



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

ORDER NO. 3215

Subject: Principles for the Discharge of the Secretary's Trust Responsibility

Sec. 1 Purpose. This Order is intended to provide guidance to the employees of the Department of the Interior who are responsible for carrying out the Secretary's trust responsibility as it pertains to Indian trust assets. All Departmental regulations, policy statements, instructions, or manuals regarding the discharge of the Secretary's trust responsibility shall be interpreted or developed using these trust principles. In addition, these principles provide guidance to all persons who manage Indian trust assets.

This Order is intended to address neither the unique government-to-government relationship between the United States and American Indian and Alaska Native tribal governments nor the unique relationship between the United States and individual Indians, both of which have been referred to as a trust responsibility.

Sec. 2 Background. The trust responsibility is defined by treaties, statutes, and Executive orders. The most comprehensive and informative legislative statement of Secretarial duties in regard to the trust responsibility of the United States was set out in the American Indian Trust Fund Management Reform Act of 1994 (Reform Act), Pub. L. 103-412, Oct. 25, 1994, 108 Stat. 4239. The Reform Act provides:

The Secretary's proper discharge of the trust responsibilities of the United States shall include (but are not limited to) the following:

- (1) Providing adequate systems for accounting for and reporting trust fund balances.
- (2) Providing adequate controls over receipts and disbursements.
- (3) Providing periodic, timely reconciliations to assure the accuracy of accounts.
- (4) Determining accurate cash balances.
- (5) Preparing and supplying account holders with periodic statements of their account performance and with balances of their account which shall be available on a daily basis.
- (6) Establishing consistent, written policies and procedures for trust fund management and accounting.
- (7) Providing adequate staffing, supervision, and training for trust fund management and accounting.
- (8) Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands.

25 U.S.C. § 162a(d).

As stated in the Reform Act, this list of duties is not exhaustive. Therefore, to understand the nature of the Department's duties, we must look to a variety of other sources for guidance. One internal Departmental source of guidance is legal advice from the Solicitor's Office. The Solicitor's Office continues to provide the Department with guidance through formal and informal legal advice regarding its trust responsibility. The most comprehensive document available on this subject is a letter by Solicitor Krulitz dated November 21, 1978, analyzing the federal government's responsibility concerning Indian property interests. This legal guidance from the Solicitor's Office informs our interpretation of the duties required by treaties, statutes, and Executive orders.

Legal guidance also is found in judicial decisions. In Seminole Nation v. United States, 316 U.S. 286 (1942), the Supreme Court said that the government in its dealings with Indians is charged with "moral obligations of the highest responsibility and trust" and should be "judged by the most exacting fiduciary standard." *Id.* at 296. Many other cases too numerous to list here have discussed the trust responsibility. See Poafybitty v. Skelly Oil Co., 390 U.S. 365 (1968); Nevada v. United States, 463 U.S. 110 (1983); United States v. Mitchell, 463 U.S. 206 (1983) (Mitchell II); White Mountain Apache Tribe v. United States, 20 Cl. Ct. 371 (1990); Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252 (D.D.C. 1972); and Cobell v. Babbitt, 1999 WL 1581470 (D.D.C. Dec. 21, 1999).

It is with this legal history in mind that I issue this Order. This Order is intended to provide guiding principles to interpret or develop policy statements, regulations, and instructions regarding the proper discharge of the Secretary's trust responsibility. It would be beyond my authority, and this Order is not intended, to impose the legal standards by which a breach of trust claim would be reviewed in a court of law.

Sec. 3 Authority. This Order is issued in accordance with the Reform Act.

Sec. 4 Definitions.

a. "Beneficial owner" means both Indian tribes and individual Indians who are the beneficial owners of Indian trust assets held by the federal government in trust or with a restriction against alienation.

b. "Persons who manage Indian trust assets" means Departmental employees or contractors, or Indian tribes that have been properly delegated specific authority to manage or administer Indian trust assets.

c. "Trustee" means the Secretary or any person who has been properly authorized to act as the Trustee for Indian trust assets.

d. "Indian trust assets" means lands, natural resources, money, or other assets held by the federal government in trust or that are restricted against alienation for Indian tribes and individual Indians.

- e. "Trust responsibility" as used in this Order only pertains to Indian trust assets.

Sec. 5 Trust Principles. The proper discharge of the Secretary's trust responsibility requires, without limitation, that the Trustee, with a high degree of care, skill, and loyalty:

- a. Protect and preserve Indian trust assets from loss, damage, unlawful alienation, waste, and depletion;
- b. Assure that any management of Indian trust assets that the Secretary has an obligation to undertake promotes the interest of the beneficial owner and supports, to the extent it is consistent with the Secretary's trust responsibility, the beneficial owner's intended use of the assets;
- c. Enforce the terms of all leases or other agreements that provide for the use of trust assets, and take appropriate steps to remedy trespass on trust or restricted lands;
- d. Promote tribal control and self-determination over tribal trust lands and resources;
- e. Select and oversee persons who manage Indian trust assets;
- f. Confirm that tribes that manage Indian trust assets pursuant to contracts and compacts authorized by the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450, *et seq.*, protect and prudently manage Indian trust assets;
- g. Provide oversight and review of the performance of the Secretary's trust responsibility, including Indian trust asset and investment management programs, operational systems, and information systems;
- h. Account for and timely identify, collect, deposit, invest, and distribute income due or held on behalf of tribal and individual Indian account holders;
- i. Maintain a verifiable system of records that is capable, at a minimum, of identifying: (1) the location, the beneficial owners, any legal encumbrances (i.e., leases, permits, etc.), the user of the resource, the rents and monies paid, if any, and the value of trust or restricted lands and resources; (2) dates of collections, deposits, transfers, disbursements, third party obligations (i.e., court ordered child support, judgements, etc.), amount of earnings, investment instruments and closing of all trust fund accounts; (3) documents pertaining to actions taken to prevent or compensate for any diminishment of the Indian trust assets; and (4) documents that evidence the Secretary's actions regarding the management and disposition of Indian trust assets;
- j. Establish and maintain a system of records that permits beneficial owners to obtain information regarding their Indian trust assets in a timely manner and protect the privacy of such information in accordance with applicable statutes;

k. Invest tribal and individual Indian trust funds to make the trust account reasonably productive for the beneficial owner consistent with market conditions existing at the time the investment is made;

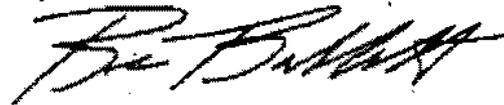
l. Communicate with beneficial owners regarding the management and administration of Indian trust assets; and

m. Protect treaty-based fishing, hunting, gathering, and similar rights of access and resource use on traditional tribal lands.

Sec. 6 General Provision. This Order is intended to enhance the Department's management of the Secretary's trust responsibility. It is not intended to, and does not, create any right to administrative or judicial review, or any legal right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies, or instrumentalities, its officers or employees, or any other person.

Sec. 7 Implementation. This Order shall be implemented as guidance for the employees of all bureaus and offices within the Department as they review, modify or promulgate new regulations, policy statements, instructions or manuals, as they develop legislative and budgetary proposals, and as they manage, administer, or take other actions directly relating to or potentially affecting assets held in trust by the United States for Indian tribes and individual Indians.

Sec. 8 Effective Date. This Order is effective immediately. It will remain in effect until its provisions are converted to the Departmental Manual, or until it is amended, superseded or revoked, whichever comes first. In the absence of any of the foregoing actions, the provisions of this Order will terminate and be considered obsolete on October 31, 2000.



Secretary of the Interior

Date: APR 28 2000

Two Years After the President's Meeting With Tribal Leaders

Annual Report

of the

Administration Working Group on American Indians and Alaska Natives

August 1996

PREFACE

On April 29, 1994, President Clinton reaffirmed the Federal government's commitments to operate within a government-to-government relationship with federally recognized American Indian and Alaska Native tribes, and to advance self governance for such tribes. He also directed federal agencies to build a more effective working relationship with tribes, consult with them openly and candidly, and fully consider their views prior to undertaking actions that may affect their well-being.

To advance President Clinton's goals, the White House established the "Working Group on American Indians and Alaska Natives" as part of the Domestic Policy Council. The purpose of the Working Group is to coordinate and share information on Indian tribes and programs, provide a forum for resolution of issues amongst Federal agencies, ensure the implementation of Presidential directives on Indian policy and promote initiatives to better serve Indian tribes and their members. The Honorable Bruce Babbitt, Secretary of the Interior, chairs the Working Group, and five subgroups have been created to carry out work in the following areas:

- ▶ **Religious Freedom**
- ▶ **Consultation**
- ▶ **Education**
- ▶ **Reinvention**
- ▶ **Environment and Natural Resource Protection.**

The Administration is pleased to report substantial progress over the past year in improving our relationships with American Indian and Alaska Native tribes.

This Report summarizes the numerous actions undertaken over the last year to meet the President's commitments, and updates the *One Year Later* report of April 28, 1995.

Additional details on this Report can be obtained from Faith Roessel, Department of the Interior, at (202) 208-5904.

Federal Funding for Indian Programs

The following table provides a breakdown of Federal budget authority for Indian programs across the Federal government in billions of dollars:

	FY 1995 Actual	FY 1996 Actual	FY 1997 Administration Request
Bureau of Indian Affairs	1.729	1.578	1.782
Indian Health Service	2.156	2.202	2.400
All Others	1.891	1.923	2.032
TOTAL	5.777	5.702	6.215

Note: Totals may not add due to rounding.

- BIA is shifting programs to local tribal levels. Tribes can prioritize the basic reservation programs within the Tribal Priority Allocation (TPA) budget activity according to their unique needs and circumstances. In the last three years, the TPA budget has comprised an increasingly greater share of the BIA operations budget. In FY 1992, TPA comprised less than 30 percent of the BIA operations budget; the FY 1997 TPA budget provides over 50 percent of the BIA operations budget.
- The BIA has made significant reductions in administrative costs. In FY 1996, 90 percent of the BIA operating budget goes directly to the tribes at the local level.

Advancing Self Governance and Self Determination

- The final rule on Self Determination was published on June 24, 1996. This rule, which will take effect August 23, 1996, was developed jointly by the Department of the Interior (DOI), Health and Human Services (HHS) and tribal representatives using the guidance of the Negotiated Rulemaking Act.
- In 1995, the Bureau of Indian Affairs (BIA) had about 1,500 Self Determination contracts, totaling about \$650 million, with virtually every Federally Recognized Indian Tribe, covering the full range of its activities.

- In 1995, within BIA, the number of Self Governance annual funding agreements increased from 29 to 53. The funding amount is now about \$150 million and covers approximately 180, or a third of all, Federally Recognized Indian Tribes. These agreements cover activities ranging from social services to law enforcement to trust related programs.
- In anticipation of self governance, self-determination and devolution of several activities to tribes, BIA will, for the first time, identify each tribe's share of its budget.
- Approval of P.L. 93-638 requirements has been delegated by BIA to area offices.
- Rules and regulations for administering the Self-Governance program are being developed by a joint Federal and Tribal negotiation team. Participants include DOI, HHS and numerous tribal representatives.
- The Department of Justice (DOJ) has initiated a Tribal Courts Project to assist tribal governments in strengthening their justice systems. This project includes establishment of:
 - U.S. Magistrate Courts on certain reservations. The first such court has convened at the Warm Springs Reservation in Oregon.
 - Partnership Projects. DOJ will help 45 tribal governments strengthen their justice systems, particularly their abilities to respond to family violence and juvenile issues.
- At the end of FY 1995, the Indian Health Service (IHS) transferred more than \$770 million to support health delivery programs of tribal nations, through self-determination contracts and self-governance compacts. This represents approximately one-third of the IHS services budget for that year.
- The IHS has negotiated 29 self-governance compacts and 42 annual funding agreements for FY 1996, and transferred approximately \$300 million to 197 tribes in Alaska and 28 tribal governments in the lower 48 States. The process to select an additional 30 tribes to participate in self-governance compacting has been initiated.
- Pilot projects have been initiated with two compacting tribes, the Jamestown S'Klallam and the Mille Lacs Band of Ojibway Indians, to assess the impact of stable funding on a tribe's ability to plan for and manage health service programs. (IHS)

Advancing the Government-to-Government Relationship

- Many Departments and agencies have strengthened or begun to implement policies to deal with Federally Recognized Indian Tribes on a government-to-government basis. These include the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, Transportation, Treasury, and the Environmental Protection Agency. As part of this effort, several Departments and agencies have instituted Indian "offices" and "desks."

- IHS is being restructured with the direct involvement of tribal and urban Indian health leaders. This restructuring will eventually lead to delegating greater power and authority to local health care service sites.
- The Department of Energy (DOE) has comprehensive cooperative agreements with the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, the Yakima Indian Nation, the Pueblos of Cochiti, Jemez and Santa Clara, and the Shoshone-Bannock Tribes which allow for the development of tribal environmental capabilities to address health and safety issues and tribal cultural concerns resulting from Environmental Management activities.
- The Environmental Protection Agency (EPA) and 24 tribal governments have signed Tribal/EPA Environmental Agreements (TEAs) that identify tribal priorities for developing environmental programs and EPA technical and program assistance. EPA anticipates that an additional 15 TEAs will be signed by September 30, 1996.
- Following the Supreme Court's decision in Adarand Constructors v. Peña--which held that the Constitution requires strict judicial scrutiny of race-based affirmative action programs--DOJ has reviewed Federal programs which use race as a factor to ensure that they are constitutional. In this review, DOJ determined that federal government programs for Indian tribes are founded on the government-to-government relationship between the United States and Indian tribes and, therefore, based on that unique political relationship, not race.
- U.S. Department of Agriculture's (USDA's) Forest Service signed formal agreements with most Southeast Alaska Tlingit and Haida tribal communities which acknowledge they are governments and require ongoing consultation regarding national forest programs and activities.
- The Forest Service is consulting actively with several affected tribes on the planning and management and activities of its units. For example, the Chippewa National Forest in Minnesota is working with the Leech Lake Reservation on a formal agreement regarding tribal reserved rights on the forest. Similarly, National Forests in the Pacific Northwest Region have included tribes in discussions of timber, fisheries and other natural resource issues (since they have reserved hunting, fishing, and gathering rights in those areas).

Advancing Tribal Sovereignty

- BIA acknowledged or clarified the status of six tribes in 1995.
- DOI's Office of Surface Mining is working to extend "primacy" (regulatory jurisdiction) to coal-producing Indian tribes with respect to regulating coal mining on their lands.
- Approximately 100 tribes now have EPA approval to administer 150 surface water, drinking water and solid waste programs in a similar manner to a state under federal law, including 18 regulatory programs. Approximately 20 tribes operate pesticide programs under cooperative agreements with EPA.
- In June 1996, EPA worked with DOI and USDA to successfully oppose an amendment to the

Federal Insecticide, Fungicide and Rodenticide Act that would have limited tribal authority to regulate pesticide usage on Indian reservations.

- DOJ continues to pursue litigation on behalf of tribes and against third parties:
 - Seminole Tribe v. Florida. Despite DOJ's arguments, the Supreme Court held that Congress does not have the authority to abrogate states' Eleventh Amendment immunity under the Commerce Clause and allow tribes to sue states. DOJ and DOI are studying, and have testified on, this decision's impact on the compacting process under the Indian Gaming Regulatory Act.
 - Oklahoma Tax Commission v. Chickasaw Nation. DOJ argued successfully before the Supreme Court that absent congressional consent, states may not tax Indian tribes, reservation Indians, or Indian property in Indian country, and accordingly Oklahoma could not impose fuel taxes directly on the Chickasaw Nation.
 - Reservation Telephone Cooperative v. Three Affiliated Tribes. DOJ successfully argued before the 8th Circuit for dismissal of the telephone cooperative's suit for failure to exhaust tribal court remedies.
 - Crow Tribe and the United States v. State of Montana. The Ninth Circuit recently ruled that the State of Montana and Big Horn County must pay the Tribe \$46 million and \$11 million respectively. These amounts represent taxes imposed and collected by the State and County on Crow Reservation coal since 1975. The Court of Appeals further ordered the District Court to decide whether the State and County should pay interest on the funds they unlawfully collected.
 - Leech Lake. DOJ filed a brief supporting the Leech Lake Band of Chippewa Indians' appeal of a lower court's determination that its reservation-based fee lands are subject to state ad valorem taxation.

Protecting Trust Resources and Indian Lands

- Each agency within DOI has institutionalized the Secretary's Order on protecting Indian trust resources. This includes incorporating such considerations into the National Environmental Policy Act process.
- Because of DOI's successful actions on behalf of the Metlakatla Indian Community, it is now secure in its possession of Warburton Island and its eastern salmon run.
- DOI is establishing a procedure that would uphold the Department's authority to take land into trust for Indian tribes.
- South Dakota v. United States -- Recognizing that the Indian Reorganization Act is the cornerstone of modern federal Indian law, DOJ is seeking review of an Eighth Circuit Court of Appeals' decision that a portion of the Act, which empowers the Secretary of the Interior to acquire land in the name

of the United States in trust for Indians, violates the non-delegation doctrine.

- United States v. Pend Oreille County Public Utility District -- DOJ helped secure \$3,030,000 in trespass damages on behalf of the Kalispel Tribe and certain tribal allottees for the Utility's longstanding flooding of lands within the Kalispel Reservation.
- Williams v. Babbitt -- DOJ successfully defended in district court DOI's interpretation of the Reindeer Industry Act of 1937 as having reserved the reindeer industry in Alaska for the benefit of Alaska Natives. The case is currently under appeal.
- United States v. Washington -- In this landmark, longstanding case, the United States has continued its support and defense of Indian treaty fishing rights. Most recently, in Sub-proceeding 89-3, DOJ succeeded in obtaining a ruling from the district court that largely extended the 50/50 allocation rulings applicable to salmon to all species of shellfish wherever found in a tribe's "usual and accustomed" fishing area.
- United States v. Michigan -- In this 23-year old Indian fishing rights case involving the Day Mills Indian Community, Sault Ste. Marie Tribe of Chippewa Indians, and the Grand Traverse Band of Ottawa and Chippewa Indians, the district court recently issued an order which adopted DOJ's and the tribes' argument that commercial harvest of salmon is not restricted by the 1985 consent order to a single area. This is the first time since entry of that consent order and the establishment of the Dispute Resolution Mechanism that the Judge has decided a "fisheries management" issue.

Improving Trust Funds and Asset Management

- Over the past several years, progress has been made in correcting the management of Indian trust funds and assets. These improvements help ensure the Secretary of the Interior meets his fiduciary responsibilities to Individual Indian beneficiaries and tribes, by ensuring safe investment of trust funds at favorable rates of return, providing timely and accurate account holder information, and correcting decades of accounting inaccuracies. Some of the more significant improvements include:
 - The Special Trustee for American Indians was appointed and the Office of Special Trustee was created as authorized by the American Indian Trust Fund Management Reform Act of 1994. The special Trustee is responsible for oversight, reform, and coordination of the policies, procedures, systems and practices used by various Departmental agencies in managing Indian trust monies.
 - Adequate staffing of trust funds functions has been secured. The number of personnel in the Office of Trust Fund Management (OTFM) in Albuquerque, New Mexico, is now about 100 FTE.
 - In 1995, OTFM successfully converted to a core trust accounting and investment system for tribal accounts.
 - In 1996, the Office of Special Trustee has begun to address the numerous problems associated with Individual Indian Money (IIM) trust funds management. With funding

requested in the 1997 President's Budget, the Office of Special Trustee plans to implement a critically needed IIM accounting system.

- The Special Trustee will complete a comprehensive strategic plan in 1997 for further improving trust management functions, including trust resource management systems improvements; the installation of an accounts receivable (billing) system; improvements to the land records and ownership systems; and improved record keeping.

Protecting Religious Freedom and Cultural Resources

- On May 24, 1996, the President signed an Executive Order directing federal land management agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners. In addition, the President directed the federal land management agencies to avoid adversely affecting the physical integrity of such sites, and to provide tribes notice of activities that may restrict access to sacred sites.
- The National Eagle Repository was opened on May 22, 1996 in Denver. The repository receives eagle carcasses and distributes eagle parts which helps resolve conflicts between the use of eagle feathers in sacred religious ceremonies with the need to protect bald and golden eagles. (DOI/FWS)
- DOI provided about \$4 million to about 50 Native American groups to help protect historic places, cultural practices and artifacts, and to identify and repatriate human and cultural items found in graves in both 1995 and 1996.
- In August 1995, DOE issued its final version of the Environmental Guidelines for Development of Cultural Resource Management Plans. This document, developed in consultation with the National Congress of American Indian and the National Park Service, provides DOE facilities with the necessary framework to develop their own cultural resource management program.
- Bear Lodge Multiple Use Association v. Babbitt -- DOJ and DOI are working to defend, as a permissible governmental accommodation to religion, a legal challenge to the National Park Service's (NPS) Climbing Management Plan for Devil's Tower National Monument, a sacred site for several northern plains tribes. The Plan imposes a temporary moratorium on commercial climbing during June, the height of tribal ceremonial use of the Monument. The plaintiff in Bear Lodge challenged the Plan as a violation of the Establishment Clause. On June 8, the court granted a preliminary injunction prohibiting the NPS from imposing the moratorium. The Federal government is asking the court to stay the proceedings while the NPS reconsiders its plan in light of the court's concerns.
- The Bighorn National Forest in Wyoming has successfully worked with the Crow, Northern and Southern Cheyenne, Shoshone, Arapaho, and Sioux Tribes and their tribal spiritual practitioners to accommodate the access to and ceremonial use of the "Medicine Wheel," a national historic landmark and sacred site of many Indian tribes and their members. This was accomplished with the support of local communities, State Historic Preservation Officers, and many others. (USDA)
- DoD created a set of maps based on a geographic information system displaying DoD installations

and historic and current Indian lands. Currently, the map data are being refined. A users' manual is being created and spatial and text data are being prepared for electronic dissemination on the Internet World Wide Web. The Department of the Navy has also published a two-map set that will provide information which will serve as the basis for its consultation efforts.

- In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), over 50% of Navy's archeological collections have been identified and assessed.
- The Army assessed the need for NAGPRA summaries at 167 Army installations, placing it at the forefront of compliance which will assist consultation with over 200 tribes.
- Nellis Air Force Base, Nevada, began a long term Native American Interaction Program with 18 Shoshone, Paiute and other tribes in January 1996 to examine archaeological collections, provide input on recent Air Force proposals regarding land management decisions, and the base's cultural resources management program.

Protecting Water Rights

- DOI, with DOJ's active involvement, has successfully negotiated water settlements for several tribes and reservations including Northern Cheyenne Tribe (Montana), Yavapai-Prescott Tribe (Arizona), and the Pyramid Lake Paiute Reservation (Nevada).
- State of Washington v. Acquavella -- In this general stream adjudication, the DOJ successfully asserted a water right for the benefit of the Yakima Nation.
- In the extraordinarily complex general stream adjudication of surface and groundwater sources in the Snake River Basin, Idaho, DOJ continues to defend the water rights of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, the Nez Perce Tribe, and the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation. DOJ's most recent victory was a decision rendered July 5, 1996, by the Idaho Supreme Court upholding the 1990 Fort Hall Indian Water Rights Agreement against attack by non-Indian water users.

Protecting the Civil Rights of American Indians

DOJ has been very active over the last several years enforcing statutes that prohibit discrimination against American Indians. These include actions challenging discrimination related to housing or voting rights:

- In April 1996, DOJ filed a complaint in district court in Rapid City, South Dakota, against the First National Bank of Gordon, Nebraska, alleging that the bank charged Indian customers higher interest rates on consumer loans than similarly situated white customers, and that it took the race of its Indian customers into account in setting those higher rates.
- Over the last several years DOJ has taken numerous actions that have resulted in significant increases in Native American voter registration and voter turn-out. Consent decrees entered in lawsuits filed under the minority language provisions of the Voting Rights Act have established

extensive continuing programs to provide information and assistance in the Navajo and Pueblo languages for counties in Arizona, New Mexico, and Utah.

Improving Indian Health

- Indian health facilities operated by the IHS include 40 hospitals in 12 States, 64 health centers in 27 States, and 5 school health centers and 50 health stations in 18 States. Eighty percent of all IHS hospitals and clinics are in 9 States--Arizona, New Mexico Nevada, North Dakota, South Dakota, Oklahoma, Montana, Minnesota, and Washington.
- The Health Care Financing Administration and IHS are working on an agreement that would raise Federal medical assistance coverage to 100% for Medicaid-funded services in tribally owned, operated or leased facilities.
- HHS is undertaking targeted Indian health care initiatives to address problems or issues specific to Indian youth, women and elders.
- USDA's Rural Development Water and Waste (WW) and Community Facilities (CF) programs which help replace contaminated water supplies, provide running water, treat waste water and build essential medical facilities in the communities, invested \$38.5 million in 15 states in FY 1993-95. This represents an increase of 145% in funding and 100% in tribal coverage over the previous 3-year period.

Improving Indian Housing

- The Department of Housing and Urban Development (HUD) is coordinating activities among the 20 (or more) federal and private sector partners to implement the action items in the President's National Homeownership Strategy initiative pertaining to Native Americans. On June 18, 1996, the Department hosted a national program, entitled "Putting the Pieces Together," to address the numerous facets involved in bringing homeownership to a reservation including planning, developing a legal and physical infrastructure, and selecting and counseling home buyers.
- HUD continued its efforts to bring new and improved housing and associated amenities to Indian communities. These include:
 - Over \$244 million for new 2,325 housing units in FY 1995. \$160 million is available in FY 1996.
 - \$162 million for modernizing existing housing units in FY 1995. \$140 million is available in FY 1996.
 - \$23 million for the Indian Home Loan Guarantee Program in FY 1995. \$37 million is available in FY 1996.
 - \$14 million for Indian HOME projects in FY 1995. \$14 million is available in FY 1996.

- Assisting Cochiti and Santa Clara Pueblos, New Mexico, develop a HAZMAT plan and response team.
- Undertaking studies to evaluate the potential health risks to Indian communities in the vicinity of Los Alamos.
- Cooperative agreements with the Yakima Indian Nation, Confederated Tribes of the Umatilla Indian Reservation, and Nez Perce Tribe to support their involvement in the environmental restoration and waste management activities on the Hanford Site and transportation issues involving reservation lands.
- EPA has increased resources for its Indian Program from \$35 million in FY 1994 to \$85 million in FY 1996. The President has requested \$99 million in FY 1997. Most of these monies are provided directly to tribes as grants for tribal environmental programs and activities or fund tribal sanitation infrastructure.
- In 1996, EPA initiated a Tribal Watershed Project and issued demonstration grants to four tribes. This project is intended to help tribes all across the country better document the condition of their landscapes and identify activities that threaten Tribal resources.
- Under President Clinton's AmeriCorps program, the Earth Conservation Corps manages 80 youth from the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, the Yakima Indian Nation, the Shoshone-Bannock Tribes, and the Warm Springs Tribe to implement tribal fisheries and watershed projects to restore salmon runs within the Columbia River watershed.
- In 1995, BIA invested \$1.5 million for tribal waste management projects. These included closure of landfills affecting the Santee Sioux; Taos, Laguna and Isleta Pueblos; Grand Portage and Red Lake Chippewas; Menominee, Hualapi, Hopi and Washo Tribes.
- The National Park Service (DOI) is currently working toward restoring the Elwha River Ecosystem and reviving salmon fisheries through partial or complete removal of the Glines Canyon and Elwha Dams and hydroelectric plants which have been in existence since the early part of this century. The dams have dramatically reduced the treaty fisheries of at least four federally recognized tribes--the Lower Elwha S'Klallam, the Port Gamble S'Klallam, the Jamestown S'Klallam, and the Makah. Restoration of the Elwha River ecosystem and native fisheries, which could cost about \$100 million or more, would help uphold the federal trust responsibility to affected Indian Tribes.
- DOJ recently completed settlement in an action initiated in 1982 as a trespass action on behalf of the Torres-Martinez Desert Cahuilla Indians seeking damages and injunctive relief from decades of continuing inundation by the defendant irrigation districts of about 11,000 acres of trust lands located within the Torres-Martinez Indian Reservation in Riverside and Imperial Counties, California. The settlement, signed June 18, 1996, calls for a payment of \$14.2 million to the tribe from both the defendants and the United States.
- United States v. Minerec -- In response to the DOJ's Clean Air Act suit against Minerec, a chemical plant operator on the Tohono O'odham Reservation, agreed to discontinue its production of hydrogen sulfide which had previously caused harm to Indian residents of the Reservation.

- HUD changed the method of rent calculation in the Indian housing rental programs lowering the rent ceiling for many low-income families.
- In conjunction with the President's Homeownership Initiative, the USDA's Rural Development Rural Housing Service (RHS) identified barriers (USDA, tribal, and interdepartmental) to delivery of the Section 502 Direct Single Family Housing Loan Program within tribal trust land boundaries and developed recommendations to reduce these barriers and increase home ownership in Indian country.
- Under the Rural Housing Native American pilot loan program, 25 tribes will work in partnership with USDA and Fannie Mae to obtain guaranteed Section 502 housing loans for at least 250 homes on restricted lands within each reservation's boundary. BIA will be responsible for the title searches. RHS and Fannie Mae have reached an agreement with the Navajo Nation, and an agreement with the Grand Traverse Band of Ottawa and Chippewa Indians is close at hand.

Protecting Subsistence Activities

- Expanded protection for subsistence fisheries in Alaska is a goal long sought by Alaska Native groups. DOI has now prevailed in court on the critical issue that the scope of the rural subsistence priority for the harvest of fish and wildlife on public lands in Alaska (which is guaranteed under Title VIII of the Alaska National Interest Lands Conservation Act) should be expanded to include navigable waters where a federal reserved water right exists. Navigable waters were excluded from subsistence protection previously under an earlier, more restrictive interpretation of the subsistence statute, even though most important subsistence fishing generally takes place in navigable waters. To implement the recent court decisions, the Department published an Advance Notice of Proposed Rulemaking in the Federal Register in April 1996 which identifies the specific navigable waters where the subsistence priority will apply in the future and which seeks public comment on the Department's proposal.

Settling Land Disputes

- The Navajo-Hopi Land Dispute -- In December 1995, after several years of negotiation, the DOJ settled multiple lawsuits by the Hopi Tribe against the United States for the failure to protect the Tribe's rights against use of its land by members of the Navajo Nation. This historic settlement paves the way for a consensual resolution of the longstanding dispute between the Hopi Tribe and the Navajo Nation over use of lands partitioned to the Hopi Tribe in 1979. DOJ is hopeful that Congress will enact legislation that may effectuate the settlement.

Increasing Environmental and Natural Resource Protection

- For FY 1996, DOE allocated over \$25.5 million to support American Indian initiatives and activities. Much of this is devoted to addressing environmental issues, and to advance science education for American Indians. Specific activities include:

- Montana v. EPA -- DOJ successfully defended EPA's treating the Confederated Salish & Kootenai Tribes of the Flathead Reservation as a state for purposes of setting environmental standards under the Clean Water Act within the Tribes' Reservation.
- Northwest Sea Farms v. U.S. Army Corps of Engineers -- DOJ successfully defended the Army Corps of Engineers' decision to deny Northwest Sea Farms' application for a permit to construct salmon net pens in an area of Puget Sound because of its potential to adversely impact the treaty-protected rights of the Lummi and Nooksack Tribes to take fish at customary sites.
- On May 3, 1996, the Department of Defense (DoD) established principles for consultation with Native Americans on its land management decision-making as part of its environmental conservation program. The principles were established based on consideration of the strong religious and cultural ties to natural areas. Currently, the Departments of Army, Air Force, and Navy are all working on guidelines geared specifically towards consultation between Native American organizations and their activities.
- DoD issued its Environmental Planning and Analysis Instruction on May 3, 1996, which emphasizes partnering with and involvement of local governments and local communities in DoD's environmental planning process. It also directs that compliance with the National Environmental Policy Act must incorporate the analysis required under Executive Order 12898 on Environmental Justice.
- In response to Congressional direction, the DoD devised a comprehensive program to: (1) establish a management information systems to house existing information on environmental impacts on Indian land; (2) conduct preliminary assessments to determine the appropriate responses to these impacts; (3) develop a priority model for allocating resources to address these impacts; (4) undertake model/demonstration projects; and (5) develop training material and prototype training programs with Native American and Tribal Colleges and Universities.

Enhancing Economic Development

- Indian reservations would be eligible to compete for designations, under the President's proposed second round of Empowerment Zones and Enterprise Communities. Potential benefits include access to "brown field" tax incentives to help with environmental clean-up, certain, private activity bonds, and additional expensing of business costs that would otherwise have to be capitalized.
- The Department of Housing and Urban Development (HUD) provided \$43 million for Indian Community Development Block Grants in FY 1995 for 106 projects. \$50 million is available in FY 1996.
- HHS' Administration for Native Americans (ANA), which promotes the goal of social and economic self-sufficiency for Native Americans, announced the availability of FY 1996 funds for its three grant programs in a consolidated funding Program Announcement in the Federal Register on September 7, 1995. This announcement combined into one comprehensive document, the following ANA grant programs: 1) Social and Economic Development Strategies (SEDS); 2) Environmental Regulatory Enhancement; and 3) Native American Languages Preservation and Enhancement. ANA

awarded 217 new competitive grants and continuations under six application closing dates.

- Treasury and the IRS have completed a draft of the Indian Assistance Handbook, which was undertaken to ensure that the administration of the tax laws as they affect Indian tribes, is consistent across the country. The Handbook is to be circulated to all tribes through the National Indian Gaming Commission. Copies may also be requested from the IRS.
- Reclamation (DOI) is nearing completion of rural water supply systems for the Three Affiliated Tribes of the Fort Berthold Reservation, the Standing Rock Sioux of the Standing Rock Reservation, and the Spirit Lake Nation of the Fort Totten reservations. It is also constructing the Mni Wiconi Project, a municipal, rural and industrial water system that will provide water for the Oglala Lakota tribe of the Pine Ridge Reservation, the Rosebud Sioux, and the Lower Brule Sioux Tribe.
- In conjunction with the issuance of regulations that impact tribal gaming, Treasury's Financial Crimes Enforcement Network (FinCEN) convened a compliance conference in Orlando, Florida, on April 4-5, 1996. These regulations, which became effective August 1, 1996 (see 61 FR 7054-7056) subject tribal casinos to the same reporting and recordkeeping requirements and anti-money laundering safeguards of the Bank Secrecy Act (BSA) as those in place for state-licensed casinos. The conference was attended by over 250 tribal government leaders, casino operators and other interested persons.
- Treasury's Office of the Comptroller of the Currency (OCC) plans to release an information guide for national banks, examiners, tribal governments and individuals on mortgage lending to residents of Indian reservations who face unique lending issues because of tribal sovereignty and trust land issues. OCC also plans to collect information about successful programs and partnerships involving national banks lending and investing in Indian country. Moreover, OCC continues to provide technical assistance to Indian tribes regarding the new Community Reinvestment Act (CRA) rule, community development investments and tribally-owned banks. OCC is working with the DOJ and other federal bank regulators to address policy issues on tribal acquisition and chartering of financial institutions. Finally, OCC highlighted bank provisions of lending and services in Indian country at its February community development conference.
- Treasury worked to enact legislation ensuring that tribes are able to offer 401(k) retirement plans to their employees. The Administration proposed the necessary legislative change in the FY 1997 budget and worked with Congress to ensure that the change was included in the Small Business Job Protection Act of 1996.
- In recognition of the importance of economic development in Indian country, the Assistant Secretary - Indian Affairs has been appointed a member of the Community Development Advisory Board established under the Community Development and Regulatory Improvement Act of 1994. (DOI/BIA)
- USDA Rural Development issued a policy statement acknowledging the rights of federally recognized tribal governments to impose Tribal Employment Rights Ordinance (TERO) requirements on subcontracts and subgrants under contracts and grants to the tribal governments and those for the benefit of tribal members.

- USDA's Rural Development Rural Business-Cooperative Service, which makes grants to finance development of small and emerging private business enterprises, has nearly doubled the investment in federally recognized tribes--from \$3.5 million to \$6.6 million--between FY 1994 to FY 1995.
- An interagency agreement was signed by USDA and the Administration for Native Americans (ANA) to improve the economies of eight tribes and the surrounding communities.

Enhancing Employment and Job Training

- Under the Job Training Partnership Act (JTPA), as amended, the Department of Labor's (DOL's) Employment and Training Administration has 187 designated grantees representing 97 federally recognized tribes, 16 tribal consortia, 15 Alaska Native organizations and 61 non-profit Indian-controlled organizations. Other grants are awarded to Native American non-profit organizations serving urban areas. Grantees were designated for a two-year period beginning on July 1, 1995. 15 JTPA grantees have approved plans to participate in the Indian Employment, Training and Related Services Demonstration Act demonstration programs. This program permits federally recognized Indian tribes, including Alaska Native villages, to submit plans that integrate employment and training formula based funds from the Departments of the Interior, Health and Human Services, and Labor.
- The charter of the Native American Employment & Training Council established under the Job Training Partnership Act, as amended in 1992, was renewed on July 1, 1995. In order to make "partnership" meaningful, all major policy issues are presented to the Advisory Council for their consideration and advice. The Council's first report to the Secretary of Labor and Congress has been issued to all Indian and Native American grantees. (DOL)
- The "waiver of competition" provision included in the 1992 JTPA Amendments was successfully implemented for the first time during the 1995-96 designation process. The law provides the Secretary of Labor with the right to waive competition for a grantee that is successfully administering a current grant. However, waivers will not be used for the 1997-98 designees (to be announced March 1, 1997) thereby permitting all eligible entities, current grantees and non-grantees an opportunity to compete for JTPA, Section 401 funding. (DOL)
- The finalized 1996 Partnership Plan was issued to all grantees on July 19, 1996. This second Program Year Partnership Plan serves as a blueprint for further improving program performance management and results. 90 percent of the 1995 Partnership Plan goals were met. (DOL)
- DOL, in consultation with its Section 401 partners, published in the Federal Register a regulation waiver provision that became effective November 1995. The waiver provision allows grantees to seek waivers of regulations that impedes their ability to improve program management, results and outcomes.
- DOL's Employment Standards Administration (ESA) excellent working relationship with and commitment to the Tribal Employment Rights Organization (TERO) ensures Native Americans have an opportunity to participate fully in employment with Federal contractors covered under Executive Order 11246, as amended. TERO Directors and other Native American Leaders are also invited to

participate in regional management meetings and to express their concerns. DOL participated in an Alaskan Construction Initiative which involved TERO representatives. DOL also met with the Alaskan Native Coalition on Employment and Training and with TERO Council members to hear their concerns.

- The Family Support Act gave Indian tribes and Alaska Native organizations an opportunity to apply to operate a Job Opportunities and Basic Skills Training (JOBS) program. Currently, there are 76 Indian tribes, consortia of tribes and Alaska Native organizations operating a JOBS program. In FY 1996, the tribal JOBS grantees received \$8.5 million to operate their programs on behalf of Native American AFDC recipients residing in the service areas of the tribal grantees. In fiscal year 1995 the tribal JOBS grantees helped over 1,250 AFDC recipients gain employment at an average hourly wage of \$6.36. (HHS/Office of Family Assistance).

Increasing Indian Energy

- In fiscal year 1996, 12 grants totaling \$1.65 million were awarded for increasing energy efficiency and renewable resource use to the following tribes: Ute Mountain Ute, Nambe Pueblo, Devil's Lake Sioux, Manzanta Band of Mission Indians, Mohegan, Picuris Pueblo, Native Village of Chignik Lagoon, Haida Corporation, Cape Fox Corporation, Atka Native Village, Jicarilla Apache, and Standing Rock Sioux. (DOE)

Enhancing Indian Agriculture

- Several USDA agencies are working together to heighten awareness of USDA services available to American Indian and Alaska Native communities. A 2-year grassroots outreach campaign is being conducted through a contract with the Intertribal Agriculture Council (IAC).
- USDA's Farm Service Agency (FSA) is making a concentrated effort to ensure that American Indian producers have equitable access to the new 7-year production flexibility program. To ensure the protection and lease value of American Indian agricultural land, FSA is working closely with--and authorized--BIA to sign these 7-year contracts. In addition, FSA is working directly with tribes to communicate all aspects of the new programs to every eligible farmer and has enlisted BIA support in ensuring they take full advantage of the new program sign up.
- With the support of Foreign Agricultural Service (FAS) Agricultural Attaches in Asia, the American Indian Trade Development Council has successfully promoted such products as range-fed beef, buffalo meat, and seafood products in Japan, Hong Kong, and Singapore. FAS also provides training to American Indian exporters on how to participate in the Market Assessment Program (MAP). FAS continues to work closely with IAC outreach coordinators to identify export-ready American Indian companies, and to recruit those companies for participation in MAP and other trade promotion activities. A trade mission will be conducted to Hong Kong and China in the fall of 1996 to promote American Indian products.
- The Extension Indian Reservation Program (EIRP), administered by USDA's Cooperative State Research, Education, and Extension Service (CSREES), provides extension agents to selected

American Indian tribes. The extension agents conduct programs of instruction on reservations in response to needs identified by the tribes. The programs help American Indians develop agricultural enterprises ranging from rearing and restocking salmon in Washington, to growing specialty seed crops in Arizona, to establishing a farmers market in North Carolina, to vegetable gardening in Alaska. These efforts aim to bring the benefits of the land-grant universities to the Reservations, and to increase quality of life, income, and self-esteem.

Base Realignment and Closure Program

Each military department is committed to working with Indian tribes interested in acquiring military property under the Base Closure process and laws. In 1995, the President announced another round of closures which prompted renewed interest from tribes. At the federal screening level, DOI usually makes the request on behalf of a tribe, and the affected military department coordinates with all parties. Following are examples of significant actions related to base closures which involve both DOI and military services:

- K.I. Sawyer Air Force Base, Marquette, MI - The Sault Ste Marie Tribe of Chippewa signed a lease for 275 housing units, three industrial buildings and two commercial buildings. The tribe is screening business proposals and expect to start major redevelopment activities by spring. Cooperation between the Local Redevelopment Authority (LRA), Air Force Base Conversion Agency, and the tribe is greatly aiding the success of job creation of the base and redevelopment of the community.
- Williams Air Force Base, Mesa Arizona - Air Force recently negotiated the sale of the base golf course to the Gila River Indian Tribe. DOI has made a request on behalf of the tribe for other "excess" federal property.
- Loring Air Force Base, Limestone, ME - Former military housing units are being transferred to DOI on behalf of the Aroostook Band of the Micmac Tribe, a recently recognized tribe which, as yet, has no land base. To enhance the tribe's economic and governmental self-sufficiency, other property is also planned to be transferred to DOI.
- Naval Station Sand Point, Seattle, Washington - The City of Seattle and the Muckleshoot Tribe are finalizing an agreement that will address the tribe's interests and the community's redevelopment plan by giving the tribe land in the area of the closing base and access to part of the base. The agreement also provides the tribe fishing rights and piers formerly part of the base.
- Fort Wingate, Gallup, New Mexico - The Navajo Nation and Zuni Pueblo, working with the Council of Governments is drafting an economic redevelopment plan. This closure involves DOI-withdrawn public domain lands which will revert to DOI for the benefit of both tribes. Currently, the Navajo Nation is using excess warehouse space for food distribution to American Indians and an excess building for vehicle maintenance to service the food distribution vehicles.
- Sierra Army Depot, Herlong, CA - Members of the Susanville Indian Rancheria serve on the Local Redevelopment Authority's Executive Council and will participate in redevelopment planning. The rancheria desires excess property to establish the State of California's first Regional Youth Treatment Facility and are working with the local community in this process.

Advancing Indian Child and Family Welfare

- The Health and Human Services (HHS) Administration for Children and Families (ACF) working with BIA and the Children's Bureau, satisfactorily addressed three longstanding concerns in Indian Country. Specifically,
 - Beginning in FY 1996, every tribe will, for the first time, be eligible for direct funding for Social Security Title IV-B parts I and II - funds administered by ACF for child welfare services.
 - In FY 1996, tribes will receive family preservation funds for the first time ever.
 - In FY 1996, as a condition for receiving Federal funds, ALL States must submit plans to HHS outlining tribal consultation methods for tribes within their State to address their method of compliance with the Indian Child Welfare Act.
- Through a three percent set-aside in the HHS' Child Care and Development Block Grant, approximately \$28 million was awarded in FY 1995 to 226 tribal grantees representing over 500 Indian tribes, Alaska villages, and tribal consortia.
- Child Welfare Services, whose goal is to help keep families together, awarded \$2.2 million in FY 1996 funds to Indian tribes, as of July 24, 1996. (HHS/Children's Bureau)
- The Children's Bureau's Family Preservation and Family Support Services, which helps state child welfare agencies and eligible Indian tribes establish and operate integrated, preventive family preservation services and community-based family support services for families at risk or in crisis, awarded \$2.1 million in FY 1996 funds to Indian tribes, as of July 24, 1996. (HHS)
- HHS' Office of Community Services (OCS) and Administration for Native Americans (ANA) are planning to hold a national tribal workshop from October 30 to November 1, in Washington, D.C.
- In FY 1996, the American Indian Head Start Program network operated by HHS' Head Start Bureau has 130 funded grantees. These grantees, located in 25 states, include 118 federally recognized tribes who directly operate programs; 4 Inter-tribal consortia representing 26 reservations, 12 colonies and 14 rancherías; and 8 Alaska Native Regional Corporations serving 35 villages and cities.
- In FY 1996, there were 18,858 children enrolled in the American Indian Programs Branch Head Start Programs. Indian Head Start program staff totaled 3,965 for School Year 95-96. The Indian network has 487 centers and 919 classrooms.
- HHS' Head Start Bureau held eight tribal consultation meetings around the country to provide elected tribal leadership an opportunity to offer input and feedback on current regulatory and policy issues related to Indian Head Start.
- The Office of Child Support Enforcement (OSCE) provided technical assistance to the Congress on

proposed amendments to welfare reform legislation related to services for Native Americans. The final conference agreement on the welfare reform legislation, the Personal Responsibility And Work Opportunity Reconciliation Act of 1996, reflected some of these discussions and adds a state plan requirement under which child support agencies may enter into agreements with Indian tribes for the cooperative delivery of child support enforcement services in Indian country. The legislation also allows the Secretary of HHS, in appropriate cases, to make direct payments to Indian tribes with an approved child support enforcement plan under title IV-D of the Act. (HHS)

- OCSE has formed a Native American Work Group with federal, state and tribal representatives. The goals of the work groups include identifying barriers and opportunities for states and tribes to expand CSE services to the Native American population. (HHS)
- OCSE's regional office staff coordinated a wide range of activities and provided technical assistance to support the Child Support Enforcement program's mission, e.g., it provided assistance in the development of support guidelines and a Policy and Procedures Manual for the Navajo Nation. (HHS)
- HHS' Family Violence Prevention and Services Program funded 120 tribes and tribal organizations for the purpose of reducing family and intimate violence through coordinated prevention and services strategies. The program provides funds for the provision of shelter services to victims of family violence and their dependents. In addition, the funds provide support for related services in shelter programs such as legal advocacy, family violence prevention counseling, and other prevention activities.
- As part of the HHS' Administration for Children and Families (ACF) Tribal Initiative, representatives from over 400 tribes were invited to participate in the following three tribal partnership events the week of August 5, 1996 in Denver, Colorado:
 - The ACF Tribal Building Bridges Forum.
 - The Northwest Head Start Conference.
 - The Annual National Tribal Child Care Conference.
- USDA's Food and Consumer Service (FCS) sponsored a national meeting for Indian State agencies that administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) in Albuquerque on February 6-8, 1996. FCS developed a new packet of WIC materials to increase awareness of Fetal Alcohol Syndrome (FAS) among American Indians and Alaska Natives. Of the more than 7 million WIC participants, nearly 117,000 are women, infants, and children of American Indian or Alaskan Native descent. It is estimated that American Indians and Alaska Natives have a FAS rate two to three times higher than the overall population. The materials include the nationally recognized film, "Sacred Trust."

Improving Food and Nutrition

- About 325,000 American Indians and Alaska Natives receive food stamps each month. (USDA)

- The Food Distribution Program on Indian Reservations (FDPIR) food package was received by about 114,000 other participants in 1995. New products such as lower-fat frozen ground beef and reduced-fat macaroni and cheese have been added to the food package, and product specifications have been modified to reduce fat, sodium, and sugar. USDA plans to initiate a comprehensive FDPIR food package review in FY 1996, in full partnership with Native American cooperators.
- In FY 1995, USDA, through programs for needy families donated about \$4.8 million of ground beef, canned poultry, pork and vegetables, and dried egg mix to Indian tribes.
- USDA's Food Consumer Service (FCS) is working to improve the nutritional quality and variety of commodities provided under the Food Distribution Program on Indian Reservations program. In a major departure from standard procedures, USDA established a pilot project under which fresh produce was made available to two tribes participating in the FDPIR which had restricted the food package to items with long shelf lives due to the relative isolation of reservations and their limited storage capacities. In FY 1997, USDA plans to expand the pilot to encompass up to 18 additional sites.

Reducing Alcohol and Drug Abuse

- In FY 1995, the Department of Housing and Urban Development (HUD) Public and Indian Housing Drug Elimination Program (PIHDEP) awarded \$9.3 million to 41 IHA grantees.
- HUD's Youth Sports Program provided 28 grants to IHAs totaling \$3.3 million in FY 1995. This program was not funded in FY 1996, however, most eligible activities under this program are eligible under the Public and Indian Housing Drug Elimination Program.
- Five schools were recognized under the national Drug Free Schools Recognition Program for public and private elementary, middle and secondary schools. (DOI/BIA)
- USDA's Rural Development Community Facilities program funded construction of a 10,000-square-foot substance abuse facility on the Yankton Sioux Tribe Reservation, South Dakota, to house up to 20 full-time patients.

Improving Indian Education

- The Department of Education (ED), as co-chair of a working group with DOI, has been working during this past year with other Federal agencies on a draft Executive Order for tribal colleges. This draft order was presented to the Domestic Policy Council for White House consideration and review. The purpose of the Order is to expand Federal assistance for Indian institutions of higher education, promote tribal sovereignty and individual achievement, and advance the National Education Goals and Federal policy in Indian education. Importantly, tribal sovereignty and the Federal Government's unique relationship to American Indians and Alaska Natives would be reaffirmed by the order.
- ED's Indian Education programs serve 430,000 students in the public and BIA schools in 42 states

through nearly 1,300 projects. Indian Education programs are not administered by the states; funds go directly to school, district, or tribal grantees.

- In FY 1996, American Indian students were served by approximately \$226 million dollars in Impact Aid funds for schools nationwide.
- In 1994, 45 percent of American Native High School graduates earned the core credits recommended by *A Nation at Risk* -- a dramatic increase over the 7 percent reported in 1982. This demonstrates the high levels to which native students can achieve upon completion of high school. However, the proportion of Native American high school graduates taking the recommended core credits is still below that for all high school students (52 percent in 1994).
- Scores on the Scholastic Assessment (SAT) for Native Americans have improved between 1987 and 1995. Native Americans students' scores increased by an average of 10 points for verbal and 15 points in mathematics. Likewise, between 1986 and 1995, Native Americans showed the largest gains among all racial groups on the ACT assessment.
- The number of Native Americans taking Advanced Placement exams in English, mathematics, science, and history increased by 481 percent from 1986 (415 students) to 1995 (2,412 students) compared to an increase of 220 percent for all races and ethnic groups. Native Americans represented 0.5 percent of all AP test-takers, about half their representation in the student population.
- Under the provisions of the President's Goals 2000: Educate America Act, the Office of Indian Education Programs (OEIP/BIA) and the National Indian Goals 2000 Panel have developed long range goals and benchmarks for the BIA funded school system. These goals include:
 - By the year 2000, increasing the average daily attendance rate from 90 percent to 94 percent, reducing the yearly dropout rate from 15.6 percent to 11.6 percent, and increasing the enrollment retention rate of students from 93 percent to 97 percent.
 - Increasing the number of students reaching the proficient and advanced levels by five percent per year, based on new authentic assessments.
 - Decreasing substance abuse incidents by ten percent.
- As of 1996, 105 of the 187 BIA funded schools, i.e., 56 percent, are controlled by tribal councils and/or tribal boards of education.
- A cooperative effort between the Centers for Disease Control, IHS, and BIA developed an integrated curriculum to address comprehensive school health issues relating to adolescents. Currently there are fourteen pilot sites.
- In 1996, the Johnson-O'Malley program was transferred to the Tribal Priority Allocation category of the Tribal Budget System. Using a national student count from 1995, funds were transferred into each participating tribe's base funding level under the TPA. This move has increased tribal control over education funds.

- The OIEP received one of nineteen Challenge Grants from ED. This five year \$5 million grant will assist schools in integrating technology into the curriculum. Corporations such as Microsoft, Intel and Apple are partners in this project.
- BIA is the first State Education Association (SEA) in the nation to have all Local Education Associations (LEAs) submit IASA funding requests in a Consolidated School Reform Plan.
- BIA was one of two SEAs that provided a model Professional Development Plan for 9 LEAs for 13 months providing on- and off-site training, and supplying each school with technology and integration of technology into the curriculum.
- Leupp, Little Singer, Hanahville, Grey Hills, Greasewood and three Pima Agency schools were designated Charter Schools by their respective states.
- Eight Indian schools were recognized as Blue Ribbon Schools under a national recognition program sponsored by ED. The program identifies those public and private elementary, middle and secondary schools that provide outstanding academic programs. (OIEP/BIA)
- Indian tribes and schools are participating in an innovative School-to-Work Opportunities Program administered through the Departments of Education and Labor. The Puyallup, and Yakima tribes received grants in 1995 to implement the program, as did the Lac Courte Oreilles and Alamo Navajo Schools. In addition, four BIA funded schools were awarded planning grants: Chief Leschi, Hannahville, St. Stephens Indian School, and Tohono O'odham High School.
- In 1995-96, 22 BIA funded schools serving approximately 1,680 families were selected for the Family and Child Education (FACE) program, a family literacy program that serves children ages 0-5 and their parents. This program, a collaborative effort by Parents as Teachers, the National Center for Family Literacy, the High Scope Educational Foundation, and BIA, is designed to enhance early childhood education, parent and child time, parenting skills and adult education.
- ED worked successfully with Indian organizations on the restoration of funding for ED's Indian Education program after the House Appropriations Committee voted to eliminate that funding in the FY 1996 Interior Department appropriations bill. ED has continued, since then, to work closely with the Indian community on budget issues.
- In its proposal for reauthorization of the Carl Perkins vocational education program, the Administration proposed the continuation of separate programs for Indian tribes and organizations, and for tribally controlled vocational institutions.
- Youthbuild is a program designed to help disadvantaged young adults who have dropped out of high school to obtain the education and employment skills necessary to achieve economic self-sufficiency and develop leadership skills and a commitment to community development in low-income communities. The Notice of Funding Availability (NOFA) for Youthbuild was published in the Federal Register on Monday, March 4, 1996, announcing availability of up to \$37.5 million. The maximum award for a Youthbuild implementation grant is \$700,000. Grants are expected to be awarded by the end of August 1996. (HUD)

- The Corporation for National Service is implementing a 1% set-aside equivalent to \$2.5 million for Native American and Alaska Native programs.
- USDA's Food and Consumer Service (FCS) included the 29 tribal colleges given land-grant status by President Clinton in October 1994 in an agency program which provides excess computer equipment at no cost to land-grant colleges.
- The USDA's Higher Education Programs office established an endowment fund for the above mentioned 29 Tribal Colleges, authorized under P.L. 103-382. In 1996, the first of an anticipated series of five contributions of \$4.6 million has been invested by the U.S. Treasury. The interest earned for fiscal year 1996 will amount to about \$100,000 for use in fiscal year 1997 and will be distributed to the institutions by means of a statutory formula. The total for the endowment fund at the end of 5 years will amount to \$23 million. These funds will be used to facilitate teaching programs in the food and agricultural sciences. (USDA)
- USDA's Communities Facilities program funded phases two and three of the Pinon Unified School District project in Arizona, in the amount of \$2,800,000 to help upgrade education for the Navajo Nation.
- In 1996, the office of Higher Education Programs launched the Tribal Colleges Education Equity Grants Program. This formula grants program provides \$50,000 for each of the 29 Tribal Colleges designated as 1994 land-grant institutions to improve teaching programs. (USDA)
- The Children, Youth, and Families at Risk Initiative--supported by USDA's Cooperative State Research, Education, and Extension Service (CSREES) in partnership with State and county Cooperative Extension Services--provided funding and technical support for numerous programs focusing on Native American needs. Examples include 4-H Yukon Fisheries, Oklahoma After School Care Program, Wind River Reservation Youth and Families at Risk Project, Wyoming.

Advancing Justice and Law Enforcement

- United States Attorneys' Offices with significant Indian Country jurisdiction have focused on how to provide better service to the American Indian population. In 1995-96, 26 additional Assistant United States Attorney positions have been provided to districts containing significant amounts of Indian Country. In addition, several U.S. Attorneys' Offices have worked with federal, tribal, and state agencies to develop memoranda of understanding to address problems caused by overlapping jurisdictions. Finally, training programs are being redesigned to ensure that federal prosecutors understand the jurisdictional framework for Indian Country, the law, and their responsibilities to American Indian communities.
- The FBI and the BIA work together to investigate federal crime which occurs on Indian Country. In 1995 and 1996, the United States Attorneys have encouraged the further development of tribal police and law enforcement programs and aggressive cross-designation of tribal police with BIA and other appropriate policing authorities. Twenty-seven additional FBI agents will be assigned to supplement the agents currently conducting investigations in Indian Country. In addition, the FBI, BIA Law Enforcement, and the Federal Law Enforcement Training Center (FLETC) have entered

into a memorandum of understanding providing \$1.125 million from the FBI to expand and improve investigative and managerial training of Indian Country law enforcement agencies.

- DOJ has several programs to build tribal capacity to address crime:
 - The Community Oriented Policing Services (COPS) program, established under the Violent Crime Control and Law Enforcement Act of 1994, is committed to helping Indian tribes control crime by helping them hire more police officers and expand their law enforcement capacity. To date, 129 Indian Tribes have been approved for estimated funds totaling \$22,998,450. This includes 177 different grants in 24 states, and 367 funded police officer positions. The COPS Office also provides funding to support training to implement the principles and practices of community policing.
 - For FY 95, 4% of the STOP Violence Against Women formula grant program was set aside for Indian tribal governments. Of the \$1,040,000 designated for grants to tribal governments, a total of 14 grants were awarded to 11 tribal governments and 3 consortiums representing 35 villages and 14 tribes. For FY 96, \$5.2 million will be allocated to this program.
 - Office of Juvenile Justice and Delinquency Prevention (OJJDP) in FY 95, provided \$1.2 million to the Fort Belknap Indian Community, Montana for the Safe Futures program, a five year comprehensive and coordinated delinquency prevention and intervention treatment program for at-risk and delinquent juveniles.

Other Social Services

- The National Senior Service Corps spent \$5.6 million to support 30,000 volunteers serving in Indian communities in 20 states.

STATEMENT OF KEVIN GOVER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE JOINT HEARING OF THE HOUSE RESOURCES COMMITTEE AND SENATE COMMITTEE ON INDIAN AFFAIRS, ON S.1586, THE "INDIAN LAND CONSOLIDATION ACT OF 1999"

November 4, 1999

Good morning Chairman Young, Chairman Campbell and Members of the Committee. I am pleased to appear before you today to provide the Department's views on S.1586, a bill that will amend the Indian Land Consolidation Act to more fully address the problem of the fractionated ownership of Indian lands. Resolution of this issue is critical to the economic viability of Indian country and the successful implementation of the Department of the Interior's ongoing efforts to implement trust reform. I would like to thank the House and Senate Committees and their staffs for the efforts they have put forth to resolve this complex issue. The fact that this hearing is a joint hearing serves to underscore the importance of this issue and the commitment of Congress to resolve it.

HISTORY

The origin of the fractionation problem has been documented many times. Although several treaties provided for the allotment of Indian land, the process became a nationwide policy in 1887 with enactment of the General Allotment Act (GAA). The GAA directed that tribal lands be divided into small parcels and given or "allotted" to individual Indians. The purpose was to accelerate the civilization of the Indians by making them private landowners and, ultimately, to assimilate them into society, at large. Many Indians sold their land, but few assimilated into the surrounding non-Indian communities, resulting in wide-spread homelessness and impoverishment for Indians. By the 1930s it was widely accepted that the GAA had, for the most part, failed. In 1934 Congress, in Section 1 of the Indian Reorganization Act, stopped the further allotment of tribal lands. A direct result of the GAA was the loss of over 100,000,000 acres of land from the Indian trust land base between 1887 and 1934. An indirect result was fractionated ownership of land allotments.

As originally envisioned by the drafters of the GAA, allotments would be held in trust by the United States for their Indian owners for no more than 25 years. At the end of the 25 years, the land would be conveyed in fee simple to its Indian owners. Many allottees died during the 25 year trust period. In addition, it became evident that many allottees continued to need federal protection. As a consequence, Congress enacted limited probate laws and authorized the President to extend the trust period for those individuals who were not competent to manage their lands. The presumption was, however, that at some point in the foreseeable future the lands would be conveyed to their Indian owners free of federal restrictions. As a consequence, Congress did not amend the probate laws even though it continued to extend the period of trust protection. As individuals died, their property descended to their heirs as undivided "fractional" interests in the allotment. In other words, if an Indian owning a 160 acre allotment died and had four heirs, the heirs did not inherit 40 acres each. Rather, they each inherited a 1/4th interest in the entire 160 acre allotment. As the years passed, fractionation has expanded exponentially to the point where there are hundreds of thousands of tiny

fractional interests spread throughout Indian country.

The fractionated ownership of Indian lands is taxing the ability of the Department to administer and maintain records on Indian lands. Fractionated heirship also threatens the integrity and viability of the Department's trust funds management. The Department is charged by statute with maintaining Federal Indian land records on these hundreds of thousands of fractional interests and with probating the estates of every Indian individual who owns a fractional interest in an allotment, regardless of how small that interest may be. The Department also maintains Individual Indian Money (IIM) accounts to receive, distribute, and account for income received from these fractional interests. In many cases, the fractions are so small that the cost of administering the fractional interests and maintaining the IIM accounts far exceeds both their value plus any income derived therefrom.

THE INDIAN LAND CONSOLIDATION ACT

In 1984, Congress attempted to address the fractionation problem with passage of the Indian Land Consolidation Act (ILCA). The ILCA authorized the buying, selling and trading of fractional interests but, most importantly, it provided for the escheat to the tribes of land ownership interests of less than 2 percent. Over 55,000 of the 2 percent-or-less fractional interests escheated since passage of the ILCA in 1984. However, the problem of fractionation continues to worsen and, in fact, since the Supreme Court declared the current escheat provision unconstitutional in *Babbitt v. Youpee*, 117 S.Ct. 727 (1997), is accelerating. This is because interests that would have escheated are now passing to the heirs and further fractionating, and because numerous estates will have to be reopened in order to revert the 55,000 escheated interests. The costs of maintaining heirship records and administering the land is inordinately expensive for the BIA. Approximately 50 - 75 percent (\$33 million) of the BIA's realty budget goes to administering these fractional interests making funds unavailable for more productive investments in lands. Other programs such as trust funds management, forestry, range, transportation, and social services, are likewise adversely impacted. Utilization and/or conveyance of the fractionated property by the numerous owners is also difficult because of the need to secure the numerous consents which are required.

ACTIONS BY THE DEPARTMENT

In 1994, my office distributed a consultation package to tribal leaders to address the issue of fractionation and followed it with a letter to owners of trust and restricted Indian lands. The package included a proposal in the form of draft legislation and invited comments and suggestions for alternatives to the concepts contained in the draft legislation. The letter to landowners was sent to more than 126,000 individuals. The landowners letter described the proposal and included a questionnaire. More than 12,000 persons, 90 percent of whom reported themselves as members of federally recognized tribes, responded in writing during 1995. Sixty-five percent (65 percent) of the respondents in the survey of landowners agreed with the basic concepts of consolidating small fractional interests in the tribes through an acquisition program and preventing and slowing further fractionation.

S. 1586

In order for any initiative to have a measurable impact on the fractionated heirship problem, it must have two major components – first, it must eliminate or consolidate the number of existing fractional interests and, second, it must prevent or substantially slow future fractionation. S.1586 accomplishes both of these objectives. S. 1586 provides an acquisition fund to eliminate existing fractional interests and contains limitations on the devise and descent of trust property that will materially slow the future fractionation of allotted lands. Savings from the cost of probating Indian estates alone justifies the cost of the acquisition program. The average value of a less than 2 percent fractional interest in allotted lands on twelve reservations studied by the General Accounting Office (GAO) in 1992 was estimated to be less than \$200. Comparatively, upon the death of an Indian owner, it costs the BIA between \$1,500 and \$2,000 to probate the landowner's estate. Additional costs are borne by the Department's Office of Hearings and Appeals. In many cases, the simple fact of the matter is that it will be cheaper to simply acquire the interests than it will be to probate them, allow them to further fractionate, and to pass them on to more heirs, which in turn allows them to continue to fractionate.

FRACTIONATED HEIRSHIP PILOT PROJECT

In FY 1999, the Congress authorized a fractionated heirship pilot project and appropriated \$5 million for that purpose. 34 tribes applied for the pilot. After reviewing the applications and examining such things as the severity of fractionation on the various reservations, the condition of the probate and realty records, the availability of appraisal data, and the tribe's willingness to contribute to the program, three tribes from Wisconsin were selected: Bad River, Lac Courte Oreilles, and Lac du Flambeau. All of these reservations have very old (1850s vintage) pre-GAA allotments. Approximately 85 percent of ALL of the interests on the reservations were less than 2 percent, and several 80 acre allotments had in excess of 1,000 owners. After meeting with the tribes, establishing procedures for determining value, how to make rapid payment to the landowners, and how to speed up the deed recording process, the project was initiated in April of this year.

Initially it was anticipated that notices would be sent to landowners and advertisements placed in local newspapers and perhaps notice of the project announced on local radio stations. However, the opportunity to sell fractional interests spread quickly by word of mouth and the BIA has been inundated with requests to sell interests. To date, over 8,000 interests have been purchased and over 4,000 acres have been returned to the tribes. Over 600 deeds (combining multiple sales of fractional interests into one document) have been recorded and the need for over 250 probates and new IIM accounts have been eliminated. With over \$1 million in additional acquisitions currently being processed, the entire \$5 million for the pilot project will likely be used to purchase additional fractional interests by February 2000. The success of the pilot project demonstrates not only that the number of fractional interests can be dramatically reduced through an acquisition program, but, more importantly, that there are significant numbers of individual Indians that are in the market to voluntarily dispose of these interests.

ECONOMIC VIABILITY OF INDIAN LAND

S. 1586 addresses one of the most serious ramifications of the fractionated state of Indian land ownership. Before the Secretary can lease land for purposes such as grazing, drilling, mining or rights of way, the owners of that land must approve the lease. In some cases under federal law, such as agriculture, a majority in interest of the owners must approve the lease. In others, such as oil and gas drilling, all owners must approve the lease before it can go forward to the Secretary. With scores or even hundreds of owners on a single allotment, potential lessees simply find it too burdensome or costly to locate and obtain the approval of all owners. As a result, land frequently goes unleased and the owners lose the economic benefit of their property.

S. 1586 would adopt a uniform standard for all leases, rights-of-way, sales of natural resources or similar transactions regardless of the use to which the property will be put. It would authorize the Secretary to approve such a transaction if it is supported by the owners of a majority of the interests in a parcel of land.

I would also like to bring SEC. 221. REAL ESTATE TRANSACTIONS INVOLVING NON-TRUST LANDS to your attention. There has been considerable confusion and litigation about whether 25 U.S.C. §177 applies to lands acquired in fee by Tribes.

The Administration believes that Section 221, as proposed, should be amended to make it clear that §177 automatically attaches to lands that are purchased in fee by a Tribe if those lands are within the boundaries of its current reservation. Such a provision would greatly enhance the federal and tribal goal, evidenced by statutes such as 25 U.S.C. § 465, of rebuilding the Tribal land bases that were decimated by the allotment of Tribal lands. We believe that such a provision is consistent with the goals of the majority of Tribes, who generally are interested in preserving lands within reservation boundaries in Tribal ownership for the benefit of future generations. The right to sell, mortgage or otherwise dispose of interests in land that are outside of current reservation boundaries without Congressional or Secretarial approval will better enable Tribes to pursue economic development and self-sufficiency.

CONCLUSION

In 1997, the Administration submitted a draft bill that was introduced and hearings were held. Representatives of some of the allottees, principally the Indian Land Working Group, testified on that bill and also presented their own legislative proposal to Committee staff.

Following the hearing, a meeting was held with Senate Committee staff, the Administration and the Indian Land Working Group to discuss the two proposals. The Senate Committee staff then took the comments received at that meeting and drafted S.1586. The Committee staff has done a remarkable job in combining the best features of both proposals and are to be commended for their efforts. There will, no doubt, be concern expressed by some witnesses over the inclusion of an escheat provision in S.1586 and emphasis placed on the fact that the Supreme Court has twice ruled

that the escheat provisions in the existing version of ILCA are unconstitutional. To that argument we quote from the final paragraph of the Supreme Court's opinion in *Hodel v. Irving*:

There is little doubt that the extreme fractionation of Indian lands is a serious public problem. It may well be appropriate for the United States to ameliorate fractionation by means of regulating the descent and devise of Indian lands. Surely it is permissible for the United States to prevent the owners of such interests from further subdividing them among future heirs on pain of escheat. [Citation omitted.] It may be appropriate to minimize further compounding of the problem by abolishing the descent of such interest by rules of intestacy, thereby forcing the owners to formally designate an heir to prevent escheat to the Tribe.

S.1586 was drafted in full awareness of and in response to the quoted language. S. 1586 specifically addresses defects that rendered the earlier versions of the ILCA unconstitutional. First, it requires that notice of the amendments be given to the allottees within six months of passage of the amendments and gives them a minimum of eighteen months to comply with the amendments. Second, it also has liberal provisions of the devise of property and does not totally prohibit the devise of less than 2 percent interests as the earlier versions of the ILCA did.

The Administration wholeheartedly supports passage of S.1586. We will submit a list of technical corrections and relatively minor suggestions to the Committee, shortly. Passage of S.1586 is, in fact, imperative if the current trust reform initiative is to succeed. Without a legislative resolution of the fractionation problem, the ever quickening growth of fractionation will outpace any efforts to implement meaningful trust reform.

Thank you for the opportunity to testify on this important piece of legislation. I will be happy to answer any questions you may have.

**STATEMENT OF EDWARD B. COHEN, DEPUTY SOLICITOR, DEPARTMENT OF
THE INTERIOR, BEFORE THE HOUSE COMMITTEE ON RESOURCES
CONCERNING H.R. 2743, TO REDUCE THE FRACTIONATED OWNERSHIP OF
INDIAN LANDS, AND FOR OTHER PURPOSES.**

JULY 29, 1998

Mr. Chairman and members of the committee, thank you for the opportunity to present the views of the Department of the Interior on H.R. 2743, a bill to reduce the fractionated ownership of Indian lands, and for other purposes.

Fractionation affects lands held in trust or restricted status by the United States for individual Indians. These "allotted" or individually-owned trust lands comprise approximately 11 million acres and, in size, exceed that of the States of Massachusetts, Connecticut and Rhode Island, combined. Fractionated ownership threatens the integrity and viability of the Department's trust funds management system and is a major impediment to the reconciliation of Indian trust accounts and any meaningful improvement of the system. Equally important, it threatens to undermine the economic vitality of land in Indian Country. The problem was created by 19th Century federal Indian policy. It cannot be addressed by the tribes; it requires a federal legislative solution.

BACKGROUND

In 1887, Congress enacted the General Allotment Act ("GAA"). This Act directed the Secretary to divide tribal lands into small parcels and "allot" them to individual Indians. The purpose was to accelerate what was termed to be the "civilization" of the Indians by making them private landowners, successful farmers, and ultimately to assimilate them into society at large. Many Indians sold their land, but few assimilated into the surrounding non-Indian communities. By the 1930's it was widely accepted that the GAA had, for the most part, failed. In 1934 Congress, in Section 1 of the Indian Reorganization Act, 25 U.S.C. § 461, stopped the further allotment of tribal lands. A direct result of the GAA was the loss of over 100,000,000 acres of land from the Indian trust land base between 1887 and 1934. An indirect result was fractionated heirship.

As originally envisioned, allotments would be held in trust by the United States for their Indian owners for no more than 25 years. At the end of the 25 years, the land would be conveyed in fee simple to its Indian owners. Many allottees died during the 25 year trust period. In addition, Congress concluded that many allottees continued to need federal protection because they had not assimilated. As a consequence, Congress authorized the President to extend the trust period for those individuals who were deemed not competent to manage their lands. It also enacted probate laws which provided that as individuals died, their property descended to their heirs as undivided "fractional" interests in the allotment (tenancy in common). In other words, if an Indian owning a 160 acre allotment died and had four heirs, the heirs did not inherit 40 acres

each. Rather, they each inherited a 1/4th interest in the entire 160 acre allotment. As successive generations have died, each allotment has continued to fractionate exponentially. It had been thought that at some point in the foreseeable future, the lands would be conveyed to their Indian owners free of federal restrictions. As a consequence, Congress did not amend the probate laws even though it continued to extend the period of trust protection. As the years passed, fractionation has expanded exponentially to the point where there are literally hundreds of thousands of tiny fractional interests.

The Department of the Interior is charged by statute with maintaining federal Indian land records on these hundreds of thousands of fractional interests and with probating the estates of every Indian individual who owns a fractional interest - no matter how small - in an allotment. In many cases, the fractions are so small that the cost of administering the fractional interests - about \$8.00 per account per month - far exceeds both their value plus any income derived therefrom. Approximately 50 - 75 percent (\$33 million) of the BIA's realty budget goes to administering these fractional interests and is, thus, unavailable for probate, leasing and other land management functions.

The fractionation of allotted Indian land has serious ramifications for the Department. Most BIA trust programs are impacted (realty, forestry, agriculture, range, etc.), as well as programs of the Office of the Special Trustee and the Office of Hearings and Appeals. While we can implement new systems to minimize some costs, the labor intensive processes of probating estates and obtaining owner consents on leases or sales will continue.

Savings from the cost of probating an Indian estate alone justifies the cost of acquiring fractional interests. The average value of a less than 2% interest in allotted land for the twelve reservations studied by the Government Accounting Office in a 1992 report is estimated to be less than \$200. Comparatively, upon the death of these land owners, it will cost the BIA between \$1,500 and \$2,000 to probate the landowner's estate. Additional costs are borne by the Office of Hearings and Appeals. Probating these estates is very costly due to the number of heirs and the number of undivided interests held by the deceased. The fact that an estate may be worth very little does not reduce the Bureau's cost to probate these estates. Significant time is consumed in locating the heirs and obtaining their current addresses. For example, in three recent deaths on the Fort Berthold Reservation (N.D.), the three deceased individuals owned a total of 53 undivided interests on the reservation as well as additional interests on four other reservations.

In addition to the costs borne by the Government in probating Indian estates, there are negative impacts on the Indian heirs to these estates in terms of delays in the distribution of their inherited assets. There are approximately 9,000 backlogged BIA probates. Many of these probates relate to individuals who died more than eight years ago. As of March 31, 1998, \$48.3 million was held in 18,244 Individual Indian Money (IIM) accounts for estates in the probate process.

After probating the estates, there are increased costs in the maintenance of agency records, including land records, and these costs are increasing geometrically. For example, upon the

death of an individual on the Winnebago Reservation (NE), the land records workload increased from the maintenance of 67 undivided interests for the deceased to 938 undivided interest for his 14 heirs. In addition, new IIM accounts need to be established which cost approximately \$35.00 per account in account maintenance alone.

Significant costs are also borne by the Government in the leasing and sale of allotted Indian lands and income distribution. On agricultural lands, when landowners are unable to come to agreement and negotiate a lease of their lands, the BIA is required to send out notices to allotted land owners advising them that they have 90 days to negotiate a lease on their land. If the owners cannot come to agreement, the BIA must advertise the land and lease it on the owners' behalf. The cost of this notification process is substantial. For example, each spring the Fort Peck Agency sends out approximately 10,000 ninety day notices to individual owners of 1,200 leases.

If an individual landowner wishes to sell his or her interest to a non-co-owner, gift deed to a non-co-owner, or grant a right-of-way, consent must be obtained from at least 51% of the other co-owners in the allotment. Trying to obtain consent from other landowners is difficult, and often impossible for owners that live off the reservation and receive only pennies annually. The problem is even more difficult for oil and gas leases where consent of 100% of the owners usually is required.

More importantly, the economic viability of Indian land is impaired. Utilization for commercial or other purposes and/or conveyance of the fractionated property by the numerous owners is difficult because of the need to secure the numerous consents which are required. But given a choice between leasing on Indian land as opposed to state, federal or private land, potential lessees are becoming less willing to endure the costs and burden of obtaining all of the necessary consents. In some cases, hundreds of signatures may be required. As noted, usually all of the owners must consent to an oil and gas lease. Landowners who want to put their lands to productive use are often prevented from doing so by other landowners. The costs to contact allottees to lease lands is enormous. The location of the owners is often unknown. One group of oil companies reported this past May that they have spent over \$300,000 on bonus bids and lease signing efforts and have only been able to sign 816 of 3,500 allottees in New Mexico. Another oil company operating on Indian lands in Montana will not even bid on tracts with 40 or more owners. As a result, much of these lands remain unproductive and desperately needed economic opportunity is lost.

In 1983, Congress attempted to address the fractionation problem with passage of the Indian Land Consolidation Act (ILCA). The ILCA authorized the buying, selling and trading of fractional interests but most importantly it provided for the escheat (uncompensated transfer) to the tribes of fractional interests of less than 2 percent. Although thousands of the 2 percent-or-less fractional interests have escheated since passage of the ILCA in 1983, the problem of fractionation continues to worsen. The limitations of ILCA were further exacerbated

when the Supreme Court, in *Babbitt v. Youpee*, 117 S.Ct. 727 (decided January 21, 1997), found the existing escheat provisions of Section 207 of ILCA to be unconstitutional.

DEVELOPMENT OF THIS PROPOSAL

Both the Supreme Court's recent decision in the *Youpee* case and the need to overhaul the law relating to the disposition of interests in fractionated ownership land make a legislative solution to fractionation an imperative. This particular proposal has been several years in the development stage. In 1994, the Assistant Secretary - Indian Affairs distributed to tribal leaders a consultation package to address the issue of fractionation and followed it with a letter to owners of trust and restricted Indian lands. The package included a proposal in the form of draft legislation and invited comments on the concepts in the proposal or suggestions for alternatives that would meet two objectives: 1) the consolidation of existing fractionated interests, and, 2) the prevention of further fractionation. The letter to the landowners, sent to more than 126,000 individuals, described the proposal and included a questionnaire. More than 12,000 persons responded in writing during 1995. Based on the results of the survey and dozens of consultation meetings held around the country, the bill has been revised to provide, among other things, tribes with greater authority to implement the land acquisition provisions of the proposal on their reservation, provide the tribes with more authority to design and implement their own probate codes, and authorize tribes to elect to probate estates in tribal court.

BILL PROVISIONS

This bill is intended to achieve two primary objectives: 1) a significant reduction in the number of existing small fractional interests and consolidation of these interests in the tribes, and 2) a significant reduction in, or elimination of, the further fractionation of allotted lands. In order to achieve these objectives, the bill contains three major components.

First, it would create a land acquisition program and authorize the Secretary, in his discretion, to purchase fractional interests from willing sellers. These interests will be transferred to the tribes without any out-of-pocket costs to the tribes.

Second, in order to prevent further fractionation, new rules of inheritance would be adopted.

Third, the bill clarifies the Secretary's authority to approve land transactions approved by the owners of a majority interest in the property and clarifies the tribes' right to buy and sell non-trust lands without federal supervision.

A. Acquisition of Small Fractional Interests

The bill authorizes the expenditure of funds for the purpose of acquiring fractionated interests. The bill creates a priority for the acquisition of fractional interests of 2 percent-or-less. Those interests would be transferred to a tribe, subject to the requirement that all income derived from

the interests will be paid to the Secretary until the purchase price has been recovered. Income generated from an acquired fractional interest would be put into a revolving fund which would be used for the acquisition of additional fractional interests. That income and the reductions in administrative costs to administer the highly fractionated interests together will assure that the benefits to the federal government will be greater than the costs.

B. Limitations on Inheritance

In order to prevent further fractionation, inheritance of interests in allotments would be limited to members of a federally recognized tribe; non-member spouses and children can, however, obtain life estates. In cases where the Indian owner dies without a will, inheritance would be further limited to the decedent's immediate family: spouses, children, grandchildren, parents, grandparents, brothers and sisters. By preparing a will, an Indian owner could continue to direct inheritance to any individual he or she chooses, as long as the individual is a member of a federally recognized tribe. Again, non-member spouses and non-member children could inherit a life estate. The bill authorizes tribes to change the federal limitations on inheritance by enactment of tribal probate codes, and authorizes tribes, at their option, to implement their probate codes in tribal court. The new inheritance limitations would not become effective for 2 years subsequent to enactment to allow landowners to modify or prepare wills to comply with the new requirements. The Secretary would be required to provide notice to landowners of the new inheritance limitations and to alert them to estate planning options. The bill provides authorization for the necessary appropriations. Use of appropriated funds for acquisition of the very small interests and transfer of these interests to tribes would generate almost immediate cost savings from the administration of small interests held in trust for individuals.

C. Approval of Land Transactions

The bill also addresses a longstanding problem by clarifying the Secretary's authority to approve land transactions as long as the owners of a majority interest in an allotment have consented to a lease, or timber or mineral sale. Under existing law, in many cases unanimous consent is required for land transactions. Given the number of fractional interest owners, in many cases getting such unanimous consent has been virtually impossible. This provision is modeled after Section 105(c) (2) of the Indian Agriculture Act of December 3, 1993, 25 U.S.C. §3715 (c) (2), which expressly authorizes the Secretary to approve agricultural leases as long as the owners of a majority interest in the allotment have consented to the transaction.

The bill also eliminates ambiguity as to existing law by authorizing tribes to buy and sell non-trust lands on the same basis as any other person in the United States.

CONCLUSION

The question of how best to address the fractionated heirship problem is legally and factually complicated. Moreover, there are many different points of view on how this issue should be addressed. Nonetheless, without an immediate solution to the fractionated ownership problem, it

will continue to grow unabated and will shortly completely disable the Department from meeting its record keeping and fiscal accounting responsibilities. For example, the Special Trustee is charged with ensuring that the BIA "establishes policies and practices to maintain complete, accurate, and timely data regarding the ownership and lease of Indian lands". 25 U.S.C. S 4043(b)(2)(C). The BIA is at the point where it is, or will shortly be, unable to maintain such data. Without such data, all other fiscal and accounting systems that rely on this data can never be fully reconciled. While no bill will satisfy all concerns and still make a meaningful reduction in the number of existing fractional interests, this bill is designed to ensure that the existing trust land base does not further fractionate and that Indian land remains productive.

The Administration also urges favorable consideration of its 1999 Budget Request of \$10 million for implementation of its Indian Land Consolidation Pilot. The pilot program is consistent with the acquisition program included in H.R. 2743. A total of 34 tribes have been nominated to participate in the pilot program. Unfortunately, the House passed Interior and Related Agencies Appropriation Bill failed to fund the pilot. As the Interior bill moves through Conference, we ask you to support funding the pilot, which we believe to be essential to gaining future support for nationwide implementation of any fractional interest land acquisition program.



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

JUN 18 1997

Honorable Albert Gore, Jr.
President of the Senate
United States Senate
Washington, D.C. 20510

Dear Mr. President:

There is enclosed a draft bill "To reduce the fractionated ownership of Indian lands, and for other purposes."

We recommend that this draft bill be introduced, referred to the appropriate committee for consideration, and enacted.

The enclosed draft bill addresses one of the most complex and debilitating issues facing the Department of the Interior and Indian people--the fractionated ownership of Indian lands. The fractionation of Indian lands is taxing the ability of the government to administer and maintain records on Indian lands. It also is making it increasingly difficult for the Indian owners to put their lands to productive use.

Fractionation affects lands held in trust by the United States for individual Indians. These "allotted" or individually-owned trust lands comprise approximately 11 million acres and, in size, exceed that of the States of Massachusetts, Connecticut and Rhode Island, combined. Fractionated ownership also threatens the integrity and viability of the Department's trust funds management system and is a major impediment to the reconciliation of Indian trust accounts and any meaningful improvement of the system. The problem was created by 19th Century federal Indian policy. It cannot be addressed by the tribes; it requires a federal legislative solution.

BACKGROUND

In 1887, Congress enacted the General Allotment Act ("GAA"). This Act directed the Secretary to divide tribal lands into small parcels and "allot" them to individual Indians. The purpose was to accelerate what was termed to be the "civilization" of the Indians by making them private landowners, successful farmers, and ultimately to assimilate them into society at large. Many Indians sold their land, but few assimilated into the surrounding non-Indian communities. By the 1930's it was widely accepted that the GAA had, for the most part, failed. In 1934 Congress, in Section 1 of the Indian Reorganization Act, 25 U.S.C. § 461, stopped the further allotment of tribal lands. A direct result

of the GAA was the loss of over 100,000,000 acres of land from the Indian trust land base between 1887 and 1934. An indirect result was fractionated heirship.

As originally envisioned, allotments would be held in trust by the United States for their Indian owners no more than 25 years. At the end of the 25 years, the land would be conveyed in fee simple to its Indian owners. Many allottees died during the 25 year trust period. In addition, it quickly became evident that the allottees were not assimilating and continued to need federal protection. As a consequence, Congress authorized the President to extend the trust period for those individuals who were not competent to manage their lands. It also enacted probate laws which provided that as individuals died, their property descended to their heirs as undivided "fractional" interests in the allotment (tenancy in common). In other words, if an Indian owning a 160 acre allotment died and had four heirs, the heirs did not inherit 40 acres each. Rather, they each inherited a 1/4th interest in the entire 160 acre allotment. As successive generations have died, each allotment has continued to fractionate exponentially.

It had been thought that at some point in the foreseeable future, the lands would be conveyed to their Indian owners free of federal restrictions. As a consequence, Congress did not amend the probate laws even though it continued to extend the period of trust protection. As the years passed, fractionation has expanded geometrically to the point where there are literally hundreds of thousands of tiny fractional interests.

The Department of the Interior is charged by statute with maintaining federal Indian land records on these hundreds of thousands of fractional interests and with probating the estates of every Indian individual who owns a fractional interest in an allotment. In many cases, the fractions are so small that the cost of administering the fractional interests - about \$8.00 per account per month - far exceeds both their value plus any income derived therefrom. Approximately 50 - 75 percent (\$33 million) of the BIA's realty budget goes to administering these fractional interests and is, thus, unavailable for investment in productive lands. Other programs are, likewise, adversely impacted, e.g., trust funds management, forestry, range, transportation, etc. Utilization for commercial or other purposes and/or conveyance of the fractionated property by the numerous owners is also difficult because of the need to secure the numerous consents which are required.

In 1984, Congress attempted to address the fractionation problem with passage of the Indian Land Consolidation Act (ILCA). The ILCA authorized the buying, selling and trading of fractional interests but most importantly it provided for the escheat to the tribes of fractional interests of less than 2 percent. Although

thousands of the 2 percent-or-less fractional interests have escheated since passage of the ILCA in 1984, the problem of fractionation continues to worsen. The limitations of ILCA were further exacerbated earlier this year when the Supreme Court, in Babbitt v. Youpee, 117 S.Ct. 727 (decided January 21, 1997), found the existing escheat provisions of Section 207 of ILCA to be unconstitutional.

BILL PROVISIONS

Our draft bill is intended to achieve two primary objectives: 1) the elimination of existing small fractional interests and consolidation of these interests in the tribes, and, 2) a significant reduction in, or elimination of, the further fractionation of allotted lands. In order to achieve these objectives, the bill contains three major components. First, it would create a land acquisition program and authorize the Secretary, in his discretion, to purchase fractional interests from willing sellers. These interests will be transferred to the tribes without any out-of-pocket costs to the tribes. Second, in order to prevent further fractionation, new rules of inheritance would be adopted. Third, the bill clarifies the Secretary's authority to approve land transactions approved by the owners of a majority interest in the property and clarifies the tribes' right to buy and sell non-trust lands without federal supervision.

A. Acquisition of Small Fractional Interests

The draft bill authorizes the expenditure of funds for the purpose of acquiring fractionated interests. The bill creates a priority for the acquisition of fractional interests of 2 percent-or-less. Interests transferred to a tribe would be subject to the requirement that all income derived from the interests will be paid to the Secretary until the purchase price has been recovered. Income generated from an acquired fractional interest would be put into a fund to be used for the acquisition of additional fractional interests. That income and the reductions in administrative costs to administer the highly fractionated interests together will assure that the benefits to the federal government will be greater than the costs.

B. Limitations on Inheritance

In order to prevent further fractionation, inheritance of interests in allotments would be limited to members of a federally recognized tribe; non-member spouses and children can, however, obtain life estates. In cases where the Indian owner dies without a will, inheritance would be further limited to the decedent's immediate family: spouses, children, grandchildren, parents, grandparents, brothers and sisters. Again, a non-member spouse and children could inherit a life estate. The draft bill

authorizes tribes to change the federal limitations on inheritance by enactment of tribal probate codes, and authorizes tribes, at their option, to implement their probate codes in tribal court. The new inheritance limitations would not become effective for 2 years subsequent to enactment to allow landowners to modify or prepare wills to comply with the new requirements. The Secretary would be required to provide notice to landowners of the new inheritance limitations and to alert them to estate planning options.

The draft bill provides authorization for the necessary appropriations. Use of appropriated funds for acquisition of the very small interests and transfer of these interests to tribes would generate almost immediate cost savings from the administration of small interests held in trust for individuals.

C. Approval of Land Transactions

Our draft bill also addresses a longstanding problem by clarifying the Secretary's authority to approve land transactions as long as the owners of a majority interest in an allotment have consented to a lease, or timber or mineral sale. Under existing law, in many cases unanimous consent is required for land transactions. Given the number of fractional interest owners, in many cases getting such unanimous consent has been virtually impossible. This provision is modeled after Section 105(c)(2) of the Indian Agriculture Act of December 3, 1993, 25 U.S.C. § 3715(c)(2), which expressly authorizes the Secretary to approve agricultural leases as long as the owners of a majority interest in the allotment have consented to the transaction.

The draft bill also eliminates ambiguity in existing law by authorizing tribes to buy and sell non-trust lands on the same basis as any other person in the United States.

A LEGISLATIVE RESOLUTION OF THE FRACTIONATED OWNERSHIP PROBLEM IS AN IMPERATIVE

The question of how best to address the fractionated heirship problem is legally and factually complicated. Moreover, there are many different points of view on how this issue should be addressed. Nonetheless, without an immediate solution to the fractionated ownership problem, it will continue to grow unabated and will shortly completely disable the Department from meeting its record keeping and fiscal accounting responsibilities. For example, the Special Trustee is charged with ensuring that the BIA "establishes policies and practices to maintain complete, accurate, and timely data regarding the ownership and lease of Indian lands". 25 U.S.C. § 4043(b)(2)(C). The BIA is at the point where it is, or will shortly be, unable to maintain such data. Without such data, all other fiscal and accounting systems

that rely on this data can never be fully reconciled. Both the Supreme Court's recent decision in the Youpee case and the need to overhaul the law relating to the disposition of interests in fractionated ownership land make a legislative solution to fractionation an imperative.

This particular proposal has been several years in the development stage. In 1994, the Assistant Secretary - Indian Affairs distributed to tribal leaders a consultation package to address the issue of fractionation and followed it with a letter to owners of trust and restricted Indian lands. The package included a proposal in the form of draft legislation and invited comments on the concepts in the proposal or suggestions for alternatives that would meet two objectives: 1) the consolidation of existing fractionated interests, and, 2) the prevention of further fractionation. The letter to the landowners, sent to more than 126,000 individuals, described the proposal and included a questionnaire. More than 12,000 persons responded in writing during 1995. Based on the results of the survey and dozens of consultation meetings held around the country, the proposal has been revised to provide, among other things, tribes with greater authority to implement the land acquisition provisions of the proposal on their reservation, provide the tribes with more authority to design and implement their own probate codes, and authorize tribes the ability to elect to probate estates in tribal court.

While no proposal will satisfy all concerns and still make a meaningful reduction in the number of existing fractional interests, this bill is designed to ensure that the existing trust land base does not further fractionate and that Indian land remains productive. It is fully expected that these and other concerns will be discussed during hearings before the Congress on this proposed legislation.

The Office of Management and Budget has advised that presentation of this proposal to the Congress is in accord with the President's program.

Sincerely,



S. _____

H.R. _____

A BILL

To reduce the fractionated ownership of Indian lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Findings.

Congress finds that--

(1) In the 1800's and early 1900's the United States sought to assimilate Indian people into the surrounding non-Indian culture by allotting tribal lands to individual tribal members.

(2) Many trust allotments were taken out of trust status and sold by their Indian owners.

(3) The trust periods for trust allotments have been extended indefinitely; however, because of the inheritance provisions in the original treaties or allotment acts, the ownership of many of the allotments that have remained in trust status has become fractionated into hundreds or thousands of interests many of which represent less than 2 percent of the total interest in the allotment.

(4) Congress, further, has authorized acquisition of lands in trust for individual Indians, many of which lands

have also become fractionated by subsequent inheritance. Such acquisitions continue to this day.

(5) These fractional interests provide little or no return to their beneficial owners and cost the United States inordinate amounts in administrative costs.

(6) In 1983 Congress enacted the Indian Land Consolidation Act (ILCA). Substantial numbers of 2 percent or less fractional interests have escheated to tribes pursuant to section 207 of the ILCA. However, the United States Supreme Court found the application of section 207 to the facts presented in Babbitt v. Youpee, ___ U.S. ___ (decided January 21, 1997) to be unconstitutional. Thus, in the absence of remedial legislation, the number of fractional interests will continue to grow.

(7) The problem of fractionation was caused by federal policy and cannot be solved by the tribes and their members. It requires a federal solution.

Section 2. Declaration of Policy.

It is the policy of this Act to--

- (1) prevent the further fractionation of trust allotments;
- (2) to consolidate fractionated interests and ownership of those interests into usable parcels;
- (3) to vest beneficial title to such parcels in the tribes on whose reservations the lands are located; and,

(4) to promote tribal self-sufficiency and self-determination.

Section 3. Amendments to the Indian Land Consolidation Act.

The Indian Land Consolidation Act of January 12, 1983 (96 Stat. 2515, Public Law 97-459), as amended, (the "Act") is hereby further amended as follows:

(1) Section 202 is amended by deleting the existing language of paragraph (2) and inserting in lieu thereof the following:

"'Indian' means a person who is a member of an Indian tribe or is eligible to become a member of an Indian tribe at the time of the distribution of the assets of a decedent's estate;"

and by adding the following new definition:

"(5) heirs of the first or second degree" means parents, children, grandchildren, grandparents, brothers and sisters of the decedent."

(2) Section 203 is amended by deleting the words "section 5" and inserting in lieu thereof the words "sections 5 and 7", and inserting after the word "land" the words "or the creation of reservations".

(3) Section 205 is amended by deleting the colon before the word "Provided" and inserting in lieu thereof the following new sentence:

"Interests owned by a tribe in a tract may be included in the computation of the 50 per centum ownership requirement:".

(4) The proviso clause of Section 205 is amended by striking the existing language of paragraph (3) and inserting in lieu thereof the following:

"(3) if a tribe does not have a land consolidation plan approved pursuant to section 204 of this Chapter, all purchases and sales initiated under this section shall be subject to approval by the Secretary."

(5) Section 206 is amended by striking the existing language and inserting in lieu thereof the following:

"Sec. 206. Descent and distribution of trust or restricted lands; tribal ordinance barring nonmembers of tribe from inheritance by devise or descent

"(a) Tribal Probate Codes

"Notwithstanding any other provision of law, any Indian tribe may adopt its own code of laws to govern descent and distribution of trust or restricted lands within that tribe's reservation or otherwise subject to that tribe's jurisdiction. Such codes may provide that, notwithstanding the provisions of section 207 of this Chapter, only members of the tribe shall be entitled to receive by devise or descent any interest in trust or restricted lands within that tribe's

reservation or otherwise subject to that tribe's jurisdiction.

"(b) Secretarial Approval

"(1) All tribal codes enacted pursuant to subsection (a) of this section, or amendments to such codes, shall be subject to approval by the Secretary. The Secretary shall not approve any code that does not prevent or substantially reduce the further fractionation of allotted lands. Any code approved pursuant to this subsection, or an amendment to such code, shall not become effective until the effective date of section 207. For codes or amendments to a code enacted after the effective date of section 207, the code or amendments shall not be effective until at least six months after approval of the code or amendments by the Secretary. All codes shall affect only those estates of decedents dying on or after the effective date of the code or amendments to a code.

"(2) Repeal of any tribal code approved pursuant to this subsection shall require the approval of the Secretary and shall not be effective until at least six months after the Secretary's approval of the repeal. The repeal of a tribal code shall affect only the estates of decedents dying on or after the effective date of the repeal.

"(c) Probate of estates in tribal court; United States not an indispensable party

Any tribe with a probate code approved pursuant to subparagraph (b) of this section may assume the responsibility for probating the estates of decedents owning lands or interests in lands on the tribe's reservation, or who own lands or interests in lands otherwise subject to the tribe's jurisdiction, in tribal court. In any probate proceeding initiated by a tribe pursuant to this subsection, the United States shall not be an indispensable party to the proceeding. Provided, that any tribe that elects to probate estates in tribal court shall promptly notify the Bureau of Indian Affairs Agency having jurisdiction over the tribe's lands of the final distribution of a decedent's interests in trust property. Provided further, if the Secretary determines that a tribe is not providing timely notice of the distribution of estates or that the Bureau of Indian Affairs's ability to maintain accurate financial and land records is being adversely affected, the Secretary may, after 30 days written notice to the tribe and after providing the tribe with an opportunity to respond to the notice, reassume the duty to probate Indian estates."

(6) Section 207 is amended by deleting the existing language and inserting in lieu thereof the following:

"Sec. 207. Descent and distribution; escheat of fractional interests

"(a) Descent and distribution

"(1) Except as provided herein, interests in trust or restricted lands may descend by testate or intestate succession only to Indians.

"(A) If a testator devises interests in the same parcel of trust or restricted land to more than one person, in the absence of express language in the devise to the contrary, the devise shall be presumed to create a joint tenancy with right of survivorship.

"(B) For those estates passing by intestate succession, only spouses and heirs of the first or second degree may inherit interests in trust or restricted lands. All interests in trust or restricted land passing by intestate succession shall create a joint tenancy with right of survivorship in the heirs to the estate.

"(C) If a person who is prohibited by subsection (a) (1) above from receiving an interest in trust or restricted lands is a surviving spouse or child of the decedent--

"i. Any devise to such spouse or child shall be presumed, unless a lesser estate is provided for in the decedent's will, to

create a life estate, if requested during the probate of the decedent's estate by the spouse or child or by their representative if they are under a legal disability.

"ii. In the absence of a will, a life estate shall be created for such spouse or child, if requested during the probate of the decedent's estate by the spouse or child or by their representative if they are under a legal disability.

"(D) If no individual is eligible to receive an interest in trust or restricted lands, the interest shall escheat to the tribe having jurisdiction over the trust or restricted lands, subject to any life estate that may be created pursuant to sub-paragraph (C) of this subsection.

"(2) Within 180 days of the enactment of these amendments, the Secretary shall, to the extent the Secretary deems practicable, notify tribes and individual landowners of the provisions of these amendments. The notice shall list estate planning options available to the owners.

"(3) Upon the death of an individual holding an interest in trust or restricted lands which is located outside the boundaries of a reservation and is not subject to the jurisdiction of any tribe, such interest

shall descend either by (a) testate or intestate succession in trust to Indian spouses and Indian heirs of the first or second degree, or (b) in fee status to any other devisees or heirs.

"(4) Upon the death of an Indian holding an interest in restricted lands issued pursuant to the Acts of May 17, 1906, 34 Stat. 197, as amended, or May 25, 1926, 44 Stat. 629, as amended, and the land is not subject to the jurisdiction of any tribe, such interests shall descend either by (a) testate or intestate succession in restricted status to Indian spouses and Indian heirs of the first or second degree, or (b) in fee status to any other devisees or heirs.

"(b) Escheatable fractional interests

"Notwithstanding the provisions of subparagraph (a) (1) (B), no undivided interest which represents 2 per centum or less of the total acreage in a tract of trust or restricted land shall pass by intestacy but shall escheat to the tribe on whose reservation the interest is located or if outside of a reservation to the recognized tribal government possessing jurisdiction over the land.

"(c) Effective Date of Section.

"The provisions of this section shall not become effective until two years after the date of enactment of this section and shall apply only to those estates

of decedents dying on or after said effective date."

(7) Section 208 is amended by striking the existing provisions and inserting in lieu thereof the following:

"Sec. 208. Full faith and credit to tribal actions under tribal ordinances limiting descent and distribution of trust or restricted or controlled lands

"The Secretary in carrying out his responsibility to determine the heirs of trust and restricted lands pursuant to section 372 of Title 25, United States Code, shall apply the rules of devise and descent contained in any tribal probate code approved pursuant to section 206 and shall give full faith and credit to any probates conducted by a tribal court pursuant to an approved tribal probate code."

(8) Section 209 is amended by striking the existing provisions and inserting in lieu thereof the following:

"Sec. 209. Conveyancing authority upon sale or exchange of tribal lands; removal of trust status of individually owned lands

"The Secretary shall have the authority to issue deeds, patents, disclaimers or such other instruments of conveyance or transfer as may be needed to effectuate or perfect a sale, partition, exchange, or transfer of tribal lands and individual trust or restricted lands or interests therein which are made pursuant to the terms of this Act or of sections 372,

378, 379, 404 or 405 of Title 25, United States Code, including the authority to eliminate the trust status, or remove restrictions on alienation, of individually held lands or interests therein as authorized by the above laws and when requested by the individual Indian owner."

(9) The Act is further amended by adding after Section 212 the following:

"Section 213. Acquisition of Fractional Interests

"(a) The Secretary is authorized to acquire, in his discretion, and with the consent of its owner and at fair market value, any fractional interest in trust or restricted lands. The Secretary shall give priority to the acquisition of fractional interests representing 2 per centum or less of a parcel of trust or restricted land. The Secretary shall hold in trust for the tribe that has jurisdiction over the fractional interest the title of all interests acquired pursuant to this section.

"(b) Any tribe with a land consolidation plan approved by the Secretary pursuant to section 204 may apply to the Secretary to enter into an agreement with the Secretary to implement the program to acquire fractional interests authorized by subsection (a) of this section. In addition to the requirements set forth in sections 204 and 205, tribes applying for federal funding of tribal land

consolidation plans shall include in their applications the following:

"(1) A description of the tribe's dispute resolution mechanisms and an assurance that allottees will have a forum to challenge any value determinations made by the tribe in implementing its land consolidation plan;

"(2) a financial statement indicating whether the tribe has any resources to contribute to the financing of the fractional interest acquisition program and the amount of that contribution;

"(3) a statement that none of the federal money received to implement the fractional interest acquisition program will be used to finance the acquisition of land by individual tribal members; and

"(4) a commitment to pay any rents or profits from, or the proceeds of sales of fractional interests acquired pursuant to subsection (a), to the Secretary in accordance with section 214 of this Act.

"Any agreement negotiated pursuant to this section shall not be subject to P.L. 93-638, as amended, or any regulations promulgated thereunder, but shall be subject solely to the provisions of this Act and the terms and conditions of the agreement. All such agreements shall provide that if funds made available to a tribe for the acquisition of fractional interests remain unexpended for

two years, the funds shall revert to the Acquisition Fund created by section 216.

"Section 214. Administration of Acquired Fractional Interests, disposition of proceeds

"A tribe receiving a fractional interest pursuant to sections 207 and 213 may, as a tenant in common with the other owners of the trust or restricted land lease the interest, sell the resources, consent to the granting of rights-of-way, or engage in any other transaction affecting the trust or restricted land authorized by law. Provided, that until the purchase price paid by the Secretary for the interest has been recovered any lease, resource sale contract, right-of-way or other transaction affecting the interest shall contain a clause providing that all revenue derived from the interest shall be paid to the Secretary. The Secretary shall deposit all such revenue in the Acquisition Fund created pursuant to section 217 of this Act. Provided further, that notwithstanding section 476 of Title 25, United States Code, or any other provision of law, so long as a tribe is a tenant in common with individual Indian landowners on land acquired pursuant to sections 207 and 213 of this Act, the tribe may not refuse to enter into any transaction contemplated by this section if a majority of the remaining landowners consent to the transaction. If the tribe does not consent, the Secretary may consent on behalf of the tribe. For leases of allotted land that are

authorized to be granted by the Secretary, the tribe shall be treated as if it were an individual Indian landowner.

"Section 215. Establishing Fair Market Value

"For the purposes of this Act, the Secretary may develop a reservation-wide system for establishing the fair market value of various types of lands and improvements which may govern the amounts offered for the purchase of interests in trust or restricted lands pursuant to section 213.

"Section 216. Acquisition Fund

"The Secretary is directed to establish an Acquisition Fund to disburse appropriations authorized to accomplish the purposes of section 213 of this Act and to collect all revenues received from the lease, permit, or sale of resources from interests in trust or restricted lands transferred to tribes by the Secretary pursuant to section 213. Until the purchase price of an interest acquired pursuant to section 213 has been recovered, all proceeds from leases, permits or resource sales derived from the interest shall be deposited in the Acquisition Fund and shall, as specified in advance in appropriations Acts, be available for the purpose of acquiring additional fractional interests.

"Section 217. Determination of Reservation Boundaries and Tribal Jurisdiction

"Determinations of whether or not a parcel of land is within an Indian reservation or is otherwise subject to a tribe's jurisdiction shall be made by the Secretary. Review of these determinations may be had in the United States District Court where the land is located pursuant to Chapter 7 of Title 5, United States Code.

"Section 218. Reports to Congress

"Three years from the date of enactment of this Act, and annually thereafter, the Secretary shall file a report indicating the number of fractional interests acquired and the impact of the reduction in the number of fractional interests on the BIA's financial and realty record keeping systems. The Secretary, after consultation with the tribes, shall recommend any amendments or additional legislation necessary to make meaningful reductions in the number of fractional interests.

"Section 219. Approval of Leases, rights-of-way, and sales of natural resources

"The Secretary of the Interior may approve any lease, right-of-way, sale of natural resources, or any other transaction affecting individually owned trust or restricted lands that requires approval by the Secretary, if the owners of a majority interest in the trust or restricted lands consent to the transaction and the Secretary determines that approval of the transaction is in the best interest of the Indian owners. Upon such approval the transaction shall be

binding upon the owners of the minority interests in the trust or restricted land and all other parties to the transaction to the same extent as if all of the Indian owners had consented to the transaction.

"Section 220. Real Estate Transactions Involving Non-Trust Lands

"Notwithstanding any other provision of law, any Indian tribe may on the same basis as any other person, buy, sell, mortgage, or otherwise acquire or dispose of lands or interests in land acquired after the effective date of this Act, and which are not held in trust or subject to a pre-existing federal restriction on alienation imposed by the United States, without the approval of the Congress or of the Secretary and such disposition shall create no liability on the part of the United States."

Section 4. Authorization for Appropriations.

There are authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

Section by Section Analysis

of

S. _____

H.R. _____

Section 1. Findings.

This section outlines the history and causes of the Indian fractionated ownership problem.

Section 2. Declaration of Policy.

This section sets forth the reasons, justification and purposes of the Bill.

Section 3. Amendments to the Indian Land Consolidation Act.

This section amends various provisions of the Indian Land Consolidation Act of 1983, 96 Stat. 2515, as amended, and adds several new sections.

Subsection (1) amends Section 202 of the Indian Land Consolidation Act by changing the definition of "Indian" to mean a person who is a member of an Indian tribe or at the time of the distribution of a decedent's estate is eligible to become a member of a tribe. The new definition is essentially the same definition used in many recent pieces of legislation and makes the definition compatible with the provisions of the amended section 207. Subsection (1) also adds a new definition defining heirs of the first and second degree of relationship to a decedent.

Subsection (2) amends section 203 of the Indian Land Consolidation Act by making section 7 of the Indian Reorganization Act applicable to all tribes, unless otherwise

restricted by Federal law. Section 7 of the Indian Reorganization Act authorizes the Secretary of the Interior to proclaim new Indian reservations or to add lands acquired pursuant to section 5 of the Indian Reorganization Act to existing reservations.

Subsection (3) amends section 205 of the Indian Land Consolidation Act to allow a tribe to include interests it owns in a parcel of trust or restricted land in computing the 50 per centum ownership requirement needed for a tribe to purchase all remaining interests in a parcel or trust or restricted land.

Subsection (4) amends subparagraph (3) of section 205 to provide that Secretarial approval of tribal acquisitions is necessary only if a tribe does not have a land consolidation plan.

Subsection (5) replaces the existing language of section 206 of the Indian Land Consolidation Act with new provisions that give tribes increased authority to enact their own probate codes. The section also allows tribes with approved probate codes to elect to probate estates in tribal court. The section makes it clear that in any proceeding initiated pursuant to an approved code, the United States need not be named as a party to the tribal court proceeding. The section has provisions for reassumption of the probate function by the Secretary, after notice and an opportunity to respond have been afforded to the affected tribe, if a tribe fails to maintain timely and accurate records. In order to give Indian testators an opportunity to

become familiar with the provisions of the Act and with any tribally enacted probate codes, the section provides that tribal probate codes will not become effective until two years after the date of enactment of the Act, or for codes enacted more than two years after enactment of the Act, that no tribal probate code will become effective for at least six months after approval of the code by the Secretary. Tribes can provide for a longer notice period by designating a different effective date in their codes. In order to ensure that tribal members are aware of the repeal of a tribal code and have time to change their wills and to ensure that the Department's Administrative Law Judges are kept apprised of the repeal of any tribal probate codes, repeals require approval of the Secretary and will not become effective until at least six after the Secretary has approved the repeal. Again, tribes can provide for a longer review period by specifying an effective date that is more than six months after the Secretary's approval of the repeal of a tribal code.

Subsection (5) deletes the existing provisions of section 207 of the Indian Land Consolidation Act, portions of which were determined to be unconstitutional by the United States Supreme Court in Babbitt v. Youde, ___ U.S. ___ (decided January 21, 1997), and substitutes new language that comports with Youde and Hodel v. Irving, 481 U.S. 704 (1987). (In Hodel, the Supreme Court found the original version of section 207 unconstitutional.)

Subsection 6(a) establishes federal rules of inheritance and

devise. Paragraph 6(a)(1) provides that interests in trust and restricted lands may only be inherited by Indians. It should be noted that inheritance can be further limited to members of the tribe having jurisdiction over the land if a tribe enacts a code with such limiting provisions pursuant to section 206. Paragraph 6(a)(1)(A) allows a testator to devise his/her trust property to any Indian. However, if a testator leaves fractional interests in the same parcel of land to multiple devisees, the amendment creates a presumption that the testator intended to leave the interests to the devisees as joint tenants with right of survivorship. This will stop the further fractionation of interests in that parcel of land.

Section 6(a)(1)(B) limits the classes of people who can inherit property if a decedent has failed to execute a will. Under present law, property can pass to any lineal descendent no matter how remote the degree of Indian blood and regardless of whether the heir is a member of an Indian tribe. By limiting the class of eligible recipients of land passing by intestate succession and by creating a joint tenancy among the heirs, fractionation will be dramatically reduced and ownership of trust lands will remain with Indians.

Subsection 6(a)(1)(C) provides for life estates for non-Indian spouses and children if the spouse or children request a life estate during the probate of the decedent's estate. If they are under a legal disability such as mental incompetence or minority, their representative can request a life estate on their

behalf. If the decedent has affirmatively left a spouse or non-Indian children out of his/her will or has left a lesser estate, the provisions of the will will govern the devise. This provision will help to ensure that trust lands remain in Indian ownership while protecting the enjoyment of interests in the decedent's estate by non-Indian spouses or children.

Subsection 6(a)(1)(D) provides that if there are no eligible heirs to a decedent's trust real property estate, the property will pass to the tribe on whose reservation the land is located or to the tribe having jurisdiction over the land.

Subsection 6(a)(2) requires the Secretary to notify tribes and individual owners of the contents of the amendments to the Indian Land Consolidation Act and to suggest to individual owners estate planning options available to them. Given the sheer number of fractional interests involved, and the fact that many interest holders' whereabouts are unknown, the Secretary is required to provide notice only to the extent that the Secretary deems practicable.

Subsection 6(a)(3) addresses public domain allotments. Under the allotment acts if there were, for example, insufficient land on a reservation that was being allotted, an individual Indian could select an allotment on the public domain. In many cases these allotments are miles from the nearest reservation and have no connection with any tribe. Under current law these islands of trust land remain in trust as long as an heir has any degree of Indian blood. This section limits the class of persons

who can inherit public domain allotments in trust status and provides for the passing into fee status of land that belongs to persons who are outside of the class of eligible recipients or are not members of a tribe. The owners would retain their interests in the land; however, the interests would no longer be held in trust by the federal government.

Subsection 6(a)(4) addresses allotments in Alaska. Alaska creates unusual problems because the Department is still issuing allotments there. Accordingly, this section treats Alaskan allotments similar to public domain allotments but has special provisions that address the land's restricted fee status and the fact that much of the restricted fee land in Alaska may not be subject to any tribe's jurisdiction.

Subsections 6(b) is an escheat provision that is based on language in the final paragraph of the majority opinion in the Supreme Court's decision in Hodel v. Irving, 481 U.S. 704 (1987). In that paragraph, the court opined that the United States has the authority to take steps to prevent the further subdividing of fractional interests on pain of escheat and that the United States can minimize further fractionation by abolishing the rules of descent and forcing the owners of fractional interests to designate an heir. Thus, Subsection 6(b) provides for the escheat of fractional interests smaller than 2% if a decedent fails to make a will and, thus, fails to designate an heir. Interests smaller than 2% and passing by intestacy will escheat to the tribe on whose reservation the land is located or that

exercises jurisdiction over the land. In addition to the existing authority for an interest holder to make an inter vivos conveyance of the interest, to petition to have the land converted to fee status or to will the property to a person that already owns an interest in the parcel, in order to provide additional relief for persons with sub 2% interests, subsection 213 requires the Secretary to give preference to the purchase of 2% or smaller interests.

In order to provide individuals with an opportunity to learn about the amendments and to take appropriate estate planning measures, Subsection 6(c) provides that the provisions of section 207 will not become effective until two years after enactment of the amendments.

Subsection (7) amends section 208 of the Indian Land Consolidation Act by requiring the Secretary to follow approved tribal probate codes when probating estates, or to give full faith and credit to tribal court decisions for those tribes probating estates of decedents with land on their reservations.

Subsection (8) amends section 209 of the Indian Land Consolidation Act to give the Secretary the authority to issue any documents needed to effectuate any land transaction authorized by the Indian Land Consolidation Act or for any other Act authorizing the disposal of interests in trust or restricted land.

Subsection (9) adds several new sections to the Indian Land Consolidation Act:

Section 213 establishes a fractional interest acquisition program that authorizes the Secretary to purchase any size fractional interest from any willing seller. In order to provide another alternative for those individuals who currently own interests of 2 percent or less and that wish to avoid the escheat provisions of section 207, the acquisition of 2 percent or less interests is given a priority. All interests acquired by the Secretary will be transferred to the tribe on whose reservation the interests are located or to the tribe with jurisdiction over the interests.

Subparagraph (b) of section 213 authorizes tribes with Land Consolidation Plans approved by the Secretary under section 204 to negotiate agreements with the Secretary for the tribes to run the fractional interest acquisition programs on their reservations. Subparagraph (b) requires tribes operating the program to have adequate dispute resolution mechanisms in place (i.e., in most cases a tribal court), a financial statement indicating whether the tribe will contribute to the program, a commitment that monies received to acquire fractional interests will not be used to finance private land acquisitions, and a commitment to pay all revenue the tribe may receive from the acquired interests to the Secretary for deposit in the Acquisition Fund until such time as the funds used to acquire the interest have been repaid, without interest, as required by section 214 of the Act. In order to ensure that funds are not reallocated to other programs and to ensure that as few funds as

possible are expended on administrative overhead, the section provides that agreements negotiated pursuant to this section are not subject to Self-Determination contracts or Self-Governance Annual Funding Agreements. The section also provides that if a tribe receives funds to implement a land acquisition program and does not spend those funds within two years, the funds will revert to the Acquisition Fund from which they can be used by the Secretary or reallocated to other tribes.

Section 214 authorizes the tribes to act as co-tenants in any parcels in which they own less than all the interests and to participate in transactions affecting those parcels on the same footing with their co-owners. A proviso requires that any income received by a tribe attributable to interests acquired under section 213 is to be paid to the Secretary until the purchase price has been recovered. Any income received by the Secretary is directed to be deposited in the Acquisition Fund created by section 217. The section also provides that while the tribes hold land subject to a repayment obligation, the tribes cannot refuse to enter into agreements that will generate funds that can be used for repayment of the purchase price. If a tribe refuses to consent to a transaction, the Secretary can treat the tribe as if it were an individual Indian landowner and consent to leases, rights-of-way, etc., on behalf of the tribe.

Section 215 authorizes the Secretary to develop and perform reservation wide appraisals rather than require a separate appraisal for every land acquisition made pursuant to section

213. On many reservations, one parcel of grazing land or farm land or timber land is the equivalent of other similar parcels located on the reservation. Individuals can dispute an appraisal by filing an appeal under the Department's existing regulations, or can simply refuse to sell a parcel if they disagree with the appraised value.

Section 216 requires the Secretary to establish an Acquisition Fund with any monies appropriated to accomplish the purposes of the Act. The Secretary is also directed to deposit any revenue received from fractional interests conveyed to tribes in the fund and to use that revenue for the purchase of additional fractional interests.

Section 217 provides that determinations of whether a parcel is within a particular tribe's reservation or subject to a tribe's jurisdiction will be made by the Secretary. Review of such decisions is authorized in the United States District Court where the parcel is located. Such review will be conducted based on the agency record pursuant to the Administrative Procedure Act, 5 U.S.C. § 701 et seq.

Section 218 requires the Secretary to file a report within three years of passage of the amendments, and annually thereafter, describing the progress made under the fractional interest acquisition program. After consultation with the tribes, the Secretary may recommend any changes or additional legislation needed in order to accomplish a meaningful reduction in the number of fractional interests.

Section 219 resolves a longstanding problem in leasing and resource sales. In some circumstances land cannot be leased or resources sold without the unanimous consent of all the fractional interest owners. In many cases this is impossible or extremely time consuming and expensive given the large number of owners. This provision will give the Secretary the same authority found in section 105(c)(2)(A) of the Indian Agriculture Act of 1993, 25 U.S.C. § 3715(c)(2)(A), by authorizing the Secretary to approve leases and resource sales upon application by the owners of a majority interest in the property.

Section 220 clarifies longstanding disagreement over the scope of the Non-Intercourse Act of 1790, 25 U.S.C. 177. Tribes that purchase real estate for investment purposes often have difficulty reselling or mortgaging the property because of uncertainty about application of the Non-Intercourse Act. Unless the scope of the Non-Intercourse Act is clarified, banks and other lending institutions will continue to be reluctant to loan money to tribes for the acquisition of land, to mortgage investment properties or for the development of such lands. This provision makes it clear that lands acquired after the date of the Act are not subject to the Non-Intercourse Act, unless the Tribe petitions for and the Secretary accepts the land in trust, and that such lands may be bought, sold, or mortgaged on the same basis as non-Indian landholding. The Navajo Nation presently has a similar provision, 25 U.S.C. § 635(b), and this amendment would extend that authority to all tribes.

Section 4. Authorization for Appropriations.

Section 4 of the Amendments is an authorization for the appropriation of funds necessary to accomplish the purposes of the amendments.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 29 1995

Dear Tribal Leader:

Thank you for your responses to my October 20, 1994, letter concerning our proposal to address the problems of fractionated ownership of allotted land. During the four-month tribal comment period, we have received many helpful comments and recommendations. We continue to see an opportunity to get a bill introduced early in the 104th Congress.

We are very committed to consultation and will consider your comments throughout the 104th Congress, which is authorized until adjournment or until January 3, 1997, the date for convening the 105th Congress. Since we anticipate changes to the draft as a result of consultation, we would like to hear from as many tribal leaders and tribal governments as possible. We also anticipate many questions from members of Congress in the coming months, and your views will be most helpful and welcome in responding to such questions.

Individual owners of interests in allotted land have responded at a fast pace to the legislative proposal to amend the Indian Land Consolidation Act. Many excellent comments, suggestions and alternatives have been received in response to the letter to land owners and survey questionnaire distributed beginning November 29, 1994. We are summarizing the data and reviewing the responses and will begin making revisions and incorporating the comments into the next version of the proposed legislation.

We appreciate hearing from you. Please send your comments to the Division of Real Estate Services, Attention: HEIRSHIP, Bureau of Indian Affairs, 1849 C Street, NW, MS-4522-MIB, Washington, D.C. 20240.

Sincerely,

Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs

AREA OFFICE	MAILING SIZE	RESPONSES
Aberdeen	25,000	1,596
Albuquerque	1,800	208
Anadarko	*	1,741
Billings	40,000	2,908
Juneau	13,394	1,636
Minneapolis	6,005	735
Muskogee	5,000	136
Navajo	18,000	2,119
Phoenix	12,700	793
Portland	23,000	415
Sacramento	4,600	205

*The Anadarko Area Office did not count the number of its mailouts. Also, although there are 12 BIA Area Offices, the Eastern Area Office was not included but all of its lands are tribally owned.

1994-1995 SURVEY OF LANDOWNERS

DESCRIPTION OF DATA ELEMENT (QUESTIONNAIRE)	TOTALS
NUMBER OF OWNERS RESPONDING	12,492
OWNERS OF MULTIPLE INTERESTS	7,368
OWNERS ON MULTIPLE RESERVATIONS	1,989
OWNER RESIDES ON LAND OWNED BY HIM/HER	1,119
MEMBER OF A FEDERALLY RECOGNIZED TRIBE	10,558
OWNER HAS ATTEMPTED TO SELL OR ACQUIRE INTERESTS	1,942
OWNER IS WILLING TO SELL	5,358
OWNER AGREES WITH PROPOSAL	7,512
TOTAL NUMBER OF QUESTIONNAIRES MAILED	149,599
PERCENT RETURN (Questionnaires mailed/response*100)	8.35



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

NOV 29 1994

Dear Landowner:

A growing problem has faced individual Indians, tribes, and the Bureau of Indian Affairs (BIA) for many years - the fractionated ownership of allotted lands. The problem has now reached the point where the Department of the Interior's ability to administer allotted lands, probate Indian estates and maintain the IIM system can no longer keep up with the increasing number of fractional interests. You may be the owner of such interests.

An attempt to address the problem was made by Congress in 1984 when it passed the Indian Land Consolidation Act. Part of that Act requires that when an individual owner dies, an interest amounting to 2 percent or less in a tract of land will "escheat" or automatically transfer to the tribe. In spite of this law, the number of such small interests owned by individual Indians has grown from 350,000 in 1984 to over 1.5 million in 1994! Unless something is done to fix the fractionated heirship problem soon, the BIA will simply no longer be able to provide realty and IIM services to the owners. Your advice and assistance are needed.

Any proposal to solve the fractionated heirship problem must have two parts: (1) the consolidation of ownership, and (2) the prevention (or substantial reduction) of further fractionation. These objectives can be met through a land-purchase program, and by placing limitations on who can inherit interests in allotted land. The Department has prepared a "consultation package" which outlines a legislative proposal that meets these two objectives. The basic elements of this proposal are as follows:

* The proposal creates a land acquisition program and authorizes the Secretary of the Interior to purchase fractional interests of any size from owners who are willing to sell. These interests will ultimately be transferred to the tribes.

* A priority for purchase is given to owners of fractional interests amounting to 2 percent-or-less and to income producing land.

* The Secretary will attempt to either purchase all of the interests in a parcel, or partition out the purchased interests into a single parcel, for transfer to the tribe on whose reservation the land is located.

* All income from a parcel transferred to the tribe will be paid to the Secretary until the purchase price paid by the Secretary has been recovered.

* Income from the purchased interests and from parcels transferred to tribes will be put into a revolving fund which will be used for the purchase of additional fractional interests.

* The proposal changes the test in the present Indian Land Consolidation Act which is used to determine whether fractional interest of 2 percent or less will escheat to the tribe when an owner dies. The new test avoids presumptions and would be based on actual income produced by a fractional interest or on the appraised value of the interest.

* To prevent further fractionation, inheritance of interests is limited to members of the tribe on whose reservation the land is located. Where an owner dies without a will, inheritance is further limited to the decedent's immediate family - spouse, children, grandchildren, parents, grandparents, brothers and sisters. A non-member spouse can only receive a life estate.

* Tribes are authorized to change the limitations on inheritance established by the proposal.

* New limitations on who can inherit do not become effective for two years. The Secretary is required to provide notice of the limitations and alert owners of estate planning options.

I wish to emphasize that the proposal outlined in the consultation package is only a draft proposal. It has not been introduced in the Congress, and no proposal will be introduced until the landowners and tribes have had an opportunity to comment and/or suggest alternate solutions. I invite you to comment on the concepts described above or to suggest other solutions to the fractionated ownership problem. Enclosed for your convenience is a short questionnaire. If you need additional space feel free to add pages as necessary. These comments should be sent to us in the enclosed postage-paid envelope no later than February 15, 1995.

It is also our intent to conduct field consultations with landowners and tribes. We will attempt to provide notice of these consultations by mail, newspaper, radio and posted notices at public locations. Because of the difficulty in locating addresses and sending thousands of notices by mail, you may not receive this letter for several weeks after it has been signed. It is our goal to have this notice in your hands no later than mid-January, 1995, in order to give you time to consider the proposal and submit comments by February 15, 1995. If you would like a complete copy

of the consultation package, copies are available at BIA Agency and Area Offices. If you do not live near an Agency or Area Office you may request a copy of the consultation package by writing to the Bureau of Indian Affairs, Attention: HEIRSHIP, 1849 C Street, NW, MS-4522-MIB, Washington, D.C. 20240.

Sincerely,



Ada E. Deer
Assistant Secretary - Indian Affairs

Enclosures



Remarks of
Kevin Gover, Assistant Secretary-Indian Affairs
Department of the Interior
at the
Ceremony Acknowledging the 175th Anniversary
of the Establishment of the
Bureau of Indian Affairs
September 8, 2000



In March of 1824, President James Monroe established the Office of Indian Affairs in the Department of War. Its mission was to conduct the nation's business with regard to Indian affairs. We have come together today to mark the first 175 years of the institution now known as the Bureau of Indian Affairs.

It is appropriate that we do so in the first year of a new century and a new millennium, a time when our leaders are reflecting on what lies ahead and preparing for those challenges. Before looking ahead, though, this institution must first look back and reflect on what it has wrought and, by doing so, come to know that this is no occasion for celebration; rather it is time for reflection and contemplation, a time for sorrowful truths to be spoken, a time for contrition.

We must first reconcile ourselves to the fact that the works of this agency have at various times profoundly harmed the communities it was meant to serve. From the very beginning, the Office of Indian Affairs was an instrument by which the United States enforced its ambition against the Indian nations and Indian people who stood in its path. And so, the first mission of this institution was to execute the removal of the southeastern tribal nations. By threat, deceit, and force, these great tribal nations were made to march 1,000 miles to the west, leaving thousands of their old, their young and their infirm in hasty graves along the Trail of Tears.

As the nation looked to the West for more land, this agency participated in the ethnic cleansing that befell the western tribes. War necessarily begets tragedy; the war for the West was no exception. Yet in these more enlightened times, it must be acknowledged that the deliberate spread of disease, the decimation of the mighty bison herds, the use of the poison alcohol to destroy mind and body, and the cowardly killing of women and children made for tragedy on a scale so ghastly that it cannot be dismissed as merely the inevitable consequence of the clash of competing ways of life. This agency and the good people in it failed in the mission to prevent the devastation. And so great nations of patriot warriors fell. We will never push aside the memory of unnecessary and violent death at places such as Sand Creek, the banks of the Washita River, and Wounded Knee.

Nor did the consequences of war have to include the futile and destructive efforts to annihilate Indian cultures. After the devastation of tribal economies and the deliberate creation of tribal dependence on the services provided by this agency, this agency set out to destroy all things Indian.

This agency forbade the speaking of Indian languages, prohibited the conduct of traditional religious activities, outlawed traditional government, and made Indian people ashamed of who they were. Worst of all, the Bureau of Indian Affairs committed these acts against the children entrusted to its boarding schools, brutalizing them emotionally, psychologically, physically, and spiritually. Even in this era of self-determination, when the Bureau of Indian Affairs is at

long last serving as an advocate for Indian people in an atmosphere of mutual respect, the legacy of these misdeeds haunts us. The trauma of shame, fear and anger has passed from one generation to the next, and manifests itself in the rampant alcoholism, drug abuse, and domestic violence that plague Indian country. Many of our people live lives of unrelenting tragedy as Indian families suffer the ruin of lives by alcoholism, suicides made of shame and despair, and violent death at the hands of one another. So many of the maladies suffered today in Indian country result from the failures of this agency. Poverty, ignorance, and disease have been the product of this agency's work.

And so today I stand before you as the leader of an institution that in the past has committed acts so terrible that they infect, diminish, and destroy the lives of Indian people decades later, generations later. These things occurred despite the efforts of many good people with good hearts who sought to prevent them. These wrongs must be acknowledged if the healing is to begin.

I do not speak today for the United States. That is the province of the nation's elected leaders, and I would not presume to speak on their behalf. I am empowered, however, to speak on behalf of this agency, the Bureau of Indian Affairs, and I am quite certain that the words that follow reflect the hearts of its 10,000 employees.

Let us begin by expressing our profound sorrow for what this agency has done in the past. Just like you, when we think of these misdeeds and their tragic consequences, our hearts break and our grief is as pure and complete as yours. We desperately wish that we could change this history, but of course we cannot. On behalf of the Bureau of Indian Affairs, I extend this formal apology to Indian people for the historical conduct of this agency.

And while the BIA employees of today did not commit these wrongs, we acknowledge that the institution we serve did. We accept this inheritance, this legacy of racism and inhumanity. And by accepting this legacy, we accept also the moral responsibility of putting things right.

We therefore begin this important work anew, and make a new commitment to the people and communities that we serve, a commitment born of the dedication we share with you to the cause of renewed hope and prosperity for Indian country. Never again will this agency stand silent when hate and violence are committed against Indians. Never again will we allow policy to proceed from the assumption that Indians possess less human genius than the other races. Never again will we be complicit in the theft of Indian property. Never again will we appoint false leaders who serve purposes other than those of the tribes. Never again will we allow unflattering and stereotypical images of Indian people to deface the halls of government or lead the American people to shallow and ignorant beliefs about Indians. Never again will we attack your religions, your languages, your rituals, or any of your tribal ways. Never again will we seize your children, nor teach them to be ashamed of who they are. Never again.

We cannot yet ask your forgiveness, not while the burdens of this agency's history weigh so heavily on tribal communities. What we do ask is that, together, we allow the healing to begin. As you return to your homes, and as you talk with your people, please tell them that time of dying is at its end. Tell your children that the time of shame and fear is over. Tell your young men and women to replace their anger with hope and love for their people. Together, we must wipe the tears of seven generations. Together, we must allow our broken hearts to mend. Together, we will face a challenging world with confidence and trust. Together, let us resolve that when our future leaders gather to discuss the history of this institution, it will be time to celebrate the rebirth of joy, freedom, and progress for the Indian Nations. The Bureau of

Indian Affairs was born in 1824 in a time of war on Indian people. May it live in the year 2000 and beyond as an instrument of their prosperity.

--END--



Remarks of
Kevin Gover, Assistant Secretary-Indian Affairs
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at the
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of the Establishment of the
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