requisite abilities to manage the resources and outsiders are often subcontracted for the missing skills, then tribes should be authorized to contract many of the trust fund management functions.⁶²

Tribes can also respond that because many trust fund management responsibilities are being contracted out to the private sector, those functions must not fall within fiduciary responsibilities. Those functions--depositing, accounting and reporting, advising about investment decisions could be contracted to the tribes and the tribe could then subcontract for their performance. The Bureau would retain its authority to direct monitor and authorize these transactions and activities as performed by the tribe or its subcontractor.⁶³

thing the (Saginaw) tribe should be forced to bootstrap themselves into a long-range, fixed plan as to how they're going to be utilizing these funds. It doesn't make any sense in the investment world, and any banker or investment firm will tell you you're crazy if you lock yourself into a preset plan." Karl Funke testifying on behalf of the Saginaw Chippewa Tribe to the Senate Select Committee's July 10, 1985 hearing, pgs. 58-59.

⁶¹At this time the Rosebud Sioux Tribe has mostly IMF accounts. Tribal funds may be forthcoming when the Consolidated Sioux Fund is disbursed. Also, the Rosebud Sioux were selected as part of the BIA tribal self-governance experiment where the tribe voluntarily assumes all BIA functions. They will consider tribal trust fund management as part of their first year \$100,000 planning grant.

⁶²Backey, Carole A., "A Summary Review of the Department of Interior's Report of the Task Force on Indian Economic Development", January 20, 1987, pg. 24. she says he says--Reagan's Task Force on Economic Development concluded that "The BIA should issue guidance clarifying BIA policy that contracting of trust-related economic and natural resource functions to tribes in most cases does NOT conflict with the Department's trust responsibility."

⁶³See the Answer to Question #60, "BIA Question and Answers".

In addition, when Congress considered legislation to increase tribal management under Self-Determination contracts, there was formal discussion about increasing the role of tribes in the management of the Tribal Trust Fund accounts.⁶⁴ Although Trust Fund management is not expressly addressed in the proposed amendments to the Indian Self-Determination Act, it could be construed to be included in the amendment to Section 102(a)(1)(E) which allows tribes to contract any programs "for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department of Health and Human Services or the Department of the Interior within which it is performed."⁶⁵

a) **Increase of tribal role.** The tribe would have to create a Trust Fund Management office to administer the Trust Fund accounting and investment. The Tribal Council would have greater oversight in the tribal budgeting and review process.

b) **Advantages**

- (1) The Tribe would have control of specific functions.
- (2) Tribal activity would be monitored by the BIA.
- (3) The Tribe would have the authority to subcontract for services.

c) **Disadvantages**

The typical constraints of Self-Determination contracts would be present such as:

- (1) Indirect costs are not covered adequately.
- (2) The BIA is not responding to contract proposals in a timely manner
- (3) There is a lack of commitment to contracting with the federal agencies.

d) **Safeguards**

(1) **Degree of federal oversight.** The federal government could establish regulations to protect itself. BIA could establish criteria for choosing an investment advisor, expressly limiting what investments could be made, setting strict requirements for audits, and possibly establishing a prerequisite amount of tribal experience with monitoring or subcontracting similar duties. Contracts could be set for a limited time, such as one year.

To avoid government fears due to the liability issue, the 638 Model could be treated more like a "passive trust" where the trustee has only mechanical and prescribed duties. Current 638

⁶⁴ "The Committee intends . . . tribes to enter into contracts with the Secretary of the Interior to carry out trust related functions . . . including but not limited to . . . trust fund investment and accounting services . . . The intent of the law is to enable tribes to improve the protection of trust resources by operating the technical functions relating to the trust responsibility while preserving the Federal Government's obligations as trustee for Indian lands and resources. Clearly, the Secretary continues to maintain trust responsibility for tribal resources when the tribe operates a program under a self-determination contract . . ." Senate Select Committee Report on Amendments to P.L. 93-638, (S. 1703), pg. 24.

⁶⁵H.R. 1223, Title II, Section 201(e).

regulations could be used by BIA to deny a contract,⁶⁶ terminate it if necessary, and a tribe could retrocede the service to the BIA.

(2) The degree of outside advice and counsel would again depend on how much the tribe is willing to hire. The BIA would still, under the Self-Determination regulations, be required to provide technical assistance at the tribal request.

Other protections could be for the tribe to deposit funds into governmentally guaranteed securities; use more than one investment manager to hand separate amounts of money, use only investment managers with experience in similar types of investments who have a reputable, proven record. Protect money by locking it into a long range plan where the principal could not be used for twenty years, and then require a 2/3 vote of tribal members and 2/3 vote of the council to be used.⁶⁷

(3) The reporting mechanism would be implemented by the Tribe. The BIA could oversee the tribal accounting but the tribe would not be restricted in its design.

3. OUT-OF-TRUST MODEL

FNFP has been working with the Umatilla Tribe to create an Out-of-Trust model where tribal trust funds would be removed from the federal trust and the tribe itself would have total control over investing and managing the fund. Tribes have the right to propose and request that their funds be taken out of trust except for funds restricted by Judgment Fund Distribution Plans. But the tribal decision is subject to federal approval.⁶⁸ Tribal control has been authorized in specific occasions but no uniform guidelines exist; decisions are made on a case-by-case basis, area-by-area basis.

a) **Increase of tribal role.** The tribe will have total control in this situation. Any staff or consultants will be answerable to the tribe.

b) **Advantages**

(1) The Tribe may receive higher return if it is willing to take greater risks.

⁶⁶The Secretary would be required to "show cause" to decline a contract, such as: 1) If services performed by contract "will not be satisfactory", i.e., if services are provided at a lesser standard than the BIA. 2) If project cannot be completed by the contract. If "adequate protection of trust resources is not assured". By regulations this prohibits the Secretary of Interior from 638ing with tribes for any "trust responsibility vested by law in the SOI or Commissioner" or if it "provides for the termination of a responsibility." (25 CFR 271.33) for example, as provided by the 1977 American Indian Policy Review Commission, Final Report, May 17, 1977, pg. 16. "Whenever the Secretary finds it necessary to disapprove a proposed tribal initiative, he must file a written statement with the tribe notifying them of the reason for his disapproval of their proposed action and afford them an opportunity for a hearing."

⁶⁷According to Attorney Eric Eberhard, the Navajo Nation contemplated these options when it considered contracting for its trust fund management services.

⁶⁸Support in the 1984 annual report of the Division of Trust Fund Management, FY 1984 Annual Report pg. 9. "tribes have complete authority over . . . trust funds, except where that authority has been restricted or altered by Congress through legislation." Tribal funds are invested unless the tribe that owns the funds objects; the decision to not invest is the result of the council's determination." See also, "BIA: Contract for Trust Fund Services, Questions and Answers", undated version, Question #44: "Yes, upon appropriate authorization, tribes may withdraw funds from trust."

- (2) A tribe could use a local bank or investment firm to build a relationship. In the long run this may allow tribe to secure prime rates for projects and gain further capital for economic development.
- (3) Tribes would likely gain increased contact with their investment managers and banks, who may be more attentive and experienced than BIA personnel.
- (4) Tribes can limit the term of their contract with investment managers so they may change investment managers if their performance--whether investment or accounting--is not satisfactory.
- (5) Tribes can split their funds to be managed by different investors and thereby create a competitive process.

c) Disadvantages

- (1) Funds will lose the 100% federally secured guarantee--unless the tribe restricts itself to continuing investments in federally guaranteed securities.
- (2) Lose advantage of being pooled with larger Treasury funds.
- (3) The Tribe may be responsible for administrative costs and investment manager fees.
- (4) Higher risk investments could lose money.

d) Safeguards

The BIA can protect itself from a *Seminole Nation* situation where they are held liable for turning funds over to the tribe. For one thing, that case can be narrowly construed to situations where the BIA knows or should know that the tribal council will act fraudulently with the funds. But the BIA can regulate a review and approval process. The regulations can require that Tribal Plans be drafted and approved prior to the extinguishment of the trust status.

(1) The degree of federal oversight would be minimal once the BIA has approved the transfer of funds. There could be, however, a large degree of oversight during the tribal planning process.

(2) The degree of outside advice and counsel will similarly be independent of the federal government once the funds are removed from the trust status; however, federally provided technical assistance could become part of the tribal planning process.

The Tribe could require that their investment managers guarantee a minimum rate of return. This tends to keep investments conservative but it is added security.

Managers could be required to prove that they have a set number of years worth of experience with similar investments. Externally published standards, such as a rating from Standard and Poors, may also be used. The tribe could specify that the manager be local or easily accessible. The tribe could require that more than one manager be used for any fund.

- (3) The tribe would have total control over the reporting mechanism.

D. Steps Necessary to Give Tribes Control

1. Legislation

It would not be necessary to amend 25 USC 162a to authorize the Secretary to create trust documents converting existing Tribal Trust Funds for the In-Trust Model. It would be relatively simply to control upcoming judgment fund awards through a document approved as part of the Congressional plan for disbursement.

The 638 Model could be implemented under the current structure but anticipated amendments to the Self-Determination laws may make it easier for tribes to contract services.

The Out-of-Trust Model may not require additional legislation for some tribes if it is established in the Congressional approved Judgment Fund Plan. In the past, tribal control has been approved on an ad hoc basis, usually as part of the Judgment Funds Distribution plan or special legislation, although a uniform law could be enacted to apply to all tribes.

2. Regulations

The BIA should issue regulations to ensure that tribes have an investment plan in place before the funds are either released from trust status or to be administered by the tribe. The federal government can shield itself from a claim regarding the breach of its fiduciary duty if it establishes and enforces protective regulations. The following requirements could be enacted by regulation: Guidelines for choosing investment advisors. Secretarial approval for any authorizing agreement between a tribe and an investment manager. Guidelines on how to measure community support for taking funds out of trust and how to determine the needs of the tribe. Limitations on what type of investments can be made. Review and approval of tribal plans for out-of-trust management. Appeal procedures for denial of the selection of an advisor or the implementation of a plan.

3. Greater technical assistance

The BIA needs to demonstrate commitment in terms of adequate funding and a specific program to improve cash management and budget planning.⁶⁹ The BIA could provide grants for tribes to secure their own technical assistance from Indian organizations such as FNFP or the Native American Finance Officers Association.⁷⁰

Manuals and regulations should be enacted and followed by all Area offices; and should be disseminated with training to the tribes. The BIA could also provide further interpretation of the Self-Determination process in regards to Tribal Trust Fund accounting.

The BIA could also assist tribes in determining whether they need to modify their constitutions in order to manage the Tribal Trust Funds in the manner in which they desire.

⁶⁹Price Waterhouse In-Depth Review of Indian Trust Funds.

⁷⁰The Act should "authorize the Secretary to provide a grant to a tribe to obtain technical assistance in program planning . . . whether or not such technical assistance is available from a Federal agency. Technical assistance may be provided by sources chosen by the tribe . . . (and) include other tribes, tribal organizations, local experts, state and county agencies . . . It is apparent that many tribal organizations have greater technical capabilities in the areas of program planning and evaluation . . . than the BIA . . . For too long, however, federal agencies have monopolized technical assistance funds and have used those resources to establish centralized offices which are inaccessible to most tribes . . ." See the Senate Select Committee's December 22, 1987 Report on S. 1703 Amendments to the Indian Self-Determination Act. At this point the BIA relies partly on the private sector to provide technical assistance in exchange for the future hope of getting some business.

E. Investment Objectives

The Tribe should have the opportunity to decide its investment objectives for itself. Objectives may include using funds to leverage for economic development loans, per capita payments, investing for income, investing to growth, or socially responsible investing. The goal should be to an improved lifestyle, not only for the currently enrolled tribal members, but for the membership of generations to come.

Once the tribe has conducted a survey to identify the community's social and economic needs then an investment plans should be developed documenting when and how much income is needed. The plan should contain a formula for distributing earnings both from investment and tribal enterprises. The tribe should stipulate that the principal cannot be spent until a certain amount of time, or only for specified activities, and that a certain percentage of the interest earned would be reinvested into the principal.

F. Case Factual Summary

1. *Seminole Nation v. United States*, 316 US 286 (1942)

When \$37,000 of a \$500,000 trust to per cap to members was paid directly to the tribal treasurer upon request of the Seminole General Council from 1870 to 1874., the federal government was held liable because it should have know of the fraudulent nature of the council.

2. *Manchester Band of Pomo Indians v. United States*, 363 F.Supp. 1238 (N.D.Cal. 1973)

BIA held liable for "deficient management" of funds contributed by the tribe from its 18 year dairy business because the BIA only made 2 interest payments totalling \$26 and the money remained in the Treasury where it earned only 4% interest per annum. Court held the BIA to same fiduciary standard as for private trustee.

3. *Cheyenne Arapaho Tribe of Indians of Oklahoma v. U.S.*, 512 F2d 1390 (Ci.Cl. 1975)

All funds held by the U.S. for Indians is impliedly held in trust. The tribes claimed the BIA did not fully use all of the investment options authorized by Congress but instead left funds in lower interest bearing Treasury accounts when higher interest rates were available elsewhere. Court held that the federal government, as trustee, has the obligation to maximize trust income by prudent investment and also has the burden of proof to justify less than maximum return.

4. *Navajo Tribe of Indians V. United States*, 624 F2d 981 (Ci. Cl. 1980)

Numerous accounting claims and complaints that BIA did not properly disburse of invest funds, nor accurately account for fire-damaged timber. Court held feds to highest fiduciary duty because whenever the Federal Government takes control or supervision over tribal monies or properties a fiduciary responsibility exists.

APPENDIX A

25 CFR 116: Guidelines for Creating Individual Trust for Members of the Five Civilized Tribes of Oklahoma

- Not more than 30% may be invested in securities which appear in the list of legal investments for savings banks prepared by the Superintendent of banks of the State of New York;
- Not more than 20% may be invested in general obligations issued by States or political subdivisions of states;
- Not more than 10% may be invested in public utilities or railroad securities;
- Not more than 15% may be invested in Federal land bank bonds;
- Not more than 40% may be invested in total loans secured on first deeds or mortgages on improved real estate;
- No part of the trust may be invested in stocks;
- No part of the trust may be invested in any kind of foreign securities.

APPENDIX B

Investments expressly approved of by the Court of Claims in the *Cheyenne-Arapaho Tribes of Oklahoma v. United States* case. The BIA's RFP also specified this list as legal investment options.

1. Export-Import Bank participation certificates
2. Federal National Mortgage Association participation certificates.
3. All other obligations, participations or instruments of the Federal National Mortgage Association.
4. Debentures of the Federal Housing Administration.
5. Farm loan bonds issued by federal land banks.
6. Obligations of the Federal Home Loan Banks.
7. Debentures of the Federal Intermediate Credit banks.
8. Debentures of the banks for cooperatives.
9. Bonds and notes of the Tennessee Valley Authority.
10. Notes guaranteed as to principal and interest of the Small Business Administration.
11. Bonds issued by local housing authorities secured by annual contributions contracts with the United States.
12. Bonds or notes of local housing and urban renewal authorities secured by a contract with the United States.

APPENDIX C

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Mr. SYNAR. Mr. Thomas.

Mr. THOMAS. I'm through. Thank you, sir.

Mr. SYNAR. Again, let me thank all four of you for being here this morning. We appreciate the opportunity to hear from you very much.

Mr. SKYE. Mr. Chairman, I would like to add one more thing.

When the contract is terminated with Security Pacific Bank, you know, the Bureau of Indian Affairs developed an acceptable plan, in that before they do this they have the consent of the tribes and the consent of Congress to be able—before they do any kind of this stuff. Simply because if you ask the Indian out in the street, on the reservation, what his trust funds are, he doesn't know.

Mr. SYNAR. One of the things we'll explore with our next witness is the lack of consultation with the tribes.

Mr. SKYE. Thank you very much.

Mr. SYNAR. Thank you, Mr. Skye. I thank all of you for being here.

Ms. GILES. Thank you.

Mr. SYNAR. Our final witness today is Dr. Eddie F. Brown, Assistant Secretary for the Bureau of Indian Affairs, U.S. Department of the Interior. He will be accompanied today by Mr. Walter Mills, Deputy Assistant Secretary of Indian Affairs for Operations, and Acting Director.

Welcome, and anyone else who might potentially be asked to testify, please come forward.

Do any of you have any objection to being sworn in? Raise your right hand.

[Witness sworn.]

Mr. SYNAR. Let's play a little game I like to play. I think it's only appropriate, given the number of people that stood up. How many people are here from the BIA? Stand up if you're from the BIA. Everybody in the audience is from the BIA. That's half the audience here. All right. Welcome. We're glad to have you here.

Dr. Brown, your entire testimony will be made a part of the record. At this time we would ask you to summarize, and we welcome you this morning.

STATEMENT OF EDDIE F. BROWN, ASSISTANT SECRETARY OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY WALTER MILLS, DEPUTY, OPERATIONS; LINDA RICHARDSON, ASSISTANT DIRECTOR FOR ADMINISTRATION, FINANCIAL MANAGEMENT; WILLIAM P. RAGSDALE, ACTING ASSISTANT SECRETARY, BUREAU OF INDIAN AFFAIRS; RON CRAMMER, CONTRACTING OFFICER; BETTY WILKINSON, DIVISION CHIEF, ACCOUNTING MANAGEMENT; ARLENE BROWN, TRUST FUND CONTRACT PROJECT LEADER; JOSEPH WELLER, CHIEF, DIVISION OF TRUST FUNDS MANAGEMENT; FRED KELLERUP, INVESTMENTS OFFICER; AND GEORGE T. SKIBINE, ATTORNEY, DIVISION OF INDIAN AFFAIRS, OFFICE OF THE SOLICITOR

Dr. EDDIE BROWN. Good morning, Mr. Chairman, members of the committee.

Let me begin by stating that when I accepted the position as Assistant Secretary of Indian Affairs, I did so with a profound sense of the challenges that lay ahead in carrying out the trust responsibility on behalf of American Indians. I want to state right up front my personal dismay over the recent Interior Department's inspector general's report on the Bureau's trust fund management program. Upon my recent review of this situation, however, I found the following factors:

One, that we have dedicated, up-front, front line employees, but they are employees working in a decade of transition for the Bureau, from direct service provider to technical support and service partner, without all the required direction and support that they require.

That we have a smaller staff with larger workloads, insufficient training, and a high turnover in upper level management and high skill areas.

That we have a Bureau struggling with the delivery of complex services, with antiquated or partially integrated systems.

Now, the management of Indian trust funds is one of the most basic trustee responsibilities of the BIA, a function I feel we must perform more effectively. Historically, for well over a century, Federal appropriated funds have been held in trust and invested for Indians, and for 80 years private funds of tribes and individuals also have been held and invested by the Government.

The universe of the BIA trust fund accounts include approximately 2,000 tribal accounts maintained for the benefit of 300 tribes and 288,000 local individual Indian money accounts, or IIM accounts.

The composition of these trust funds has not changed significantly since the 1930's. The funds include payments from the United States required under treaties or in satisfaction of Indian claims against the United States, as well as income to tribes and individuals from nonfederal sources—agriculture, timber, mineral, oil, and gas leases. Some tribal trust funds are subject to specific congressional approval, while individual Indian trust funds are not subject to restrictions on their use unless they are held in supervised accounts.

For decades, the Federal investment authority was exercised on a decentralized basis, with each BIA area office handling its own investments and manually recording transactions on individual ledger cards.

In the late 1960's, a centralized investment and accounting system was initiated, and while automation of the accounts began in the 1970's, many manual functions, such as the calculation and posting of semiannual interest payments, remained a manual function until well into the 1980's. It was just within this past year that all BIA agencies implemented automated systems to calculate interest payments.

Now, as pointed out, the identification of specific weaknesses in the BIA trust fund accounting and investment system is not a new issue. In 1982, a GAO report was filed. A year later, an IG report was filed, followed by the Price-Waterhouse review in 1984, and then by the Bureau in 1988, which commissioned the Arthur Andersen audit. That was the first known audit of the fund by an out-

side, independent auditor, and as you well know, the recent IG report was just recently released.

Now, as a partial remedy to these identified weaknesses, the BIA, in 1986, initiated but did not complete a contract arrangement for some trust fund services with Mellon Bank. In September 1988, a contract for trust fund financial services was awarded to Security Pacific National Bank. The contract is expected to provide an interface among the current multiple accounting systems now in use with the BIA, as well as professional investment services.

We are now in the process of establishing a new position of Deputy Assistant Secretary of Indian Affairs through a Secretarial order that has been signed by the Secretary, that would be in charge of the trust fund's management, to consolidate the various aspects of trust fund management currently split among three different deputies. Now, in my few months as Assistant Secretary of Indian Affairs, I have found that the BIA administers what I feel is the greatest variety of programs within the Federal Government. The demand for efficient, high-level performance places a premium on creative and effective managerial innovation, such as contracting for technical expertise and performance not readily available within the BIA.

The contracting of portions of the investment and accounting functions of the BIA trust fund management program is a creative attempt to improve our fiduciary obligation. Like all new initiatives in uncharted waters, new issues and situations have risen which will call for modification in the contracting process. Rather than viewing this as a failure to see clearly enough into the future, these new issues should be recognized as expected occurrences and that we should work to minimize their number and their impact.

Given the problems with existing BIA trust fund systems, and the IG and Price-Waterhouse recommendations to contract with the private sector, we believe the Security Pacific contract is currently the most viable option for the Bureau.

Now, before I conclude, let me just talk for a moment on my managerial style. In my first 100 days in office, I have visited directly with the leaders of over 100 tribal governments. I view the BIA role as a service organization where the input and the views of the constituency are critical to my actions. Therefore, I will seek to improve the communication and opportunities for tribal government council on the trust funds contract as well as other issues of major impact on Indian constituencies.

This concludes my opening remarks, Mr. Chairman.

I have at the table with me Mr. Walt Mills, Deputy to the Assistant Secretary of Indian Affairs in charge of operations. Also, Linda Richardson, Assistant Director for Administration over financial management. I have also technical staff in the audience that are available for questions. Mr. Ron Crammer, who is the contracting officer; Mr. William Ragsdale, who is currently on intergovernmental personnel assignment with the Cherokee Tribe; Betty Wilkinson, who is chief of the division of accounting management; Arlene Brown, who is trust fund contract project leader; Mr. Joe Weller, who is chief of the division of trust funds management; and Mr. Fred Kellerup, who is investment officer.

[The prepared statement of Dr. Eddie Brown follows:]

STATEMENT OF THE HONORABLE EDDIE F. BROWN
Assistant Secretary - Indian Affairs
before the
Subcommittee on Environment, Energy, and Natural Resources
Committee on Government Operations
October 26, 1989

Good morning, Mr. Chairman, I am here today along with my Deputy for Operations, Mr. Walt Mills, to discuss several items of mutual concern regarding the management of and accounting for the funds held in trust by the United States Government for the benefit of Indian tribes and individual Indians.

I wish to begin my statement by registering my personal dismay over the findings of the Inspector General's report. The management of Indian trust funds is one of the most basic trustee responsibilities of the Bureau of Indian Affairs, as agent for the Secretary of the Interior.

I would like to begin with some background information, as I understand it, leading up to the Bureau's effort to contract out certain accounting and investment functions relating to trust funds management.

Trust Relationship With Indian Tribes

Almost 200 years ago, the Trade and Intercourse Act of 1790 first established the fiduciary relationship between Indians and the United States Government. The courts have held that Congress has exclusive plenary legislative authority over Indians and all of their tribal relations. The Congress has designated the Secretary of the Interior as the Government's trustee for that portion of the Indian estate for which there exists a fiduciary relationship. The Secretary, as authorized by Congress, has delegated to the Assistant Secretary Indian Affairs the responsibility for the management of Indian affairs.

The first trust funds were established more than 150 years ago based upon provisions contained in treaties between the United States Government and individual Indian tribes. The Secretary of War was authorized to invest treaty funds in 1837. In 1880 the Secretary of the Interior, who was given responsibility for Indian Affairs in 1849, was authorized to place into the Treasury certain Indian funds received by him as trustee. Interest was to be paid semi-annually at the rates established by treaties or by law. Legislation enacted in the 1860's vested in the Secretary special responsibilities for funds that were due orphaned children and incompetent Indian adults. Today, these funds are held in what are referred to as "supervised" accounts.

In 1908, Congress authorized Indian agents to receive into their custody and to deposit into national banks individual Indian or tribal money. Any funds so deposited were to be fully covered by a surety bond. Thus, for well over a century federally-appropriated funds have been held in trust and invested for Indians, and for 80 years, private funds of tribes and individuals have also been held and invested by the Government. Almost as long as there have been Indian trust funds, there have been issues raised concerning the investments of and payments from these funds. Court cases date back to the 18th century.

The last substantive legislative change in the authority of the Secretary to manage and invest Indian trust funds occurred in 1938, when the Secretary was authorized to withdraw tribal funds which were deposited in the Treasury and to deposit such funds in banks, if the funds were fully secured, or in public debt obligations of the United States Government which are unconditionally guaranteed as to both interest and principal. The 1938 Act, 25 U.S.C. §162a, authorizes the deposit and investment of individual Indian trust funds on the same condition.

For decades, this investment authority was exercised on a decentralized basis, with each BIA area office handling its own investments and manually recording transactions on individual ledger cards. So long as tribal funds were held in the Treasury and drew a specified annual rate of interest, the bookkeeping associated with such accounts was not a major problem. Once the investment program began, however, which included individual trust funds, accounting became much more difficult as investment instruments matured at different times throughout the year and as differing rates of return were earned on the investments. Tribal funds and judgment funds were invested on a tribe-by-tribe basis, while the Individual Indian Monies (IIM) were pooled for investment purposes.

Recent History

The composition of the trust funds has not changed significantly since the 1930's. The funds include payments from the United States required under treaties or in satisfaction of Indian claims against the United States, and income to tribes and individuals from non-Federal sources, mainly from agricultural, timber, mineral, or oil and gas leases. The use of the tribal funds acquired from the United States are subject to specific Congressional approval. Other tribal funds may be used for purposes designated by a tribe with the approval of the Secretary of the Interior (25 U.S.C. §123). Individual Indian trust funds are not subject to restrictions on their use unless they are held in supervised accounts.

In the late 1960's, the practice of individual BIA area offices managing investments was stopped in favor of centralized investment and accounting. Automation of the accounts began in the 1970's, but many manual functions, such as calculation and posting of semi-annual interest payments, remained well into the 1980's. In fact, it has just been within the last year that all BIA agencies implemented automated systems to calculate

interest payments.

Let us consider what it is the BIA has to reconcile with regard to trust fund accounts. Approximately 2,000 tribal accounts are maintained for the benefit of some 300 tribes. The remainder of the 290,000 total accounts are local Individual Indian Money (IIM) accounts. Funds going into many of the tribal accounts and a significant number of the IIM accounts are from lease or royalty payments. As noted previously, the Secretary is authorized to receive and invest these non-Federal resources on behalf of the account holders. A single allotment of individually owned Indian land with a producing oil or gas well may have hundreds of individual owners, all of whom are entitled to share in the royalty income.

The BIA receives money for royalty payments from the Minerals Management Service. Approximately two weeks after the funds are received, a computer tape with ownership information is provided so that the funds previously received can be paid. In the interim, the funds are held in a special deposit account and invested. When payment is made, it is also necessary to calculate the amount of interest earned on the special deposit account which is attributable to each owner.

Thus, accurate accounting for these funds is not solely dependent upon the adequacy of the investment and accounting systems, but relies heavily on the lease distribution and land ownership records. The BIA currently has a backlog of over 4000 estates with individual trust property which awaiting probate. Until estates are probated, the income from leases continues to be paid into the account of the estate. When probate is concluded, all ownership records must be updated and distributions made to the heirs or devisees.

Subject of the Hearing

With that background, let us turn to the subject of today's hearing. The issues which the Committee has indicated will be discussed go back to 1982. In that year, the General Accounting Office issued a report which found that controls over trust funds were lacking and that accounting records were out of balance by \$25 million. The following year, the Inspector General conducted an audit as a follow-up to the GAO report which confirmed the GAO findings, except that the out-of-balance amount had increased to \$71 million, and the IG recommended that the BIA determine the feasibility of contracting all or a portion of the trust fund activity.

The BIA obtained the services of Price-Waterhouse to review the options of contracting with the private sector. Their report, issued in 1984, recommended that we look to the private sector to obtain the needed services. A Request for Information was issued to financial, brokerage, and accounting institutions in 1985 to determine if there was interest in the private sector. The following year, the Treasury Department conducted a solicitation on behalf of the BIA which was limited to six lockbox banks. From this solicitation, Mellon Bank was selected.

Faced with the possibility of court action as a result of the limited competition and the opposition from some tribes, the contract with Mellon Bank was not concluded. Extensive consultation was then conducted with Indian tribes, an A-76 study was conducted, and the contract was readvertised for full competition. In September 1988, a contract for financial trust services was awarded to Security Pacific National Bank.

In preparation for the conversion to contracted operations and in an effort to comply with language contained in our 1989 appropriations act, the BIA contracted with Arthur Andersen & Company to audit the trust fund balances. This was the first known audit of the fund balances by an outside independent

auditor in the 150 years of their existence. The Arthur Andersen report, issued in March 1989, identified numerous control and compliance deficiencies and reported that the BIA systems were out of balance by more than \$17 million. The Inspector General's report, which was released three weeks ago, confirmed the findings of the independent auditor.

It is essential to note that the "shortage" of \$17 million identified in the report of the Inspector General is the difference in the balances shown on the investment system and that recorded in the finance system. This difference was as of September 30, 1988, but it reflects cumulative errors over a period of years which had not been corrected. It appears that the imbalance is essentially confined to the Individual Indian Money account and is most likely the result of accumulated accounting errors. While it may not be possible to account for every dollar, BIA staff have begun an analysis, in concert with audit team members, of the audit work papers which will further clarify the history of imbalances in the IIM accounts and which will identify specific errors. This out-of-balance situation is distinct from the investment losses sustained in the trust funds. To the actual losses, the Inspector General has added estimates of interest that would have been earned had the funds not been lost, for a total of \$12 million.

While most of the problems identified in 1982 still exist in our system today, the BIA has been working for six years to improve our management and our accountability by internal improvements, reorganizing the accounting operation, hiring for the first time a trust fund accounting officer, and by retaining the services of an outside contractor.

Improvements under a Contracted Operation

When the contract with Security Pacific National Bank becomes operational, a number of the current system deficiencies will be corrected. It should be emphasized that the contract addresses a number, but not all, of the

weaknesses identified. It is one step in developing a unified, improved trust fund management system.

Through the use of an integrated accounting system, the need to reconcile the Moneymax, INFO, Finance, and Easytrieve data for tribal activity and the Indian Services Special Disbursing Agent general ledger data with the IIM subsystem of the Integrated Resources Management System will be eliminated. Audit coverage will be rigorous. Not only will bank examiners review Security Pacific's operations, but the contract allows the General Accounting Office, the Inspector General, and outside auditors, as selected by the BIA, to review the bank's handling of the trust funds.

IIM account holders presently receive statements only twice a year, which makes it difficult for them to track the balances in their accounts. Under the contract with Security Pacific National Bank, individuals will receive monthly statements. Interest to account holders will be distributed based on average daily balances and will continue to accrue until checks drawn on the account are actually cashed. Under the present system, once the funds are withdrawn from Treasury by the issuance of checks, the accounts do not receive interest regardless of whether a check is cashed. The physical security of the investment instruments would be enhanced by separating the custody of the instruments from the investment operations and the investment accounting would be separated from the investment purchases.

In addition, for improved management and oversight of the trust funds, the Secretary has ordered that the BIA establish a new position of Deputy to the Assistant Secretary - Indian Affairs for Trust Funds Management. Responsibilities for various aspects of trust funds are currently split between three different deputies -- Trust and Economic Development, Operations, and Tribal Services. This division of responsibility has made it

very difficult to maintain accountability and to carry out a comprehensive management strategy which would allow us to fulfill our fiduciary obligations to tribes and individuals.

As I noted earlier, the responsibility we have to manage trust funds for American Indians is one of the most basic of our obligations, and I am not satisfied with our current level of performance. In the few months I have been in the position of Assistant Secretary - Indian Affairs, I have learned some basic facts that apply to our effort to improve our management of trust funds through the contracting of portions of the function:

- o The BIA administers what may be the greatest variety of programs within the Federal Government -- from law enforcement to social services to highly technical natural resource evaluation and management to financial management -- and, as it should be, the highest level of performance is expected in each of these areas.
- o The BIA has limited time and expertise with which to meet these expectations, which places a premium on efficient management and creative innovations -- such as contracting portions of programs which call for technical expertise and performance not currently available within the Bureau.
- o The contracting of portions of the investment and accounting functions of the Bureau's trust fund management program is a creative and ambitious initiative to assist the Bureau in improving in a timely manner the performance of our fiduciary trust obligation.
- o The contracting process was set up under the best assumptions of direction and requirements recognized at that time, given the time constraints, and the uncharted nature of the initiative.

- o As we have proceeded in this major undertaking, we have identified new parameters and issues which have caused us to re-evaluate and perhaps modify some of our assumptions, directions, and contracting process. Rather than viewing this as a failure to see clearly enough into the future, these new issues should be recognized as normal occurrences in the development of any new initiative.

Given the problems with the existing trust fund systems and the IG and Price-Waterhouse recommendations to contract with the private sector, we believe implementation of the Security Pacific contract is currently the most viable option for the Bureau. We are not structured to be a bank or an investment house, and it is questionable whether we should try to become either when sophisticated private sector resources are available to us in providing a higher standard of trust fund management performance.

That concludes my opening remarks, Mr. Chairman. I will be pleased to respond to the questions of the Committee.

Mr. SYNAR. Thank you very much, Dr. Brown. I appreciate those remarks.

You know, I had you all stand up. How many of you have been with BIA for more than 2 years? Everyone stand up who's been there 2 years. If you've been there for less than 5 years, sit down. Ten years. So we've got some 10-year veterans here, right. OK. I just wanted to make sure we knew who was here.

Dr. Brown, I'll start the first segment here. A proviso was included in the fiscal year 1987 Supplemental Appropriations Act prohibiting transfer of funds under contract with any private institution until the Indian Trust Fund accounts were audited and reconciled. Then, in fiscal year 1988, Dr. Brown, the Interior and Related Agencies Appropriations conference report included language that prohibited BIA from contracting out trust fund services until an accounting of the funds had been provided to the tribes involved, the proposed contractual agreements had been submitted to the Appropriations Committees and approved, and the Bureau had adequately consulted with the affected tribes.

My question to you is, did the Bureau of Indian Affairs comply with those congressional directives?

Dr. EDDIE BROWN. Mr. Chairman, let me state what we are currently doing and then we can back up, if you would like. I can—

Mr. SYNAR. No, I need an answer to that question. Did you comply with those directives?

Dr. EDDIE BROWN. OK. Let me refer to Mr. Walt Mills, who has a little longer historical as to what took place specifically within those years, as well as Linda Richardson.

Mr. SYNAR. Mr. Mills.

Mr. MILLS. We have complied with the language to a point. There are some problems that we're having, that it's almost an impossibility for us to reconcile all of the accounts. This is what we're trying to address now.

The contract, of course, is entered into, but no funds have been transferred, and in that respect, we have complied with the language by not transferring any funds to the contractor.

Mr. SYNAR. So you did not comply with the directives, did you, Mr. Mills?

Mr. MILLS. No funds have been transferred to the contractor.

Mr. SYNAR. Did you audit and reconcile them, as required by the directives?

Mr. MILLS. No, we have not at this time.

Mr. SYNAR. All right.

The subcommittee has been in contact with Arthur Andersen & Co., the firm that BIA contracted with, and they have provided us some interesting information. At this time I would like to introduce into the record exhibit 1.

[Exhibit 1 follows.]

ARTHUR ANDERSEN & CO.

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October 2, 1989

Representative Mike Synar, Chairman
Environment, Energy and Natural
Resources Subcommittee of the
Committee on Government Operations
Rayburn House Office Building
Room B-371-B-C
Washington, D.C. 20515

Dear Representative Synar:

This letter is in response to your letter dated September 11, 1989 to Mr. James LaBorde which discussed your subcommittee's review of the Bureau of Indian Affairs (BIA or the Bureau) contract awarded to Security Pacific National Bank to provide BIA with accounting and financial trust services. Your letter requested that we comment on certain matters to assist your subcommittee in its review. Our responses to your request follow.

BIA Interpretation Regarding AA&Co. Audit Report and Scope of Work

Your letter indicates that the BIA advised you that "while the Arthur Andersen & Co. (AA&Co.) audit report reconciled the total balances in the Tribal trust funds and Individual Indian money pool account for a one year period, the cash balances for the accounts could not be verified and that an audit would be impossible due to the lack of records." Your letter goes on to indicate that in a document submitted to Congress, the BIA stated "the auditor reconciled cash balances for the previous fiscal year, but found 1) that cash balances for Individuals and Tribes cannot be confirmed; 2) that the Bureau's accounting systems and records are inadequate; and 3) that it is not practicable to extend the audit to verify the balances held in trust for Indian Tribes and Individuals."

We will attempt to clarify certain aspects of our audit report and related findings and the scope of work in the next two sections of this letter - "Scope of Audit Performed by AA&Co." and "Audit Findings as Stated in Report of Independent Public Accountant."

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Representative Mike Synar

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October 2, 1989

Scope of Audit Performed by A&C Co. - As specified in the original audit service contract awarded to Arthur Andersen & Co. (contract no. MOOC14205135) and as noted in the first paragraph of our Report of Independent Public Accountants dated March 23, 1989, our audit was of trust fund financial statements as of September 30, 1988 and for the year then ended. As further noted in paragraph 3 of our Report of Independent Public Accountants, "this was the first known financial audit by independent public accountants of the Tribal and Individual Indian Monies (IIM) Trust Funds managed by the Bureau, and the scope of our engagement was not sufficient with respect to the financial statements for preceding periods (from inception through September 30, 1987) to enable us to determine the propriety of trust fund balances resulting from prior activity and what portions of adjustments identified in our audit relate to prior periods."

This scope limitation is a direct result of the BIA not having audits conducted in periods prior to the year ended September 30, 1988. The majority of the individual trust accounts managed by BIA originated in periods prior to September 30, 1987 and a significant portion of the historical activity in these accounts occurred prior to the year under audit. Accordingly, we were unable to ascertain whether activity prior to the year ended September 30, 1988 was properly accounted for other than through an attempt to determine whether the Indian tribes, organizations and individuals for whom the BIA managed trust accounts agreed with the cumulative balances in their accounts (as discussed below). Furthermore, our audit was of the trust funds (not each of the individual accounts within the funds) and did not result in a verification of each individual transaction in each of the approximately 300,000 trust accounts managed by the BIA.

Audit Findings as Stated in Report of Independent Public Accountants - During our audit of trust funds managed by the BIA during the year ended September 30, 1988, we recognized the existence of major inadequacies in the accounting records and related systems used to account for Tribal and Individual Indian Monies Trust Funds managed by BIA. We were also aware prior to our audit of the existence of accounting errors, including overpayments, that had occurred in prior periods and potentially during the year under audit. Recognizing these factors, we undertook to perform substantive audit procedures on substantially every known trust fund balance and activity type for the year ended September 30, 1988. In so doing, we attempted to confirm cash balances with the U.S. Department of Treasury. We also attempted to confirm every known investment account with the applicable financial institution or other party, and we attempted to confirm the balances held in trust for Indian tribes, organizations and individuals with every applicable trust account beneficiary.

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As noted in our Report of Independent Public Accountants, because we were unable to obtain third party confirmation of cash balances and balances held in trust, and because of the above-mentioned inadequacies in accounting records and related systems, and because of the existence of accounting errors, it was not practicable to extend our auditing procedures to enable us to express an opinion regarding the basis on which 1) cash, including balances invested overnight, 2) investments at failed financial institutions, and 3) balances held in trust for Indian tribes, organizations and individuals, including unallocated balances, are stated. Investments (except for investments at failed financial institutions) and accrued interest receivable balances were stated at September 30, 1988, based on the total amounts of verifiable investments. Also, as noted in the final paragraph of our Report of Independent Public Accountants, "a significant number of Indian tribes, organizations and individual account holders, for whom the Bureau holds assets in trust, do not agree with the balances recorded in the Bureau's records. Accordingly, the balances held in trust for specific Indian tribes, organizations and individuals and in total may differ from the recorded balances. The ultimate resolution of these matters and resulting amounts due to or due from certain specific Indian tribes, organizations and individual account holders is presently not determinable." Accordingly, we agree in substance with the above interpretations made by the BIA regarding the scope and language in our report.

Availability of Records Needed to Perform an Audit and Reconciliation of Tribal and Individual Indian Monies Trust Fund Accounts

As indicated in your September 11, 1989 letter, BIA's response in a document submitted to Congress stated in part, "regardless of the amount of time or money spent, the accounts cannot ever be audited because records simply do not exist."

Your September 11, 1989 letter also states that "in discussions with representatives of Arthur Andersen & Co., it was explained that with some exceptions it is likely that there exist sufficient records to perform an audit and reconciliation of tribal and individual Indian trust monies and that such audit and reconciliation are possible." To clarify the extent to which we believe individual trust fund accounts can be audited and reconciled, we submit the following.

As previously discussed, our audit procedures related to the individual trust fund accounts held by BIA for Indian tribes, organizations and individuals found that a significant number of both tribes and individuals responded to us that they could not confirm their account balances or did not agree with their

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Representative Mike Synar

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balances. The responses to our confirmation requests were not adequate for us to form an opinion regarding the propriety of recorded balances. Also, as discussed in Note 10 to the financial statements, various Indian tribes, organizations and classes of individuals have filed numerous claims against the Bureau, including claims alleging failure to fulfill its fiduciary responsibilities.

In order to audit and reconcile individual trust accounts absent third party verification, it would be necessary to review all, or a substantial majority, of the transactions affecting a particular account from the time of inception of that account. We believe it is inappropriate to make a blanket statement concerning the availability of records to audit and reconcile tribal and individual Indian accounts because sufficient records may be available to audit certain accounts and not others. For many of the individual and tribal accounts, we believe that audit and reconciliation would not be possible due to the lack of records or practicable due to the volume of transactions.

We believe the availability of records is generally adequate (or that certain critical records could be located if sufficient resources were devoted) to permit the audit and reconciliation of the majority of the judgment award accounts. However, we have not done a "survey" of records availability at all necessary locations for the awards accounts to confirm this belief.

Judgment awards are generally explicit with regard to the proper use of funds. For certain judgment awards, the balances have only been increased by investment earnings as the Tribes have not yet developed plans or had plans approved for the use of these funds. For many other judgment accounts, the number and type of expenditures are limited. The extent to which reconciliations can be performed is dependent upon the availability of records which varies among area offices. The judgment awards are of relatively recent origin with most of the significant awards activity occurring within the past 10 to 20 years. Accordingly, the probability of locating records for activity within the judgment award funds is greater than for "non"-judgment award accounts which may date back in some cases, 100 years or more, and/or which may have numerous sources of receipts and/or disbursements for a wide variety of purposes. Attachment I is a summary of judgment account balances in relation to total account balances as of September 30, 1988 based on BIA records.

As reflected in Attachment I, a significant portion of the amount of money held in trust can be covered by auditing the judgment award accounts. We would anticipate that certain records with respect to these judgment award accounts are not locatable but we presently lack sufficient information to quantify the extent of unavailable records.

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Representative Mike Synar

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October 2, 1989

With regard to tribal trust and individual Indian money accounts other than judgment awards, we believe that for the majority of the accounts a complete audit and reconciliation of all activity from the inception of the accounts is not possible or practicable due to the lack of available records at certain locations for certain periods.

We do not believe, however, that non-judgment award account holders should be ignored. Whether or not all trust accounts are audited and reconciled, we believe that unidentified and unallocated balances exceeding a specific dollar amount should be analyzed to the extent reasonably possible, and significant accounts for which account holders indicated disagreement or misunderstanding should be analyzed and researched and discussed with the beneficiaries. As the Bureau has control over the distribution of monies to IIM account holders and many account holders are not aware of the terms of leases and other revenue sources in which they participate, it is likely that the majority of account holders do not know whether they receive appropriate distributions.

It is also quite possible, and should be expected, that given the current situation where certain records are not located and certain receipts have not been distributed, that there will be some account holders who will disagree with (or certainly will not have full faith in) their balances as reported by BIA.

Practicability of Performing an Audit and Reconciliation of Tribal and Individual Indian Trust Accounts to the Extent Records are Available

The individual accounts managed by the Bureau include several different types of accounts, some of which may be relatively "auditable"; some of which are probably not auditable. By the word auditable we mean having the ability to verify all or substantially all transactions (receipts, disbursements/ interest payments, other accounting entries) which have or should have impacted the account balances.

An issue which should to be clarified before anyone (accounting firm, BIA employee, etc.) performs an audit and reconciliation of all accounts is the definition of "audit" and "reconcile."

- . Auditing typically involves examination and review of selected account balances, transactions, etc. to determine if account balances are reasonably and accurately presented.
- . Reconciled could mean to have all activity accounted for (i.e., receipts and disbursements properly distributed to account holders) and all related financial reports brought into agreement.

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Representative Mike Syner

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If audited and reconciled is to mean all activity from inception of accounts being verified, then this task is probably not realistic for a significant portion of non-judgment award accounts, particularly those which have been in existence for a long period of time.

There are many complicating factors which would prevent a 100% verification of all activity and all accounts since inception of the Bureau, as follows:

1. The number of IIM accounts is mushrooming as more and more descendants become owners of smaller and smaller fractionated interests in land allotments or other rights to income distributions. By way of illustration, we found in some cases, that lease payments of approximately \$3,000 were distributed to several thousand account holders so that the postage cost alone exceeds the distribution amount.
2. Records in certain locations, and certainly going back a significant number of years, may not be locatable. Some records will have been lost, destroyed, misplaced, etc.
3. Personnel turnover results in BIA personnel who are not adequately trained or informed of the location of prior period records.
4. Revenues in certain situations are not adequately enforced (i.e., lease payments may not have been collected or amounts collected may be incorrect).
5. Undistributed monies, primarily in "special deposit" accounts need to be analyzed and appropriately distributed.
6. As previously noted, the U.S. Department of Treasury cannot readily provide an independent verification of cash balances held for the BIA.

Regarding the wording in Public Law 100-446 to which you refer, "and the tribe or individual have been provided with an accounting of such funds" --

- a. Some accounts have activity which could date back 100 years or more. If it is necessary to list every transaction which has impacted every account on cumulative "inception-to-date" statements which would be delivered to the tribes and individuals, with adequate description of each transaction to clearly identify the source of each receipt and the recipient of each disbursement, the amount of effort involved would be staggering (and possibly cost prohibitive).

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Representative Mike Synar

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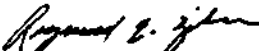
October 2, 1989

- b. A significant number of individual account holders are not presently receiving their statements because the Bureau does not have current addresses on file. While the Bureau might be able to make available information to tribes and individuals, it may not be realistic to anticipate that each tribe and individual could be provided with an accounting (as it is not possible to provide all account holders with their regular statements of account at this time).
- c. Certain individuals may have had accounts at one time but no longer do as they might have withdrawn their funds when they reached the age of majority or at another time. Would it be necessary to provide an accounting for all account holders (or their heirs) for all accounts which have had activity since the inception of the Bureau?

We hope this letter is responsive to your requests. We would be pleased to provide any additional information we have that may assist you.

Very truly yours,

ARTHUR ANDERSEN & CO.

By 
Raymond E. Ziler

amw/1088Z

ATTACHMENT I

	<u>Total Accounts</u>		<u>Judgment Award Accounts</u>		<u>Judgment Awards as</u>	
	<u>as of September 30, 1988</u>		<u>as of September 30, 1988</u>		<u>Percent of Total</u>	
	<u>Number</u>	<u>Amount</u>	<u>Number</u>	<u>Amount</u>	<u>Number</u>	<u>Amount</u>
Tribal	2,041	\$1,208,800,547	1,736	\$ 830,127,600	85%	69%
IIM	310,478	466,210,163	89,978	207,607,374	29%	45%
	312,519	\$1,675,010,710	91,714	\$1,037,734,974	29%	62%
	*****	*****	*****	*****		

10682

Mr. SYNAR. This is a letter from Arthur Andersen & Co. to this subcommittee. It states that Arthur Andersen did not advise the BIA that it was impossible to audit and reconcile the accounts. However, they told us that such a task could not be accomplished only looking at one year's transactions, which is what Arthur Andersen did. The Arthur Andersen audit was not intended to meet the requirements of the congressional directive.

Now, in light of this, Mr. Mills, can you explain why the BIA has refused to undertake this effort, because Arthur Anderson says it's not impossible.

Mr. MILLS. We feel like it's not impossible. There are some accounts that we feel cannot be reconciled because of the records. At this particular time, we do not know what the scope of the work would be to audit and reconcile all of the 298,000 accounts. That is what we are trying to get a handle on now as far as what resources and how long that would take.

Mr. SYNAR. Did you tell the Appropriations Committee this year that to accomplish this task was impossible? Did you not testify to that at the Appropriations Committee?

Ms. Richardson.

Ms. RICHARDSON. Mr. Chairman, we have on several occasions told the Appropriations Committee that we believed it would be impossible to reconcile all accounts, yes, sir.

Mr. SYNAR. All right. We'll get to that in a second. Let me go on here.

In fiscal year 1989, the Interior and related agencies appropriations conference report included language that states—and let me read it: “None of the funds in this Act shall be used by the Bureau of Indian Affairs to transfer funds under a contract with any third party for management of tribal or individual trust funds until the funds held in trust for such tribe or individual have been audited and reconciled, and the tribe or individual have been provided with an accounting of such funds, and the appropriate committees of Congress and the tribes have been consulted with as to the terms of the proposed contract or agreement.”

Now, Dr. Brown, does that language seem explicit to you?

Dr. EDDIE BROWN. Yes, sir.

Mr. SYNAR. All right. Do you agree that Congress clearly intended the BIA to audit and reconcile those accounts?

Dr. EDDIE BROWN. Yes, within the limited—or within the amount of time. I'm not sure of the exact language there. Let me see. “. . . have been audited and reconciled to the earliest possible date.” Yes, sir.

Mr. SYNAR. Now, have you followed that congressional directive?

Dr. EDDIE BROWN. Yes, sir.

Let me just say that we will be preparing a proposed audit plan, along with estimated costs of such a plan, as well as intent to work closely with the tribes, and to submit that to the Appropriations Committee for their review.

Mr. SYNAR. This is for 1990. What about 1987, 1988, and 1989, did you meet the congressional directive?

Dr. EDDIE BROWN. As what I'm understanding—

Mr. SYNAR. Before you transferred any funds.

Mr. Mills.

Mr. MILLS. We have not transferred—

Mr. SYNAR. In 1987 you transferred no funds; in 1988 you transferred no funds; and in 1989 you transferred no funds.

Mr. MILLS. That's correct.

Mr. SYNAR. But did you audit and reconcile during those years?

Mr. MILLS. No, we did not.

Mr. SYNAR. So you did not meet the directive, did you?

Mr. MILLS. I believe we went on record by informing the committee on what we had planned to do.

Mr. SYNAR. But you did not do it, did you? You did not complete the directive.

Mr. MILLS. The Arthur Andersen report was one of the steps for us to lead toward trying to reconcile and audit the accounts.

Mr. SYNAR. You have the letter in front of you. As Arthur Andersen wrote us, right here is the interpretation regarding the audit report and the scope of their work. They clearly state that their work could not satisfy that directive.

Do you disagree with that?

Mr. MILLS. No.

Mr. SYNAR. OK.

Dr. EDDIE BROWN. Mr. Chairman—

Mr. SYNAR. Now, Mr. Mills, did you obtain a Solicitor's opinion saying that you did not need to comply with the clear language of the appropriations bill?

Dr. EDDIE BROWN. To get a good, clear answer to your questions, which I think are important questions, let me ask Mr. Ragsdale, who was acting—

Mr. SYNAR. Come on up.

Dr. EDDIE BROWN [continuing]. To talk a little about what was done to address that situation.

Mr. SYNAR. We know—we're going to get through all this. We've got a lot of questions here. We want to find out what really happened and in the most precise way.

Dr. EDDIE BROWN. OK. He will provide specific responses to your questions.

Mr. SYNAR. Fine. Mr. Ragsdale, we can call on you, too.

Now, did you obtain a Solicitor's opinion saying that you need not comply with the clear language of the appropriations bill?

Mr. RAGSDALE. No, sir. My recollection is that we had asked for a Solicitor's opinion to interpret that language specifically. But my recollection, during the time that I was the deputy for operations, commencing in August 1987, with respect to the specific appropriations was that I directed and I believe I may have signed some of the correspondence back to the Appropriations Committees to clearly outline what our intent was to follow that directive—that was a specific concern of ours.

To the best of my knowledge, we specifically provided the Appropriations Committees, as well as the Senate select and Congressman Udall's committee, a full disclosure of what we proposed to do with respect to this contract.

Mr. SYNAR. Mr. Ragsdale, it's clear that the Appropriations Committee, from 1987 through today, has not been satisfied with your response, because they continue to put the language within the bill.

The point I'm trying to make here is that the congressional directive was ignored and you all proceeded to contract; is that correct?

Mr. RAGSDALE. No, sir. I do not believe so.

Mr. SYNAR. Did you or did you not contract with the Security Pacific—

Mr. RAGSDALE. We did contract with Security Pacific, but we did not transfer any funds because of the specific requirements of the congressional language. We had also—

Mr. SYNAR. Did the contract provide for transfer of funds?

Mr. RAGSDALE. The contract did not—well, I would have to ask the contracting officer to be specific about that. But we did not transfer any trust funds when we let that particular contract in September.

Mr. SYNAR. Does the contract contemplate the transfer of funds?

Mr. RAGSDALE. Yes, the contract does contemplate the transfer of funds, subject to the—

Mr. SYNAR. Before audit?

Mr. RAGSDALE. Subject to the requirements of the Appropriations Committees. We did not intend to violate that appropriations language.

Mr. SYNAR. Let's stop here and let me go vote. We'll be right back.

[Whereupon, the subcommittee was in recess.]

Mr. SYNAR. Dr. Brown, let me see if I can summarize the point we're trying to make here through this first series of questions. It's very simple. The BIA was obligated to audit and reconcile prior to transfer. However, you signed a contract that was silent on the question of the auditing and reconciling. It simply said "set up the accounting system and we will transfer."

What we're saying is, you should have done more. You should have admitted in the contract that you had that responsibility. Sitting here and trying to split hairs is just not going to get it. That's the point we're trying to make here.

Let's go on. In fiscal year 1990, the Interior and related agencies appropriations conference report that was signed just this week by President Bush and became Public Law 101-121, included language that states—and let me read it:

The managers direct the Bureau to take steps to address the concerns raised over account reconciliation of trust funds. The Bureau should take all possible steps to reconcile accounts to the maximum extent possible, and an independent party should review the Bureau's reconciliation efforts to certify that no further reconciliation can be achieved before such accounts are transferred under contract.

The managers are also aware of concerns with respect to the technical sufficiency of the contract and the operation of the software. It is the manager's expectation that the Bureau will address these concerns and will keep the committees fully informed as to the steps taken to address these concerns.

Is that message pretty clear as to what Congress wants, Dr. Brown?

Dr. EDDIE BROWN. Yes, sir.

Mr. SYNAR. Now, what did the BIA tell Security Pacific National Bank about the fiscal year 1990 appropriations language that would bar the transfer of funds from the Indian Trust Fund prior to an audit and reconciliation? What did you all tell them?

Mr. Mills. Miss Brown.

Mr. MILLS. Let me have Arlene come up.

Mr. SYNAR. Miss Brown, did we swear you in?

Ms. ARLENE BROWN. Yes.

Mr. SYNAR. All right, if you would come forward.

What did you tell Security Pacific National Bank about the fiscal year 1990 appropriations language and whether it would bar transfer of funds from the Indian Trust Fund prior to the audit and reconciliation?

Ms. ARLENE BROWN. We indicated it was a conference item. As far as the Senate side, we had understood that the language was going to be removed and sunset for 1990, and by that interpretation, the requirement would no longer be there; therefore, assets could be moved if the Senate conferees' proposal remained at the conference.

Mr. SYNAR. So you told them it wouldn't be in the bill and they basically relied on that?

Ms. ARLENE BROWN. No. I said that the Senate version had no language in there and that the House version we expected to continue to remain, so that we would have to meet those requirements if it continued to remain in 1990.

Mr. SYNAR. I'll ask unanimous consent at this point to enter into the record exhibit 2, which is a budget justification briefing paper by the Bureau of Indian Affairs.

[Exhibit 2 follows:]

DEPARTMENT OF THE INTERIOR

FY 1990 Interior Appropriations Bill
Effect of House Action

Bureau: Bureau of Indian Affairs
 Appropriation: Operation of Indian Programs
 Activity/Subactivity: Trust Responsibilities/Financial Trust Services

(Dollars in Thousands)

Item:	FY 1989 Enacted	FY 1990		House change (+/-) from Pres. Request
		Pres. Request	House Level	
Trust Fund Contract	1,790	4,203	3,203	-1,000

House Action: The House reduced the request for the Trust Fund Contract by \$1,000,000 and added bill language requiring an audit of all individual and tribal accounts prior to implementation of the contract.

House Report Statement: "A decrease of \$1,000,000 is recommended to financial trust services. The Committee has included bill language similar to that included in prior years, requiring reconciliation of tribal or individual accounts prior to transfer to the new trust fund contract. This decrease reflects the delay in implementing activities under the contract while this reconciliation effort continues. Additional issues related to the contract are under review by another Committee of the Congress, and may result in additional directives at a later date." (p. 57)

House Bill Language: " : Provided further, That none of the funds in this Act shall be used by the Bureau of Indian Affairs to transfer funds under a contract with any third party for the management of tribal or individual Indian trust funds until the funds held in trust for such a tribe or individual have been audited and reconciled, and the tribe or individual has been provided with an accounting of such funds" (pp. 27-28)

Effect of House Action: The House action would prevent the Secretary from taking action to better fulfill his fiduciary responsibility to Indian tribes and individuals for whom funds are held in trust. The Bureau of Indian Affairs contracted with Arthur Anderson and Company to conduct an audit of the trust funds. This was the first known audit ever conducted by independent public accountants of these funds.

The auditor reconciled cash balances for the previous fiscal year, but found (1) that cash balances for individuals and tribes cannot be confirmed; (2) that the Bureau's accounting system and records are inadequate; and (3) that it is not practicable to extend the audit to verify the balances held in trust for Indian tribes and individuals. Regardless of the amount of time or money spent, the accounts cannot ever be audited because records simply do not exist. To require the Bureau to continue operating under a system which cannot be audited when an alternative system has been developed which will allow for audits, seems most unteasonable and is certainly not in the best interests of the tribes and individuals for whom funds are held in trust.

The Bureau has held consultation meetings with tribes and interested Committees of Congress and has provided the tribes with a copy of the Arthur Anderson report. We will continue working on an individual basis with tribes and individual Indian

Money account holders to review the status of their accounts when they have information that would indicate a balance other than that shown by the Bureau. Transfer of the funds to the contractor in no way diminishes the legal right any individual or tribe has with respect to recovery of funds if it is determined that the balance in the account is incorrect.

As the terms of the language can never be met, the Bureau would have to consider cancellation of the contract. Given the time and effort devoted by the contractor to this project, the costs of cancelling the contract are likely to be substantial.

If the contract were cancelled, the Bureau would then have to begin to make substantial investments in terms of systems development, equipment, and personnel in order to rectify the known deficiencies in current operations. Based on the A-76 study that was completed, the increased cost to the government of making these changes would be \$5 million more over a three-year period than would be spent under the contract. In addition, approximately 100 additional staff would have to be hired.

Preferred Action: The funds should be restored and the bill language deleted so that the Department may better fulfill its responsibility to the more than 300,000 account holders who rely on the Bureau of Indian Affairs for the management, investment, and accounting of their money. The requirements of the bill language can never be met. To continue the current operation simply provides an increased liability exposure for the Federal government as we have acknowledged that the stated balances cannot be audited.

historical or archive title documents, and property income data for over 200,000 tracts, with an average of 10 owners of undivided interests per tract. Records must be kept for each tract as well as separate records on two million ownership interests.

This program is actively involved in the redesign of the Land Records Information System, the Integrated Records Management System, and the bureau's other land records data systems, to form a single, unified data management system providing bureauwide access to land, ownership and document data. The unification of these separate land records data systems requires the conversion and reconciliation of land records data contained in each system to a single new data base structure which is universally compatible with and accessible by all bureau offices and computer systems. Data reconciliation and maintenance will be performed by the Land Titles and Records Offices and Title Service Offices for land title and records data, and by area and agency offices for all other data. The reconciliation of land records data and the establishment of a unified land records management system are essential to the bureau and to the Indian individuals and tribes it serves.

Changes from FY 1990 Base:

(Dollar amounts in thousands)

		<u>FY 1990</u> <u>Base</u>	<u>FY 1990</u> <u>Estimate</u>	<u>Difference</u> <u>(+ or -)</u>
Area Office Operations	\$	2,176	3,087	+911
	FTE	(85)	(85)	(--)
Central Office Operations	\$	912	912	--
	FTE	(10)	(17)	(+7)
<u>Field Operations:</u>				
Land Records Improvement	\$	<u>4,100</u>	<u>1,500</u>	<u>-2,600</u>
Total		7,188	5,499	-1,689

Area Office Operations (+\$911,000): The net increase of \$911,000 includes a reduction of \$89,000 based on area office priorities and an increase of \$1,000,000 for Other Real Estate Services for administering approximately 60,000 leases and use permits of approximately 5 million acres of trust and restricted Indian lands to ensure that lessees of such land comply with the terms of the leases. These funds will be used to conduct lease site inspections, review lease documents, issue notices of lease violations, initiate corrective actions where lease violations occur, and process billings to lessees for payment of approximately \$60 million in annual rentals to the Indian landowners. The reduction based on priorities established by the area offices is as follows:

<u>Area Office</u>	<u>FY 1989 Enacted</u>	<u>FY 1990 Request</u>	<u>Change</u>
Aberdeen	252,400	252,000	- 400
Anadarko	262,500	243,000	-19,500
Billings	133,100	133,000	- 100
Juneau	188,000	189,000	+ 1,000
Minneapolis	51,600	52,000	+ 400
Muskogee	81,500	84,000	+ 2,500
Phoenix	248,700	244,000	- 4,700

Changes from FY 1990 Base continued:

<u>Area Office</u>	<u>FY 1989 Enacted</u>	<u>FY 1990 Request</u>	<u>Change</u>
Sacramento	120,700	121,000	+ 300
Albuquerque	185,800	123,000	-62,800
Navajo	441,000	438,000	- 3,000
Portland	141,700	139,000	- 2,700
Net Change.....			-89,000

Central Office Operations (FTE +7): Due to a consolidation of related real estate services functions, seven FTE have been added to the Central Office Real Estate Services Program for the bureauwide administration of the Land Titles and Records Program (2 FTE) and the Unresolved Rights Program (5 FTE). Funding for these FTE is reflected as a base transfer from the respective programs.

Land Records Improvement (-\$2,600,000): The decrease in Land Records Improvement funding reflects the completion of contractual services and the substantial completion of two Land Records Improvement Projects: the Unrecorded Documents Project and the LRIS Reautomation Project.

C. Financial Trust Services

	<u>FY 1989 Enacted To Date</u>	<u>FY 1990 Base</u>	<u>FY 1990 Estimate</u>	<u>Inc. (+) Dec. (-) From 1988</u>	<u>Inc.(+) Dec. (-) From Base</u>
C.O. Staff - Trust Fund Management:	\$ 782 (FTE) (14)	786 (14)	786 (14)	+4 (--)	-- (--)
C.O. Staff - Trust Fund Accounting:	\$ 723 (FTE) (8)	725 (8)	725 (8)	+2 (--)	-- (--)
Trust Fund Accounting Contract	\$ 1,790	1,790	4,203	+2,413	+2,413
<u>Field Operations:</u>					
Field Staff:	\$ 3,525 (FTE) (117)	3,538 (117)	3,768 (97)	+243 (-20)	+230 (-20)
Total Financial Services	\$ 6,820 (FTE) (139)	6,839 (139)	9,482 (119)	+2,662 (-20)	+2,643 (-20)

Objectives: To provide individual Indians and Indian tribes the same or equivalent technical, administrative, and protective services that are expected and duly rendered to a beneficiary under any lawful trust created or imposed to protect, maintain, or enhance the corpus of the trust estate; to properly manage and be accountable for tribal funds and individual Indian monies held in trust by the bureau as the fiduciary trustee.

Base Program (\$6,839,000; FTE 139):

Central Office Staff - Trust Fund Management (\$786,000; FTE 14): This program provides: (1) the full range of investment services for funds held in trust for tribes and individual Indians; (2) trust fund histories and research projects

involving special financial trust problems; and (3) special reports for use in litigation and legislative acts. Trust fund revenues are invested to maximize income while protecting the principal. Income from investments is provided directly to the tribes and individual Indians. The bureau has entered into a contract with a major private sector financial institution. These contract services were sought in order to maximize earnings, enhance the quality of investment accounting, and provide state-of-the-art systems not available in the bureau. Under a continuing contract scenario, this program will monitor the technical operations of the investment services, provide policy guidance and oversight for the trust funds management, and evaluate the trust fund services contract. This program will be available to provide advisory services to tribes and other account owners, in overall cash management.

Central Office Staff - Trust Fund Accounting (\$725,000; FTE 8): This program provides management of accounting systems and central control for all funds held in trust for tribes and individual Indians. Efforts are concentrated on field staff training, reconciling balances, streamlining collection and disbursing processes, and providing accurate and timely account information to bureau management and to tribal and individual Indian account holders, as well as to management. Coordination with field offices and contract oversight functions will be performed in FY 1989 as the bureau begins to acquire cash concentration and accounting services under contract.

Trust Fund Accounting Contract (\$1,790,000): The objective of the contract is to assist the bureau in improving its financial management of the Indian trust funds.

Benefits expected from the contract operations include:

- Improved cash collection, concentration and disbursement of trust funds.
- Improved investment performance.
- Improved deposit and investment accounting for individual and tribal accounts.
- Improved account reporting to tribes, individual account holders and management.

The contract was awarded in FY 1988, and the contract term is for one year with four one-year renewable options. Contract implementation is being accomplished in FY 1989, and the first full operating year is planned for FY 1990.

Field Operations (\$3,538,000; FTE 117): The bureau is charged by law and regulations with the trust responsibility of accounting for and disbursing Individual Indian Monies (IIM) which come into the custody of bureau officials as a result of administering trust or restricted properties of individual Indians, and through per capita payments, judgments, awards, and claims. Deputy Indian Service Special Disbursing Agents are designated to carry out these responsibilities. The major portion of this effort is carried out at the field level. The staff members serve as contacts with Indians at the reservation level and perform work connected with activities concerned with administration of trust properties. Activities include: (1) accounting for and disbursing of tribal and individual Indian monies derived from the sale or lease of renewable and non renewable trust resources such as land, timber, minerals, and water; (2) disbursing per capita payments, judgments, awards,

Mr. SYNAR. Now, as you know, Dr. Brown and Miss Brown, Arthur Andersen did not tell the BIA that the reconciliation language was impossible to comply with. However, isn't it a fact that the BIA informed the House and Senate Appropriations Committees and this subcommittee that the appropriations directive prohibiting transfer without audit and reconciliation could never be met?

Ms. Richardson.

Ms. RICHARDSON. That's true, that it could never be fully met.

Mr. SYNAR. Weren't you misleading Congress, Miss Richardson?

Ms. RICHARDSON. I don't think so, Mr. Synar. The IG in his testimony indicated that he did not believe we could ever audit all of the IIM accounts.

Mr. SYNAR. That's not what he said, Miss Richardson, if I heard him correctly. He said it was possible to do prior year audit and reconciliation.

Ms. RICHARDSON. Of the tribal trust funds, not of IIM, sir.

Mr. SYNAR. Now, he said—we can have the record read back. But he said he didn't think it was a good idea to do some of them because some of them were so small, but he did not say you couldn't. The language says "maximum extent possible."

Ms. RICHARDSON. Sir, when we were doing this statement, the language did not say "maximum extent possible." That was conference language. This was a statement on the House language which did not say "maximum extent possible."

Mr. SYNAR. Which is the previous language, is that right, Miss Richardson?

Ms. RICHARDSON. "Maximum extent possible" was an addition to the 1990 language. It was not contained in either the 1987 or 1988 language.

Mr. SYNAR. Let me have counsel respond, if I could.

Mr. RICHARDSON. Isn't it a fact that the 1989 language did just say audit and reconcile—I'm referring to fiscal year 1989—that, in fact, you were directed under the bill not to transfer until the funds held in trust have been audited and reconciled?

Ms. RICHARDSON. That's correct.

Mr. RICHARDSON. Did you read that without the normal rules? I know Arthur Andersen advised you there are a number of accounting mechanisms that could be applied, where you would undertake to eliminate certain procedures, not going back to the origin of all accounts.

Did you think that that was not possible under this language?

Ms. RICHARDSON. That discussion with Arthur Andersen was held last week. Last year and the year before, we were viewing this language to be all inclusive, that back to the beginning of each account we would be required to audit and reconcile, and we did not and do not believe that would be possible.

Mr. RICHARDSON. But you never entertained the idea of auditing and reconciling to the "maximum extent possible" prior to this time?

Ms. RICHARDSON. We informed the Appropriations Committees when we did contract with Arthur Andersen that that was our effort to comply with their language. They were informed ahead of time that what we were doing to attempt to meet their require-

ments was going to be the Arthur Andersen audit, which would be a limited scope audit.

Mr. SYNAR. Dr. Brown, let me ask you this. Did the BIA consult with the tribes before the RFP for the trust fund contract was prepared?

Dr. EDDIE BROWN. It is my understanding that, yes, they did consult with the tribes, that there was a process in place.

Mr. SYNAR. With whom and which tribes did the BIA consult, and when?

Dr. EDDIE BROWN. Let me ask Arlene Brown to respond to that specifically.

Mr. SYNAR. Miss Brown.

Ms. ARLENE BROWN. After the first Mellon attempt, which was before my time, before I came on board with the Bureau of Indian Affairs, we instituted an actual procedure for consultation. Prior to that time, there had been a lot of definitions as to what consultation means. So what we had done at that time was issue in the Federal Register notice, on April 15, 1987, a procedure with which we would conduct the consultation effort. We then went and had the superintendents conduct individual meetings with all their respective tribes. We released information with the draft RFP, the IG opinions, the GAO opinions, several solicitors' opinions, and oriented the superintendents in training sessions so they could go out to tribes.

We went ahead and conducted a series of about 4 months of meetings with tribes. They were required to document their invitations to their tribes, the responses, as well as the minutes of what took place during those meetings, and required to take notes of all the questions that came up.

After that we received a lot of tribal correspondence from those tribes who wished to respond, give their comments, their recommendations, their positions, and we responded to them. Those letters were all furnished to the four committees on the Hill—the two Appropriations Committees, the Senate select, and the House committee.

Mr. SYNAR. Miss Brown, did you hear the tribes testify earlier today? I don't believe they got that message.

Can you provide for the record the names of the tribes and when you contacted them, and all the record of their comments with respect to this RFP?

Ms. ARLENE BROWN. Yes. They have been furnished to the committee.

[The information follows:]



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

April 20, 1987

Dear :

On March 13, 1987, the Bureau of Indian Affairs announced through a Department of the Interior news release that it would reopen competition to procure services to strengthen the Bureau's management and administration of Indian trust funds. As indicated in the release, a consultation plan was to be developed and published in the Federal Register. This process is to assure that Indian tribes are kept informed with relevant information and to solicit any comments from the tribes. The purpose of this letter is to transmit to you a copy of the Federal Register Notice and to alert you to the consultation process which will be followed.

In addition to describing the consultation process, the Notice provides a description of the Bureau's responsibility to manage trust funds, the services the Bureau proposes to procure, and the benefits which will accrue to the Indian beneficiaries, as well as the Bureau. There are several points in the Notice which deserve reiteration. First, the services to be procured should strengthen the Bureau's ability to exercise its trust responsibilities. Second, the Bureau is not divesting itself of its trust responsibilities. Third, the services to be procured will not limit or adversely affect tribal or individual Indian interest in the trust funds.

You will soon be contacted by your Agency Superintendent to schedule a consultation meeting. As provided in the consultation process, the Bureau is committed to considering and formally responding to all written suggestions, recommendations and concerns in its development of the final Request for Proposals.

Your active participation in the consultation process is critical and I urge you to attend the meetings scheduled for your tribe.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ross O. Swimmer".

Ross O. Swimmer
Assistant Secretary - Indian Affairs

Enclosure

federal register

**Wednesday,
April 15, 1987**

Part IV

Department of the Interior

Bureau of Indian Affairs

**Indian Trust Funds; Consultation Process
To Procure Collection, Accounting,
Advisory Investment Services and
Custodial Services; Notice**

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****Indian Trust Funds; Consultation Process To Procure Collection, Accounting, Advisory Investment Services and Custodial Services**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposal to procure collection, accounting, advisory investment services and custodial services for funds held in trust for Indian individuals, Indian tribes and others and to follow a prescribed consultation process with tribes in this regard.

SUMMARY: The Bureau of Indian Affairs, to strengthen its internal management and administration of trust funds, proposes to procure collection, accounting, investment services, and investment custodial services, and will follow a prescribed consultation process with Indian tribes to address their concerns and suggestions.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior has broad responsibilities in managing trust funds, including collections, accounting, investments, and disbursements. The Bureau of Indian Affairs carries out these functions except for collection of royalties from Indian oil and gas production which are administered by the Minerals Management Service. Collections are deposited through the banking system into Department of Treasury accounts specified for such trust funds. Treasury is responsible for maintaining all trust fund cash accounts and for all disbursements of such funds upon request by the Bureau of Indian Affairs. The Bureau of Indian Affairs is responsible for investment of the funds in securities authorized by law. The Bureau of Indian Affairs maintains accounts to reflect tribal, individual Indian and other trust interests in funds invested and funds held in Treasury.

Background

The Bureau of Indian Affairs has obtained an independent evaluation of the trust fund operation and has considered numerous audits and reports concerning operational deficiencies in the management and administration of Indian trust funds. In response to a request for information published by the Bureau, a wide range of materials has been received on relevant private sector capabilities. It has been determined that the need for improvements in the management and administration of Indian trust funds requires immediate

action, that the assistance required is readily available from the private sector, and that there is no likelihood that the government could effectively duplicate, in the time required, the needed assistance already available in the private sector.

Proposed Procurement Process

The proposed procurement is intended to streamline the collection process; permit feater concentration of funds for investment; assure accurate and current trust accounting and reporting; strengthen internal cash and investment management controls; improve the level of service to Indian beneficiaries, and strengthen the government's ability to comply with its fiduciary responsibility to Indian beneficiaries. The services to be procured will not restrict or negatively affect any existing tribal or individual Indian interest in the Trust funds. Rather, the services to be procured will be designed to enhance the services rendered to Indian beneficiaries by a modernized collection process, better accountability and current reporting, and improved investment management operations.

The procurement process generally consists of the following steps: developing the request for proposal (RFP); publishing a synopsis of the RFP in the Commerce Business Daily; issuing RFPs as requested, to parties who have an interest in contracting; receiving proposals from prospective contractors; evaluating the proposals from prospective contractors; selecting the successful contractor; negotiating the contract and awarding the contract.

The procurement process will include consultation with Indian tribes by the Bureau of Indian Affairs. However, it should be noted that "consultation is not the same as obeying those who are consulted." *The Hoopa Valley Tribe vs. Joe Christie, et al.*, No. 85-2861 DC# C 85-5537 MHP, United States Court of Appeals for the Ninth Circuit, and that the Bureau retains decision authority as the responsible fiduciary party.

Consultation Process

This consultation process is specific to this activity only; that is, the procurement of services to strengthen the Bureau's internal management and administration of Indian trust funds. The consultation process is to provide the opportunity for Indian tribes to be informed, share in relevant information, and, if they so choose, raise and receive responses to concerns and/or suggestions.

The consultation process to be followed by the Bureau of Indian Affairs includes the following principal actions:

(a) A copy of this Federal Register Notice with an accompanying letter of explanation from the Assistant Secretary—Indian Affairs will be sent to each tribe.

(b) A draft RFP and other relevant information will be provided through the applicable Bureau Agency Superintendent to each tribe.

(c) Within 30 days from receipt by the tribes of the information package, each Agency Superintendent will conduct a consultation meeting with the respective tribes which their Agency serves. At this meeting the Bureau will present the draft RFP and relevant information, address issues and concerns, and accept written suggestions, recommended alternatives, or other relevant comments. The Superintendent will document the attendance and results of the consultation by written minutes of the meeting as well as those written suggestions, recommendations and concerns presented by the tribes which were not fully addressed in the consultation to the Assistant Secretary—Indian Affairs. The Assistant Secretary—Indian Affairs will provide a written response to the applicable tribes on all issues not fully addressed in the consultation meeting within 30 days of the date the issues are received by the Bureau of Indian Affairs.

(d) All written suggestions, recommendations, and comments received relating to the draft RFP will be considered and changes made as deemed appropriate at the discretion of the Assistant Secretary in preparation of the final RFP.

(e) The final RFP will be provided to each Agency Superintendent. Upon receipt the Agency Superintendent shall advise the tribe of its availability and a copy will be provided to each tribe which requests it.

(f) Pursuant to law, the proposals received from prospective contractors and the evaluation of said proposals will be held in confidence by the Bureau of Indian Affairs. The Assistant Secretary—Indian Affairs will appoint a tribal representative to serve as a consultant to the Evaluation Committee that will be established to review and judge the proposals from prospective contractors.

(g) After appropriate negotiations, a contract reflecting the requirements of the RFP will be awarded. The Assistant Secretary—Indian Affairs will advise each tribe by letter of the contract award and that the contract document is available for review in the Office of the Agency Superintendent. The Bureau, through the Superintendent, will also be available for any further discussions on

contract content or implementation as may be requested by the tribes.

FOR FURTHER INFORMATION CONTACT:
For information and to comment on the consultation process, contact Ms. Betty Wilkinson, Chief, Division of Accounting Management, Bureau of Indian Affairs, at 18th and C Streets, N.W., Room 4071—Main Interior Building, Washington, DC 20240; telephone number (202) 343-2578.

Rose O. Swimmer,
Assistant Secretary, Indian Affairs
[FR Doc. 87-8438 Filed 4-14-87, 8:45 am]
BILLING CODE 4310-07-M



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 5 1987

MEMORANDUM

TO: Area Directors

FROM: Assistant Secretary - Indian Affairs *[Signature]*

SUBJECT: Consultation Process for Proposed Procurement of Trust Fund Collection, Accounting, Advisory Investment Management and Custodial Services

Attached is a copy of a March 13 news release and a Federal Register Notice (FRN) of April 15 pertaining to the above subject. A copy of a letter transmitting the notice to tribal leaders was transmitted to you on April 20.

These two documents state the Bureau's need to strengthen its internal management and administration of trust funds; the basis for determining the need; the Bureau's responsibility to address the need, and why it is felt that the need can best be met by procuring private sector assistance. Of even greater importance, the documents reiterate my commitment to meaningful consultation with Indian tribes and define the Agency Superintendents' role in the process.

I expect the Agency Superintendents to play a key role in the consultation process. Accordingly, the following meeting schedule is established during which the Agency Superintendents will be thoroughly briefed on the proposed procurement and given an opportunity to have any questions answered.

<u>Location</u>	<u>Area Participants</u>	<u>Central Office Assistance</u>	<u>Date</u>
Phoenix	Phoenix Area Director, Superintendents and Contracting Officer*	Jim Farris J. D. Colbert	May 14
Albuquerque	Albuquerque and Navajo Area Directors, Superintendents and Albuquerque Contracting Officer*	Jim Farris Fred Kellerup	May 19
Billings	Billings Area Director, Superintendents and Billings Contracting Officer*	Jim Getter Betty Wilkinson	May 20

<u>Location</u>	<u>Area Participants</u>	<u>Central Office Assistance</u>	<u>Date</u>
Oklahoma City	Anadarko, Eastern and Muskogee Area Directors and Superintendents and Anadarko Contracting Officer*	Betty Wilkinson J. D. Colbert	May 21
Portland	Juneau, Portland and Sacramento Area Directors and Superintendents and Portland Contracting Officer*	Jim Parris Jim Gatter	May 27
Sioux City, Iowa	Aberdeen and Minneapolis Area Directors, Superintendents and Aberdeen Contracting Officer*	Jim Parris Jim Gatter	May 28

* For responses to general questions on procurement process.

The Area Director in the city where the meeting is to be held is assigned responsibility for acting as "host" and, as such, arranging for a meeting place and notifying the participants of the arrangements. The Anadarko Area is assigned "host" responsibility for the Oklahoma City meeting. Each host Area is to assign a contact person who will be responsible for making the arrangements and to whom copies of appropriate materials will be sent.

Within 30 days of the above meetings, each Superintendent will conduct a consultation meeting with his agency's tribes. Superintendents will notify Ms. Arlene Brown, PTS 343-5116, of the time and place of the consultation meetings as soon as they are confirmed. To the extent possible, Area Directors should participate in the sessions. As stated in the FRN, Superintendents are to forward all comments, questions, etc., to the Central Office immediately after the consultation meeting. Superintendents should also forward to Ms. Brown the list of tribes in attendance at the consultation meetings.

Before the meetings take place, the following actions have or will occur:

1. The FRN describing the consultation process was published and copies sent to all Indian tribes, Area Directors, and Superintendents. (Published April 15)
2. Copies of the draft RFP, along with a set of Questions and Answers concerning the effort, will be sent to all Area Directors for each superintendent. These documents should be furnished the tribes at least a week before the consultation meeting. Superintendents should provide my office with a copy of the tribal letter announcing the consultation meetings.

3. Copies of all pertinent material will be sent by the Central Office to Area Directors for Superintendents for use as the Superintendents deem appropriate. The "package" will include (1) SOL opinion on trust funds management; (2) IG reports; (3) applicable pages from Price Waterhouse study; and (4) GAO report.

Please furnish the name of your area's contact person to Ms. Brown, as soon as possible. Any questions you have should be directed to her.

Please support the Superintendents in this important process.

Attachment



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

February 8, 1988

Dear Tribal Leader:

I wish to update you on the progress made in our trust fund services proposal and to provide you further information about the improvements we are seeking.

In followup to the tribal sessions conducted by our agency superintendents last summer, we have enclosed a question and answer document which was compiled in response to those written questions submitted by tribes and our superintendents on behalf of their constituent tribes.

We have also enclosed copies of: (a) a summary Comparison of Current and Anticipated Procedures under the Proposal and (b) a Summary of Recommendations made in past independent studies and reports which prompted this proposal.

Since my last communication with you, we have contracted an A-76 study to provide a management analysis and an estimate of what it would cost to improve the Bureau of Indian Affairs' financial trust services program in-house. The cost estimate for the government will be compared with those proposals we anticipate receiving from the private sector.

We also invited comments from the private sector last fall on the proposed statement of work. We have incorporated many of those suggestions received from tribes and the private sector into the final request for proposal (RFP) and will soon issue the RFP for procurement of trust fund services. A copy of the RFP will be available through your agency superintendent.

In closing, I wish to thank you for your participation in our effort to seek the most efficient methods to service our trust fund responsibility functions.

Sincerely,


Ross O. Swimmer

Assistant Secretary - Indian Affairs

Enclosures (3)

FEB 08 1988

**BUREAU OF INDIAN AFFAIRS
COMPARISON OF CURRENT AND ANTICIPATED
PROCEDURES UNDER THE PROPOSAL**

CURRENT	PROPOSED	CONTRACT PROCEDURE ADDRESSES
NOTE: These procedures are what generally is being applied bureauwide today.	NOTE: These are the anticipated procedures envisioned in the proposed environment.	RECONFIGURATION MADE IN
		82 83 84 85 86
		CAO IC/TRINAL P/W NFI IC/IIM

I. CASH MANAGEMENT

(1) Deposits

- A. Checks (30% of dollar activity) received over-the-counter by check or received in cash at Agency, mailed to Area Office where it is deposited. This takes 3-7 days, usually.
Est. Time: 3-7 days, usually
- B. Wire transfers (70% of dollar activity) to the Treasury.

(1) Deposits

- A. Checks will be received at lockbox bank and deposited on day of receipt.
Est. Time: 0-1 days
Est. Earnings Increase: \$126,219
Est. increase in earnings due to decrease mail float:
\$120 M x 6.5% x 6 days/365 days = \$126,219.
- B. Wire transfers to the concentration bank (acting as an agent of Treasury.)

(2) Disbursements

- A. Checks IIM(automated)(97% of all IIM checks.) issued at Area and mailed to IIM account owner.
Est. Time: 2-3 days for receipt by account owner.
- B. Checks-IIM(Manual)(3% of all IIM checks) issued at the Agency and either hand delivered immediately or mailed to the IIM account owner.
- C. Treasury Regional Finance Centers- Payments routed thru San Francisco APC used most often for tribal per capita.
- Est. Time: 1-2 days for check to be issued.
Est. Time: 2-3 days from issue date to be received.
- D. Wire transfers-same day retarding

(2) Disbursements

- A. Checks-IIM Issued by the contractor and mailed to the account owner.
Est. Time: 3-4 days for receipt by account owner.
- B. Checks-IIM(Manual) This could be an option available, but might rather arrange for a wire transfer to bank near an Agency instead on behalf of account owner.
- C. Contractor would issue tribal per capita payments within one day and mailed to payees.
Est. Time: 1 day for check to be issued.
Est. Time: 2-3 days from issue date to be received.
- D. Wire transfers same as current.

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CONTRACT PROCEDURE ADDRESSES

RECONFIGURATION MADE IN

82 83 84 85 86

CAO IC/TRINAL P/W NFI IC/IIM

CONTRACT PROCEDURE ADDRESSES

82	83	84	85	86
GAO	IC/TRIBAL	P/M	RFI	IC/IFB

CURRENT

PROPOSED

(3) Transfers Between Fund Groups-
 Paperwork prepared usually at Agency Office and mailed to the Area Office where it is entered into the Finance System.
 Est. Time: 3-4 days to be entered into the Finance System.

NOTE: Est. savings to trust accounts = 0
 Any "clearance float" would accrue to Treasury for trust fund checks issued. No interest is credited to trust funds while the check is "in the mail."

(3) Transfers Between Fund Groups-
 Data entry entered at the Agency, electronically cleared by Area and entered into accounting system maintained by contractor within 1-2 days.
 Est. Time: 1-2 days to be entered into the contractor's accounting data.

NOTE: Est. savings to trust accounts = \$243,100
 Checks issued by the contractor would not cause interest to stop being earned by pool. Interest float would go to the pool in which the account drawn on was located. Estimated savings to trust funds based on "clearance float" is computed as follows:
 2 days avg. savings / 365 days x 4.38 x \$741 M = \$243,910.

IF INVESTMENTS

(1) IIR, Alesha Native Sorrow, Irrigation /Power, and contributed funds are now all in "pools". Only Tribal Funds have individual portfolios for each account. Most funds are now invested in short term securities.

(2) The investment cycle for moving funds into CD's is once a week.

(3) Many tribes do not provide specific guidance as to how they want their funds invested. Thus the decision is left up to the investment officer.

(1) All funds would be pooled. Each pool would be structured in three portfolios: ST, INTER & LT. Would provide flexibility to investment selections of longer maturities which may result in increased yields (under general market conditions).

(2) Funds could be invested in CD's daily to maximize earnings.

(1) Cash planning conferences will be regularly scheduled between investment coordinators and tribes to determine cash flow and investment goals.

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CONTRACT PROCEDURE ADDRESSES

ACCOMMODATION MADE IN
 83 84 85 84
 67 GAO IC/TRIBAL P/W 871 15/11M

CURRENT

PROPOSED

II. INVESTMENTS (cont.)

- (4) Most investments are in CP's (10% - 80%) with balance in government securities. No buyouts without serious impact on earnings (premature withdrawal penalties).
- (5) Investment analysis of market irrelevant.
- (6) Custody of securities at BIA, Division of Trust Fund Management (Albuquerque)
- (7) Only part of the portfolio is available on the MORGAN Reporting system to tribes. No investment data given to other fund account owners.
- (4) Investing will be in strongest market (ie. CD's or government securities sold on secondary market) to maximize earnings with increased liquidity.
- (5) Trends would be analyzed by investment analysts at contractor and advice pro sent to BIA investment managers for use in investment decisions.
- (6) Custody of securities at the Contractor and Federal Reserve Bank NYC.
- (7) All investment portfolio data will be summarized and report to BIA. All account owners will see only effective yield in the "pools" in which they are participating.

III. ACCOUNTING

- (1) Recording of Transactions.
 - A. Finance System
 - (1) Area Offices
 - (2) Branch of Trust Fund Acctg. (Albuquerque)
 - (3) Division of Trust Fund Mgmt. (Albuquerque)

The date that the transaction is actually entered in the Finance System varies from one day to several weeks (sometimes months) after the effective date of the transaction.

- B. Individual Indian Monies Subsystem of the "IBMS" system

87 GAO IC/TRIBAL P/W 871 15/11M

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CONTRACT PROCEDURE ADDRESSES

RECOMMENDATION MADE IN	83	84	85	86
CAO	IC/TRINAL	P/M	MPI	IC/IIH
CURRENT				
PROPOSED				

IF ACCOUNTING (cont.)

- (1) Entered by agencies of Area Offices. This varies from one day to several months after the effective date across the Bureau.
- (2) Standardization of Procedures-The various Agencies & Area Offices utilize a wide variety of procedures some clearly inappropriate. Clearly outside of those described in the Bureau's Accounting Policies & Procedures Manual (i.e. -Internal computation, mines, oil/gas royalties, etc.)
- (3) Audit of Accounting Data-The ICA Trust Accounts are audited by the IC's Office on a sporadic basis at various Agency sites (usually). There are no comprehensive audits of all trust funds that have been done by the OIC or the CAO. Independent audits by CPAs are performed at Agencies only on rare occasions usually in connection with a court proceeding.
- (4) Accounting Reports-Most, but not all, IFM account owners receive summaries of the activity in their accounts semi-annually. Tribal trust account owners receive selected data monthly. These reports are often inaccurate due to late entry of transactions.

- (2) Standardization of Procedures-a standard accounting procedure manual and training for key personnel will be provided at each Agency and Area Office prior to initiation at their location.
- (3) Audit of Accounting Data-The contractor will have annual opinion audits by their external independent CPA firms, on-going reviews by their internal auditors during the year, and the Branch of Trust Fund Accounting would be reviewing their transactions continually. The transactions would also continue to be subject to OIC & CAO audits.
- (4) Accounting Reports-Monthly summaries of all account activity will be provided for all IFM and Tribal Trust Fund account owners.

5.

CONTRACT PROCEDURE ADDRESSES
 RECOMMENDATION MADE IN

CURRENT

PROPOSED

M2 M3 M4 M5 M6
 CMO IC/TRIBAL P/Y MFI IC/IM

III. ACCOUNTING (cont.)

- (5) Interest Distribution-IFM Accounts use "month-end balance" method. Tribal trust funds earn what is generated by their portfolio. All other trust funds are "pooled" and are distributed earnings based on their participation in these pools.
- (6) Tax Reporting-Today, many agencies with IFM accounts are not complying with IRS reporting guidelines for interest income. The Bureau has not yet been able to comply with the Magnetic Media Reporting requirements of the IRS.
- (5) Interest Distribution-Daily Interest will be distributed based on each account's participation in the applicable "pool".
- (6) Tax Reporting-All interest income will be properly reported. Magnetic Media Reporting to the IRS will be done.

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**BUREAU OF INDIAN AFFAIRS
DEPARTMENT OF THE INTERIOR**

FEB 08 1988

Sept., 1982 GAO Report on Trust Assets	Jan., 1984 Price Waterhouse Report	December, 1985 Request for Information	March, 1986 IG Report - IIR
<ul style="list-style-type: none"> Reconcile individual subsidiary accounts with control accounts 	<ul style="list-style-type: none"> Develop investment advisory committee which will involve tribal representatives 	<ul style="list-style-type: none"> A directed investment account or advisory services relationship would be beneficial to BIA now 	<ul style="list-style-type: none"> All Area Offices should be required to reconcile IIR accounts each month
<ul style="list-style-type: none"> Utilize Treasury MDO system for disbursements 	<ul style="list-style-type: none"> Short term and long-term investment portfolios should be created 	<ul style="list-style-type: none"> Legislation authorizing new investment alternatives should be initiated 	<ul style="list-style-type: none"> A tracking procedure should be implemented to document and report any Area Office not preparing reconciliations
<ul style="list-style-type: none"> Develop written procedures for entering transactions into Finance System 	<ul style="list-style-type: none"> A formal investment oversight committee should be created 	<ul style="list-style-type: none"> Investment pools should be utilized to maximize overall returns: ST, IRTS, L, LT 	<ul style="list-style-type: none"> A one-time accounting adjustment to bring controls into agreement w/detail accounts should be made
<ul style="list-style-type: none"> Trust accounting units should enforce separation of duties 	<ul style="list-style-type: none"> Accounting controls and procedures should be improved 	<ul style="list-style-type: none"> Procedures to expedite deposit and investment should be implemented soon 	<ul style="list-style-type: none"> Modify minor's and supervised IIR account guidelines
<ul style="list-style-type: none"> Investment Branch should not overdraw trust accounts when investing funds 	<ul style="list-style-type: none"> BIA should purchase processing services from banks or service Bureau ADP firms 	<ul style="list-style-type: none"> Utilize EFT method as much as possible 	<ul style="list-style-type: none"> Enforce standards for IIR interest computation
<ul style="list-style-type: none"> Creates a new entity responsible for trust funds 	<ul style="list-style-type: none"> Creates cash management and trust account positions 	<ul style="list-style-type: none"> An accounts receivable system for trust funds should be created 	<ul style="list-style-type: none"> Review inactive IIR accounts at least semi-annually

2.

Sept., 1982 CAO Report on Trust Accts.	Sept., 1983 IC Report-Tribal Funds	January, 1984 Price Waterhouse Report	December, 1983 Request for Information	March, 1984 IC Report - IIM
	<ul style="list-style-type: none"> o Audit balance sheets of all trust funds 	<ul style="list-style-type: none"> o Define reconciliation, reporting, and review procedures 	<ul style="list-style-type: none"> o BIA should develop re-quirements and specs for new trust acctg. system 	<ul style="list-style-type: none"> o Review asstata accounts
<ul style="list-style-type: none"> o Segregate investment management and security custody 	<ul style="list-style-type: none"> o Establish on-going financial audit functions 	<ul style="list-style-type: none"> o Segregate investment management and security custody 	<ul style="list-style-type: none"> o Review internal controls and establish new procedures 	<ul style="list-style-type: none"> o Review internal controls and establish new procedures
<ul style="list-style-type: none"> o Implement a trust accounting system 	<ul style="list-style-type: none"> o Implement an income tracking system 	<ul style="list-style-type: none"> o Segregate investment management and security custody 	<ul style="list-style-type: none"> o Distribute an acctg. of IIM accts. (at least) annually 	<ul style="list-style-type: none"> o Enforce cyclical internal audit procedures enforced
<ul style="list-style-type: none"> o Implement a deposit reporting service 	<ul style="list-style-type: none"> o Utilize services of a concentration bank 	<ul style="list-style-type: none"> o Implement a deposit reporting service 		



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

April 11, 1988

Honorable Martha Delagado
President, Village of Ouzinkie
P.O. Box 13
Ouzinkie, Alaska 99644

customized information
sent to all tribal leaders

Dear President Delagado:

I wish to update you on recent developments in our trust fund proposal and to invite your participation in the nomination of tribal consultants to the evaluation committee.

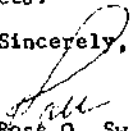
On February 18, we issued the Request for Proposals (RFP) for Financial Trust Services. At a March 18 pre-proposal conference, we provided over 65 representatives from 35 financial institutions additional information and responded to vendor questions on the RFP. Copies of the bidders mailing list, RFP Amendment No. 1 (including the Operational Capabilities Demonstration Information Package) and a question and answer document for prospective bidders will be available through your agency superintendent.

We are now in the process of establishing an evaluation committee to review and evaluate the proposals received in the procurement process. Three tribal representatives will be appointed to serve as consultants in an advisory capacity to the members of the committee. In order to present tribal interests during the proposal review process, they will be expected to be familiar with the trust fund functional areas and the RFP procurement and be able to commit priority time during the upcoming summer/fall months.

Please submit the name, address and telephone number, and a brief background statement on any nominees you wish to be considered as tribal consultants no later than May 13, 1988. If you have additional questions concerning this nomination process, please contact Ms. Arlene Brown of my staff at 202-343-4174.

Thank you for your continued participation in our effort to better service your trust assets.

Sincerely,


Ross O. Swimmer
Assistant Secretary - Indian Affairs



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

July 25, 1988

Dear Tribal Chairman:

We are pleased to advise you of the results of the comparison between the Government's and the selected offeror's cost estimates under our Request for Proposals (RFP) for Financial Trust services issued February 18, 1988. The cost comparison favors performance under contract.

We have enclosed a copy of the completed cost comparison form for your information. Please note that the cost differential of savings to the Government under the contract alternative is more than required under the OMB Circular A-76 procurement process.

The RFP was competitively open to all eligible financial institutions at large. Proposals received in response to the RFP were evaluated by an interagency evaluation committee and three tribal consultants to the committee. The negotiated best and final offer from the selected bidder was then compared with the Government's in-house cost proposal under the A-76 process.

Final determination for contract award will be made after completion of the 30-working day review period of this cost comparison pursuant to Section L.2.0. of the RFP and the selected contractor's successful completion of the Operational Capabilities Demonstration site test.

When the above process has been completed, we will advise you of the selected contractor and provide you an opportunity to review the proposed terms of the contract which will include the implementation schedule for the trust services program.

If you have any questions concerning this trust fund procurement, please contact Ms. Arlene Brown of my staff at 202-343-4174.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ross O. Swimmer".

Ross O. Swimmer
Assistant Secretary - Indian Affairs

Enclosure



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

August 15, 1988

Dear Tribal Leader:

In followup to my July 25 letter announcing the cost comparison results of our Request for Proposals (RFP) for Financial Trust Services, I wish to advise you of the present award status and to invite any comments or suggestions you may have concerning the proposed contract.

The prospective contractor is Security Pacific National Bank. Security Pacific successfully passed the Operational Capabilities Demonstration test on August 10. Security Pacific, the Nation's sixth largest banking company with over \$70 billion in assets, is headquartered in Los Angeles, California, and has teamed with Computer Data Systems, Inc., Rockville, Maryland, to support the trust fund accounting and data processing services.

After completion of the Inspector General's pre-award audit, final negotiations and the conclusion of the time period required for appeals of the OMB Circular A-76 cost comparison results, we will announce the final decision for contract award.

As part of this procurement stage, we have enclosed for your review a copy of the proposed contract agreement based on the RFP requirements between the Bureau of Indian Affairs and Security Pacific National Bank. Please provide any comments to my office no later than Friday, September 2, 1988, or through Ms. Arlene Brown, 202-343-7163, so they may be considered during final negotiations with the selected contractor.

Thank you for your continued participation in this final stage of the trust fund procurement process.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ross O. Swimmer".

Ross O. Swimmer
Assistant Secretary - Indian Affairs

Enclosure



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

WASHINGTON, D C 20245

NOTES TO REVIEWERS
ON
PROPOSED CONTRACT AGREEMENT

- I. The RFP issued February 18, 1988, and RFP Amendment Nos. 1 through 3, were provided to you through your respective area or agency at the time they were issued. All RFP requirements are incorporated by reference in the proposed contract, unless otherwise modified by the attached Addendum Schedule.
- II. The selected contractor's proposal and best and final offer which responds to the RFP requirements are also incorporated in the proposed contract by reference. These documents contain propriety information for the Government's evaluation purpose only, until such time as a contract is awarded. At that time, certain information may be released as determined by the Government in accordance with the Privacy Act, 5 U.S.C. 552
- III. Final contract pricing and payment terms are pending completion of the Inspector General's pre-award audit and final negotiations with the prospective contractor. In the interim, please refer to the contract performance costs in the A-76 cost comparison results provided to you on July 25, 1988.
- IV. The proposed implementation schedule is also attached to the addendum schedule for your review.

**BUREAU OF INDIAN AFFAIRS
TRUST FUND MANAGEMENT SERVICES
IMPLEMENTATION PLAN**

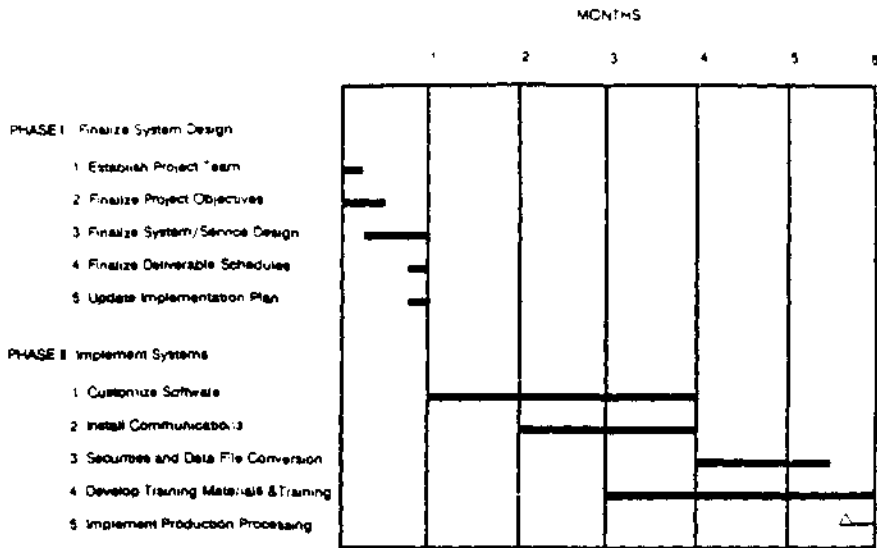


EXHIBIT 3.3

AWARD/CONTRACT		1 THIS CONTRACT IS A RATED ORDER UNDER OPAS (15 CFR 300)		RATING		PAGE OF VALUE									
2 CONTRACT (Proc. Nat. Ident. No.)		3 EFFECTIVE DATE		4 REQUISITION/PURCHASE REQUEST/PROJECT NO.											
K51C14201266		9/15/88													
5 ISSUED BY DEPARTMENT OF THE INTERIOR BUREAU OF INDIAN AFFAIRS BRANCH OF CONTRACT & GRANT OPERATIONS 1951 CONSTITUTION AVE., N.W., MS 534A S1B WASHINGTON, D.C. 20245				6 ADMINISTERED BY (If other than Item 5) CODE											
7 NAME AND ADDRESS OF CONTRACTOR (No. street, city, county, State and ZIP Code)				DRAFT											
SECURITY PACIFIC NATIONAL BANK GOVERNMENT SERVICES DIVISION 1850 M STREET, N.W., SUITE 1070 WASHINGTON, D.C. 20036				8 DELIVERY <input type="checkbox"/> FOB ORIGIN <input type="checkbox"/> OTHER (See below)											
				9 DISCOUNT FOR PROMPT PAYMENT											
				10 SUBMIT INVOICES (If copies submit other than specified TO THE ADDRESS SHOWN IN)											
				ITEM 5											
CODE		FACILITY CODE		13 PAYMENT WILL BE MADE BY											
11. SHIP TO/MARK FOR		CODE		CODE											
SEE BLOCK 5				SEE BLOCK 5											
12. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION <input type="checkbox"/> 10 USC 2304(c)(1) <input type="checkbox"/> 41 USC 253(c)(1)				14 ACCOUNTING AND APPROPRIATION DATA											
				K01-51/8/3400/4361											
15A. ITEM NO.		15B SUPPLIES/SERVICES		15C QUANTITY		15D UNIT	15E UNIT PRICE	15F AMOUNT							
		FINANCIAL TRUST SERVICES (SEE ADDENDUM SCHEDULE)													
180. TOTAL AMOUNT OF CONTRACT <input type="checkbox"/> \$															
18. TABLE OF CONTENTS															
M1		SEC.		DESCRIPTION		PAGE(S)		M1		SEC.		DESCRIPTION		PAGE(S)	
PART I - THE SCHEDULE						PART II - CONTRACT CLAUSES									
A				SOLICITATION/CONTRACT FORM				I				CONTRACT CLAUSES			
B				SUPPLIES OR SERVICES AND PRICES/COSTS				PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.							
C				DESCRIPTION/SPECS./WORK STATEMENT				J				LIST OF ATTACHMENTS			
D				PACKAGING AND MARKING				PART IV - REPRESENTATIONS AND INSTRUCTIONS							
E				INSPECTION AND ACCEPTANCE				K				REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS			
F				DELIVERIES OR PERFORMANCE				L				INSTRS., CONDOS. AND NOTICES TO OFFERORS			
G				CONTRACT ADMINISTRATION DATA				M				EVALUATION FACTORS FOR AWARD			
H				SPECIAL CONTRACT REQUIREMENTS											
CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE															
17. <input type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign the document and return _____ copies to issuing office. Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract; (b) the solicitation, if any; and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)								18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer; and (b) this award/contract. No further contractual document is necessary.							
19A. NAME AND TITLE OF SIGNER (Type or print)				20A. NAME OF CONTRACTING OFFICER				20B. UNITED STATES OF AMERICA				20C. DATE SIGNED			
				RONALD W. CRAMMER											
19B. NAME OF CONTRACTOR				19C. DATE SIGNED				BY _____				BY _____			
								(Signature of person authorized to sign)				(Signature of Contracting Officer)			

ADDENDUM SCHEDULETHIS CONTRACT CONSISTS OF:

1. RFP BIA K51-0063
2. RFP Amendment Number 1, Dated 3/17/88
3. RFP Amendment Number 2, Dated 4/20/88
4. RFP Amendment Number 3, Dated 5/17/88
5. Contractor's Proposal, Dated 6/1/88
6. Contractor's Best & Final offer, Dated 7/11/88
7. This Addendum Schedule

ORDER OF PRECEDENCE:

1. This Addendum Schedule
2. Amendments Number 1, 2 and 3 to RFP BIA K51-0063
3. RFP BIA K51-0063
4. Contractor's Best & Final Offer
5. Contractor's Proposal

ADDENDUM:

The following addenda are incorporated into the contract:

1. Add the following to Section C.3.8 Training
 - C.3.8.1 The contractor shall provide the following on an on-call basis;
 - C.3.8.1.1 - Maintenance training within 48 hours of a request from the Contracting Officer.
 - C.3.8.1.2 - Additional Classroom training within five (5) working days of a request from the Contracting Officer.
 - C.3.8.2 - The contractor, within 45 days of the effective date of this contract, shall provide a one (1) day orientation session at the five (5) sites in C.3.8 to all interested Tribes. The contents of this orientation shall be as agreed to by the contractor and the Contracting Officer.
2. Add the following to Section C.4.2 Investment Services
 - C.4.2.0 - The contractor shall provide from Pacific Century Advisors an electronic communication link to BIA's Albuquerque Investment Branch.
3. Add the following to Section C.4.4-Disbursements from Trust Accounts:
 - a. C.4.4.8 APPLICABILITY OF 25 CFR PART 115 TO DISBURSEMENT OF IIM FUNDS

The contractor may not disburse Individual Indian money (IIM) for the payment of debts allegedly owed by a beneficiary to the Internal Revenue Service (IRS) or other

creditors unless directed to do so by the BIA pursuant to the provisions of 25 CFR Part 115. The contractor shall be liable for any funds disbursed to the IRS or any other creditor without prior authorization from the BIA.

4. Add the following to Section C 4.8 REPORTS:
 - a. C 4.8.5 News Letter - The contractor shall provide all account holders within 15 days of the end of each Government fiscal quarter, a financial news letter in the form and content prescribed by the Contracting Officer.
 - b. C 4.8.6. On-line Telephonic query to the contractor's system shall be available to Tribal account holders. The cost for such query shall be borne by the Tribal requester.
5. Add the following to Section E - INSPECTION AND ACCEPTANCE:
 - E.2.0. Performance Acceptance
 - E.2.1. The contractor shall maintain a minimum 99% accuracy in posting transactions as received from the BIA to individual accounts. Error reconciliation is required within five (5) days after contractor discovery or notification by either the individual account holders or the BIA.
 - E.2.2. The contractor shall meet or exceed the the performance indices set forth below which shall be used to measure investment performance and acceptability based on semiannual evaluations. Factors which may have a bearing on the contractor's expected investment performance include but are not limited to:
 - Statutory investment instrument restrictions;
 - Guidelines provided to the contractor in executing investment decisions by the BIA;
 - Portfolio cash flows, contributions and withdrawals, and portfolio liquidity needs;
 - Composition of investment instruments used to create the indices vs. eligible investment instruments;

<u>Portfolio</u>	<u>Performance Index</u>
Short Term Investment Fund (STIF)	Donoghue's Government Money Markey Index
Short Term Tribal Trust	Donoghue's Government Money Markey Index
Intermediate Term Tribal Trust	Merrill Lynch 1-3 Year Treasury Index
Long Term Tribal Trust	Shearson Lehman Long Term Government Bond Index
Individual Indian Monies Trust	Shearson Lehman Intermediate Government Bond Index
Alaskan Native Escrow Fund	Donoghue's Government Money Markey Index
Cooperative Portfolio	Merrill Lynch 1-3 Year Treasury Index
Contributed Irrigation and Power	Merrill Lynch 1-3 Year Treasury Index

6. Add the following to Section F - DELIVERIES ON PERFORMANCE:

F.3.0 No Cost Options

F.3.1 The Government exercises the following no cost options detailed in the contractor's proposal:

Account Remarks History - contains a chronological history of free-form notes for each participant account. The remarks can be used to record telephone conversations, problem reports and any other permanent notes.

Account Service Representative Tickler File - the Account Remarks file also includes a tickler feature to be used as a reminder for Account Service Representatives (SR). An SR may enter a note to themselves or other service representatives and the system will retain the note until the due date. The user may then access the system and display all notes for the day or may receive a hardcopy report of notes.

Document Tracking Facility - provides for the tracking of documents which must be filed by participants of other users of the system. Each document type is assigned a code, description and a grace period for filing. If, after the assigned grace period, a document is not received, the system generates a delinquency letter and reports the delinquent document on a daily report. The system also tracks the date received, the accuracy and any notes may be entered.

on-line HELP Facility - up to 99 pages of help text are provided for each FARS on-line screen. The HELP information is easily accessed and contains both system codes and instructions on proper use of the screen. The HELP information can also be easily tailored by each client.

System Bulletin Board - provides the ability to transmit messages and instructions to all users of the system. Anyone authorized access to the message facility may enter free-form messages which are displayed to each user as they sign-on to the system.

Account Service Representative Name and Address File - contains the name, address and phone number of each SR assigned to each account. All correspondence with participants can include the SR's name, address and phone number as the return address and for contact information. The file also contains the names and addresses of all report recipients in field, area and headquarters offices.

Transaction History by Office - in addition to the transaction history by participant account, FARS provides on-line transaction history by office. Therefore, daily activity reports may be viewed through on-line access and do not require a report to be transmitted.

Discretionary Letter and Form Request Function - the system also provides an on-line request facility which can be used to request several system outputs including pre-formatted letters and forms. Each letter/form is assigned a two position code and the narrative is stored in an on-line master file. Each letter/form can be requested by designating the participant account number and letter code. The system will prepare the letter/form via laser printer and the GDSI mail shop package and mail it. Statements of Account, which provide complete master file information can also be requested for mailing or printing in the requestor's office.

NOTE: Requestors are to bear the cost of materials and mailing.

Allocation Module - allows the user to specify a clearing account to which collections or disbursements may be coded. An allocation table can be defined for each clearing account and the system will automatically allocate the account balance to specified accounts as defined. Fixed amounts, percentages and unit based allocation formulas can be used. This feature can be used for allocating multi-account collections on a recurring basis and can also be used for allocating Judgement accounts at settlement.

IMAGINE - An online ad hoc query and report writer which provides a complete data base through a data dictionary and file linkage process.

7. Add to G.1. - Contract Administration Data -

Add the following to Section G.4.0.:

Contracting Officer's Representative for this contract:

MS ARLENE BROWN
18th & C Streets, N.W. Mail Stop 4160
WASHINGTON, D.C. 20245
TELEPHONE: (202) 343-4174

Add the following to Section G.4.0. - Method of Payment/Schedule of Payments

Add the following Section G.5.0. - The cost of mailing associated with account holders shall be borne by the BIA.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



September 19, 1988

Dear Tribal Leader:

We are pleased to announce that the Bureau of Indian Affairs Contract for Financial Trust Services was awarded to Security Pacific National Bank, Los Angeles, California, on September 14.

The contract includes cash concentration, accounting and investment advisory services, which will enable the Bureau of Indian Affairs (BIA) to strengthen and improve its management of Indian trust funds. A copy of the executed contract award and a news release are enclosed for your information.

During the next two months, five orientation sessions will be scheduled as required by the contract for all interested tribes in the following locations: Minneapolis, Minnesota; Portland, Oregon; Phoenix, Arizona; Albuquerque, New Mexico; and Tulsa, Oklahoma. After these sessions are scheduled, I will notify you as to the date, time and site for each session. Representatives from the BIA and Security Pacific will (a) discuss our specific plans for implementing the contract and the operational impact under the new contract environment and (b) respond to questions you may have concerning the contract.

I wish to sincerely thank you for your participation and suggestions during the past year and a half in structuring this procurement to better serve you as trust asset owners.

Sincerely,

Ross O. Swimmer
Assistant Secretary - Indian Affairs

Enclosures (2)

AWARD/CONTRACT		<small>OFFICE OF CONTRACT ACQUISITION UNDER GSA FPMR (41 CFR) 101-11.6</small>	<small>DATE</small> <small>PAGE 1 OF 1 PAGES</small>				
<small>AWARD/CONTRACT NUMBER</small> K01-51/8/3400/436		<small>EFFECTIVE DATE</small> 4/15/88	<small>REQUISITION NUMBER</small> 436				
<small>ISSUED BY</small> Department of the Interior Bureau of Indian Affairs Branch of Contract & Grant Operations 1841 Constitution Ave., N.W. - MS 334A S1B Washington, D.C. 20245		<small>ADMINISTERED BY (Other than Item 5)</small> _____					
<small>MAILING ADDRESS (If different from Item 5)</small> Security Profile National Bank Government Services Division 1501 M Street, N.W. Suite 1070 Washington, D.C. 20045		<small>DELIVERY</small> _____					
<small>SHIP TO MARK FOR</small> See Block 5		<small>PAYMENT WILL BE MADE BY</small> See Block 5					
<small>THIS ACQUISITION WAS (Check appropriate box)</small> <input type="checkbox"/> ADVERTISED <input checked="" type="checkbox"/> NEGOTIATED PURSUANT TO 10 USC 2304(a)(1) <input type="checkbox"/> 41 USC 252(c)(1)		<small>ACCOUNTING AND APPROPRIATION DATA</small> K01-51/8/3400/4361					
<small>15A ITEM NO</small>	<small>15B SUPPLIES/SERVICES</small> Financial Trust Services (See Addendum Schedule)	<small>15C QUANTITY</small>	<small>15D UNIT</small>	<small>15E UNIT PRICE</small>	<small>15F AMOUNT</small> Funding for FY 1988-----5330,000.00		
19G. TOTAL AMOUNT OF CONTRACT \$330,000.00							
16. TABLE OF CONTENTS							
<small>W/</small>	<small>SEC</small>	<small>DESCRIPTION</small>	<small>PAGE(S)</small>	<small>W/</small>	<small>SEC</small>	<small>DESCRIPTION</small>	<small>PAGE(S)</small>
<small>PART I - THE SCHEDULE</small>				<small>PART II - CONTRACT CLAUSES</small>			
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS		<small>PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.</small>			
	C	DESCRIPTION/SPECS/WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING		<small>PART IV - REPRESENTATIONS AND INSTRUCTIONS</small>			
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTRS. CONDS. AND NOTICES TO OFFER	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					
<small>CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE</small>							
17. <input type="checkbox"/> <small>CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign the document and return copies to issuing office. Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)</small>				18. <input type="checkbox"/> <small>AWARD (Contractor is not required to sign the document.) Your offer on Solicitation Number _____ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract; no further contractual document is necessary.</small>			
19A. NAME AND TITLE OF SIGNER (Type or print) Michael J. Barrett, Vice President Jerry E. Gray, 1st Vice President				19A. NAME OF CONTRACTING OFFICER Ross O. Swinnee Assistant Secretary - Indian Affairs			
19B. NAME OF CONTRACTOR By: <i>[Signature]</i>		19C. DATE SIGNED 9/14/88		19B. UNITED STATES OF AMERICA By: <i>[Signature]</i> (Signature of Contracting Officer)		19C. DATE SIGNED 9/14/88	

NSN 7540-01-152-0069
PREVIOUS EDITION UNUSABLE

28-108
GPO : 1984 O - 421-526 (15)

STANDARD FORM 28 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.214(a)

ADDENDUM SCHEDULETHIS CONTRACT CONSISTS OF:

1. RFP BIA K51-0063
2. RFP Amendment Number 1, Dated 3/17/88
3. RFP Amendment Number 2, Dated 4/20/88
4. RFP Amendment Number 3, Dated 5/17/88
5. Contractor's Proposal, Dated 6/1/88
6. Contractor's Best & Final Offer, Dated 1/11/88
7. This Addendum Schedule

ORDER OF PRECEDENCE:

1. This Addendum Schedule
2. Amendments Number 1, 2 and 3 to RFP BIA K51-0063
3. RFP BIA K51-0063
4. Contractor's Best & Final Offer
5. Contractor's Proposal

ADDENDUM:

The following addenda are incorporated into the contract:

1. Add the following to Section C.3.8 Training
 - C.3.8.1 The contractor shall provide the following on an on-call basis:
 - C.3.8.1.1 - Maintenance training within 48 hours of a request from the Contracting Officer.
 - C.3.8.1.2 - Additional Classroom training within five (5) working days of a request from the Contracting Officer.
 - C.3.8.2 - The contractor, within 60 days of the effective date of this contract, shall provide a one (1) day orientation session at the following five (5) sites to all interested Tribes: Minneapolis, Minnesota; Portland, Oregon; Albuquerque, New Mexico; Phoenix, Arizona; and Tulsa, Oklahoma. The contents of this orientation shall be as agreed to by the contractor and the Contracting Officer.
2. Add the following to Section C.4.2 Investment Services
 - C.4.2.8 - The contractor shall provide from Pacific Century Advisors an electronic communication link to BIA's Albuquerque Investment Branch.
3. Add the following to Section C.4.4-Disbursements from Trust Accounts:

3. DISBURSEMENT OF TRUST FUNDS FOR PAYMENT OF DEBTS ALLEGEDLY OWED TO IRS OR OTHER CREDITORS

The contractor may not disburse tribal and individual Indian Money (IIM) for the payment of debts allegedly owed by any beneficiary to the Internal Revenue Service (IRS) or other creditors unless directed to do so by the BIA. The contractor shall be liable to the United States on behalf of the affected Indian beneficiary for any funds disbursed to the IRS or any other creditor without prior authorization from the BIA.

4. Add the following to Section C 4.8 REPORTS:
- a. C 4.8.5 News Letter - The contractor shall provide all account holders within 15 days of the end of each Government fiscal quarter, a financial news letter in the form and content prescribed by the Contracting Officer.
 - b. C 4.8.6. On-line Telephonic query to the contractor's system shall be available to Tribal account holders. The cost for such query shall be borne by the Tribal requester.
5. Add the following to Section E - INSPECTION AND ACCEPTANCE:
- E.2.0 Performance Acceptance
 - E.2.1 The contractor shall maintain a minimum 99% accuracy in posting transactions as received from the BIA to individual accounts. Error reconciliation is required within five (5) days after contractor discovery or notification by either the individual account holders or the BIA.
 - E.2.2 The contractor shall meet or exceed the the performance indices set forth below which shall be used to measure investment performance and acceptability based on semiannual evaluations. Factors which may have a bearing on the contractor's expected investment performance include but are not limited to:
 - Statutory investment instrument restrictions;
 - Guidelines provided to the contractor in executing investment decisions by the BIA;
 - Portfolio cash flows, contributions and withdrawals, and portfolio liquidity needs;

Composition of investment instruments used to create
the indices vs. eligible investment instruments:

<u>Portfolio</u>	<u>Performance Index</u>
Short Term Investment Fund (STIF)	Donoghue's Government Money Market Index
Short Term Tribal Trust	Donoghue's Government Money Market Index
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Contributed Irrigation and Power	Merrill Lynch 1-3 Year Treasury Index

6. Add the following to Section F - DELIVERIES ON PERFORMANCE:

F.3.0 No Cost Options

F.3.1 The Government exercises the following no cost options
detailed in the contractor's proposal:

Account Remarks History - contains a chronological
history of free-form notes for each participant
account. The remarks can be used to record
telephone conversations, problem reports and any
other permanent notes.

Account Service Representative Tickler File - the
Account Remarks file also includes a tickler
feature to be used as a reminder for Account
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representatives and the system will retain the
note until the due date. The user may then access
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Allocation Module - allows the user to specify a clearing account to which collections or disbursements may be coded. An allocation table can be defined for each clearing account and the system will automatically allocate the account balance to specified accounts as defined. Fixed amounts, percentages and unit based allocation formulas can be used. This feature can be used for allocating multi-account collections on a recurring basis and can also be used for allocating judgement accounts at settlement.

IMAGINE - An online ad hoc query and report writer which provides a complete data base through a data dictionary and file linkage process.

7. Add to G. - Contract Administration Data -

Add the following to Section G.3.0. - Method of Payment/Schedule of Payments

- (c) In accordance with clause 52.232-1 payment shall be made as follows:

FISCAL YEAR 1988

Implementation and development-	\$300,000	
Orientation-	\$ 30,000	
		\$330,000

NOTE: PAYMENT TO BE MADE IN 6 EQUAL PAYMENTS

*FISCAL YEAR 1989 (OPTION)

Support Services \$50,000 per month for six (6) months	\$300,000
--	-----------

NOTE: PAYMENTS TO BE MADE IN SIX (6) EQUAL PAYMENTS COMMENCING MAY 1, 1989

Custodial Services:

IM \$.167 per account (estimated at) 298,000 x 6 months for	\$298,598
--	-----------

Other accounts - \$15.90 per account (estimated at) x 6 months	\$190,800
--	-----------

Investment Services:

.0008 (8 basis points) x estimated portfolios values
 \$1,800,000,000 x 1/2 (year) \$720,000

\$1,509,396

*SUCCEEDING FISCAL YEARS (OPTION PER YEAR)

Support Services \$50,000 per month x 12 months \$600,000

Custodial Services:

a) IIM - \$.167 per account (estimated at)
 298,000 x 12 months \$597,192

b) Other accounts - \$15.90 per account
 (estimated at) 2,000 x 12 months \$381,600

Investment Services:

.0008 (8 basis points) x estimated portfolios value
 \$1,800,000,000 \$1,440,000

\$3,018,792

*NOTE: PAYMENTS TO BE MADE MONTHLY UPON RECEIPT OF ACCEPTABLE INVOICES.

PAYMENTS FOR CUSTODIAL SERVICES SHALL BE MADE ON THE ACTUAL NUMBER OF ACCOUNTS PROCESSED

PAYMENTS FOR INVESTMENT SERVICES SHALL BE ADJUSTED AT THE END OF EACH FISCAL YEAR TO REFLECT THE AVERAGE ANNUAL DAILY MARKET VALUE OF THE TOTAL PORTFOLIOS UNDER MANAGEMENT

(d) ON-CALL TRAINING SYSTEM

This shall be on a Task Order Basis containing the following fixed rates:

	<u>Unit Rate</u>
	<u>Per Hr</u>
Account Manager	\$36.45
Senior Accountant	\$23.35
Computer Time	\$11.02
Training Consultant	\$65.40

Travel and per diem shall be on an as incurred basis, not to exceed the existing Government allowable rates.

8. Add the following to Section G.4.0.:

Contracting Officer's Representative for this contract:

MS ARLENE BROWN
18th & C Streets, N.W. Mail Stop 4070
WASHINGTON, D.C. 20240
TELEPHONE: (202) 343-4807

9. Add the following Section G.5.0. - The cost of mailing associated with account holders shall be borne by the BIA.



DEPARTMENT of the INTERIOR

news release

OFFICE OF THE SECRETARY

For Release September 14, 1988

Carl Shaw 202/343 4576

INTERIOR DEPARTMENT SIGNS HISTORIC CONTRACT TO IMPROVE MANAGEMENT OF \$1.8 BILLION IN INDIAN TRUST FUNDS

The Department of the Interior today signed a contract with Security Pacific National Bank of Los Angeles to strengthen internal management and administration of more than \$1.8 billion in Indian trust funds.

"This contract will provide better management of resources belonging to individual Indians and tribes," Secretary of the Interior Don Hodel said at a contract signing ceremony in his office. "And the federal government will save almost \$3 million over a five-year period in costs of administering trust funds.

"This does not relieve the federal government of any trust responsibilities," Hodel said. "As trustee, what we are doing is assuring that the Indians will get the best possible administration and accounting of the assets involved."

Hodel praised Ross Swimmer, Assistant Secretary of Indian Affairs, for three years of intensive effort to bring about this improvement in the handling of Indian trust funds.

"There were times when a person less committed to improving the administration of federal Indian programs would have given up, but Assistant Secretary Swimmer went the extra mile to see this through," Hodel said. "Time will demonstrate that this is a landmark improvement in U.S. Indian affairs."

Today's action followed extensive consultations with Indian leaders.

The Bureau of Indian Affairs (BIA) opened competitive bidding last February on a proposal to procure collection, accounting, advisory investment services and custodial services for funds held in trust for Indian tribes, individuals and others. The more than 300,000 accounts represent land claims or damage awards, income from trust lands, oil and gas revenues, timber sales and the like. Bidding for the contract was open to all financial institutions for the single contract to run for one year with four one-year renewable options.

(more)

An Interior Department interagency committee and three tribal consultants reported in July that the Security Pacific National Bank proposal would cost \$21.2 million over a five-year period. Added to that cost would be a conversion differential of \$980,000 to change from government management of the funds. The committee estimated that an in-house BIA proposal would cost \$25.2 million, almost \$3 million more than the contract signed today.

Swimmer, designated by Hodel as trustee of Indian trust funds, signed the contract for the government with Michael J. Barrett, vice president of Security Pacific's Government Services Division. Security Pacific, the Nation's sixth largest banking company with over \$70 billion in assets and more than \$147 billion in assets under management, has teamed with Computer Data Systems, Inc., of Rockville, Md., to support the trust fund accounting and data processing services.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



October 5, 1988

Dear Tribal Leader:

In followup to my September 19 letter announcing the Bureau of Indian Affairs' financial trust services contract award to Security Pacific National Bank, we have scheduled five orientation sessions for all interested tribal representatives in the following locations:

TUESDAY, OCTOBER 18, 1988 -- 9:00 a.m. - 4:00 p.m.
Rodeway Inn Airport - 612-854-3400 (Airport Shuttle)
1321 East 78th Street
Bloomington, Minnesota 55420
Minneapolis Area Host Contact: Mr. Jim Sansaver
612-349-3581
FTS 787-3581

THURSDAY, OCTOBER 20, 1988 -- 9:00 a.m. - 5:00 p.m.
Winrock Inn - 505-883-5252
18 Winrock Center, N.E.
Albuquerque, New Mexico
Albuquerque Area Host Contact: Ms. Shelly Farmer
505-766-3056
FTS-474-3056

TUESDAY, NOVEMBER 1, 1988 -- 9:00 a.m. - 5:00 p.m.
Holiday Inn-Holidome - 503-256-5000
8439 N.E. Columbia Blvd.
Portland, Oregon
Portland Area Host Contact: Mr. Ron Brown
503-231-6702
FTS 429-6702

THURSDAY, NOVEMBER 3, 1988 -- 8:00 a.m. - 4:30 p.m.
La Mancha Athletic Resort - 602-279-9811
100 West Claredon
Phoenix, Arizona 85013
Phoenix Area Host Contact: Mr. Ray Albert
602-241-2305
FTS 261-2305

FRIDAY, NOVEMBER 4, 1988 -- 10:00 a.m - 5:00 p.m.
Westin Hotel - 918-582-9000
10 East 2nd Street
Tulsa, Oklahoma 74103
Muskogee Area Host Contact: Ms. Nancy Gassaway
918-687-2296
FTS 736-2296

Representatives from the Bureau and Security Pacific will provide an overview of the new contract services and respond to general questions from the floor during the morning session. In the afternoon, the Bureau and the contractor will divide into three component teams to separately address specific questions in the following areas: (1) accounting and related systems, (2) investments services and (3) general areas related to the contract.

We look forward to meeting with you in the upcoming orientation exchanges. For additional information concerning these sessions, please contact your nearest Area host coordinator listed above or Ms. Arlene Brown, 202-343-4807.

Sincerely,



Ross O. Swimmer
Assistant Secretary - Indian Affairs

CC: Secy's Surname,
Secy's RF (2)
Surname (ABrown),
Chron, 101-A, AS-IA RF,
600, 100, 120
ABrown:pat



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

February 15, 1989

Dear Tribal Leader:

This is a followup to the tribal orientation sessions conducted last fall on the Bureau's Financial Trust Services Contract with Security Pacific National Bank. We have enclosed for your comment a copy of the draft investment guidelines for the three tribal portfolios to be offered when the contract is fully implemented. We also wish to invite your participation in our cash planning survey for investment portfolio selection. A copy of the questionnaire is enclosed for your completion.

With respect to the draft Investment Guidelines, please note:

- o The Statement of Purpose and Limitations Sections vary for each portfolio--short term, intermediate term and long term--and should be given particular attention in your review.
- o The provisions contained in the Allowed Investments, Restrictions and Measure of Performance Sections are similar for each portfolio.
- o Additional agency securities have been proposed and are now under review by the Solicitor's Office for eligibility under 25 U.S.C. 162a. Upon approval, they will be added when the guidelines are finalized.

With respect to the Cash Planning Questionnaire, your responses will be used in planning the initial structure of the three tribal portfolios and related cash management services to be offered when the contract is fully implemented.

Please provide your comments on the guidelines and your responses to the questionnaire by Friday, March 17, 1989, to:

Division of Trust Funds Management
Bureau of Indian Affairs
P.O. Box 386
Albuquerque, New Mexico 87103

If you have questions or need additional information, please contact the following:

- o Mr. Fred Kellerup
Investment Officer
505-766-2975
For Information on:
DRAFT INVESTMENT GUIDELINES
- o Mr. Loren J. "Rusty" Farmer
Cash Management Officer
505-766-2975
For Information on:
CASH PLANNING QUESTIONNAIRE
- o Ms. Arlene Brown
Trust Fund Project Manager
202-343-4807
For Information on:
FINANCIAL TRUST SERVICES
CONTRACT

Sincerely,



Acting Assistant Secretary - Indian Affairs

Enclosures (2)

DRAFT

BIA INVESTMENT GUIDELINES
for
SHORT TERM TRIBAL TRUST FUND PORTFOLIO

I. Statement of Purpose of Fund:

The purpose of this portfolio is to provide maximum flexibility for the deposit and withdrawal of funds by the participants. The objectives, in the order of importance are: (1) to provide liquidity; (2) to preserve principal; and (3) to generate income. Deposits and withdrawals in this portfolio will be allowed on a daily basis without restrictions. Accordingly, the rate of return on this fund is anticipated to approximate that of a typical government money market mutual fund with an average maturity ranging from 15 to 90 days. The portfolio will be managed with the intent that dollars deposited will not reflect market value fluctuations, and earnings posted will consist of realized gains and losses, plus accrued income.

II. Allowed Investments:

- A. United States Treasury Issues
- B. United States Government Agency Issues Backed by the Full Faith and Credit of the U.S. Government:
 - 1. Commodity Credit Corporation (CCC)
 - 2. Department of Energy (DOE)
 - 3. Public housing authorities secured by the Secretary of Housing and Urban Development
 - 4. Federal Financing Bank (FFB)
 - 5. Federal Housing Administration (FHA)
 - 6. Government National Mortgage Association (GNMA)
 - 7. Small Business Administration (SBA)
 - 8. Other Issues which are full faith and credit of the U.S. Government
- C. Other United States Government Agency Issues:
 - 1. Farm Credit System (FCS)
 - 2. Federal Home Loan Banks (FHLB)
 - 3. Federal Home Loan Mortgage Corporation (Freddie Mac)
 - 4. Tennessee Valley Authority (TVA)
 - 5. Federal National Mortgage Association (FNMA)

DRAFT

SHORT TERM TRIBAL TRUST FUND PORTFOLIO

PAGE 2

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PLEASE NOTE: The following U.S. Government Agency Issues are under review for eligibility under 25 U.S.C. 162a:

1. United States Postal Service (USPS)
2. Farm Credit System Financial Assistance Corp. (FCSFAC)
3. Farmers Home Administration (FmHA)
4. General Services Administration (GSA)
5. Maritime Administration Guaranteed Ship Financing Bonds
6. Student Loan Marketing Association (Sallie Mae)
7. Financing Corporation (FICO)
8. Washington Metropolitan Area Transit Authority Bonds (WMATA)
9. National Oceanic and Atmospheric Administration (NOAA)
10. Agency for International Development (AID)
11. National Marine Fisheries Service (NMFS)
12. International Bank for Reconstruction and Development (IBRD)
13. Bureau of Indian Affairs Guaranteed Issues

D. Certificates of Deposit:

1. Insured Certificates of Deposit by FDIC or FSLIC Institutions (maximum \$100,000 per bank)
2. Secured Certificates of Deposit from FDIC Insured Institutions only (Collateralized at 110 percent)

III. Limitations:

- A. The maximum maturity at the time of purchase is limited to 375 days.
- B. No more than five percent of the portfolio may be invested in any one United States Government Agency which is not backed by the full faith and credit of the United States Government.
- C. No bond swaps are allowed that would subject the portfolio to market risk while completing the transaction.
- D. These limitations may be modified with the concurrence of the Contracting Officer's Representative as opposed to formal contract modification procedures.

DRAFT

SHORT TERM TRIBAL TRUST FUND PORTFOLIO
PAGE 3

IV. Restrictions:

- A. Buying on margin and selling short are prohibited.
- B. Repurchase agreements are not authorized.
- C. Securities lending transactions are prohibited.
- D. Maintenance of securities must be under the supervision and control of the custodian contractor that has been contracted by the BIA for that purpose.
- E. The BIA retains the right to take possession of securities in lieu of cash redemptions.

V. Measure of Performance:

- A. The performance of the portfolio will be measured against the following index: Donoghue's Government Money Market Index.
- B. The evaluation of performance will be done with the understanding that any policy or strategy change imposed by the BIA which alters the original investment structure of this portfolio will be taken into consideration at the time of evaluation. These changes must be documented and approved in writing by BIA.

VI. Investment Strategy:

This portfolio will be invested according to a strategy developed between the BIA and Pacific Century Advisors. The initial strategy will be documented under separate cover and approved by BIA. It will be reviewed on a continuing basis and revised when both parties deem it necessary.

DRAFT

BIA INVESTMENT GUIDELINES
for
INTERMEDIATE TERM TRIBAL TRUST FUND PORTFOLIO

I. Statement of Purpose of Fund:

The purpose of this portfolio is to provide a rate of return higher than that generally available from the Short Term Tribal Trust Fund Portfolio. In order to assure liquidity and protect existing Fund participants, withdrawals will only be processed once each week. In addition, these withdrawals will be limited to 100 percent of a tribe's available balance, not to exceed \$1,000,000. Deposits will be accepted on a daily basis. The Bureau's intent is to manage the liquidity requirements of this fund in such a manner that a significant level of longer term securities can be maintained and that the forced sale of these securities into an untimely market can be avoided.

II. Allowed Investments:

- A. United States Treasury Issues
- B. United States Government Agency Issues Backed by the Full Faith and Credit of the U.S. Government:
 - 1. Commodity Credit Corporation (CCC)
 - 2. Department of Energy (DOE)
 - 3. Public housing authorities secured by the Secretary of Housing and Urban Development
 - 4. Federal Financing Bank (FFB)
 - 5. Federal Housing Administration (FHA)
 - 6. Government National Mortgage Association (GNMA)
 - 7. Small Business Administration (SBA)
 - 8. Other Issues which are full faith and credit of the U.S. Government
- C. Other United States Government Agency Issues:
 - 1. Farm Credit System (FCS)
 - 2. Federal Home Loan Banks (FHLB)
 - 3. Federal Home Loan Mortgage Corporation (Freddie Mac)
 - 4. Tennessee Valley Authority (TVA)
 - 5. Federal National Mortgage Association (FNMA)

DRAFT

INTERMEDIATE TERM TRIBAL TRUST FUND PORTFOLIO
PAGE 2

PLEASE NOTE: The following U.S. Government Agency
Issues are under review for eligibility under 25
U.S.C. 162a:

1. United States Postal Service (USPS)
2. Farm Credit System Financial Assistance Corp.
(FCSFAC)
3. Farmers Home Administration (FmHA)
4. General Services Administration (GSA)
5. Maritime Administration Guaranteed Ship Financing
Bonds
6. Student Loan Marketing Association (Sallie Mae)
7. Financing Corporation (FICO)
8. Washington Metropolitan Area Transit Authority
Bonds (WMATA)
9. National Oceanic and Atmospheric Administration
(NOAA)
10. Agency for International Development (AID)
11. National Marine Fisheries Service (NMFS)
12. International Bank for Reconstruction and
Development (IBRD)
13. Bureau of Indian Affairs Guaranteed Issues

D. Certificates of Deposit:

1. Insured Certificates of Deposit by FDIC or FSLIC
Institutions (maximum \$100,000 per bank)
2. Secured Certificates of Deposit from FDIC Insured
Institutions only (Collateralized at 110 percent)

III. Limitations:

- A. The maximum maturity at the time of purchase is
limited to ten years, except mortgage backed
securities which may have a remaining life of not more
than twenty years.
- B. No more than ten percent of the portfolio may be
invested in any one United States Government Agency
which is not backed by the full faith and credit of
the United States Government.
- C. No bond swaps are allowed that would subject the
portfolio to market risk while completing the
transaction.
- D. These limitations may be modified with the concurrence
of the Contracting Officer's Representative as opposed
to formal contract modification procedures.

DRAFT

INTERMEDIATE TERM TRIBAL TRUST FUND PORTFOLIO

PAGE 3

IV. Restrictions:

- A. Buying on margin and selling short are prohibited.
- B. Repurchase agreements are not authorized.
- C. Securities lending transactions are prohibited.
- D. Maintenance of securities must be under the supervision and control of the custodian contractor that has been contracted by the BIA for that purpose.
- E. The BIA retains the right to take possession of securities in lieu of cash redemptions.

V. Measure of Performance:

- A. The performance of the portfolio will be measured against the following index: Merrill Lynch 1-3 Year Treasury Index.
- B. The evaluation of performance will be done with the understanding that any policy or strategy change imposed by the BIA which alters the original investment structure of this portfolio will be taken into consideration at the time of evaluation. These changes must be documented and approved in writing by BIA.

VI. Investment Strategy:

This portfolio will be invested according to a strategy developed between the BIA and Pacific Century Advisors. The initial strategy will be documented under separate cover and approved by BIA. It will be reviewed on a continuing basis and revised when both parties deem it necessary.

DRAFT

BIA INVESTMENT GUIDELINES
for
LONG TERM TRIBAL TRUST FUND PORTFOLIO

I. Statement of Purpose of Fund:

The purpose of this portfolio is to provide a rate of return higher than that generally available from the Intermediate Term Tribal Trust Fund Portfolio. Deposits will be accepted on a daily basis. In order to assure liquidity and protect existing fund participants, withdrawals will only be processed once a month. In addition, these withdrawals will be limited to five (5) percent of a tribe's available balance or \$100,000, whichever is greater. The Bureau's intent is to manage the liquidity requirements of this fund in such a manner that a significant level of long term securities can be maintained and that the forced sales of these securities into an untimely market can be avoided.

II. Allowed Investments:

- A. United States Treasury Issues
- B. United States Government Agency Issues Backed by the Full Faith and Credit of the U.S. Government:
 - 1. Commodity Credit Corporation (CCC)
 - 2. Department of Energy (DOE)
 - 3. Public housing authorities secured by the Secretary of Housing and Urban Development
 - 4. Federal Financing Bank (FFB)
 - 5. Federal Housing Administration (FHA)
 - 6. Government National Mortgage Association (GNMA)
 - 7. Small Business Administration (SBA)
 - 8. Other Issues which are full faith and credit of the U.S. Government
- C. Other United States Government Agency Issues:
 - 1. Farm Credit System (FCS)
 - 2. Federal Home Loan Banks (FHLB)
 - 3. Federal Home Loan Mortgage Corporation (Freddie Mac)
 - 4. Tennessee Valley Authority (TVA)
 - 5. Federal National Mortgage Association (FNMA)

DRAFT

LONG TERM TRIBAL TRUST FUND PORTFOLIO
PAGE 2

PLEASE NOTE: The following U.S. Government Agency Issues are under review for eligibility under 25 U.S.C. 162a:

1. United States Postal Service (USPS)
2. Farm Credit System Financial Assistance Corp. (FCSFAC)
3. Farmers Home Administration (FmHA)
4. General Services Administration (GSA)
5. Maritime Administration Guaranteed Ship Financing Bonds
6. Student Loan Marketing Association (Sallie Mae)
7. Financing Corporation (FICO)
8. Washington Metropolitan Area Transit Authority Bonds (WMATA)
9. National Oceanic and Atmospheric Administration (NOAA)
10. Agency for International Development (AID)
11. National Marine Fisheries Service (NMFS)
12. International Bank for Reconstruction and Development (IBRD)
13. Bureau of Indian Affairs Guaranteed Issues

D. Certificates of Deposit:

1. Insured Certificates of Deposit by FDIC or FSLIC Institutions (maximum \$100,000 per bank)
2. Secured Certificates of Deposit from FDIC Insured Institutions only (Collateralized at 110 percent)

III. Limitations:

- A. The maximum maturity at the time of purchase is limited to thirty years, except mortgage backed securities which may have a remaining life of not more than forty years.
- B. No more than ten percent of the portfolio may be invested in any one United States Government Agency which is not backed by the full faith and credit of the United States Government.
- C. No bond swaps are allowed that would subject the portfolio to market risk while completing the transaction.
- D. These limitations may be modified with the concurrence of the Contracting Officer's Representative as opposed to formal contract modification procedures.

DRAFT

LONG TERM TRIBAL TRUST FUND PORTFOLIO
PAGE 3

IV. Restrictions:

- A. Buying on margin and selling short are prohibited.
- B. Repurchase agreements are not authorized.
- C. Securities lending transactions are prohibited.
- D. Maintenance of securities must be under the supervision and control of the custodian contractor that has been contracted by the BIA for that purpose.
- E. The BIA retains the right to take possession of securities in lieu of cash redemptions.

V. Measure of Performance:

- A. The performance of the portfolio will be measured against the following index: Shearson Lehman Long Term Government Bond Index.
- B. The evaluation of performance will be done with the understanding that any policy or strategy change imposed by the BIA which alters the original investment structure of this portfolio will be taken into consideration at the time of evaluation. These changes must be documented and approved in writing by BIA.

VI. Investment Strategy:

This portfolio will be invested according to a strategy developed between the BIA and Pacific Century Advisors. The initial strategy will be documented under separate cover and approved by BIA. It will be reviewed on a continuing basis and revised when both parties deem it necessary.

TRIBAL CASH PLANNING QUESTIONNAIRE
for
TRUST FUND INVESTMENT PORTFOLIO OPTIONS
to be offered by the
BUREAU OF INDIAN AFFAIRS

-
1. Does your tribe have any written investment policy and/or guidelines for cash planning purposes? Yes _____ No _____
 2. How many tribal trust fund accounts are maintained by the BIA? _____
 3. Please list each tribal trust account by appropriation/activity number and the dollar amount or percentage of each account your tribe would recommend for initial placement in the short-term (ST), intermediate-term (IT) and/or long-term (LT) investment portfolio options to be offered by the BIA on May 1, 1989--target conversion date. Please note that one appropriation/activity number may be allocated to more than one portfolio. (Use the back of this sheet, if needed.)

Approp./Activity # _____ ST - \$ Amount or % _____
IT - \$ Amount or % _____
LT - \$ Amount or % _____

Approp./Activity # _____ ST - \$ Amount or % _____
IT - \$ Amount or % _____
LT - \$ Amount or % _____

4. To assure ready availability and access to your tribe's trust funds, please provide for our verification the following:

Name of Tribe's Bank _____
Bank Address _____
Routing & Transit # _____ Bank Acct.# _____

5. What is the name and location of the bank(s) which provide check cashing services to your tribal community?

Name _____ Location _____
Name _____ Location _____

6. Who is your tribal officer or designated contact with the primary responsibility for tribal investment issues?

Name _____ Title _____ Telephone _____

7. Who at the BIA Agency/Area does your Tribe primarily communicate with on investment matters?

Name _____ Title _____ Telephone _____

[OVER]

Please provide any suggestions you may have to improve the BIA's investment coordinator services to better meet your tribal cash planning needs.

.....
.....
.....
.....
.....

2. (Continuation):

Approp./Activity No. _____	ST - \$ Amount or % _____
	IT - \$ Amount or % _____
	LT - \$ Amount or % _____
Approp./Activity No. _____	ST - \$ Amount or % _____
	IT - \$ Amount or % _____
	LT - \$ Amount or % _____
Approp./Activity No. _____	ST - \$ Amount or % _____
	IT - \$ Amount or % _____
	LT - \$ Amount or % _____
Approp./Activity No. _____	ST - \$ Amount or % _____
	IT - \$ Amount or % _____
	LT - \$ Amount or % _____

PLEASE MAIL RESPONSES TO THIS QUESTIONNAIRE TO:

Bureau of Indian Affairs
Division of Trust Funds Management
P.O. Box 886
Albuquerque, New Mexico 87103

FOR ADDITIONAL INFORMATION OR QUESTIONS, PLEASE CONTACT:

Mr. Loren J. "Rusty" Farmer
505-766-2975
FTS 8-474-2975



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

April 3, 1989

Dear Tribal Leader:

Prior to full implementation of the Financial Trust Services Contract with Security Pacific National Bank, we will conduct a cash planning conference to provide you assistance in allocating your trust assets among the three tribal investment portfolios to be offered.

We wish to invite you to our conference which will be held April 25-26, 1989, 8:00 a.m. to 5:00 p.m., at the Clarion Four Seasons Hotel, 2500 Carlisle Blvd. NE, Albuquerque, New Mexico. Lodging reservations may be made directly to the hotel at 505-888-3311. A block of rooms have been reserved by the Bureau of Indian Affairs at the rates of \$45.00/single and \$55.00/double.

On April 25, representatives of the Bureau and the Security Pacific Bank will (a) update you on the status of the contract implementation plan, (b) discuss the operational aspects of the investment portfolios, (c) introduce the new tribal reports to be issued and (d) present cash management tools that may be used in selecting the appropriate portfolio(s).

On April 26, individual tribal sessions will be scheduled in 30-minute intervals to enable "one-on-one" planning for your initial portfolio(s) selection to better meet your expected cash flow, liquidity and investment objective requirements.

If you have further questions relating to this conference, please contact Mr. Loren J. "Rusty" Farmer, BIA Cash Management Officer, at 505-766-2975.

Sincerely,

Assistant Secretary - Indian Affairs



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 22 1989

Dear Tribal Leader:

In September 1988, the Bureau of Indian Affairs entered into a contractual arrangement with Arthur Andersen & Company to perform three annual financial and compliance audits of the trust funds managed by the Bureau. The first of these audits, the most comprehensive audit of these funds ever performed, is now complete. A copy of the Bureau's financial statements for the Tribal Trust Funds and the Individual Indian Monies Trust Funds for the Fiscal Year ended September 30, 1988, with the independent public accountant's opinion on the statements, is enclosed for your information.


The audits are only one part of the strategy to improve the Bureau's management of the funds held in trust. Later this year we will initiate the new systems and procedures developed as a result of the Financial Trust Services contract with the Security Pacific National Bank. This contract will provide critically needed system enhancements to address many of our problem areas such as the lack of integrated systems, interest distribution methods, and the timeliness of accounting data for reporting and investment purposes. In addition to the contract, we are exploring new ways to provide more efficient and reliable financial trust services to you. In continuing our effort to improve the Bureau's financial trust program, any suggestions you may have to better service your trust assets will be appreciated.

If you have any questions regarding the audit report, please address them to the Chief, Branch of Trust Fund Accounting, Bureau of Indian Affairs, P.O. Box 1067, Albuquerque, New Mexico 87103, or call (505) 766-3875.

Sincerely,

Acting Assistant Secretary - Indian Affairs

Enclosure


 United States Department of the Interior
 

 BUREAU OF INDIAN AFFAIRS
 WASHINGTON, D.C. 20245

IN REPLY REFER TO

JUN 20 1989

Dear Tribal Leader:

We wish to update you on the status of the BIA Financial Trust Services Contract with Security Pacific National Bank and provide you information which was distributed at our recent cash planning conference.

We are currently planning to fully implement the contracted services beginning October 1, 1989. Prior to that time, we will conduct acceptance testing for one month at selected Bureau agency locations and conduct Bureau user training over a two month period. In addition, we plan to have the contractor issue a tribal quarterly newsletter in July so that you may have market and economic information for investment portfolio planning purposes prior to October.

The Bureau and Security Pacific recently conducted a tribal cash planning conference on April 25-26. Tribal attendees were updated on the status of the contract implementation, introduced to the investment portfolio options and tribal reports to be offered, and presented with cash management tools that may be used in selecting the appropriate portfolio(s). In addition, individual tribal planning sessions were conducted to assist the tribes in meeting their expected cash flow, liquidity and investment objective requirements.

We have enclosed copies of (1) the conference agenda, (2) a hardcopy of the conference slide presentations, and (3) a cash management module document that may be used in your tribal planning.

Under separate cover, we are sending this same information and a detailed listing of each tribal appropriation to your respective Area investment coordinator to be used in developing tribal allocation plans for each investment portfolio. If you have not submitted a completed tribal cash planning questionnaire which was furnished to you in earlier mailing, please submit one at your earliest convenience.

We would welcome any suggestions from you, as the trust beneficiaries, so that we may structure future tribal conferences and planning sessions to better meet your cash management needs and investment goals.

Sincerely,



Deputy to the Assistant Secretary -
Indian Affairs (Operations)

Enclosures (3)

TRIBAL TRUST

from existence, and the fact that many of the assets in the Trust Funds are in the form of Certificates of deposit in S&L's. What is the best way to minimize reliance on CD's within the investment instruments authorized by Congress? How will liquidity demands on portfolios be handled without sacrificing yields? These are issues on which we are all concentrating.

■ INVESTMENT STRUCTURE

The BIA, working along with Security Pacific, has developed an investment structure for managing the Tribal Trust Monies which provides an opportunity for attractive returns along with the flexibility in meeting tribal obligations. The investment structure will utilize three portfolios, each holding investments with different maturities. Each portfolio is expected, under ordinary market conditions, to produce a different return. When investing in fixed income securities, the longer the maturity - the higher return. Therefore, we would expect that the portfolio holding the longer maturities would return the highest return over a full market cycle.

The three portfolios will have the following investment structure: The Short-Term Portfolio will purchase securities with maturities ranging from several days out to a maximum maturity of 375 days. A portion of the portfolio will be invested in very short-term investments so that on any given day, cash will always be there to meet any withdraw request or transfers. This "liquidity" portion of the portfolio will be adjusted to assure that whenever any tribe needs money, it will always be available. The portfolio is designed to be used for money which is either expected to be used in the next 12 months, or where the timing of the needs for the money is unknown. We expect that the Short-Term Portfolio will be the largest of the three.

The Intermediate-Term Portfolio will invest in securities that have maturities as long as 10 years. The maturities will be selected so that there are some investments that will be maturing on a regular basis. The exact maturity structure will be determined by the projected inflows and outflows, and by where the BIA and Security Pacific believes the most attractive maturity area is to buy. Both of these conditions will change as the market and the projects change. The portfolio is intended to be used by the tribes for investing of monies which are not expected to be needed for at least one year, or longer. For example, if a tribe's financial plan had a project that was not expected to start for three years, this is the portfolio to which those monies would be allocated. In order to protect other participants in the portfolio, there will be some withdraw/transfer restrictions. They are as follows: A tribe may withdraw up to 100% of its available balance, not to exceed \$1 million, per month. As in the Short-Term Portfolio, a portion of the Intermediate-Term Portfolio will be invested in very short-term investments in order to meet any authorized withdraw requests or earnings transfers that meet the restrictions stated above. The Intermediate-Term Portfolio is expected to yield more than the Short-Term Portfolio.

The Long-Term Portfolio can invest in maturities out to 30 years. However, the investment structure will have maturities at varying lengths to provide periodic maturities for liquidity needs. In addition, a portion of the portfolio will be invested in very short-term securities to meet withdraw/transfer requests. Like the Intermediate-Term Portfolio, the Long-Term Portfolio will have withdraw restrictions to protect other participants in the portfolio as follows: A tribe may withdraw up to 5% of its available balance, not to exceed \$100,000, per month. The expected return of this portfolio should be higher than either the Intermediate or Short-Term Portfolios.

All securities to be purchased in any of the portfolios will be dictated by the BIA, as authorized by the Trust Investment Funds Statute, 25 USC 162a. In general, these consist of U.S. Government and U.S. Government Agency Securities, and other securities that have been specifically approved for use by the BIA. This includes CD's of banks and S&L's but given the current status of the S&L's the BIA intends to de-emphasize the use of CD's. The use of three separate portfolios has been purposefully structured in order to provide the opportunity to generate higher revenues yet still maintain flexibility for the tribes. The new structure will require some advanced planning of your expected money inflows and outflows to get the most benefits from the program.

■ TODAY'S MARKET

By now you've probably all heard something or other about the Federal Government's "thrift bailout plan." The bill, designed to resolve the country's savings and loan problems, was passed by Congress on Friday evening, August 4, 1989. It's a 1100 page document which those in the know say "will change the financial services industry forever" and represents "the most dramatic change since the 30's." Obviously it is full of sweeping reforms, new rules and regulations, tighter financial requirements and more stringent reporting. The ultimate cost, to the taxpayer of course, is estimated to be prohibitive at best. And this may not only be in tax dollars, but also possibly in terms of lost mortgage outlets, depressed real estate markets and diminished returns on savings.

What impact will it have on the Tribal Trust investment program? Not much, in and of itself. We believe interest rates have already started to decline of their own accord since peaking in early April 1989. The prime rate has dropped in two increments from 11.50% to 10.50%, and the Federal Reserve Board has loosened the reins a bit to ensure that we don't dive into a recession. The premium rates offered by some of the weaker S&L's will obviously disappear as those institutions are taken over. Fortunately we are not overly dependent on that part of the marketplace. Presently only 35 of the 455 institutions in which the BIA has deposits are flagged as not meeting the BIA minimum net worth to asset ratio requirement. If the BIA approach works correctly, all of the CD's in those institutions will have matured by the time they are closed, sold, merged or infused. In addition, however, the BIA does have a sizable commitment to the Federal Home Loan Bank, Dallas "As Agent" program which is specifically designed to provide funds to the less healthy S&L's under their jurisdiction. Under the terms of the agreement with BIA, FHLB personnel act as the BIA's agent at any proceedings, thus minimizing the paperwork requirements and significantly speeding up the process. Undoubtedly, that program will shortly be phased out of the FHLB's bag of remedies and many of the dollars the BIA has on deposit there will be coming back prematurely. As a matter of fact, since the rescue plan has gone into effect, the BIA has experienced only four S&L closures; all have been from the "As Agent" program. Deposits averaged \$1,000,000 per institution and the BIA received interest past the date of closure, up to the date of return.

Another reason we don't think the BIA program will be traumatized by the bailout program is because the BIA will be bailing out themselves. In other words, in transitioning to operations under the Security Pacific National Bank contract, the BIA will be phasing out of their current emphasis on CD's and increasing the commitment to U.S. Treasury and Government agency securities. As we see it, the weakening of the S&L industry and the advent of the Financial Trust Services Contract will dovetail nicely.

TRIBAL TRUST

■ GETTING ASSISTANCE

A first draft of the Tribal Trust Fund Allocation Plan, incorporating the information obtained from the completed Tribal Cash Planning Questionnaires, will be furnished to each Area Investment Coordinator. Each Coordinator will be asked to review and verify the information contained therein with the finished product to be sent to each tribe for further review and information. These documents will be used as the basis to allocate Tribal Trust Funds to the Short-Term, Intermediate and Long-Term Portfolios to be established under the Security Pacific Bank Contract. Any questions or additional information can be directed to the Division of Trust Funds Management, Albuquerque, New Mexico, Attention: Loren J. Farmer, (505) 766-2975.

TRIBAL TRUST

OCTOBER 1989
ISSUE 1, NUMBER 1

A Publication on the BIA/Security Pacific Bank Financial Trust Services Contract

■ ABOUT THIS NEWSLETTER

It is now approximately one year since Security Pacific was awarded the contract from the BIA to provide Financial Trust Services to support the BIA in its desire for improved management of almost \$2 Billion in assets for Tribes, Individual Indians and others. As part of the communication process supporting this project we will be publishing an ongoing newsletter of which this is the first issue. We hope this newsletter will provide answers, clarification and information of interest to you as tribal asset owners. We welcome your input as to possible topics for future issues.

■ PROJECT UPDATE

This project is an extremely complex undertaking. What we are in essence doing is building a banking institution - a Trust Company - for an entity which happens to be a government agency, with all the political and administrative elements of a government agency. This new "bank" will have assets of almost \$2 Billion under management, from which approximately 300,000 accountholders will demand both safety of money and a high rate of return, and access to their accounts from a network of over 100 offices - many of which are remotely located. These offices must all be connected to a central database which maintains the critical information on each account, and each office must be on-line to the system so that an accountholder standing in an office may find out the status of his or her account right away. The people who staff this network of offices must be trained to use a new system, and trained to the extent that errors are minimized and the system works as efficiently as if it truly were a trust company in the private sector.

Security Pacific Bank was awarded the contract in the fall of 1988. So, why aren't we "live" today? Aside from the technical complexities involved, there is another issue. The language in the law which appropriated the money for the contract has been interpreted to preclude the transfer of assets to Security Pacific this fiscal year. We are in hope that the conferees meeting on the new Interior appropriation for FY1990 will allow us to go forward. In the meantime, we are continuing to test the new Trust Fund Management System.

The selection of Security Pacific is timely given the uncertainty surrounding the recent Thrift "bail-out" legislation, with the creation of the Resolution Trust Corporation, departure of FSLIC

IN THIS ISSUE

- **PROJECT UPDATE**
Building a Trust Company
- **INVESTMENT STRUCTURE**
Focusing in on the Three Investment Alternatives
- **TODAY'S MARKET**
The Impact of the Saving & Loan Industry's Problems
- **GETTING ASSISTANCE**

SEP 15 1987

TRUST FUND CONSULTATION SCHEDULE

AREA	AGENCY	SUPERINTENDENT	TRIBE(S)	BRIEFING DATE	CONSULTATION TARGET DATE	ACTUAL DATE
PHOENIX	Colorado River	C.L. Henson	Chemehuevi Colorado River	May 14	June 14	June 10 June 18, July 11, 23
			Port Mojave			May 18
	Eastern Nevada	Steven Tibbets	Duckwater Shoshone Riy Colony Goshute Shoshone Paiute Te-Moak Battle Mountain Band Elko Band South Fork Band Wells Indian Colony	May 14	June 14	May 18 May 18 May 18 May 18 May 18 May 18 May 18 May 18
			White Mtn. Apache	May 14	June 14	May 20
			Cocopah Quechan	May 14	June 14	June 12 July 15
			Hopi	May 14	June 14	Responded by Ltr.
			Tonono O'odham	May 14	June 14	June 22, Sept. 9
			AK Chin Gila River	May 14	June 14	June 17 June 17
			Fl. McDowell Pascua Yaqui Salt R. Pima	May 14	June 14	May 18 NO T.P. Impact June 15
			San Carlos	May 14	June 14	June 11, 17

AREA	AGENCY	SUPERINTENDENT	TRIBE(S)	BRIEFING DATE	CONSULTATION TARGET DATE	ACTUAL DATE
	Truxton Canon	George Keller	Havasupai Hualapai Tonto Apache Yavapai-Apache Yavapai-Prescott	May 14	June 14	Did Not Attend May 28 May 28 May 28 May 28
	U & O	Perry Baker	Skull Valley Uintah & Ouray	May 14	June 14	June 25 June 10
	W. Nevada	Robert Hunter	Pt. McDermitt Fallon Paiute Shoshone LoveLock Pyramid Lake Paiute Reno-Sparks Summit Lake Paiute Walker R. Paiute Washoe Winnemucca Colony Yerington Paiute Yomba	May 14	June 14	Did Not Attend June 8 Did Not Attend June 8 June 8 June 8 June 8 June 8 June 8 Did Not Attend June 8 Did Not Attend
	S. Paiute PS	Dee Wilcox	Kaibab Paiute Las Vegas Moapa Paiute of Utah	May 14	June 14	June 4 June 8 June 9 June 8
ALBQR.	Jicarilla	Sherryl Viquil	Jicarilla Apache	May 19	June 19	July 24
	Laguna	Yamie Leeds	Laguna Pueblo	May 19	June 19	July 23
	Mescalero	Robert Walker	Mescalero Apache	May 19	June 19	June 10

AREA	AGENCY	SUPERINTENDENT	TRIBE(S)	BRIEFING		CONSULTATION		ACTUAL DATE		
				DATE	TARGET DATE	TARGET DATE	DATE			
N. Pueblos		Gene Powers	Nambe Pueblo	May 19	June 19	May 26	May 26			
			Picuris Pueblo			May 28	May 28			
			Pojoaque Pueblo			May 27	May 27			
			San Ildefonso			May 27	May 27			
			San Juan Pueblo			May 27	May 27			
			Santa Clara Pueblo			May 28	May 28			
			Taos Pueblo			May 28	May 28			
			Tesuque Pueblo			May 26	May 26			
			Ramah-Navajo	Richard Evans	Ramah-Navajo Band	May 19	June 19			
			S. Pueblos		Sam Montoya	Acoma Pueblo	May 19	June 19	May 13, July 17	May 13, July 17
Cochiti Pueblo						May 13, July 17	May 13, July 17			
Leleita Pueblo						May 13, July 17	May 13, July 17			
Jemez Pueblo						May 13, July 17	May 13, July 17			
Sandia Pueblo						May 13, July 17	May 13, July 17			
San Felipe Pueblo						May 13, July 17	May 13, July 17			
Santa Ana Pueblo						May 13, July 17	May 13, July 17			
Santo Domingo						May 13, July 17	May 13, July 17			
Zia Pueblo						May 13, July 17	May 13, July 17			
S. Ute	Alton Nordwall	Southern Ute				May 19	June 19	June 5	June 5	
Ute Mch. Ute	Dorrance Steele	Ute Mountain Ute	May 19	June 19	June 2	June 2				
Zuni	John Gray	Zuni Pueblo	May 19	June 19	June 4	June 4				
NAVAJO	Area Director	Wilson Barber	Navajo	May 19	June 19	June 17	June 17			

4.

<u>AREA</u>	<u>AGENCY</u>	<u>SUPERINTENDENT</u>	<u>TRIBE(S)</u>	<u>BRIEFING DATE</u>	<u>CONSULTATION TARGET DATE</u>	<u>ACTUAL DATE</u>	
BILLINGS	Blackfeet	William Gipp	Blackfeet	May 20	June 20	June 22	
	Crow	Ernest Moran, Sr.	Crow	May 20	June 20	Did Not Respond	
	Ft. Belknap	Sam Metterville	Ft. Belknap	May 20	June 20	June 26	
	Ft. Peck	Dennis Whiteman	Ft. Peck	May 20	June 20	June 22	
	N. Cheyenne	John Perea	N. Cheyenne	May 20	June 20	June 22	
	Rocky Boy's	Kenneth Davis	Chippewa Cree	May 20	June 20	June 8	
	Wind River	David Allison	Arapahoe Shoshone	May 20	June 20	June 24	
	ANADARKO	Anadarko	Ralph Penzoneau	Apache Caddo Comanche Delaware Ft. Sill Apache Kiowa Wichita	May 21	June 21	June 16 June 16 June 16 June 16 June 16 June 16 June 16
		Concho	James Abeita	Cheyenne-Arapaho	May 21	June 21	June 19
		Horton	Peggy Acoya	Iowa of Kansas Kickapoo of Kansas Prairie Potawatomi Sac & Fox of Missouri	May 21	June 21	June 16 June 16 Did Not Attend June 16

<u>AREA</u>	<u>AGENCY</u>	<u>SUPERINTENDENT</u>	<u>TRIBES (S)</u>	<u>BRIEFING DATE</u>	<u>CONSULTATION TARGET DATE</u>	<u>ACTUAL DATE</u>
	Pawnee	Julia Langan	Pawnee Kaw Otoe-Missouria Ponca Tonkawa	May 21	June 21	June 10 June 10 Did Not Attend June 10 June 10
	Shawnee	Joe Walker	Absentee Shawnee Iowa of Oklahoma Kickapoo of Okla. Citizens Pottawatomie Sac & Fox of Okla.	May 21	June 21	June 12 Did Not Attend Did Not Attend Did Not Attend June 12
MUSKOGEE	Atmore	Zane Browning	Chickasaw of Okla.	May 21	June 21	June 19
	Okmulgee	Jimmy Gibson	Creek of Okla. Alabama-Quassarte Tn. Kialegee Town Thlopthlocco Town	May 21	June 21	June 16 Did Not Attend Did Not Attend June 16
	Osage	Jack Shoemate	Osage	May 21	June 21	June 19
	Miami	Jack Naylor	Eastern Shawnee Miami Modoc of Okla. Ottawa Peoria Quapaw Seneca-Cayuga Wyandotte	May 21	June 21	Did Not Attend June 1 June 1 Did Not Attend June 1 June 1 June 1 June 1
	Tahlequah	Dennis Wickliffe	Cherokee of Okla United Keetoowah	May 21	June 21	June 17 June 17
	Talibina	Jacky Carl Pate	Choctaw of Okla.	May 21	June 21	July 22
	Mewoka	George Goodner	Seminole of Okla.	May 21	June 21	June 6

<u>AREA</u>	<u>AGENCY</u>	<u>SUPERINTENDENT</u>	<u>TRIBE(S)</u>	<u>BRIEFING DATE</u>	<u>CONSULTATION TARGET DATE</u>	<u>ACTUAL DATE</u>	
EASTERN	Area Office		Houlton Maliseet Band	May 21	June 21	Did Not Respond	
			Mashentucket Pequot			Did Not Respond	
			Miccosukee			Did Not Respond	
			Narragansett			No T.P. Impact	
			Pasamaguddy			Did Not Respond	
			Penobscot			Responded By Lt.	
			Gay Head Mamanoag			No T.P. Impact	
			Poarch Creek			Did Not Respond	
							June 25
							Did Not Attend
	Cherokee	Wilbur Paul	Eastern Cherokee	May 21	June 21	June 17	
	Choctaw	Robert Benn	Chitimacha Mississippi Choctaw Coushatta Tonica-Biloxi	May 21	June 21	June 19 June 19	
	New York FO	Dean White	Cayuga Oneida of New York Onondaga Seneca St. Regis Mohawk Tonawanda Seneca Tuscarora	May 21	June 21	No T.P. Impact No T.P. Impact No T.P. Impact No T.P. Impact No T.P. Impact No T.P. Impact	
	Seminole	Harold LaRoche	Seminole of Fla.	May 21	June 21	June 9	

<u>AREA</u>	<u>AGENCY</u>	<u>SUPERINTENDENT</u>	<u>TRIBE(S)</u>	<u>BRIEFING DATE</u>	<u>CONSULTATION TARGET DATE</u>	<u>ACTUAL DATE</u>
FORTLAND	Colville	George Davis	Colville	May 27	June 27	June 30
	Flethead	Wyman Babby	Salish & Kootenai	May 27	June 27	June 19
	Ft. Hall	Duane Thompson	Ft. Hall Northwestern Shoshoni	May 27	June 27	July 2 Did Not Respond
	N. Idaho	Gordon Cannon	Coeur D'Alene Kootenai Nez Perce	May 27	June 27	Did Not Respond Did Not Respond Did Not Respond
	Spokane	Michael Whitelaw	Kalispel Spokane	May 27	June 27	Did Not Respond Responded By Ltr.
	Umatilla	William Sandoval	Umatilla	May 27	June 27	June 12, 29
	Puget Sound	William Black	Lummi Muckleshoot Nisqually Nooksack Port Gamble Puyallup Sauk-Suiattle Stillaguamish Squamish Swinomish Tulalip Upper Skagit	May 27	June 27	May 22 Did Not Attend Did Not Attend No T.F. Impact Did Not Attend May 22 Did Not Attend May 22, June 29 May 22, June 29 May 22, June 29 May 22, June 29 Did Not Attend

<u>AREA</u>	<u>AGENCY</u>	<u>SUPERINTENDENT</u>	<u>TRIBE(S)</u>	<u>BRIEFING DATE</u>	<u>CONSULTATION TARGET DATE</u>	<u>ACTUAL DATE</u>
	Warm Springs	Bernard Topash	Warm Springs Klamath Burns-Paiute	May 27	June 27	June 18 No T.F. Impact Did Not Respond
	Yakima	Hiram Olney	Yakima	May 27	June 27	June 12, 15
	Metlaktla FS	Henry Alameda	Metlaktla	May 27	June 27	July 20
	Olympic Peninsula	Ray Maldonado	Chehalis Hob Jamestown Clallam Lower Elwha Makah Quileute Quinalt Shoalwater Skokomish Squaxin Island	May 27	June 27	Did Not Attend June 10 June 11 June 11 June 11 June 10 June 10 Did Not Attend Did Not Attend
	Siletz	Nelson Witt	Coos, Lower Umpqua & Siuslaw Grande Ronde Cow Creek Siletz	May 27	June 27	No T.F. Impact No T.F. Impact June 29 June 20

9.

AREA	AGENCY	SUPERINTENDENT	TRIBE(S)	BRIEFING DATE	CONSULTATION TARGET DATE	ACTUAL DATE
SACRAMTO.	Central Calif.	Michael Smith	Potter Valley	May 27	June 27	
			Alturas			
			Berry Creek			July 9
			Big Pine			
			Big Sandy			
			Big Valley			
			Bishop			July 9
			Bridgeport			
			Buena Vista			
			Cedarville			
			Chicken Ranch			
			Cloverdale			
			Cold Springs			
			Colusa			
			Covelo			June 18
			Coyote Valley			June 18
			Cortina			
			Dry Creek			
			Death Valley/Timbasha			July 9
			Elem			
			Enterprise			
			Ft. Bidwell			
			Ft. Independence			July 9
			Greenville			
			Grindstone			
			Hopland			June 18
			Jackson			
			Kashia			
			Laytonville			June 18
			Lone Pine			July 9
			Lookout			
			Manchester			
			Middletown			
			Mooretown			
			North Fork			
			Picayune			
			Pinoleville			June 18

11.

<u>AREA</u>	<u>AGENCY</u>	<u>SUPERINTENDENT</u>	<u>TRIBE(S)</u>	<u>BRIEFING DATE</u>	<u>CONSULTATION TARGET DATE</u>	<u>ACTUAL DATE</u>
	S. California	Tom Dowell	Augustine	May 27	June 27	Did Not Attend
			Barona			"
			Cabazon			"
			Cahuilla			"
			Campo			"
			Cuyapaipa			"
			Inaja & Cosmit			"
			Jamul			"
			La Jolla			"
			La Posta			"
			Manzanita			"
			San Manuel			"
			Morongo			"
			San Pasqual			"
			Pauma			June 11
			Santa Rosa			Did Not Attend
			Romana Band			"
			Santa Ynez			"
			Rincon			June 11
			Los Coyotes			Did Not Attend
			Mesa Grande			"
			Pala			June 11
			Pechanga			Did Not Attend
			Santa Ysabel			"
			Soboba			"
			Sycuan			"
			Torres-Martinez			"
			Twenty-Nine Palms			"
			Viejas			"

12.

<u>AREA</u>	<u>AGENCY</u>	<u>SUPERINTENDENT</u>	<u>TRIBE(S)</u>	<u>BRIEFING DATE</u>	<u>CONSULTATION TARGET DATE</u>	<u>ACTUAL DATE</u>
JUNEAU	Area Director	Jake Lestenkoff	Tlingit & Haida Aleutian Pribiloff Island Aleut Tribes: Akutan Atka Bekofski False Pass King Cover	May 27 May 27 Nelson Lagoon Nikolski Sand Point Unalaska	June 27	July 6 Teleconf. July 6 Teleconf. July 6 Teleconf.
ABERDEEN	Area Director	General Briefing for all Area Tribal Chairmen, Aberdeen, S.D. June 17				
	Cheyenne River	Russell McClure	Cheyenne River Sioux	May 28	June 28	June 17, July 8
	Crow Creek	Leo O'Connor	Crow Creek Sioux	May 28	June 28	June 17, 30
	Ft. Berthold	Alonzo Spang	Ft. Berthold	May 28	June 28	June 17, 23
	Ft. Totten	Donald Morgan	Devils Lake Sioux	May 28	June 28	June 17, 26
	Lower Brule	Edwin Miller	Lower Brule Sioux	May 28	June 28	
	Pine Ridge	Mike Fairbanks	Oglala Sioux	May 28	June 28	June 17, July 15
	Rosebud	Wyman McDonald	Rosebud Sioux	May 28	June 28	June 8, 17, July 2
	Sisseton	Cora Jones	Sisseton-Wahpeton	May 28	June 28	June 2, 17
	Standing Rock	Bobby Glass	Standing Rock Sioux	May 28	June 28	June 17
	Turtle Mtn.	Terrance Walters	Turtle Mountain	May 28	June 28	June 8, 17
	Winnabago	Don Whitener	Santee Sioux Winnabago Omaha	May 28	June 28	June 15 June 16 June 8
	Yankton	Dan Deerinwater	Yankton Sioux	May 28	June 28	June 23

<u>AREA</u>	<u>AGENCY</u>	<u>SUPERINTENDENT</u>	<u>TRIBE(S)</u>	<u>BRIEFING DATE</u>	<u>CONSULTATION TARGET DATE</u>	<u>ACTUAL DATE</u>
MNNPLS	Great Lakes	- James Morin	Bad River Forest County Potawatomi Lac Courte Oreilles Lac du Flambeau Oneida Red Cliff Sakaogon Chippewa St. Croix Stockbridge-Munsee Wisconsin Winnebago	May 28	June 28	June 11 June 16 Did Not Respond June 15 June 24 June 10 June 16 June 22 June 17 June 23
	Menominee LO		Menominee	May 28	June 28	June 9, 10
	Michigan	Alvin Picotte	Bay Mills Grand Traverse Hannahville Keweenaw Bay Saginaw Chippewa Sault Ste. Marie Chippewa	May 28	June 28	June 11 June 19 June 15 June 12 June 18 June 10
	Minnesota	Roger Aitken	Minnesota Chippewa: Fond du Lac Grand Portage Leech Lake Mille Lacs Nett Lake White Earth	May 28	June 28	July 16 July 17 July 17 July 16 July 16 July 17 July 16
	Minnesota Sioux	Don Murdock	Lower Sioux Prairie Island Shakopee Upper Sioux	May 28	June 28	June 15 June 3 June 23 June 12
	Red Lake	Rex Mayotte	Red Lake Chippewa	May 28	June 28	Did Not Respond
	Sac & Fox FO	James Fenelon	Sac & Fox	May 28	June 28	June 30



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Honorable Robert C. Byrd
Chairman, Subcommittee on Interior
and Related Agencies
Committee on Appropriations
United States Senate
Washington, DC 20510

SEP 8 1987

Dear Senator Byrd:

As a followup to a commitment made with Committee staff at an August 3 briefing, we have enclosed copies of correspondence with the following tribal groups subsequent to the consultation sessions conducted this summer on the proposal to procure trust fund services:

Choctaw Nation of Oklahoma	Saginaw Chippewa Indian Tribe
Confederated Tribes of	Shii Shi Keyah Association
Warm Springs	of Allottees
Hopi Tribe	Southern Ute Indian Tribe
Navajo Nation	Spokane Tribe
Omaha Tribe of Nebraska	Stockbridge-Munsee Community
Penobscot Indian Nation	United Sioux Tribes of South
Pueblo of San Juan	Dakota
Quapaw Tribe of Oklahoma	Yakima Indian Nation
Red Cliff Band of Lake	
Superior Chippewas	

In addition, we will provide separately a question and answer document which comprises all questions which were submitted in writing by tribes or agency superintendents on behalf of their constituent tribes.

Sincerely,

[S] Ross O. Swimmer,

Assistant Secretary - Indian Affairs

Enclosures (32)

Original also sent to Sidney R. Yates, Appropriations Subcommittee on Interior and Related Affairs; Morris K. Udall, Committee on Interior and Insular Affairs; and Daniel K. Inouye, Select Committee on Indian Affairs.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 11 1987

Mr. Joe Manor
Finance Director, Choctaw
Nation of Oklahoma
Drawer 1210
Durant, Oklahoma 74702-1210

Dear Mr. Manor:

Thank you for your letter of July 22 to the Talihina Agency Superintendent responding to the proposed contract for trust fund services.

You stated that the Choctaw Nation does not support this proposal since the cost for obtaining these services would be high and that the tribe may not receive the best rate of return on investment of their funds.

Contemplated costs for the services needed to upgrade our trust program will be higher during the initial implementation year than in subsequent years. There will be some dual costs for Bureau operations and contract phase-in during Fiscal Year 1988 and additional funds have been requested in the Bureau's FY'88 budget. After the implementation period, however, we expect the contract costs, plus remaining Bureau residual operation costs, to not exceed what we are currently paying for service delivery. Since the Bureau would continue to pay for all costs, the return on your assets would not be adversely impacted.

Moreover, because our current investment program is basically a manual operation which relies primarily on a bidding process for certificates of deposit in which funds are offered to the highest bidders, the professional services we are seeking would strengthen that process. Investment analysis or economic and market trend capability in considering other eligible government securities of varying maturities with potential higher yields is not included in today's program. Such expertise is readily available in the private sector. The addition of professional portfolio management services would also offer you more flexibility in selecting from the proposed short, intermediate and long-term investment options which would best meet your investment objectives and liquidity needs. In addition, tribes and individual Indians will receive more timely and accurate reports on their funds.

We are making every effort to consider all tribal concerns in our endeavor to improve our trust services program. I hope that we have responded to your concerns. Thank you for taking the time to review our proposal and express your views in writing.

Sincerely,

W. J. ...

Assistant Secretary - Indian Affairs

08:42 BUREAU OF INDIAN AFFAIRS, TALIHINA AGENCY

Choctaw Nation of Oklahoma

8/5/87



Drawer 1210 - Area Code 405-924-2226
Durant, Oklahoma 74702-1210

5 19 AM '87

TALIHINA AGENCY FINANCE DEPARTMENT

July 22, 1987

Mr. Jack Pate, Superintendent
Bureau of Indian Affairs
P.O. Drawer H
Talihina, Ok. 74571

Dear Mr. Pete,

The Choctaw Nation has been consulted regarding the contracting for Financial Services of Trust Funds.

The cost for these services will be considerably high and the Choctaw Nation may not receive the best rate of return.

Therefore, Choctaw Nation does not support contracting for these services.

Sincerely,

Joe Manor, Finance Director
Choctaw Nation of Oklahoma

JM/am



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 1 1987

Mr. Zane Jackson
Chairman, Warm Springs
Tribal Council
Warm Springs, Oregon 97761

Dear Mr. Jackson:

Thank you for your letter of July 7 to the Warm Springs Agency Superintendent commenting on our proposal for financial trust services. Please accept our apology for the delay in responding. Your comments, recommendations and transcript proceeding will be made part of the record and considered in preparing the final proposal.

We will address your concerns and questions in the same order as presented in your letter.

First, you requested responses or acknowledgments to all Warm Springs correspondence related to this proposal. In a telephone conference following your June 18 tribal consultation session, your tribal attorney itemized those outstanding letters for our reply. Copies of the following letters received and our responses are enclosed for your reference:

Warm Springs Correspondence

Jan 20 letter to Sec. Hodel
Feb 13 letter to AS/IA
Mar 16 letter to AS/IA

Mar 25 letter to AS/IA
May 19 letter to AS/IA

Apr 28 letter to BIA
Jul 2 letter to Sec. Hodel

DOI Responses

Feb 17 letter from AS/IA
Mar 16 letter from AS/IA
Mar 27 letter from AS/IA
and Mar 31 transmittal
See Jul 21 letter from Sol
Jun 26 letter from BIA
and Jul 21 letter from
Solicitor

Jul 13 letter from BIA
See Jul 21 letter from Sol

Second, you expressed your concern that this proposal would result in a diminution and erosion of the trust responsibility of the United States. I assure you that the proposal would in no way diminish our responsibility, as trustee, to the tribes and individuals. The Bureau is seeking professional cash management, accounting and investment advisory services that it critically needs to strengthen its legally mandated responsibility. Such improvements to our current operations are

readily available in the marketplace and would result in greater earnings from cash concentration and quicker investment, accurate daily accounting and interest distribution, and increased liquidity to tribes and individuals. The Bureau would continue to direct, monitor and authorize those transactions and activities performed by any prospective contractor. The protection of the trust would remain an integral part of the Bureau's trust responsibility.

Third, you are concerned that we may not continue to manage the trust resources and thereby do away with satisfying our cost obligation with appropriated dollars and withhold the costs from the trust funds. This is not the case and would be contrary to our trust fund management policy. The basic trust responsibility and management functions would remain exactly the same, but the methods to service those functions would be improved by securing the best services available in the marketplace. We expect the costs for the requested services to be higher during the initial implementation year than in subsequent years. There will be some dual costs for Bureau operations and contract phase-in during the Fiscal Year 1988; additional funds have been requested in the Bureau's FY 1988 budget. After the implementation period, however, we expect the contract costs, plus remaining Bureau residual operation costs, to not exceed what we are currently paying for service delivery. Since the Bureau would continue to pay for all costs, the return on tribal assets would not be adversely impacted.

Fourth, we have provided the following responses to your specific questions on the draft request for proposal (RFP) in the same numerical order as your letter:

1. Question: [With respect to cash collection and concentration,] what is different from what is being done now?

Response: Today, the Bureau receives deposits through a variety of methods, including: (1) over-the-counter receipts at the agency; (2) checks mailed to the agency (Note: In a few locations, checks are sent directly to the area office); (3) wire transfers directly to the Treasury; and (4) transfers from other federal agencies such as MMS, BLM, etc. All of these methods would be improved by the proposed procedures with the exception of wire transfers. Under the proposed process, most of the payments now made over-the-counter and those mailed into the agencies would be sent directly by the payors to the lockbox bank. Funds would be promptly deposited and subsequently invested more quickly. Instead of transfers from federal agencies, we would request that

the funds be wire transferred to the Bureau's concentration Treasury account at the financial institution, which would accelerate the deposit process.

2. Question: Why not consider regionalizing cash collection concentration?

Response: The collection of funds could be regionalized. Cash management studies would be conducted prior to implementation of the lockbox network to determine the most efficient collection point(s) for trust funds. The funds would then be routed to the contracting bank for immediate investment.

3. Question: Who is really going to manage the investments and make the final individual investment decisions? The RFP, and the explanation by your people, is unclear.

Response: The Bureau would continue to manage the investment process under the proposal and make the final investment decisions. The prospective contractor would notify the Bureau investment managers of the investment options available based on its investment and market analysis. The contractor would then execute the instructions received from the Bureau and record the transactions in the trust accounts established and maintained on their system, which would be available via an on-line, real-time computer network across the Bureau.

4. Question: If the answer to 3 above is the BIA, then what will be the time frame for approving individual investment decisions recommended by the financial institutions?

Response: Approval times could range from a few minutes for decisions to invest in very short-term securities such as overnight investments to whatever longer time is required in considering other longer term or different securities with varying market conditions. We would anticipate, however, that decisions would be made on a daily basis since cash receipts occur almost daily so that these assets may immediately begin earning interest.

5. Question: Why are custodial services included in this RFP? How can the U.S. Government, as trustee, delegate the holding of trust assets without approval of the beneficial owner of the trust?

Response: The U.S. Government, as trustee, would not be delegating the responsibility for the trust assets. The custodial services described in the RFP are routine services performed by commercial banks and investment service organizations for master trust programs. The contractor would be required to maintain secure custody of the accounts and maintain accurate records of the investment transactions. It would be more efficient for them to handle the custody of the certificates of deposit, for example, than it would for us. By allowing the contractor to handle the mechanical, routine aspect of the investment program, we would also be able to provide a better system of internal controls. The Price Waterhouse report recommended that the Bureau segregate the investment management and custody functions to improve our control responsibilities, and suggested the custody function could be provided by commercial banks. In addition, the funds would be audited by the financial institution's internal audit staff several times during the year and the Bureau's trust fund accounting staff each month. They would also be subject to review by the Inspector General and General Accounting Office.

6. Question: Tribes who currently base annual budgets on interest earnings will be unable to forecast and plan what in fact their earnings will be in the pooled funds and in fact no identifiable revenue will be available to tribes except by pulling lump sums from the pooled funds on dates when the withdrawals are permitted. (Currently on bonds, the tribes can look to interest payments, coupons, etc., for available revenue.)

Response: The proposed pooling of tribal trust funds for portfolio investment would enable professional advisors to recommend portfolio strategies and mix options which would produce the greatest returns while exposing the funds to the least risk. Portfolio mixes would diversify the funds among the eligible types of securities with varying maturities consistent with the objectives set for each portfolio. Funds would also be allocated proportionately among maturing securities to meet expected tribal cash withdrawals or the liquidity requirements of the respective portfolio.

The contracting institution would be required to provide valuations of the portfolios on a daily basis. In addition, the institution would project the expected earnings for the upcoming months in each new year, based on current and anticipated market conditions and the expected returns of the securities which have been

or would be invested for each portfolio. Using experienced portfolio managers and their advisory services, we would continue to be able to assist tribes with annual budget planning and projection of earnings for the upcoming year.

7. Question: Tribes with little knowledge or expertise in market conditions could very likely suffer losses as a result of withdrawing funds at a time when the fund value is down. Even tribes with expertise could lose money with market timing.

Response: We plan to provide training and cash planning assistance to tribes in selecting the appropriate portfolio(s), i.e. short, intermediate or long term, based on their investment goals and liquidity needs. Portfolios would be structured in such a way that funds would be available to meet tribal cash withdrawals. Tribal cash requirements would be a very important factor in determining the term of each portfolio and its respective investments. In addition, the average maturity of the portfolios would be shortened or lengthened based on market timing.

8. Question: Tribes with knowledge and expertise in market conditions could very easily take advantage of gains by withdrawing funds based on market conditions.

Response: Timing of disbursements could have a favorable impact on the earnings of a tribe, and that is what we hope will happen with the new system. We want you to earn more interest by planning your cash withdrawals and selecting the appropriate portfolio term. For those tribes that are less experienced, we expect that through the training sessions to be scheduled prior to and throughout implementation, they will be better able to select among the proposed portfolio options and schedule their withdrawals accordingly to maximize their interest income.

9. Question: In effect, the pools being considered seem to be developed with the needs of the BIA in mind, not the needs of each individual tribe with whom the BIA is exercising separate and individual trust responsibility.

Response: An investment manager with a large block of money to invest has a greater opportunity to obtain a higher rate of return than a manager with large numbers of small blocks of money with specific investment

instructions. The proposed investment system would benefit all tribes. Today, many tribes do not actively participate in their investment program, except when they want to make a withdrawal and then discover that their funds are invested in securities that may not mature in time to allow the smooth transition of funds. Some tribes, however, are actively involved with the investment of their funds and we hope they would continue that involvement in identifying their future cash planning needs. In order for the Bureau to maximize the earning capacity of your trust assets, we need good cash flow projection data, which must be identified by the tribal owners. Under the proposed system, we would be able to more efficiently meet your cash planning needs and investment goals, and also meet our trust responsibility to maximize the interest earned on your trust dollars. In short, we would be able to better serve all trust fund account owners with the proposed system.

10. Question: What will be the standard turnaround time for checks, particularly per capita checks? Will the contract set a standard? Will tribes have input into such standards?

Response: The Bureau now has a turnaround time on per capita issuance of checks that is usually three to four days. The checks are then mailed to the account holder or to the relevant agency/area for pickup. Under the proposal, the data would be electronically transmitted to the concentration bank for processing and issuance of the checks, which would then be mailed out on the same or next day to the account holders.

Section 5.3 of the draft RFP describes the requirements for disbursements from trust accounts. We would welcome any suggestions on this section to provide the most efficient procedures for accomplishing this function. Once the contract has been awarded, the requirements described in the final RFP would become the basis for the "standards" for contractor compliance. As indicated in section 5.3.5.0 of the draft RFP, the contractor would be expected to issue checks (including per capita checks) daily as requested by the Bureau.

11. Question: Each individual tribe is unique and has its own separate needs which must be met to satisfy the trust relationship with that tribe. Have there been any dialogues with tribes about their individual

needs? Are tribal and individual needs to be considered in the services to be delivered?

Response: We are making every effort to meet our obligation to provide sound trust fund financial management to all trust account owners, large and small. We want to establish, through the implementation of this proposed contract, the most efficient combination of private and Bureau capabilities. Each tribe has been given several opportunities to comment on what they would like included in this effort, beginning in 1986 with letters notifying all tribes of the Bureau's intention to address the trust fund management problems and seeking their comments and then again this year with the individual tribal consultation sessions which have generated comments and suggestions from the majority of tribes. We have proposed positive action to the problems involved with the financial management of trust funds and we are currently incorporating many of the recommendations received from tribes and the private sector into the final proposal.

12. Question: It appears to us that a major part of the current problems have been due to inadequately trained staff in the field and failure to provide relevant information on a timely basis. Please explain how the full implementation of the IRMS system will correct these deficiencies.

Response: The full implementation of the IRMS system would not solve the problems that the Bureau is experiencing due to inadequately trained staff. Prior to the implementation of the proposed system, the financial institution would assist the Bureau in training all relevant field personnel at the agency, area and central office locations. This training would reinforce internal control procedures and define specific lines of authority between agency and area offices. Procedural manuals would be provided to all persons receiving this training. This should greatly improve the Bureau's capabilities related to the lack of properly trained individuals.

The full implementation of the IRMS system will help us address the failure to provide relevant information on a timely basis. Currently, the Bureau is in the final stages of editing the lease and ownership data in the IRMS system at all agencies. We are also converting the data base files in the IRMS system to ADABASE

format, which will allow us to process data more efficiently and interface with an IBM system or an external contractor's system more easily. We expect this effort to be completed in early 1988. By cleaning up the data in the IRMS system, and then creating a more efficient method of handling the data, we expect to be able to provide the relevant information that you refer to on a more timely basis.

13. Question: At what level will on-line access be available? Area, agency, or tribal location?

Response: On-line access to information for trust accounts would be available to the area and agency locations. We also anticipate that an option would be made available to those tribes desiring on-line access to their own tribal account balances and related transaction summary data. Only Bureau area and agency offices, however, would have access to IIM balance data. The associated costs for tribal access, yet to be determined in part or in total, would be the responsibility of the user tribe.

14. Question: What will become of financial trust positions for which funding has been removed from the Indian priority system? Will these positions be removed unilaterally by the Bureau along with direct contact between the tribes and individual Indians with someone having direct access to account information?

Response: Under current operations, many non-financial program staff devote significant portions of their time to handling and accounting for trust collections due to the lack of modern data systems. The use of contracted modern systems would enable these staff members to return their efforts to program duties.

Further, it is unlikely that staff would be laid off as a result of the proposed contract. There will continue to be a need for staff at each area and agency to monitor the contract and to continue to provide the necessary services to their respective Indian constituents. Every effort will be made to place any affected employee in other positions available at their same working stations such as IRMS and realty work for which there are great staffing needs. In other words, while fewer Bureau employees will be required specifically for financial trust activities under the contract, other activities will require additional employees.

15. Question: What reports will the tribes and individual account holders receive?

Response: Account holders would receive monthly statements of account that would present transaction summaries and beginning and ending balances in their accounts. These reports would be sent directly to the tribal and individual Indian money (IIM) account holders, unless the account holder desires the agency to receive and hold the reports until they can be picked up. In addition, we are exploring alternatives to provide future improvements in tribal reporting. As a result of the contract, we would then be able to consider the inclusion of optional tribal reports such as monthly balance sheet and income statement reports.

16. Question: Will tribes have any input into the format and contents of those reports?

Response: With respect to report formats, you may expect standard formats used for these types of reports and, during the phase-in period, reports would be similar to those you receive today. We would welcome any suggestions you may wish to offer on report format or content. Please keep in mind that cost effectiveness would be a primary factor in considering significant variations in standard report formats.

17. Question: Will any reports be forwarded directly to tribes to avoid unnecessary delays in tribal receipt of needed information?

Response: In addition to the respective area and agency, reports would be sent directly to each tribe unless they prefer them to be sent to the agency.

Fifth, you asked to what study did Article 1.0 "Summary" of the draft RFP in the second sentence of the last paragraph refer. That study refers to the Price Waterhouse report of January 1984; the report summary was provided to you in preparation for the June consultation meeting.

Sixth, you requested that answers be provided to you relating to questions raised in the June 26, 1987, memorandum from the Portland Area Director. A copy of our response to this memorandum will be provided separately.

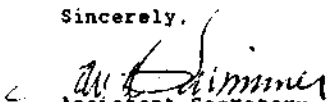
Seventh, we share your concern that the Bureau's accounting is the most critical area in need of improvement. A major part of our proposal focuses on obtaining external services which would assist us in upgrading this function. Using available state-of-the-art systems would enable more timely and accurate accounting data to be presented to BIA, tribes and individual Indian participants.

In addition, we are also seeking cash management services to improve these areas in our trust program. Private cash management services, already used by other federal agencies, would result in greater earnings to the trust accounts from disbursement float benefits and by minimizing the delays between cash receipts and deposits. Those federal agencies using Treasury's network financial institutions have benefited in increased earnings totally approximately \$29 million for the years 1983 through July 1987. The network currently handles 180 accounts with an annual cash flow of \$15 billion for 46 agencies and seven departments.

Finally, you commented that the Bureau's investment performance record is good and does not appear to be in need of repair. I agree that the Bureau has performed well in this function, and past assessments from independent studies have so acknowledged. These same studies, however, have also recommended the Bureau seek supplementary professional advisory services to continue and strengthen our investment responsibilities. Investment analysis or economic and market trend capability in considering other eligible government securities of varying maturities with potentially higher yields is not included in today's program. The addition of professional portfolio management services would also offer more flexibility in selecting from the proposed short, intermediate and long term investment options. These investment services would assist us in continuing to assure safety, liquidity and maximum return for your trust assets.

In closing, I wish to thank you for taking the time to review our proposal and providing us your comments. I hope that we have responded to your concerns and questions. Your suggestions are sincerely appreciated and will be used in preparing the final proposal for improving the quality of trust fund services.

Sincerely,


Assistant Secretary - Indian Affairs

Enclosures

cc: Portland Area Director
Warm Springs Superintendent



July 7, 1987

Bernard Topash, Superintendent
Warm Springs Agency
Bureau of Indian Affairs
P.O. Box B
Warm Springs, OR 97761

Subject: RFP For Financial Trust Services

Dear Superintendent Topash:

This is the Tribal Council's written response supplementing the meeting held on June 18, 1987, concerning the proposed RFP relating to tribal and individual Indian trust funds. We understand that the Assistant Secretary for Indian Affairs will provide a written response to us on all issues which were raised within 30 days of the date the issues are received by the Bureau of Indian Affairs.

At the outset, we again must state the grave concerns that we have concerning this whole process. It is clear that the decision to proceed was made before any meaningful consultation with tribal leadership and that the implementation is proceeding regardless of the concerns that our Tribe has. We have many unanswered questions that we have previously asked, many unresponded-to requests for information, and comments that we submitted, such as our letter on the consultation process of April 28, 1987, that were not even acknowledged. We are extremely disturbed about the course upon which the Assistant Secretary seems set and, as always, will take whatever steps we believe are necessary to protect the interests of our people.

Our overriding concern is that implementation of this proposal will, in the long run, result in a diminution and erosion of the trust responsibility of the United States. That trust responsibility is something we hold very dear. We have received numerous assurances from the Assistant Secretary and others in his administration that this will not occur, yet there is no way that can be said with assurance. The Assistant Secretary proposes dismantling the entire Bureau program all at once, and we believe it would be very difficult to retreat from that position if this experiment should fail. We believe such a course to be reckless and not in the best interests of Indian people.

Bernard Topash, Superintendent
July 7, 1987

Our second primary concern is that, rather than the Bureau continuing to manage these resources as we believe it is obligated to do by the trust responsibility, the Assistant Secretary will see this as a "subsidy," and it won't be long before he will propose to do away with satisfying this obligation with appropriated dollars and suggest that the cost be withheld from the trust funds themselves.

Finally, we have many concerns about the mechanics of this proposal. We asked a number of questions which the Bureau could not answer and were told that some of these details had not yet been worked out. How can we evaluate the advisability of a proposal when we do not know what that proposal contains?

At tribal expense, we had a court reporter keep a verbatim transcript (subject to some minor errors which always occur in a transcript) of the consultation meeting held between you, Mr. James Parris, Mr. John Vale and the Tribal Council and its representatives on June 18, 1987 at Warm Springs. We are providing you a copy of that transcript with this letter.

We specifically request to have all questions asked at that meeting on behalf of the Tribe answered and all requests for materials, documents and information included in the transcript complied with. In addition, we have further specific questions concerning the RFP.

The RFP suggests that cash collection and concentration will occur from several sources: (1) lock-box services, (2) electronic fund transfer payments from payor and transfers from BIA and the Treasury, and (3) redemption of securities and investment earnings by the financial institution. With regard to the specifics, we ask the following:

1. What is different from what is being done now?
2. Why not consider regionalizing cash collection concentration?

With regard to investment management services as described in the RFP, we ask the following specific questions:

3. Who is really going to manage the investments and make the final individual investment decisions? The RFP, and the explanation by your people, is unclear.
4. If the answer to 3 above is the BIA, then what will be the time frame for approving individual investment decisions recommended by the financial institutions?

Bernard Topash, Superintendent
July 7, 1987

5. Why are custodial services included in this RFP? How can the U.S. Government, as trustee, delegate the holding of trust assets without approval of the beneficial owner of the trust?

Since investments are proposed for pooling, and since time periods provided in the RFP are extended as to investment maturities, then each tribe's interest in each pool will be based on shares. This means that, based on market conditions at any given date, the tribe's funds may be down in value. How does the BIA anticipate dealing with the following potential problems?

6. Tribes who currently base annual budgets on interest earning will be unable to forecast and plan what in fact their earnings will be in the pooled funds and in fact no identifiable revenue will be available to tribes except by pulling lump sums from the pooled funds on dates when the withdrawals are permitted. (Currently on bonds, the tribes can look to interest payments, coupons, etc., for available revenue.)
7. Tribes with little knowledge or expertise in market conditions could very likely suffer losses as a result of withdrawing funds at a time when the fund value is down. Even tribes with expertise could lose money with market timing.
8. Tribes with knowledge and expertise in market conditions could very easily take advantage of gains by withdrawing funds based on market conditions.
9. In effect, the pools being considered seem to be developed with the needs of the BIA in mind, not the needs of each individual tribe with whom the BIA is exercising separate and individual trust responsibility.

With regard to the statement concerning disbursements from trust accounts that checks will be issued and other forms of disbursements made only as requested or approved by the BIA, we the have the following specific questions:

10. What will be the standard turnaround time for checks, particularly per capita checks? Will the contract set a standard? Will tribes have input into such standards?
11. Each individual tribe is unique and has its own separate needs which must be met to satisfy the trust relationship with that tribe. Have there been any dialogues with tribes about their individual needs? Are tribal and individual needs to be considered in the services to be delivered?

Bernard Topash, Superintendent
July 7, 1987

We point out that when automating the IIM accounts, the Bureau promised the tribes that checkwriting capability would remain at the agency level. Thereafter, that authority was unilaterally withdrawn by the Bureau. In the case of our Tribe, it forces the Tribe to make loans to individual members while they await the receipt of checks mailed from BIA in Portland. Will this problem be compounded by this RFP?

The RFP suggests that the financial institution must compute daily interest rate factors for each of the trust pools and hold such data in a program which may be accessed on line by the BIA. Since participants will be accounted for on a share basis and the pool will be valued at market on a daily basis, how can interest be computed on a daily basis?

With regard to the provision of data/systems processing, we have the following questions:

12. It appears to us that a major part of the current problems have been due to inadequately trained staff in the field and failure to provide relevant information on a timely basis. Please explain how the full implementation of the RPMS system will correct these deficiencies.

With regard to custodial services and IIM accounts, we have the following specific questions:

13. At what level will on-line access be available? Area, agency, or tribal location?
14. What will become of financial trust positions for which funding has been removed from the Indian priority system? Will these positions be removed unilaterally by the Bureau along with direct contact between the tribes and individual Indians with someone having direct access to account information?

With regard to reporting, we have the following questions:

15. What reports will the tribes and individual account holders receive?
16. Will tribes have any input into the format and contents of those reports?
17. Will any reports be forwarded directly to tribes to avoid unnecessary delays in tribal receipt of needed information?

Bernard Topash, Superintendent
July 7, 1987

The first page of Article 1.0 "Summary" of the RFP in the second sentence of the last paragraph refers to a "recently completed study." What study is that?

We recently received copies of the Bureau of Indian Affairs Financial Memorandum 87-46 dated July 1, 1987 transmitting certain other documents which raise serious question concerning the legality of this RFP. Please provide us with answers to the questions raised in the June 26, 1987 memorandum from the Portland Area Director to the Assistant Secretary - Indian Affairs.

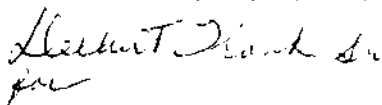
We hoped the Assistant Secretary would follow our recommendations contained in our letter of April 28, 1987 to Ms. Betty Wilkinson concerning this consultation process to allow us further opportunity to comment after we've received responses to these questions. We again ask that you make that change in your procedure and your schedule.

We recognize as well as anyone that the Bureau's accounting is a shambles and a disgrace. We do not see any way in good conscience how you can transfer all of these operations without first straightening that out. We also restate our concern that too much is being done too fast. Prudence would suggest a step-by-step process of attacking these problems, with the first step being the proper accounting of and reconciliation of all accounts. That is a known need and has been addressed by numerous studies.

On the other hand, the Bureau's investment performance record is good and does not appear to be in need of repair. We recommend that the Bureau consider an RFP for accounting services only and that it provide a meaningful consultation process for tribes to participate in the development of such a proposal.

We look forward to receiving your prompt response.

Sincerely,



Zane Jackson, Chairman
Warm Springs Tribal Council

Enclosure



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 17 1987.

Ms. Wilma L. Himel
Treasurer, Hopi Tribal Council
P.O. Box 123
Oraibi, Arizona 86039

Dear Ms. Himel:

Thank you for your July 23 letter to the Hopi Agency Superintendent offering supportive recommendations to the proposed procurement for financial trust services.

You first recommended that the Hopi Tribe be timely consulted prior to initiating contract implementation so that your tribal plans for investment may be included. Our investment staff would continue to work with you, throughout all phases of implementation, to determine your tribal cash requirements and to provide assistance in selecting those investment portfolio options which would best meet your investment objectives and liquidity needs.

Second, you recommended that your tribe be afforded the opportunity to develop and enforce its own investment policy under the proposed BIA contract to ensure the lowest risk and highest rate of return. Tribes now may develop their own investment policies; this would not change under the proposal. With respect to those trust funds managed by the Bureau under the Indian trust fund statute (25 U.S.C. 161a), it is the Bureau's legal responsibility, as trustee, to approve investment decisions which would assure safety, liquidity and maximum return to the Indian beneficiaries. The professional advisory services we are seeking would assist us in making the best possible decisions. Again, your tribe's cash planning guidance is important so that we may approve decisions consistent with your cash flow and investment goals.

And third, you recommended that the proposed contract have the capability to provide on-line access to tribes. We anticipate that an option would be made available to those tribes desiring on-line access to their own tribal account balances and related transaction summary data. Only Bureau area and agency offices, however, would have access to IIM balance data. The associated costs, yet to be determined in part or in total, would be the responsibility of the user tribe.

In closing, I wish to thank you for taking the time to review the proposal and for providing us your recommendations. They will be used in preparing our final proposal. Your support of our endeavor to improve the quality of trust fund services is sincerely appreciated.

Sincerely,

/s/ Ross O. Swimmer

Assistant Secretary - Indian Affairs

THE HOPI TRIBE

Ivan L. Sidney
CHAIRMAN

VICE CHAIRMAN

July 23, 1987

In reply refer to:

Alph Secakuku
Alph Secakuku, Superintendent
Hopi Agency
Bureau of Indian Affairs
P.O. Box 158
Keams Canyon, Arizona 86040

Re: Trust Management

Dear Mr. Secakuku,

I have reviewed the materials relating to the Trust Management contract. The material provided is very informative, although I did not find the actual PFP for the funds management services.

I do have several recommendations and desires that I would like to see implemented with this new contract proposal.

1. The Hopi Tribe should be consulted in a timely manner prior to initiating the agency's implementation of the contract for the Tribes plans on investments.
2. The Hopi Tribe should be afforded the opportunity to develop/enforce their own investment policy even if handled through the BIA trust management contract to ensure the lowest risk and highest rate of return.
3. The Contract for Trust Services should have the capability to provide on-line access to the Hopi Tribe and all tribes.

Thank you for this opportunity to provide some input in this planning process. If you have any questions, please call me at 724-2441, extension 173.

Sincerely,

William H. H. H.
William H. H. H., Treasurer
Hopi Tribal Council



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

0617 1987

Mr. Peter MacDonald, Sr.
Chairman, Navajo Nation
P.O. Box 308
Window Rock, Arizona 86515

Dear Mr. MacDonald:

Thank you for your letter of July 2 responding to the proposed procurement of financial trust services. Please accept our apology for the delay in responding. Your comments and recommendations will be made a part of the tribal consultation record and considered in preparing our final proposal.

I wish to first commend the Navajo Nation on the progress and achievements made in its investment management program for tribal assets. Your successful experience offers much that we and other tribes might potentially benefit from in using professional services to improve existing financial management programs.

We will respond first to your specific tribal requests and then address your general comments and recommendations in the same order as your letter.

You first requested that all Navajo monies held in trust by the Bureau be transferred to your tribe for its own investment, management and administration. As you know, this option is already available to you. Tribal funds may be withdrawn from trust status upon appropriate authorization by the Bureau, as trustee, in accordance with statutory and regulatory limitations. You are also aware that when a tribe exercises this option, it then assumes the investment responsibility and liability as well as the costs for its tribal investment program.

With respect to your request that the Bureau also fund the tribe's costs for its respective management in an amount comparable to that which would be paid to a contracting institution for such services, I wish to clarify that our procurement proposal would not grant any management nor decision-making authority functions to the prospective institution. Consistent with our legal responsibility, the contractor would only provide transactional or advisory services in nature. The Bureau would continue to direct, monitor and authorize those transactions and activities performed by the contractor. If you wish to submit a proposal under these same

conditions, within the scope of our current proposal and contracting authorities (as you suggest), we would be willing to consider any appropriate services which might be rendered by the Navajo Nation.

In general, you first commented that our draft request for proposal (RFP) does not address the problems related to monitoring the Bureau's systems in areas such as revenue collection and investment. In response to your concern that better provisions be included to assure that tribal revenues and investments are properly and adequately managed, we plan to incorporate into the final RFP definite criteria which would provide the Bureau monitoring measures to assure contractor compliance and quality performance in these and other service areas we are seeking to improve.

Second, you recommended that we regionalize our proposal and have several institutions located in different geographical areas handle the proposed work. The draft RFP would not preclude prospective bidders from submitting such a proposal. A bidder could join or subcontract with other financial institutions in a respondent proposal which would best meet the performance statement of work. The principal bidder, however, would have to meet the eligibility criteria, i.e., be designated as a depository and fiscal agent of the Treasury, have a registered trust department with fiduciary responsibility for at least \$500 million in assets and have at least \$250 million under investment management. Further consideration would be given to advantages such as cost effectiveness, ease of monitoring and assurance that functions would not be fractionated.

Third, you commented that the data requirements of the RFP would require a significant amount of effort to convert the data to any new system and indicated that potential problems may arise during contract implementation and thereby impact Indian tribes and their members. You further emphasized that the "comfort factor" of an understanding of the data converted by the prospective financial institution is an important area of concern to the Indian asset holders.

As a result of our request for information to the private sector in 1985, we found that modern trust financial systems are available which have the capability of handling activities similar to our functional needs, and in many cases, handle account activity and dollar levels far in excess of the Bureau's trust operations. Such systems are already equipped with corresponding financial controls. Our proposal to utilize private trust systems would minimize the amount of redesign necessary to our current internal systems. The contracting institution would be required to have a compatible state-of-the-art software system. Or in other words, they would be able to accept our data in an automated format and enter into their system.

To minimize any implementation problems, we are currently redesigning our Integrated Records Management System (IRMS) environment to enable the transfer of IRMS data to an external system with relative ease. IRMS is made up of four subsystems: individual Indian monies, lease, owner and people. For the past year, the Bureau has made a concerted effort to bring each of the four subsystems on-line with current and accurate data. The data is currently available in an automated format. We expect our redesign effort to be completed in December 1987.

You further indicated that the RFP has no contingency plan or system backup in the event the selected institution fails to perform. In the IRMS redesign, the modules would be available on the Bureau's system so that they may be exercised should the need arise. The financial institution and the Bureau would have a close working relationship; however, in the event of non-performance, contract cancellation or expiration, the Bureau would be in a position to carry on its functions in-house during the interim.

Fourth, you recommended that the Navajo Nation be represented on the committee that will select the prospective financial institution. When we establish the evaluation committee, I will consider your recommendation at that time. Thank you for your willingness to participate in the evaluation process.

And finally, you pointed out that the costs relating to this proposal should not reduce the existing funding for Indian tribes nor be deducted from the return on their trust fund investments. We expect the costs for the requested services to be higher during the initial implementation year than in subsequent years. There will be some dual costs for Bureau operations and contract phase-in during Fiscal Year 1988; additional funds have been requested in the Bureau's FY'88 budget. After the implementation period, however, we expect the contract costs, plus remaining Bureau residual operation costs, to not exceed what we are currently paying for service delivery. Since the Bureau would continue to pay for all costs, the return on tribal assets would not be adversely impacted.

In closing, I wish to thank you for taking the time to review our proposal and providing us constructive comments. Your supportive recommendations on our proposal to improve the quality of trust fund services is sincerely appreciated.

Sincerely,

/S/ Ross O Swinmer

Assistant Secretary - Indian Affairs


THE NAVAJO NATION

 PETER MACDONALD
 CHAIRMAN

 JOHNNY R. THOMPSON
 VICE CHAIRMAN

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 BIA

JUL 21 1987

Mr. Ross Swimmer
 Assistant Secretary of the Interior
 U.S. Department of Interior
 18th and C Street, N.W.
 Washington, D.C. 20040

Dear Mr. Swimmer:

Subsequent to consultation with the BIA Navajo Area Director, the Navajo Nation hereby responds as requested to the BIA's Request for Proposal for Financial Trust Services dated April 1987. The Navajo Nation's response will not be limited to the Nation's concern for investment by the BIA of Navajo Nation Trust Funds, but will include comments on the overall intent of the BIA's Proposal with respect for those other Indian Tribes who are not as fortunate in regards to resources and expertises as compared to the Navajo Nation.

As a result of our resources, expertise and existing policy regarding investment of Tribal monies, the Navajo Nation believes the investment of Navajo Nation Funds held in Trust by the BIA can be managed and administered more effectively by the Navajo Nation than being contracted out to a financial institution. Presently, the Navajo Nation is investing, managing, and administering Tribal monies in excess of one hundred and fifty million dollars while simultaneously monitoring other monies totaling approximately one hundred and twenty five million dollars that are managed by the BIA and other fiduciary institutions. The Tribe invests its funds in accordance with existing Tribal policy, procedures and guidelines regarding investment of Tribal discretionary monies. The Nation's Investment Policy is quite explicit concerning the objectives, preferences, statutory constraints and management capacity of Tribal Funds. Safety of Capital (Risk), local considerations, liquidity and return on investment are the primary objectives of the existing Navajo Nation Investment Policy.

KSwimmer/Proposed for Financial Services
Page 2 of 5

As a result of the Nation's current expertise and policy/procedures in conjunction with the fact that the Navajo Nation is successfully managing a significant amount of money in excess of what the BIA is managing of Navajo Trust Funds, please be advised that the Navajo Nation respectfully requests that all Navajo monies held in Trust by the BIA be immediately transferred to the Navajo Nation for investment, management and administration by the Navajo Nation. The Nation acknowledges that definitive agreements must be effectuated between the Nation and the BIA pursuant to the Navajo Nation evidencing compliance with those plans adopted by Congress for the use of land claims monies. However, in as much that any financial institution the BIA contracts with subsequent to the Request for Proposal would also have to provide evidence of compliance, the Navajo Nation wholeheartedly believes that the transfer of Navajo monies held in Trust by the BIA and the subsequent Investment/Management/Administration of these funds by the Navajo Nation would not be a violation of the BIA Trust Responsibilities.

The Navajo Nation's position and request is further strengthened by the advent of the Assistant Secretary's waiver of the federal regulations in approving the Nation's request for direct lockbox services for receipt of all Navajo Oil and Gas Revenues. Once the lockbox for oil and gas revenues is implemented, the Nation anticipates requesting for approval from the BIA for similar service for receipt of all Navajo Coal and Mineral Revenues. The lockbox services effectively reduce (1) the amount of revenues received by the BIA on behalf of the Navajo Nation, (2) the number of transactions the BIA processes for Navajo Trust Funds, and (3) the amount of Tribal money managed by the BIA.

Since the BIA is willing to contract with a private financial institution to manage Navajo Funds, it seems more appropriate for the BIA to fund the Navajo Nation's cost to manage its own Trust monies in light of its demonstrated experience and expertise in this area. The Navajo Nation would, if approval is granted for the Nation to manage its own monies, provide the necessary facilities and services to process receipt of IIM funds and their related disbursements to members of the Navajo Tribe. However, the Nation would expect compensation comparable to that received by a financial institution for these services. By having the Navajo Nation be responsible for and manage its own monies, additional employment of Navajos would result as well as receiving ancillary services from those institutions where the Tribe invests these funds.

KSwimmer/Proposal for Financial Services
Page 3 of 5

The above comments relate specifically to the concern the Navajo Nation has with respect to the management of Navajo Funds held in Trust by the BIA. The following comments pertain to the overall concept contained in the BIA Request for Financial Trust Services.

As you are aware, the Navajo Nation as well as other Tribes and states have had continuing problems with the present system of revenue collection as administered by MMS and the BIA. These problems have also resulted in much difficulty in the monitoring of BIA Tribal Trust Funds Investment. Much effort is expended in monitoring and recording the receipt of revenues collected, invested, etc ... due to (1) the lack of information provided to the Tribes by MMS and the BIA and (2) the time lag inherent in the Department of Interior's systems. The tracking of revenues received by MMS and the BIA and the resultant investment of these monies by the BIA has been a constant headache for the Tribes.

Since the Department of Interior's revenue collection system, deposit to US Treasury Investment Area and actual investment process do not interface, compounded with the fact there is no existing internal balance and control within the BIA in regards to these funds, the Tribes are required to expend considerable Tribal resources, in terms of personnel and money, in an effort to monitor these areas in order to ensure Tribal revenues and investments (as managed by the Department of Interior) are being properly and adequately managed. Many errors have been discovered as a direct result of the monitoring efforts by the Tribes that would have probably gone uncorrected by MMS and the BIA had it not been for the Tribes' continued monitoring of the Department of Interior Systems. It does not appear that the Request for Proposal addresses the aforementioned flaws in your system.

While the RFP indicates many different types of revenues collected and disbursements to be made, and in light of the number of Tribes included in the total pooled fund of approximately \$1.7 billion dollars, it does not appear logical nor reasonable for one institution to be delegated the total responsibility for revenue collection, disbursement, and investment management for all Indian Tribes! The Navajo Nation believes a concept of utilizing regional institutions would be more beneficial to all Indian Tribes. The Tribes experience with one institution, the BIA, has been detrimental to the Tribes. Should one institution be awarded this contract, and should this institution not be located in Indian Country, the resultant jobs from this contract would go to non-Indians; thus the BIA is once again not fulfilling its Trust Responsibility in regards to economic development for Indian Tribes and their people.

RSwimmer/Proposal for Financial Services
Page 4 of 5

By dividing the country into three geographic zones, Western, Central and Eastern, a regional concept could accomplish the desired result of improved efficiency as outlined in the RFP while also providing comfort to those Tribes concerned with what institution their monies are deposited in. In addition, the regional concept can address the economic development needs previously mentioned.

The data requirements of this RFP will also require a significant amount of effort to convert the data to any new system. Data must not only be converted, but also an understanding of the data converted and its impact upon Indian Tribes is a major factor to be understood. For many Indian Tribes and their members, these monies are critical to their everyday existence. To expect one (1) financial institution to be able to develop the means to handle these requirements in a timely manner may be creating major problems and probably will require many years to successfully implement. Again, regional financial institutions would tend to reduce the volume and variation of data to be processed and understood which would result in a more personalized approach to handling the information and the relations with the Indian Tribes. The comfort factor (personal relationship) is a most critical area for many Indian Tribes and their members.

The selection process, once the proposals have been received, is also most critical. The appointed or selected individuals who will review and analyze the proposals must be knowledgeable in the existing systems as well as having a thorough understanding of the needs and requirements of Indian Tribes and their members. It is strongly recommended by the Navajo Nation, and concurred by the BIA Navajo Area Director, that the Navajo Nation be represented on the committee that will make the selection of the financial institution(s) that will assume the responsibility for processing the day to day operations of the BIA trust funds.

Additionally, the regional concept of using more than one financial institution would provide system backup if one of the institutions selected was not able to perform satisfactorily pursuant to their contractual obligation. As presently structured, the RFP has NO contingency plan should your selected financial institution fail to perform.

The cost relating to the conversion and implementation of this request and the on-going cost of maintaining the investment operation by an outside financial institution must be carefully considered along with continuing costs incurred by the BIA. It must be so indicated and agreed to by the Department of Interior and the US Congress that the costs relating to these trust fund responsibilities, whether BIA or others, will not reduce the existing funding for Indian Tribes, now or in the future.

RSwimmer/Proposal for Financial Services
Page 5 of 5

Furthermore, any investment fees paid by the BIA to the financial institution(s) selected will at no time reduce the return on investments that are due the Indian Tribes, nor will this fee be paid from the pooled funds.

We, the Navajo Nation appreciate the opportunity to be able to make our comments on this proposal. We anticipate that our comments will be received as constructive criticism, and look forward to working with your office in whatever capacity, so that the Indian Tribes can have the best possible investment system.

If you have any questions, please do not hesitate to contact my office of (602) 871-6353. Thank you.

Sincerely,



Peter MacDonald, Sr., Chairman
Navajo Tribal Council

cc: Wilson Barber, Area Director
Navajo Area Office, BIA
William Morgan, Director
Administration and Finance
Bobby White, Comptroller
Administration and Finance
Richard Mathis, Director
Financial Service Department
Chrono/File



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 14 1984

Mr. John M. Peebles
Steier & Kreikemeier, P.C.
1055 North 115 Street, Suite 100
Omaha, Nebraska 68154

Dear Mr. Peebles:

Thank you for your letter of July 15 to the Winnebago Agency Superintendent responding on behalf of the Omaha Tribe of Nebraska to the proposed procurement of financial trust services.

You stated that the Omaha Tribe opposes the proposed contracting of trust services to an external-nongovernmental entity and instead requests the Bureau to obtain and maintain in-house capabilities to perform these services. We have recently contracted out an A-76 study which will provide a management analysis and an estimate of what it would cost to improve the Bureau's financial trust services program. The cost estimate for the government would then be placed in competition with those we anticipate receiving from the private sector.

With respect to your concern that our proposal would transfer an important area of responsibility from the United States to an independent contractor, I assure you that the proposed improvements would in no way diminish our responsibility, as trustee, to the tribes and individuals. The Bureau is merely seeking professional cash management, accounting and investment advisory services that it critically needs to strengthen its legally mandated responsibility. Such improvements to our current operations are readily available in the marketplace and would result in greater earnings from cash concentration and quicker investment, accurate daily accounting and interest distribution and increased liquidity to tribes and individuals. The Bureau would continue to direct, monitor and authorize those transactions and activities performed by any prospective contractor. The protection of the trust would remain an integral part of the Bureau's trust responsibility.

We are making every effort to consider all tribal concerns so that they may better understand our effort to provide better services to their trust assets. Thank you for taking the time to share your views in writing.

Sincerely,

[Signature]

Assistant Secretary - Indian Affairs

LAW OFFICES

STEIER & KREIKEMBIEN, P. C.

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402-466-2200

July 15, 1987

Donald H. Whitner, Superintendent
United States Department of Interior
Bureau of Indian Affairs
Winnebago Agency
Winnebago, Nebraska 68071

RE: Omaha Tribe of Nebraska
Indian Trust Funds
Our File: 15-026-99-051

Dear Superintendent Whitner:

This letter will respond to the "consultation with the Omaha Tribe of Nebraska" by the Bureau of Indian Affairs regarding the Secretary of Interior's intent to contact for the collection, accounting, advisory investment services and investment custody functions for funds held in trust for individual Indians, tribes, and other funds by the United States.

After reviewing the materials supplied by the Department of Interior as set forth in the Fed. Reg., Vol. 52, No. 72, Wednesday, April 15, 1987, the Omaha Tribe of Nebraska, informs the Department of Interior that they vehemently oppose the contracting of trust services to an external-nongovernmental entity. Specifically, the Omaha Tribe of Nebraska demands that the Bureau of Indian Affairs provide integrated internal services such as processing receipts, accounting for liabilities and trust assets, distributing earnings, making disbursements and investments, performing investment custody functions as well as account custody functions and providing reports and reconciliations. To do otherwise is a clear statement that the policy of the United States is to regress to the termination era. This would be accomplished through a series of laws and/or contracts transferring important areas of responsibility from the United States to independent contractors. This result cannot and will not be accepted by the Omaha Tribe.

As a result, the Omaha Tribe of Nebraska demands that the Bureau of Indian Affairs obtain and maintain inhouse capabilities to perform all financial management investment services for management of the trust funds belonging to Indian

W. H. Whitner, Superintendent
July 15, 1967
page 2

tribes, individual Indians, Alaskan Natives and irrigation and power projects.

If I can be of further assistance, please contact me.

Sincerely,



John M. Peebles



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



SEP 18 1987

Mr. James G. Sappier
Governor, Penobscot Indian Nation
Community Building
Indian Island
Old Town, Maine 04468

Dear Mr. Sappier:

Thank you for your letter of July 10 to the Eastern Area Director supporting our proposal to procure financial trust services.

As you pointed out, the contracting out of these services would not relieve the Bureau of its trust responsibility. The Bureau would continue to direct, monitor and authorize those transactions and activities performed by the prospective contractor.

In terms of services, you asked what reports would tribes receive and what would they look like? All account holders would receive monthly statements of account that would present transaction summaries and beginning and ending balances in their accounts. These reports would be sent directly to the tribes and individual Indian money (IIM) account holders, unless the account holder desires the agency to receive and hold the reports until they can be picked up. In addition, we are exploring alternatives to provide future improvements in tribal reporting. As a result of the contract, we would then be able to consider the inclusion of optional tribal reports such as monthly balance sheet and income statement reports.

With respect to report formats, you may expect standard formats used for these types of reports and, during the phase-in period, reports would be similar to those you receive today. We would, however, welcome any suggestions you may wish to offer on report format or content. Please keep in mind that cost effectiveness would be a primary factor in considering significant variations in standard report formats.

You also asked what your tribe may expect in terms of investment assistance and coordination. Our investment staff would continue to work with you to determine your tribal cash requirements and to provide assistance in selecting those investment portfolio options which would best meet your liquidity needs and investment objectives. In addition, we are open to any suggestions you may have in developing better procedures for tribal cash planning and investment coordination.

In closing, thank you for taking the time to review the proposal and for providing us your comments. They will be used in preparing our final proposal. Your support of our endeavor to improve the quality of trust fund services is sincerely appreciated.

Sincerely,

[S] W. P. Bogsdale

Acting Assistant Secretary - Indian Affairs

Office of the Governor and Council

Timothy Love
Governor
James Sappier
Lt. Governor
Priscilla Atlean
Representative



Community College
Indian Island
Old Town, Maine 04468
(207) 827-7736

Date: July 10, 1987

William B. Utt, Area Director
Eastern Area Office - Code 1000
Bureau of Indian Affairs
1951 Constitution Avenue, N.W.
Washington, D.C. 20245

Re: Trust Fund Investment Management

Dear Mr. Utt:

We are generally in favor of the BIA's plan to contract out the management of the Trust Fund investments. It makes sense to us that a bank with modern investment management would be able to provide the benefits outlined in your letter dated June 12, 1987. Such as:

- A. Improved yield on investments
- B. Better Accounting of trust Funds
- C. More frequent reporting to account holders
- D. Improved reconciliation of accounts
- E. Faster payment of funds to account holders
- F. Timely identification of delinquent payers

We have always had trouble with getting timely, accurate reporting from the Bureau. Contracting for these services appears to be a sound approach. We take considerable comfort in knowing that contracting out these services does not relieve the BIA of its trust responsibility.

We would expect the Bureau to monitor this service closely and provide an avenue for feedback from the tribes. We also expect that the BIA will keep us informed of what kind of services the tribes can expect in terms of:

1. What kinds of reports will we get and what will they look like?

2. Will each tribe have one cognizant person that will assist and coordinate investment decisions, and assist with problem resolution? We like the idea of having someone who actually does the investing or is close to this function. A middle man tends to make the coordination of this function slower and more complicated.

In summary, we believe that contracting these services is a logical way of accomplishing much needed improvements. We expect that the Bureau will keep us informed.

Sincerely,

James G. Sappier
Tribal Governor



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Mr. Tony Trujillo
Governor, Pueblo of San Juan
P.O. Box 1099
San Juan Pueblo, New Mexico 87566

SEP 11 1974

Dear Mr. Trujillo:

Thank you for your letter of June 17 to the Northern Pueblos Agency Superintendent responding to the proposed procurement of trust fund services.

You expressed opposition and indicated that should the proposed contract become a reality, you would choose to handle your own tribal funds. This option is available today and would continue to be in the proposed contract environment. Tribal funds may be withdrawn from trust status upon appropriate authorization by the Bureau, as trustee, in accordance with statutory and regulatory limitations. Should you choose not to participate and instead invest your own tribal funds, please be aware that your Tribe would then assume the investment responsibility and liability as well as the costs for a tribal investment program.

Thank you for taking the time to review our proposal and expressing your views in writing.

Sincerely,

Acting Assistant Secretary - Indian Affairs



P.O. BOX 1099
SAN JUAN PUEBLO, NEW MEXICO 87566
PHONE (505) 852-4400

June 17, 1987

Mr. Gene Powers, Supt.
Northern Pueblos Agency
Bureau of Indian Affairs
1570 Pacheco St. - Building D
Santa Fe, New Mexico 87501

Dear Mr. Powers:

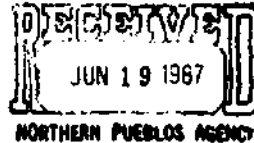
The San Juan Pueblo Council has reviewed the Bureau's (BIA) proposal to contract Tribal Trust Funds to or on the private market.

We strongly oppose such a move and would handle our own funds should the Bureau of Indian Affairs proposal become a reality.

Thank You,

Tony Trujillo
Governor
Pueblo of San Juan

cc: File
Tribal Treasurer





United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 06 1987

Harry F. Gilmore, Chairman
Quepaw Tribe of Oklahoma
P.O. Box 763
Quepaw, Oklahoma 74363

Dear Chairman Gilmore:

Thank you for your letter of May 27, 1987, in which you expressed concerns about the collection procedure to be used under a contract for financial trust services. I hope all your questions were answered during the consultation meeting which was chaired by the Miami Agency Superintendent. However, in the event that not all were addressed, I will take this opportunity to respond to each of your concerns.

In the collection process, the computer is used only to handle the information which is necessary to properly account for a collection. The land and lease ownership information is maintained in the computer and funds can be distributed to the proper owners much faster through the computer than by manual processes. The proposal is to use the computer to distribute the collection after it is deposited into the Treasury account. By changing the methods of receiving and depositing checks received in payment for leases and rents, we expect to increase the interest earnings by reducing the mail time. Under the current methods, it is estimated that funds are in the mail and not available for investment from 5 to 10 days after they are received at the Bureau collecting location. All interest earned on funds collected and invested by the Bureau for the benefit of tribes and individuals is credited to those owners and will continue to be credited to the same owners under a service contract.

The financial institution which is selected to perform the services will be processing transactions as directed by the Bureau. All trust funds will be deposited in Treasury accounts, not in the institution's accounts, and the institution will serve as the Bureau's agent. The trust funds will not at any time be used by the institution for its collateral or investment purposes.

If you have additional questions or concerns in regard to the proposed contract, please submit same to your Agency Superintendent. The Bureau is making every effort to assure that all tribal and individual concerns are considered in any action taken to improve the management of the funds held in trust.

Sincerely,

/s/ Ross O. Swimmer

Assistant Secretary - Indian Affairs

QUAPAW TRIBE OF OKLAHOMA

P. O. BOX 765 QUAPAW, OKLAHOMA 74363

May 27, 1987

Mr. Ross O. Swimmer
Assistant Secretary-Indian Affairs
Office of the Secretary
Washington, D.C. 20240

Dear Mr. Swimmer:

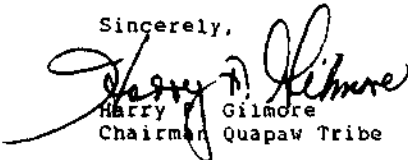
I have today received your letter dated April 20, 1987, regarding Indian Trust Funds.

I have expressed my opinions against this procedure as it is doing away with the collection procedure, which is now working very satisfactorily. The collection procedure in the past was very unsatisfactory as the Indian was paid if and when the lessee could or would pay the rent.

The collections of payments is my main objection to this procedure. How can a computer make collections? Another great reason is again the Indian is being used. By this, I mean how much interest has the Indian received from funds deposited with the BIA. Now, you intend to contract with a bank, whereby, all the trust funds will be deposited in one bank and the bank receive the interest and also use the funds for their investments.

I have informed the Miami Agency Superintendent also the Area Director of my concerns against this procedure as it is not for the good of the Indian as I have said, the Indians are being used again.

Sincerely,


Harry D. Gilmore
Chairman Quapaw Tribe

HFG/jmj

cc: Area Director
Miami Agency Supt. ✓



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 30 1987

Mr. Richard L. Gurnoe
Chairman, Red Cliff Band of Lake
Superior Chippewas
P.O. Box 529
Bayfield, Wisconsin 54814

Dear Mr. Gurnoe:

In followup to our letter of July 6, we are providing the following responses to the questions outlined in your June 11 letter. We will address them in the same order as your letter.

1. Question: Why are we re-opening competition to manage the trust funds, especially since we never received an answer from the resolution (attached) submitted by the Great Lake Inter-Tribal Council?

Response: We have re-opened the competition for trust fund services so that Indian tribes will have an opportunity for greater input. Many tribes requested additional information and consultation on the proposed procurement. As you know, in response to this request, we developed a comprehensive consultation plan which was published in the Federal Register. This exchange is an important part of that process so that you may better understand the proposal and we may include any suggestions you may have to secure the best possible trust services. In addition, we are seeking full and open competition among financial institutions at large, rather than limiting the procurement to Treasury's lockbox institution network. (With respect to your attached resolution, we will address those questions at the end of this letter.)

2. Question: How do we know that whatever bank that gets the trust money to manage will not go bankrupt, and if that happens what assurances are there that we do not lose our trust dollars?

Response: I wish to first clarify that the prospective contractor would not perform any management functions. They would only be providing transactional or advisory services in the areas of accounting, cash management and investment. The Bureau would continue to direct, monitor and authorize those transactions and activities performed by the contractor.

Trust funds would be deposited in Treasury accounts, not in the prospective contractor's accounts. The funds could not at any time be used by the contracting institution for its collateral or investment purposes. In the event of bankruptcy, the funds invested on the Bureau's behalf would not belong to the bank, but to the Bureau as fiduciary for the Indian asset holders. Further, the funds would be invested in either certificates of deposit (CD's) that are federally insured or in federal securities backed by the United States government. The insurance limits, and any collateral pledged by the financial institution, would cover any trust dollars at risk.

3. Question: Why can't we draw monies out of the fund and put them in a local bank and draw interest? This would give us better borrowing power and it would also be a type of collateral.

Response: This option is available today and would continue to be under the proposal. Tribal funds may be withdrawn from trust status upon appropriate authorization by the Bureau, as trustee, in accordance with statutory and regulatory limitations. Should you choose to invest your own tribal funds, please be aware that your tribe would then assume the investment responsibility and liability as well as the costs for a tribal investment program.

4. Question: If this passes, how do we know we will get a tribal representative that will be able to do the job, or will the tribal representative be a BIA employee?

Response: For purposes of this question, I will assume you are referring to the tribal representatives which would be appointed as consultants to the evaluation committee. We plan to establish this committee later this year to review and evaluate the proposals received in the procurement process. The persons selected to represent the tribes would be non-voting members of the evaluation committee, and would be expected to present tribal interests during the proposal review process. They would not be BIA employees.

5. Question: What guarantee do we get that the proposal would be more effective than the way the BIA handled the funds?

Response: The proposal would enable the Bureau to address many operational deficiencies in its current systems as identified by external studies and upgrade the quality of trust services to Indian beneficiaries. Benefits to the account holders would include: (1) increased earnings to the trust accounts as a result of cash concentration and quicker investment, and the use of lockbox services to minimize the delays between cash receipt and deposit; (2) increased earnings resulting from the proposed disbursement float policy which would allow trust funds to continue to

draw interest until the check has cleared the bank (trust funds now stop earning interest on the day the check is issued); (3) accurate daily accounting and interest distribution; and (4) more timely and accurate reporting data. Further, the addition of professional portfolio management services would also offer more flexibility in selecting from the proposed short, intermediate and long term investment options which would best meet your investment objectives and liquidity needs. An active investment analysis program and a more aggressive cash planning process would enable the Bureau to maximize the overall yield on your investments. These items, combined with more accurate accountability, would be very advantageous to all the trust fund groups.

6. Question: If a bank or institution insures your money up to \$100,000 and you have X amount of dollars over the \$100,000 and bankruptcy occurs, do we lose the X amount or will the BIA reimburse?

Response: One of the key controls in the investment of tribal funds is the requirement that no one bank is allowed to accept over \$100,000 per tribe unless they post collateral for amounts over the \$100,000 federally insured limit. Currently, the Division of Trust Fund Management uses a computer data base system, called the INFO system, to track the insurance and collateral requirements for each bank. The prospective financial institution would be required to maintain a similar type data base in order to provide the Bureau with the proper monitoring capability.

7. Question: If a bank or financial institution is to provide basic daily data to the BIA, who will handle this data?

Response: The financial institution would be required to submit a variety of financial data to the Bureau on a daily basis; some data would be required only on a monthly basis. The majority of the data would be provided to the National Technical Service Center (NTSC) in Albuquerque, New Mexico, who would then distribute relevant data to the various Information Management Centers (IMC's) across the Bureau. The IMC's would then provide the agency offices with balance data related to the accounts (IIM or tribal) for which they are responsible. The Bureau's Branch of Trust Fund Accounting, Division of Trust Fund Management, and Area Offices would also be able to receive respective data directly from the financial institution on a daily basis.

8. Question: Draft RFP # 4.2.2.2 - IIM - Individual Indian Monies. Minors judgment funds - If an institution goes to bankruptcy, will these minors lose everything?

Response: As described above, the trust fund investments are not allowed to exceed the FDIC or FSLIC limits for certificates of deposit at any one financial institution.

If an institution declares bankruptcy and has trust fund dollars on deposit, the insurance limits, together with any collateral pledged by the financial institution, would cover those trust dollars at risk. Under the proposal, these protection requirements would continue.

9. Question: In all the different systems and accounts, do we know where individual tribal monies are invested and at what percent or interest? How do we find out if we have a poor investment, and if money is lost, who absorbs the loss?

Response: Today, the Bureau uses the MONEYMAX reporting system to summarize investment portfolio data for each tribe. This report is sent each month to each tribe that has funds on deposit. It includes information such as: the name of the financial institution at which the funds are placed, the type of investment, the interest rate, the term of the investment, and the projected interest income that would be earned at maturity. Under the current program, the Bureau does not analyze any potential losses or gains associated with alternative investment strategies. The investment program is basically a manual operation which relies primarily on a bidding process for CD's in which funds are offered to the highest bidders. Under the proposal, professional investment analysis, and economic and market trend capability, would be available so that we may consider other eligible securities with the strongest market return. In addition, all trust fund dollars would be "pooled" to allow more flexibility in the selection of higher yielding securities. Such improvements would assure safety, greater liquidity and maximum return for your trust assets.

10. Question: If monies are invested in a short or long term portfolio and a withdrawal is needed, what happens? What type of penalty occurs?

Response: Each investment portfolio would be managed to maintain sufficient liquidity to meet day-to-day operating requirements. There would be no penalty for fund withdrawals made in the ordinary course of business.

11. Question: Prior to the new firm making an investment, the criteria calls for the firm to check with the BIA on any investment. The question I pose is, who in the BIA will handle this? Who is qualified, especially with the previous track record on investment decisions?

Response: All investment decisions would be cleared through Bureau investment managers. These managers would include members of the Division of Trust Fund Management staff. With respect to our previous track record, assessments from independent studies have commended the Bureau's past performance in its investment of trust funds. These same studies, however, offered recommendations to improve our

investment program so that our investment performance may continue. Our proposal seeks investment advisory services consistent with these recommendations.

12. Question: Question and Answer pamphlet - Question #4 does not spell out anything in the area of losses; #10 does not spell out anything in the area of losses; #44, there's a question posed, may an individual tribe choose not to participate in the contract and instead invest his own funds? You state yes, but no statement is made of what type of funds may be drawn from the trust status. If a tribe does not go along with the BIA in this change-over, will the BIA still handle the trust funds?

Response: Question #4 refers to the Bureau's trust responsibility and whether we would be "giving it away to the contractor". Question #10 asks what would happen in the event that the contractor does not perform satisfactorily. The Bureau's legally mandated responsibility would not be altered as a result of this contracting effort. As to what type of trust funds may be withdrawn from trust status, a tribe may withdraw any tribal trust funds other than judgment award funds. For example, any "7000" series tribal trust fund appropriation accounts could be withdrawn. Finally, you asked whether the BIA would still handle your trust funds in the event that a tribe does not "go along" with this "change-over". As discussed in Question No. 3, a tribe may exercise the option to manage its own assets. However, under the proposed contract, the Bureau would not continue a separate operation for selected tribes.

13. Question: My understanding is that FDIC is broke. What will happen if a problem pops up, such as bankruptcy? Page 4 of the Solicitor's pamphlet spells it out somewhat but not enough to make a decision. More explanation is needed.

Response: The Federal Deposit Insurance Corporation (FDIC) is solvent. Again, no trust funds are invested in certificates of deposit in excess of the \$100,000 limit at any one bank, so no FDIC insurance limits would be exceeded. The Federal Savings & Loan Insurance Corporation (FSLIC) had serious problems, but they have recently been resolved when Congress passed legislation that made FSLIC solvent once again. All other eligible securities would be backed or fully guaranteed by the United States Government.

14. Question: The contractors letter spells out accountability and loss of interest by the BIA. My gut feeling is, we won't lose monies as long as the BIA has the trust responsibilities, but what happens to that responsibility with a private sector establishment? If the BIA is to spend \$6 million to contract this out, why not take that money and update the BIA's financial capability?

Response: The Bureau would not contract out any trust responsibility to a financial institution as a result of this effort. The proposed improvements would strengthen our legally mandated responsibility; they would in no way diminish our responsibility, as trustee, to the tribes and individuals.

With respect to your suggestion that we update our financial capability internally, we have contracted out an A-76 study which would provide a management analysis and an estimate of what it would cost to improve the Bureau's financial trust services program. The cost estimate for the government would then be placed in competition with those we anticipate receiving from the private sector.

15. Question: Who is to evaluate the proposals submitted by other banking establishments, especially with the BIA's track record?

Response: An evaluation committee will be established by the Bureau to evaluate all respondent proposals. We plan to include financial experts from the Department of Treasury as well as the Bureau. In addition, tribal representatives will be appointed to serve as consultants to the committee.

16. Question: According to papers sent to me, the BIA will be spending from \$4-\$6 million contracting with a banking establishment. Where out of the BIA is this money coming from?

Response: The funding would come primarily from additional appropriated funds, with some funding generated by cost savings in the Bureau as a result of this effort. We anticipate some dual costs for Bureau operations and contract phase-in during Fiscal Year 1988; additional funds have been requested in the Bureau's FY 1988 budget. After the implementation period, however, we expect the contract costs, plus remaining Bureau residual operation costs, to not exceed what we are currently paying for service delivery.

17. Question: The bottom line of this whole consulting process is that there are no clear assurances for tribes on: A) protection on potential losses, B) this new process does not address adequately the problems identified initially, and C) it remains unclear as to their processes impact on existing or remaining services and trust responsibility activities remaining within the BIA.

Response: First, the proposal would not change the Bureau's current trust responsibility or trust protection requirements. Second, the proposed improvements are consistent with the recommendations of various federal oversight agency reports and other studies which identified serious operational deficiencies in our current systems.

Securing these critically needed services would enable the Bureau to accomplish more efficient movement of trust dollars, provide a more comprehensive investment process, and provide accurate and timely accounting and reporting data to all trust fund account owners. These would be major steps forward in upgrading the quality of services to the Indian beneficiaries. The basic trust responsibility functions would remain exactly the same, but the methods to service those functions would be improved by securing the best services available in the marketplace.

Finally, we have provided the following responses to the questions posed in your letter's attachment--Great Lakes Inter-Tribal Council Resolution 11-12-86G:

1. Question: What is the statutory authority for the contract?

Response: The Snyder Act provides the basic authority for all Bureau services to Indians including the proposed contracting for the requested trust fund services. In addition, applicable authorities which Treasury uses to designate financial institutions as depositories and fiscal agents of the United States (i.e. 12 U.S.C. 265, 12 U.S.C. 1464(K) and 12 U.S.C. 1725(d)) would be employed.

2. Question: What are the terms of the contract with respect to the ultimate cost to the beneficiaries?

Response: Since the government would continue to pay for all contract costs, there would be no cost to the Indian beneficiaries.

3. Question: Will the funds in the custody of a private company be subject to jurisdiction and judgment of any courts?

Response: For purposes of this discussion, we will assume that you are referring to whether the Bureau would continue to protect trust funds from liens or claims to the same extent we do today. The Bureau would continue to protect trust funds in the same way that we do now. The added dimension of the financial institution in the processing of our data and movement of trust fund dollars would not alter our responsibility to protect those trust dollars.

4. Question: Will the funds in the custody of a private company be subject to taxation or liens by private claimants?

Response: The proposed procurement would not change our role in protecting trust funds from IRS liens, or those of private companies or individuals, nor change our role in complying with IRS reporting requirements for interest income or any other taxable income. The financial institution's role would be limited to servicing the trust

fund accounts so that the Bureau may accomplish the receipt, disbursement, transfer, and investment of trust fund dollars more efficiently.

5. Question: In the case of claims by the Internal Revenue Service, will the Department of Justice represent the trustee or the IRS?

Response: The current contracting effort would not alter the conduct of the Department of Justice in any case, whether it involves the IRS, the Bureau, or any other Federal agency.

6. Question: Will the funds be fully insured under the provisions of the Federal Insurance Deposit Corporation?

Response: Yes, trust dollars would be insured under the provisions of FDIC only to the extent that they are invested in commercial certificates of deposit in banks across the United States. The Bureau would not place funds with a financial institution unless the funds can be insured by either FDIC or FSLIC, or by funds pledged as collateral by the respective financial institution. These same requirements would apply in the proposed system.

7. Question: If losses are incurred, will the United States accept liability without raising the defense of sovereign immunity?

Response: Once again, the current contracting effort would not alter the Bureau's current liability for any losses incurred as a result of the failure to meet our fiduciary obligations to the trust fund account owners.

In closing, we are making every effort to consider all tribal concerns in our endeavor to improve the management of Indian trust assets. I hope the above responses and information is helpful to you in better understanding the proposed procurement. Thank you for taking the time to review our proposal and posing your questions in writing.

Sincerely,

/s/ Ross O Swimmer

Assistant Secretary - Indian Affairs

cc: Minneapolis Area Director
Great Lakes Agency



June 11, 1987

Mr. Ross Swimmer
 Assistant Secretary
 Bureau of Indian Affairs
 U.S. Department of Interior
 Office of the Secretary
 Washington, D.C. 20240

Dear Sir,

Mr. James Morrin (Acting Superintendent), was here to address the consultation process regarding the Bureau Trust Fund Management. I do have some questions that I would like to comment on.

1. Why are we re-opening competition to manage the trust funds, especially since we never received an answer from the resolution (attached) submitted by the Great Lakes Inter-Tribal Council?
2. How do we know that whatever bank that gets the trust money to manage will not go bankrupt, and if that happens what assurances are there that we do not lose our trust dollars?
3. Why can't we draw monies out of the fund and put them in a local bank and draw interest? This would give us better borrowing power and it would also be a type of collateral.
4. If this passes, how do we know we will get a tribal representative that will be able to do the job, or will the tribal representative be a BIA employee?
5. What guarantee do we get that the proposal would be more effective than the way the BIA handled the funds?

6. If a bank or institution insures your money up to \$100,000.00 and you have X amount of dollars over the \$100,000.00 and bankruptcy occurs, do we lose the X amount or will the BIA reimburse?
7. If a bank or financial institution is to provide basic daily data to the BIA, who will handle this data?
8. 4.2.2.2 - IIM - Individual Indian Monies. Minors judgement funds - If institution goes to bankruptcy, will these minors lose everything?
9. In all the different systems and accounts, do we know where individual tribal monies are invested and what percent or interest? How do we find out if we have a poor investment, and if money is lost, who absorbs the loss?
10. If monies are invested in short or long term portfolio and a withdrawal is needed, what happens? What type of penalty occurs?
11. Prior to the new firm making an investment, the criteria calls for the firm to check with the BIA on any investment. The question I pose is, who in the BIA will handle this? Who is qualified, especially with the previous track record on investment decisions?
12. Question and Answer pamphlet - Question #4 does not spell out anything in the area of losses; #10 does not spell out anything in the area of losses; #44, there's a question posed, may an individual tribe choose not to participate in the contract and instead invest his own funds? You state yes, but no statement is made of what type of funds may be drawn from the trust states. If a tribe does not go along with the BIA in this change-over, will the BIA still handle the trust funds?
13. My understanding is that FDIC is broke. What will happen if a problem pops up, such as bankruptcy? Page 4 of the Solicitors pamphlet spells it out somewhat but not enough to make a decision. More explanation is needed.
14. The Contractors letter spells out accountability and loss of interest by the BIA. My gut feeling is, we won't lose monies as long as the BIA has the trust responsibilities, but what happens to that responsibility with a private sector establishment? If the BIA is to spend \$6 million to contract this out, why not take that money and update the BIA's financial capability?
15. Who is to evaluate the proposals submitted by other banking establishments, especially with the BIA's track record?

16. According to papers sent to me, the BIA will be spending from \$4-\$6 million contracting with a banking establishment. Where out of the BIA is this money coming from? .
17. The bottom line of this whole consulting process is that there are no clear assurances for tribes on: A) protection on potential losses, B) this new process does not address adequately the problems identified initially, and C) it remains unclear as to their processes impact on existing or remaining services and trust responsibility activities remaining within the BIA.

Sincerely,

Richard L. Gurnoe

Richard L. Gurnoe
Tribal Chairman

cc: James Morrin, BIA-GLA
File

RLG/jc



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 31 1987.

Mr. Arnold J. Sowdick
Chief, Saginaw Chippewa Indian Tribe
7070 East Broadway
Mt. Pleasant, Michigan 48853

Dear Mr. Sowdick:

Thank you for your letter of June 29, 1987, to Mr. Alvin G. Picotte, Superintendent, Michigan Agency, on our proposal for financial trust services.

Your supportive comments on the trust fund pooling advantages and acceptable anticipated costs will be used in preparing our final proposal for trust services.

In addressing your concern with using a contracted financial institution for the central processing and account management component of the Bureau's data processing and accounting system, we first point out our proposal envisions that the contractor would provide the Bureau integrated external services. They include cash collection and concentration, deposit of funds into the Treasury, custody of trust fund accounts, distribution of earnings, and investment advisory, disbursement and reporting services. The proposal further requests that the prospective financial institution have a state-of-the-art software system to handle these tasks.

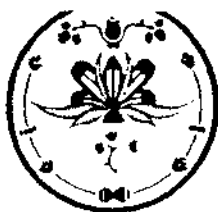
The Bureau is currently redesigning its in-house Integrated Records Management System (IRMS) environment to enable the transfer of IRMS data from one modern system to another with relative ease. In the IRMS redesign, the IIM module would be available on the Bureau's system so that it may be exercised should a need arise. The financial institution and the Bureau would have a close working relationship; however, in the event of contract cancellation or expiration, the Bureau would be in a position to carry on the IIM functions in-house.

In closing, I wish to thank you for taking the time to review the proposal and for providing us with your comments and suggestions. Your support of the proposed contract to assist the Bureau in improving its management of tribal and individual trust funds is sincerely appreciated.

Sincerely,

Wm Ross O. Swimmer

Assistant Secretary - Indian Affairs



July 1 1987

The Saginaw Chippewa Indian Tribe

7070 EAST BROADWAY

M. PLEASANT MICHIGAN 49858

(517) 772-5700

June 29, 1987

Alvin G. Picotte
 Superintendent
 Michigan Agency
 Bureau of Indian Affairs
 PO Box 884
 Sault Ste Marie, MI 49783

Dear Mr Picotte:

I would like to thank you for the time and effort that you spent to inform us of the details of the Request for Proposal For Financial Trust Services currently under consideration with the Bureau of Indian Affairs. Obviously, this proposal is of great significance to Indian Tribes and to Indian people. The future of the Indian Nations depends a great deal on the safety and efficiency with which these trust funds are handled. We appreciate the opportunity to review and comment on this plan.

As I understand it, the plan consist of essentially two parts. A commercial banking institution will be contracted to perform two basic services. The first is to consolidate and pool the monies in the 299,826 accounts and to manage the investment activities within the boundaries and guidelines established by 25 U.S.C. S 162a. The second is to provide collection, distribution and accounting services currently being performed by BIA personnel.

After consulting with our staff and other Council members, my responses are the following:

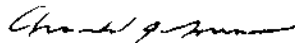
1) We concur with the concept of pooling investment funds as this will greatly simplify the fund management work load and will probably result in better overall earnings on the monies.

2) If the proposed costs for this activity can be held between the estimated \$4 - \$6 million dollars per year, representing between .24% to .35% of the \$1.7 billion dollar total fund, this is an acceptable investment management fee.

3) We recognize the need to substantially upgrade the BIA data processing and fund accounting system. We are very concerned, however, with the concept of utilizing an external contracted financial agency as the central processing and account management component of this system. This will create many complex 'distributive data base' technical problems, increase the future cost of system maintenance, and make it extremely difficult and costly to transfer these services to a different

agency or back to the BIA at the end of the proposed 5 year contract period. It will be highly likely that the financial institution that initially receives the contract will be locked into a favorable position, virtually assuring them of indefinite future contracts. We would recommend that this component be retained within the BIA system, or that a substantial amount of planning and design work be done that would allow the transfer of this function back into the BIA at the end of the contract period if indicated.

Arnold J. Sowmick



Chief
Saginaw Chippewa Indian Tribe



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOV 20 1987

Mr. Robert J. Nordhaus
Nordhaus, Halton, Taylor
Taradash & Frye
125 Lincoln Avenue, Suite 400
Santa Fe, New Mexico 87501

Dear Mr. Nordhaus:

Thank you for your letter of June 16 on behalf of the Shii Shi Keyah Association of Allottees to the Eastern Navajo Agency Superintendent commenting on the proposal for financial trust services. Please accept our apology for the delay in responding.

Your comments on specific sections of the draft request for proposal (RFP) relating to the accounting and payments of oil and gas royalties will be considered in preparing the final proposal.

We have provided the following responses to the questions outlined in your letter. They are addressed in the same order as presented in your letter.

1. Question: Will receipts for royalties and mineral lease rentals be deposited to the treasury or to the bank?

Response: The Minerals Management Service (MMS) would continue to deposit the oil and gas related receipts they collect directly to the MMS Treasury account. Under the proposed system, the Indian-related receipts would then be transferred by EFT to the Bureau's concentration Treasury account at the financial institution instead of the current procedure of transferring the funds by SF-1081 from MMS's Treasury account to the Bureau's Treasury account.

2. Question: How are IIM monies, particularly royalty receipts, to be transferred from the bank, the BIA or the treasury?

Response: Under the same procedures above, oil and gas receipts would be transferred from MMS's Treasury account directly to the financial institution's Bureau concentration Treasury account, where the funds would be promptly invested. The funds would be recorded in the Special Deposit account, where they would remain until identified for payment on an Indian Financial Distribution Report (IFDR). At that time, it is our intention that the funds would then be disbursed by check from the financial institution according to Bureau instructions.

3. Question: Will explanations of payment with respect to royalties payable to tribes and allottees accompany monthly royalty payments as required by the Federal Oil and Gas Royalty Management Act (FOGRMA)?

Response: Under the proposed system, we would be able to provide explanations of payment with monthly royalty payments for those Navajo account owners who are automatically paid royalties each month. This, of course, would be contingent upon the Bureau's capability to identify the relevant data and transmit it to the financial institution. During the transition or in the event the contracting institution would not be able to issue the checks accompanied by the explanations of payment, the Regional Finance Center in San Francisco would continue to process the payments for the Navajo owners.

4. Question: What time lag will there be between a request for funds from an IIM account by an allottee and the disbursement of funds from the bank?

Response: We expect the contractor to issue and mail checks by the end of the business day following the day we electronically transmit the disbursement authorization data to them. In the event of an emergency, a wire transfer could be accomplished in a matter of hours or possibly minutes, depending on the circumstances.

5. Question: Will the BIA agency office be able to call for IIM funds directly to the contractor and will the checks be issued that day or the following day to the account owner?

Response: As explained in question no. 4, the Agency would initiate the authorized disbursement data to be transmitted electronically to the contractor. The checks could be issued the same day as the agency

request, depending on the timing of the data transmission to the contractor and their system capabilities. In any case, the checks should be issued and mailed no later than the business day following the date of Bureau transmission to the contractor.

6. Question: Would money be wired at the request of an allottee through terminals maintained at various BIA offices; for example, the Shiprock office on the Navajo Nation?

Response: The process described in question no. 4 would be available in the event of an emergency. Money would be wired by the contractor directly to the commercial bank specified by the allottee.

7. Question: Would an allottee be able to receive the statement of his IIM account instantaneously from a computer terminal at an agency office? How will these payments be handled during the transition?

Response: Yes, under the proposed system, IIM account transaction and balance data would be available at an agency office. Payments during the transition or phase-in period would continue to be made just as they are today.

8. Question: Navajo allottee royalty payments are now being made from the San Francisco Office of the United States Treasury. May and June payments were not made on time. Explanation of payments which were to accompany checks have not been accomplished as yet. Will these problems be addressed?

Response: These processing problems have been addressed jointly by the Bureau's Office of Data Systems, the Branch of Trust Fund Accounting, the Navajo Area Office, and the Office of the Solicitor. The payments since June have been processed more timely; the checks are prepared and mailed by the Treasury within one week of BIA's receipt of the IFDR data from MMS. Explanation of payments have accompanied the checks sent out in late September, and have accompanied the oil and gas royalty checks paid by Treasury since that date for the Navajo Area.

9. Question: How will the transition be established without suspension of payments and information?

Response: The transition would be carefully phased in with the financial institution. The first phase would be the investment data loading, which would install the investment reporting on the financial institution's data processing system. The payment function would not be shifted to the contractor until the accounting data has been properly loaded and run parallel for a satisfactory period to assure reliability of the contractor's data processing system capabilities.

I hope the above information is helpful to you and your clients in understanding the proposed procurement. We are making every effort to consider all tribal and individual Indian concerns in our endeavor to improve the management of their trust assets. Thank you for taking the time to review our proposal and offering your comments in writing.

Sincerely,

/s/ W. P. Bagudale

Acting Assistant Secretary-Indian Affairs

cc: Navajo Area Director
Eastern Navajo Agency Supt.

NORDBAUS, HALTOM, TAYLOR, TARADASH & FRYE

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KATHLEEN D. BOND
 C. W. HARRIS

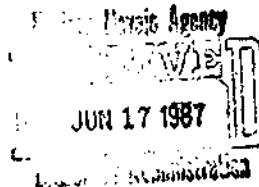
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 FROM ALBUQUERQUE (505) 242-7272

June 16, 1987

Mr. William G. Bowman
 Acting Superintendent
 Eastern Navajo Agency
 P.O. Box 328
 Crown Point, NM 87313



RE: BIA proposal for Financial Trust Service Investment

To: Mr. Bowman

With regard to your request for comments on the BIA request for proposals, please be advised that my particular interest in responding has been with respect to royalty bonus and rental payments to tribes and allottees from oil and gas production. While we have not been particularly concerned with royalties on other minerals, these problems would be essentially the same as accounting for oil and gas royalties.

I attended the meeting in Phoenix, March 5, 1987 at which meeting the proposal of the Mellon Bank for handling of BIA trust funds was presented. I wrote a letter on March 3, 1987 to Ms. Pat Davin of the Mellon Bank with a copy to Assistant Secretary Ross Swimmer. This letter set forth our concerns about the Mellon Bank proposal.

In reviewing the Request for Proposal for Financial Trust Services dated April 1987, it seems to me that BIA has not addressed directly the concerns which we voiced with respect to accounting for, and payment of royalties on oil and gas. These matters are handled indirectly in the sections on cash collection, lock box services and electronic fund transfer collection methods (§ 5.00 et. seq.), and the section on Integrated Records Management System (IRMS) § 5.551 et. seq. and the section on IIM accounts 5.6.1 et. seq. It appears that in providing these services, the Bank will be constrained by BIA capabilities. I am also concerned that there is no mention in the proposal at all with respect to flow of information from the MMS to the BIA or directly to the contractor. Many of the problems in the past have resulted from failure of communication between the MMS, BIA and the Treasury or other disbursing agent.

In paragraph 5.5.1, it is stated that the IIM subsystem will be removed from the BIA system and will reside on the financial institution's computer and interface in real time with the BIA. It is stated that the other three systems will reside on the BIA's computer system and data will be forwarded as necessary via telecommunication to the financial institution.

It is not clear whether tribal and allottee land and royalty accounts removed from the BIA's system "will reside" in the financial institution's computer.

In par. 5.6, with respect to IIM accounts, it is stated that the BIA must have on line access to the accounts to perform certain functions such as query as to account status, enter new accounts, account maintenance, request disbursements, etc. It is not clear to me whether the allottee lease records, for example, will be kept up and maintained by BIA or

NORDHAUS HALTOM TAYLOR TARADASH & FRYE
ATTORNEYS AT LAW

Wilfred C. Bowman
June 16, 1987
Page 2

by the contractor. If by the contractor, it seems to me that the system will be unworkable.

Some of the questions which seem to me not to have been addressed with sufficient specificity are: (1) Will receipts for royalties and mineral lease rentals be deposited to the treasury or to the bank? (2) How are IIM monies, particularly royalty receipts, to be transferred from the bank, the BIA or the treasury? (3) Will explanations of payment with respect to royalties payable to tribes and allottees accompany monthly royalty payments as required by Federal Oil and Gas Royalty Management Act (FOGRMA)? (4) What time lag will there be between a request for funds from an IIM account by an allottee and the disbursement of funds from the bank? (5) Will the BIA agency office be allowed to call for IIM funds directly to the contractor and will the checks be issued that day or the following day to the account owner? (6) Would money be wired at the request of an allottee through terminals maintained at various BIA offices; for example, the Shiprock office on the Navajo Nation? (7) Would an allottee be able to receive the statement of his IIM account instantaneously from a computer terminal at an agency office? How will these payments be handled during the transition?

29 Navajo allottee royalty payments are now being made from the San Francisco Office of the United States Treasury. May and June payments were not made on time. Explanation of payments which were to accompany checks have not been accomplished as yet. Will these problems be addressed?


29 How will the transition be established without suspension of payments and information?

There is a section on Inspection and Acceptance, Acceptance Testing, Contractor Cooperation During Acceptance and Acceptance. As far as I can see there is no provision in the proposal which requires a contractor to assure continued operation without interruption of service during the transition period.

Judging from past performance, there will be many problems involved with respect to information and payment during the transition period.

The problems which you believed were not addressed in the Mellon Bank proposals are covered in a letter of June 13, 1987 to Ms. Pat Daniels of the Mellon Bank also mentioned. I am enclosing a copy of that letter for your information.

Sincerely,


Robert J. Nordhaus

NORDHAUS HALTOM TAYLOR TARADASH & FRYE

RJN:mb
Enclosure.

NORONHAUS, HALTOM, TAYLOR & TARABASH

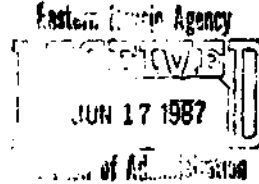
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 807 ROMA AVENUE, N.W.
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TELEPHONE
 (505) 843-4275

March 13, 1987

Ms. Pat Davin
 Mellon Bank
 Trust Department
 210 Chestnut St.
 Meadville, PA 16335



RE: Management of BIA Trust Funds

Dear Ms. Davin:

I attended the meeting in Phoenix on March 5, 1987. At that time you presented charts showing the flow of funds and responsibility for various operations within the bank and method of handling the BIA Trust Funds and royalty payments. You advised me that these charts would be available to us as counsel for the Navajo Tribe and Navajo Allottees. I would appreciate a copy of the flow charts which you presented at the meeting together with other information shown on the charts which were included in the slide presentation.

There were certain answers to questions which were not clear to me and I would appreciate your responding to them as much as feasible at this time.

I would like to clarify the status of the intermediate fund, composite fund and short term fund—the term of years for each and the average yield which you anticipate. I took your figures down but I am not sure they are correct. I would also appreciate a copy of the yield curves shown on the slides.

I understand that there are approximately 1700 Tribal Accounts and 250,000 I.I.M. Accounts. I would appreciate having this information verified.

It is my understanding from your presentation that the receipts for royalties and other deposits to the trust accounts, IIM and IMPL accounts would be deposited in the Treasury as required by law. How are Trust fund monies to be transferred from Treasury to Mellon Bank? How will they be identified? What will be the time lag? I understand that the terminals would be maintained at various BIA offices for access to information and that information would be available to Tribes and allottees at all times at the terminals. It is also my understanding that the tribes would have money available by wire service at any time. The question in my mind is how a request for funds by a tribe would be authenticated and whether BIA approval would be required for the transfer. With respect to the allottees, the question is what access by allottees to money would be available, at what time and through what process? Would money be wired at the request of an allottee through the terminal maintained at various offices, for example the Shiprock office on the Navajo Reservation? Would approval by the Superintendent be

NORDHAUS, HALTOM, TAYLOR & TARALASH
ATTORNEYS AT LAW

Ms. Pat Davin
March 13, 1987
Page 2

required for withdrawal by an allottee? What time lag would there be between the request and the transfer of funds? How would the money be transferred, i.e. What account reconciliation could be provided? By wire to the agency office overnight to the agency office or by mail in a check to the allottee?

With respect to royalty payments to allottees, please be advised that we represent an association of Navajo allottees in a class action suit filed in the United States District Court for the District of New Mexico entitled, *Shii Shi Keyah Association, v. Donald P. Hodel*. This case has been in litigation for three years and the Court has issued various opinions and orders designed to affect compliance by the Department of Interior with Federal Oil and Gas Royalty Management Act of 1982. As a result of various agreements between the parties arising out of the Court's orders, a Stipulation and an Amended Stipulation were entered into November 20, 1986 and January 26, 1987, copies of which are enclosed.

The Stipulation provides that royalty reports and Indian Financial Distribution Reports will be transmitted from the MMS and BIA in time so that BIA will be able to deposit royalty payments to IIM accounts or make its payments by the end of the month following the month received by the MMS.

With respect to explanation of payments accompanying the checks, the parties agreed to an interim explanation of payment form attached to the Stipulation of November 24, 1986. It was agreed that the explanation of payment form will also show the balance in IIM accounts of each allottee at the end of the reporting period.

You will note that it is stated in the Amended Stipulation that the Defendants intend to implement this new procedure through use of its contract with the Mellon Bank and, that additional information required by the Act will be provided at computer terminals at Crownpoint, Gallup, Shiprock and Window Rock offices of the BIA serving the Plaintiffs by September 1, 1987.

The importance of making royalty payments at the specified time and accompanying payments with the minimal explanations of payment shown on the attachment to this letter cannot be overemphasized. Allottees sometimes have to travel 200 miles or more to obtain their mail or to receive checks at agency offices. If the checks are not there on time the trips have to be made again at great hardship. They also have regular monthly payments which cannot be met if the payments are not made on time. In the past, explanations of payment did not accompany checks and the allottees had no idea what the payments covered, what dates of payments were covered, what leases were involved, nor did they have any information as to what balances remained in their IIM accounts. This information was not available to them at the BIA offices. The situation was intolerable. It is now in the process of being cured by Court action.

I am not sure that the personnel at the Mellon Bank recognizes the seriousness of this problem. We need to know whether procedures are or will be in place to carry out the terms of the enclosed Stipulation.

We also need to know what will be happening during the transition period and how the transition will be handled. I am particularly interested how it will be handled with respect to the Navajo allottees. I am also concerned about the information being readily available at any time with respect to tribal trust funds, IMPL funds and IIM account

NORDHAUS, HALTOM, TAYLOR & TARADASH
ATTORNEYS AT LAW

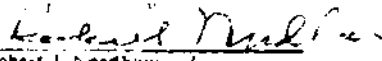
St. Paul, Minn.
March 13, 1967

...funds through the BIA Agency offices or otherwise. We want to be assured that this will be handled.

It is also not clear to me how the information from the BIA tribal records on leases, allottee records on leases, and allottee interest in leases will be transferred from the BIA to Mellon. Will this be done by BIA area office, and the transition handled a period of time?

If I were furnished a copy of the proposal made by the bank to the Assistant Secretary for Indian Affairs and the draft contract, perhaps some of these matters would be clarified.

Sincerely,


Robert J. Nordhaus

NORDHAUS, HALTOM, TAYLOR & TARADASH

Re: ...

Enclosure

cc: The Honorable Ross Swimmer
Mize Upham, Esq.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20240

Accounting Management
MS 4070

ME 117357

Chris A. Baker, Chairman
Southern Ute Indian Tribal Council
P.O. Box 737
Ignacio, Colorado 81137

Dear Chairman Baker:

Thank you for your letter of June 9, 1987, in which you expressed the Tribal Council's support for our initiative to improve the management of funds held in trust.

Your concerns regarding the system security are very valid and will be properly addressed in the final product. Consideration will also be given to your proposal to expand the requested investment advisory services to include tribal asset management or investment counseling for tribal funds not maintained in trust accounts by the Bureau. However, cost would be a determining factor in obtaining such additional advisory services.

Your question concerning the Contributed Funds and the possibility of tax deductions for individual contributors is being researched. I believe it to be possible, since the tribe is a government, and contributions to governments are non-taxable. However, I would like to provide you with the specific statutory reference and the documentation you would need to provide the contributor to satisfy the Internal Revenue Service requirements. When we have the specific information, I will provide a follow-up response.

As far as the Bureau requirements are concerned, the Contributed Funds Account was set up for the purpose of accepting donations for the benefit of Indians, and donors may specify the purpose and/or beneficiaries. In your case, a sub-account would be established to accept each program specific donation.

On behalf of the Assistant Secretary - Indian Affairs, and myself, I wish to thank you for taking the time to review the proposal and for providing us with your very pertinent comments and suggestions. Your support of this proposed contract to assist the Bureau in improving its management of the funds held in trust for tribes and individual Indians is sincerely appreciated.

Sincerely,

/s/ BETTY WILKINSON

Chief, Division of Accounting
Management



SOUTHERN UTE INDIAN TRIBAL COUNCIL

Tribal Affairs Building
 POST OFFICE BOX 737
 IGNACIO, COLORADO 81137
 303-563-4525

RECEIVED
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 JUN 11 1987

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June 9, 1987

Ms. Betty Wilkonson, Chief
 Division of Accounting Management
 Bureau of Indian Affairs
 Room 4071, Main Interior Building
 18th & C Streets N.W.
 Washington, D.C. 20240

Re: Trust Fund Management

Dear Ms. Wilkonson:

This letter is sent on behalf of the Southern Ute Indian Tribal Council regarding the Bureau of Indian Affairs' proposal to procure trust fund management for individual Indians and tribes as set forth in 52 Fed.Reg. 12348, April 15, 1987. In reviewing the proposal, the Southern Ute Indian Tribal Council is impressed with the comprehensive nature of the investment plan. It is obvious that a substantial amount of time and effort has been devoted to improving the administration of trust funds. Conceptually, the Southern Ute Indian Tribe has no objection to contract management of the funds, provided that the expense for such administration is not deducted from tribal or individual accounts.

Specifically, the Tribal Council is concerned about several provisions:

§3.6 - Provisions of Data/System Processing. This section provides that the BIA will have on-line access not only for account status, but also for "data entry for account maintenance, investment data, and daily interest rate computation." While the Southern Ute Indian Tribe agrees that the BIA must continue to have a process for on-line review of accounts, we question the ability to maintain system security and integrity if BIA has immediate data entry access into the system. Further elaboration of design features that would control or eliminate direct BIA data entry would be helpful, particularly in light of the requirements of §3.8 mandating security control.

§4.1.2.1 - Agency Offices. While the experiences of other tribes may differ, the Southern Ute Agency lacks individuals with the expertise to assist meaningfully in financial planning and operations. Particularly with respect to asset management, the Southern Ute Indian Tribe has begun to rely upon outside investment counselors who can assist not only in investment in federal agency bonds and issues, but also private sector securities

Wilkinson/Baker

Page 2

June 9, 1987

and bonds. While we recognize that such investments do not carry the security of Secretarial trust fund investment, private sector investment may provide tribes with substantial investment opportunities that cannot be realized by restrictive investment constraints of the Secretary's program. The Southern Ute Indian Tribe requests consideration of additional provisions that would allow tribes to utilize the expertise of the successful program contractor in either asset management or investment counseling outside the investment parameters of Secretarial trust funds. Because of the size of the trust fund account, we feel that such an investment service could be acquired for the benefit of tribes at no additional tribal expense. We also feel strongly that this financial tool would be infinitely more productive than that provided by agency personnel in maximizing tribal economic opportunities.

§4.2.1.2 - Contributed Funds. The Southern Ute Indian Tribe has been the sponsoring entity for several nonprofit activities. For example, the Tribe has developed a small museum and the Tribe has initiated a scholarship fund for qualified tribal students. Both of these activities have been aided to some extent by contributions from third parties. Additional funding, including funding from private foundations, would be enhanced by obtaining tax exempt 501(C)(3) status from the IRS. Tribal efforts to obtain this status have met with resistance from the IRS. The justification for this resistance has been that because qualifying tribes are tax exempt entities, contributions can be made to tribes pursuant to the Indian Tax Status Act and be deductible without 501(C)(3) status being conferred. The contributed funds section states that donations may be accepted by the Secretary of the Interior for the benefit of Indians. We would appreciate knowing if donations can be established for particular Southern Ute tribal programs under this provision, and we would appreciate knowing if such donations would be tax deductible for the contributor. This vehicle may provide us a means for satisfying contributor concerns in assisting tribal nonprofit programs.

In conclusion, the Southern Ute Indian Tribe appreciates the opportunity to comment on the proposal. As contemplated, the ability to obtain accurate timely reports of tribal investments will be a tremendous improvement. We hope that our comments will be of assistance to the Bureau of Indian Affairs in instituting this new service. If you have any questions or further comments, please feel free to contact me.

Sincerely,

Clement J. Frost Vice Chairman
for Chris A. Baker, Chairman
Southern Ute Indian Tribal Council

CAB:sls

cc:Sidney Mills, Area Director
Aiton Nordwall, BIA, Southern Ute Agency
Larry Beck, Finance Officer



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



SEP 14 1987

Mr. Bruce Wynne
Vice Chairman, Spokane Tribe
P.O. Box 100
Wellpinit, Washington 99040

Dear Mr. Wynne:

Thank you for your letter of July 10, 1987, submitted to the Spokane Agency Superintendent expressing your concerns on the proposed procurement of trust fund services. Your comments and views will be made part of the tribal consultation record.

I wish to first address your two primary reasons for opposing the procurement and then your specific comments.

First, you stated that the Bureau's investment program has been effective in the past and that a private bank would do no better in the long run. I agree that the Bureau has performed well in its investment of tribal trust funds, and past assessments from independent studies have so acknowledged. These same studies, however, have also recommended that the Bureau seek supplementary professional advisory services to continue and strengthen our investment responsibilities mandated by law. Our current investment program is basically a manual operation which relies primarily on a bidding process for certificates of deposit in which funds are offered to the highest bidder. Investment analysis or economic and market trend capability in considering other eligible government securities of varying maturities with potentially higher yields is not included in today's program. Such specialized assistance or expertise is readily available in the private sector. The addition of professional portfolio management services would also offer you more flexibility in selecting from the proposed short, intermediate and long-term investment options which would best meet your investment objectives and liquidity needs. It is these improvement services which we are seeking in our investment program in order to assure safety, liquidity and maximum return for your trust assets.

Second, you believe serious problems with collections would result and that funds would be better spent augmenting, training and modernizing the existing IIM system. Further, you indicated that the loss of privacy and the lack of direct BIA accountability would be insurmountable drawbacks to the proposal.

We are proposing to streamline the collection process through the use of lockbox services and faster concentration of funds for investment. Such cash management services are available in the private sector and have been implemented successfully for those federal agencies using Treasury's network financial institutions. Since inception at Treasury in 1983, the increased earnings to the government is approximately \$29 million as of July 1987. The network currently handles 180 accounts with an annual cash flow of \$15 billion for 46 agencies and seven departments. In addition, we plan to provide training and standard procedural manuals to agency, area and central office staff to minimize those problems normally associated with any new implementation.

In order to continue privacy safeguards in the proposed environment, security access codes would prevent any agency office from accessing accounts of any other agency. In addition, no area office would have access to accounts of any agency or other area office outside its jurisdiction.

Further, I assure you that the proposal would in no way diminish our responsibility, as trustee, to the tribes and individuals nor lessen our direct accountability over the activities and functions we are seeking to improve. Various federal oversight agency reports and other studies have identified serious operational deficiencies in the current accounting systems and have offered recommendations, which included contract options, to correct these problems. Consistent with these recommendations, our proposal to contract for deposit accounting services using available state-of-the-art systems would enable more timely and accurate accounting data to be presented to BIA, tribes and individual Indian participants. The Bureau, as the trust fund manager, would continue to direct, monitor and authorize those transactions and activities performed by the contractor. Our legally mandated role in carrying out these trust functions would not change under the proposal to upgrade the quality of trust accounting services.

With respect to your comment that Congress is requiring a full accounting of all IIM funds before contracting out, the House Appropriations Committee has included language in the Fiscal Year 1988 Appropriations bill which would preclude the transfer of Indian trust funds under any contract until the respective tribes or individual Indians have been provided an accounting of their funds. The House bill is currently pending Senate action.

Such proposed language is consistent with our current IIM reconciliation efforts. Our Branch of Trust Fund Accounting has recently initiated a nation-wide program to train each area and

agency to reconcile the IIM accounts at the local level. Training is being conducted on-site at each area and includes a preliminary review of compliance with current published procedures. We plan to separately contract for internal control reviews to determine the accuracy of transactions recorded to individual IIM subsidiary accounts. This will enable the Bureau to identify those locations where the accounting controls are inadequate to allow reliance on the records. Reconciliation of subsidiary accounts at those locations is a priority in anticipation of any transfer of accounting data to a prospective financial institution.

While the procedures for processing collection and payment transactions are in place, not all locations comply. These standard procedures would be a condition under the proposed contract and any deviation from the standards would be cause for cancellation. Such quality controls would address the weaknesses in our current operations. In addition, the funds would be subject to internal and external audits supplied by the contracting institution, and to audits by the General Accounting Office and the Inspector General as well as contract compliance reviews by the Bureau. This would be the first time all the trust funds would be included in such an environment.

With respect to your comment that no definitive study has been made on cost comparisons between proper internal trust fund systems and those which would be obtained by contract, we have recently contracted out an A-76 study which will provide a management analysis and an estimate of what it would cost to improve the Bureau's financial trust services program. The cost estimate for the government would then be placed in competition with those we anticipate receiving from the private sector. We advised the appropriate Congressional Committees on this project at an August 3, 1987, briefing.

In response to your comment that the proposal would "place Indian monies in the hands of private bankers so they can get their cut and eventually charge the accounts for services now provided by the Bureau," the trust funds would be deposited in Treasury accounts, not in the prospective financial institution's accounts. The institution would serve as the Bureau's agent and would be processing transactions as directed by the Bureau. The trust funds would not at any time be used by the institution for its collateral or investment purposes. Contract servicing costs would be paid from funds appropriated by Congress and not taken out of the Indian trust accounts.

With respect to your comment that the Spokane Tribe does not wish to be subjected to dealing with a banking entity that is "thousands of miles removed geographically and eons removed philosophically," your tribe would continue to deal with the

same agency and area office you deal with today. We are merely changing the point of collection and where the data processing will occur. Today, your area office has an Information Management Center (IMC) manager that has a computer on-site which stores and processes IIM records. In the proposed environment, that same data would merely be processed at another location and transmitted to your area IMC manager. Your agency would be able to call up on its local computers the most current data possible. More importantly, the data would be processed as efficiently as possible and made available to your people at the local level on a much more timely basis.

Regarding social security numbers, you indicated that many of your older people do not have one and have shown no inclination to apply for one. Social security numbers are required as a matter of law. The Internal Revenue Code requires us, as an agent of the federal government, to obtain social security numbers for individuals or estates to whom we distribute interest income or any other taxable income. This is not an attempt to subject the Indian people to any harassment by the Internal Revenue Service (IRS). The IRS requires this same data from any bank at which Indian individuals have a personal account. We are no different according to the law; we are just trying to comply with the reporting requirements which we are mandated by law to enforce.

We are making every effort to consider all tribal and individual concerns in our endeavor to improve the management of Indian trust assets. I hope that we have responded to your concerns. Thank you for taking the time to express your views in writing.

Sincerely,

St. Ross G. Selinger

Assistant Secretary - Indian Affairs



Spokane Tribe of Indians

P.O. Box 100 - Wellpinit, WA 99040 - Ph (509) 258-4581/838-3465

CENTURY OF SURVIVAL

1881 - 1981

July 10, 1987

RECEIVED
JUL 13 1987
SPOKANE AGENCY

Mr. Mike Whitelaw
 Superintendent
 Bureau of Indian Affairs
 Box 365
 Wellpinit, Washington 99040

Re: Comment on Proposed Private Contract of
 Investment and Management of Trust Funds

Dear Mr. Whitelaw:

The Spokane Tribe has been asked by the Bureau of Indian Affairs to comment on the proposed private contract of Investment and Management of Trust Funds.

We would like to go on record as strongly opposing the contract for two primary reasons:

1. The Bureau Investment program has done an effective job in the past and we are convinced that a private bank will do no better in the long run.
2. We are also convinced that there will be serious problems with collections and we believe the funds would be better spent augmenting, training and modernizing the existing Bureau IIM system. In our opinion the loss of privacy and the lack of direct BIA accountability are insurmountable drawbacks to the proposed plan.

According to our information Congress has told the BIA not to contract for trust fund management until full accounting of all IIM funds is attained. BIA must accomplish this accounting so what then would be the justification for contracting after full accounting has been realized. There would certainly be no justification if the BIA made the effort to bring the IIM system up to speed and kept it there? We were told by BIA Central Office that no definitive study has been made on cost comparisons between a proper BIA IIM and investment systems and the private contract. Our question is, does Congress know this?

Although we expect the present administration to proceed with this ill-conceived proposal despite overwhelming opposition from the Nation's Tribes, we are, to repeat, adamantly opposed to the

Mike Whitelaw
July 10, 1987
Page - 2


concept. In our view it is another step by this administration to abdicate it's trust responsibilities to Indians despite talk to the contrary. We also see this type of action as a thinly veiled attempt to place Indian monies in the hands of private bankers so they can get their cut and eventually charge the accounts for services now provided by the Bureau, again despite talk to the contrary.

Basically the Spokane Tribe does not wish to subject it's members to the confusion of dealing with a banking entity that is thousands of miles removed geographically and eons removed philosophically. Many of our older people do not even have Social Security Numbers and have shown no inclination to apply for one. The BIA's objective should be to provide better services to the Indian people rather than create more time frame lags, confusion and fear among the Indians serviced by Federal Government.

Finally the Spokane Tribe strongly objects to this process of disguising after the fact notification as "consultation" which, incidentally, has become a dirty word in Indian Country. If the Tribes hadn't objected politically so strenuously we would already have a contract with Mellon Bank, an unstable institution at best.

This proposed contract does not serve the best interests of the Indian people and we are prepared to join with Tribes in challenging it and the other damaging initiatives in Congress and in court, if necessary.

Sincerely,


Bruce Wynne
Vice Chairman
Spokane Tribe

BW:kw



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



Mr. Leon Miller
Chairman, Stockbridge-Munsee
Community
Route 1
Bowler, Wisconsin 54416

SEP 14 1987

Dear Mr. Miller:

Thank you for your letter of June 19, 1987, expressing your concerns on the proposed procurement of trust fund services. Please accept our apology for the delay in responding. Your comments and views will be made part of the tribal consultation record.

I wish to first address your general concerns for opposing the procurement and then respond to your specific questions.

With respect to your first concern that the proposal would transfer a Bureau trust responsibility to the private sector, I assure you that the proposal would in no way diminish our responsibility, as trustee, to the tribes and individuals. The Bureau is seeking professional cash management, accounting and investment advisory services that it critically needs to strengthen its legally mandated responsibility. Such improvements to our current operations are readily available in the marketplace and would result in greater earnings from cash concentration and quicker investment, accurate daily accounting and interest distribution and increased liquidity to tribes and individuals. The Bureau would continue to direct, monitor and authorize those transactions and activities performed by any prospective contractor. The protection of the trust would remain an integral part of the Bureau's trust responsibility.

Second, you asked if I intend to follow through with the proposal without considering tribal wishes. While the Bureau retains decision authority as the responsible fiduciary party, we have included this forum to provide you an opportunity to raise and receive responses to your concerns, recommendations and any alternate suggestions. We are currently responding to and considering those tribal issues not fully addressed in their consultation meetings before preparing the final proposal.

Third, with respect to your recommendation that the present system be improved before any attempt to secure services from a private financial institution, we have recently contracted out an A-76 study which will provide a management analysis and an

estimate of what it would cost to improve the Bureau's financial trust services program. The cost estimate for the government would then be placed in competition with those we anticipate receiving from the private sector.

And fourth, you asked how the Bureau will determine if "accountability" of the financial institution's performance is being accomplished. Definite criteria would be included in the proposed procurement to provide the Bureau monitoring measures to assure contractor compliance and quality performance.

Finally, we have provided the following responses to your specific questions in the same order you listed in your letter:

1. **Question:** Will the transfer of investing and management process to a private financial institution cure the in-house management problems?

Response: First, no management responsibilities would be shifted in the proposed environment. Again, the Bureau would not be delegating any of its trust management responsibilities. With respect to the investment process, the prospective contractor would notify Bureau investment managers of the investment and market analysis. The contractor would then execute only those instructions received from the Bureau and record the transactions in the trust accounts established and maintained on their system, which would be available via an on-line, real-time computer network across the Bureau.

The proposal would also enable the Bureau to standardize the way cash deposits, disbursements, transfers, investments and accounting is handled. This and other improvements described earlier would address many operational deficiencies in our current systems and thereby upgrade the quality of trust services to Indian beneficiaries. While they are not instant solutions to our in-house management problems, the proposed contracting of such services would be an important step forward. These problems did not happen overnight and neither will their solutions. Steps to improve management oversight would include Bureau manager training, implementation of annual audit requirements and development of an internal audit staff and more effective procedural manuals.

2. **Question:** Would not the trust accounts have to be reconciled prior to any transfer of trust funds?

Response: We have a contract arrangement with a private CPA firm to reconcile the tribal trust fund accounting records on the Bureau's automated finance system with the Treasury's

records. In addition, we have initiated a similar wide program to train each area and agency to administer the IIM accounts at the local level. The training includes a preliminary review of compliance with current published procedures. We plan to separately contract for internal control review to determine the accuracy of accounting records in internal IIM subaccounts. Such efforts to verify the tribal and IIM account balances are currently in contemplation of any transfer of accounting data to a prospective contractor. From that point on, the funds would be subject to internal and external audits supplied by the contracting institution and to audits by the General Accounting Office and the Inspector General as well as contract compliance reviews by the Bureau. This would be the first time all the trust funds would be included in such an arrangement.

question: In the contracting procedure you are about to enter into more costly to the federal government?

response: Contemplated costs for the services needed to upgrade our trust program will be higher during the initial implementation year than in subsequent years. There will be some dual costs for Bureau operations and contract phase in during fiscal year 1985 and additional funds have been requested in the Bureau's FY 1985 budget. After the implementation period, however, we expect the contract costs, plus remaining Bureau overhead operations costs, to not exceed what we are currently paying for trust administration.

- 4 question: How is a contract of that magnitude to be justified when the BIA staff is off responsible for trust fund accounts that will remain on the payroll?

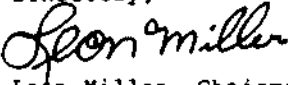
response: Under current operations, many nonfinancial program staff devote significant portions of their time to handling and accounting for trust collections due to the lack of modern data systems. The use of contracted modern systems would enable these staff members to return their efforts to program duties.

Further, it is unlikely that staff would be laid off as a result of the contract. There will continue to be a need for the staff at each agency and for staff to monitor the contract. We do, however, anticipate a reduction in IIM staff at some locations. Every effort will be made to place any affected employees in other positions available at their same working stations such as their own office work for which there are great staffing needs. In other words, staff

Page 2
Mr. Swimmer
June 19, 1987

assurances can you give me, that if the Bureau receives a grade of "F" for poor forestry management of the Tribe's timber and forestry resources, that you will not contract the forestry trust responsibilities out to a private company or firm? And what if the Bureau receives another grade of "F" for poor quality educational programs in Bureau schools etc., would you transfer the Bureau educational programs out? This could go on with all the trust responsibilities that the Bureau has the legal and moral responsibility for protecting.

Sincerely,



Leon Miller, Chairman
Stockbridge-Munsee Community

LM/ek

cc: BIA - Ashland Agency
BIA - Minneapolis Area
Senator William Proxmire
Senator Robert Kasten, Jr.
Congressman Toby Roth

STOCKBRIDGE - MUNSEE



BAND OF MOHICAN INDIANS

STOCKBRIDGE - MUNSEE COMMUNITY

Route 1 Phone Bowler (715) 793-4111

BOWLER, WISCONSIN 54616

June 19, 1987

Mr. Ross Swimmer
 Assistant Secretary - Indian Affairs
 Department of Interior - BIA
 18th and C. St. N.W.
 Washington, D.C. 20240

RE: Transfer of Trust Responsibilities

Dear Mr. Swimmer:

I write this letter to you on behalf of my tribe to let you know that we are vehemently opposed to the planned transfer of Bureau trust responsibilities to the private sector. It is my opinion that this is another flagrant example of the Bureau's attempt to usurp its trust and fiduciary responsibility that Congress has bestowed upon them. It is also my opinion, that if Congress believed "our best interests" could adequately be addressed elsewhere, I'm confident that they would have taken the necessary steps. However, since it is obviously their position that "our best interests" could be accomplished within the structure of the Bureau, Congress saw fit to leave these responsibilities with you and the Agency you administer.

Mr. Swimmer, before I continue on with my specific remarks, and the questions I have about this transfer, let me say this: As a tribal leader, I am appalled and horrified with respect to comments I have been hearing throughout Indian Country that you intend to follow through with this transfer plan of yours regardless of the wishes of the Tribes? Tell me, Mr. Swimmer, that it isn't so. I am equally horrified Mr. Swimmer, that if this is in fact true, I can only interpret this "consultation process" as a direct slap in the face of our governmental integrity and intelligence. I can understand how upset you were when the Tribes across Indian Country united to put a stop to your transfer plans with the Mellon Bank, but that should have been some indication to you that the Tribes are opposed to any type of dismantling of trust responsibilities. Like the spoiled kid with the ball who ask the other kids what games they want to play, and they tell him, and he says, "to bad, its my ball and we will play what I tell you". Is this the kind of treatment you have in store for us?

R. Swimmer
 JUN 25 1987

Page 2
Mr. Swimmer
June 19, 1987

We have been informed by Bureau representatives and those familiar with the internal operations of fiscal management of the Bureau, that the reason you are contemplating this move is because of the Comptroller General's report, the Bureau receives a grade of "F" in management of accounts and accounting principles, reconciliations, disbursements, reports and custodial services for trust fund monies and a grade of "A" for returns on investments. I believe that the solution to this problem could be rectified internally by re-organizing your staff responsible for this division and providing them with the necessary training; any sophisticated equipment/computers that are necessary and increase in manpower if need be. We recommend that the present system be completely overhauled, if necessary, in order to improve efficiency within this division before any attempt is made by the Bureau to transfer this to a private financial institution.

Another troubling aspect of this transfer, as we were informed by Bureau representatives, is that the Bureau itself will determine if "accountability" of the financial institution is being accomplished and purpose and goals being met. How can this be so when the primary reason you wanted it removed from the Bureau is because of poor management, mismanagement and accountability problem within the agency?

Some other questions we have with respect to this transfer are as follows:

1. Will the transfer of investing and management process to a private financial institution cure the in-house management problems?
2. Would not the trust accounts have to be reconciled prior to any transfer of trust funds?
3. Is the contracting procedure you are about to enter into more costly to the federal government?
4. How can a contract of this magnitude be justified when the BIA has staff responsible for trust fund accounts that will remain on the payroll?
5. What happened to the investments during the three months of investment in the Mellon Bank?

Lastly, I am concerned about the type of precedent this dismantling of trust responsibility will have on other trust responsibilities the Bureau is obligated to uphold. What

**UNITED SIOUX TRIBES
OF SOUTH DAKOTA**

Development Corporation
P O Box 1193, Pierre, S.D. 57501

Executive Director
Personnel Management 224-8961
Employment Program
Employment Program 224-8960
Land Management
Business Office 224-8965
CETA



- Standing Rock
- Lower Brule
- Devils Lake
- Flandreau
- Rosebud
- Santee
- Crow Creek
- Pine Ridge
- Cheyenne
- Sisseton
- Yankton

Field Offices

Aberdeen	225-9513
Rapid City	343-1190
Sioux Falls	339-0248

August 5, 1987

Arlene Brown, Special Assistant
Deputy Assistant Secretary
Bureau of Indian Affairs
Operations
Main Interior Building
C St. Between 18th & 19th Sts., N.W.
Washington, D.C. 20240

Dear Ms. Brown:

The Aberdeen Area Tribal Chairmen's Association would like to extend their appreciation to you for attending their meeting in conjunction with the Aberdeen Area Office Bureau of Indian Affairs concerning the trust fund issue and possible contracting. Your information was very helpful in bringing about some understanding of the particulars of contracting the trust fund program that the Bureau of Indian Affairs is the trustee for. We now know considerably more than we knew before your presentation at the meeting.

Again, I want to thank you and extend our most sincere appreciation for your presentation at our meeting.

Sincerely,

Clarence W. Skye
Clarence W. Skye
Executive Director

CC: Chrono



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 13 1967

Melvin R. Sampson
Chairman, Yakima Indian Nation
P.O. Box 151
Toppenish, Washington 98948

Dear Mr. Sampson:

Thank you for your letter of June 15 on the proposed procurement of trust fund services. Please accept our apology for the delay in responding. Your comments and views will be made a part of the tribal consultation record.

I will address your concerns in the same order as your letter.

First, while you acknowledged the need for major corrections in our current trust fund system, you stated that the Bureau's approach in this proposal is focused solely on technical considerations for solutions. Further, you emphasized that the Bureau has a trust responsibility to tribes and individual Indians not a responsibility to a trust function and asked where the human factor has been incorporated?

As you point out, the Bureau, as trustee, has a responsibility to the tribes and individual Indians it services. To meet and strengthen that responsibility, however, certain operational functions in our trust program are in critical need of improvement so that the tribe or individual may benefit. As you know, independent reports and studies have identified deficiencies in our operations which have resulted in a lack of quality services to the ultimate Indian beneficiary, i.e., untimely, inaccurate information; disbursement time lags and loss of earnings to the trust account holder from disbursement clearance float; and uninvested cash due to delays between cash receipt and deposit. The professional cash management, accounting and investment advisory services we are seeking would result in greater earnings from cash concentration and quicker investment, accurate daily accounting and interest distribution, and increased liquidity to tribes and individuals. In addition, the reporting data would be processed more efficiently and made available to you on a much more timely basis.

Second, you expressed concern that tribal input would not be incorporated into the procurement process. While the Bureau retains the decision authority as the responsible fiduciary party, we have included this forum to provide you an opportunity to raise and receive responses to your concerns, recommendations and alternate suggestions. We are currently considering the incorporation of those tribal recommendations received into the final proposal.

Third, you requested that all the alternatives considered leading to this proposal and any associated feasibility studies be made available to your tribe for review. The Price Waterhouse report summary of January 1984, the Inspector General's reports of September 1983 and March 1986, the General Accounting Office report of September 1982 and other information were furnished to you at the time of the consultation conducted by your superintendent on the proposal.

Briefly, alternatives considered in the Price-Waterhouse report--which studied the cash management, investment management and the related accounting systems--included recommendations to: (1) purchase processing services from external providers; (2) implement a trust accounting system that could be run through an external service organization which would provide terminal access in Albuquerque; (3) implement a deposit reporting service, which would involve the procurement of services from a commercial vendor; (4) modify cash deposit procedures by establishing a BIA trust fund concentration account in a major commercial bank and utilize a balance reporting service from the bank selected; (5) consider a shift of BIA disbursement activities to the concentration bank in order to allow the trust funds to obtain the benefit of disbursement float; and (6) consider the addition of professional portfolio management capabilities to enable Indian beneficiaries more flexibility in the selection of investment options.

The General Accounting Office and the Inspector General identified serious operational deficiencies in the current accounting systems and offered recommendations, which included contract options, to correct these problems.

Further, our "request for information" in 1985 to private sector businesses sought information on the systems available that could address our cash management, investment and trust fund accounting needs. Responses indicated great interest from the private sector and pointed to some excellent systems available that were apparently superior to our existing systems. We are enclosing a copy of a draft summary of comments from the private sector.

In addition, we have recently contracted out an A-76 study which will provide a management analysis and an estimate of what it would cost to improve the Bureau's financial trust services program. The cost estimate for the Government would then be placed in competition with those we anticipate receiving from the private sector. A copy of the study will be available after the project is completed.

Fourth, you commented that the primary problem may be the lack of data availability within the computer system and recommended we redesign or modify our existing automated accounting and finance systems to eliminate the accounting inadequacies. Further, you requested the feasibility study associated with upgrading the current system to correct these deficiencies.

Data availability is a part of the problem we have with our current systems. The reason for that data unavailability is not, however, due to programming deficiencies. Otherwise, we could overcome the problems by dedicating adequate resources from our Office of Data Systems. The real problem goes much deeper. We have serious internal accounting control problems as identified by the General Accounting Office and the Inspector General in their reports. These problems are not purely mechanical in nature; we cannot program around them. They require major redesign or improvement, as you suggest but not in the automated system alone.

Modern trust accounting and record keeping systems, which are generic in nature, are already available in the private sector which have the capability of handling activities similar to our functional needs. Such systems are already equipped with corresponding accounting controls. Consistent with the recommendations in the Price-Waterhouse and Inspector General reports to consider contract options, we propose to correct those weaknesses that cannot be resolved by reprogramming alone by employing under contract a standardized, modern accounting control environment. This would minimize the amount of redesign necessary to our current internal systems. Under the proposal, the contracting institution would be required to have a compatible state-of-the-art software system to handle the trust fund processing. Or, in other words, they would have a system which would accept our data in an automated format and enter into their system.

Further, we are currently redesigning our Integrated Records Management System (IRMS) environment to enable the transfer of IRMS data to an external modern system. IRMS is made up of four subsystems; individual Indian monies, lease, owner, and people. For the past year, the Bureau has made a concerted effort to bring each of the four subsystems on-line with current and

accurate data. The data is currently available in an automated format. We expect our redesign effort to be completed in December 1987.

With respect to your request for the associated studies used as the basis for our proposal to correct the accounting deficiencies, we have provided you the Price-Waterhouse, General Accounting Office and Inspector General reports, as stated earlier.

Fifth, you asked if the prospective financial institution faces some type of governmental or legal order to release Indian trust information, would that information be released regardless of statutory requirements? The institution would be required to comply with the Privacy Act and any other legal requirements applicable to Indian trust funds. The contracting institution would be required to defer to the Bureau any decision on releasing information to any other government agencies. We would handle the matter from that point just as we do today.

Sixth, you indicated that our Branch of Investments has performed adequately and that unless our determination to contract out for these services has been adequately justified, you do not believe such services should be obtained. Further, you asked what is the Solicitor's opinion on the request for proposal?

I agree that the Bureau has performed well in its investment of trust funds, and past assessments from independent studies have so acknowledged. These same studies, however, have also recommended that the Bureau seek supplementary professional advisory services to continue and strengthen our investment responsibilities mandated by law. Our current investment program is basically a manual operation which relies primarily on a bidding process for certificates of deposit in which funds are offered to the highest bidders. Investment analysis or economic and market trend capability in considering other eligible government securities of varying maturities with potentially higher yields is not included in today's program. Such specialized assistance or expertise is readily available in the private sector. The addition of professional portfolio management services would also offer you more flexibility in selecting from the proposed short, intermediate and long term investment options which would best meet your investment objectives and liquidity needs. It is these improved services which we are seeking in our investment program to assure safety, liquidity and maximum return for your trust assets. The Solicitor's Office has been working with us closely in preparing the request for proposal and has concurred in its May 13, 1985,

memorandum (referenced in your letter) that the above factors make the securing of outside expertise both important and proper as a prudent trustee.

Finally, with respect to your concern as to the cost effectiveness of the contracting alternative versus in-house redesigning, the ultimate costs would be determined on a competitive basis. Cost estimates from the private sector and the government would be a primary factor in evaluating the proposals received. Further, we anticipate that the costs for the services we are seeking to be higher during the initial implementation year than in subsequent years. There will be some dual costs for Bureau operations and contract phase-in during Fiscal Year 1988 and additional funds have been requested in the Bureau's Fiscal Year 1988 budget. After the implementation period, however, we expect the contract costs, plus remaining Bureau residual operation costs, to not exceed what we are currently paying for service delivery.

We are making every effort to consider all tribal and individual concerns in our endeavor to improve the management of Indian trust assets. I hope that we have responded to your concerns. Thank you for taking the time to review our proposal and share your views in writing.

Sincerely,

/s/ Ross O. Swimmer

Assistant Secretary - Indian Affairs

Enclosure

ESTABLISHED BY THE
TREATY OF JUNE 9, 1862
EFFECTIVE JUNE 9, 1862

CONFEDERATED TRIBES AND BANDS

Yakima Indian Nation

POST OFFICE BOX 151
TOPPENISH WASHINGTON 99044

GENERAL COUNCIL
TRIBAL COUNCIL

June 15, 1987

Honorable Ross Swimmer
Assistant Secretary of Indian Affairs
United States Department of Interior
Washington, D.C. 20240

THRU: Miram Olney, Superintendent
Yakima Indian Agency
Bureau of Indian Affairs

Dear Mr. Swimmer:

The Yakima Indian Nation recognizes that the Bureau of Indian Affairs has, in the past, been unable to provide financial trust functions to Tribes in an effective and efficient manner and that major corrections to the system may be necessary. However, it appears that the alternative to contract these functions has been based solely on technical considerations for a solution, and has not taken into account the human factor, the individual Indian. Again and again it has been stated that the Bureau of Indian Affairs has a "trust" responsibility to Indians and Indian tribes. This responsibility is a trust responsibility to the individual Indian and not a responsibility to a trust function. Where has the human factor been incorporated?

It appears from the tone of the Federal Register notice dated April 15, 1987, that tribal consultation would be solicited as a necessary requirement but would not be incorporated.

"The procurement process will include consultation with Indian tribes by the Bureau of Indian Affairs. However, it should be noted that "consultation is not the same as obeying those who are consulted." The Hoopa Valley Tribe vs. Joe Christie, et al., No. 86-2861 DC#C 86-5557 MHP, United States Court of Appeals for the Ninth Circuit, and that the Bureau retains decision authority as the responsible fiduciary party."

It is also apparent that the Bureau of Indian Affairs has undergone various audits and reviews of their Trust Accounting system and that recommendations to correct the deficiencies have been proposed. One of the recommendations of the IG's Audit Report on Accounting Controls Over Tribal Trust Funds Bureau of Indian Affairs was to establish a separate organizational approach for tribal trust fund accounting and investment operations.

ATTACHMENT C

Page Two
June 15, 1987

"Several options exist, including contracting out, and an in-depth feasibility analysis is needed before the best one can be selected."

In order for the Yakima Indian Nation to assess the BIA recommended alternative, the Yakima Indian Nation is requesting that all the alternatives considered and the associated feasibility studies be made available to our Tribe for review.

Moreover, upon review of both IG's reports, it appears that the problem is not the investment services provided or rate of return, and not necessarily the accounting system established, but rather the lack of data availability within the computer system. It appears that most, if not all, the accounting problems would be eliminated by redesigning or modifying the existing automated accounting and finance system. This does not mean an additional purchase of computer equipment, but rather an expenditure for additional computer programming to redesign the system to eliminate the inadequacies which led to the development of accounting and finance sub-systems. The Yakima Indian Nation requests the feasibility study associated with upgrading the current system to correct deficiencies.

Another primary concern the Yakima Nation has with the proposal to contract, is the protection of Indian Resource information. It has been stated in the information provided that funds held in trust will be protected through statutory requirements and that the contractor is restricted, by laws governing financial institutions, from releasing financial data. However, if this financial institution faces some type of U.S. Governmental and/or legal order to release information under a time requirement, won't that information be released, regardless of Statutory requirements? Even if the BIA is contacted regarding the release, which they may not be, it is highly unlikely that they would be able to prevent the release in a timely manner. The damage to the individual Indian or tribe would already be done and a possible precedent established. Realizing that this financial institution will have access to a majority of tribal records, what assurances are there that this will not occur. We believe none, because the financial institution selected operates under the guidelines of the United States, and is therefore responsible to them, unlike the BIA who has a "trust" responsibility to Tribes and individual Indians.

Page three
June 15, 1987

Another area of concern is the Solicitor's opinion regarding investments of Indian Trust funds. In Opinion dated May 13, 1985, the solicitor was responding to the implications of contracting with outside vendors to handle the various aspects of several management and investment of Trust Funds options. This opinion states:

"(3) There are no legal obstacles to the employment of an agent to provide investment information assuming the information is needed for the proper investment of Indian Trust Funds and cannot reasonably be provided by Bureau Personnel."

It also states,

"The burden is on the trustee to show that it was necessary to employ the agent.,."

It further states,

". . . a corporate Trustee is guilty of an improper delegation of its powers and duties if it permits others to do acts which should be performed by its own directors, officers or employees; . . .

and qualifies this with the following statement,

". . . (it) would seem to come down to finding that the Branch of Investments cannot adequately perform needed investment services as the outside agent could (3)".

Therefore, has it been proven that the BIA Branch of Investments cannot adequately perform these functions. We believe not. In fact, it has been shown that the Branch of Investments has performed adequately. Unless this determination has been adequately justified, we do not believe these services may be obtained. What is the Solicitor's opinion with regards to this Request for Proposal?

Page Four
June 15, 1987

We believe that it is in our best interest to maintain BIA responsibility over Trust funds, in terms of protection of our resources and the associated "trust" responsibility, and that it is as cost effective and efficient to correct the current system as it is to contract the function. We will oppose the concept of contracting until you, the Assistant Secretary of the Interior, can provide the associated feasibility studies which prove contracting is more cost effective than in-house redesigning, and have answered all our questions and concerns. Until the answers to our questions and the requested information have been provided for our review and comment, the consultation process cannot be considered complete.

Sincerely,

Harvey P. Adams
for *Harvey P. Adams*
Melvin R. Sampson, Chairman
Yakima Indian Nation



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 20 1988

Honorable Daniel K. Inouye
Chairman, Select Committee
on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As an update to our trust fund proposal, we have enclosed a copy of Amendment No. 3 to our Request for Proposals for Financial Trust Services. The amendment would provide the prospective contractor an alternative to use U.S. government securities as collateral in lieu of the surety bond requirement. Please note that the closing date for submission of proposals has been extended to June 1, 1988.

We are also enclosing for your information copies of additional correspondence with the Agua Caliente Band of Cahuilla Indians, the Fort Belknap Community Council and the Seneca Nation, who offered further comments on the procurement proposal.

Sincerely,

/s/ Ross Q. Swimmer

Assistant Secretary - Indian Affairs

Enclosures (7)

Original sent to Sidney R. Yates, House Appropriations Subcommittee on Interior and Related Affairs; Morris K. Udall, House Committee on Interior and Insular Affairs; Daniel K. Inouye, Senate Select Committee on Indian Affairs; and Robert C. Byrd, Senate Subcommittee on Interior and Related Agencies.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 12 1989

Mr. Richard M. Milanovich
Chairman, Agua Caliente Band of
Cahuilla Indians
960 East Tahquitz Way, Suite 106
Palm Springs, California 92262

Dear Mr. Milanovich:

Thank you for your March 15 letter commenting on our trust fund question and answer document dated February 8. You requested clarification on two of the questions concerning IIM accounts.

Your first query relates to Question #155 in the February 8 document on the role of the Department of Justice in a dispute concerning a claim by the Internal Revenue Service (IRS) against IIM funds held by a private banking institution under the proposal. Our initial answer to this question was that the current contracting effort would not alter the conduct of the Department of Justice. That is because the contract proposal would not alter BIA's responsibility with respect to Indian trust funds. Hence, the BIA's relationship with the Justice Department if and when such a case arises will not be compromised by the approval of the proposed contract. Of course, we are unable to determine what position the Justice Department will take in any particular case. These determinations are within the Justice Department's discretion and are made on a case by case basis.

You also expressed concern relating to the protection enjoyed by IIM trust funds from IRS seizure or levy under the proposed procurement. Our initial answer to Question #156 was that the trust funds would be as protected under the proposed procurement as they are today. You suggested that although this may be true in theory, in actual practice various factors will combine to expose IIM funds to a much greater risk of levy by the IRS or attachment by a private claimant under state law. We agree that your concern in this regard cannot be dismissed as improbable. Therefore, in order to assure continued protection of IIM funds

under the contract to the same extent as they are protected today, we plan to include a provision in the prospective contract which would require that the contractor shall not release such funds to the IRS or other claimant without the appropriate BIA official's approval as required by 25 CFR Part 115, and that failure to follow this requirement shall expose the contractor to liability for the funds disbursed without BIA approval.

Your contribution of constructive comments to improve our contract proposal is sincerely appreciated.

Sincerely,

/S/ Ross O. Swimmer

Assistant Secretary - Indian Affairs

cc: Sacramento Area Director
Palm Springs Field Office

cc: (Surname, ABrown, 100, 600, B. Wilkinson, AS/IA, Chron, BCCO,
AS/IA RF, Sol-IA
ABrown:ab 5/11/88

U. Brown 3/15/88
 MAR 14 1988
 Correspondence Ofc-RTA
 IA

AGUA CALIENTE
 BAND OF
 CAHUILLA INDIANS

March 15, 1988

Mr. Ross O. Swimmer,
 Assistant Secretary, Indian Affairs
 U. S. DEPARTMENT OF THE INTERIOR
 18th & "C" Streets, N. W.
 Washington, D.C. 20240

RE: Trust Fund Services Proposal

Dear Mr. Swimmer:

Thank you for your letter of February 8, 1988 and the enclosed set of questions and answers regarding your proposal to improve financial trust fund services, especially concerning IIM accounts. The Tribal Council is still reviewing these materials, and may have further comments on them. But there is one point on which we wish to comment now. Our present primary concerns are with questions 155 and 156, and the answers to them.

Question 155 asks which party the Department of Justice would represent in a dispute concerning a claim by the Internal Revenue Service against IIM funds held by a private banking institution under the proposal. The answer given is that there will be no change in the Department of Justice's role, but does not specify what that role presently is. So we must ask again, who will the Department of Justice represent? Will it represent the IRS as claimant? Will it represent the BIA and the bank as trustee? Will it represent the account holder as beneficiary? If the Department of Justice will represent the IRS, who will advocate the interests of and represent the trustee and the beneficiary?

Question 156 and its answer are even more troubling. The question and its answer represent that trust funds in a private institution under this proposal will be just as protected by the BIA from seizure or levy by the IRS or others. Within the last few months, the IRS attempted to levy on over \$50,000 of another local tribe's IIM funds held by the Southern California Agency in trust for the tribe for the debts of a third party. There was no advance notice to either that tribe or the agency. The Notice of Levy was just served one day, demanding compliance within 10 days.

R. O. Swimmer
March 15, 1988
Page 2.

Under 26 U.S.C. S6332(c), the Agency Superintendent was personally at risk for 150% of the amount of the levy. Fortunately for that tribe, the Agency Superintendent was effectively relieved of this responsibility because the Tribe was able to convince the IRS that cases such as Keechi v. U.S., 604 F.Supp. 267 (D.D.C., 1985) prevented IRS levy of such IIM funds in the hands of the BIA.

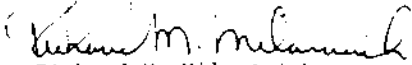
But we are not at all sure that a private banker served with the same Notice of Levy would be willing to run the risk of a 150% personal liability, or would be able to convince the IRS or a court that such funds were equally exempt from levy, especially since the tax anti-injunction act (26 U.S.C. Section 7421) generally prohibits any court from restraining the collection of any tax. We fear that the proposal would significantly increase the chances of seizure of trust funds by the IRS or others beyond what that risk is now unless either legislation or at least new federal regulations make it absolutely clear that the private banking institution would have exactly the same rights and duties toward protecting such funds from levy as does the BIA now. It is difficult enough now, and sometimes impossible, for the BIA to make the required response within 10 days to prevent such a seizure. What assurance do we have that a private banking institution performing the same function would be willing or able to make the same response within the same 10 days.

We may agree that, in theory, cases such as U.S. v. Keechi, supra, and statutes such as 25 U.S.C. Section 410, would protect IIM funds from seizure by the IRS or others. But in actual practice we fear that the private status of the financial institution, uncertainty about the trust status of the funds, the reluctance of a private institution to take up and vigorously assert the advocacy role expected of the trustee, and the pressure of short response times would all combine in practice to expose IIM funds to a much greater risk of levy by the IRS or attachment by a private claimant under state law than exists today.

R. O. Swimmer
March 15, 1988
Page 3.

We are pleased to be able to present our concerns to you on this subject which is of enormous practical importance to our members and to the Tribe itself. We will appreciate hearing your thought on our concerns as you further develop the proposal.

Sincerely yours,



Richard M. Milanovich
Chairman, Tribal Council
AGUA CALIENTE BAND OF
CAHUILLA INDIANS

RMM:emp

cc: Bell Haney, Area Director
Palm Springs Field Office

RMM:emp



United States Department of the Interior

OFFICE OF THE SECRETARY
 WASHINGTON, D.C. 20240
 MAY 12 1988

Mr. Gilbert Horn
 Chairman, Fort Belknap Community Council
 P.O. Box 249
 Fort Belknap Agency
 Harlem, Montana 59526

Dear Mr. Horn:

Thank you for your March 17 letter to the Fort Belknap Agency Superintendent commenting on the Request for Proposals (RFP) for trust fund financial services.

You first indicated that a Government cost comparison was not made prior to seeking solicitations to contract under section L.2.0 of the RFP. Under the requirements of OMB Circular A-76, the Government must prepare an A-76 study for its commercial activities. We have contracted out for this A-76 study. The study will evolve into three documents: a most efficient organization (MEO) study, a Government's cost estimate and a comparison (a single form) of the Government's cost to the selected vendor's cost. Each of these documents are treated as if they were an independent bid and are, therefore, sealed until the decision is to be made. The MEO study has been completed in draft form. The Government's cost estimate is now in preparation and must be submitted by May 25, 1988, the closing date for all proposals under the RFP. The comparison will be performed during the proposal evaluation period. After an offeror is selected for contract award, based on cost and technical submissions, the Government's estimate will be opened and compared to the successful offeror's proposal to determine whether the improved services we are seeking will be performed by contract or by the Government.

In addition, you stated that the Fort Belknap Tribal Council was not consulted on this trust fund initiative. During the three summer months of 1987, our superintendents met with their respective agency tribes on the trust fund proposal. A Federal Register Notice dated April 15, 1987, outlined the process for these tribal sessions. (Copy enclosed.) We have also enclosed for your reference our agency file on the June 26, 1987, meeting with the Fort Belknap Indian Community Council on this proposal. As a result of the tribal sessions conducted nationwide, many of the tribal suggestions received were incorporated in the RFP issued February 18, 1988. Questions asked in followup to these sessions were compiled in a comprehensive question and answer document and provided to all tribes as an additional informational exchange. A copy of this document is enclosed.

Fort Belknap Community Council

(406) 353-2205
P.O. Box 249
Fort Belknap Agency
Harlem, Montana 59526



Fort Belknap Indian Community
(Trustee Council)
Fort Belknap Indian Community
Elected to administer the affairs of the community
and to represent the Applicants and the Great
Horned Owl Tribe of the Fort Belknap Indian
Reservation

March 17, 1988
DATE

Sam Netterville, Superintendent
Bureau of Indian Affairs
Fort Belknap Agency
Harlem, MT 59526

Mr. Netterville:

I feel that comments must be made regarding the proposed Request For Proposal (RFP) to contract for Indian Trust Fund Financial Services.

In the first instance it appears to indicate that it is more economical to contract this aspect of a "Trust Responsibility" than have the Bureau of Indian Affairs manage the funds. We do not believe a comparison was made prior to seeking solicitations to contract for this service L.2 Notice of Cost Comparison (Negotiated) (FAR 52.207-2) (Apr. 1984)

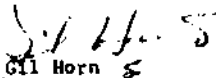
- (a) This solicitation is part of a Government cost competition to determine whether accomplishing the specific work under contract or by Government performance is more economical. If Government performance is determined to be more economical, this solicitation will be cancelled and no contract will be awarded."

At a meeting of Tribal Chairman and Staff in February 1987 Assistant Secretary Swimmer was informed by all tribes in the Billings Area that they viewed his proposed contract with the Mellon Bank as an abrogation of trust responsibility. The immediate RFP is an effort to accomplish the same purpose. Who is to say that Mellon Banking interests will not win the bid. In effect, the same purpose was accomplished without tribal consent even though Swimmer said, "We have spent more than three months consulting with Indian Tribes to increase their understanding and address their concerns." The Fort Belknap Tribal Council were not consulted.

The Fort Belknap Community Council would like to object to be assured the services of cash concentration, accounting and investment services being contracted to a private for profit financial institution. Court cases have plainly stated that Indian tribes are governmental units that have a "special" political trust relationship with the United States government. This "trust" relates to land, tribal self government and social services. The general purpose of the trust relationship is to insure the survival and welfare of the Indian resources. It is a duty imposed upon the Secretary of the Interior. Therefore, the Assistant Secretary should not contract away a "trust" service. We believe that the Bureau of Indian Affairs could and should have streamlined it's own capabilities and staff to accomplish this purpose.

Basically we view the proposed action as a step on the part of the Assistant Secretary to dismantle the Bureau of Indian Affairs. We believe that most financial staff will lose their jobs, the Bureau budget will be reduced, and the services will be diminished.

Sincerely yours,


Gil Horn *G*
Chairman

cc: file



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 12 1988

Mr. Robert C. Hoag
President, Seneca Nation of Indians
1490 Route 438
Irving, New York 14081

Dear Mr. Hoag:

Thank you for your March 28 letter on the trust fund services question and answer document dated February 8. You posed several additional questions.

On investments, you asked how the proposed changes would result in an increased return on investment that would justify the cost of anything more than a professional investment advisory services contract. You also requested the results of any study or analysis conducted to justify the added risk of "other eligible securities" as compared to BIA's experience of investments in certificates of deposit.

With the exception of a small percentage of investments in government securities, the BIA primarily invests in short-term certificates of deposit. The Price Waterhouse Report of 1984 recommended that the Bureau pool the tribal funds into portfolios and seek outside investment advisory services to assure that the BIA would have access to experienced portfolio managers. Specifically, it recommended establishing at least a short-term highly liquid portfolio and an intermediate-term wealth maximization portfolio. Optional intermediate or longer term portfolios would enable tribes to allocate those assets where funds are not needed for longer periods in higher yielding securities. Under the traditional yield curve, investors who assume the risks associated with longer term securities are rewarded more than investors who place their funds in shorter term issues. The Report further suggested that the portfolio(s) be constructed to diversify among other eligible government securities under 25 U.S.C. 162a, i.e. mortgaged-backed securities and other longer term federally guaranteed securities, so as to maximize the return on investment and to reduce the portfolio risk associated with the various levels of expected returns. In addition, the portfolio(s) should also provide sufficient liquidity to meet other tribal investment objectives and needs.

Our procurement proposal seeks improvements in our investment program consistent with these recommendations. Since the Government would continue to pay for all contract costs, there would be no impact on the yield which trust holders now enjoy. With respect to the longer term portfolio options, tribes would also have the opportunity to allocate their assets in potentially higher yielding investments. These portfolio options are not available in today's program. Further, the A-76 process will include the cost estimates for the Government to provide these same improvements to the BIA's investment program internally.

You also asked if the A-76 study will estimate the cost of services to be performed by the contractor now performed by BIA staff. The cost estimate prepared under the A-76 will determine only the Government's cost of an improved operation to meet all requirements of the Request for Proposals (RFP) issued February 18 including the cost to implement those changes. The total estimate for upgrading BIA services internally will then be compared with the successful vendor proposal.

Finally, you asked if additional appropriated funds will be requested for this initiative or will other program funds be used. Additional funds were provided in the Bureau's Fiscal Year 1988 budget for the trust fund contract initiative. We have also requested additional funds for the Bureau's Fiscal Year 1989 budget.

I hope this information is helpful in better understanding our effort to improve services to Indian trust asset owners. Thank you for offering further comments on our trust fund proposal.

Sincerely,

Assistant Secretary - Indian Affairs

cc: Eastern Area Director
New York Liaison Office

cc: (Surname, 100, 200, F. Kellerup, ABrown, 600, AS/IA
Sec'y RF, BCCO
ABrown:ab 5/12/88



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(IA)
W. Brown

The Seneca Nation of Indians

PRESIDENT - Robert C. Hoag, 464 Fair Oak St., Salamanca, N.Y. 14779
CLERK - Darlene F. Miller, RFD 1, 134-J, Salamanca, N.Y. 14779
TREASURER - Gilbert Lay, Box 15, Seneca Rd., Lewiston, N.Y. 14093

March 28, 1988

Ross O. Swimmer
 Assistant Secretary-Indian Affairs
 US Dept. of the Interior
 Office of the Secretary
 18 & C Streets, NW
 Washington, DC 20240

Dear Mr. Assistant Secretary

Thank you for the information you sent with the RFP Trust Fund Services status report in your letter dated February 8, 1988. Though I found your "question and answer document" truly informative, a couple of questions remain.

Regarding Investments, it is still unclear how the changes you propose will result in an increased return on investment that will justify the cost of anything more than a simple professional investment advisory services contract. Related to this, I would like to know the result of any study or analysis that has been done to justify the added risk of investment in "other eligible securities" as compared to the historical experience of investments in CD's.

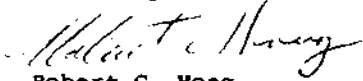
You note in your letter that the A-76 study will provide a cost estimate of the improvements to the BIA's financial trust services program. Will this study also estimate the cost of services that will be done by the contractor that are now being done by BIA staff?

A final concern I have is how any additional costs of this initiative will be met if the expected saving do not fully offset the added cost. Will additional appropriated funds be requested or will other program funds be used?

Mr. Ross O. Swimmer
Page 2
March 28, 1988

Thank you again for this opportunity to comment on this important matter.

Sincerely

A handwritten signature in cursive script, appearing to read "Robert C. Hoag".

Robert C. Hoag
SNI President

FEB 08 1988

BUREAU OF INDIAN AFFAIRS

Proposal for Financial Trust Fund Services

QUESTIONS AND ANSWERS

The following list of questions and answers has been compiled from questions which were submitted in writing from tribes and BIA field offices in followup to the consultation meetings conducted in accordance with the Federal Register Notice of April 15, 1987. We have arranged them under the following general subject areas in alphabetical order:

<u>Subject Area</u>	<u>Page</u>
Accounting	2
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Collections & Disbursements	12
Contracting: General & Miscellaneous	15
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Minerals Management Service (MMS) and Related Indian Royalty Process	40
Options: Trust Fund Withdrawal & Regionalization	44
Taxation and Internal Revenue Service (IRS) Related	45
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Accounting

1. HOW DO YOU PLAN TO BALANCE THE VAST NUMBER OF IIM ACCOUNTS AND TO CLEANSE THE TRIBAL TRUST ACCOUNTS?

We have several projects underway to address the IIM and tribal trust fund accounting problems:

The Bureau initiated training for staff in area and field locations in May 1987 for reconciliation of all tribal and IIM trust accounts. The training includes preliminary reviews and evaluation of the accounting systems so that the field can reconcile current and future transactions. All areas have completed their training. As a result, each location now has been trained in the procedures and has the capability to verify the accuracy of each individual account balance.

We have also contracted with a CPA firm to reconcile the estimated 1,750 tribal accounts. Since January 1987, they have completed reconciliation of these accounts for FY 1972 through FY 1981. We expect the tribal reconciliation for FY 1981 through FY 1987 to be completed by June 30, 1988.

2. WOULD NOT THE TRUST ACCOUNTS HAVE TO BE RECONCILED PRIOR TO ANY TRANSFER OF TRUST FUNDS?

The reconciliation efforts described above to verify the tribal and IIM account balances are a priority in anticipation of any transfer of accounting data to a prospective contractor. From that point in time, the funds would be subject to internal and external audits supplied by the contracting institution, and to audits by the General Accounting Office and the Inspector General as well as contract compliance reviews by the Bureau. This would be the first time all the trust funds would be included in such an environment.

3. WILL THE CONVERSION TO THE PROPOSED SYSTEM CAUSE THE IIM RECONCILIATION PROJECT TO BE SHIFTED TO A LOWER PRIORITY?

No. The reconciliation effort would proceed as scheduled.

4. WILL AN AUDIT OF THE TRUST ACCOUNTS BE CONDUCTED PRIOR TO TRANSFERRING THE ACCOUNT DATA TO THE PROPOSED SYSTEM?

Currently, tribal and IIM account cash balances are reconciled with Treasury each month. An ongoing review of tribal and individual accounts is being performed to assure accuracy of the balances prior to any transfer of accounting data to a contractor. In conjunction with this review, we plan to contract for an annual audit beginning with FY 1987 of trust account transaction activity (including tribal and IIM) to obtain an independent opinion as to whether the transactions are fairly presented in the financial reports as generated by the Bureau's accounting systems.

5. WHAT REPORTS WILL THE TRIBES AND INDIVIDUAL ACCOUNT HOLDERS RECEIVE AND WHAT WILL THEY LOOK LIKE?

Account holders would receive monthly statements of account that would present transaction summaries and beginning and ending balances in their accounts. These reports would be sent directly to the tribes and IIM account holders, unless the account holder desires the agency to receive and hold the reports until they can be picked up. In addition, we are exploring alternatives to provide future improvements in tribal reporting. As a result of the contract, we would then be able to consider the inclusion of optional tribal reports such as monthly balance sheet and income statement reports.

With respect to report formats, you may expect standard formats used for these types of reports and, during the phase-in period, reports would be similar to those you receive today.

6. WILL TRIBES HAVE ANY INPUT INTO THE FORMAT AND CONTENTS OF THOSE REPORTS?

We would welcome any suggestions tribes may wish to offer on report format or content. Please keep in mind that cost effectiveness would be a primary factor in considering significant variations in standard report formats.

7. IF A BANK OR FINANCIAL INSTITUTION IS TO PROVIDE BASIC DAILY DATA TO THE BIA, WHO WILL HANDLE THIS DATA?

The financial institution would be required to submit a variety of financial data to the Bureau on a daily basis; some data would not be required except on a monthly basis. The majority of the data would be provided to the National Technical Service Center (NTSC) in Albuquerque, New Mexico, where relevant data would be distributed to the various Information

Management Centers (IMC's) across the Bureau. The IMC's would then provide the agency offices with the balance data related to the accounts (IIM or tribal) for which they are responsible. The Branch of Trust Fund Accounting, the Division of Trust Fund Management and the Area Offices would also be able to receive selected data directly from the financial institution on a daily basis.

8. AT WHAT LEVEL WILL ON-LINE ACCESS BE AVAILABLE? AREA, AGENCY OR TRIBAL LOCATION?

On-line access to information for trust fund accounts would be available to the area and agency locations. We anticipate that an option would be made available to those tribes desiring on-line access to their own tribal account balances and related transaction summary data. Only Bureau area and agency offices would have access to IIM balance data. The costs associated with tribal access, yet to be determined in part or in total, would be the responsibility of the user tribe.

9. HOW WILL THE PAPERWORK OCCUR FOR SPECIFIC TRIBAL DRAWDOWNS?

Until the Bureau has selected the successful proposal, it will be difficult to present specifically how the procedures to draw down tribal funds will be defined. We anticipate, however, that the same paperwork now prepared at the area/agency level would be required, and entered into the computer system at the agency/area. This would allow the data to be reviewed by the area office and then transmitted electronically to the contractor. Once the payment has been cleared by the area, the disbursement would be made on the same day or no later than the next day by the contractor.

10. HOW WILL INCOME BE COMPUTED ON THE TRUST FUND BALANCES AND WHEN WILL IT BE CREDITED TO THE ACCOUNTS?

Under the proposal, income would be earned each day that an account has a principal balance. For example, today, only those IIM accounts with balances at the end of the month earn interest for that month. If you have a balance of \$1,000 in your IIM account for the first 30 days of a 31-day month and you withdraw \$900 on the 31st day, leaving a balance at month end of \$100, you now only earn interest on the \$100 amount. Under the proposed system, you would earn income on the full \$1,000 for 30 days and on \$100 for the 31st day. Earnings would be posted at month end and you would earn income for each day your account had a balance.

This example would also be applicable for other trust fund groups.

11. INTEREST WILL BE COMPUTED DAILY ON ALL BALANCES, YET WILL BE CREDITED ONLY MONTHLY. WHY IS THIS? WE WILL BE LOSING ADDITIONAL INTEREST ON THE INTEREST THAT HAS ALREADY BEEN EARNED DURING THE MONTH. FOR EXAMPLE, INTEREST EARNED ON THE 1ST DAY OF THE MONTH WON'T BE CREDITED UNTIL THE END OF THE MONTH. IF YOU WERE TO INVEST \$1 BILLION IN A PASSBOOK SAVINGS ACCOUNT EARNING 5.5% ANNUAL INTEREST, THE INTEREST EARNED IN ONE DAY'S TIME WOULD EQUAL \$150,680. THIS \$150,680 EARNED ON THE FIRST DAY OF THE MONTH COULD BE EARNING ADDITIONAL INTEREST DURING THE BALANCE OF THE MONTH.

Under the proposal, we plan to post earnings once a month. The scenario described, however, is not entirely accurate. The principal and any realized available income would be reinvested on a daily basis to increase the earnings available in the portfolio at month-end. This means that the compounding effect you describe would be taken into account in the monthly income factor for funds that were participating in the portfolio during the computation month. Theoretically, if income were posted daily, the effective income rate for the month should yield the same net income as the monthly income factor we anticipate under the method selected. The investment of your funds could be more accurately compared to a mutual fund type of account rather than a "passbook savings" account.

12. THE DRAFT RFP SUGGESTS THAT THE FINANCIAL INSTITUTION MUST COMPUTE DAILY INTEREST RATE FACTORS FOR EACH OF THE TRUST POOLS AND HOLD SUCH DATA IN A PROGRAM WHICH MAY BE ACCESSED ON LINE BY THE BIA. SINCE PARTICIPANTS WILL BE ACCOUNTED FOR ON A SHARE BASIS AND THE POOL WILL BE VALUED AT MARKET ON A DAILY BASIS, HOW CAN INTEREST BE COMPUTED ON A DAILY BASIS?

As described above, the principal in your account would earn income for each day it is in your account. Earnings, however, would not be posted until the end of each month using the method described above.

13. REFER TO DRAFT RFP SECTION 3.6. WHAT TIMEFRAMES WILL BE USED IN ORDER TO PRINT STATEMENTS? PRESENTLY, WE GO BACK TO JULY OF 1983 FOR HISTORICALS. STATEMENTS OF ACCOUNTS, WE GO BACK FIVE MONTHS PLUS CURRENT DAY. WHAT WILL HAPPEN WITH OUR CURRENT DATA?

We expect monthly statements of account to be prepared and forwarded to the account owners and the Bureau by the middle of the month following the report month.

This could be accelerated, depending on the configuration and system capabilities of both the Bureau and the contractor at the time of implementation. The statements of account would include the same report format as we have today, which is fiscal year to date for tribal reports, and current month activity for each IIM account owner report.

The retention requirements for historical data would conform to the standards set by the General Services Administration for our records. Current data would not be endangered in any way. The conversion plan would require that all data be backed up on a separate system before the conversion takes place in case there is a problem in the transition.

14. REFER TO DRAFT RFP SECTION 3.8. WE PRESENTLY POST OTHER AGENCIES IN THE AREA OFFICE. WILL THE PROPOSED CONTRACT ALLOW THAT ABILITY? WHAT WILL HAPPEN IF OTHER AGENCIES POST TO CLOSED ESTATES? HOW WILL WE KNOW IF THIS HAPPENS? WILL AGENCIES BE ABLE TO ESTABLISH ACCOUNTS FOR MEMBERS OF OTHER AGENCIES WHO HAVE INTEREST IN OUR LAND? WE FORESEE A GOOD POSSIBILITY FOR THE POSTING OF WRONG I.D.'S, NAMES, ETC. BY INDIVIDUALS WHO ARE NOT FAMILIAR WITH OUR TRIBE. WILL THIS SYSTEM BE ABLE TO POST NATIONWIDE?

The proposed system would function under very tightly controlled data processing requirements that would prevent the contractor from "assuming" or "forcing" any account names or numbers. New accounts would be opened only after the agency/area office input and approvals have been obtained by the contractor. The establishment of multiple accounts for an individual would be unnecessary since there would be one system processing all accounts. The proposed system would be a nation-wide system servicing all IIM accounts. If an agency tries to post to a closed estate (or any other closed account), the system would require the Bureau to provide specific approval from the agency superintendent for whom that IIM account would be maintained before the contractor would allow the transaction to be posted. The areas/agencies would not post directly into the contractor's system. They would, however, be able to present approved transactions to the contractor for processing.

15. REFER TO DRAFT RFP SECTION 4.2.1.7. FOR YOUR INFORMATION, THIS AGENCY MAINTAINS ACCOUNTS ON THE AREA'S SYSTEM. THE CONTRACTOR WILL HAVE TO MAINTAIN THREE SEPARATE ACCOUNTS FOR MANY OF OUR PEOPLE AFTER WE MAKE THE "TREATY" PAYMENT.

We can appreciate your concern for this unique situation. We expect to have one account for each individual. Only in the most unusual circumstances would there be a need for authorizing more than one account. The organizations that we expect to contract with are in the business of handling large volumes of transactions for all kinds of situations on a daily basis. They are not new to this process. They will be very concerned with data integrity and we would establish clear requirements for any special system needs, such as the one you suggest, before they would be allowed to assume the system processing for that special requirement. Before the contractor would assume the transaction posting, we plan a phased-in approach with parallel processing until we and the contractor are satisfied with their capability to handle that particular area's account activity.

16. REFER TO DRAFT RFP SECTION 4.3.2.1. WHAT HAPPENS WITH FUNDS UNDER \$1.00 AFTER A YEAR'S TIME? WILL THIS MONEY BE HELD AND ADDRESSED AS UNKNOWN? HOW WILL THE CONTRACTOR ADDRESS THIS ISSUE?

The Bureau will address this issue, not the contractor, just as we are required to do today. The contractor would not make any management decisions. They would only provide advice and process the trust fund data according to predisposed methods agreed to in writing.

17. REFER TO DRAFT RFP SECTION 5.3.2.2. WE FORESEE POSSIBLE OVERDRAFTS CREATED BY RECREDITING OF ACCOUNTS TOO SOON.

No overdrafts would be possible, since any check reissued would be prepared only after the check being replaced is cancelled and the funds are recredited to the relevant trust account.

18. REFER TO DRAFT RFP SECTION 5.3.2.2.2. WHO WILL BE RESPONSIBLE FOR ENCODING? WHAT HAPPENS WITH FUNDS WHEN THEY HAVE TO BE HELD 10-30 YEARS DUE TO LACK OF ADDRESS, NO DEATH CERTIFICATE, ETC. HOW LONG WILL FUNDS REMAIN IN THE BANK?

The RFP will specify the requirements as to how long an outstanding check would be honored. Those checks over the specified period would be recredited to the relevant account, and the funds would remain there until a determination has been made as to whether it should be reissued. Distribution of funds related to estates would continue to be handled in accordance with BIA established procedures. As to who will do the encoding, the contractor would be expected to post

transaction activity into the trust accounts per the instructions of the Bureau.

Automated Systems

19. IT APPEARS THAT A MAJOR PART OF THE CURRENT PROBLEMS HAVE BEEN DUE TO INADEQUATELY TRAINED STAFF IN THE FIELD AND FAILURE TO PROVIDE RELEVANT INFORMATION ON A TIMELY BASIS. PLEASE EXPLAIN HOW THE FULL IMPLEMENTATION OF THE IRMS SYSTEM WILL CORRECT THESE DEFICIENCIES.

The full implementation of the IRMS system would not solve the problems that the Bureau is experiencing due to inadequately trained staff. Prior to the implementation of the proposed system, the financial institution would assist the Bureau in training all relevant field personnel at the agency, area and central office locations. This training would reinforce internal control procedures and define specific lines of authority between agency and area offices. Procedural manuals would be provided to all persons receiving this training. This should greatly improve the Bureau's capabilities related to the lack of properly trained individuals.

The full implementation of the IRMS system will help us address the failure to provide relevant information on a timely basis. Currently, the Bureau is in the final stages of editing the lease and ownership data in the IRMS system at all agencies. We are also converting the data base files in the IRMS system to ADABASE format, which will allow us to process data more efficiently and interface with an IBM system or an external contractor's system more easily. We expect this effort to be completed in early 1988. By cleaning up the data in the IRMS system, and then creating a more efficient method of handling the data, we expect to be able to provide the relevant information that you refer to on a more timely basis.

20. THE BUREAU IS SPENDING A LOT OF MONEY NOW ON ADP. WHY NOT FIX THE SYSTEM FOR ACCOUNTABILITY AND RUN THE PROGRAM IN-HOUSE?

The Bureau's ADP program involves significant systems operations not within the scope of this contract. The Bureau is upgrading its capability to provide accurate and timely information Bureau-wide. In the trust fund program areas, however, private institutions traditionally have developed complex computer systems for maintaining individual accounts and for processing

collections and disbursements. The Bureau intends to take advantage of this technology to minimize its own development costs and to attain state-of-the-art improvements.

21. IF ONE AGENCY HAS NOT COMPLETED THE NECESSARY WORK TO GO ON THE IRMS SYSTEM, WILL ALL AGENCIES IN THAT AREA BE KEPT OFF THIS SYSTEM UNTIL ALL AGENCIES ARE PREPARED TO GO ON THE IRMS SYSTEM?

While over 90 percent of the agencies in the Bureau has implemented or begun implementing the IRMS, the Bureau is working on an agency-by-agency basis to fully install the system. While adoption of the IRMS will be mandatory, schedules are being developed independently for each agency.

22. WHAT COMPUTER SECURITY SYSTEM WILL THE CONTRACTOR ASSURE? WILL THE POTENTIAL FOR COMPUTER FRAUD BE ELIMINATED?

The proposal would require the financial institution to have a software system that has an auditing capability and a system of internal controls that provides a framework in which to ensure that accounting and investment transactions are executed in accordance with generally accepted accounting principles or prescribed standards and procedures and that financial reports accurately reflect the result of the operations. The system would provide the necessary audit trails to trace transactions through the system from source documents and original input and to provide transaction details to support account balance on a demand basis.

Software system integrity would have the ability to protect itself and to insure that security controls cannot be bypassed. The system would provide for authorization for access to system functions that can be defined for different classes of users. The system would provide for controls to ensure the timeliness, validity, correctness, and completeness of transactions entered into the system.

All operations regarding the system and its security would be subject to periodic audits by the U.S. government audit agencies, in addition to the internal and external audits customarily required for entities providing financial services to the government. The commercial banking industry has a long history of providing software systems which insure the integrity and security of the accounts they maintain. While the Bureau expects a higher amount of security protection than exists today, the exact nature of the specific

security system will not be known until the contract award is made.

23. IN THE IRMS, HOW WILL ERRORS IN DEPOSITS BE CHECKED AND CORRECTED?

Functionally, the IRMS would match deposits which result from lease obligations with the accounts receivable module which the Bureau is developing. A reconciliation would then take place with the accounts receivable module and the contractor's report of deposits.

24. HOW WILL THE CONTRACTOR AND IRMS INTERFACE WITH EACH OTHER SO AS TO IMPROVE THE RECEIPT AND DISBURSEMENT OF TRUST MONEYS DUE THEM AS LANDOWNERS. WE DO NOT WANT A SYSTEM THAT IS SLOWER AND MORE DISRUPTIVE THAN THE CURRENT IIM SYSTEM.

Under the proposed environment, the financial institution would have a state-of-the-art accounting system. The Bureau's telecommunications system (AADIX) would enable the Bureau to transfer data in real time and/or batch mode to the financial institution. The Bureau's redesigned and enhanced Integrated Records Management System (IRMS) which includes the IIM subsystem would enable the IIM group to exercise a more sophisticated and up-to-date system. We anticipate that large scale main-frame computers would be involved within the Bureau and the financial institution, and would thereby alleviate the poor response times now incurred.

Checks

25. OUR TRIBAL MEMBERS MUST USE BANK FACILITIES LOCATED 70 PLUS MILES FROM THEIR RESERVATION, SOME DO NOT MAINTAIN ACCOUNTS IN ANY BANK. WHAT GUARANTEE WILL THEY HAVE THAT THESE CHECKS WILL BE HONORED WITH NO WAITING PERIOD?

We intend to do what we can to alleviate any doubt in the local communities as to the negotiability of the contractor's checks. This will require aggressive informational campaigns. In addition, the checks would bear an inscription which would state that the issuing financial institution is an agent of the Bureau of Indian Affairs. Also, the RFP will require bidders to propose check description formats intended to increase the acceptability of contractor issued checks in remote geographical areas.

26. PRIVATE CHECKS MAY BE MORE DIFFICULT TO NEGOTIATE THAN GOVERNMENT CHECKS. HOW WILL ALL BANKS BE INFORMED?
- We intend to actively pursue information campaigns in all areas through the use of newspapers (local and tribal), and to inform those known businesses which accept Treasury checks today from tribal members, in an effort to assure them of the negotiability of the new checks. This would be done well in advance of any implementation of the new checks.
27. WILL THERE BE CHECKWRITING CAPABILITY AT THE AGENCY LEVEL?
- We do not anticipate that checkwriting capability would be provided to the agency level under the proposal. We will, however, provide an emergency payment process. A contingency plan for emergencies would be provided to all agency locations. We intend to explore a number of alternatives with the future contractor, one of which is to utilize the electronic funds transfer system to move cash to IIM account holders either: (1) through their personal checking account, or (2) to a BIA account established at a local bank to receive funds and have a cashier's check issued to the IIM account owner.
28. WHAT WILL BE THE STANDARD TURNAROUND TIME FOR CHECKS, PARTICULARLY PER CAPITA CHECKS? WILL THE CONTRACT SET A STANDARD?
- The Bureau now has a turnaround time on per capita issuance of checks that is usually three to four days. The checks are then mailed to the account holder or to the relevant agency/area for pickup. Under the proposal, the check request would be electronically transmitted to the contractor for processing and issuance of the checks, which would then be mailed out on the same or next day to the recipients.
- Once the contract has been awarded, the requirements described in the RFP would become the basis for the "standards" for contractor compliance. The contractor would be expected to issue checks (including per capita checks) as requested by the Bureau.
29. WILL LOCAL LAW ENFORCEMENT AGENCIES BE AGGRESSIVE IN THE CASE OF STOLEN/FORGED CHECKS?
- The proposed system would not alter the relationship with any level of law enforcement agencies across Indian country. The checks would continue to be the responsibility of the Department of Interior. We

anticipate law enforcement agencies will continue their current aggressiveness in the case of stolen or forged trust fund checks.

30. REFER TO DRAFT RFP SECTION 4.3.4.0. WHO WILL HANDLE JUDGMENT CHECKS FOR DECEASED INDIVIDUALS? WHERE WILL MONEY GO AND WHAT HAPPENS TO INTEREST GENERATED FROM RETURNED CHECKS?

The Bureau would provide the contractor collection and disbursement advice. There would be no change from the way in which judgment checks are handled today. The contractor would be expected to prepare the actual check following the Bureau's direction. This would be done by authorization of the Bureau according to procedures agreed to in advance between the Bureau and the contractor. The actual disbursement of the principal and related interest would be handled exactly as they are today, complying with instructions in 25 CFR and 42 BIAM, Supplement No. 3. Interest would continue to be earned by the respective portfolio until the check is cashed or returned.

31. REFER TO DRAFT RFP SECTION 5.3.1.2. STALE DATE DOES NOT MEAN ANYTHING TO MOST PEOPLE. WE [AN AGENCY] RECEIVE MANY PHONE CALLS REQUESTING WHAT THE CHECK IS FOR. WILL AN EXPLANATION OF WHAT THE CHECK IS FOR BE PRINTED ON THE CHECK?

Stale date means the last date on which the check may be cashed. We hope to be able to provide check information, especially for checks related to oil and gas royalties. The actual requirements for explanation of other income type checks would be considered at a later date.

32. REFER TO DRAFT RFP SECTION 5.3.6.0. HOW WILL THESE DOCUMENTS BE TRANSMITTED? WILL THE BANK HAVE A CODE FOR WEEKLY AND MONTHLY CHECKS?

The actual authority for any payments would be electronically transmitted to the contractor on a daily basis, as required. The contractor would then be expected to issue the authorized payment within 24 hours of receipt of the disbursement instructions. As to what documents would be required for Bureau preparation in authorizing the payments, that process would not change. They would be the same as those described in 42 BIAM, Supplement No. 3 until any further notice.

Collections & Disbursements

33. WITH RESPECT TO CASH COLLECTION AND CONCENTRATION, WHAT WILL BE DIFFERENT FROM WHAT IS BEING DONE NOW?

Today, the Bureau receives deposits through a variety of methods, including: (1) over-the-counter receipts at the agency; (2) checks mailed to the agency (Note: In a few locations, checks are sent directly to the area office); (3) wire transfers directly to the Treasury; and (4) transfers from other federal agencies such as MMS, BLM, etc. All of these methods would be improved by the proposed procedures with the exception of wire transfers. Under the proposed process, most of the payments now made over-the-counter and those mailed into the agencies would be sent directly by the payors to the lockbox bank. Funds would be promptly deposited and subsequently invested more quickly. Instead of transfers from federal agencies, we would request that the funds be electronically transferred to the Bureau's concentration Treasury account at the financial institution.

34. WHY NOT CONSIDER REGIONALIZING CASH COLLECTION CONCENTRATION?

The collection of funds could be regionalized. Cash management or mail studies would be conducted prior to implementation of the lockbox network to determine the most efficient collection point(s) for trust funds. The funds would then be routed to the contracting bank for immediate investment.

35. HOW WILL DELINQUENT ACCOUNTS BE HANDLED AND WHAT PROCEDURES WOULD BE ESTABLISHED TO ASSURE PROPER FOLLOWUP?

Delinquent accounts would be handled the same way they are today. It would be the responsibility of the Bureau to followup on delinquent debts. The Bureau is currently in the process of developing the requirements for a trust fund accounts receivable system module to interface with the IRMS and the Bureau's automated finance systems. This accounts receivable system would allow the BIA managers to track the outstanding receivables and do a better job of collecting delinquent debts owed to trust account owners.

36. WOULD THE DIRECT PAYMENT FROM LESSEE TO INDIVIDUAL LANDOWNERS CONTINUE UNDER THE PROPOSAL?

The proposed system would not alter any current payment arrangements made with the lessees. For those lessees who now either send their payment to the Bureau by check or electronic transfer, the proposed system would require them to send the payment either to the lockbox bank or to wire their transfer to the Bureau's concentration Treasury account at the financial institution.

37. HOW WILL THE SYSTEM BE SET UP TO HANDLE SUBLEASE RENTAL PAYMENTS TO THE INDIAN LANDOWNERS?

The proposed system would not handle the distribution of funds collected for sublease rental income any differently than the current system. The distribution would be exactly what the agency has established for the particular lease agreements concerned. If there are any arrangements for periodic payments today, that practice would not be required to change as a result of the proposed system enhancements.

38. IF LESSEE MAKES ONLY A PARTIAL PAYMENT, WHAT LEGAL EFFECT WOULD RESULT IN TERMS OF POTENTIAL WAIVER OF BALANCE OF RENT OWED, AND HOW CAN THE SYSTEM BE PROGRAMMED TO HANDLE THIS TYPE OF SITUATION?

Under the proposed system, the lessee payments would be handled just as they are today. Partial payments would simply be recorded in the applicable trust fund account. Upon implementation of the accounts receivable system, Bureau managers would have better capability to monitor delinquencies.

39. HOW WILL THE BUREAU HANDLE PARTIAL PAYMENTS?

This will depend on how far along we are with the accounts receivable system. At the time the proposed environment is in place, we would be able to take one of two courses of action: (1) we would have the accounts receivable system in place and the partial payments would be recorded and a separate bill for the balance owed would automatically be sent out each month; or (2) the accounts receivable system would not be in place and we would manually track how much has been paid and what amount is owed. A bill would then be manually prepared and sent out for the unpaid portion.

40. IS THERE ANYTHING ADDRESSING CREDIT ENTERPRISE COLLECTIONS?

Credit enterprise collections are not allowed to be deposited to trust funds accounts. Only trust funds would be allowed, except under special voluntary account guidelines recently issued by the Bureau.

41. HOW WILL DEPOSITS OCCUR FOR FORESTRY AND REALTY?

The deposit procedures would require all checks to be sent to the designated lockbox bank. Electronic fund transfers would be sent to the Bureau's concentration Treasury account at the financial institution. Any over-the-counter checks received at the agency would be forwarded to the lockbox bank.

Contracting: General & Miscellaneous

42. WHY ARE YOU RE-OPENING COMPETITION TO MANAGE THE TRUST FUNDS?

We re-opened the competition for trust services so that Indian tribes would have an opportunity for greater input. Many tribes requested additional information and consultation on the proposed procurement. As you know, in response to this request, we developed a comprehensive consultation plan which was published in the Federal Register. This exchange is an important part of that process so that tribes may better understand the proposal and to include suggestions that tribes may have to secure the best possible trust services. In addition, we are seeking full and open competition among financial institutions at large, rather than limiting the procurement to Treasury's lockbox institution network.

43. EACH INDIVIDUAL TRIBE IS UNIQUE AND HAS ITS OWN SEPARATE NEEDS WHICH MUST BE MET TO SATISFY THE TRUST RELATIONSHIP WITH THAT TRIBE. HAVE THERE BEEN ANY DIALOGUES WITH TRIBES ABOUT THEIR INDIVIDUAL NEEDS? ARE TRIBAL AND INDIVIDUAL NEEDS TO BE CONSIDERED IN THE DISBURSEMENT SERVICES TO BE DELIVERED?

We are making every effort to meet our obligation to provide sound trust fund financial management to all trust account owners, large and small. We want to establish, through the implementation of this proposed contract, the most efficient combination of private and Bureau capabilities. Each tribe has been given several opportunities to comment on what they would like included in this effort, beginning in 1986 with letters notifying all tribes of the Bureau's intention to address the trust fund management problems and seeking their comments, and then again last year with the

individual tribal sessions which generated comments and suggestions from the majority of tribes. We have proposed positive action to the problems involved with the financial management of trust funds and we have incorporated many of the recommendations received from tribes and the private sector into the final proposal.

44. HOW WAS THE MELLON BANK SELECTED IN THE PREVIOUS PROCESS?

In the previous procurement process, the RFP was limited to Treasury's six lockbox network financial institutions--Citizens and Southern National Bank, Atlanta; First National Bank of Chicago; Republic Bank of Dallas; Mellon Bank of Pittsburgh; Bank of America, California; and First Interstate Bank of California. The prior contract was to be awarded by the Financial Management Service of the Department of Treasury on behalf of the Bureau of Indian Affairs. After evaluation of the respondent proposals by Treasury and BIA representatives, the Mellon Bank was selected. As you know, that contract was never consummated and we have reopened the competition for trust fund services.

45. WHAT IS THE STATUTORY AUTHORITY FOR THE CONTRACT?

The Snyder Act provides the basic authority for all Bureau services to Indians including the proposed contracting for the requested trust fund services.

46. HOW CAN WE BE ASSURED THAT THE BANK SELECTED IS NOT OVEREXTENDED WITH BAD DEBT? DOES THE BANK HAVE A LARGE OUTSTANDING LOAN DEBT WITH "THIRD WORLD" COUNTRIES? A BANK CAN HAVE A HUGE POOL OF TRUST ASSETS, WHILE ALSO HAVING A LARGE OUTSTANDING LOAN BALANCE. THE ONLY REQUIREMENTS SPELLED OUT IN THIS DOCUMENT ARE FOR THE BANK TO HAVE AT LEAST \$500 MILLION IN TRUST ASSETS. CAN WE BE ASSURED THAT THE BANK IS FINANCIALLY SOUND AND NOT ON THE BRINK OF FAILURE? ARE BIA PERSONNEL THE BEST INDIVIDUALS TO ANALYZE A BANK'S PERFORMANCE RECORDS AND ITS FINANCIAL CONDITION?

Contracts of this size are subject to a pre-award audit by the Inspector General which would be used to determine, among other factors, the financial soundness of the prospective contractor.

47. WHEN THE FINAL RFP IS COMPLETED, WILL TRIBES HAVE AN OPPORTUNITY TO REVIEW IT?

A copy of the final RFP will be available, upon request, through your agency superintendent.

48. WHEN THE ACTUAL CONTRACT IS AWARDED, WILL TRIBES HAVE AN OPPORTUNITY TO REVIEW THE CONTRACT?

After appropriate negotiations, a contract reflecting the requirements of the RFP would be awarded. Tribes would be advised by letter of the award and the contract document would be available for review at their agency office.

49. IS THERE ANY WAY TO GET A COPY OR LIST OF ALL BIDDERS?

Yes, upon request, after all proposals have been submitted.

50. WILL TRIBES INCUR MORE PROBLEMS IN HAVING TO DEAL WITH A BANK FAR REMOVED FROM ITS AREA AND THEREFORE MAY BE UNRESPONSIVE TO THEIR NEEDS?

Tribes would continue to deal with the same agency and area office they deal with today. We would be merely changing the point of collection and where the data processing would occur. Today, your area office has an Information Management Center (IMC) manager that has a computer on-site which stores and processes trust records. In the proposed environment, that same data would merely be processed at another location and transmitted to the respective tribe's area IMC manager. The agency would be able to call up on its local computers the most current data possible. More importantly, the data would be processed more efficiently and made available to the tribe at the local level on a much more timely basis.

51. CAN YOU AND WILL YOU DEMONSTRATE WITH NUMBERS ANALYSIS THE BENEFITS THAT WILL ACCRUE TO TRIBES AND INDIVIDUALS IF THIS SYSTEM IS PUT INTO PLACE?

Please refer to the separate document which we are providing which summarizes a "Comparison of Current and Anticipated Procedures under the Proposal." This document includes illustrations of benefits in terms of time and dollar comparisons.

52. ARE THERE ANY OTHER FEDERAL BRANCHES THAT MIGHT BE USING THIS TYPE OF SERVICE?

With respect to the cash management services we are seeking, such private services have been implemented successfully for those federal agencies using Treasury's network financial institutions. Since inception at Treasury in 1983, the increased earnings to the government is approximately \$29 million as of

July 1987. The network currently handles 180 accounts with an annual cash flow of \$15 billion for 46 agencies and seven departments.

With respect to investment services, other federal agencies, i.e. Federal Reserve and the Tennessee Valley Authority, use private investment managers for their public trust funds.

53. IF THE CONTRACT DOES NOT WORK OUT, CAN WE BACK OFF FROM THIS?

Yes, the contract can always be terminated if the Bureau determines that such an action is appropriate.

54. WHAT WILL BE DONE WITH THE CENTER IN ALBUQUEQUE?

The National Technical Service Center in Albuquerque would remain operational but may require minor changes in staffing arrangements as the proposed system is implemented.

55. WHO IS TO EVALUTE THE PROPOSALS SUBMITTED BY OTHER BANKING ESTABLISHMENTS, ESPECIALLY WITH THE BIA'S TRACK RECORD?

An evaluation committee will be established by the Bureau to evaluate all respondent proposals. We plan to include financial experts from the Department of Treasury as well as the Bureau. In addition, tribal representatives will be appointed to serve as consultants to the committee.

56. HOW WILL THE COR FUNCTION WITHIN THE BIA WORK? WILL HE/SHE REPORT TO BIA AS WELL AS TRIBES?

The Contracting Officer Representative (COR) will be placed organizationally within the Bureau. As with any other contract, he or she would report regularly to the contracting officer on the performance of the contractor.

57. WHAT QUALIFICATIONS WILL THE COR BE REQUIRED TO POSSESS TO ADEQUATELY OVERSEE THE CONTRACT?

In addition to possessing the knowledge of the program areas within the scope of this procurement, the person would be trained fully in the duties and responsibilities of a COR. The COR would also be supported by technical representatives of the program functions we are seeking to improve in this proposal.

58. IS THE RFP TO BE LIMITED TO U.S. BANKS?

No. Any bank that meets the eligibility requirements in the RFP may compete.

59. WHAT ASSURANCES DO WE HAVE THAT "OVERCHARGES" WON'T OCCUR ON SUCCESSOR CONTRACTS? AFTER THE CONTRACT IS IN PLACE AND THE BIA STRUCTURE AND SYSTEM ARE GONE, WOULDNT ANY BIDDER KNOW THAT THEY COULD "UP" THE COSTS?

Successor contracts would be competed; therefore, a "bidder" that tries to overcharge would have to consider what other potential contractors might charge.

60. WHAT WILL THE BIA'S ROLE BE IF TRUST FUND MANAGEMENT IS CONTRACTED?

The procurement proposal would not grant any management nor decision-making functions to the prospective contractor. Consistent with our legal responsibility, the contractor would only provide transactional or advisory services in nature. The Bureau would continue to direct, monitor and authorize those transactions and activities performed by the contractor.

61. WILL THE TRANSFER OF INVESTING AND MANAGEMENT PROCESS TO A PRIVATE FINANCIAL INSTITUTION CURE THE IN-HOUSE MANAGEMENT PROBLEMS?

Again, the Bureau would not be delegating any of its trust management responsibilities. With respect to the investment process, the prospective contractor would notify Bureau investment managers of the investment options available based on its investment and market analysis. The contractor would then execute only those instructions received from the Bureau and record the transactions in the trust accounts established and maintained on their system, which would be available via an on-line, real-time computer network across the Bureau.

The proposal would also enable the Bureau to standardize the way cash deposits, disbursements, transfers, investments and accounting is handled. This and other improvements would address many operational deficiencies in our current systems and thereby upgrade the quality of trust services to Indian beneficiaries. While they are not instant solutions to our in-house management problems, the proposed contracting of such services would be an important step forward. These problems did not happen overnight and neither will their solutions. Steps to improve management oversight would include Bureau manager training, implementation

of annual audit requirements and development of an internal audit staff and more effective procedural manuals.

62. DOES THIS INITIATIVE REQUIRE CONGRESSIONAL APPROVAL?

While no formal Congressional approval is required, Public Law 100-202 which includes the Bureau's fiscal year 1988 appropriations has a provision requiring the Bureau to consult with the appropriate Congressional committees as to the terms of the proposed contract or agreement. The Bureau has been keeping the committees informed on the progress of this proposal and will continue to consult with them before any contract is awarded.

63. HOW CAN A CONTRACT OF THIS MAGNITUDE BE JUSTIFIED WHEN THE BIA HAS STAFF RESPONSIBLE FOR TRUST FUND ACCOUNTS THAT WILL REMAIN ON THE PAYROLL? WILL THESE POSITIONS BE REMOVED UNILATERALLY BY THE BUREAU ALONG WITH DIRECT CONTACT BETWEEN THE TRIBES AND INDIVIDUAL INDIANS?

Under current operations, many non-financial program staff devote significant portions of their time to handling and accounting for trust collections due to the lack of modern data systems. The use of contracted modern systems would enable these staff members to return their efforts to program duties.

Further, it is unlikely that staff would be laid off as a result of the contract. There will continue to be a need for IIM staff at each agency and for staff to monitor the contract and to continue to provide the necessary services to their respective Indian constituents. We do, however, anticipate a reduction in IIM staff at some locations. Every effort will be made to place any affected employees in other positions available at their same working stations such as IRMS and realty work for which there are great staffing needs. In other words, while fewer Bureau employees will be required specifically for financial trust activities under the contract, other activities will require additional employees.

64. WHAT GUARANTEE DO WE GET THAT THE PROPOSAL WOULD BE MORE EFFECTIVE THAN THE WAY THE BIA HANDLED THE FUNDS?

The proposal would enable the Bureau to address many operational deficiencies in its current systems as identified by external studies and upgrade the quality of trust services to Indian beneficiaries. Benefits to the account holders would include: (1) increased earnings to the trust accounts as a result of cash

concentration and quicker investment, and the use of lockbox services to minimize the delays between cash receipt and deposit; (2) increased earnings resulting from the proposed disbursement float policy which would allow trust funds to continue to draw interest until the check has cleared the bank (trust funds now stop earning interest when the check is issued); (3) accurate daily accounting and earnings distribution; and (4) more timely and accurate reporting data. Further, the addition of professional portfolio management services would also offer more flexibility in selecting from the proposed short, intermediate and long term investment options which would best meet your investment objectives and liquidity needs. An active investment analysis program and a more aggressive cash planning process would enable the Bureau to maximize the overall yield on your investments. These items, combined with more accurate accountability, would be very advantageous to all the trust fund groups.

65. THE BOTTOM LINE OF THIS WHOLE CONSULTING PROCESS IS THAT THERE ARE NO CLEAR ASSURANCES FOR TRIBES ON A) PROTECTION ON POTENTIAL LOSSES, B) THIS NEW PROCESS DOES NOT ADDRESS ADEQUATELY THE PROBLEMS IDENTIFIED INITIALLY, AND C) IT REMAINS UNCLEAR AS TO THEIR PROCESSES IMPACT ON EXISTING OR REMAINING SERVICES AND TRUST RESPONSIBILITY ACTIVITIES REMAINING WITH THE BIA.

First, the proposal would not change the Bureau's current trust responsibility or trust protection requirements. Second, the proposed improvements are consistent with the recommendations of various federal oversight agency reports and other studies which identified serious operational deficiencies in our current system. Securing these critically needed services would enable the Bureau to accomplish more efficient movement of trust dollars and provide a more comprehensive investment process, and accurate and timely accounting and reporting data to all trust fund account owners. These would be major steps forward in upgrading the quality of services to the Indian beneficiaries. The basic trust responsibility functions would remain exactly the same, but the methods to service those functions would be improved by securing the best services available in the marketplace.

66. WILL TRIBES HAVE FLEXIBILITY IN MAKING FINAL DECISIONS REGARDING LEASE INCOME CONTRACT COMPLIANCE CHANGES?

The contract environment will have no direct effect on lease compliance arrangements. The tribes will not have the final decision regarding lease agreements on

trust property for which the Bureau is responsible. The Bureau will try to accommodate the wishes, however innovative, of the tribes relevant to leases on their trust property.

67. THE SOLICITOR'S MEMORANDUM OF MAY 13, 1985, STATES THAT TRIBES MUST GIVE CONSENT TO DELEGATION OF TRIBAL TRUST FUND MANAGEMENT IN ADVANCE. IS UNANIMOUS TRIBAL CONSENT REQUIRED BEFORE DELEGATION IN THIS INITIATIVE?

The proposal would not delegate any trust fund management functions; therefore, tribal consent is not required in this initiative.

68. HOW WILL THE BUREAU DETERMINE IF "ACCOUNTABILITY" OF THE FINANCIAL INSTITUTION'S PERFORMANCE IS BEING ACCOMPLISHED?

Definite criteria will be included in the proposed procurement to provide the Bureau monitoring measures to assure contractor compliance and quality performance.

Costs

69. HOW MUCH IS BIA SPENDING FOR THIS SERVICE IN-HOUSE NOW?

In Fiscal Year 1987, the Bureau estimates about \$5.7 million to conduct the various trust fund activities, including: revenue collection and handling, trust fund accounting and advisory investment and all necessary support services. Additionally, many non-financial program staff devote significant portions of their time to handling and accounting for trust collections due to the lack of modern data systems. The use of modern systems expected of the contractor would enable non-financial program staff members to return their efforts to program duties.

70. WHAT IS THE DOLLAR FIGURE PAID TO MELLON BANK FOR THEIR ATTEMPT TO CONTRACT IN THIS INITIATIVE?

No contract was awarded to the Mellon Bank; consequently, there were no payments made under a contract.

71. WHAT IS THE TOTAL DOLLAR FIGURE EXPENDED BY THE BUREAU, TO DATE IN ITS EFFORTS TO APPROVE THIS INITIATIVE?

Out of the budgeted amounts for fiscal year 1987 to conduct the various trust fund activities, the major dollars expended to date by the Bureau to continue this

initiative include staff travel to conduct the tribal consultation sessions last summer and \$118,374 for the A-76 study contract to provide a management analysis and an estimate of what it would cost to improve the Bureau's financial trust services program in-house.

72. IS THE CONTRACTING PROCEDURE YOU ARE ABOUT TO ENTER INTO MORE COSTLY TO THE FEDERAL GOVERNMENT?

Contemplated costs for the services needed to upgrade our trust program will be higher during the initial implementation year than in subsequent years. We anticipate some dual costs for Bureau operations and contract phase-in during fiscal year 1988; additional funds were provided in the Bureau's FY 1988 budget. After the implementation period, however, we expect the contract costs, plus remaining Bureau residual operation costs, to not exceed what we are currently paying for service delivery.

73. ACCORDING TO PAPERS SENT TO ME, THE BIA WILL BE SPENDING FROM \$4-6 MILLION CONTRACTING WITH A BANKING ESTABLISHMENT. WHERE WILL THE MONEY COME FROM TO COVER THE COST OF THE CONTRACT?

The funding would come primarily from additional appropriated funds, with some funding generated by cost savings in the Bureau as a result of this effort.

74. IS THE \$4-6 MILLION COST ESTIMATE FOR THE FULL CONTRACT PERIOD? IF NOT, WHAT IS THE ESTIMATED COST FOR EACH CONTRACT YEAR?

This cost estimate is for the first full year of operations. The contract, however, would be phased in, as investments mature and data is loaded, over an 18 to 24 month period. The RFP will provide for an initial one-year term with four renewable one-year options. Among other factors, costs for the initial term and the four options will be evaluated together on a competitive basis, which will then enable the Bureau to negotiate the ultimate costs.

75. TO KEEP COSTS DOWN, HOW WILL THE RFP ON SUCCESSOR CONTRACTS BE STRUCTURED RELATIVE TO COMPETITION?

After the contemplated five-year contract period, successor contracts would be competed in accordance with the Federal Acquisition Regulations.

76. SINCE THE BIA SYSTEM IS IN PLACE, WHY NOT PROVIDE WHAT IS LACKING AT A COST MUCH LESS THAN \$4-6 MILLION AND LET THE BUREAU OPERATE THE SYSTEM?

We have contracted out an A-76 study which will provide a management analysis and an estimate of what it would cost to improve the Bureau's financial trust service program. The cost estimate for the government would then be compared with those we anticipate receiving from the private sector.

77. WILL TRIBES RECEIVE A COPY OF THE A-76 STUDY AS IT PERTAINS TO THIS TRUST FUND INITIATIVE?

A copy of the A-76 study will be available to tribes, upon request, after this project is completed.

78. RELATING TO THE COST COMPARISON OF THIS CONTRACT VERSUS CORRECTING THE BIA INTERNAL CONTROLS, WHAT IS THE ACTUAL SAVINGS, IF ANY?

Results of any comparison would not be available until the proposed procurement has been competed and cost estimates from the private sector and the government have been evaluated.

79. WILL THE CONTRACTOR BE FREE TO INCREASE SERVICES IF THE CONTRACT IS COST REIMBURSABLE OR DECREASE SERVICES IF THE CONTRACT IS FIXED FEE?

The contractor would be required to adhere to the terms of the contract regardless of whether it is cost reimbursable or fixed fee.

80. IF THE CONTRACT IS COST REIMBURSABLE, WHAT HAPPENS IF COSTS EXCEED THE CONTRACT AMOUNT?

If the contract were cost reimbursable and any such costs were determined to be allowable, reasonable, and allocatable, the contractor would be paid those additional costs; provided, that the contractor gives notification in accordance with the contract and is advised that funds are available.

81. WHAT IS THE INDIRECT COST RATE OR CONTRACT SUPPORT AMOUNT?

This cannot be determined until the contractor is selected.

82. WHAT ARE THE TERMS OF THE CONTRACT WITH RESPECT TO THE ULTIMATE COST TO THE INDIAN BENEFICIARIES?

Since the government would continue to pay for all contract costs, there would be no cost to the beneficiaries.

83. WHAT ARE THE SPECIFICS OF THE BREAKDOWN FOR COST OF SERVICES?

The A-76 study being conducted will determine the cost of the Bureau providing the service. Further, a pre-award audit would be conducted by the Inspector General's Office which among other things would verify costs and would be used to negotiate a fair, reasonable price.

Individual Indian Monies (IIM)

84. HOW WILL THIS CONTRACTING AFFECT IIM COLLECTIONS AND INTERNAL ACCOUNTING?

Over-the-counter and mail-in receipts would be deposited and invested more quickly due to the use of a concentration banking system in conjunction with the lockbox bank capabilities. This would result in increased earnings to the trust funds. By expediting the deposit of new money, independent studies have estimated that the BIA would be able to produce in excess of \$140,000 in additional trust-related earnings (Source: Price-Waterhouse Report, 1984). In addition, accounting transactions would be posted more accurately and timely than they are today. At most locations across the Bureau, the recording of deposits are delayed in the accounting system for up to 1-2 weeks because they are mailed to the agency, who then mails the receipts to the area for eventual deposit.

The recording of accounting transactions would be removed from the various input points located across the Bureau and the contractor would be required to record any deposit, disbursement, transfer, or adjustment activity being processed through their system. For example, any checks issued by the contractor would be automatically posted to the appropriate individual (or tribal) account. The various Bureau offices would still be responsible for providing proper ownership and authorization for the disbursements. The contractor would merely be processing the receipts and disbursements according to the Bureau's instructions. The Bureau offices would be able to immediately access the most current balance data available from the contractor's data processing system.

85. AT THE PRESENT TIME, IRS LEVIES ARE NOT VALID JUDGMENTS AGAINST IIM ACCOUNTS; HOWEVER, THEY ARE VALID THROUGH COMMERCIAL BANKS. WHAT PROTECTION WILL THE BIA PROVIDE TO THESE ACCOUNT HOLDERS?

IIM account holders are protected by the procedure in 25 C.F.R. Part 115 and court decisions such as Kennerly v. United States, 721 F.2d 1252 (9th Cir. 1983), and Keechi v. United States, 604 F.Supp. 267 (D.D.C. 1984). IIM funds may, nevertheless, be applied against delinquent debts under the regulations. Under the proposed contract, the financial institution would not be authorized to disburse funds for the payment of debts allegedly owed by the beneficiary unless directed to do so by the BIA pursuant to 25 C.F.R. Part 115.

86. REFER TO DRAFT RFP SECTION 5.4.0. WILL THE DAILY INTEREST GO INTO IIM ACCOUNT AND THEN BE ADDED TO PRINCIPAL DAILY?

Income earnings would be computed daily, but posted to the IIM account at the end of each month.

87. WILL AN ACCOUNT RECEIVE INTEREST IF IT IS IN AN ACCOUNT FOR 24 HOURS OR MORE?

Income would be earned and distributed on any amount left in the account for at least 24 hours.

88. WE [AGENCY] CLOSE ESTATES AT ANY TIME AND THEN CODE SO THAT IT WILL NOT RECEIVE INTEREST AGAIN. WILL THE CONTRACTOR HAVE THIS ABILITY AND WHAT WILL BE THE COMMUNICATION PROCEDURES?

Yes, the contractor would have the capability to open or close accounts at the direction of the BIA. It would be the responsibility of the applicable agency office to direct the contractor as to when to close an account. When an account is closed, no earnings would be computed or distributed by the contractor for that account. The communication procedures would be finalized once we have identified the contractor and their capabilities in relation to our system.

89. WE HAVE SPECIAL DEPOSITS THAT PAY IN ON SEVERAL LEASES. WE FORESEE PROBLEMS IN GETTING THE CORRECT AMOUNT TO THE CORRECT INDIVIDUAL.

The contractor would not be deciding who gets what amount from a lease. The BIA would utilize the IRMS system to make the proper distribution, and this data would be transmitted to the contractor to designate which accounts should be credited. The contractor would hold any new deposit amounts

that cannot be identified in a "special deposit" type of account until the BIA can indicate the amounts to be deposited into the appropriate IIM account. Once the applicable agency/area office has identified ownership, the BIA would then transmit the owner's account data and the related dollar amount to be deposited to the contractor.

90. REFER TO DRAFT RFP SECTION 5.4.1.0. WILL THE CONTRACTOR BE ABLE TO MEET TIMEFRAME FOR DEPOSIT IN ORDER TO COLLECT ACCURATE INTEREST?

One of the primary benefits that the contractor would be able to provide the BIA is their ability to expedite deposit processing and accountability. To expedite the investment of funds, the contractor would be required to utilize lockbox and concentration banking systems to accelerate the deposit of trust funds.

91. WHO WILL BE RESPONSIBLE FOR UNDERPAYMENT OF INTEREST WHEN THESE SITUATIONS OCCUR?

This contracting effort would not alter the Bureau's current liability for underpayment of interest due to failure to meet our fiduciary obligations to the trust fund account owners. These obligations would not be altered by the proposed contract.

92. HOW WILL INTEREST BE DETERMINED IF IT IS DEPOSITED ON THE 30TH OR 31ST OF THE MONTH?

If funds were deposited on the 30th or 31st, earnings would be computed from the day of deposit until the day before the funds are withdrawn. The only requirement would be that the funds stay on deposit at least 24 hours.

93. REFER TO DRAFT RFP SECTION 5.4.1.1. NOT ALL MINORS WILL HAVE REGULAR IIM ACCOUNTS. HOW WILL THEY BE HANDLED?

Minors who own IIM accounts with judgment award funds would be maintained separately from their regular IIM accounts. The contractor would set up accounts as requested by BIA; the Bureau must indicate any distinctions between certain types of accounts. Or in other words, the Bureau would be responsible for notifying the contractor that accounts with special requirements, such as minor, restricted adults, judgment award funds, etc., need to be established.

94. WHAT WILL THIS CONTRACT DO TO YOUR IIM STAFF?

As part of the implementation phase of this project, a review of each IIM office would be made to establish whether staff levels should be increased or reduced. We would then

adjust staff levels to the extent necessary to handle the workload and to assure adequate separation of duties at each location. Every effort would be made to place any employees adversely impacted into vacancies at their same working stations. At some locations, however, new positions would need to be created. Until that review has been completed, the full impact would not be known. For those IIM staff to be maintained at each agency, however, on-site training and accounting procedural manuals would be provided to assure that the staff understands what their role would be and that standardized procedures are applied Bureau-wide.

95. SECTION 5.4.0 OF THE DRAFT RFP ON INTEREST COMPUTATION SUGGESTS THAT ACCOUNTS WILL CONTINUE TO EARN INTEREST UNTIL THE CHECK HAS CLEARED. SECTION 5.4.1.0 - IIM, SUGGESTS THAT THOSE ACCOUNTS THAT ARE ON AUTOMATIC PAY WILL BE DISBURSED IMMEDIATELY AND THEREFORE EARN NO INTEREST. WILL ANY INTEREST BE EARNED ON AUTOMATIC PAYMENTS?

Yes, automatic payments would earn income in the portfolio until the checks clear the account established for the trust funds.

96. WILL THERE BE A LOSS OF SERVICES TO THE IIM ACCOUNT HOLDERS AS A RESULT OF THE CONVERSION TO A FINANCIAL INSTITUTION?

No. Steps would be taken to assure that there would be no interruption in services available at the agency or area office level.

97. IN THE CASE OF AN INDIVIDUAL FILING SUIT FOR ERRONEOUS PAYMENT AND/OR INTEREST TRANSACTIONS, WHO WILL THE CONTRACTOR REPRESENT, THE INDIANS OR THE CONTRACTOR INTERESTS?

Under the proposed contract, the contractor would not be given authority to represent the government or the Indians in the event of a lawsuit. If it were to be sued because of action taken under the contract, the contractor would only be able to represent itself.

98. WHO SEES THAT THE INDIAN IS GETTING HIS FAIR SHARE WHEN WE HAVE HEARD THE RECENT STORY ABOUT THE MAN THAT WAS LIVING IN A CAR BECAUSE HE DID NOT HAVE FUNDS AND THEN LATER FOUND OUT HE WAS ALMOST A MILLIONAIRE?

The BIA is responsible for assuring that each tribe and individual Indian receive their "fair share." The contractor would be supplying services, but the BIA would still be responsible for proper administration of the trust funds, just as it is today.

99. IF THERE IS ANY UNDISTRIBUTED INTEREST DUE TO ANY IIM ACCOUNT OWNERS, WON'T THAT HAVE TO BE DISTRIBUTED PRIOR TO CONVERSION TO THE NEW SYSTEM?

We anticipate that it would all be distributed prior to conversion. In the event that it is not distributed, however, those corrections for prior periods would be made and the interest fully funded. The Bureau must continue to review the trust fund accounts to clear up any accountability problems that are known to exist. The conversion would not alter that responsibility.

100. WILL IIM ACCOUNT INTEREST EARNED ON \$10.00 OR MORE, INSTEAD OF THE ORIGINAL \$600.00 LIMIT, BE REPORTED TO THE IRS? MANY INDIVIDUALS, PARTICULARLY THE ELDERLY, HAVE NEVER HAD A SOCIAL SECURITY NUMBER, AND HAVE REFUSED EVEN TO APPLY FOR A NUMBER.

Yes, when the Tax Equity and Fiscal Responsibilities Act of 1982 (TEFRA) was passed by Congress, it included a requirement for agencies of the federal government, who were distributing interest income to third parties, to comply with the interest reporting provisions, which require interest income totalling \$10.00 or more per year per individual to be reported to the IRS. Consistent with this new requirement, the Bureau now reports any income earned over \$10.00 instead of the old \$600.00 amount used for many years. Under the proposal, the contractor would be responsible for meeting the reporting requirements for such income.

Regarding social security numbers, you indicate that many of the older people do not have one and show no indication to apply for one. Social security numbers are required as a matter of law. The Internal Revenue Code requires us, as an agent of the federal government, to obtain social security numbers for individuals or estates to whom we distribute interest income or any other taxable income. This is not an attempt to subject the Indian people to any harassment by the IRS. The IRS requires this same data from any bank at which Indian individuals have a personal account. We are no different according to the law; we are just trying to comply with the reporting requirements which we are mandated by law to enforce.

Insurance

101. IF A BANK OR INSTITUTION INSURES YOUR MONEY UP TO \$100,000 AND YOU HAVE X AMOUNT OF DOLLARS OVER THE \$100,000 AND BANKRUPTCY OCCURS, DO WE LOSE THE X AMOUNT OR WILL THE BIA REIMBURSE?

One of the key controls in the investment of tribal funds is the requirement that no one bank is allowed to accept over \$100,000 per tribe unless they post collateral for amounts over the \$100,000 federally insured limit. Currently, the Division of Trust Fund Management uses a computer data base system, called the INFO system, to track the insurance and collateral requirements for each bank. The prospective financial institution would be required to maintain a similar data base in order to provide the Bureau with the proper monitoring capability.

102. MY UNDERSTANDING IS THAT FDIC IS BROKE. WHAT WILL HAPPEN IF A PROBLEM POPS UP, SUCH AS BANKRUPTCY? PAGE 4 OF THE SOLICITOR'S PAMPHLET SPELLS IT OUT SOHEWHAT BUT NOT ENOUGH TO MAKE A DECISION. MORE EXPLANATION IS NEEDED.

The Federal Deposit Insurance Corporation (FDIC) is solvent. Again, no trust funds are invested in certificates of deposit in excess of the \$100,000 limit at any one bank, so no FDIC insurance limits would be exceeded. The Federal Savings & Loan Insurance Corporation (FSLIC) had serious problems; however, they were recently resolved when Congress passed legislation that made FSLIC solvent once again. Other eligible securities would be backed or guaranteed by the U.S. Government.

103. WILL THE FUNDS BE FULLY INSURED UNDER THE PROVISIONS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)?

Yes, trust dollars would be insured under the provisions of FDIC only to the extent that they are invested in commercial certificates of deposit in banks across the United States. The Bureau would not place funds with a financial institution unless the funds can be insured by either FDIC or FSLIC, or by funds pledged as collateral by the respective financial institution. These same requirements would apply in the proposed system.

Investment

104. IN ALL THE DIFFERENT SYSTEMS AND ACCOUNTS, DO WE KNOW WHERE INDIVIDUAL TRIBAL MONIES ARE INVESTED AND AT WHAT PERCENT OR INTEREST?

Today, the Bureau uses the MONEYMAX reporting system to summarize investment portfolio data for each tribe. This report is sent each month to each tribe that has funds on deposit. It includes information such as: the name of the financial institution at which the funds are placed, the type of investment, the interest rate, the term of the investment, and the projected interest income that would be earned at maturity.

105. WHY CONTRACT OUT? ACCORDING TO THE PRICE WATERHOUSE STUDY THE BIA'S RETURN ON INVESTMENTS WAS WAY ABOVE THE NORM?

Yes, the Price Waterhouse report did find that the Bureau has performed well in its investment program. The report, however, also recommended that the Bureau seek supplementary professional advisory services to continue our investment performance and thereby strengthen our investment responsibilities mandated by law. Our current program is basically a manual operation which relies primarily on a bidding process for certificates of deposit in which funds are offered to the highest bidders. Under the proposal, professional investment analysis, and economic and market trend capability, would be available so that we may consider other eligible securities with the strongest market return. In addition, all tribal trust fund dollars would be pooled into three optional term portfolios to allow more flexibility in the selection of higher yielding securities. Such improvements would assure safety, greater liquidity and maximum return for trust assets.

106. WHAT CAN TRIBES EXPECT IN TERMS OF INVESTMENT ASSISTANCE AND COORDINATION?

Our investment staff would continue to work with tribes to determine their cash requirements and to provide assistance in selecting those investment portfolio options which would best meet their liquidity needs and investment objectives. In addition, we are open to any suggestions in developing better procedures for tribal cash planning and investment coordination.

107. PRIOR TO THE NEW FIRM MAKING AN INVESTMENT, THE CRITERIA CALLS FOR THE FIRM TO CHECK WITH THE BIA ON ANY INVESTMENT. WHO IN THE BIA WILL HANDLE THIS? WHO IS QUALIFIED, ESPECIALLY WITH THE PREVIOUS TRACK RECORD ON INVESTMENT DECISIONS?

All investment decisions would be cleared through Bureau investment managers. These managers would include members of the Division of Trust Fund Management staff. With respect to our previous track record, assessments from independent studies have commended the Bureau's past performance in its investment of trust funds. These same studies, however, offered recommendations to improve our investment program so that our investment performance may continue. Our proposal seeks investment advisory services consistent with these recommendations.

108. IS THERE SPECIFIC STATUTORY AUTHORITY FOR POOLING OF FUNDS?

Although there is no specific statutory authority for or against pooling tribal trust funds, the practice of combining trust funds in investments is legally sanctioned and has been specifically endorsed with respect to tribal trust funds in Manchester Band of Pomo Indians, Inc. v. United States, 363 F.Supp. 1238, (N.D. Cal. 1973).

109. ISN'T TRIBAL CONSENT TO POOLING REQUIRED IN ABSENCE OF STATUTORY AUTHORITY?

As long as pooling of trust funds is permitted under established principles of trust law, tribal consent to pooling is not required.

110. HOW WILL NECESSARY EXPERTISE BE PROVIDED BY BIA TO OVERSEE INVESTMENTS?

All investment decisions will be cleared and coordinated through BIA investment staff.

111. REFER TO DRAFT RFP SECTION 5.4.3.0. WHAT HAPPENS TO THE INTEREST IF A BIDDER DOES NOT RECEIVE NOTICE OF AWARD AND FUNDS HAVE TO BE HELD ONE YEAR BEFORE DETERMINATION IS MADE? DOES THE INTEREST GO TO THE BIDDER OR TO THE GOVERNMENT?

For the purpose of responding to your question, we assume you are referring to a potential situation in which the Bureau might overinvest certain amounts from the Alaska Native Escrow Fund (ANEF), and, upon discovering the overinvestment, the Bureau would decide to let the investment mature rather than cash it in early. First, the investment would likely be liquidated immediately. But in order to respond to your question, if the investment was allowed to mature, the ANEF would be overdrafted for the term of the

investment, and that would create a negative interest amount to be posted to the account for the term of the investment. That would mean that the negative interest charged to the ANEF account would be reversed upon maturity of the investment, and the actual interest earned would then be credited to the Miscellaneous Receipts account in the U.S. Treasury, since the Treasury really was overdrawn for the term of the investment.

112. CAN TRIBAL MONEY BE INVESTED IN FOREIGN INVESTMENTS?

No. The trust fund statute (25 USC 162a) limits the investment of Indian trust funds to U.S. securities, U.S. federally backed or guaranteed securities, or other obligations as deemed appropriate.

113. ARE ANY TRIBAL FUNDS INVESTED IN SAVINGS AND LOAN AT THE PRESENT TIME?

Our current program invests heavily in insured certificates of deposit from savings and loan institutions and commercial banks which offer the most competitive rates. CD's from savings and loan institutions represent a significant portion of these investments.

114. WHAT HAPPENED TO THE INVESTMENTS DURING THE THREE MONTHS OF INVESTMENT IN THE MELLON BANK?

No funds were invested in or by the Mellon Bank at any time as a result of the first request for proposal that was awarded in October 1986. What you may be referring to is the period from late December 1986 to late February 1987 when the Bureau implemented a temporary policy of not placing those investments that matured during that period back into certificates of deposit (CD's) or other longer term investments. This was done in anticipation of the transfer of trust funds in the Treasury to Mellon's concentration account. As you know, that transfer never occurred. Those funds that matured during that period were invested in Treasury "overnighters" which earned a competitive rate of interest at that market time. The "overnighters" consistently earned interest at a rate which exceeded the average jumbo CD rates of 30, 60 and 90 day terms during the same period the policy was in effect. In late February 1987, the policy ended and the trust funds were once again invested in CD's or longer term investments.

115. WOULD THE PROPOSED RFP INCLUDE PROVISION FOR TRIBES TO INVEST OTHER FUNDS NOT NECESSARILY DERIVED FROM JUDGMENT FUNDS OR IMPL TYPE FUNDS?

The proposal requests investment services for only those funds which qualify for deposit as trust funds.

116. TRIBES WHO CURRENTLY BASE ANNUAL BUDGETS ON INTEREST EARNINGS WILL BE UNABLE TO FORECAST AND PLAN WHAT IN FACT THEIR EARNINGS WILL BE IN THE POOLED FUNDS AND IN FACT NO IDENTIFIABLE REVENUE WILL BE AVAILABLE TO TRIBES EXCEPT BY PULLING LUMP SUMS FROM THE POOLED FUNDS ON DATES WHEN THE WITHDRAWALS ARE PERMITTED. (CURRENTLY ON BONDS, THE TRIBES CAN LOOK TO INTEREST PAYMENTS, COUPONS, ETC., FOR AVAILABLE REVENUE.) HOW DOES THE BIA ANTICIPATE DEALING WITH THIS POTENTIAL PROBLEM?

The proposed pooling of tribal trust funds for portfolio investment would enable professional advisors to recommend portfolio strategies and mix options which would produce the greatest returns while exposing the funds to the least risk. Portfolio mixes would diversify the funds among the eligible types of securities with varying maturities consistent with the objectives set for each portfolio. Funds would also be allocated proportionately among maturing securities to meet expected tribal cash withdrawals or the liquidity requirements of the respective portfolio.

The contracting institution would be required to provide valuations of the portfolios on a daily basis. In addition, the institution would project the expected earnings for the upcoming months in each new year, based on current and anticipated market conditions and the expected returns of the securities which have been and/or would be invested for each portfolio. Using experienced portfolio managers and their advisory services, we would continue to be able to assist tribes with annual budget planning and projection of earnings for the upcoming year.

117. TRIBES WITH LITTLE KNOWLEDGE OR EXPERTISE IN MARKET CONDITIONS COULD VERY LIKELY SUFFER LOSSES AS A RESULT OF WITHDRAWING FUNDS AT A TIME WHEN THE FUND VALUE IS DOWN. EVEN TRIBES WITH EXPERTISE COULD LOSE MONEY WITH MARKET TIMING. HOW DOES THE BIA ANTICIPATE DEALING WITH THIS POTENTIAL PROBLEM?

We plan to provide training and cash planning assistance to tribes in selecting the appropriate portfolio(s), i.e. short, intermediate or long term.

based on their investment goals and liquidity needs. Portfolios would be structured in such a way that funds would be available to meet tribal cash withdrawals. Tribal cash requirements would be a very important factor in determining the term of each portfolio and its respective investments. In addition, the average maturity of the portfolios would be shortened or lengthened based on market timing.

118. TRIBES WITH KNOWLEDGE AND EXPERTISE IN MARKET CONDITIONS COULD VERY EASILY TAKE ADVANTAGE OF GAINS BY WITHDRAWING FUNDS BASED ON MARKET CONDITIONS. HOW DOES THE BIA ANTICIPATE DEALING WITH THIS POTENTIAL PROBLEM?

Timing of disbursements could have a favorable impact on the earnings of a tribe, and that is what we hope will happen with the new system. We want you to earn more income by planning your cash withdrawals and selecting the appropriate portfolio term. For those tribes that are less experienced, we expect that through the training sessions to be scheduled prior to and throughout implementation, they will be better able to select among the proposed portfolio options and schedule their withdrawals accordingly to maximize their earnings.

119. IN EFFECT, THE POOLS BEING CONSIDERED SEEM TO BE DEVELOPED WITH THE NEEDS OF THE BIA IN MIND, NOT THE NEEDS OF EACH INDIVIDUAL TRIBE WITH WHOM THE BIA IS EXERCISING SEPARATE AND INDIVIDUAL TRUST RESPONSIBILITY. PLEASE COMMENT.

An investment manager with a large block of money to invest has a greater opportunity to obtain a higher rate of return than a manager with large numbers of small blocks of money with specific investment instructions. The proposed investment system would benefit all tribes. Today, many tribes do not actively participate in their investment program, except when they want to make a withdrawal and then discover that their funds are invested in securities that may not mature in time to allow the smooth transition of funds. Some tribes, however, are actively involved with the investment of their funds and we hope they would continue that involvement in identifying their future cash planning needs. In order for the Bureau to maximize the earning capacity of your trust assets, we need good cash flow projection data, which must be identified by the tribal owners. Under the proposed system, we would be able to more efficiently meet your cash planning needs and investment goals, and also meet our trust responsibility to maximize the earnings

on your trust dollars by prudent investment. In short, we would be able to better serve all trust fund account owners with the proposed system.

120. WHO IS REALLY GOING TO MANAGE THE INVESTMENTS AND MAKE THE FINAL INDIVIDUAL INVESTMENT DECISIONS? THE RFP, AND THE EXPLANATION BY YOUR PEOPLE, IS UNCLEAR.

The Bureau would continue to manage the investment process under the proposal and make the final investment decisions. The prospective contractor would notify the Bureau investment managers of the investment options available based on its investment and market analysis. The contractor would then execute the instructions received from the Bureau and record the transactions in the trust accounts established and maintained on their system, which would be available via an on-line, real-time computer network across the Bureau.

121. IF THE ANSWER TO 120 ABOVE IS THE BIA, THEN WHAT WILL BE THE TIMEFRAME FOR APPROVING INDIVIDUAL INVESTMENT DECISIONS RECOMMENDED BY THE FINANCIAL INSTITUTIONS?

Approval times could range from a few minutes for decisions to invest in very short-term securities such as overnight investments to whatever longer time is required in considering other longer term or different securities with varying market conditions. We would anticipate, however, that decisions would be made on a daily basis since cash receipts occur almost daily so that these assets may immediately begin earning interest.

122. WHY ARE CUSTODIAL SERVICES INCLUDED IN THIS RFP? HOW CAN THE U.S. GOVERNMENT, AS TRUSTEE, DELEGATE THE HOLDING OF TRUST ASSETS WITHOUT APPROVAL OF THE BENEFICIAL OWNER OF THE TRUST?

The U.S. Government, as trustee, would not be delegating the responsibility for the trust assets. The custodial services described in the RFP are routine services performed by commercial banks and investment service organizations for master trust programs. The contractor would be required to maintain secure custody of the accounts and maintain accurate records of the investment transactions. It would be more efficient for them to handle the custody of the certificates of deposit, for example, than it would for us. By allowing the contractor to handle the mechanical, routine aspect of the investment program, we would also be able to provide a better system of internal

controls. The Price Waterhouse report recommended that the Bureau segregate the investment management and custody functions to improve our control responsibilities, and suggested the custody function could be provided by commercial banks. In addition, the funds would be audited by the financial institution's internal audit staff and the Bureau's trust fund accounting staff. They would also be subject to review by the Inspector General and the General Accounting Office.

123. WILL BIA CONTINUE TO INVEST TRIBAL FUNDS AT THE HIGHEST YIELD AVAILABLE?

Yes. The Bureau is required by law to approve investment decisions which would assure maximum return by prudent investment to the Indian beneficiaries.

124. CAN TRIBES HAVE INPUT IN THE DECISION ON WHERE THEIR FUNDS MAY BE INVESTED?

Yes, tribal input and cash planning guidance is important so that we may approve decisions consistent with tribal liquidity needs and investment objectives.

125. WHAT ASSURANCES CAN YOU GIVE THAT IIM ACCOUNTS WILL EARN INTEREST RATES EQUAL TO OR BETTER THAN BIA HISTORICAL RATES?

Today, the IIM funds are already pooled, so that the investment structure would not essentially change. Under the proposal, we would continue to pool these funds for investment in a separate portfolio and maximize the return by investing in securities with the strongest market return. We would like to clarify that the BIA would still be making investment decisions, with the contractor executing those decisions. The major improvement impacting IIM earnings would be the initiation of cash management improvements such as the lockbox and cash concentration systems. The other factor would be the increased earnings as a result of the "float" on the IIM dollars disbursed. Presently, when a U.S. Treasury check is issued, the transaction is posted to the IIM account and the check amount stops earning interest when the check is issued. Under the proposal, the funds would continue to earn income until the check actually clears the account later. (The Price-Waterhouse study of 1984 projected that interest on disbursement float alone would increase earnings for all trust funds in excess of \$690,000 based on the market rate at that time.) With more efficient processing of collections, cash can

be invested more promptly, and with the increased earnings from float, the system envisioned in this contract would result in additional earnings for IIM funds.

126. WILL THE CONTRACT ASSURE AN EQUAL OR GREATER RATE OF INTEREST ON OUR INVESTMENT FUNDS?

As described above, the same benefits in earnings would apply to all trust fund groups. Under the proposed portfolio investment system, we would continue to maximize the return on Indian trust funds by investing in securities with the strongest market return.

127. WILL THE PROCESS FOR INVESTMENT OF IIM FUNDS BE DIFFERENT FROM THE TRIBAL TRUST FUND INVESTMENT?

Under the proposal, the process for investing IIM funds would be similar to the investment of tribal funds. There would, however, be one portfolio established for the IIM monies and three portfolio options--short, intermediate and long term--available for tribal trust monies. Separate investment guidelines for each of these portfolios will be included in the RFP.

128. WHAT CRITERIA IS USED BY THE BRANCH OF INVESTMENTS IN SELECTING BANKING INSTITUTIONS?

Presently, in addition to bids offering the highest yielding certificates of deposit, the Branch of Investments looks at the net worth to asset ratio, liquidity ratio, loan loss ratio, profitability and age of the institutions in selecting banks and savings and loans from which to buy CD's. Under the proposal, we would expect the contractor to provide similar credit analysis of those institutions which would be recommended for the investment of trust monies.

129. ARE THE INTEREST RATES DIFFERENT FOR THE TWO FUNDS--IIM AND TRIBAL?

Under the current program, IIM accounts enjoy one rate of return and each tribe enjoys whatever rate its investment strategy produces. Under the proposal, IIM monies would be invested as a separate portfolio and tribal monies would be invested in three optional term portfolios. Rates of return for each portfolio would vary depending on the investment objectives and guidelines established for the respective portfolios.

Legal: Liability & Protection

130. IF LOSSES ARE INCURRED, WILL THE UNITED STATES ACCEPT LIABILITY WITHOUT RAISING THE DEFENSE OF SOVEREIGN IMMUNITY?

The current contracting effort would not alter the Bureau's current liability for failure to administer the trust funds properly.

131. WILL THE FUNDS IN THE CUSTODY OF A PRIVATE COMPANY BE SUBJECT TO JURISDICTION AND JUDGMENT OF ANY COURTS?

For purposes of this question, we will assume that you are referring to whether the Bureau would continue to protect trust funds from liens or claims to the same extent we do today. To ensure that trust funds are protected under the proposed contract to the same extent that they are today, the financial institution would not be authorized to disburse funds for the payment of debts allegedly owed by the beneficiary unless directed to do so by the Bureau pursuant to 25 C.F.R. Part 115.

132. IN CASE OF A JUDICIAL LOCKDOWN, LEGAL INJUNCTION OF SOME KIND, WHAT WOULD STATUS OF TRUST FUNDS AND OPERATIONS BE?

It is unclear what is meant by "judicial lockdown." If you mean the enjoining of the contract process by court action before contract services can be provided, the Bureau would continue its trust fund operations without the contractor's services. If "judicial lockdown" refers to a court order closing down the contractor's operations after the contract services are being provided, the contract arrangement would permit the Bureau to resume the trust fund operation without the contractor's services.

133. IS LEGISLATION NEEDED FOR PROTECTION AGAINST A "LOCKDOWN"?

Because a "judicial lockdown", as stated in response to question 132, would not prevent the Bureau from administering Indian trust funds, no legislation is needed to protect against the "lockdown".

134. DOES THIS CONTRACTING PROPOSAL CONSTITUTE A DELEGATION OF TRUST RESPONSIBILITY?

This proposal does not constitute a delegation of trust responsibility. Moreover, the proposed improvements would in no way diminish our responsibility, as

trustee, to the tribes and individuals. We are seeking professional cash management, accounting and investment advisory services which are critically needed to strengthen our legally mandated responsibility. The Bureau would continue to direct, monitor and authorize those transactions and activities performed by any prospective contractor. The protection of the trust would remain an integral part of the Bureau's trust responsibility.

135. IS THERE A SOLICITOR'S OPINION APPROVING THE CONTRACTING OF TRUST FUNDS?

The contract proposal has been developed on the basis of advice obtained from the Solicitor's Office. There is not, however, an opinion which covers the entire contracting proposal.

Minerals Management Service (MMS) and Related Indian Royalty Program

136. WHAT WILL BE THE MINERAL MANAGEMENT SERVICE (MMS) ROLE IN THE PROPOSED SYSTEM?

MMS would continue collecting and accounting for oil and gas related income for trust fund accounts just as they are doing today. The only difference in their procedures would be that instead of transferring funds directly to BIA's Treasury accounts, they would transfer the funds to BIA's concentration Treasury account at the financial institution.

137. SHOULDN'T THE PROBLEMS WITH MMS BE CLEARED UP BEFORE GOING INTO THIS CONTRACT?

With respect to problems related to explanations of payment (EOP), when the contractor disburses oil and gas payments, the EOP data would be provided from MMS through BIA. Efforts by MMS and the BIA already underway to improve MMS-provided EOP data would continue. These efforts include consultation with allottee groups. It would not necessary, for example, to delay implementation of the proposed cash management function until improvement of EOP data is completed.

138. WILL THE PROPOSED SYSTEM CAUSE ANY IMPROVEMENTS IN SERVICE FOR INDIANS WHO HAVE OIL AND GAS RELATED INCOME COLLECTED BY MMS?

Under the proposed system, the main benefit for IIM account owners with oil and gas related income would be additional earnings due to disbursement float and more timely investment of funds. There would also be other benefits such as monthly reporting and more accurate accounting of trust funds that would improve overall service to IIM account owners.

139. WILL THERE BE ANY IMPROVEMENTS FOR INDIANS WHO HAVE NOT BEEN PAID FOR OIL AND GAS?

For purposes of responding to this question, we will assume you are referring to individuals who, due to some error or question concerning the amount due them, have not been paid some royalty income. MMS continues to dedicate 25 staff years of audit effort for Indian work. In addition, the Interior Department has recently decided to develop an automated production reporting system and, once implemented, a comparison of sales and production data will occur. The Bureau and MMS are also in the process of developing a reconciliation module that will, among other things, enable BIA to identify the date of funds received from MMS and when invested by BIA.

140. HOW DO WE KNOW WE ARE GETTING PROPER CREDIT FOR OIL AND GAS WHEN TRUCKS COME OUT AT MIDNIGHT?

This type of activity can only be monitored through increased inspections by the Bureau of Land Management (BLM). The BIA and MMS are working with BLM to provide these services to Indian leases across the country, and to obtain the additional resources BLM has requested in order to meet our needs.

141. WILL RECEIPTS FOR ROYALTIES AND MINERAL LEASE RENTALS BE DEPOSITED TO THE TREASURY OR TO THE BANK?

MMS would continue to deposit the oil and gas related receipts they collect directly to the MMS Treasury account. Under the proposed system, the Indian-related receipts would then be transferred electronically to the Bureau's concentration Treasury account at the financial institution instead of the current procedure of transferring the funds from MMS's Treasury account to the Bureau's Treasury account.

142. HOW ARE IIM MONIES, PARTICULARLY ROYALTY RECEIPTS, TO BE TRANSFERRED FROM THE BANK, THE BIA OR THE TREASURY?

Under the same procedures above, oil and gas receipts would be transferred from MMS's Treasury account directly to the financial institution's Bureau concentration Treasury account, where the funds would be promptly invested. The funds would be recorded in the Special Deposit account, where they would remain until identified for payment on an Indian Financial Distribution Report (IFDR). At that time, it is our intention that the funds would then be disbursed by check from the financial institution according to Bureau instructions.

143. WILL EXPLANATIONS OF PAYMENT WITH RESPECT TO ROYALTIES PAYABLE TO TRIBES AND ALLOTTEES ACCOMPANY MONTHLY ROYALTY PAYMENTS AS REQUIRED BY THE FEDERAL OIL AND GAS ROYALTY MANAGEMENT ACT (FOGRMA)?

Under the proposed system, we would be able to provide explanations of payment with monthly royalty payments for particular account owners who are now automatically paid royalties each month. This, of course, would be contingent upon the Bureau's capability to identify the relevant data and transmit it to the financial institution. During the transition or in the event the contracting institution would not be able to issue the checks accompanied by the explanations of payment, the Regional Finance Center in San Francisco would continue to process the payments for these owners.

144. WHAT TIME LAG WILL THERE BE BETWEEN A REQUEST FOR FUNDS FROM AN IIM ACCOUNT BY AN ALLOTTEE AND THE DISBURSEMENT OF FUNDS FROM THE BANK?

We expect the contractor to issue and mail checks by the end of the business day following the day we electronically transmit the disbursement authorization data to them. In the event of an emergency, a wire transfer could be accomplished in a matter of hours or possibly minutes, depending on the circumstances.

145. WILL THE BIA AGENCY OFFICE BE ABLE TO CALL FOR IIM FUNDS DIRECTLY TO THE CONTRACTOR AND WILL THE CHECKS BE ISSUED THAT DAY OR THE FOLLOWING DAY TO THE ACCOUNT OWNER?

As explained in question no. 144, the agency would initiate the authorized disbursement data to be transmitted electronically to the contractor. The checks could be issued the same day as the agency request, depending on the timing of the data transmission to the contractor and their system capabilities. In any case, the checks should be issued

and mailed no later than the business day following the date of Bureau transmission to the contractor.

146. WOULD MONEY BE WIRED AT THE REQUEST OF AN ALLOTTEE THROUGH TERMINALS MAINTAINED AT VARIOUS BIA OFFICES?

The process described in question no. 144 would be available in the event of an emergency. Money would then be wired to the commercial bank specified by the allottee.

147. WOULD AN ALLOTTEE BE ABLE TO RECEIVE THE STATEMENT OF HIS IIM ACCOUNT INSTANTANEOUSLY FROM A COMPUTER TERMINAL AT AN AGENCY OFFICE? HOW WILL THESE PAYMENTS BE HANDLED DURING THE TRANSITION?

Yes, under the proposed system, IIM account transaction and balance data would be available at an agency office. Payments during the transition or phase-in period would continue to be made just as they are today.

148. HOW WILL THE TRANSITION BE ESTABLISHED WITHOUT SUSPENSION OF PAYMENTS AND INFORMATION?

The transition would be carefully phased in with the contractor. The first phase would be the investment data loading, which would install the investment reporting on the contractor's data processing system. The payment function would not be shifted to the contractor until the accounting data has been properly loaded and run parallel for a satisfactory period to assure reliability of the contractor's data processing system capabilities.

149. PLEASE CLARIFY WHETHER TRIBAL AND ALLOTTEE LEASE DATA WILL BE ON THE BUREAU'S IN-HOUSE COMPUTER SYSTEM OR ON THE PROPOSED SYSTEM?

The lease and ownership data would still be on the Bureau's data processing system. The IIM and tribal trust fund account balances would be processed on the proposed system.

150. WHEN WILL UNDISTRIBUTED INTEREST EARNED ON OIL AND GAS ROYALTIES BE DISTRIBUTED TO THE PROPER IIM ACCOUNTS AND PAID OUT?

The undistributed interest has not been calculated and posted to the proper IIM accounts due to the inability of the BIA to identify the interest computation date. The BIA receives lump sum dollars transferred from MMS

each month. Twice a month MMS transmits the financial distribution report data to the BIA, who, in turn, identifies the ownership of the funds listed for distribution and the principal is then posted into the proper IIM account. In most cases, the account owner is then issued a check for the royalty amount deposited. The problem is that the BIA has no way of identifying the date the BIA received the funds from MMS, since we receive the cash before we receive the financial distribution report identifying which leases the cash was earned on. The BIA is in the process of developing a method to identify the date it receives the funds and when the allottee's oil and gas related income is actually invested. This would allow BIA to calculate and distribute the interest at the same time the principal is distributed to the individual allottee's IIM account. We hope this system will be implemented by mid-1988. The undistributed interest accumulated prior to the implementation of this system would be distributed as soon as possible after implementation is completed.

Options: Withdrawal and Regionalization

151. SINCE THE POSSIBILITY EXISTS THAT INDIVIDUAL MEMBERS WOULD SUFFER DUE TO A TIME LAG IN PROCESSING INDIVIDUAL TRANSACTIONS, OUR TRIBE WOULD PREFER TO DEAL WITH A BANK IN OUR IMMEDIATE AREA. IS THIS POSSIBLE UNDER THE PROPOSED SYSTEM?

In almost every instance, the proposed system would process transactions faster and more efficiently than they are today. Deposits of trust funds and their subsequent investment would be faster than the current system. Today, 97 percent of all IIM disbursements are made from the area IMC locations, and mailed to the individuals or the agency for handling. Under the proposal, the disbursements would be made by the contractor based on Bureau instructions, and mailed to either the agency or directly to the IIM account owner. An emergency payment system for electronic transfer of funds would also be required to handle those situations that cannot wait. The funds would continue to earn interest for the portfolio until the check has cleared, unlike today's system which cuts off interest on the day of disbursement. With respect to your tribe's suggestion to deal with a local bank, it would not be efficient for the Bureau to deal with, for example, multiple banks across the country in an effort to meet each tribe's desire to use a local bank. In order for the Bureau to better manage trust funds, we must implement the most efficient system possible.

152. WHY CAN'T WE DRAW MONIES OUT OF THE FUND AND PUT THEM IN A LOCAL BANK AND DRAW INTEREST? THIS WOULD GIVE US BETTER BORROWING POWER AND IT WOULD ALSO BE A TYPE OF COLLATERAL.

This option is available today and would continue to be in the proposed contract environment. Tribal funds may be withdrawn from trust status upon appropriation authorization by the Bureau, as trustee, in accordance with statutory and regulatory limitations. Should a tribe choose not to participate and instead invest its own tribal funds, please be aware that the tribe would then assume the investment responsibility and liability as well as the costs for a tribal investment program.

153. IN YOUR QUESTION & ANSWER DOCUMENT, #44 THERE'S A QUESTION POSED, MAY AN INDIVIDUAL TRIBE CHOOSE NOT TO PARTICIPATE IN THE CONTRACT AND INSTEAD INVEST HIS OWN FUNDS? YOU STATE, YES, BUT NO STATEMENT IS MADE OF WHAT TYPE OF FUNDS MAY BE DRAWN FROM THE TRUST STATUS.

A tribe may withdraw any tribal trust funds other than judgment award funds. For example, any "7000" series tribal trust fund appropriation accounts could be withdrawn.

154. HAS ANY CONSIDERATION BEEN GIVEN TO REGIONALIZING THE CONTRACT PROPOSAL AND HAVE SEVERAL INSTITUTIONS LOCATED IN DIFFERENT GEOGRAPHICAL AREAS NEAR THE INDIAN COMMUNITIES HANDLE THE PROPOSED WORK?

The RFP would not preclude prospective bidders from submitting such a proposal. A bidder could join or subcontract with other financial institutions in a respondent proposal which would best meet the performance statement of work. The principal bidder, however, would have to meet the eligibility criteria, i.e., be designated as a depository and fiscal agent of the Treasury, have a registered trust department with fiduciary responsibility for a least \$500 million in assets and have at least \$250 million under investment management. Further consideration would be given to advantages such as cost effectiveness, ease of monitoring and assurance that functions would not be fractionated.

Taxation and IRS

155. IN THE CASE OF CLAIMS BY THE INTERNAL REVENUE SERVICE, WILL THE DEPARTMENT OF JUSTICE REPRESENT THE TRUSTEE OR THE IRS?

The current contracting effort would not alter the conduct of the Department of Justice in any case, whether it involves the IRS, the Bureau, or any other Federal agency.

156. WILL THE FUNDS IN THE CUSTODY OF A PRIVATE COMPANY BE SUBJECT TO TAXATION OR LIENS BY PRIVATE CLAIMANTS?

The proposed procurement would not change our role in protecting trust funds from IRS liens, or those of private companies or individuals. Further, as stated in question 85, the prospective financial institution would not be authorized to disburse funds for the payment of debts allegedly owed by the beneficiary unless directed to do so by the Bureau pursuant to 25 C.F.R. Part 115. In addition, the proposal would not change our role in complying with IRS reporting requirements for interest income or any other taxable income nor affect the status of trust funds with respect to any tax liability. The financial institution's role would be limited to servicing the trust fund accounts so that the Bureau may accomplish the receipt, disbursement, transfer, and investment of trust fund dollars more efficiently.

157. CAN YOU TALK A LITTLE ABOUT THE W-9 FORM?

The W-9 form is an IRS form that is used to document each individual Indian, estate, or other entity (other than tribes), who has funds on deposit and earns interest income. The Bureau is required by law to present these forms to each account owner in the IIM system in order to obtain the necessary social security number, or fiduciary tax number, or, in the case of a company with funds held in the Special Deposit accounts for some reason, their employer identification number. This will allow the Bureau to comply with the reporting requirements established by law for the IRS. Over the next several months, these forms will be mailed or delivered to IIM account owners in an attempt to comply with our requirement to collect this data.

Training

158. WHO WILL TRAIN THE CONTRACTOR IN THE MULTITUDE OF COMPLEX AND UNIQUE TRANSACTIONS THAT WE ARE ALREADY TRAINED FOR AND IN OUR ESTIMATION, OPERATING

EFFICIENTLY AND EFFECTIVELY? EACH AGENCY HAS ITS OWN UNIQUE SITUATION. WHO WILL TRAIN EACH INDIVIDUAL AGENCY IIM STAFF AS TO THE PROCEDURE AND RESPONSIBILITIES UNDER THE CONTRACT FOR THAT PARTICULAR AGENCY?

The phase-in process would require that each area/agency be reviewed prior to implementation of this new system. Each agency would be examined prior to implementation to establish the need for any unique requirements in order to handle the processing of transaction data for that location. This review and the subsequent parallel testing period would be accomplished by a combination of Bureau and technical specialists from the contractor. Each agency would receive training and given user's guides prior to implementation.

159. WHAT WILL BE DONE TO RESOLVE PROBLEMS FOR THE INDIVIDUAL INDIAN IN THE TRAINING, PHASE-IN, AND INITIAL TAKEOVER OF THE PROGRAM BY THE CONTRACTOR?

The phase-in of the IIM accounts at any area/agency location will require several stages: (1) analysis of the account activity at that location, (2) development and testing of any software changes necessary to accommodate the unique needs of that location, (3) training sessions for Bureau staff, and (4) parallel processing for a time period necessary to assure the proper implementation of the programs and procedures. As part of this process, procedural manuals would be given to the staff at each location as part of their training material. This would assist in the standardization of procedures across the Bureau. The phase-in process would be carefully coordinated with each area/agency to assure smooth transition. Our primary goal is to assure that the quality of service will be maintained after the transition has occurred. Individual Indians would be sent information describing the new services and any procedural changes that would be initiated with the new system. Each agency would be required to have IIM staff made available to assist any Indian individuals needing clarification on any of the new services or procedures.

Tribal Representation

160. WHAT KIND OF TRIBAL REPRESENTATION WILL TRIBES HAVE ON THE CONTRACTOR'S BOARD OF DIRECTORS?

There is no provision in the RFP for tribal representation on the prospective contractor's board of directors.

161. IF THIS CONTRACT PROPOSAL GOES FORWARD, HOW DO WE KNOW WE WILL GET A TRIBAL REPRESENTATIVE THAT WILL BE ABLE TO DO THE JOB, OR WILL THE TRIBAL REPRESENTATIVE BE A BIA EMPLOYEE?

For purposes of this question, we assume you are referring to the tribal representatives which will be appointed as consultants to the evaluation committee. We plan to establish this committee after the RFP is issued to review and evaluate the prospective proposals received in the procurement process. The persons selected to represent the tribes would be non-voting consultants to the evaluation committee, and would be expected to present tribal interests during the proposal review process. They would not be BIA employees.

162. WOULD THE EVALUATION COMMITTEE PROPOSED TO REVIEW THE PROPOSALS BECOME PERMANENT?

The evaluation committee would not be permanent and its members would serve only in a capacity limited to this proposal.

Mr. SYNAR. Let me ask you this. Wasn't the RFP developed before, during, and after those meetings?

Ms. ARLENE BROWN. It was developed before and a preliminary draft was sent to them for comment. We held consultation sessions, individually, prior to that. We then sent out a series of information and about 12 different letters to all tribal leaders, including the Alaskan Native groups, over the next 2-year period to advise them and to encourage comments on the final draft agreement.

We have provided all—

Mr. SYNAR. Was it changed?

Ms. ARLENE BROWN. Yes. It was changed. We did receive some very good comments. We also had—

Mr. SYNAR. What were the concerns that they expressed?

Ms. ARLENE BROWN. In the beginning, the major concerns were whether or not the Federal Government was delegating their trust responsibility to a third party contractor. We indicated that we're not delegating any management functions; they're merely a servicing agent, as we've talked about earlier.

As the comment process went on, we gathered a comprehensive list of questions from the tribes and from the field, about 165 which were issued in a document to everyone so that they could have the benefit of knowing what other tribes and other individuals were asking. It generated other questions which were more strategic and more about the particular aspects of the contract as opposed to a political effort.

Mr. SYNAR. You will supply for the record the changes made to the RFP based upon those comments?

Ms. ARLENE BROWN. Yes.

[In addition to those tribal comments furnished earlier for the record, copies of the following correspondence with three tribes were received during the draft contract comment period. The three tribal consultants to the procurement evaluation committee also recommended changes which included five tribal orientation sessions, additional training requirements, direct on-line access availability for tribes, and additional contractor performance requirements.]

[The information follows:]



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 13 1988

Mr. Richard M. Milanovich
Chairman, Agua Caliente Band of
Cahuilla Indians
960 East Tahquitz Way - Suite 106
Palm Springs, California 92262

Dear Mr. Milanovich:

Thank you for your letter of August 26 offering two comments on the proposed contract for financial trust services.

You first requested that the contract addendum section 3.a. be amended to also include protection of tribal account holders in the disbursement of any payment of debts allegedly owed to the IRS or other creditors. Second, you asked that this section also be amended to specify to whom the contractor would be liable in such a case.

In order to reflect your suggestions, we have amended section 3.a. to read as follows:

"3.a. C.4.4.8 DISBURSEMENT OF TRUST FUNDS FOR PAYMENT OF DEBTS ALLEGEDLY OWED TO IRS OR OTHER CREDITORS

The contractor may not disburse tribal and individual Indian money (IIM) for the payment of debts allegedly owed by any beneficiary to the Internal Revenue Service (IRS) or other creditors unless directed to do so by the BIA. The contractor shall be liable to the United States on behalf of the affected Indian beneficiary for any funds disbursed to the IRS or any other creditor without prior authorization from the BIA."

A copy of the executed contract will be provided to you separately after contract award. Your constructive comments have been helpful in finalizing the contract agreement.

Sincerely,

[Handwritten Signature]
Assistant Secretary - Indian Affairs

*Richard. M. Milanovich
taking the time to
review & write
this*

Richard M. Milanovich

Chairman, Tribal Council
AGUA CALIENTE BAND OF
CAHUILLA INDIANS

30 August 1988

Mr. Ross O. Swimmer:

Please replace with copy mailed on
August 26, 1988.

There was a typographical error in
Paragraph 4, line 5, which now reads:
does not specify to whom....

RMM:emp

Sent Express Mail #81967885

AGUA CALIENTE
BAND OF
CAHUILLA INDIANS

Express Mail
B81967885

RECEIVED
BUREAU OF INDIAN AFFAIRS
EXECUTIVE SECRETARIAT

88 AUG 31 P2:44

August 26, 1988

Ross O. Swimmer, Assistant Secretary
BUREAU OF INDIAN AFFAIRS
U.S. Department of the Interior
Washington, D.C. 20240

Re: Proposed contract with Security Pacific
Bank for Financial Trust Services

Dear Mr. Swimmer:

On behalf of the Agua Caliente Tribal Council, I am writing to respond to your letter of August 15, 1988. In it you request our comments on the final revisions to the proposed contract, to arrive by September 2, 1988.

In reviewing addendum 3.a. (C.4.4.8), we were particularly pleased to see that you have responded to the concerns expressed in our letter to you of earlier this year by requiring that the "contractor may not disburse Individual Indian money (IIM) for the payment of debts allegedly owed by a beneficiary to the Internal Revenue Service (IRS) or other creditors unless directed to do so by the BIA pursuant to the provisions of 25 CFR Part 115." This provision should give trust funds in the hands of the contractor more nearly the same protection from seizure as the same funds in the BIA's hands.

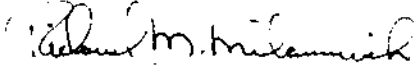
However, this language is still somewhat ambiguous. This broad language may or may not cover all IIM accounts, including those of tribes and those of individuals. Therefore, to remove any doubt on this subject, we request that this language "by a beneficiary" be changed to read "by any tribal or individual beneficiary."

Also, this addendum 3.a concludes by stating that "The contractor shall be liable for any funds disbursed to the IRS or any other creditor without prior authorization from the BIA." This is a very helpful provision, and we are pleased to see it. However, it does not specify to whom the contractor would be liable in such a case. Therefore, we request that the above language be changed to read "shall be liable to both the United States and the affected beneficiary for any funds."

R.O. Swimmer
Washington, BIA
August 26, 1988
Page 2

These are our comments on the revisions which you just sent to us. Please negotiate the above two changes into the language of addendum 3.a and send us a copy of the executed contract. Thank you for your attention to our concerns.

Sincerely yours,



Richard M. Milanovich
Chairman, Tribal Council
AGUA CALIENTE BAND OF
CAHUILLA INDIANS

RMM:mea



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 13 1988

Mr. Harry F. Gilmore
Chairman, Quapaw Tribe of
Oklahoma
P.O. Box 765
Quapaw, Oklahoma 74363

Dear Mr. Gilmore:

Thank you for your letter of August 23 commenting on the proposed contract for financial trust services. We will respond to each of your comments by section in the same order as your letter.

On Section C.4.4.8, you indicated that the disbursement of IIM funds is strictly the responsibility of the BIA. We agree that the disbursement approval authority is the responsibility of the BIA and will continue to be under the contract. The contractor will disburse tribal and IIM funds only as approved by the BIA. Further, in the case of disbursements for payments of debts allegedly owed by a tribe or individual to the Internal Revenue Service or other creditor, the contractor will not be able to disburse such payments unless directed to do so by the BIA.

On Section C.4.8.5, you objected to the contractor providing a financial news letter to all account holders and suggested that reports be on a individual basis. A monthly report will be provided to the account holders on the status of their accounts, as you suggest. This is one of the basic requirements of the contract and the report format will be similar to the reports you receive today. The quarterly news letter, however, is an additional requirement and will contain general information such as the national economic and financial markets outlook. We will work with the contractor to customize this news letter to reflect general information which may be useful to our Indian clientele.

On Section C.4.8.6, you objected to the cost of the on-line telephonic query being borne by the tribal requester. This optional requirement would enable those tribes who wish to install a computer terminal and modem at their location to have direct on-line access to the contractor's computer system with respect to their account information. Security

access codes would then be assigned to the tribal requester for appropriate real-time information. The cost of this on-line capability would be borne by the tribal requester. If a tribe chooses not to exercise this option, tribal information needed on a day-to-day basis will be available through its respective agency via its on-line terminals to the contractor.

On Section E.2.1, you asked how an individual account holder would know of an error in posting. Account holders will receive monthly statements on their accounts. If an error is detected, the account holders should notify their respective BIA agency or the contractor.

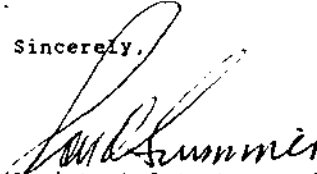
On Section E.2.2, you indicated that the semi-annual evaluations of the contractor's investment performance would allow the contractor to invest tribal funds on a semi-annual basis and thereby have the advantage to collect the interest for a six-month period. This is not the case. The performance indices listed in this section will be used by the BIA, as quality assurance measures, to evaluate on a semi-annual basis the contractor's investment performance of the trust fund portfolios. The contractor, however, will be investing funds on a daily basis as approved by the BIA. Interest earnings will accrue to the tribal portfolios daily and will also be computed daily in accordance with section C.4.5, Earnings Computation, of the Request for Proposals (RFP).

On Section F.3.0, Note to the Discretionary Letter and Forms Request Function, you objected to the requirement that the cost of materials and mailing be borne by the tribal requester. The discretionary letter and forms request function is an optional software capability under the contractor's system which will allow the BIA or any tribal requester to use the account holders mailing list maintained by the contractor, in whole or in part, to send out pre-formatted letters on any subject, trust or non-trust related. The contractor would then customize each letter at no cost and provide the mailing services with the cost of postage and materials to be borne by the requester. Please note that the costs for this capability would be additional and do not apply to the monthly and other report mailing as required in the RFP.

Finally, on Section G.4.0, you asked what will be the method of payment/schedule of payments. The amount and schedule of payments will be provided to you separately after contract award.

I hope this information is helpful to you in better understanding the terms of the contract. Thank you for providing us your comments.

Sincerely,



Assistant Secretary - Indian Affairs

Harry, Thanks for
taking the time to
review & write!
Jan

QUAPAW TRIBE OF OKLAHOMA

P. O. BOX 765 QUAPAW, OKLAHOMA

RECEIVED
 DEPT. OF THE INTERIOR
 BUREAU OF INDIAN AFFAIRS
 EXECUTIVE SECRETARIAT

Harry J. Gilmore

'88 AUG 31 09:12 AM '88
 Miami, Oklahoma 74355

August 23, 1988

Mr. Ross O. Swimmer
 Assistant Sec. - Indian Affairs
 U. S. Department of Interior
 Office of the Secretary
 Washington, D.C. 20240

Dear Mr. Swimmer:

This is in reply to your letter dated August 15, 1988, regarding Request for Proposals (RFP) for Financial Trust Services (FTS) inviting any comments I may have concerning the proposed contract.

Following are my comments:

C 4.4.8

Disbursement of IIM funds strictly responsibility of BIA. No mention of the individual having authority over their own account.

C 4.8.5. & 6

I object to the Contractor providing a financial news letter of all the account holders. This should be on an individual basis. No form should be prescribed by the Contracting Officer as the account holder could get a one line report.

I object to the Telephonic query being borne by the Tribal requester. This is added expense to the account holder and if they want the contract, they should get an 800 number.

E. 2.1

How would an individual account holder know of an error in posting?

E. 2.2

This factor is making it possible for the contractor to invest Tribal account holders funds on a semiannual basis and having the advantage of collecting interest for a six (6) month period.

NOTE:

Requesters are to bear the cost of materials and mailing. I object to this very strongly because, again, the Tribal account holder is bearing their legitimate expense. They should have figured all these expenses in their bid.

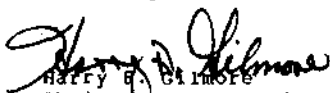
G. 4.0

What is the method of payment/schedule of payments?

I am of the opinion this contract is going to be a headache for all Tribal account holders. It is difficult enough at present for Tribal account holders to receive information and payments from their accounts.

I would like to go on record as saying I object to the contract in its present form.

Sincerely,


Harry E. Gilmore
Chairman, Quapaw Tribe

HFG/jmj

IA - Brown



RECEIVED
BUR OF INDIAN AFFAIRS
EXECUTIVE SECRETARIAT

PETER MACDONALD
CHAIRMAN

THE NAVAJO NATION

88 AUG 17 19 39 JIMMY R. THOMPSON
VICE CHAIRMAN

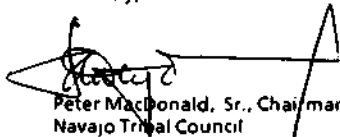
August 5, 1988

Honorable Ross O. Swimmer, Assistant Secretary -
Indian Affairs
Office of the Secretary
Washington, D. C. 20240

Dear Mr. Secretary:

Thank you for your letter of July 25, 1988 which provided an update to the results of comparison between the Government's and the selected offeror's cost estimate under our Request for Proposals (RFP) for Financial Trust Services. This information provided by your office will be forwarded to Mr. William Morgan, Executive Director for the Administration and Finance Office for his continuing management on this Task Force.

Sincerely,


Peter Macdonald, Sr., Chairman
Navajo Tribal Council

cc: Mr. William Morgan,

Mr. SYNAR. Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Chairman.

Just to follow up on that, you indicated, Dr. Brown, you had extensive contacts. What was the general reaction of the tribes to the contract?

Dr. EDDIE BROWN. Mr. Thomas, as you're well aware, I've been here approximately 100 days in my current office and must rely, therefore, on those individuals that have worked here. Let me call on Ms. Arlene Brown.

Ms. ARLENE BROWN. In the beginning of the contract effort there was some strong opposition generated from primarily the Northwest tribes, because of the lack of consultation, not from the conceptual standpoint, probably because there was not enough information about the specifics as to what we were really trying to do. We tried to mediate that and there was a lot of support there. If you look at the demographics and some of the responses that we received, those tribes that have the larger assets already have money managers or have withdrawn some money from trust and have an understanding about how that works, as far as the contract relationship and money management types of activities. There was a correlation between that. For some of the smaller tribes, there was some deep concern about the delegation of trust responsibility.

Toward the end we received a lot of good, positive, constructive comments on the contract. They were more informational—have you thought about this; have you thought about that our tribe experienced this; and we had a problem with this money manager and had to cancel. We had three tribal consultants participating with the evaluation committee. The northwest tribes indicated—in fact, when I was a special assistant to the former assistant secretary, I do know of individual sessions where they actually came back, some of those that were adamantly opposed, and felt a lot more comfortable and actually thanked him for his efforts to try to get as much information out as possible.

Mr. THOMAS. Thank you.

Dr. BROWN, what would you envision as being the benefit to the tribes were a successful contract negotiated for the investment of these dollars? What do you see as the result; what do you hope for?

Dr. EDDIE BROWN. Definitely we would hope that—again, going back to the trust responsibility, of carrying that out at the highest fiduciary level. That is, how do we get the best investment and take the best care of those dollars that we are charged with. Any system, then, that is put together, must begin to provide that kind of trust responsibility over those funds.

Mr. THOMAS. Are you talking about a higher yield; are you talking about more dollars?

Dr. EDDIE BROWN. I'm talking about an approach and a system and process that protects the dollars that we have, that allows for investments, and hopefully it will allow the flexibility to get the highest yield, or allow us that process to put that in place.

For this reason, as you can well imagine, the Bureau is not a banking system. As we have looked at all of the comments of those reports that have been done, the recommendation is that we turn

that over to a system that can, in fact, carry that out at the highest level.

Mr. THOMAS. I guess, then, if that's the case, and there are generally perceived to be benefits to come from it, this matter of being able to reconcile the accounts then, how are we going to get there?

Dr. EDDIE BROWN. Well, as I was mentioning—and let me state for the record that I can't speak for what happened in the past, but I can surely speak for what's going to happen in the future, and I intend to.

That is, we are preparing a proposed audit plan. Please understand that, as of September 30, 1988, there were 585 individual Indian money accounts, with balances in excess of \$50,000. The remainder, the average balance of the other 298,000 accounts, was just over \$1,200. So, you know, as we begin to try to reconcile this, we've got to talk about the cost, we've got to talk about the number of things that are involved here. Based on that, as I indicated earlier, we will be preparing a proposed audit plan, along with the estimated costs of such a plan, that we will submit to the Appropriations Committee for their review.

Mr. THOMAS. So your hope is that you will find a solution and you'll either audit completely, as is now apparently the requisite, or you will recommend some deviation from that?

Dr. EDDIE BROWN. I can tell you, sir, at this time, we will have to recommend a deviation from that, just given the extent of the audits, the cost, potential cost of an audit and so forth, until we have a chance to look. We're going to have to come up with some kind of process that could justify this. But until we give it a little more thought and put it in a plan, it's a little difficult for me to talk specifically of what that would be.

Mr. THOMAS. Would you just react in general to the notion that more of these funds might be placed in the hands of the tribes, either by distributing more money and so on? Is there—how do you react to the notion of putting more of this money back in the hands of the tribes to take care of it themselves?

Dr. EDDIE BROWN. I think when you look at the direction of where we're going, and the strengthening of the tribal governments, the wish of tribal governments to move to greater self determination, I cannot rule that out as an option here for the future.

It has not been recently looked at as an option. Currently, we're looking at contracting with the private contractor to manage that. To rule that out as an option for the future, I cannot. I would think it is a very serious option, as tribes come forth and as they develop their own approaches on how they want to do things.

Mr. THOMAS. Thank you, Dr. Brown.

Thank you, sir.

Mr. SYNAR. Thank you, Mr. Thomas.

Dr. Brown, before I proceed, I think it's important to say that we all recognize that you've been there about 100 days or so. But you need to be very conscious of what this hearing is all about today, and that is the depth and the breadth of the concerns this subcommittee, Congressman Yates and the other committees. I hope that you understand that as we proceed through this questioning because I think that's very, very important.

The other thing is, there was a reason I asked everybody to stand up. You are leading a group of people who have been there for over a decade, who have been in charge of this program.

Dr. EDDIE BROWN. Sir, they have been with the Bureau perhaps a decade. I'm not sure how many of them or all of them have been with that specific program.

Mr. SYNAR. As you know, Dr. Brown, the Brooks Act and the Federal regulations and guidelines pertaining to acquisition of automatic data processing equipment or ADP services require that agencies obtain a delegation of procurement authority from the GSA before they proceed with acquisition of such equipment and services. Maybe Mr. Mills or someone appropriate can answer this.

Did the Bureau seek to obtain a GSA delegation of procurement authority prior to the signing of the contract with Security Pacific National Bank?

Dr. EDDIE BROWN. Let me have Mr. Ron Crammer to talk specifically on the contract, and then if there are any legal issues, we have our Solicitor as well to address that.

Mr. SYNAR. All right. Let me repeat the question.

Did the Bureau seek to obtain from GSA a delegation of procurement authority prior to signing the contract?

Mr. CRAMMER. No, sir.

Mr. SYNAR. Did the Bureau consult with the Solicitor's Office about whether it was necessary to obtain that delegation?

Mr. CRAMMER. Yes, sir.

Mr. SYNAR. And what did they tell you?

Mr. CRAMMER. They were in common agreement because the ADP application was incidental, that such delegation was not required and the Brooks Act did not apply.

Mr. SYNAR. Now, in June, this subcommittee requested a legal opinion from GAO regarding the applicability of the Brooks Act to this particular contract. Were you here before?

Mr. CRAMMER. Yes, sir.

Mr. SYNAR. Did you hear the testimony that it was GAO's opinion that the Bureau had violated the provisions of the Brooks Act and should have obtained a delegation of procurement authority from GSA? And did you hear the GAO also say that the BIA should obtain a delegation of procurement authority prior to proceeding with the procurement of automated data processing services?

Mr. CRAMMER. Yes, sir.

Mr. SYNAR. And what do you intend to do?

Mr. CRAMMER. I think we intend to go back and discuss this matter with GAO before a final decision can be made, and depending on the outcome of that discussion, whether we go back to GSA or not.

Mr. SYNAR. Mr. Crammer, GAO has made its final decision. What are you going to do?

Mr. CRAMMER. We're going to have further discussions with the GAO. This is brand new. We haven't had privity to this GAO decision and/or their recommendation.

Mr. SYNAR. Now, it is our understanding that the Bureau completed an A-76 study, which is required by OMB, before contracting out the trust fund services. What were the results of the A-76

study of the cost savings associated with contracting out these financial services, Mr. Crammer?

Mr. CRAMMER. The results of the A-76 study showed it would be more economical to go to an outside source rather than continuing in-house.

Mr. SYNAR. How much more economical?

Mr. CRAMMER. I'll have to consult here. It was around \$2 million, roughly.

Mr. SYNAR. What was the initial cost of the contract, by year and total, Mr. Crammer?

Mr. CRAMMER. The initial cost of the contract on a year-by-year basis—

Mr. SYNAR. Wasn't it \$330,000 for the first 6 months?

Mr. CRAMMER. Yes, that was the initial contract for 1988. And then there are option years, which add to \$3,018,000 per year, on option years.

Mr. SYNAR. Isn't it true that the A-76 cost comparison, using the initial cost figures, Mr. Crammer, were marginal, meaning that they barely met the cost-benefit criteria?

Mr. CRAMMER. No, sir. It depends on what you mean by marginal. The cost comparison study shows a net variance of \$2,996,000 over a base of \$21 million. That covers the 5 years contemplated, the initial year and option years.

Mr. SYNAR. We're going to get into that.

Isn't it also true, Mr. Crammer, that any increase in the expenses associated with the contract could easily erode the cost savings by tilting the original cost numbers?

Mr. CRAMMER. That's always the case.

Mr. SYNAR. Isn't it true that there would be no reduction in employees as a result of contracting out for these services?

Mr. CRAMMER. That is my understanding, but I would have to defer exactly to those numbers.

Mr. SYNAR. Isn't it true, Mr. Crammer, that the Bureau will still need to operate and maintain its current system for many years in the future, and that those expenses will be incurred with or without that contract?

Mr. CRAMMER. That is my understanding.

Mr. SYNAR. Well, you know something? What we're finding here, I think, is that after 31 inspector general audits in 7 years, and some angry account holders, and what I think you could pretty well characterize as an angry Congress, we're not making great progress, are we, Mr. Crammer?

Mr. CRAMMER. I can't relate—I think the progress would have to be the result of what the outcome of this contract is.

Mr. SYNAR. Let's turn to what BIA is buying with the Security Pacific National Bank contract. What services are being procured through the Security Pacific contract, Mr. Crammer?

Mr. CRAMMER. I wish to be precise about this, Mr. Chairman.

Mr. SYNAR. Well, let's see if this is right: cash collections, investment services, accounting services, and automated data processing?

Mr. CRAMMER. I don't think it is. I have in the contract, it calls for custodial services of the account and investment services.

Mr. SYNAR. All right. So we do have investment services. Accounting services would have to be on there if it's custodial, wouldn't it?

Mr. CRAMMER. That's correct.

Mr. SYNAR. Wouldn't cash collections be part of that custodial service, too?

Mr. CRAMMER. Yes.

Mr. SYNAR. And automated data processing would be part of it?

Mr. CRAMMER. Well, yes, we would assume it would be under ADP, yes.

Mr. SYNAR. Who is the subcontractor for the ADP system?

Mr. CRAMMER. CDSI.

Mr. SYNAR. Where are they located?

Mr. CRAMMER. Rockville.

Mr. SYNAR. Rockville where?

Mr. CRAMMER. Maryland.

Mr. SYNAR. And where are most of the accounts and the finances held?

Mr. CRAMMER. I'll have to defer—

Mr. SYNAR. Albuquerque, isn't it?

Mr. CRAMMER. No. There are 83 locations, approximately, and they are two all over the country.

Mr. SYNAR. OK.

What are the needs for and the benefits of these functions I've just specified Mr. Crammer?

Mr. CRAMMER. You mean as far as the opportunities under the contract?

Mr. SYNAR. Yes.

Mr. CRAMMER. To be a more efficient and effective organization and to avoid some of the things that have been highlighted by the previous audit reports.

Mr. SYNAR. Is the present BIA system of automatic data processing capable of supporting these functions that you've just contracted for?

Mr. CRAMMER. I would—

Mr. SYNAR. Mr. Ragsdale, why don't you come back up.

Mr. RAGSDALE. I believe that, since the contract was generated during my watch, I would probably be best able to explain our perspective on it.

It was our perspective, the Assistant Secretary's and mine, that the ADP—there are two facets to the problem, and that is, as the Congressmen know, since the committee focused on oil and gas management a few years ago, the internal operation of the Bureau of Indian Affairs will still require us to identify who owns the money for specific leases and revenue levels.

Our ADP system in the Indian Bureau is responsible for supporting that function, and—

Mr. SYNAR. Can they do that?

Mr. RAGSDALE. They are required to do it now. The Bureau's intention—

Mr. SYNAR. I didn't ask you that.

Mr. RAGSDALE. They are doing it now, but not adequately.

Mr. SYNAR. And what capabilities have been added to your system in order to meet the contractor's work under this contract?

Mr. RAGSDALE. Well, a couple of things. First of all, the program people and the responsible directors for the Indian Bureau did an extensive review of requirements to support our basic functions, the lease management function, collections and so on, and developed program packages that would then be converted into ADP systems that would increase the efficiency overall and that would interface with—

Mr. SYNAR. Mr. Ragsdale, let me interrupt you. Requirements don't mean capabilities, do they? I mean, you could require something until the cows come home, but that doesn't increase your capability. I'm asking, what are the new capabilities that are available of the BIA to meet this contract?

Mr. RAGSDALE. The new capabilities of the BIA at the present time are that the Bureau of Indian Affairs now has a system that is operational which the Bureau of Indian Affairs did not have when this committee focused on the oil and gas management problem. That system is still inadequate, but that was the intent of the development of this package, to—

Mr. SYNAR. So you still have to obtain further capabilities to meet this contract?

Mr. RAGSDALE. We still have, in my opinion, a long ways to go in the Indian Bureau to fulfill the requirements that were developed by Bureau of Indian Affairs personnel with tribal input, yes, sir.

Mr. SYNAR. I want to touch on BIA's first request for proposals for third party services. Mr. Ragsdale, briefly describe the first request for proposals issued by the Treasury on behalf of the Bureau.

Mr. RAGSDALE. Are you referring to the Mellon Bank initiative? That was before I came on in Washington in 1987.

Mr. SYNAR. Do we have someone here who can answer that? Please identify yourself for the record.

Ms. WILKINSON. My name is Betty Wilkinson. I'm the accounting officer for the Bureau of Indian Affairs.

Mr. SYNAR. Will you describe that RFP for us?

Ms. WILKINSON. The first award was an effort for us to take action in a rapid fashion, to prevent further deterioration of the Bureau's management of the trust funds. Since we were under—this goes back to the disbursing question that was discussed earlier this morning. Since Treasury had to approve anyone who did disbursements for us under the Treasury disbursing authority, it had to be a designated, delegated agent.

Also, the fact that we had to, by statute, deposit the trust funds into Treasury accounts, we looked to the Treasury and said could we possibly look to the lock-box banks as potential bidders to provide financial trust services to assist the Bureau. The Treasury reviewed it and said, indeed, they thought it would be possible. We put out a limited competition to the then six financial institutions which were a part of the Treasury's lock-box network, which had previously been bid under competition.

Mr. SYNAR. So the procurement was conducted by BIA and Treasury, right?

Ms. WILKINSON. Treasury on behalf of the BIA.

Mr. SYNAR. Who developed that first RFP, both agencies together?

Ms. WILKINSON. Yes, together.

Mr. SYNAR. Did you obtain a delegation of procurement authority from the General Services Administration on that occasion, either?

Ms. WILKINSON. No, we did not.

Mr. SYNAR. What was the cost of that first proposed contract?

Ms. WILKINSON. I believe—

Mr. SYNAR. Was it \$4 to \$7 million?

Ms. WILKINSON. It was approximately \$4 million, I believe, but I'm not sure of the exact amount.

Mr. SYNAR. Over 5 years?

Ms. WILKINSON. Yes.

Mr. SYNAR. Was the competition limited to only six lock-box banks under contract?

Ms. WILKINSON. Yes, sir.

Mr. SYNAR. And what was the ultimate outcome of that first RFP?

Ms. WILKINSON. As far as the award?

Mr. SYNAR. Yes.

Ms. WILKINSON. The competition was reviewed. It was awarded to the Mellon Bank.

Mr. SYNAR. Was it awarded? Turn around. They're shaking their heads this way.

Ms. WILKINSON. OK. Mellon was chosen as the contractor.

Mr. SYNAR. But no contract was let, was it?

Ms. WILKINSON. They were identified as having the winning bid, and a contract was never signed.

Mr. SYNAR. So you withdrew it.

Ms. WILKINSON. Yes.

Mr. SYNAR. There was an outcry from the tribes that they had not been consulted as to their needs and requirements concerning the handling of their trust funds; is that correct?

Ms. WILKINSON. There was quite a bit of conversation and discussion with regard to the method of consultation and—

Mr. SYNAR. There was an outcry?

Ms. WILKINSON. If that's what you want to call it, yes.

Mr. SYNAR. Do you think you would have better luck with these RFP's if you consulted with the tribes first?

Ms. WILKINSON. Which is exactly why we developed the consultation plan and published in the Federal Register and did do extensive consultation on the recompetition.

Mr. SYNAR. All right.

Let me move on, unless Mr. Thomas has anything at this point.

Mr. THOMAS. Just one, Mr. Chairman, if you don't mind.

Mr. SYNAR. Sure.

Mr. THOMAS. I want to go back again. It seems like there's two obvious problems here. One is the accounting and maintaining accountability for these accounts, and the other is improving the investment procedure so that you increase the yield. I guess I still don't have a notion as to how long you project it will be before you could comply with the idea of having the accounts completed. Therefore, under the current law, you could not transfer any money to an investment group; isn't that true?

Dr. EDDIE BROWN. That's correct.

Mr. THOMAS. If there are benefits to be derived, isn't there a possibility of crafting some kind of a contract which would allow us to

begin to receive some benefits of the improved investment, while still at the same time doing this other portion?

Dr. EDDIE BROWN. I think that may be a possibility. One of the things we're trying to do in looking at not only the reconciliation of accounts, we're also looking at the extent of modifications to the contract. I think, as over the next short while, we will be looking at both of those situations to determine just what options are available based on some of the information that came out today in regards to the Brooks Act as well.

There are a number of factors we're going to have to go back and sit down and look at based on that and begin to make some decisions, and just see what clearly the options are for us based on whether or not we can work out a reconciliation plan with the Appropriations Committee, to understand that, whether when we look at the modifications and requirements of the contract, as well, as we look at the discussions in the Brooks Act.

Mr. SYNAR. Dr. Brown, you will keep us informed on the progress of those discussions, will you not?

Dr. EDDIE BROWN. Yes.

Mr. SYNAR. Thank you.

Mr. THOMAS. Let me just make one final comment. It does certainly seem to me that this first portion, the reconciliation of these accounts, the accountability, has to be resolved. On the other hand, it doesn't seem fair to deprive the beneficiaries of this trust from a higher yield awaiting that, which might take, according to the historical data here, it might take years. Is that true?

Dr. EDDIE BROWN. I am not sure of the amount of time, but yes, it may take considerable time once we get into that, or it may not. I'm still unclear at this time.

Mr. THOMAS. Thank you.

Mr. SYNAR. Miss Wilkinson, before I finish that last segment, I want to put you on notice. That is, the publishing of a plan in the Federal Register is not working with the tribes, because no one looks in the Federal Register to look at bank balances. So if that's the extent of the consulting, that's not going to get it, all right?

Ms. WILKINSON. May I respond, Mr. Chairman?

Mr. SYNAR. Yes.

Ms. WILKINSON. I didn't intend that to mean that that was the extent of the consultation. But to us, it was the first time that we had ever formally defined how we would consult.

Mr. SYNAR. I just want you to know the subcommittee does not consider that extensive consultation with the tribes, OK?

Ms. WILKINSON. Thank you.

Mr. SYNAR. All right.

Dr. Brown, I want to turn now to the functions and accounting services the BIA has contracted for. What was the Security Pacific National Bank required by the contract to accomplish during the first 6 months of that contract?

Back to you, Mr. Crammer? Come back up. What were they required to do?

Mr. CRAMMER. Within the first 6 months?

Mr. SYNAR. Yes, sir.

Mr. CRAMMER. It was implementation of the requirements of the contract. In other words, come up with—

Mr. SYNAR. Implementing an accounting system?

Mr. CRAMMER. No, implementing an investment system, sir.

Mr. SYNAR. An investment system. Were those tasks completed by the contractor, Mr. Crammer?

Mr. CRAMMER. No.

Mr. SYNAR. What was the cost of that segment of the contract, Mr. Crammer?

Mr. CRAMMER. It was \$330,000.

Mr. SYNAR. OK, \$300,000 for implementation and \$30,000 for orientation, correct?

Mr. CRAMMER. Uh-huh. Yes, sir.

Mr. SYNAR. Was a demand letter provided to Security Pacific National Bank for nonperformance on that requirement, Mr. Crammer?

Mr. CRAMMER. No, sir.

Mr. SYNAR. Why not?

Mr. CRAMMER. One of the reasons is we had had—and you would have to look at negotiations and things. We had set this up for the first 6 months, on the proviso that there would be some—with the understanding that hopefully most or all of the, within a revised schedule, the reconciliations would be done. Therefore, the contract would then become operative on the April 1, as far as receipt of the accounts and the turnover of the funds, et cetera.

Mr. SYNAR. What was done in the next 6 months of the contract, Mr. Crammer?

Mr. CRAMMER. Within—you mean from April to date?

Mr. SYNAR. Yes.

Mr. CRAMMER. To my recollection, having been out of it for some time, it was trying to come up and continue the development—I mean the implementation of this, and it ran into some problems, as I understand it, as far as—

Mr. SYNAR. What does it specify? Does it specify maintenance and operation of the accounting system, account custodial services for individual Indian money accounts and tribal accounts, and investment services for BIA?

Mr. CRAMMER. Yes.

Mr. SYNAR. Is that correct?

Mr. CRAMMER. That's correct.

Mr. SYNAR. What was the cost of that segment of the contract, Mr. Crammer?

Mr. CRAMMER. Well, I don't know if I could isolate it.

Mr. SYNAR. We have information that it totals \$1,509,396, which is: Support services costing \$330,000, custodial services costing \$298,596, investment services costing \$720,000, and other accounts costing \$190,800. Is that a pretty accurate portrayal of that contract?

Mr. CRAMMER. On a full-year basis? I'm sorry, I missed your—

Mr. SYNAR. On a full-year basis. Is that correct?

Mr. CRAMMER. On a year-by-year basis. I was just trying to relate this, as you indicated the \$330,000, that was the first—

Mr. SYNAR. We'll get into that.

Let me ask you this. Were the tasks completed as required in the second 6 months, by the Security Pacific National Bank?

Mr. CRAMMER. No, sir.

Mr. SYNAR. Which tasks were completed?

Mr. CRAMMER. The only tasks that have been ongoing is to try to reach an agreement, and there are forthcoming modifications, it's my understanding, on what that will have to be implemented in order to—

Mr. SYNAR. So there were no tasks completed whatsoever? Is that correct?

Mr. Crammer, was a demand letter sent to the contractor for nonperformance of this contract, during the second 6 months?

Mr. CRAMMER. No, sir.

Mr. SYNAR. Why wasn't a demand letter sent to the contractor for nonperformance, Mr. Crammer?

Mr. CRAMMER. Because there was a determination there was no need to, because it was still under consideration in trying to reconcile the differences.

Mr. SYNAR. So what you were doing here is contracting for non-performance?

Mr. CRAMMER. That's not true, sir.

Mr. SYNAR. Well, we're paying them for nothing having been done, Mr. Crammer. I've walked you through this. You've just told me that we've now paid them this amount of money and nothing has been done. I mean, nothing has been performed.

Mr. CRAMMER. No. I'll have Miss Brown address what has been performed or not performed.

As indicated by the inspector general, and also by the GAO, I believe, in their earlier comments, these were general specifications. We were attempting to get to something that would provide the necessary investment services for the tribes that had not—that we had previously been taken to task upon. They weren't specific indicators that would go on, that A, B, and C would be done. It was in the schedule of requirements as far as periods of time.

Mr. SYNAR. Mr. Crammer, are these performance contracts or not?

Mr. CRAMMER. Yes.

Mr. SYNAR. Now, I can read you your answer. None of these tasks have been performed, correct?

Mr. CRAMMER. Right.

Mr. SYNAR. So we are basically paying out money for non-performance.

Mr. CRAMMER. Well, let me correct myself. When I say none of the tasks have been performed—

Mr. SYNAR. OK. What has been performed?

Mr. CRAMMER. I'll have to defer that to the people who have been involved in it.

Mr. SYNAR. All right. Bring that person up. What has been performed?

Let me see if I can help you through this thing here. Does the accounting system work, Miss Brown?

Ms. ARLENE BROWN. We're still in a preliminary testing of the accounting system.

Mr. SYNAR. OK. The maintenance and operation of that accounting system, therefore, is not in place.

Ms. ARLENE BROWN. Therefore, no costs are incurred and they cannot bill us for those services.

Mr. SYNAR. You're paying for a contract here, and we're looking at performance.

Are the account custodial services for individual Indian money accounts in place?

Ms. ARLENE BROWN. No.

Mr. SYNAR. Are the tribal accounts in place?

Ms. ARLENE BROWN. That subsystem is about 90 percent ready. It's the IIM that is not ready to be tested.

Mr. SYNAR. Now, you are the project manager for this contract with Security Pacific National Bank, is that correct?

Ms. ARLENE BROWN. That's correct.

Mr. SYNAR. Are you a permanent BIA civil service employee, Miss Brown?

Ms. ARLENE BROWN. No, I am not.

Mr. SYNAR. Are you on a limited contract specifically for this project?

Ms. ARLENE BROWN. I am on a 2-year permanent term service.

Mr. SYNAR. Now, did you work in other positions in the BIA before becoming manager of this project, and if so, what were your duties?

Ms. ARLENE BROWN. I spent about 4 years in our Congressional Liaison Office, working on legislation focused more on the judgment claims area, Court of Claims, business development legislation, tax status legislation, those aspects. Mostly in business development.

Mr. SYNAR. I'm interested in what your background is with respect to trust fund operations, investments and cash management practices, and procedures like accounting, project management, and development. What background do you bring to this?

Ms. ARLENE BROWN. As far as some of the trust side, I did work with Treasury on some of the legislative initiatives, that we had to work on increasing that 3 to 4 percent interest rate that was, you know, over 50 or 60 years old.

I do have education as far as a bachelor's degree in business. I have an MBA in finance and investments. I've also had—well, that's a lot of accounting and investment activity. I did do work with a joint venture firm, Lehman Management Co., on an alternative for this investment trust fund aspect.

Mr. SYNAR. Do you have experience in procuring, developing, testing, and evaluating computer systems?

Ms. ARLENE BROWN. No, I do not. I rely on my people. We have experts on those areas that I rely on heavily.

Mr. SYNAR. The subcommittee understands that after almost monthly delays in implementing the accounting system, in July the contractor agreed to do a series of tests on the accounting system. Both the current and the new system were to operate, in parallel and the output of the two systems would be compared. If the results were satisfactory, we were told, the new accounting system was planned to be implemented in October 1989.

Isn't it true Miss Brown, that after only 2 days of testing, the subcontractor, Computer Data Systems, Inc., telephoned the BIA finance center in Albuquerque and asked that the test be canceled because they couldn't get their own system to do what they said it could do?

Ms. ARLENE BROWN. I'm not aware of that phone call.

Mr. SYNAR. Mr. Crammer, are you aware of this? Is anyone aware of this?

Ms. ARLENE BROWN. I do know that, once it was brought to our attention, I flew out there and got the project manager for Security Pacific and got a four-way conference call going to see what the problems were.

Mr. SYNAR. I think what I'm trying to get to is, CDSI still is not able to demonstrate a new automated accounting system, are they, Miss Brown?

Ms. ARLENE BROWN. We have to complete further definition of our requirements, which is within the modification, the draft modification that has just been received. After that, they will have to give us some feedback as to how long it will take to complete those particular requirements. We will then launch a preliminary testing mode so that we do not repeat what happened in July.

Mr. SYNAR. You cabled to them on October 18, 1989, did you not?

Ms. ARLENE BROWN. A copy of a draft.

Mr. SYNAR. So they cannot demonstrate a new automated accounting system; yes or no? They can't demonstrate that, can they?

Ms. ARLENE BROWN. Demonstrate a new—

Mr. SYNAR. Automated accounting system.

Ms. ARLENE BROWN. At this point in time, there is no requirement. We're still outlining the definition of the specs.

Mr. SYNAR. I think the easy answer here would be No, OK? Say No. [Laughter.]

Ms. ARLENE BROWN. No, with the above qualification.

Mr. SYNAR. All right.

Does the BIA consider this to be a case of nonperformance by Security Pacific National Bank, Miss Brown?

Ms. ARLENE BROWN. No.

Mr. SYNAR. Why not?

Ms. ARLENE BROWN. We paid them \$300,000 for the implementation and development phase. We are still continuing that. We have not—while it may still be a year in the continuation of that, they have been paid for those costs.

Mr. SYNAR. How much have they been paid? \$650,000?

Ms. ARLENE BROWN. They've been paid \$530,000 out of the contracted amount of \$747,012.

Mr. SYNAR. Has it ever crossed your mind to ask these people to perform before you pay them?

Ms. ARLENE BROWN. That was what was negotiated in the original contract—we were bound, upon billing of monthly receipts, to pay.

Mr. SYNAR. If you demand it, they'll do it.

What actions have you taken against Security Pacific National Bank to put them on notice for nonperformance, Miss Brown?

Ms. ARLENE BROWN. That's not within my authority. That's the contracting officer's authority.

Mr. SYNAR. Mr. Crammer, come back up. In fact, just pull your chair up here. Both of you be here.

What actions have you taken to put Security Pacific on notice for nonperformance?

Mr. CRAMMER. None to date.

Mr. SYNAR. Has a formal written notice ever been sent to them?

Mr. CRAMMER. No.

Mr. SYNAR. After all these problems, why haven't you all at BIA simply demanded the contractor perform as promised, Mr. Crammer? I mean, that's a lot of money going out for nonperformance; wouldn't you agree?

Mr. CRAMMER. Yes. But I wouldn't necessarily say, Mr. Chairman, that it was all nonperformance.

Mr. SYNAR. I asked you to show me one thing. I gave you and Miss Brown an opportunity to show me one thing they performed on under this contract and neither one of you have been able to show me. You say "it's getting there, it's getting there." These are performance contracts, and you can't point to one thing that's ready.

Ms. ARLENE BROWN. The one thing that is ready is the securities conversion aspect of the contract, to employ the investment advisory services.

Mr. SYNAR. That's great, Miss Brown, but you're not sending them anything until you reconcile all those accounts.

Ms. ARLENE BROWN. That's correct. But it does have to be planned for and those procedures are ready to be implemented upon the—

Mr. SYNAR. But the taxpayers have already footed the bill for this group to be ready, willing, and able to go. We've got one little thing they've done, which they can't do because you all aren't even ready to provide that, are you?

Ms. ARLENE BROWN. Well, that one aspect is about two-thirds of the contract, as far as revenues are concerned.

Mr. SYNAR. Revenues and performance are two different things, are they not, Miss Brown?

Ms. ARLENE BROWN. That's correct. You have to institute services before you can have them go by performance standards.

Mr. SYNAR. It is the subcommittee's understanding that the contractor continued development efforts on the system during the 6-month period of April through September of this year, during which the contract had technically lapsed and no moneys were paid.

Now, who authorized Security Pacific National Bank to continue work on the project without a valid contract and payment?

Mr. CRAMMER. Could you repeat the question? I'm—

Mr. SYNAR. Let me repeat it. It is our understanding that the contractor continued development efforts on the system during the 6-month period from April to September of this year, during which the contract had technically lapsed and no moneys were paid. I'm asking you, for the record, who authorized Security Pacific National Bank to continue work on the project without a valid contract or payment?

Did you authorize that, Mr. Crammer?

Mr. CRAMMER. Did I sign the contract document modifying the contract? It has been modified to pick up that period of time at the present time.

Mr. SYNAR. So you authorized it?

Mr. CRAMMER. The contracting officer authorized it.

Mr. SYNAR. Doesn't continuing to work under this circumstance place the Government at great risk of legal action against parties involved, particularly the tribes?

Mr. CRAMMER. I don't understand the question, sir.

Mr. SYNAR. It's very easy. You don't have a contract. You have authorized them to continue work on this. If this work gets messed up, you're going to be liable for a tremendous amount of damages.

Mr. CRAMMER. From the tribal standpoint, sir?

Mr. SYNAR. Yes. Isn't this a great risk?

Mr. CRAMMER. Not from the tribal standpoint, because there have been no accounts turned over to the contractor.

Mr. SYNAR. Mr. Thomas, you had one more question?

Mr. THOMAS. Yes, sir. Just to change the pace here a little, Miss Richardson, this business of the management and the accounting of the funds is not a new idea; it's been troublesome at least through the eighties.

What have you done to—could you enumerate some of the things that have been done to assist in the program?

Ms. RICHARDSON. After the first GAO report was issued in 1982, the Bureau management did begin to take action, and it was shortly thereafter that the Price-Waterhouse firm was contracted to look at the feasibility of our contracting out portions of those sections. As that had started, then the inspector general issued his report in 1983, further saying that we should look toward contracting.

The process of getting to a contract for this—and we're hearing about a number of the problems we're in with it now—we had done a request for information after the Price-Waterhouse report was done, a request for information from financial institutions, to see if, indeed, there would be an interest in it. That was done in 1985. In 1986 Treasury did the limited procurement, and then that was canceled. Then we did the A-76 study, and now we're in the Security Pacific contract.

There has been an attempt over a period of years to improve the situation. We haven't certainly reached the end of it yet, but we've not been just sitting around waiting for another IG report to come out.

Mr. THOMAS. Could you capsulize, in your view, why it is that you haven't made more progress? Is there a way to put your finger on it?

Ms. RICHARDSON. I think some of the things that the inspector general said about the decentralized—well, the splitting of the management authority, with having most of the people who were working in Albuquerque, managers of the Bureau in Washington, and people reporting to three different deputies. Dr. Brown mentioned in his statement that Secretary Lujan has signed a secretarial order this morning establishing a position of deputy for trust funds, who will be located in Albuquerque. The people who now work in these different offices will be working together and reporting to one person. I think that will help substantially.

Mr. THOMAS. Thank you.

Mr. RAGSDALE. Let me comment on that previous perspective. There are a number of things that are wrong, but given the fact that the accounts have not been audited for 150 years—I mean,

this is the first real audit; it's not as comprehensive as one would like—tells you something. Part of the problem is that no Bureau management, no Department of the Interior management, lasts long enough to finish the job. So as a career employee, in most cases—I'm on assignment to the Cherokee Nation now—I think that's a good part of the problem, that as you change administrations, Republican and Democrat alike, the focus is oftentimes lost on finishing the project.

Mr. SYNAR. Mr. Ragsdale, could you fill me in here? I'm a little bit weak on history.

Who has been in charge since 1980?

Mr. RAGSDALE. Well, there have been a number of Secretaries of the Interior and a number of—

Mr. SYNAR. It has been one party. I mean, I'm not trying to make this partisan, but—

Mr. THOMAS. That sounds a little partisan to me.

[Laughter.]

Mr. RAGSDALE. You probably have a better recall on that than I do, Mr. Chairman.

Dr. EDDIE BROWN. Mr. Chairman, let me point out that just in the time that the first GAO audit came out in 1982, we have had five different Assistant Secretaries and Acting Assistant Secretaries. We've had four different deputies for operations. We've had four different deputies for trust, and four different directors of administration.

Mr. SYNAR. I hope the tribes listen to that as they look forward to the 1992 elections.

Mr. THOMAS. It would just seem, though—and I understand that. That undoubtedly is troublesome, not to have the continuity there. But even if you do, it just seems to me that a lack of accountability on the funds ought to go on from one watch to another. Certainly no one can move in and say gee, that's something that happened before me and it doesn't matter. That's something that would be expected in any sort of an operation, wouldn't it?

Mr. RAGSDALE. That's correct. The first duty of any trustee is to be able to account and provide an accurate inventory of the assets that they hold in trust. I would agree with you totally. That should be the No. 1 priority.

Mr. THOMAS. As a matter of fact, it really doesn't make much sense for anybody to take the responsibility of a trust without having an audit upon which to assume that responsibility, Dr. Brown. It must be tough for you to move in and be accountable for this if you don't have an audit.

Dr. EDDIE BROWN. That's true. However, we do have, as indicated, the audits and the situations we currently are dealing with, and those are the instruments that I'm going to be using in making some determination here in the next few months.

Mr. THOMAS. Thank you very much.

Mr. SYNAR. Thank you, Mr. Thomas.

I think the point is, we've had 31 inspector general reports over 7 years. These aren't new problems. The point is, we're bleeding to death here while we go through all these administrative changes.

Now, at some point during the August to September period of this year, did BIA discuss this prospect with Security Pacific and

make any alternative plans in the event the appropriations bill restriction was included in the final legislation?

Ms. ARLENE BROWN. No, we did not. What we did inform them of was our effect statement that was sent to the House Appropriations Committee, that in the event the language was not completely stricken, as opposed to the revised language which later occurred, that there was a risk they were undertaking as far as contract termination and liquidating damages may have to pursue.

Mr. SYNAR. Have there been any modifications to the contract, Mr. Crammer, or Miss Brown?

Ms. ARLENE BROWN. There are two.

Mr. SYNAR. And what are those?

Ms. ARLENE BROWN. The first one is to renew the option year for fiscal year 1989, to continue compensation to the contractor, as agreed by the original contract award for \$50,000 a month for a 6-month period.

The second one was to modify the contract for fiscal year 1989 to add \$117,000 plus for the securities conversion, because of the additional costs that would be incurred had we gone to the conversion aspect of that.

Mr. SYNAR. Explain that second one to me. Why was it necessary to complete a retroactive modification to pay Security Pacific National Bank for work performed, since now we see they haven't performed anything? Why did you have to do that?

Ms. ARLENE BROWN. The first modification?

Mr. SYNAR. No, the second. I'm sorry, yes, the first one.

Ms. ARLENE BROWN. Well, as I was informed by the contracting people, at the time of negotiations—and I think Mr. Crammer could address that—there was an anticipated amount of delays in months until we could complete the accounting and reconciliation activities that were going on parallel at that time. So, rather than halting or being in technical breach of the contract from the Federal Government, that we were not ready, it was negotiated to at least continue the support services at the rate of \$50,000 a month.

Mr. SYNAR. So you're saying the Government couldn't perform?

Ms. ARLENE BROWN. Yes. It was an incentive clause on the Government's side.

Mr. SYNAR. That's leadership at the BIA that's necessary for us to perform?

Ms. ARLENE BROWN. Excuse me?

Mr. SYNAR. Wouldn't that require some leadership for you all to perform?

Ms. ARLENE BROWN. Yes.

Mr. SYNAR. OK. Now, does the second modification authorize the transfer of Indian Trust Fund moneys to Security Pacific National Bank?

Ms. ARLENE BROWN. No. It only authorizes additional costs that would be incurred to transfer the securities into the custodianship of the contractor.

Mr. SYNAR. Dr. Brown, or whoever, didn't the fiscal year 1989 Interior Appropriations Act, which was in effect at that time, specifically prohibit any transfer of trust fund assets prior to audit and reconciliation of the accounts and adequate consultation with the Congress and the tribes? Isn't that what was in effect?

Ms. RICHARDSON. That's correct.

Mr. SYNAR. Explain to the subcommittee, if you could, why the second contract modification was made at this particular time, in spite of that appropriations language?

Ms. ARLENE BROWN. I would say that we were being very optimistic that the Senate conferees would reign.

Mr. SYNAR. What was the cost of the two modifications, Miss Brown?

Ms. ARLENE BROWN. Modification one was \$300,000, at the rate of \$50,000 per month from April 1, through September 30. Modification two was \$117,012 for the additional costs for security conversion, as well as for some materials that we had requested for use at our cash planning conference.

Mr. SYNAR. What's the total cost of the contract now?

Ms. ARLENE BROWN. The total cost of the contract now is—I had it ready here for an earlier question. Just a moment.

The total cost of the contract for fiscal year 1989 is \$747,012, of which \$530,000 has been paid to date.

Mr. SYNAR. Now, as we discussed before, Miss Brown, the original A-76 cost-benefit review concluded that there was only marginal savings by contracting out these functions.

Now, when these modifications and these cost increases are added, how does that affect the original cost-benefit ratio change?

Ms. ARLENE BROWN. I would have to run the numbers, or somebody would have to run the numbers, on the comparison.

Mr. SYNAR. It does change it, doesn't it? Did BIA consider this when they made their original decision?

Ms. ARLENE BROWN. Actually, total authorized costs, there are costs that were not incurred because of the 6 months the contractor had not rendered services because they haven't been tested. So there is a cost that is not incurred of \$1.2 million.

Mr. SYNAR. That's going to make it worse, isn't it?

Ms. ARLENE BROWN. It means we don't have to pay that money to the contractor, which was authorized at the original time of the award.

Mr. SYNAR. Won't you agree, Mr. Crammer, that the more modifications that are made—and they will be necessary, I think you will agree—that that will clearly make the original marginal savings very questionable? Wouldn't you agree?

Mr. CRAMMER. Excuse me for saying so, but, you know, that's sort of apples and oranges and conjecture, and it would be conjecture on my part to say that the modifications would take that over that limitation. The A-76 study is not done on conjecture or what is going on in the past—I mean in the future. Only for the purposes of comparing, if you will, the best possible governmental entity against what the lowest price is as proposed by the contractor at the time of the proposal stage.

Now, to go back and retroactively start comparing real life, that doesn't enter into the analysis of an A-76 study.

Mr. SYNAR. But it is the ADP that's holding this whole thing up, isn't that right?

Ms. ARLENE BROWN. The ADP in which aspect? We've got several ADP issues.

Mr. SYNAR. The accounting service itself.

Ms. ARLENE BROWN. The accounting services have two aspects, the tribal aspect and the individual Indian moneys aspect.

Mr. SYNAR. Neither one of them has been fully performed, so they're holding this up?

Ms. ARLENE BROWN. The IIM is the most difficult that we're trying to overcome right now.

Mr. SYNAR. That's the point I think we're trying to make here, that the Brooks Act and the GAO have said exactly this is why the GSA should delegate the ADP procurement and obtain the least cost. I think that's the point we're trying to make through all of this.

Mr. CRAMMER. If I may, sir, we're dealing only in two factors of the ADP situation that you're referring to, the least cost. Most of the equipment is Bureau of Indian affairs equipment. Once again, I just—

Mr. SYNAR. What are we buying, then?

Mr. CRAMMER. We're buying a service. We're buying a banking service. That was the intent of this whole, from my perspective, of this—

Mr. SYNAR. What are we getting, if that's what we're buying?

Mr. CRAMMER. That's what we're going to get.

It's like, you know—I hear some moans, but it would be just like I was going to my own bank and asking for services.

Mr. SYNAR. I can guarantee you, if this was the case, I'd be changing banks by now.

Since the BIA has not saved money, or time, or personnel costs, let me ask the natural question here. Why is the BIA proceeding with development efforts on a system that has had significant cost increases and that clearly would violate the congressional directive, Dr. Brown? I think you've listened to this discussion. Why are you proceeding?

Dr. EDDIE BROWN. We are proceeding because of a number of things. One is, as I indicated before, the Bureau of Indian Affairs is not a bank. When you begin to look at the complexity of the accounts and the number of accounts, and clearly, the audits that have been done, clearly all have recommended that we needed to look at other options. The key option that was represented is that we contract that out. Clearly, we're looking at that.

Let me say that we're in some uncharted waters here. It has been said over and over this morning that this is not a unusual kind of situation that we find ourselves in. As we get into this, and as we begin to look, based on the first test run in July which created concerns, and in which we have developed a draft of modifications and will continue to look at, based on these hearings as well, let me assure you that we will be taking a look as to see, given all the modifications, given all the issues at hand, whether or not that is the best option to continue forward with.

Mr. SYNAR. It sure will have cost us a lot of money to make that initial decision, won't it, Dr. Brown?

Dr. EDDIE BROWN. I think the cost is certainly there. I think that, given the complexity of the issue and given the situation, that every attempt, as far as I've seen and observed, is to try to make the system work. If it does not, rather than to continue the use of taxpayers' money—

Mr. SYNAR. Dr. Brown, you've sat here for the last 30 minutes and haven't really participated in this, and we understand that, because you've only been at Interior 100 days. Has the last 30 minutes concerned you? Are you concerned about what you've heard in the last 30 minutes, about someone getting in excess of \$700,000 in contract money for nonperformance? Does that bother you?

Dr. EDDIE BROWN. Sir, I was concerned before I came into this room, as I stated. I was dismayed.

Mr. SYNAR. Are you even more dismayed after what you've heard?

Dr. EDDIE BROWN. I have not heard anything that is basically new. A number of other issues have popped up clearly, but I will assure you I am prepared to take a look at that.

Mr. SYNAR. You were a taxpayer 100 days ago; now you're with us. If you were just a taxpayer, would you be outraged by what you've just heard?

Dr. EDDIE BROWN. Based on the information that was based here, definitely.

Mr. SYNAR. OK.

I would like to ask unanimous consent at this point that a letter from Security Pacific National Bank be entered into the record.

I have a vote to make. We'll come back and start right there.

[Whereupon, the subcommittee was in recess.]

[Exhibit No. 3 follows:]



SECURITY PACIFIC NATIONAL BANK

GOVERNMENT SERVICE DIVISION
 901 15TH STREET NORTHWEST, SUITE 1100, WASHINGTON, DISTRICT OF COLUMBIA 20005
 TELEPHONE (202) 691-0100, FAX NUMBER (202) 667-0049

October 23, 1989

Ms. Sandra Harris
 Staff Director
 Environment, Energy, and Natural Resources
 Subcommittee of the
 Committee on Government Operations
 U.S. House of Representatives
 Rayburn HOB, Room B-371-B-C
 Washington, D. C. 20515

Dear Ms. Harris:

In order to assist the subcommittee in its oversight hearings relative to the Bureau of Indian Affairs management of Indian trust funds and the contract between the BIA and Security Pacific National Bank, I want to provide the information set forth below.

Specifically, I would address two relatively broad concerns:

1. Why was implementation of the accounting system delayed?
2. What BIA program elements have changed to enhance a successful implementation?

1. Why was implementation of the accounting system delayed?

- 0 Acceptance of the Final Design Document. In accordance with the Request for Proposal (RFP), SPNB's proposal stated that the Final Design Document would serve as the "blueprint" for the new system; i.e., the baseline document from which software customization would be based. Our proposal allowed the BIA ten days to review and accept the Final Design Document. We delivered the Final Design Document on 12/23/88. Continuing changes were made by the Branch of Trust Fund Accounting, as the the accounting team leader adopted a user "committee" approach to responding to the design. In many cases

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changes were made to designs and then changed back to the original design after programming and documentation were complete. On October 18, 1989, the "committee" lead by the Branch of Trust Fund Accounting delivered a final accounting system requirements document.

- 0 Technical Changes to the RFP. Numerous changes from the original requirements of the RFP, or technical clarifications requiring the document delivered on 10/18/89.
- 0 Staffing:
 - o Lack of full time staff dedicated to accounting component of the project. We had to compete with other priorities for attention from BIA accounting staff.
 - o Lack of qualified systems accountants and experienced project personnel familiar with automated accounting systems on BIA staff.
 - o No one from Branch of Trust Fund Accounting assigned on site of contractor during critical design and subsequent programming resulting in design specifications and software development being reviewed and changes defined ex post facto.
 - o Requirement that design and software output be approved by a committee of users inexperienced in accounting system design. This resulted, quite naturally, in a design philosophy which sought to duplicate current systems because this is what the users were "used to". We were, and remain, reluctant to develop a system which lacks internal controls, audit trails and proper reconciliation of accounts, and which bypasses separation of duties. Difficulty on the part of BIA to "bridge" from the old and familiar to the new has resulted in significant delays.
- 2. What BIA program elements have changed to enhance a successful implementation?
 - 0 As previously stated, we have received the final accounting system requirements document on 10/18/89.

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- 0 On 10/23/89, BIA is assigning a contract employee who is familiar with our design and technical approach, and who has a "systems" background, to work on site with our subcontractor and its programmers to ensure that the accounting system meets the requirements of the BIA. Most importantly, this individual has been given the authority to approve changes, modifications and to provide preliminary acceptance of output of the accounting system. This on site review and approval process has been a critical element which has been missing from the program. Since we are confident that we are 90% of the way to producing the final product, the on-site, hand-in-hand, process should greatly accelerate final delivery for full acceptance testing.

By way of offering some recommendations to assist the committee in ensuring the successful completion of this vital project, I would provide the following comments. Most of the recommendations have been suggested to the BIA previously, and are not necessarily in order of importance:

- 0 The project needs to be elevated to a very high priority at DOI, with participation and commitment on the part of senior officials. Project leaders must be held accountable for ensuring that the project remains on schedule and within the scope of the contract.
- 0 Assets belonging to accountholders who are in agreement with BIA balances, and from judgment awards which are reconciled need to be transferred as soon as possible. While this recommendation appears self-serving, the fact remains that assets transferred to the custodian will become "immunized" from the problems pointed out in the audit of the Inspector General. In addition, an issue exists with large implications for the way BIA currently manages trust assets -- an issue in which we have been working with BIA to strategically address immediately, but which asset transfer would produce the most effective means to address. This issue is deeply influenced by the failed thrift situation and how the RTC is handling the acquisition and disposition of failed thrifts. As you are aware, the BIA is heavily invested in jumbo CD's in a large number of thrifts on the RTC listing. The RTC is allowing for the repudiation of contracted interest rates on the CD's (see attached article) which in turn will impact tribes and tribal budgets. The BIA needs to be able to react quickly to invest assets in

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alternative instruments, relying on advice from the contractor, and the BIA needs the resources of the contractor to ensure the quick release of trust funds from a large number of failed institutions. In this regard, the decision of the BIA to contract was certainly timely; the inability to employ the full resources of the contractor because assets cannot be transferred to the custody of SPNB has the potential to make the problems associated with BIA management of the trust funds worse.

- 0 Consolidation of accounting functions into a small number of offices (perhaps into Area offices) with a concentrated small, but qualified staff, and permit remaining field (agency) offices inquiry access only. This will ensure better internal controls and proper training, compliance to processing controls and procedures, data accuracy and properly maintained documentation and audit trails, and proper separation of duties with checks and balances.
- 0 As soon as possible, begin the design of a comprehensive Accounts Receivable module. An accounts receivable system that properly tracks the amounts due to trust fund participants and ensures proper and timely distribution of receipts would significantly enhance BIA program management. This can be developed and processed by the contractor.
- 0 We would recommend to the BIA that a firm such as Coopers and Lybrand join the contractor team to work with the BIA project manager to ensure/certify the accounting system integrity, and to help execute system implementation. This recommendation addresses the noted lack of BIA expertise in automated accounting system development and implementation.

We wish the committee well in fulfilling its important oversight responsibilities. We are committed to the successful completion of this large and complex endeavor. I hope that this information is of use to you.

Sincerely,



Michael J. Barrett
First Vice President

RTC FACES TEST ON REPUDIATING CD RATES

By STEVE BLINKERMAN

THE Resolution Trust Corp. will soon provide the first major test of a cost-cutting rescue strategy when it permits acquirers of five large insolvent thrifts to repudiate contracted interest rates on up to \$9.3 billion of deposits.

The RTC has allowed acquirers to break contracted interest rates at failed thrifts before, but the stakes are higher this time around.

The agency expected last Friday to sell Freedom Savings and Loan Association, Tampa, Fla.; Hill Financial Savings and Loan Association, Red Hill, Pa.; Pacific Savings Bank, Costa Mesa, Calif.; Peoples Heritage Federal Savings and Loan Association, Salina, Kan.; and University Savings Association, Houston.

October 16, 1989

FINANCIAL WEEK

RTC Faces Test on Repudiation Of CD Rates at Insolvent S&Ls

Continued from Page 1

certificates of deposit in failed thrifts. For years, sophisticated investors have taken advantage of deposit insurance and the critical funding needs of troubled thrifts by demanding above-market interest rates. As the insurer of these thrifts, the government in effect has subsidized the high rates paid to investors.

"They've been getting a far better ride than public policy should have permitted them to enjoy," said Karen Shaw, executive vice president of the Institute for Strategy Development.

Still, regulators will have a tough time bringing the joyride to an end. Over the next five years, the RTC will rescue more than 400 insolvent thrifts spread across at least 33 states and together holding more than \$200 billion of deposits. As they await rescue, most of the thrifts will have no way to meet interim expenses other than by taking in additional insured deposits.

"These institutions have an insatiable appetite for money," said William Ferguson, principal of Ferguson & Co., the consulting firm in Irving, Tex.

This dependence could place the government at a disadvantage if depositors rebel against the RTC policy permitting interest rate contracts to be broken. Officials say high-cost CDs comprise roughly a third of the deposits held by thrifts currently under RTC control.

As accounts mature, investors concerned about the contractual terms of their high-yielding CDs could either yank their funds or demand even higher rates, said James Barth, chief economist with the Office of Thrift Supervision. Funding costs would go up in either case, he said, and

"the government is going to get hit with the bill."

Despite that prospect, the RTC has a lot to gain by sticking to its guns. Shoppers for failed thrifts have made it abundantly clear that an ability to renegotiate deposit rates increases the value of the franchises and justifies higher bids.

"I don't know how banks could afford to buy RTC thrifts without this option," said Thomas Young, vice president of marketing and planning for New Orleans-based Hibernia Corp., which has bought four failed thrifts.

Moreover, the RTC has been given a big advantage in executing the policy. The agency used \$12 billion of taxpayer funds in recent weeks to replace high-cost deposits at thrifts under its control, temporarily reducing their vulnerability to mass withdrawals.

"The risks of a depositor reaction largely have been mitigated," said Sherwin Koopmans, acting deputy director of the RTC.

But the RTC can't forever spend precious cash for interim funding needs at broke thrifts under its control, meaning that at some point the policy has to stand the test of the marketplace. Given the size and visibility of the upcoming transactions, that test could begin soon, experts say.

"A policy of changing interest rates could blow needed deposits out of RTC shops and even out of the thrift industry," said Richard Kneipper, Dallas-based chairman of the financial institutions section of Jones, Day, Reavis & Pogue, Cleveland. "But if the RTC can prevail, we'll all be cheering in the streets, because the cost of rescues will be lowered." ■

The government is taking a calculated risk in permitting the repudiation of contracted interest rates on a massive scale. The RTC has said the policy would permit it to elicit higher bids for failed thrifts. It could be applied to at least the \$92.5 billion of deposits held in \$9 million accounts at the more than 250 thrifts under Resolution Trust's control.

Experts have warned, however, that depositors could rebel at the policy, hiking funding costs for troubled thrifts awaiting rescue and offsetting gains from higher sales prices.

"You can't really win on this one," said Martin Regalia, chief economist at the National Council of Savings Institutions. "If you get tough on depositors, thrifts in the fast-gasp mode will have to pay even higher rates. But acquirers would lower their bids if forced to honor high-cost rate contracts, thereby increasing RTC's rescue costs."

The policy has worked smoothly in the comparatively small rescues completed to date. So far, the agency has completed 28 transactions involving \$1.8 billion of deposits. Though acquirers have been aggressive in changing rates and running off high-cost funds, no significant lawsuits or complaints have emerged.

In soliciting bids for the five institutions, the RTC has promised that acquirers can change interest rates on any or all of the thrifts' deposits. Starting two weeks after takeovers are completed, acquirers can lower rates all the way down to passbook levels.

"We are saying that the contract deposit rates no longer exist after 14 days," said William Roelle, director of the RTC's resolutions and operations division.

Many experts agree that the RTC is justified in breaking interest rate contracts on

See RTC: Page 11 ▶

Mr. SYNAR. The subcommittee will come to order. Mr. Crammer, let's go back before I get to this letter.

Isn't it true that even more modifications are going to be necessary before BIA will have this agreement in place?

Mr. CRAMMER. I think an additional amount of modifications are contemplated at the present time, Mr. Chairman and are being reviewed.

Mr. SYNAR. Now, we're told that the RFP estimated annual transactions of 10,000 maturities and 10,000 purchases for a total of 20,000 transactions per year. A separate charge would be incurred for each. However, that 20,000 figure was reduced to 2,500 at the time of the contract negotiations.

Now, it is our opinion that if that cost for the service at the original volume, along with the unsupported reductions for other activities or services that are now also being considered for modification, had been included when the A-76 study was completed for the Office of Management and Budget, it probably would have pushed those costs to a point where it would not have been cost effective for the Government.

So I guess what we're trying to ask you is, what is the total expected cost from these modifications?

Mr. CRAMMER. The only answer I can give you, Mr. Chairman, on that—I don't know where your data are initiated, but you would have to look at the cost-comparison study and the basic document, of which both were apples and apples, not apples and oranges.

Mr. SYNAR. You said that earlier. You know, I don't buy that line of thinking. If these costs exceed the original Security Pacific National Bank bid, then you can't guarantee you're going to save a dime, can you?

Mr. CRAMMER. Well, that's true, or the opposite is true—

Mr. SYNAR. Since the system is not completed and we don't have an acceptable test, wouldn't this be the proper time to use the leverage to work out a better deal for the Government, since they haven't performed very well?

Mr. CRAMMER. In what respect, Mr. Chairman?

Mr. SYNAR. Well, you've got a system here that we've been paying for that's not up and performing. Isn't this the best time to use some leverage against Security Pacific, to say we have to get this thing controlled and, therefore, hopefully run down those costs?

Mr. CRAMMER. I think that is what is contemplated in the modifications, Mr. Chairman.

I would like to go back as a matter of clarification on this, if I didn't make myself too clear on the initial application of the initial RFP and subsequent negotiations, et cetera. The contract was redefined, if you will. If you have it in front of you, or have access to the original contract document in which Security Pacific, in essence, the only funds that were made available to them other than the original \$300,000 for the implementation phase was a sustaining effort, if you will, of \$50,000 a year—I mean \$50,000 a month.

Mr. SYNAR. That's a deal for nonperformance, isn't it? I would take that contract.

Mr. CRAMMER. Well, at the same time the Bureau made commitments up front that things would be in place, that the majority of

the money, if you will, that would be sustained from this contract from the contractor's standpoint would be turning over the accounts and processing those accounts.

Mr. SYNAR. So you're saying the Government did not perform, so you wanted to hold them at their \$50,000 a month until you all performed, right?

Mr. CRAMMER. That's correct. If you look at the contract, that's a sustaining effort through the total performance of the contract.

Mr. SYNAR. \$50,000 a month became an incentive for you all to figure out every way you could to get around reconciling and auditing those accounts, so you could get them over there, didn't it?

Mr. CRAMMER. No, sir.

Mr. SYNAR. You can't have it both ways, Mr. Crammer.

Mr. CRAMMER. Well, Mr. Chairman, there was no thinking on my part, having negotiated this contract, that that ever came into being.

Mr. SYNAR. If I'm a bureaucrat—what level are you?

Mr. CRAMMER. Huh?

Mr. SYNAR. What level are you?

Mr. CRAMMER. Fourteen, sir.

Mr. SYNAR. All right. If I'm a bureaucrat or a person working at the BIA, and I've got \$50,000 a month being poured out to a corporation that's doing nothing because I'm not performing on my part of the contract, I'm going to try to figure out a way to get my performance there so I can get rid of that \$50,000 figure every month, aren't I?

Mr. CRAMMER. Well, I don't construe this to be nonperformance or no performance whatsoever on the part of the contractor during this whole phase. This is the sustaining management effort that it would take to go through the throws of reconciling and the implementation phase. It's a sustaining effort which we removed during the course of the negotiations from each one of these services—cash collections, investment, disbursement, et cetera—rather than running a percentage of those against each one of the accounts, that from a management/business standpoint we withdraw that money and made it a sustaining management—

Mr. SYNAR. Mr. Crammer, what was the goal, performance, or transfer of the assets? Answer that.

Mr. CRAMMER. Well, of course performance is ultimately the goal.

Mr. SYNAR. But you didn't get it, and you're—

Mr. CRAMMER. We have not gotten it yet.

Mr. SYNAR [continuing]. Continuing to pay this money out.

Mr. CRAMMER. We have not gotten it yet.

Mr. SYNAR. But we're out all this money for nonperformance, are we not, Mr. Crammer?

Mr. CRAMMER. I don't think you can—

Mr. SYNAR. So your goal failed.

Mr. CRAMMER. No, sir, I don't think you can construe it as total nonperformance. This is still—to repeat what I said previously, characterized even by the GAO, these are broad, general specifications in which it took a lot of effort on both the part of the Government and the part of the contractor.

Mr. SYNAR. And in their statement they also said, because these were broad concepts, that you had a responsibility to do a better management job, didn't they?

Mr. CRAMMER. That was my understanding of the testimony, to characterize it that way.

Mr. SYNAR. I ask unanimous consent at this point to enter in the record a letter from Security Pacific National Bank. [See exhibit No. 3.]

It seems from this letter, Mr. Crammer or Miss Brown, that even the contractor suggested that you all are not clear about what you want. Is that true?

Ms. ARLENE BROWN. Yes and no.

Mr. SYNAR. OK. Read that last sentence, starting at "Continuing changes," on the first page. Just read that out loud for us all.

Ms. ARLENE BROWN. "Continuing changes were made by the Branch of Trust Fund Accounting, as the accounting team leader adopted a user 'committee' approach to responding to the design."

Mr. SYNAR. Go ahead.

Ms. ARLENE BROWN. Reading further, "In many cases, changes were made to designs and then changed back to the original design after programming and documentation were complete."

Mr. SYNAR. All right. Does that not appear to the contractor that you don't know what you want?

Ms. ARLENE BROWN. Well, I guess I just have to refer back to the GAO report and that of the initial meeting. While the specs may have been particularly broad and general, you do have to institute a mechanism in the form of a requirement document which has more specific requirements and defines those broader documents. There is a risk level, as they indicated, when you proceed with that approach.

Mr. SYNAR. Let me stop you there. That's 1 year later. Isn't that 1 year later, this letter right here? "On October 18, 1989, the committee, led by the Branch of Trust Fund Accounting, delivered a final accounting system requirements document." That's 1 year later.

Ms. ARLENE BROWN. The initial document, as far as meeting the general requirements of the contract, was delivered in December. We responded to that document in February. From then on, it became an effort by both parties to go forward in the development of the accounting segment of the contract.

What it resulted in was that we were trying to beat a deadline that was very avarice. In 6 months, the preliminary testing was aborted because it was not successful. So what we did is we came back and are trying now to see what happened, realizing that further requirements needed to be developed as far as the Bureau of Indian Affairs in a joint effort with the contractor. That's what resulted in a draft, not a final document, that was delivered just last week.

Mr. SYNAR. What are your plans, Miss Brown, for implementing the investment advisory and cash management services, even though the accounting services will not be implemented for some time?

Ms. ARLENE BROWN. Regarding our plans right now, the contractor has delivered a securities conversion plan to the Bureau of

Indian Affairs. Since we realized there was going to be some delay in the second phase, as far as the accounting conversion, we would move forward after the appropriations language is met to transfer the securities, both by book entry and the physical CD's that we hold, over into the custodianship of the contractor.

That would effect several things that we've been criticized on, as far as what we're seeking in the benefits in investment services that we're contracting out, a segregation of duties between the custodianship, or safekeeping of the securities, the investment accounting part and the money management part. Right now it is all within one person or one entity. You have nobody accounting for the money manager side, and you've got them keeping the physical securities. In industry practice, those three functions are segregated.

Also, we're dealing with the S&L bailout issue. With the CD program that the Bureau of Indian Affairs currently manages today, we have to consider that legislation in light of—you know, as far as the industry is concerned.

Mr. SYNAR. It sounds like you're passing the buck to me.

Ms. ARLENE BROWN. With respect to what?

Mr. SYNAR. To this whole issue.

Are you going to test this system before you implement it?

Ms. ARLENE BROWN. Yes.

Mr. SYNAR. All right. I'll throw out this question. Did the BIA obtain a Solicitor's opinion on whether it had the authority to contract with a third party for investment services and cash management?

Mr. Crammer, did you obtain a Solicitor's opinion on whether BIA had authority to contract with a third party for investment services and cash management?

Mr. CRAMMER. I believe, yes.

Mr. SYNAR. Our records show two separate occasions, a memorandum on May 13, and another one on January 24. I will ask unanimous consent at this time that the Solicitor's letters, exhibits 4 and 5, be admitted into the record.

[Exhibits 4 and 5 follow:]


 27.4
 United States Department of the Interior

 OFFICE OF THE SOLICITOR
 WASHINGTON, D.C. 20240

 111ST Solicitor
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 disbursing agents
 can disburse the
 funds - PS, 8

BIA-IA-0598

MAY 13 1985

Memorandum

To: Deputy Assistant Secretary - Indian Affairs

From: Associate Solicitor, Division of Indian Affairs

Subject: Investment of Indian trust funds

In your February 8, 1985, memorandum you outlined options under consideration with respect to the management and investment of Indian trust funds. Since receipt of that memorandum we have been in touch, as invited by you, with the Chief, Branch of Investment, the Chief, Branch of Indian Trust Funds, and other representatives of the Bureau. There follows, as requested, our opinion on the extent to which the Secretary of the Interior, as a prudent trustee, can contract with outside vendors to handle the various aspects of the several options.

At present, tribal funds are kept in the United States Treasury as authorized by 25 U.S.C. § 161 unless they are invested by the Bureau's Branch of Investments in accordance with 25 U.S.C. § 162a. Individual trust funds in Individual Indian Money (IIM) accounts are also presently invested by the Branch of Investments in accordance with 25 U.S.C. § 162a. The total investment of tribal and individual trust funds under Section 162a exceeds a billion dollars.

As part of an examination of its management of Indian trust funds which the Bureau of Indian Affairs has been making, several possibilities or options for alternate ways of managing and investing those funds have been developed. It is these options on which you have requested our views.

Before taking up the specific options for management and investment of the Indian trust funds, we note the following with respect to the general handling of Indian trust funds.

The authority which the Secretary of the Interior has with respect to tribal funds has been described as follows by the Court of Claims:

That Congress has plenary power over the administration of Indian Affairs is well settled, Cherokee Nation v. Georgia, 5 Pet. 1; Cherokee Nation v. Hitchcock, 187 U.S. 294; Lone Wolf v. Hitchcock, 187 U.S. 553. The Secretary of the Interior has only such authority over the funds of Indian tribes as is confided in him by Congress. He cannot legally disburse and pay out Indian funds for purposes other than those authorized by law. Creek Nation v. United States, 78 Ct. Cl. 474, 485 (1933).

Evidence of special concern by Congress for tribal funds is afforded by 25 U.S.C. § 123, which provides that, except for equalization of allotments, education of Indian children in accordance with existing law, per capita and other payments, no money shall be expended from Indian tribal funds without specific appropriation by Congress. Even where authority has existed for the Secretary to change existing practices with respect to the handling of tribal funds, Congress has modified the law to compel adherence to existing practices. See Solicitor's opinion, 68 I.D. 311 (1961), in which the Solicitor advised that the Secretary need not, as a matter of law, obtain special acts of Congress, as had been the practice, in order to authorize the use of tribal judgment funds. Thereafter Congress for a ten-year period put provisions in the annual appropriation acts of the Department of the Interior which required special legislation to be enacted for each tribal judgment fund in order for the fund to be used. Then Congress enacted permanent general legislation governing the use and distribution of tribal judgment funds. 25 U.S.C. § 1401 et seq.

The handling of tribal funds, in addition to being a matter to which Congress gives close attention, is also one which involves the exercise of trust responsibility. In Navajo Tribe v. United States, 624 F.2d 981, 987 (Ct. Cl. 1980), the Court of Claims held:

. . . where the Federal Government takes on or has control or supervision over tribal monies or properties, the fiduciary relationship normally exists with respect to such monies or properties (unless Congress has provided otherwise) even though nothing is said expressly in the authorizing or underlying statute (or other fundamental document) about a trust fund, or a trust or fiduciary connection.

And where such a trust relationship exists, the Supreme Court in an oft-cited opinion has stated the trust standard for the government to be as follows:

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. . . Under a humane and self imposed policy which has found expression in many acts of Congress¹ and numerous decisions of this Court, it has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards. . . . (*Footnote omitted)

Seminole Nation v. United States, 316 U.S. 286, 295-296 (1941).

I

The first option being considered involves changing from the government's handling of deposits of tribal and individual trust funds and having them instead deposited in banks. All collections by Indian agencies of Indian trust funds would be placed in local banks and each agency would telephone daily collections to a deposit reporting service company which would report the total deposit activity to the Branch of Investments to assist in cash forecasting and investment planning. The daily deposits in local banks would be transferred to a concentration account in a money center bank. Electronic funds transfers of Indian trust funds would be wired directly to the money center bank.

The initial inquiry, therefore, is whether the Secretary of the Interior is authorized to deposit tribal and individual trust funds¹ in banks.

In 25 U.S.C. § 162a, Congress has specifically provided for the deposit of both tribal and individual Indian trust funds in banks. Such deposits are authorized to be made on the following conditions:

The Secretary of the Interior is hereby authorized in his discretion, and under such rules and regulations as he may prescribe, to withdraw from the United States Treasury and to deposit in banks to be selected by him the common or community funds of any Indian tribe which are, or may hereafter be, held in trust by the United States and on which the United States is not obligated by law to pay interest at higher rates that can be procured from the banks. The said Secretary is also authorized, under such rules and regulations as he may prescribe, to deposit in banks to be selected by

¹ Congress has not legislated for individual Indian trust funds the same kind of supervision that it has for tribal funds. For instance, unlike for tribal funds (25 U.S.C. § 123), it does not require Congressional consent for the expenditure of individual trust funds.

him the funds held in trust by the United States for the benefit of individual Indians; Provided, That no individual Indian money shall be deposited in any bank until the bank shall have agreed to pay interest thereon at a reasonable rate, subject, however, to the regulations of the Board of Governors of the Federal Reserve System in the case of member banks, and of the Board of Directors of the Federal Deposit Insurance Corporation in the case of insured nonmember banks, except that the payment of interest may be waived in the discretion of the Secretary of the Interior on any deposit which is payable on demand: Provided further, That no tribal or individual Indian money shall be deposited in any bank until the bank shall have furnished an acceptable bond or pledged collateral security therefor in the form of any public-debt obligations of the United States and any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, except that no such bond or collateral shall be required to be furnished by any such bank which is entitled to the benefits of section 12B of the Federal Reserve Act, with respect to any deposits of such tribal or individual funds to the extent that such deposits are insured under such section. . . .

Therefore, to the extent the proposed deposits in banks are either fully insured by the Federal Deposit Insurance Corporation or are covered by the required acceptable bond or pledged collateral security, the tribal and individual trust funds may be deposited in banks. While the insurance, bond and collateral requirements may not present many problems in connection with the deposit of the Indian trust funds by the agencies in local banks, it would appear that they could present significant problems with respect to placing the funds in a concentration account in a money center bank. As the deposit of both tribal and individual trust funds in banks may be made only in compliance with the provisions of Section 162a, any change in those provisions would require an amendment of Section 162a by Congress. Moreover, since the provisions in question are obviously designed for the purpose of safeguarding the Indian trust funds, it is doubtful that other provisions can be found for banking Indian trust funds which would provide the needed safeguard with less burdensome requirements.

In regard to the possibility or option for the money center bank to provide "balance" reporting services for each tribal appropriation account, we perceive nothing which would preclude the bank from providing such services as part of its servicing of

the "concentration account", assuming that the insurance, bonding and collateral requirements for such an account can be met so as to permit the establishment of this kind of account.

If the employment of a deposit reporting service which would provide a daily total of the local deposits reported to it and advise the Branch of Investments of these daily totals is a needed service that cannot be reasonably provided within the Bureau, such service may be contracted. See Part II below for the relevant considerations governing the obtaining of such outside services with respect to the management of Indian trust funds.

With respect to the disbursement by the money center bank through checks or electronic funds transfers of Indian trust funds deposited with it, since the funds even though deposited with the bank would still be held in trust by the United States, their disbursement could only be made by an authorized disbursing agent of the United States. We assume that the money center bank would not so qualify.

II

The possibilities or options for handling the investment of Indian trust funds set out in your memorandum are by discretionary account, directed account, advisory service, or the present investment system in which the Bureau performs all activity without outside assistance. As these several ways of investing are listed with the bank deposit proposal, we understand that they are to be considered in connection with that proposed handling for Indian trust funds.

Under the discretionary account option, investments would be made by an outside agent operating under the same limitations on the investment of Indian trust funds as does the Bureau, but the agent would not obtain Bureau approval of the specific investments made.

Section 162a of 25 U.S.C. provides that:

. . .the Secretary of the Interior, if he deems it advisable and for the best interest of the Indians, may invest the trust funds of any tribe or individual Indian in any public-debt obligations of the United States and in any bonds, notes or other obligations which are unconditionally guaranteed as to both interest and principal by the United States. . . .

Currently the Secretary exercises the authority contained in this quoted part of Section 162a through the Bureau's Branch of Investments, which invests tribal and individual trust funds as directed by the statute. The Secretary, as trustee, exercises supervision of this investment program through the normal administrative controls governing activities of the Bureau. He

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has, as he must for the daily operations of the several Bureaus and offices of the Department, delegated authority for this investment activity.

So the question presented by the possibility or option of having that investment activity performed by an outside contractor is whether the Secretary, as trustee, is free to employ such an agent instead of employees or officials of the Department for this purpose and is not whether the Secretary may delegate, which he has already done, this part of his trustee's duties.

While not technically a corporate trustee, the Secretary, like a corporate trustee, acts through officers and employees in this particular matter. Thus, the test for when a corporate trustee may seek outside assistance in the performance of trust duties is also relevant here.² The test is stated as follows in A. Scott, The Law of Trusts, § 171.4 (3d 1967):

It has sometimes been said that the rule that a trustee cannot properly delegate the exercise of his powers and the performance of his duties is not applicable to a corporate trustee, because the element of reliance upon personal judgment and discretion is wanting in the case of a corporate trustee, since it can act only through its directors, officers and employees and those may change from time to time.* It is clear, however, that a corporate trustee is guilty of an improper delegation of its powers and duties if it permits others to do acts which should be performed by its own directors, officers or employees; . . . (*Footnote omitted).

Thus, a conclusion that the employment of an outside agency to operate a discretionary account would not breach the Secretary's trust responsibilities would seem to come down to finding that the Branch of Investments cannot adequately perform needed investment services as the outside agent could.³ Questions of possible liability arising from the employment of an outside agent to operate a discretionary account could be avoided by

² In considering what the government's Indian trust responsibility is where it is not expressly set out, the Supreme Court has looked to general trust law. See Seminole Nation v. United States, *supra*; United States v. Mason, 412 U.S. 391 (1973).

³ "It may be reasonable in some cases for a corporate trustee to employ specialists who are not on the corporate payroll." (Footnote omitted). G. Bogert, The Law of Trusts and Trustees, § 555, p. 113 (2d ed, revised 1980).

limiting the investment of Indian trust funds in such an account to those funds whose equitable owners, assuming no minors or others under legal disability are involved, give explicit approval and consent to such investment handling for their funds.⁴

The possibility or option of the directed account represents a major difference from the discretionary account in that for the directed account the outside agent would not proceed with the specific investment activities recommended by the agent unless the Bureau would advise the agent to do so. The above analysis for the discretionary account also applies here. However, with the limited scope of the outside agent for the directed account and the scrutiny by the Bureau of the agent's investment advice, justification for employing such an agent may be more difficult than for the employment of the agent for the discretionary account.⁵

The possibility or option of obtaining an advisory service in which the operator of the service has no role in executing investment transactions seems to involve no legal difficulties, if, as is assumed, the service is one which is needed and could not be reasonably provided within the Bureau.

For final consideration is the possibility or option of continuing the current system of investment in which the Bureau coordinates all activity without outside assistance. Whether a particular course for handling the investment of Indian trust funds is adequate depends upon the ability to achieve the results required by the decisions in Manchester Bend of Pomo Indians v. United States, 363 F.Supp. 1238, (N.D. Cal. 1973) and Cheyenne-Arapaho Tribes of Oklahoma v. United States, 512 F.2d 1390 (Ct. Cl. 1975), with which the Bureau is familiar. Thus, the Bureau may safely continue its investment program for Indian trust funds without the use of outside assistance as long as it meets those requirements. If the Bureau is unable to meet these requirements in house, then employment of other options discussed above needs to be made.

4 Since the rule against delegation is created by equity solely for the benefit of the beneficiary, it would seem clear that the beneficiary has the power to consent in advance to delegation, or approve delegation after it has been wrongfully attempted (if he is competent and the trustee deals fairly in procuring the consent or approval). Id. at 124.

5 "...The burden is on the trustee to show that it was necessary to employ the agent, that he made a reasonable contract of employment, and that the agent rendered service to the trust." [Footnote omitted]. Id. at 112.

III

In sum, using the option numbers in your memorandum:

Option I:

(A) Bank deposits of Indian trust funds as described in this part of the option may be made provided they comply with the requirements of 25 U.S.C. § 162a, including provisions for insurance and collateral. The deposit reporting service may be employed, assuming it is needed, if it cannot be reasonably accomplished within the Bureau.

(B) Provision may be made for the money center bank to furnish "balance" reporting services for each tribal appropriation account.

(C) Only if the money center bank can qualify as a federal disbursing agent may it issue disbursement checks or electronic funds transfers for Indian trust funds.

(D)(1) A discretionary account for the investment of Indian trust funds may be used if the Branch of Investments cannot adequately perform needed investment services which an outside agent could provide, or where, regardless of whether the outside agent provides required services not attainable through Bureau personnel, the beneficiaries of the trust funds involved specifically consent to the discretionary account for their funds.

(2) The same standards apply for determining whether a directed account for Indian trust funds may be employed as are determinative of whether a discretionary account may be used. It may be more difficult to justify employment of the directed account, however, since the outside agent has more limited duties to perform and therefore may not be performing beyond what Bureau personnel can. It may be option D(3), advisory service, would be found appropriate instead of a directed account.

(3) There are no legal obstacles to the employment of an agent to provide investment information assuming the information is needed for the proper investment of Indian trust funds and cannot reasonably be provided by Bureau personnel.

(4) As long as the Bureau's current investment of Indian trust funds satisfies the investment requirements set out in Manchester Band of Pomo Indians v. United States, 363 F.Supp. 1233 (N.D.Cal. 1973) and Cheyenne-Arapaho Tribes of Oklahoma v. United States, 512 F.2d 1390 (Ct. Cl. 1975), it may be continued without recourse to optional ways for investing such funds.

Option II:

As explained for Option I(C), banks cannot issue disbursement checks or electronic funds transfers for Indian trust funds unless they can function as federal disbursing agents. The current utilization of the Treasury for these purposes must continue otherwise.

Option III:

There are, of course, no legal obstacles to continuing the current system of utilizing the Treasury for receipts and disbursements. Whether the Branch of Investments may employ an advisory service depends on the conditions stated in Option I(D)(2), above.

If you have further questions concerning the investment of Indian trust funds, please let me know.


Tim Vollmann



Change of position - for system - ES
time BIA says trust funds are distinguishable from it

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

In reply, please address to:
Main Interior, Room 6456

207 2 2 1989

BIA-IA-0695

Memorandum

To: Assistant Secretary - Indian Affairs
From: Associate Solicitor, Division of Indian Affairs
Subject: Authority of the Bureau of Indian Affairs to place the disbursing functions of Indian trust funds with an eligible financial institution

This is in response to your informal request for an opinion clarifying the Bureau of Indian Affairs' (BIA) authority to place the disbursing functions of Indian trust funds with an eligible financial institution under Contract No. K51C14201266 for Financial Trust Services.

It is our understanding that your request for an opinion clarifying the status of these funds stems from correspondence between the Office of the Assistant Secretary - Indian Affairs and the Treasury Department's Financial Management Service. Following is a summary of this correspondence.

By letter dated April 9, 1987, to the Chief Disbursing Officer, Financial Management Service, the Deputy to the Assistant Secretary - Indian Affairs (Operations) requested that authority to perform disbursing services for all the Indian trust funds managed by the BIA be granted to the financial institution which is selected to provide the financial trust services under contract.

By letter dated April 27, 1987, the Chief Disbursing Officer replied that he had no objections to the BIA placing such disbursing functions with a financial institution which meets Treasury's criteria for being designated as a depository and fiscal agent since the funds involved in the proposal are tribal funds, and not public moneys of the United States.

Subsequently, by letter dated May 20, 1988, to the Chief Disbursing Officer, the Acting Assistant Secretary - Indian Affairs again requested the authorization of the Secretary of the Treasury for the selected depository to perform disbursing services for these trust funds. In a followup letter dated June 29, 1988, to the Chief Disbursing Officer, the Assistant Secretary - Indian Affairs provided additional information on the

categories of Indian trust funds involved, and indicated that the scope of the May 20 request for disbursement authorization includes all trust fund categories except irrigation and power project funds which would continue to be disbursed by Treasury disbursing officers.

Finally, by letter dated July 15, 1988, the Chief Disbursing Officer replied that, as he advised in his April 27, 1987, letter, he would have no objections to the BIA placing the disbursing functions of those tribal funds that are not public moneys of the United States with an eligible financial institution.

We agree with the Chief Disbursing Officer's April 27, 1987 determination that tribal trust funds are not public moneys of the United States. The distinction between tribal trust funds and public moneys of the United States has long been recognized by the U.S. Supreme Court. In Quick Bear v. Leupp, 210 U.S. 50 (1908), the Court held that the provisions in the Indian Appropriation Acts of 1895, 1896, 1897, 1898, and 1899 limiting and forbidding contracts for education of Indians in sectarian schools related only to appropriations of public moneys of the United States, and not to the disposition of tribal trust funds which belong to the Indians themselves. As the Court noted, "[o]ne class of appropriations relate to public moneys belonging to the Government; the other to moneys which belong to the Indians and which is administered for them by the Government." 210 U.S. at 77.

The Court's distinction in Quick Bear between tribal trust funds and public moneys of the United States has been subsequently followed by the lower federal courts. For instance, in Scholder v. United States, 428 F.2d 1123 (9th Cir.), cert. denied, 400 U.S. 942 (1970), the court held that the expenditure of funds appropriated for Indian irrigation systems to build irrigation lateral on non-Indian land within an Indian irrigation project did not constitute an unconstitutional taking of funds held in trust for Indians because the funds in question were not treaty or tribal funds held in trust for the Indians, but "gratuitous appropriations of public moneys," the use of which to benefit non-Indians is not a taking of Indian property. More recently, in Sac and Fox Tribe v. Apex Construction Co., 757 F.2d 221 (10th Cir. 1985), the court relied on the Quick Bear and Scholder distinction between tribal trust funds and public moneys of the United States to hold that 25 U.S.C. § 81 governs only those contracts involving the expenditures of tribal funds, and that the approval of the Secretary of the Interior was therefore not required for a contract funded from public grant moneys released by a federal agency.

 1 The distinction between tribal trust funds and public moneys of the United States was recognized by the courts before the Supreme Court's decision in Quick Bear. For instance, in United States v. Rogers, 81 Fed. 941 (9th Cir. 1897), the court held that the sureties in the bond of a receiver of public moneys at a land

Under Quick Bear, the fundamental difference between tribal trust funds and public moneys of the United States is the equitable ownership of the funds. As the Court stated, "[t]he 'Treaty' and 'Trust' moneys are the only moneys that the Indians can lay claim to as a matter of right...The cestuis que trust cannot be deprived of their rights by the trustee in the exercise of power implied." Quick Bear, supra, at 82.

With respect to the funds described in the Assistant Secretary's June 29, 1988 letter referred to above, it is clear that both Individual Indian Monies, Treasury Account No. 14X6039, and Tribal Funds, Treasury Account No. 14X8365 are funds held in trust for either specific individuals or tribal entities. As such, they are not public moneys of the United States under the foregoing analysis.

The same, however, cannot be said for either Contributed Funds, Treasury Account No. 14X8060, or the Papago Cooperative Fund, Treasury Account No. 14X8366, because there are no specific Indian beneficiaries with equitable interests in those funds.²

The Alaska Native Escrow Fund, Treasury Account No. 14X6140, was established in 1976 pursuant to Section 2 of Pub.L. No. 94-204, 89 Stat. 1146, 43 U.S.C. § 1613, when the Alaska Native Claims Settlement Act (ANCSA), Pub.L. No. 92-203, 85 Stat. 688, 43 U.S.C. §§ 1601-1628, was amended to provide, inter alia, for the disposition of proceeds of withdrawn lands under the Act pending conveyance of selected lands to regional or village corporations.³ In Cape Fox Corporation v. United States, 4

office are not liable for moneys received by him as proceeds of the sale of Indian lands made under an act of Congress, as such moneys are the moneys of the Indians, and not public moneys. "The moneys paid for the Indian lands were trust moneys and not public moneys." Id. at 943. See also United States v. Sinnott, 26 Fed. 84, 86 (C.C. Or. 1886).

² Contributed Funds are funds received by the Secretary of the Interior under 25 U.S.C. § 451 pursuant to which he may accept donations of funds or other property for the advancement of the Indian race. The Papago Cooperative Fund, established by Section 313 of the Southern Arizona Water Rights Settlement Act of 1982, P.L. 97-293, includes amounts appropriated by the Federal Government, as well as amounts contributed by the State of Arizona, the City of Tucson, and several private companies. The purpose of the "Cooperative Fund" is to enable the Secretary of the Interior to carry out his obligations under §§ 303, 304, and 305 of the Act. The status of Irrigation Project Funds, and Power Project Funds is not addressed in this memorandum because these funds will continue to be disbursed by Treasury disbursing officers.

³ On and after January 1, 1976, proceeds of withdrawn lands were to be deposited in an escrow account, and on conveyance of

Cl.Ct. 223 (1983), the Claims Court held that the ANCSA does not establish a fiduciary relationship between Alaska Natives and the United States, or create such a relationship with native corporations in the management of withdrawn or selected lands under the Act. Clearly, it follows that proceeds of withdrawn lands deposited in the escrow account cannot be considered trust funds absent a specific provision in the legislation to the contrary, as they are not derived from trust property. See White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 145-46 (1980); United States v. Algona Lumber Company, 305 U.S. 415, 420 (1939); Navajo Tribe of Indians v. United States, 9 Cl.Ct. 336 (1986). In addition, native corporations were permitted to over-select their entitlements, 43 CFR § 2651.4(f). Because of over-selection, the majority of lands selected will never be conveyed to the corporations, and neither will the proceeds from such lands deposited in the escrow account.

It is our conclusion that if it is contemplated to place the disbursing functions of the Contributed Funds, the Alaska Native Escrow Fund, and the Papago Cooperative Fund with an eligible financial institution under Contract No. K51Cl4201266 for financial trust services, a request must be submitted to the Secretary of the Treasury to delegate to the Secretary of the Interior, pursuant to 31 U.S.C. § 3321, the authority to disburse these public moneys.

We have examined here only the question of whether Indian trust funds are public moneys for purposes of federal law governing the disbursement of public moneys. Therefore, nothing contained herein is intended to express an opinion with respect to the nature of such funds in another context.

M. D. Daugherty

Dennis Daugherty

 selected lands, the proceeds, together with interest, were to be paid to the appropriate corporation. In 1980, the Alaska National Interest Lands Conservation Act (ANILCA), Pub.L. No. 96-487, 94 Stat. 2497, expanded the escrow provision to make it retroactive to include proceeds derived from date of withdrawal of the lands.

Mr. SYNAR. Now, did BIA obtain an opinion from the Solicitor's Office or the Interior Department's automated data processing division as to whether the BIA needed a delegation of procurement authority from GSA?

Mr. RAGSDALE. There would be no reason to. They would not be the appropriate body within the Department of the Interior to give that opinion, Mr. Chairman.

Mr. SYNAR. Was an opinion eventually sought after the contract was let, Mr. Ragsdale? Miss Richardson.

Ms. RICHARDSON. Mr. Chairman, in June, I believe, we wrote to the Secretary, saying this question had been raised, asking that the Department's Information Management Resources Committee review this matter. We have not yet received a reply.

Mr. SYNAR. So you did ask for an opinion, did you not?

Ms. RICHARDSON. In June of this year, yes, sir.

Mr. SYNAR. And when do you think you'll resolve this problem?

Ms. RICHARDSON. We haven't received a reply from the Secretary yet.

Mr. SYNAR. You know, GAO has resolved it. Did you hear them this morning?

Ms. RICHARDSON. I heard what they said, yes, sir.

Mr. SYNAR. Has the BIA Solicitor rendered an opinion as to whether the BIA can delegate this authority to a nongovernment third party such as Security Pacific National Bank, Miss Richardson?

Ms. RICHARDSON. I don't know, sir. We have Miss Brown—

Ms. ARLENE BROWN. Yes, they have, and here's the attorney that represents—

Mr. SYNAR. Would you identify yourself for the record. Did we swear you in?

Mr. SKIBINE. No.

Mr. SYNAR. Stand up. Do you have any objection to being sworn?

Mr. SKIBINE. No.

[Witness sworn.]

Mr. SYNAR. Now, identify yourself for the record.

Mr. SKIBINE. My name is George Tallchief Skibine. I'm an attorney for the Solicitor's Office.

Mr. SYNAR. I didn't catch that. Do that again, and slower.

Mr. SKIBINE. I am George Tallchief Skibine. I'm an attorney for the Division of Indian Affairs, Office of the Solicitor.

Mr. SYNAR. Are you related to the Tallchiefs in Oklahoma?

Mr. SKIBINE. Yes, I am.

Mr. SYNAR. How are you related?

Mr. SKIBINE. Cousins.

Mr. SYNAR. Have you ever been out to the Osage, tall grass country?

Mr. SKIBINE. Yes, I have.

Mr. SYNAR. That's good. Were you born there?

Mr. SKIBINE. No.

Mr. SYNAR. Are you registered to vote there? [Laughter.]

You know, one of the things you all need to realize, there are a lot of "Okies" up here I'm beating on. Thank goodness, some of them don't live in my district. I'm just kidding.

Now, the opinion is stated in the Solicitor's memorandum entered as an exhibit. Take a look at that.

Mr. SKIBINE. Which opinion are you referring to, Mr. Chairman?

Mr. SYNAR. The December 14 one.

Dr. EDDIE BROWN. We don't have a December 14 one. We have a January 24 and a May 13, Mr. Chairman.

Mr. SYNAR. Hang on. January 24. I'm sorry. January 24, do you have that one?

Mr. SKIBINE. Yes.

Mr. SYNAR. That was several months ago. That was after you signed the contract, wasn't it?

Mr. SKIBINE. That's correct.

Mr. SYNAR. OK. Now, other than saying it can be done, what is the legal basis on which the Treasury Department concluded that BIA had proper authority to delegate?

Mr. SKIBINE. As the memorandum makes clear at the beginning, we set out the correspondence background that led the Bureau to ask informally for our opinion on this topic. I think the reason that the Bureau probably asked for the opinion is that in the Treasury correspondence there was no legal basis in the correspondence that was set out in writing.

Mr. SYNAR. All right. Wasn't this a disbursing officer and not the Treasury Department's general counsel that issued this?

Mr. SKIBINE. Yes, I believe it is. Chief disbursing officer.

Mr. SYNAR. Weren't you so unsure about this advice that you asked the BIA counsel for an opinion? Is that right?

Mr. SKIBINE. I'm with the Solicitor's Office. Are you asking why the Bureau—

Mr. SYNAR. Did they ask you for an opinion?

Mr. SKIBINE. Yes, they did.

Mr. SYNAR. And they received that advice on April 27, 1987, and again on July 15, 1989; is that correct?

Mr. SKIBINE. You're referring to the correspondence from Treasury?

Mr. SYNAR. On January 24. I'm sorry.

Mr. SKIBINE. All right. January 24, 1989, yes, we rendered an opinion on this issue.

Mr. SYNAR. Was the appropriate legal research and study conducted by Treasury and BIA to support this conclusion?

Mr. SKIBINE. Was the legal research done by the Treasury, are you asking?

Mr. SYNAR. And BIA.

Mr. SKIBINE. We did the legal research to support our memorandum.

Mr. SYNAR. But Treasury did not, did they?

Mr. SKIBINE. Not to our—we have no knowledge of it.

Mr. SYNAR. Now, how will the contract be affected by GAO's legal opinion, if the BIA does not have the authority?

Mr. SKIBINE. I think at this point we would want to get involved with the Department of Treasury to seek their opinion on this issue.

Mr. SYNAR. Now, since the major portion of the contractor's income would be from processing and disbursement of funds, Miss

Brown, isn't it a question of paramount interest to Security Pacific? That's where they're going to make most of the money, isn't it?

Ms. ARLENE BROWN. On the disbursement of funds?

Mr. SYNAR. Yes.

Ms. ARLENE BROWN. No.

Mr. SYNAR. They're not going to make—

Ms. ARLENE BROWN. Two-thirds of the money will be coming from the investment advisory services.

Mr. SYNAR. We have by the contract that two-thirds of the money comes from processing and disbursing, from the transactions.

Ms. ARLENE BROWN. That's a component part of the custodial services that you see in the contract for IIM at 0.167 cents per account, and \$16 per tribal and all other accounts. That disbursement section comes within those two areas or line items.

Mr. SYNAR. But the transactions themselves are a significant portion of the income, are they not?

Ms. ARLENE BROWN. It would be a percentage of that 0.167 cents for IIM disbursements, and a percentage—I don't know what it would be—of the \$16 per tribal account.

Mr. SYNAR. We've got down a minimum of 20,000 transactions a year at about a million and a half dollars a year. That's a lot of money, isn't it? Isn't that where a large portion of their money is going to come from?

Ms. ARLENE BROWN. From the investment advisory services, yes.

Mr. SYNAR. What about disbursements, though?

Ms. ARLENE BROWN. The disbursements, as far as the check-writing privilege, are only contained within the tribal and IIM aspect of the contract. The other five categories of the trust fund groups that they would be servicing would continue to be disbursed by the Treasury Department's RFC's.

Mr. SYNAR. We've got \$597,192 for the IIM.

Ms. ARLENE BROWN. For a full year of operation, yes.

Mr. SYNAR. That's a lot of money, wouldn't you agree? \$500,000 is a lot of money.

Ms. ARLENE BROWN. Well, as compared to other proposals or whatever was offered in the prior procurements, and as opposed to the A-76 proposal. I don't know what that would be in relationship to those other proposals.

Mr. SYNAR. I think our point is, Miss Brown—and see if you can grasp this—if they don't have the authority to disburse, or if they're not allowed to disburse, they lose \$600,000 a year, do they not?

Ms. ARLENE BROWN. No.

Mr. SYNAR. Why not?

Ms. ARLENE BROWN. You may have to, in effect, have a change order for that particular portion of those line items. But contained within that particular line item, they would have to be setting up an account, performing deposit accounting services, reporting services that are attached to each one of those accounts on a monthly basis, calculating the interest—

Mr. SYNAR. This is the greatest contract I've ever heard of. They don't lose. They can never lose.

When do they lose? If they don't have the authority to disburse and they were going to be paid in the contract based upon disbursement, but they don't lose even there, how do they ever lose?

Ms. ARLENE BROWN. Well, it's only when——

Mr. SYNAR. Can I get a piece of this action? This is great.

Ms. ARLENE BROWN. The bid was open to all parties.

[Laughter.]

Mr. SYNAR. It would be a little bit of a conflict of interest.

Now, in his testimony, the Department of Interior inspector general discussed his findings of shortages of about \$17 million in the trust fund investments and documented investment losses of about \$12 million. Has it been the BIA's practice not to inform the tribes and Indians of such losses, Dr. Brown?

Dr. EDDIE BROWN. Let me——

Mr. SYNAR. Mr. Mills.

Mr. MILLS. On the losses of the IIM accounts, we have not notified all the accounts.

Mr. SYNAR. Is that the policy of the BIA?

Mr. MILLS. The BIA has no policy, so I guess you could say that could be.

Mr. SYNAR. How would you feel—where do you do your banking, Mr. Mills?

Mr. MILLS. Right now, in Oklahoma.

Mr. SYNAR. In Anadarko?

Mr. MILLS. At Chickasha.

Mr. SYNAR. If the bank at Chickasha or your investment advisor there lost your money, would you be mad if they didn't inform you?

Mr. MILLS. I definitely would.

Mr. SYNAR. Are there instances in which the BIA has gone out of its way to inform tribes and Indians of the losses?

Mr. MILLS. You're talking the tribal accounts. Let me explain something. On the individual IIM accounts, it's my understanding that there has not been any individual Indian that has lost any money on withdrawal out of their accounts.

Mr. SYNAR. You don't know that, though, do you, because you've never audited and reconciled them, have you?

Mr. MILLS. Well, that's——

Mr. SYNAR. So how can you say that, Mr. Mills?

Mr. MILLS. On the disbursement of the money, when they come in and their money is due them, they were able to withdraw their funds without any——

Mr. SYNAR. That you're aware of. But we really don't have enough information for you to be totally aware; isn't that a better way to put it?

Mr. MILLS. Well, I guess I can say completely aware.

Mr. SYNAR. How many claims have been lodged by tribes or individual Indians for recovery of losses Mr. Ragsdale?

Mr. RAGSDALE. I don't have the specific numbers, but there are a number of accounting claims that have been filed throughout history——

Mr. SYNAR. Could we get that for the record?

Mr. RAGSDALE. I represent the Cherokee Nation officially. Dr. Brown will provide that for the record.

Mr. SYNAR. Dr. Brown, can we get that for the record?

Dr. EDDIE BROWN. Yes.

Mr. SYNAR. In 10 days?

Dr. EDDIE BROWN. Hang on just a second.

Mr. MILLS. Are you talking about court cases?

Mr. SYNAR. I mean claims by tribes or individuals of any kind for recovery of losses.

Dr. EDDIE BROWN. Are these formal claims that you're talking about?

Mr. SYNAR. Look, formal or informal. Some people don't know how to use the system.

Ms. RICHARDSON. Mr. Chairman, there are claims that have been lodged against the Department starting in 1860 on the handling of trust funds. I strongly doubt that we would be able to provide you that information in 10 days or—

Mr. SYNAR. How many are still outstanding, Miss Richardson?

Ms. RICHARDSON. I have no idea, sir.

Mr. SYNAR. Can you provide that for the record?

Ms. RICHARDSON. If claims have been filed in court, the Solicitor's Office would have it.

Mr. SYNAR. To the maximum extent possible, can you provide that—

[Laughter.]

Ms. RICHARDSON. For court claims?

Mr. SYNAR. We want any time an individual or a tribe, formally or informally, by paper, by court action, by anything; you can't provide that?

Ms. RICHARDSON. No, sir.

Mr. SYNAR. Well, how in the heck are you going to resolve them, then?

Ms. RICHARDSON. Any time an individual complains does not make it a formal—

Mr. SYNAR. Do you ever check into it? I mean, if they don't make it formal, they don't get checked into?

Where do these people go?

Mr. MILLS. The individual Indians, if they have a question about their IIM account, they go to their local agency, of which there are 80 some across the United States. So they do have that opportunity to go in and—

Mr. SYNAR. Who do they go to? Where do I go in Muskogee?

Mr. MILLS. OK. It depends on the agency. You're in Tahlequah?

Mr. SYNAR. All right, I'm Cherokee. Where do I go in Tahlequah?

Mr. MILLS. OK. Then you go to the superintendent's office and he, in turn, will lead you down to the IAM office and your account will be made available to you there.

Mr. SYNAR. And so I go down there. And what do I have to do?

Mr. MILLS. You just have to ask to see your account, give your account number.

Mr. SYNAR. Do I have to do that in written form or verbal form?

Mr. MILLS. It's been done in verbal form.

Mr. SYNAR. All right, verbal form. And I get to see my account. Now, that's if it's been audited and reconciled over the years, correct? How do I know my account's right?

Mr. MILLS. We don't. I guess, you know—

Mr. SYNAR. That's the point, isn't it? I mean, I'm just living in Tahlequah and I want to go find out if I've been cheated. I can't find out, can I?

Mr. MILLS. You have to understand the type of accounts that we hold.

Mr. SYNAR. I understand the type of accounts that you hold, Mr. Mills. I've given you an example. I'm Mike Synar and I went into the Tahlequah office and I need some help. I want to know if I've been cheated, or I think I've been cheated, and I want to find out. So I go there. You send me down to this office and then you send me to my file, which may or may not be complete, correct?

Mr. RAGSDALE. Mr. Chairman.

Mr. SYNAR. Yes, Mr. Ragsdale.

Mr. RAGSDALE. Maybe if we cited some cases or some types of transactions. As an individual, if you owned a lease, that you had a lease contract for, you would be generally aware that you had a lease. The lease terms would be available to you. You would expect revenues from that lease, depending upon the nature of the lease. If it was a surface lease, the total responsibility would be the Bureau of Indian Affairs for that particular lease. You would be able to go into the IIM account, or the IIM office, and they should have ledger cards, records, that would indicate the source of revenues that had been put into your account and where that came from.

You would not find a certified audit of your account. The only thing that you would have available to you is the semiannual report that the Bureau of Indian Affairs currently puts out to indicate your account balance and so forth.

Mr. SYNAR. Mr. Ragsdale, isn't it true we don't know?

Mr. RAGSDALE. We don't know—we have never had those individual accounts certified or audited, Mr. Chairman.

Mr. SYNAR. So for those IIM accounts with balances of \$50,000 or more, you've got 535; IIM accounts, you've got \$91 million plus. It could be \$94 million, it could be \$85 million; we don't know, do we?

Mr. RAGSDALE. That's correct, and I don't think that you would have the—I mean, I don't think anyone would disagree that if you could do a full-scale audit of the 298,000 individual accounts, that that should not be done.

Mr. SYNAR. I'm not asking that. I'm asking about the 535.

Mr. RAGSDALE. Well, I think it's the position of the Bureau that they will be able to do and intend to do an audit of those particular accounts, depending upon the level or the value of that particular account, to ascertain whether or not it is accurate.

Mr. SYNAR. Let me come back to you, Dr. Brown.

The IG cited a case where there was a deficiency in earnings in the amount of \$2.4 million that has been known for several years, that had been documented by correspondence with the Treasury Department in September 1987.

Do you find that unconscionable, Dr. Brown? Are you outraged by that, that it's been sitting there for that long? Tell me that. Tell me, as the new captain of this ship, that you're outraged by that.

Dr. EDDIE BROWN. I am outraged.

Mr. SYNAR. I'm glad to hear that.

And what are you going to do to solve that problem?

Dr. EDDIE BROWN. Let's define the problem a little bit. Before we can solve something, we have to understand it. And I'm not sure we understand when we say we've lost that money. Let me call on Linda.

Ms. RICHARDSON. Mr. Chairman—

Mr. SYNAR. No, let me—I gave you all an opportunity to testify. We have testimony here from Roger Jourdain from the Red Lake Band of Chippewa Indians. It's my understanding they've had a CPA on board since May 1982. They can clearly identify—I think it's \$2 million that they're owed. \$2 million.

What are they to do? Tell me what they're going to do. Walk me through their case right here.

Dr. EDDIE BROWN. I'm not familiar with that case—

Mr. SYNAR. Somebody here is.

Dr. EDDIE BROWN. I can't—is anyone familiar? Until I can take a look at that, we can certainly walk you through it.

Mr. SYNAR. Mr. Ragsdale.

Mr. RAGSDALE. The chairman is here, so I might—

Mr. SYNAR. We know that.

Mr. RAGSDALE. The chairman is here and sitting in the back of the room, but I know that the chief of accounting in Albuquerque has spent a good part of his personal time working on that particular account and trying to reconcile that account. If it's the account that I think it is, I think the Bureau recently made a disbursement to the tribe's account after a long and extended period of review.

Now, whether or not that resolves the problem from the tribe's perspective, I can't say.

Mr. SYNAR. What's the policy? Do you all make this policy up on a case-by-case basis?

Mr. RAGSDALE. No. I think that the policy, as far as I know—and I've been in the Bureau for some time—is that if an individual has a complaint about his account, it's the responsibility of the Indian Affairs employees to try to resolve that problem and that issue.

With regard to the total collective number of accounts Bureauwide, that has been an impossible task. When this committee reviewed the oil and gas management and the committee required us to provide extensive detail on 27 or 32-some-odd leases, we had auditors and accountants at our agencies for a period of three or 4 months in order to do that. The problem is that the Bureau of Indian Affairs does not have the resources available.

Mr. SYNAR. How is it that the IG can find it but you all can't?

Mr. RAGSDALE. Well, the IG is good at identifying the problem, but the IG does not do extensive audits. The IG says you have problems, you have violations with your system requirements, now fix them.

Mr. SYNAR. Thirty-one times over 7 years they found the problems, 31 times over 7 years you've been told what the problem is, and yet it hasn't been solved.

Mr. RAGSDALE. Well, the attempt to do the last audit during the last couple of years, the comprehensive audit, the initiative to enter into the trust fund contract and to try to shore up an antiquated accounting system Bureauwide was an attempt to try to address the problem for the first time in a substantive manner.

Mr. SYNAR. So you do agree with me, Mr. Ragsdale, that an audit and reconciliation is the correct starting point?

Mr. RAGSDALE. I agree. Now, what resources would be required to do every account is a management problem.

Mr. SYNAR. If you agree with me, then why have you all resisted it for 4 years?

Mr. RAGSDALE. We haven't resisted it for 4 years, Mr. Congressman.

Mr. SYNAR. All right. Let's move on here.

Is it the practice, Dr. Brown, in the trust industry to bundle investment advice, computer applications, computer hardware, account servicing, and administration into one contract?

Mr. MILLS. No, that's not the way we do business.

Mr. SYNAR. Fine. Did you consider contracting specifically for investment advice from investment specialists and account processing from other specialists?

Mr. MILLS. Are you talking about under this particular contract?

Mr. SYNAR. Yes. Did you consider that, since it's not the standard in the industry?

Mr. MILLS. No. I think this particular contract was spelled out for those particular areas we wanted to contract for. Now, whether that's going to change in the future, I can't answer that right now.

Mr. SYNAR. You know, you just said it's not the practice of the trust industry to bundle these three or four things together. Yet, you did in this contract.

Mr. MILLS. Well, I was going on the basis—you mentioned ADP service in there and that's—

Mr. SYNAR. But also investment advice, computer applications, computer hardware, account servicing, and administration. That's all in one contract, is it not?

Mr. MILLS. It's in one contract, but—

Mr. SYNAR. That's not the standard in the trust industry, is it?

Mr. MILLS. I don't know. We're the only ones in the trust business like we are here, in the Government.

Mr. SYNAR. If you want to break the contract into various components, Mr. Mills, dealing with various aspects of the responsibilities that you have as trustee, what kind of difficulties would you have? Is it harder to do it that way than in one complete package, as you've chosen?

Mr. MILLS. I can't answer that right now. I feel like that's one of the items we're going to be looking at, whether this thing needs to be changed or modified in some respect.

Mr. SYNAR. Would you be able to do this with investment and cash management?

Mr. MILLS. There are entities out there where you can contract only for investment management services.

Mr. SYNAR. Do you consider the BIA's expertise in these areas sufficient, Mr. Mills, to be able to effectively document the performance of the agent under the contract in order to cancel or to continue the contract?

Mr. MILLS. I think the Bureau of Indian Affairs has done an excellent job as far as the investment goes. I think when it comes to our resources to continue that on a long-term basis in the future, it's probably questionable.

Mr. SYNAR. Based upon what you have heard here this morning, and how the contractor is being given all this money for nonperformance, do you want to stick to that point?

Mr. MILLS. You mean as far as staying with the Bureau of Indian Affairs?

[Laughter.]

Mr. SYNAR. No. I'm asking you if you think the BIA has sufficient expertise to administer this contract and make a decision on whether to continue or cancel it? Because right now, from the history we've built just in this hearing, the contractor could do about anything and still get their money.

Mr. MILLS. If you're saying the Bureau has the expertise to manage a contract, I would say yes, we do.

Mr. SYNAR. Is this history we've heard here in the last two hours an example of that?

Mr. MILLS. Like Dr. Brown has stated, I think we're going through a new area here and we have to take it as each problem arises.

Mr. SYNAR. Mr. Mills, does BIA currently place trust funds in overnight status with the Treasury Department?

Mr. MILLS. Yes, we currently do now.

Mr. SYNAR. And who gets the interest off those overnight deposits?

Mr. MILLS. That interest goes to the recipient of those funds.

Mr. SYNAR. So it goes to the trust fund?

Mr. MILLS. Right.

Mr. SYNAR. If those assets are transferred to Security Pacific and they put the trust fund moneys in overnight status, does your contract require that the interest earned from those transactions be credited back to the trust fund?

Mr. MILLS. I'm not that familiar with the contract.

Ms. ARLENE BROWN. Yes, indeed. That's one of the benefits.

Mr. SYNAR. Would you like to point that out in the contract, where that is?

Ms. ARLENE BROWN. There is a provision in there, under investment services—I can't cite the exact section; it's (c) something. But under investment services, they are required to establish a STIF fund, a short-term investment fund, for the purpose of overnight and weekend balances.

Mr. SYNAR. I've got to tell you, the Federal Reserve couldn't find that in the contract. We think it's silent with respect to that. But we'll leave the record open and see if you can provide that for us.

Are you all familiar with the term "sweeping cash?"

Ms. ARLENE BROWN. Yes.

Mr. SYNAR. As I understand it, this is a common banking practice which involves sweeping all uninvested cash on hand and investing it on a very short term basis, the point being the funds can then be earning interest rather than simply sitting around idly. That's basically it, correct?

Ms. ARLENE BROWN. That's correct.

Mr. SYNAR. Now, if Security Pacific or another bank had the trust fund assets, not all those assets would be invested at all times. There would always be some cash coming in and out of the trust account, correct?

Ms. ARLENE BROWN. For moments in time, yes.

Mr. SYNAR. Will Security Pacific be sweeping that cash in order to earn interest?

Ms. ARLENE BROWN. We have a proposal, which is a sweeping cash vehicle, for review. They have sent it in to us, called their Government agency money market account. We just received that request for the use of that instrument and whether it's authorized under 25 USC 162(a). Our Solicitor's Office is now reviewing that.

Mr. SYNAR. The contract was silent with respect to this, was it not?

Ms. ARLENE BROWN. That particular investment, yes.

Mr. SYNAR. Now, who will be receiving the interest earned on that swept cash? Will it be credited to the trust fund or will the extra earnings be a bonus to Security Pacific?

Ms. ARLENE BROWN. It would have to be the trust fund beneficiary account holder. It cannot self deal under this contract.

Mr. SYNAR. But you point out again that the contract is silent on that, isn't it?

Ms. ARLENE BROWN. No. On the STIF fund it has that specific provision, which requires the contractor to make use—

Mr. SYNAR. Will you provide that for the record, too?

Ms. ARLENE BROWN. Yes, I will.

[The information follows:]

With respect to the STIF fund, the BIA Financial Trust Services contract with Security Pacific National Bank under Section C.4.2. *Investment Services*, (Page C-22 of the RFP), states that "The contractor must provide a short-term investment fund (STIF) that meets the BIA's requirements for investment of overnight and weekend cash balances."

Mr. SYNAR. Dr. Brown or Mr. Mills, did the BIA explore all of this before you began negotiations with Security Pacific, or did the BIA just make this a point to be discussed with Security Pacific after the fact?

Mr. MILLS. I'm going to have to refer that to, I guess, Arlene.

Ms. ARLENE BROWN. Which particular point?

Mr. SYNAR. The sweeping.

Ms. ARLENE BROWN. The sweeping.

Mr. SYNAR. Yes.

Ms. ARLENE BROWN. That was not part of the original negotiation discussions.

Mr. SYNAR. Will you provide that for the record, then, on what has happened?

Ms. ARLENE BROWN. Our request to the Solicitor?

Mr. SYNAR. Yes.

Ms. ARLENE BROWN. On that particular instrument?

Mr. SYNAR. Yes.

Ms. ARLENE BROWN. Sure.

[The information follows:]



IN APPLY REFER TO

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

13 1989

Memorandum

To: Associate Solicitor, Indian Affairs

From: Deputy to the Assistant Secretary - Indian Affairs
(Operations)

Subject: Eligibility of Repurchase Agreements and Government Agency Money Market Account (GAMMA) under 25 U.S.C. 162a

The Bureau of Indian Affairs has received a request from the Security Pacific National Bank for authorization to invest in repurchase agreements and a Government Agency Money Market Account (GAMMA). We have attached the Bank's request of September 14, 1989, submitted under Section C.2.4 of the BIA Financial Trust Services Contract No. CMK00126689. This section provides that "The contractor may request authorization to invest in securities not presently listed and must obtain approval from the Bureau that such securities are eligible under 25 U.S.C. 162(a)."

Repurchase Agreements

While repurchase agreements are specifically precluded under the contract based on an interpretation that they are not classified as "deposits" within the authority of 25 U.S.C. 162a, the contractor provides supporting information that would instead classify repurchase agreements under the "securities" definition of 25 U.S.C. 162a. In light of this new information, your opinion is requested as to whether the Bureau and any third party contractor may be authorized to use repurchase agreements under the trust fund statute.

GAMMA

The GAMMA is an interest-bearing demand deposit account--a unique instrument offered only by the Security Pacific Bank to service an individual government agency client such as BIA, which is fully collateralized pursuant to Treasury Circular 176 and covered by FDIC insurance up to \$100,000. Any trust funds invested in a BIA GAMMA account would not be commingled with any other contractor-client funds.

Please advise us as to whether such instruments are eligible securities for investment within the authority of the Act of June 24, 1938. 52 Stat. 1037. 25 U.S.C. 162a.

Patrick A. Hayes

Attachment

Mr. SYNAR. Dr. Brown, I wonder if you could tell me if the BIA has given consideration to the ultimate privatization of any of the trust fund accounts in the future?

Dr. EDDIE BROWN. Explain to me "privatization."

Mr. SYNAR. In other words, has the BIA considered taking some of these individual accounts, such as tribal accounts, and privatizing them?

Dr. EDDIE BROWN. I have not. In the time that I've been there, that has not been a discussion.

Mr. SYNAR. You do agree that to privatize any of the individual accounts, it will require substantial changes in existing law, do you not?

Dr. EDDIE BROWN. Yeah.

Before—I'm still not clear on privatization.

Mr. SYNAR. You've got 254-plus tribes, you've got 300,000 individual accounts. I'm saying, for those individual accounts, has there been any discussion about privatizing those individual accounts—not the trust fund in general—spinning them off.

Dr. EDDIE BROWN. No. At this time, no.

Mr. SYNAR. And you do agree that, if that is to happen, or was considered, that you would have to have massive changes in existing law? Do you agree?

Dr. EDDIE BROWN. Yes.

Mr. RAGSDALE. Mr. Chairman, one point I would like to make is that tribes have the right, with respect to general revenues, like their oil and gas income, that they can be paid directly and not—

Mr. SYNAR. I agree. We're talking about this.

Mr. RAGSDALE. OK.

Mr. SYNAR. Now, the subcommittee understands that a conference was held on August 31, 1989, between certain BIA and Security Pacific officials to discuss certain investment matters. Could someone explain to me the purpose of that meeting? Miss Brown?

Ms. ARLENE BROWN. I can.

It was actually a multiple-purpose meeting. Both myself and the project manager for Security Pacific Bank had received an invitation from the Native American Finance Officers Association to make a presentation at their annual conference out there. We had also scheduled another meeting in Albuquerque for the investment team meeting, so we decided to piggyback that on to the Las Vegas effort. They had also requested that we have an investment panel available, so it coincided nicely.

Mr. SYNAR. It sure did, didn't it.

Where was that conference held?

Ms. ARLENE BROWN. The Showboat, the Showboat Hotel.

Mr. SYNAR. At Las Vegas, correct? All right.

So you just—

Ms. ARLENE BROWN. It's not within my district.

Mr. SYNAR. It was nice to have a half a day of per diem in Vegas, wasn't it?

Ms. ARLENE BROWN. I don't know. We worked for 6 hours.

Mr. SYNAR. I hear you.

How much did it cost, let me ask you that, for the Bureau to travel out there to attend that conference?

Ms. ARLENE BROWN. I provided the exact dollar amount. But it's about—for two BIA travel people, myself and our investment officer. It was a little over \$700.

Mr. SYNAR. Who paid the cost for the four Security Pacific personnel?

Ms. ARLENE BROWN. That's under their support services at \$50,000 a month, where they support team meetings, cash planning conference support—

Mr. SYNAR. We paid for the meeting in Vegas, correct?

Ms. ARLENE BROWN. If you're talking that it's absorbed under the \$50,000.

Mr. SYNAR. The taxpayers paid for it, correct? Absorbed. The taxpayer paid for it, correct? [No response.]

Now, would you please refer to the section of the contract with Security Pacific which would support the contention that these costs could properly be charged to support service?

Ms. ARLENE BROWN. As far as the support services, that's basically administrative expenses for all the team meetings that have been going on, whether they're in Albuquerque, Washington, DC, or Los Angeles.

Mr. SYNAR. Let me tell you what I think. Our information says that Mike Barrett, Ed Mraz, Clark Gates, and Joel Swanson all represented Security Pacific.

Ms. ARLENE BROWN. That's correct.

Mr. SYNAR. And they come to Las Vegas, you come to Las Vegas, when we could have saved all that cost if you would have gone to San Diego, is that correct?

Ms. ARLENE BROWN. The original meeting had been scheduled for Albuquerque, so the difference in 2-hour travel was all the same. It was a wash.

Mr. SYNAR. Is that included in the \$50,000 per month that they get for 6 months?

Ms. ARLENE BROWN. That's what they have to absorb, any costs, that we ask them to do to carry on the implementation schedules.

Mr. SYNAR. So the way they earned their \$50,000, since they haven't performed, is to travel to Las Vegas, correct?

Ms. ARLENE BROWN. Well, that's only one instance. All the travel has been 90 percent in Albuquerque at our offices there.

Mr. SYNAR. All right.

This brings us to the close of this hearing. I think there are five things, Dr. Brown, I want to talk to you about that is needed at the BIA: Leadership, accountability, management, oversight and control, improved training and support, and finally, meaningful and fruitful communication with tribal representatives and leaders and the Congress.

Now, you have said you just arrived, and we'll give you that. But I have to remind you, you volunteered for the job. If you are surprised by today's events, then I have to tell you, you're in for a very unhappy tenure as Assistant Secretary for Indian Affairs.

I am here to deliver to you one message today, and that message is that the Bureau has got to clean this mess up, and I mean starting today, period. The Indian Trust Fund needs and deserves radical—and I want to underline that—radical changes in management, supervision and leadership. The Indian Trust Fund needs

and deserves independent supervision and reliable and responsible financial management.

Very frankly—and let everyone from BIA hear this—this is the last time I want to hear anyone at the BIA offer the excuse that the mismanagement and incompetent supervision that has been documented here is because you weren't there so you're not in charge, because that answer is no longer acceptable.

Now, I think there are thousands of dedicated, capable, and honest employees at BIA. I know a lot of them and I am very dear friends with some of them. But those people deserve leadership. They deserve support. They deserve accountability.

There are hundreds of thousands of Native Americans who look to the BIA for help. They look to it for understanding. They look to it for cooperation. They deserve that leadership. They deserve that support. They deserve that accountability. And when there are shortages in the trust fund and when there is mismanagement of that trust fund, we are stealing money from these Native Americans.

I want to challenge everyone in this room with the BIA to become good and faithful servants of the Native Americans. They deserve it.

I have one question and one question only: That I have your commitment, your promise, that we are not going to move 1 penny until these accounts are audited and reconciled, is that your promise to me today?

Dr. EDDIE BROWN. My promise to you today is that we will abide by the language that's in the appropriation and that we will move forward in working with the committee.

Mr. SYNAR. That is not what I asked you, because you're interpretation of that language is not the same as ours. I'm asking you again, do you promise me that you will not move 1 penny of money until those accounts are reconciled and audited?

Dr. EDDIE BROWN. I think the language—and it's important that I be here, because I'm not going to give you my word on something I'm unclear about. I will give you my word on exactly what we agree on here today. The language leaves, appears to leave, some negotiation on how we can legitimately go about, in a realistic manner, and reconcile those accounts. We intend to propose a draft, to sit down with the committee and work out an agreement on how we can do that. Yes, I am committed to do that and I am committed to carry out that and to ensure that it happens.

Mr. SYNAR. Well, that's disappointing, Dr. Brown, because I'm going to tell you, speaking on behalf of myself and Mr. Yates and four Congresses, it is our clear intention—and let the record show—it is our clear intention that these accounts will be audited and reconciled before there is any movement or transfer. If you interpret that any other way, or if your lawyers or your personnel do, you're interpreting it wrong.

Dr. EDDIE BROWN. If that is the case in meeting with the committee, sir, then I will absolutely carry that out. Let there be no question about it.

Mr. SYNAR. All right. Thank you very much. This subcommittee is adjourned.

Dr. EDDIE BROWN. Mr. Chairman, before we adjourn, I do have one request. As to some of the tribal representatives, it was mentioned that we would request the committee keep the record open for 2 weeks to allow for tribes to submit comments.

Mr. SYNAR. We will have unanimous consent that the record will be kept open as well for questions from members who were unable to be present.

[Whereupon, at 1:50 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

MATERIAL SUBMITTED FOR THE RECORD



SECURITY PACIFIC NATIONAL BANK

GOVERNMENT SERVICES DIVISION

901 15TH STREET NORTHWEST, SUITE 320, WASHINGTON, DISTRICT OF COLUMBIA 20005

TELEPHONE (202) 682-0350 • FACSIMILE NUMBER (202) 682-0349

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November 7, 1989

Ms. Sandra Harris
Staff Director
Environment, Energy, and Natural Resources
Subcommittee of the
Committee on Government Operations
U.S. House of Representatives
Rayburn HOB, Room B-371-B-C
Washington, D. C. 20515

Dear Ms. Harris:

To further assist the subcommittee in its important oversight responsibilities relative to the management of Indian trust funds by the Bureau of Indian Affairs (BIA) and the contract between the BIA and Security Pacific National Bank (SPNB), I want to provide the information set forth below for the hearing record:

The following specific subjects are addressed herein:

1. Performance of SPNB pursuant to the contract.
2. Performance of Computer Data Systems, Inc. (CDSI), subcontractor to SPNB, relative to government-contracted automated financial accounting systems.
3. Overnight interest earnings credited to trust funds.
4. Benefits of the Financial Trust Services contract.

Performance of SPNB pursuant to the contract.

Allegations have been made of payments to SPNB for non-performance. In the best of circumstances, these allegations can be characterized as unfair -- a "Catch 22" situation.

Of course SPNB can not perform all services contracted for until the trust fund assets are transferred to SPNB, which cannot occur until Congress authorizes the transfer. These services comprise over 80% of the contract revenues, and SPNB is not receiving

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payment and cannot receive payment for these services until the trust fund assets are transferred. It is patently unfair to describe SPNB as non-performing for services which we are precluded from implementing by legislation.

The contract contains a monthly fixed fee component for support services which amounts to less than 20% of estimated contract revenues. These support services have been provided, or if delayed, subject to on-going revisions to meet BIA changes.

Pursuant to the fixed fee component, SPNB and its subcontractor have completed the following tasks and deliverables:

- o Developed and provided presentation materials, and participated with BIA in five regional Tribal orientation meetings devoted to each major service area of the contract. At each session, Tribal input was sought and given, resulting in the portfolio structure developed for the program.
- o Investment strategy and operational guidelines for structuring and managing the portfolios. Approved by the BIA solicitor.
- o Securities conversion plan submitted and approved. Draft instructions to BIA financial institutions relative to conversion submitted.
- o Securities custodial automated reporting and communications system (Customer Communications System -- CCS) installed in BIA Branch of Investments, Albuquerque, and training initiated.
- o Direct lines installed in BIA Branch of Investments, Albuquerque, to support customized version of Shaw Portfolio Management system linkage between Albuquerque and San Diego, CA., (location of investment advisor). This will enable BIA to monitor performance of the various portfolios.
- o Collection and concentration system developed and tested to support BIA collections in-lieu of BIA using the U.S. Treasury Lockbox Network pursuant to the RFP.
- o Disbursement system (SPNB's proprietary Payment Network) modified, programmed and tested. Check formats approved,

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including voucher which will contain reason for payment information to recipient, BIA logo and signature digitized, and all locations set up.

- o Securities accounting system design and specifications delivered.
- o Final Trust Fund Management System Design Document delivered.
- o Continuing modification and customization of the Trust Fund Management System software to BIA specification revisions.
- o Created, developed and produced materials for all modules of BIA-sponsored Tribal Cash Planning conference, April, 1989. Presented materials to Tribal cash managers in a seminar environment, and met individually with Tribes in conjunction with BIA to assist in planning for allocation of Tribal trust assets to portfolios.
- o Delivered first quarterly newsletter called "Tribal Trust" for mailing by the BIA.
- o Delivered draft user manual (subject to revision as additional revisions to system by BIA take place).

We are in the final steps of delivering the accounting system for acceptance by the BIA, and are simply awaiting reporting requirements to be defined by the BIA. These final steps are, of course, the steps in which all of the modules of the system "tie together" and the optimal way for the information to be displayed to the user in report formats meeting the user requirements is accomplished.

In summary, we have worked long and hard to get to this point in building for the BIA what is in essence a banking institution, with assets of almost \$2 Billion under management, from which approximately 300,000 accountholders will receive both safety of money and a high rate of return, with monthly statements which accurately display balances and transactions on the accounts, and account accessibility from a network of over 100 BIA offices. We are proud of what we have accomplished and delivered thus far, and are highly confident in our abilities to provide the services which will ultimately flow to the true beneficiaries of the program -- American Indians and Tribes who have

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entrusted their assets to the BIA.

Performance of Computer Data Systems, Inc., (CDSI), subcontractor to SPNB, relative to government-contracted automated financial accounting systems.

In developing our proposal to the BIA for the Financial Trust Services contract, we recognized that the BIA's needs are not like any other Trust Fund, and require unique approaches and solutions from an accounting system beyond a mere participant accounting system which might be procured "off-the-shelf". In teaming with CDSI to provide the services required by the BIA, SPNB combined its strengths -- superior investment advisory services, securities processing and custodial services, cash concentration and disbursement services -- with CDSI's strengths -- comprehensive accounting systems, data processing resources and government agency support experience of over 20 years.

CDSI's Financial System Division, which is supporting this contract, is in compliance with the requirements of all of its contracts. The following is a list of government agencies, contract descriptions, and a contact point for each for the subcommittee:

<u>Agency</u>	<u>Description</u>	<u>Contact</u>
US Dept. of HUD	Title I Defaulted Loan Program - Nationwide Collection Servicing Contract	Mr. Chris Peterson 202-755-5646
US Dept. of HUD	Section 312 Loan Program Cash Management System	Mr. Walt Johnson 202-755-0367
US Dept. of Justice	U.S. Trustees Bankruptcy Fee Collection Servicing	Ms. Mary Nugent 202-724-7290
US Dept. of Labor	Federal Employee Compensation Program - Collection Servicing	Mr. Ken Siglin 202-523-8463
US Dept. of Commerce	Financial & Administrative System	Ms. Linda Arter 202-377-1126
Public Health Svc.	Admin. Accounting and Debt. Collection System	Mr. Lloyd Fagg 301-443-2990

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US Treasury, Bureau of Public Debt	Financial Management System	Mr. Ed Herzig 202-376-4240
Higher Education Services Corp. (NY)	Student Loan Servicing Software Installation	Mr. J. DiPietro 518-473-0831
Interstate Conf. of Employment Security Agencies	Twenty-four State Installations of FARS for Unemployment Agencies	Mr. Doug Gough 206-586-8855

All of the above-referenced clients are operational using CDSI's proprietary financial systems.

Overnight interest earnings.

It was mentioned in the oversight hearings that the contract does not preclude SPNB from taking interest from overnight investments for its own use. First, the RFP (which is part of the contract) prohibits any contractor from self-dealing. This means that we, as a primary dealer in U.S. Government securities, are prohibited from buying securities from our inventory.

One of the distinguishing elements of our proposal is that through the use of Pacific Century Advisors as investment advisor and the wholly separate Security Pacific State Trust Co. (SPSTC) as custodian, this prohibition is absolutely guaranteed. Pacific Century Advisor's charter precludes it from buying SPNB inventory ensuring that it will obtain the best prices for investment instruments from only the largest institutional brokerage firms.

The investment process under the contract imposes strict separation of duties, an element missing from the current structure in BIA; i.e., investment transactions are settled by Security Pacific State Trust Co. acting on behalf of the BIA as Trustee. As directed by the BIA, Pacific Century Advisors is responsible for the performance of the portfolios; i.e., ensuring that the best available mix of securities are maintained within the various portfolios with attention to yield, safety and liquidity maintenance. Security Pacific State Trust Co. receives and delivers securities bought and sold, values the securities in the portfolios, maintains the income accruals, accounts for every security in a portfolio, collects the income (including overnight investment income) and accounts for the income, and establishes the market value of each portfolio. Each day,

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Security Pacific State Trust Co. reports the net cash position of each portfolio -- cash available for investment and/or cash demands on the each portfolio -- and Pacific Century Advisors, with the concurrence and oversight of BIA, performs the trading necessary for the portfolios, with Security Pacific State Trust Co. settling the trades. Security Pacific State Trust Co. maintains the portfolio accounts for the Trustee, the BIA. A full audit trail is produced for all activity within the portfolios, with end-of-day reconciliements performed so that trading may resume the following day. In addition, Pacific Century Advisors maintains its own portfolio management system, and ensures that it reconciles daily to the reconciliation reports provided by Security Pacific State Trust Co. Both systems are available to the BIA through terminals connected separately to both Pacific Century Advisors and Security Pacific State Trust Co.

Finally, SPNB is compensated with appropriated money from the U.S. Government. All of the earnings produced by the portfolios comprising the trust funds belong to the beneficiaries of the trust funds, whether the earnings are derived from long-term, intermediate-term, short-term, or overnight investments. One of the most important benefits of the contract is that each transaction related to the trust funds, whether originated by a BIA employee or employee of an SPNB-related company, requires a financial transaction producing an immediately identifiable auditable item, traceable to the transaction originator.

Benefits of the Financial Trust Services contract.

The Financial Trust Services contract will produce both direct and ancillary benefits to both Tribal and individual participants in the Trust Funds. We will discuss the direct benefits first, contrasting the current operations with contracted operations.

Investment Services:

- o Current: BIA Investments Branch invests assets primarily in Certificates of Deposit in thrift institutions, many of which will be subject to RTC repudiation of interest rates. Excess cash is held at the U.S. Treasury earning interest, but receiving the interest earnings from Treasury has been problematical. The Tribes have whole or fractional interest in specific CD's or securities, creating liquidity problems when a Tribe needs access to funds prior to

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maturity.

Contract: Beneficiaries receive the benefit of professional services from one of the nation's top-ranked investment advisory firms at no cost. Rather than whole or fractional ownership in specific investment instruments, Tribes will be able to execute an investment strategy based on cash flow requirements by participating in three portfolios -- short, intermediate, and long-term portfolios managed in a mutual-fund style. The CD emphasis will be replaced by an emphasis on government securities, with sufficient liquidity to meet Tribal demands maintained through a laddering of maturities strategy. Performance of the investment advisor will be monitored by the BIA by measuring performance against industry indices.

- o **Current:** No separation of duties from executing investments, accounting for investments, collecting income, protecting investment documents (BIA-held CD's and notes lack vault protection).

Contract: Strict separation of duties are enforced. As directed by the BIA, the investment advisor is responsible for maintaining the portfolios with attention to yield performance and liquidity, for anticipating and responding to market conditions. Security Pacific State Trust Co., the custodian, is responsible for settlement of trades, collecting income, maintenance of each security within each portfolio, portfolio accounting, determining earnings accruals, premium and discount amortization, marking the value of the portfolios to market, and safekeeping the assets. The investment advisor reconciles its records to the reports issued by the custodian. Security Pacific State Trust Co. provides custodial services to a broad range of both public and private institutions who have entrusted the care of over \$150 Billion in assets to the company.

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- o Current: No quarterly newsletter on Tribal trust fund activities.
- Contract: Quarterly newsletter prepared by SPNB with participation and oversight of BIA to discuss trust fund portfolio performance and strategies, market conditions, economic data and forecasts directed to Tribal financial managers. The first issue of "Tribal Trust" was issued in October, 1989.
- o Current: Availability of funds to a Tribe is dependent upon the maturity schedule of a specific investment instrument. If a Tribe guesses the wrong way on cash flow needs, its funds are tied up.
- Contract: Funds are available to Tribes same day upon demand from the Short-Term Portfolio; up to a ceiling of \$1 million per month per Tribe is available from the Intermediate-Term portfolio upon demand; funds are available up to a cap of \$100,000 per month per Tribe upon demand from the Long-Term Portfolio.
- o Current: Funds are not fully-invested to participants' benefit.
- Contract: Funds are fully invested and earning from the day of receipt by SPNB through the clearing date of a disbursement check.

Cash Collection and Concentration.

- o Current: Collections received by agency offices for Trust participants are receipted for, a collection document prepared, and mailed to the respective area office for deposit into a Treasury General Account (TGA) at a local depository. The day after the deposit, the local depository is debited by a concentrator bank and the funds are transferred by the concentrator bank to the BIA account in Treasury's Main Account at the Federal Reserve Bank of New York (FRBNY). FRBNY notifies BIA of funds available for investment.

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Contract: Collections items are detailed on an SPNB deposit slip with a unique agency office identifier, and forwarded by the agency directly to SPNB for deposit into the Trust funds.

Disbursements to Participants.

o Current: Disbursement requests routed to the U.S. Treasury can take two weeks for checks to be issued, and recipients stop earning on the amount when the disbursement request is entered.

Contract: Emergency wire transfers are available same day, checks are issued and mailed within 24 hours of receipt of disbursement request, and ACH credits are processed same day received. Recipients continue to earn interest on checks until they clear the banking system.

Monthly Statements.

o Current: Aside from MoneyMax reports from Branch of Investments to Tribes, non-existent.

Contract: Detailed Monthly Tribal financial statements displaying balances in each portfolio, earnings and market value of portfolios, and all transactions relative to Tribal accounts. In addition, Tribes may contract separately to have access via dial-up terminal directly to Trust Fund Management System to view status of accounts. Individuals will receive bank-style monthly statements detailing balance, earnings and transactions on their account.

Accounting System.

o Current: "Inadequate" per "Audit Findings as Stated in Report of Independent Public Accountant."

Contract: A secure, double-entry financial reporting and accounting system -- a transaction based system with integrated account balance and document balance files. Access to the system requires an authorized user ID, and each entry requires

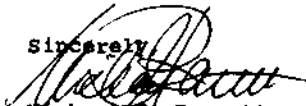
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a financial transaction, which creates and preserves a complete audit trail identifying the individual, location, time and date, and transaction. Any change to a financial balance requires a double entry, self-balancing accounting entry to be recorded. Account balances for each account on the system are reconciled daily, and reconciled further to the portfolio balances of each portfolio as provided by the custodian. Cash activity is reconciled daily. Daily earnings accrual, monthly comprehensive financial statements for all Tribes and participants. Comprehensive security control, and enforced separation of duties.

In our meetings with Tribal financial officials, we have noted a wide divergence of financial sophistication among Tribal financial managers. The larger, more financially-sophisticated Tribes employ investment advisors and look to this contract to enhance performance in trust assets. Smaller Tribal governments with limited resources view this contract as an opportunity to begin cash management planning, learning about financial markets and how portfolios function, and how to measure the performance of an investment advisor -- the first step to learning how to pool cash resources, select an investment advisor, and manage their most important economic asset, cash. We view our role and this contract as a "lynchpin" in this process toward Tribal self-determination.

We thank the committee for allowing us to submit the information herein for the oversight hearing record, and hope that this information is helpful.

Sincerely,



Michael J. Barrett
First Vice President



THE TULALIP TRIBES

Board of Directors:

Stanley G. Jones, Sr. Chairman
 Bernard W. Gobin, Vice Chairman
 Herman A. Williams, Sr. Treasurer
 Debra L. Posey, Secretary
 Dawn E. Simpson, Board Member
 Stan Jones, Jr. Board Member
 Herman A. Williams, Jr. Board Member
 Clarence H. Hatch, Executive Director

6706 TOYEM BEACH ROAD
 MARYSVILLE, WA 98270
 883-6885
 FAX 883-8286

The Tulalip Tribes are the successors
 in interest to the Snohomish,
 Snoqualmie and Skykomish tribes
 and other tribes and bands signatory to
 the Treaty of Point Elliott

NOV 13 1989

NOVEMBER 13, 1989

The Honorable Mike Synar
 Chairman,
 Environment, Energy and Natural
 Resources Subcommittee of the
 Committee on Government Operation
 House of Representatives
 Rayburn House Office Building, Room B-371-B-C
 Washington, D.C. 20515

RE: INDIAN TRUST FUND

Dear Chairman Synar:

On behalf of the Tulalip Tribes and the Board of Directors I would like to thank you and the Subcommittee for conducting the hearings into the management and contracting of the Indian Trust Funds. We believe that this is an area that has been overlooked for many years and urgently needs attention to prevent further losses to the Nation's First People.

As per the Subcommittee's decision, the following attached material is submitted for your review and the record. This attached material includes Tribal memorandums, BIA reports and information from other Tribes. We believe that this information on the original Mellon transaction and Tribal objections is important for establishing the record that Tribes were concerned about the Bureau's approach and that many of our concerns were in fact not addressed in the Security Pacific contract.

With regard to recommendations to the Subcommittee, we believe that you should consider the following:

31-919

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MIKE SYNAR LETTER
PAGE TWO (2)

1. Determining whether or not the Security Pacific and Arthur Anderson contracts complied with all Federal procurement statutes and regulations, including the P.L. 95-507, and the Buy Indian Act. If the procurement statutes were violated, both contracts should be declared null and void.
2. Recommending to Congress that the IIM accounts management and record keeping procedures should be separated out from the other BIA Trust Accounts. We believe that there is good rationale for treating the IIM accounts like a nation wide mutual fund, where policies, procedures experience and industry standards are already established.
3. The Subcommittee in its deliberations should review the information and testimony submitted to the Senate Special Investigative Committee. It is our understanding that a considerable amount of information was provided to the Committee concerning money management.
4. The Subcommittee should examine the process of how the BIA eliminated over a hundred financial institutions and businesses which resulted in only two banks submitting bids on the management of the trust funds.
5. The Subcommittee should consider recommending a Tribal option to initiate their own audit of the BIA records under a 638 contract. Thus the Tribes would have the advantage of having their own records and comparing them to the BIA to determine their true losses.
6. The BIA should submit quarterly progress report to the Subcommittee on all outstanding claims and questions that are raised by individuals and tribes.
7. With regard to IIM funds, the Subcommittee should determine whether or not the BIA maintained a practice of charging expenses against these accounts, without first notifying all interested parties.
8. If Congress decides to amend to 25 U.S.C. 162(a), the funds should still be kept in "trust" for individual Indians and Tribes. We believe that this may mean the creation of a custodial trust relationships between the Tribes, BIA and money managers. We believe this was accomplished with the Cheyenne trust funds with Bear Stearns.

MIKE SYNAR LETTER
PAGE THREE (3)

9. Congress should replace the funds lost by the Tribes and individual Indians. We believe that the most economical solution would be to just double the amount in each account in exchange for the dropping of all potential claims. If this does not occur, and, the problem turns out to be much bigger than it was first diagnosed, the Federal government will probably be found liable in thousands of law suits with judgments, attorneys fees, and court costs.
10. The Subcommittee should ask tribes if they would prefer regionalizing the management of the tribal trust funds. If this did occur, the tribes would work the BIA to select the money manager and leverage our economic positions.

We believe that these suggestions may just be the tip of the iceberg of suggestions and complaints that you could receive from tribes. Accordingly, we urge that the Subcommittee should hold ten regional meetings with the Tribes and IIM account holders.

Should you have any questions, please feel free to contact our Staff Attorney, Douglas W. Luna, for immediate assistance.

Thank you again for providing us the opportunity to provide testimony to your Subcommittee.

Sincerely,

THE TULALIP TRIBES


Delores J. Gobin
Financial Manager

DJG/am



10,621,175.1
Funds

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

February 17, 1987

Honorable Edward Thomas
President
Tlingit & Haida Central Council
320 W. Willoughby, Suite 300
Juneau, Alaska 99801

cc: Education Council
cc: Finance Council

Dear President Thomas:

The U.S. Department of Treasury, on behalf of the Bureau of Indian Affairs (BIA), selected the Mellon Bank of Pittsburgh last October from a competition with other financial institutions to provide trust fund services for the BIA's 1.7 billion dollar trust fund. Since that time, the BIA, Treasury and Mellon Bank have been preparing a contract that we believe strengthens the depository, accounting and investment side of the trust fund's management. That contract should be signed soon.

Although reports on the need for improvements in trust fund management have been public knowledge since 1982, many questions about this latest move have been raised by tribal leaders, individual Indian account holders and BIA employees. The enclosed was prepared to answer many of the most commonly asked questions. I will be carrying it along with me in the coming weeks and months to hand out as I travel to each area office to meet with tribes and BIA employees about the trust fund changes.

As I have indicated in the enclosed, your questions and comments are welcome. I look forward to working with you on this and other issues.

Sincerely,

Ross O. Swimmer
Assistant Secretary - Indian Affairs

Enclosure

ROSS O. SWIMMER
MARCH 16, 1987
PAGE TWO OF TWO

Development of a well-defined consultation process is long overdue. Once again, however, it appears that your office intends to leave tribes out of the initial phases of the process by developing and publishing a consultation plan without consulting with tribes in advance. Meetings with tribal leadership to inform them of what is being contemplated and to answer their questions and receive their suggestions should be conducted before developing and publishing the plan.

We would very much like to know if you are willing to utilize this approach. We stand ready to participate fully in these matters, but only if our participation can be meaningful. If you continue to withhold information from us that we need to understand your initiatives and are not interested in our concerns and suggestions, we will direct our efforts elsewhere.

Please provide us with a prompt written response to the concerns we have raised in this letter.

Sincerely,



ZANE JACKSON
CHAIRMAN
TRIBAL COUNCIL

cc: Donald P. Hodel, Secretary of Interior
Senator Daniel K. Inouye
Senator Mark O. Hatfield
Senator Bob Packwood
Senator Daniel J. Evans
Senator Bill Bradley
Representative Robert F. Smith
Representative Les AuCoin
Representative Peter A. DeFazio
Representative Sidney R. Yates
Representative Morris K. Udall
Representative Norman D. Dicks
Chairmen, Tribes in Portland Area
National Congress of American Indians (N.C.A.I.)
Stanley Speaks, Portland Area Director
Bernard Topash, Warm Springs Superintendent



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C.

FEB 10 1986

The Bureau of Indian Affairs

Contract for Trust Fund Services Answers to Your Questions

The U.S. Department of Treasury, at the request of the Bureau of Indian Affairs (BIA), issued last year a request to its depository banks for proposals to provide financial trust services for the BIA. From this competition, on October 6, 1986, Treasury selected the Mellon Bank of Pittsburgh. This selection was the first step in a new effort to strengthen management and administration of the BIA's \$1.7 billion trust fund. BIA, Treasury and Mellon Bank will enter into an agreement for depository, accounting and investment services. The BIA will retain oversight and authority over the trust fund.

Many questions about the agreement have been raised by those most affected -- tribal leaders and members, bank officials and BIA employees. In response to these inquiries, the BIA has prepared this report to answer many of the commonly asked questions. If you have another, please contact your local BIA agency or write BIA headquarters in Washington, D.C. The address is: Bureau of Indian Affairs, Trust Fund Inquiries, Room 4140, 18th & "C" Streets NW, Washington, D.C. 20240.

1. **What will the contract accomplish?**

The contract will provide the Bureau with depository, accounting and investment services.

2. **What benefits will be derived from this contract?**

Many of the benefits from the contract will be in the form of accounting and quicker investment of trust collections. BIA employees will have a direct access to information about collections, deposits, investments and earnings by account on a daily basis, thus enabling them to better serve tribes and individual Indians. BIA will be working with modern depository, accounting and telecommunications systems made available by the contract bank.

Tribes and individual Indians also will benefit from immediate access to account information and improved reporting both in terms of quality and timeliness.

3. Why haven't these improvements been made before?

There have been several evaluations of the Bureau's trust funds management programs over the past several years. However, it took time to develop a request for information to financial institutions and evaluate their responses before it could be determined that improvements could best be made by private sector -- contractor -- help.

Additional time was required to prepare a formal request for proposals (RFP), evaluate the proposals which were received, visit the banks which made the proposals, and determine which would be best prepared to perform this work for the Bureau.

4. Does this mean that Bureau employees have been doing a poor job in managing tribal and Indian funds?

No. Evaluations of the Bureau trust funds management program have pointed out that the Bureau did an excellent job of investing funds and getting a high rate of return. Where the Bureau did not perform well was in the collection, accounting and reporting areas. Furthermore, evaluations pointed out that even greater returns could be realized if some collections were speeded up -- those which weren't being immediately deposited or wired to federal depositories. The faster concentration of collections will enable increased investment returns on trust funds.

5. Why doesn't the Bureau just make these improvements internally using its own employees; why is a contract with a bank necessary?

The private sector has invested many millions of dollars in developing the accounting and record keeping systems that are available to customers like the Bureau. The BIA does not consider it prudent to invest scarce resources to develop systems that already exist. Under the contract, the Bureau will share in the benefits Mellon offers through its existing systems.

6. How long will this contract last?

The contract will be for a three year term with an option to renew for two additional years.

7. What happens if the bank does not perform satisfactorily?

Performance criteria will be specified in the contract. If the criteria is not met, the contract can be terminated, just as with any other contract.

8. But if the Bureau is no longer performing certain functions itself, wouldn't it be very difficult to terminate the relationship?

Under the proposed contract terms, the Bureau will be adequately protected. If termination is necessary, other financial institutions are available to provide services under a successor contract.

9. How long has Mellon been in business? Isn't it just a Pennsylvania bank?

The Mellon Bank was founded in 1869. It is the twelfth largest in the Nation. Its trust department is the third largest in the Nation. It does business in all 50 states.

10. How much will the contract cost?

Contemplated costs total approximately \$4 million the first full year of operations.

11. Where will the funds for this contract come from?

The Bureau's costs are paid from funds appropriated by Congress to the Bureau for financial trust services. The Treasury costs are paid through compensating balances, which are interest-free uses of Treasury cash balances. These are not tribal cash balances.

12. Will tribes and individual Indians have to pay service charges?

Absolutely not. The Bureau and Treasury will pay all costs.

13. What about the Bureau's trust responsibility? Will the Bureau be giving it away to a bank?

No. The bank will only serve as a financial agent for the Bureau -- to assist the Bureau in carrying out its trust responsibilities. We believe the contract will strengthen that responsibility.

14. What protection will be given to tribal and individual Indian funds?

The same protections through statutory requirements would continue to exist. All investments will be made in compliance with guidelines issued by the Assistant Secretary for Indian Affairs. Mellon will submit routine reports showing its performance. Mellon will execute investment transactions as directed by the Bureau in the same kinds of investments currently available. These investments are made in very secure governmental securities

and instruments fully insured by the Federal Savings and Loan Insurance Corporation (FSLIC) or the Federal Deposit Insurance Corporation (FDIC) or by bank collateral.

15. Will Mellon release information about specific accounts to creditors or others?

No, a bank is restricted, by the laws governing banks, from releasing financial data.

16. Will these funds be subject to more taxes?

There will be no change in the liability for taxes as a result of the contract. Those funds subject to taxes now will remain so; those funds not subject to taxes will remain so.

17. Why is Treasury involved?

Treasury is responsible for cash management throughout the Government. Treasury has worked with the Bureau for some time to assist the Bureau in improving its cash management activities and, as a result, earnings have improved. The Bureau is required by law to deposit trust funds into the Treasury accounts established for tribes and individuals. The Bureau also is required by law to use the cash collection mechanisms prescribed by Treasury.

18. How much does the Bureau currently budget for trust funds activities?

In FY 1987, the Bureau estimates it will take 205 man-years and about \$5.7 million to conduct the various trust funds activities: revenue collection and handling; trust funds accounting and investment; and all necessary support services. Additionally, many non-financial program staff devote significant portions of their time to handling and accounting for trust collections due to the lack of modern data systems. The use of the modern Mellon systems will enable non-financial program staff members to return their efforts to program duties.

19. With a contract, wouldn't many employees lose their jobs?

It is unlikely that many employees will be terminated from Bureau employment. First of all, it will require nearly two years to implement the contract nationwide during which time many new jobs will become available within the Bureau, and intense efforts will be made to ensure that employees currently responsible for cash handling will be given an opportunity to work in these positions. Also, there will be a need for IIM clerk employees in each Agency even with the contract. Furthermore, the Bureau will need staff to monitor the contract. Finally, employees now doing IIM/cash collection work can be shifted to IRMS and realty

work for which there are great staffing requirements. In other words, while fewer Bureau employees will be required specifically for financial trust activities under the contract, other activities will require additional employees.

20. Why weren't the tribes informed about BIA contract activities in advance?

There has been a great deal of notice provided about the need for improvements and of the Bureau's intention to contract. The General Accounting Office and the Inspector General of the Department of the Interior pointed out the need for improvements in the trust funds management program in 1982 and 1983, respectively. Price-Waterhouse made many recommendations for improvements in 1984. In 1985, a request for information was published in the Commerce Business Daily, the American Banker and the Wall Street Journal seeking information about assistance available from the private sector. On April 26, 1985, a letter was sent to all tribal leaders which described the Bureau's actions to improve its management of the trust funds.

On April 3, 1986, and May 21, 1986, letters were sent to all tribal leaders about the Bureau's plans to contract for private sector assistance in the trust funds management program. On April 29, 1986, a notice of policy decision was published in the Federal Register. On June 18, 1986, a presentation was made by Bureau and Treasury officials at the National Congress of American Indians meeting in Albuquerque. Finally, on September 23, the Senate Select Committee on Indian Affairs held an oversight hearing on the Bureau's plans. Then, on October 6, 1986, a press release was issued by the Bureau and Treasury concerning the selection of Mellon Bank.

21. Why hasn't there been any recent information about the contract?

Mellon was identified on October 6. Since that time, Bureau, Treasury and Mellon employees have been working to finalize contract terms. On January 7, 1987, the Assistant Secretary sent a letter to all tribal leaders describing the progress made since October and upcoming activities. Communications will be continued and enhanced.

22. When will the Bureau start contract operations in my area?

Full implementation will take up to two years.

Right now, contract implementation procedures are being developed. The procedures will undergo acceptance testing before full service begins. Meanwhile, BIA operations will continue until it is clear that the required systems are in place and will work effectively. Contract services will begin in the Billings Area. Decisions as to which Areas

should be converted to contract operations next will be made on the basis of which Areas have the Integrated Records Management System (IRMS) in place.

23. Why was the Billings Area Office chosen as the first test site?

Billings operates all Bureau trust programs -- forestry, irrigation, range, agriculture, oil and gas, minerals, and so forth. It has an effective data system center (IMC) which will be necessary to interface with the bank's computer systems.

24. How will the bank know what accounts to pay?

The bank's computers will be linked to the Bureau's IRMS system which will provide the bank with ownership (land and lease), account and payment information.

25. What happens if an Area has an ineffective IRMS program?

That Area will not go to contract operations until its IRMS program is working effectively. BIA plans to remedy the IRMS deficiencies in each Area before contract services begin.

26. How will you know if IRMS data is accurate?

Data integrity sampling will be done nationwide. Furthermore, cross checking of key program data such as land and lease ownership will be done prior to contract conversion.

27. The Bureau has just completed several efforts to implement computerized operations at Agency offices. Does this mean that we have to get new terminals and start all over again?

No. The bank will use existing data files. The terminals now in place can be used to query account information resident at the bank. The work environment will not change under the contract.

28. How will account holders get any better information?

As a result of computer linkages with the bank, Agency staff will have direct access to account information.

29. What protection will there be so that account information is not given out to the wrong party?

The number of Agency staff who can access computerized information is strictly limited; unique entry codes will be used. Tests will be randomly performed to ensure the integrity of security.

30. How will Bureau employees learn how to operate under the new system?

One of the major features of the contract is the inclusion of a training requirement. The bank will be responsible for providing training and training materials. As implementation occurs in one Area, staff from the next Area will begin training.

31. Currently, tribes receive monthly reports on their accounts and individuals receive reports every six months. Do you anticipate any change?

Reports will be provided on a monthly basis to tribes and individuals. Information will be available on a current basis through the Agency office for both tribal and individual accounts. Additionally, efforts are underway to improve the quality of reporting. There have been numerous complaints that reports are too hard to read and understand. Major improvements can be made in this area as well.

32. Will we still receive government checks?

No. Checks will be issued from the bank.

33. How long will it take to issue a check?

Checks will be issued upon demand on the day the Bureau requests issuance. Electronic transfers may be made as requested and authorized by the agency superintendent in emergency and other situations.

34. Will I have difficulty cashing a non-government check?

Local banks and businesses will be informed about the contract in an effort to ensure their willingness to handle another bank's checks. Additional steps are also being considered to ensure that checks will be converted immediately to cash.

35. What about assignments of income?

Assignments will be no different as a result of the contract.

36. What would be the frequency of payments under the contract?

Frequency will not change.

37. Who will develop bills for collection?

The Bureau will continue to prepare bills for collection.

38. Will penalties for late payments or non-payments continue?

Yes. A few Areas now enforce these penalties, but they are not uniformly imposed throughout the Bureau. Penalties will be systematized as a result of conversion to contract operations.

39. Right now there are substantial variations in program operations from one Area to another. Will these variations continue?

For the most part, no. One of the benefits from the contract will be "standardization" within the Bureau. Of course, if there is a program activity unique to a certain Area, that will be accommodated.

40. How will investment input be received from tribes?

Procedures are being developed for receipt and review of investment directions from tribes. A small investments staff will continue to operate in Albuquerque to inform the bank about cash requirements of tribes.

41. Who will authorize payments from a bank?

There will be no change from the current procedure, the Agency Superintendent will continue to authorize payments.

42. What will happen if a check is stolen?

The current procedures would apply under the proposed contract.

43. Could administrative fees be handled under the contract?

Yes.

44. I keep hearing about two banks -- Mellon of Pittsburgh, Pennsylvania and RepublicBank of Dallas, Texas. Are both involved?

Republic Bank will be the Treasury lockbox for the BIA. Its location, based on a mail study, offers the fastest concentration of trust income. Mellon Bank will receive collection data from Republic and provide depository, investment and accounting services.

45. When a contract is implemented in my Area, whom can I call if I have a question?

Your Agency staff will be prepared to answer questions. Additionally, the bank will provide toll free numbers to provide information.

46. What is the current time frame for execution of the contract?

We expect to execute the contract in February 1987.

47. Where will those who lease land from Indians or tribes send their payments?

The payor of leases will receive directions on where to make payments.

48. Will the way I receive oil and gas royalties through the Mineral Management Service Change?

No.

R. WILCO L. MARCEAU
 DEBRA C. KARNOPP
 JAMES E. PETERSEN

JAMES D. NOTESBOOM
 MARTA E. HANSEN
 HOWARD G. ARNETT

MARCEAU, KARNOPP, PETERSEN
 ATTORNEYS
 835 NW BOND STREET - BEND OREGON 97701-2799
 (503) 382-3011

Strongly Dislike
Don't
 LYNNE W. HANSEN

*** Also delivered in electronic form ***

COPY

February 13, 1987

EXPRESS MAIL
 RETURN RECEIPT REQUESTED

Hon. Ross O. Swimmer
 Assistant Secretary
 Bureau of Indian Affairs
 Department of Interior
 18th & C Streets NW
 Washington, DC 20245

Re: Mellon Bank Transaction

Dear Mr. Secretary:

So there is no misunderstanding, I want to confirm the assurances made by you at the meeting with Portland Area tribal leaders and others at the Cosmopolitan Motor Hotel in Portland, Oregon, on February 12, 1987, concerning the Mellon Bank transaction. If my understanding is not correct, I would appreciate it if you would immediately notify me and all recipients of this letter.

You agreed to immediately send to me copies of the following documents:

1. the draft contract between Mellon Bank and Treasury and/or Interior;
2. the draft memorandum of agreement between Treasury and Interior;
3. a copy of Mellon Bank's investment performance record for similar types of investments for a full business cycle;
4. any and all Solicitor's opinions relating to transfer of management, administration, accounting and/or investment of trust funds; and
5. any other written documents that exist at this time which set forth the substance of this transaction.

Ross O. Swimmer
February 13, 1987
Page 2

Re: Mellon Bank Transaction

You further agreed that the Warm Springs Tribes would have a reasonable time after receiving these documents to submit any further questions we may have concerning this transfer.

You also promised that the contract with Mellon Bank would not be executed until after we have received a written response to the questions we submit as well as a written response to the questions contained in our previous letter to Secretary of Interior Donald P. Model of January 20, 1987.

I look forward to receiving this material from you as soon as possible and to your response to our questions.

Thank you very much.

Sincerely,


DENNIS C. KARNOFF

ob

cc: Senator Mark Hatfield
Senator Bob Peckwood
Congressman Bob Smith
Congressman Les AuCoin
Congressman Peter DeFazio
All Tribal Chairmen, Portland Area
Stanley Speakes, Portland Area Director
Warm Springs Agency Superintendent Bernard Topash

Initiatives

G. Cannon
Star Speaker 1/2/87
 REMARKS to AFFILIATED TRIBES
 OF NORTHWEST INDIANS
 WINTER CONFERENCE
 January 26 - 30, 1987

Tribal Trust Funds

GOOD MORNING, I AM PLEASED TO ADDRESS THE WINTER CONFERENCE OF THE AFFILIATED TRIBES OF NORTHWEST INDIANS. Firstly, I would like to address the "Initiatives" recently introduced by Assistant Secretary Swimmer. Following this discussion, I shall address other areas of concern that each of you probably share; such as Social Services, including the Indian Child Welfare Act, and the Omnibus Drug Abuse Act; the 1988 Budget; Trust Funds Management; Indirect Costs; and Economic Development. These latter items are also included in a number of proposed initiatives at the Central Office level.

BUREAU OF INDIAN AFFAIRS, 1988 Budget Initiatives:

On January 9, 1987, Assistant Secretary Swimmer announced five basic "initiatives" affecting the Bureau and Tribes operating budget. The following is a summary of those recent developments: Overall Budget, Indian Education (covered by Van Peters), Self-Assistance, Tribal Government Assistance, Equity Funding, and Improving Trusteeship.

Mr. Swimmer has stated that "These new initiatives are not budget driven, but we are introducing them in the budget process so that we will have the remainder of the current fiscal year to think about them and formulate them into final policy after input from the tribes and from Congress".

BUDGET

We understand that the detailed Budget Justifications for FY 1988, known as the "Green Book", just went to the printers last Friday and will be mailed directly to tribes and agencies, probably next week.

THE FY 1988 BUDGET REQUEST FOR THE MAIN OPERATING ACCOUNT, OPERATION OF INDIAN PROGRAMS, TOTALS \$910.2 MILLION, ABOUT \$11 MILLION LESS THAN THE CURRENT 1987 ESTIMATE OR AN APPROXIMATE 1 PERCENT REDUCTION. The major program initiatives are included in this account and all programmatic increases and decreases are made from the 1988 base budget.

The FY 88 budget estimate for BIA is \$1.44 billion, a decrease of \$46.0 million compared to the 1987 appropriation of \$1.490 billion.

Permanent appropriations and trust funds are estimated to be \$459.0 million in 1988, an increase of \$48.0 million from the current 1987 level.

Other increases in the operating programs include \$2.2 million for the Bureau's management of tribal trust funds and \$2.4 million to improve the quality of contract, grant, and personnel functions in the Bureau.

Also included in the 1988 budget is a NEW ACCOUNT -- MISCELLANEOUS PAYMENTS TO INDIANS for \$13.6 million. This includes a \$10.7 million payment to the Tohono O'odham Nation (Gila Bend Indian Reservation) and \$2.9 million to cover the administrative requirements of the White Earth Land Settlement Act and the Old Age Assistance Claims Act, and initial payments of claims under the latter.

The major decreases proposed include deleting \$7.6 million which was included in 1987 for one-time training and curriculums development costs associated with drug abuse prevention. The 1988 budget also proposes a reduction of \$7.5 million in direct funding for the timber sales program of which \$5 million is to be offset by the Bureau's use of fees currently collected on sales, and a \$3.2 million decrease in postponable Forest Development work. Also, a reduction of \$6.9 million is proposed in funding operation and maintenance of existing facilities, based on anticipated demolition of unused buildings and better utilization of existing facilities.

-- Consistent with the Administration's policy to reduce spending in order to meet the FY 88 deficit target set forth in the Deficit Reduction Act, a proposal to rescind 1987 appropriations for construction in the amount of \$22.8 million is included. FY 1988 outlays of \$11.4 million will be saved if this proposal is enacted. The proposal would rescind \$7.5 million appropriated to construct Juvenile Detention Centers under the Omnibus Drug Supplemental Appropriations Act of 1987. The proposed rescission would also reduce by \$ 6.3 million the amount appropriated to rehabilitate existing

housing rather than constructing new housing. The proposal would also rescind \$9.0 million appropriated for irrigation construction for the Navajo Indian Irrigation Project, the Gila River Farms/Sacaton Ranch Irrigation Project and the Fort McDowell Irrigation Rehabilitation Project.

The construction budget totals \$57.9 million for 1988, a decrease of \$30.7 million from last year. Funds in the amount of \$32.4 million will be used to build one new school and to improve or repair existing schools. Also, \$17.3 million will be used for housing, emphasizing rehabilitation. Additionally, \$8.2 million will be used for repairing hazardous dams and financing other costs related to irrigation construction. The Administration is proposing a reauthorization of funding available from Highway Trust Fund for Indian road projects. Under the proposed reauthorization, \$75 million would be available for reservation road projects in FY 88.

INDIRECT COSTS

FY 1988 also proposes the establishment of a flat administrative fee to cover indirect costs associated with tribal contracting under the Indian Self-Determination Act (P.L. 93-638). The fee is proposed to provide a more equitable distribution of funding for tribal overhead costs of operating programs. For smaller tribes, additional support will be available.

*C/o - Propose Revision of the appropriate
Regulations necessary to implement the adm.
Proc procedure published in Federal Reg -*

Attached -

EQUITY FUNDING

Tribes and other groups have expressed concern about the method by which the Bureau establishes funding for each tribe. Numerous recommendations call for more "equity" in allocations. Based on these concerns, the Bureau has requested \$700,000 to conduct a special study identifying criteria and methods for determining equity in the allocation of BIA funding to tribal governments in FY 1988.

(Tribal Involvement)

During this fiscal year the Bureau will also initiate a resources allocation/effectiveness study which will provide an assessment of available resources and a productivity analysis of on-going programs on each reservation as a means of determining how equitably available Federal funding is currently allocated.

SELF-ASSISTANCE

In 1988 the Bureau proposes to implement a self-assistance program that will enable Indian individuals who receive welfare assistance to achieve sustained and meaningful work and skill development. This initiative relies heavily upon the concept of self-help, in which local residents work in their own communities on projects like building waterlines, housing and other needs. The short-term goal of this proposal is to move general assistance recipients from unproductive to productive roles. The long-term goal is to move recipients from welfare rolls to nonsubsidized payrolls.

-- The plan proposes coordinating 3 BIA programs: General Assistance, Employment Assistance, and the Housing Improvement Program. By coordinating these efforts, the self-assistance program ^{is to} open a workforce in Indian Country. It should be noted that the General Assistance program supports single adults, childless couples, and families with Dependent Children program on which GA payment levels are based.

*(Community Project)
Training emphasis*

TRIBAL GOVERNMENT ASSISTANCE

A TOTAL OF \$6.8 MILLION WILL BE AVAILABLE, WHICH IS A \$4.0 MILLION INCREASE OVER THE SMALL TRIBES PROGRAM FUNDED IN FY 1987.

The Bureau proposes to establish Tribal Government Assistance, a program which will award revenue sharing grants to small tribes with populations between 150 and 1,500. These grants will enable tribal governments to maintain basic management functions. This program will also provide specialized technical assistance to any tribe whose ability to govern is threatened by indebtedness and other financial management problems. This program will replace, but strengthen the "Small Tribes Initiative". The Bureau has requested \$6.8 million to enable tribal governments to perform their administrative responsibilities.

IMPROVING TRUSTEESHIP

In an effort to raise the quality and standard of trust responsibility, the BIA in 1988 proposes internal modernization of trust programs and systems and acquire private sector services that enhance the Bureau's trustee capabilities. To accomplish this, the BIA proposes 3 additional initiatives:

-- AGRICULTURAL TECHNICAL ASSISTANCE CENTERS - Private sector contractors will offer technical assistance to tribes and individual Indians in the extension areas of agribusiness, soil conservation and range management.

-- FORESTRY MARKETING ASSISTANCE - To maximize profits and better manage forest assets, the BIA will offer quality technical assistance from the private sector to improve marketing and sales incomes.

-- ENERGY AND MINERAL DEVELOPMENT OPPORTUNITIES - The Bureau will emphasize offering contracts for energy and mineral development directly to tribes. This will allow tribes to determine what opportunities exist and which ones to pursue.

Trust Fund Investment

The Congressional Hearing Schedule is:

FEB 4 Senate Indian Affairs Committee (Inouye)
10:00 FY 88 budget for BIA and IHS
 Witness: Asst Secy and Deputies

FEB 9 House Interior and Insular Affairs Committee (Udall)
9:45 Witness: Asst Secy and Deputies

MAR 4-5 House Interior Appropriations Subcommittee (Yates)
 Witness: Non-Federal

MAR 30-31 Witness: Asst Secy and Deputies

APR 2 Senate Interior Appropriations Subcommittee
 Witness: Asst Secy and Deputies
 Non-Federal unscheduled

Tribal Trust Funds

M E M O R A N D U M

TO: CLARENCE HATCH, EXECUTIVE DIRECTOR
RAYMOND FRYBERG, VICE-CHAIRMAN - BOARD OF DIRECTORS
ROY HATCH, BOARD OF DIRECTORS

FM: DOUGLAS W. LUNA, STAFF ATTORNEY *DWZ*

DT: FEBRUARY 24, 1987

SU: BIA MEETING

On February 12, 1987, Raymond Fryberg, Roy Hatch and I attended a BIA meeting in Portland, Oregon. The meeting was chaired by BIA under Secretary, Swimmer. The purpose of the meeting was to discuss the transfer of Indian trust funds to Mellon Bank. Attached are questions and answers that occurred during the meeting and the handout that we received as well as a newsletter that I received today.

- A. Background on the Mellon Transfer - Swimmer
1. GAO report, BIA accounting and Collection procedures were found lacking.
 - a. 1986 - agencies have not accomplished reconciliations; sending out statements of accounts, interest computation errors.
 2. IG Report - recommended separate tribal trust department contracting out was mentioned as a possible solution.
 3. 1985 - Requests for information sent out the trust responsibilities.
 4. President's Commission looked at contracting out.
 5. Outside accounting firm found problems in reconciling all accounts. IRMS must be brought on-line, and then be turned over.
 6. April 1986, RFP purpose to provide BIA several objectives including: lock box, investment, etc. Letters sent to all tribal leaders.
 - a. September 23, 1986, - Select Committee hearing, approved RFP.
 7. BIA and Treasury selected Mellon. Contract has not been signed, previous report in error.
 8. He looked at doing this in-house. It would have been costly and duplicative of hardware and software already available.
- B. Treasury - Faith MacRay - Financial Management Services.
1. Established to assist agencies in money management, especially collections. In 1986, RFP sent out, selected 6 lock box banks.
 - a. Criteria developed by BIA, Treasury will sign also the contract, monitor etc. but primary role is collection.
- C. Paul McKinne, Mellon Investment Services.
1. Mellon is 12th largest bank in the nation, 3rd largest trust department which manages billion in trust assets. No Indian trust funds will be used to purchase Mellon stock.
 2. Services to be provided to the different funds.
 - a. Intermediate Fund - First 10 million or any tribal funds will be invested in the Mutual Fund.
 - b. Composite Fund - 30 year maximum certificates. for Tribes that have more than \$10 million in trust funds. Contributed fund 100% short-term, estimate 5 1/2% return.
 - c. AK Native Escrow Fund - short-term fund with 1 year notes.
 - d. Cooperative Fund - 30 year composite fund.
 - e. Irrigation Fund - short-term intermediate fund.
 - f. Power projects - short-term intermediate fund.
 3. Believes the short term intermediate fund can earn 6% using government securities.

D. Questions:

1. Warm Springs - For every tribal account, the first \$10 million will be deposited to the Intermediate fund due to pooling coverage by Federal insurance. The 24 tribes with more than 20 million, will their funds go in to the composite fund? YES.
2. Will you use an investment firm to purchase our securities? YES, prohibited by law from being our own purchasers.
3. Can the tribes submit to Mellon their own investment policy on how their intermediate funds will be invested? NO. All funds are going into mutual funds.
4. Why a separate Alaska Native fund?
ANSCA.
5. Is Mellon Bank familiar with the treaty trust obligations 25 USCA 162(a) which only authorizes these investments? Yes. New regulations have not been established.
6. Umatilla tribe: What about other judgement funds, will they be kept separate? Judgement funds will be accounted for separately, just like they are now. What assets are the bank to cover the excess? Insurance.
7. Are these new mutual funds?
YES, Only Indian funds. Each fund has a short-term reserve, valued on a daily basis. Value of units can fluctuate every day.
8. Tribes that use interest, how do you advise on expected on income earnings?
Will issue monthly status reports.
9. Wire transfer procedure?
During interim basis - goes from Mellon back to BIA, then wire transfer. When lock box set up, it will go from Mellon to tribe. IRMS has to be loaded into system by the BIA.
10. Would Western tribes have access to Mellon system?
YES, system will be in constant operations.
11. Will the \$1.7 billion dollars be leveraged on behalf of the tribes?
YES, Mellon's services. NO, 25 USCA 162, no leverage.
12. Ken Smith, Warm Springs: Can the collecting and accounting be contracted out and leave investing with BIA? NO.
How about a regional approach?
No. Both due to the objectives of 25 USCA 162(a) "trust funds" have to be invested in 100% safe, secure funds. This also prevents leveraging.
a. Swimmer, you need an Act of Congress to invest the funds where you want.
13. How long can the tribe request BIA to invest?
John Vail, money investment program is requesting quotes. Money can be invested in 30 days or longer. On February 17, 1987, BIA will place orders.

- E. Pat Davin - Mellon operations
1. Phase I - Transfer of Mellon's - would take 18 months to transfer all funds.
 2. Account information
 - a. Daily accounting
 - b. Monthly earnings invested
 - c. Individual tribal earnings reported to BIA activity account codes (4 digit) will remain the same.
 3. Withdrawal
 - a. Tribe notify BIA Albq. forward posted against individual actg. subsequent adjustment wired to BIA, then to the tribe. After transition will then be able to wire directly to a bank.
 - b. If accounting closing out calculations will be made.
 - c. How much notice do you need to withdraw? It was planned that on the composite account it could only occur once a month, unless exceptional circumstances.
- F. Questions to the Panel.
1. What about financial planning? The system is suppose to assist this.
 2. Albq. BIA will have immediate access.
 3. Warm Springs to Swimmer, Are You (Swimmer) going to implement this proposal?
"Just as quickly as I can."
When? "We were in the program when RFP accepted..."
We can't individualize our program. No date on signing contract legal reviews must be completed.
 4. Question to Swimmer: How long is this process?
We are planning to go forward with contract. "I will have meetings for a month. Cut off now, contract is going forward regardless of when the questions will be answered."
 5. Ross responded to transfer question. There are 2 ways to transfer. Transfer the known balance, reconcile later or reconcile and transfer with daily reconciliation. The overnight reconciliation will be completed this week. Reconcile all tribal accounts by June 30th.
 6. The reconciliation report will be sent to the tribe if there's a problem or question, contact area office i.e. same procedures.
 7. Ross admitted there may be a problem on reconciling the overnight accounts.
 8. What's the criteria that will be used to rate Mellon Bank's performance? RFP Agreement.
How do other firms rate Mellon? Not answered.
 9. May 1985 BIA Solicitor opinion, question on authority was answered.

10. Is this a procurement contract? Treasury is looking at this. BIA - this is a depository contract with lock box facilities. MOU between Treasury and BIA and payment, since this was open competition with existing lock box banks, this meets procurement law.
11. 25 USC 413, Question on fees: Will this be applied to trust funds? It has never been discussed.
12. Is this a U.S. Trust obligation?
Yes, and there is no affect on the budget.
13. Criteria on selecting Mellon?
6 lock box banks rating 60% technical and 40% costs. The other 5 did not have all of the internal technical. 5 person evaluation team: 3 BIA and 2 Treasury.
14. Ross Swimmer comments:
 - a. How feasible is it to have a nationwide meeting with the BIA and tribal chairman? His belief is that it would be helpful for the budget process. Example, he is working on the 1989 budget, and he would like written comments on his initiatives, welfare reform etc.
15. Wire transfer to the BIA will continue.
16. Warm Springs requested that contract not be signed at least 5 days while questions being addressed.
17. Is there a variance (loss) between deposit and withdrawal?
Yes, there's a variance.
18. He would like a task force on the initiatives, and the form or format that consultation should occur including local teams
19. How will debt collection of delinquent rents? This will be resolved.
20. Forestry
 - a. Are you contracting out forestry?
It is an opinion. No formal RFP. Has asked trust department to put together document on whether or not it can be done.
 - b. Fees would be increased.
 - c. \$7 1/2 million budget reduction in total forestry budget returned to tribes.
 - d. Proposed budget 43.3 million with \$7 1/2 million timber sales \$5 million administrative.
BIA set-up marketing office in Washington.
 - e. Stan Speakes, Trust responsibilities limited to insect control and fire suppression is a rumor.
Swimmer would like 10-20 forestry tribes to look at budget and program and come up with a new program.
 - f. Change on 25 CFR on the indirect, the tribes would like to be involved in forming the initiative task force. Ron Allen, Chairman of a local affiliated task force on getting report to Swimmer. Swimmer would like comments on indirect especially if there is a need for different indirect rates on different activities.

M E M O R A N D U M

TO: CHRISTINA W. HENRY, ACTING EXECUTIVE DIRECTOR
DELORES J. GOBIN, FINANCIAL MANAGER

FM: DOUGLAS W. LUNA, STAFF ATTORNEY *DWL*

SU: MELLON BANK MANAGEMENT OF TRIBAL INDIAN FUND

DT: 21 JANUARY 1987

As per instructions, I attended the January 14, 1987, BIA information meeting in Portland, Oregon, on the Financial Trust Management Agreement with Mellon Bank. The following is a report on the information that Richard Whitesell, Billings BIA Area Director provided us, and, my analysis regarding this situation.

INTRODUCTION

Since 1982, the Federal Government conducted various studies and made recommendations concerning the BIA's management of the estimated \$1.7 billion dollars Indian trust fund. In response to these studies, the BIA sent out Request For Proposals to manage the individual and tribal funds. The Mellon bank was selected to manage these funds. Attached is the BIA's report to the tribal chairman.

TRIBAL INVESTMENTS

The majority of the presentation and the questions concerned the handling of the tribal investments. We were informed that for the past several months that as the securities matured, the BIA purchased short term notes that mature on January 31, 1986. On February 1, 1987, the BIA plans to transfer \$400,000,000.00 in tribal trust funds to the Mellon Bank.

When the tribal representatives were informed that the BIA purchased short term securities and were planning to transfer the tribal trust funds, several questions were raised by the tribal representatives including myself. These questions and concerns, followed by the answers were:

1. Could the tribes recover the lost interest difference between the value of the on long term and short notes? No.
2. Has the Memorandum of Agreement between the BIA, Treasury and Mellon Bank been signed? No. The delay is due to a question raised by the U.S. Solicitor General for the U.S. Department of the Treasury.

JANUARY 21, 1987

3. How will this money be invested? The funds might be invested as a separate mutual fund.
4. How will the funds be collateralized? Don't know.
5. What is the legal authority for the BIA transfer to of trust funds to Mellon bank? 25 U.S.C. 162(a), and Section 265, Title 12, U.S.C.
6. What is the policy guiding the Mellon bank in its investments? This should be covered by the Memorandum Of Agreement.
7. Can a Tribe pull its money out trust and re-deposit it later into trust? No, it would be a voluntary deposit and not "trust funds."
8. How much money will the fund earn under Mellon? No answer.
9. How will the interest earned by this fund be credited to the Tribes? No answer.
10. Can the Tribes obtain a 638 contract to manage their own funds? No.
11. What's the BIA control over Mellon bank and how does this affect trust responsibilities? There would be no abrogation of trust responsibilities. He has not seen the solicitors opinions from both Treasury and BIA on this point. The control over Mellon bank would be by in accordance with the Memorandum Of Agreement.
12. Was the National Congress of American Indian News Statement of January 8, 1987, regarding the Blackfeet and Salish-Kootenai protest, correct? The tribes have raised concerns.
13. Was the NCAI News Statement sentence on page 4, correct, regarding: "Tribal leaders ask if the step will be to contract with a large timber conglomerate to oversee Indian forestry management?" His answer was yes, this was part of Secretary's Swimmer's 1988 initiatives.
14. Would he Comment on the newspapers report that Mellon bank reported a loss of earnings and increase in its bad debt reserve? No comment.

ANALYSIS

Subsequent to the meeting, I received information that the Mellon bank's income dropped 64% and, that its reserve for credit losses increased by \$43 million dollars. I also received information indicating that last year, the BIA purchased securities in every bankrupt bank and savings and loan institution. These securities were purchased in less than \$100,000 lots, so that the funds were covered by the FDIC. However, the Tribes could loose money in two ways, first the funds would not earn interest while in bankruptcy. Second, the tribes might not have received the interest that they were promised.

With regard to removing all the tribe's funds at this time, I recommend that this not be accomplished until we have additional information and the other attorneys have had a chance to comment.

The reason is that we do not have a complete picture as to its potential impact. For instance, one policy consideration is the legal effect of withdrawing the trust funds from the BIA control and management. A withdrawal of funds would indicate the need not to have the government exercise trust responsibilities and therefore the unique position that tribes currently enjoy, could be terminated. Additionally, once the funds are withdrawn, the board would have to consider whether or not these funds could be seized in a judicial judgement.

CONCLUSION

Given the lack of information from the Bureau, there are several concerns that the Board should discuss. First, a determination should be made as to whether or not we have ever received an audited accounting of the trust funds. If an audited accounting has never been received, then, the Tribe should consider requesting one from the Area Director and the Inspector General. Second, a determination should be made as to how much interest the trust funds will actually earn by January 31, 1987. If this loss of interest between long and short term notes is considerable, then budget adjustments or other such actions may be required.

Third, given the possibility that Memorandum of Agreement may not be signed, consideration should be given as to how the fund's trust funds should be invested. One consideration would be to develop investment guidelines and send them to the BIA and Mellon bank as to how the Tribe wishes to direct the investment of its funds.

MELLON BANK MEMORANDUM

-4-

JANUARY 21, 1987

With regard to the 1988 initiatives on transferring the management of the tribal forestry management to a large company, the Board may wish to discuss this proposal. The Board should obtain all of Secretary Simmer's 1988 initiatives and determine their total economic and political affect. For instance, if the timber transference did go through, and there is a down turn in the market, could the tribe sue to the contractor?

Please advise if you want me to take any additional action.

*Dennis Karnopp
Tribal Trust Funds*



Portland, Oregon 97267 503 551 1167

March 16, 1987

RECEIVED

MAR 20 1987

THE TULALIP TRIBES

The Honorable Ross O. Swinner
Assistant Secretary
Bureau of Indian Affairs
Department of Interior
18th & C Streets NW
Washington, D.C. 20245

Dear Mr. Secretary:

We were relieved to learn that you have delayed proceedings with the proposed transfer of trust fund management to the Mellon Bank. However, we still have substantial concerns and intend to actively monitor the activities of the Bureau of Indian Affairs (BIA) and to attempt to participate to the extent possible.

We would like to restate the request for information contained in the letter from our tribal attorney Dennis Karnopp to you of February 13, 1987. At the meeting in Portland on February 12th you promised to provide this material. Specifically, we request the following be provided to us immediately:

1. Copy of the most recent draft contract with Mellon Bank together with all exhibits and appendixes.
2. A copy of the most recent draft of Memorandum of Agreement between Interior and Treasury.
3. Copies of all legal memoranda, solicitors opinions from any agency bearing on this subject.
4. Any other written documents which deal with the proposed transfer of trust funds.

We cannot understand your failure to provide this information.

Your press release of March 13, 1987, says you will develop a new request for proposal (RFP) which will "meet the needs of the BIA." Mr. Secretary, the most important consideration is to meet the needs of the tribes and individual Indians. Tribes and individuals should have the opportunity to help shape the RFP to truly meet those needs. In fact, tribal consultation on this issue must begin before development of the RFP itself. From the press release, we do not understand that to be your intention.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

RECEIVED

January 7, 1987

JAN 10

THE TULALIP TRIBES

Honorable Stanley A. Jones, Sr.
Chairman, Tulalip Board of Directors
6700 Totem Beach Road
Marysville, Washington 98270

Dear Chairman Jones:

I am writing to tell you about our progress in improving services to Indian tribes, individual Indians and Alaska Natives in the management of their trust funds. As I noted in my previous letters to you on this subject and in our meeting with the National Tribal Chairmen's Association in Albuquerque, the sound administration of these trust funds is one of my highest priorities.

Two years ago, the Bureau of Indian Affairs (Bureau) obtained a comprehensive, in-depth, and independent evaluation of our trust funds operations by a major national accounting firm. Based on the findings of that evaluation, as well as information provided through other sources, I sought the assistance of the U.S. Treasury Department in implementing management improvements throughout the trust funds program. In April of this year, the U.S. Treasury -- on behalf of the Bureau -- issued a request for proposals to obtain the services required by us through a contract with a major national financial institution.

In September, the Senate Select Committee on Indian Affairs held an oversight hearing on our contract plans. Shortly thereafter, the Committee notified us of their endorsement of these plans. In early October, the Mellon Bank of Pittsburgh, Pennsylvania was selected to be the financial institution that would help us bring the required changes to our program.

Founded in 1869, the Mellon Bank has grown to be the eleventh largest bank in the country. Its trust department is the nation's third largest. In addition to Mellon, the Republic Bank of Dallas will assist the Bureau in providing "lockbox" services.



MILLE LACS BAND OF CHIPPEWA INDIANS

Executive Branch of Tribal Government

November 3, 1989

*Rec'd
11-8-89*

Congressman Synar
Environment, Energy, and Natural
Resources Subcommittee of:
The Committee on Government Operations
Rayburn House Office Building
Room B-371-B-C
Washington, DC 20515

Subject: Review of Bureau of Indian Affairs Mismanagement of
\$1.7 Billion Indian Trust Fund

Dear Congressman Synar:

Enclosed, please find the written testimony of the Mille Lacs Band of Chippewa of Central Minnesota. Several of my staff and I flew to Washington and were present during the hearing which was held on October 26, 1989.

At the conclusion of the hearing we were informed that we may submit written testimony to your committee by November 9, 1989, and I am requesting that our testimony be reviewed and included in the Congressional Record.

Our trip to Washington was very costly for us, but the current state of management of the Bureau of Indian Affairs was important enough to warrant the expense. I sincerely believe that you will allow our voice to be heard.

Sincerely,

(Arthur Gahbow)
Arthur Gahbow
Tribal Chairman



MILLE LACS BAND OF CHIPPEWA INDIANS
Executive Branch of Tribal Government

November 6, 1989

Good Day Mr. Chairman:

My name is Arthur Gahbow and I am the Chairman of the Mille Lacs Band of Chippewa Indians in Central Minnesota. On behalf of the Mille Lacs Band of Chippewa, I would like to thank you for giving us this opportunity to voice our concerns.

I would like to begin by stating that, unlike a few other tribes with more fortunate circumstances, the Mille Lacs Band of Chippewa do not have the resources to perform an intensive study of our trust accounts as compared with the figures given by the Bureau of Indian Affairs. We do not, however, feel that this is reason for our opinions to go unheard.

Our government functions on an extremely limited budget. In fact, the Mille Lacs Band is one of the original tribes chosen to participate in the Self-Governance Demonstration Project, and through this study we have recently documented that, per capita, the people of the Mille Lacs Band are expended fifty-eight percent fewer government dollars than those people living in the lowest per capita expenditure state in the country. We obviously

have no means of performing duties which the Bureau of Indian Affairs is directly responsible for.

I can, however, relate to you general problems which we have had with the trust funds management by the Bureau. After the passing of the Nelson Act in 1889, the Chippewa Reservations were to have a trust fund established to account for proceeds derived from the sale of pine on the reservation. This fund was poorly managed, and in 1907 the Mille Lacs Band brought suit against the United States for its failure to collect money from timber companies buying timber on the Mille Lacs Reservation (some 480 million board feet). This case went to the U.S. Supreme Court and the Band obtained a judgement against the United States for approximately \$700,000.00 in damages. This money was not kept in an account for Mille Lacs, but was placed in a trust fund for all of the Chippewa in Minnesota. We do not have an account of what happened to these funds; we only know that they are gone. A very similar case has been filed in the United States Court of Claims by the other Chippewa Reservations in Minnesota and, similar to Mille Lacs, the court has awarded them payment. The single difference today, however, is that the Bureau is recommending that each reservation be allocated funds based on the lands affected by the Nelson Act of 1889. Since the case of Mille Lacs was resolved in 1916, we will receive no share of these funds. The Bureau does not have records of these transactions which it made.

In essence, most of these Tribes claim to have paid back the funds which they had borrowed from the Mille Lacs Band. Those funds would have been directly paid into the trust account for Mille Lacs which is held by the Bureau, yet has the Bureau ever acknowledged those transactions? The answer is a definite "no". Mr. Chairman, those tribal chairmen of the other Minnesota Chippewa Tribes are my brothers, and we do not cheat each other. They did pay back those funds. Yet today, while those tribes are finally receiving their own settlements, Mille Lacs is left with nothing because of incapable management by the Bureau of Indian Affairs.

As "trustee" of those funds the Bureau was able to lend them to the other tribes. Is it too much to ask that, as "trustee", the Bureau account for those funds having been repaid to the Mille Lacs people?

Mr. Chairman, tribal governments with limited finances have absolutely no means of identifying the true status of their trust fund accounts. By regulations, the Bureau is supposed to issue quarterly statements of trust fund accounts to all individual tribes; the last statement which the Mille Lacs Band received was sent to us in 1986. I ask you, Mr. Chairman, is this the kind of treatment which we are supposed to stand for? What would happen to a banker if she or he utilized these types of practices? Unfortunately, we simply do not have the financial ability to fight.

The initial concept behind land cessions was to establish trust funds for the purpose of accumulating interest, so that the tribes would never have to be dependent upon the federal government. That interest was to be perpetual, supporting Indian people for all generations. It is because of mismanagement of those trust fund accounts by the Bureau that tribes today have been forced into a dependency relationship with the government of the United States. I was recently informed by both the Inspector General and counsel for this committee that no one in Washington expects the BIA to conform to requirements set forth by this committee. This, to me, is a crime ten times worse than the initial theft of those funds.

Mr. Chairman, besides requesting that the Bureau make every attempt possible to perform its basic duties and reconcile these accounts, I am demanding that Congress, within the scope of its fiduciary trust responsibility to the Indian nations across this country, perform its duties and see that the interests of the Indian people are protected. If the government of the United States of America is unable or unwilling to ensure that this responsibility is carried out, then I would ask that we be granted the opportunity to look out for our own financial interests after those funds are reconciled.

In his report, the Inspector General stated that "it is likely that these funds may never be accounted for or recovered". That statement must be proven false in the very near future.

The government United States has, on several occasions, spent hundreds of billions of dollars "bailing out" many institutions; the most recent being the savings and loans institutions. This did not need to be done as it was not the responsibility of the U.S. Government; we looked upon that as welfare for the rich. We as Native Americans, however, did not have the good fortune to have had any money to invest in savings and loans institutions. \$1.7 billion is extremely petty when compared to the amount spent to save the accounts of people who already have everything they need.

I sincerely thank you for the opportunity to allow our views to be heard.

Respectfully ,



Arthur Gahbow

Tribal Chairman